

MASTER

South Africa and the Rule of Law

INTERNATIONAL COMMISSION OF JURISTS
GENEVA
1960

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FOREWORD

The International Commission of Jurists presents in this Report to the international legal community the results of a thorough although not exhaustive inquiry into the problems created by the systematic application of the principle of racial separation (apartheid)¹ in the Union of South Africa. In undertaking this research, the Commission was aware of the fact that its purpose could not be served by a mere study of the legality of constitutional processes that instituted apartheid and continue to uphold and strengthen it in all fields of human relations. It is not a violation of positive law that is being brought to the attention of world public opinion, but rather the spirit in which such law is made by the legislator, interpreted by the administrator and enforced by the judge.

The International Commission of Jurists counts among its primary aims the promotion and defence of the Rule of Law.² Its definition of this basic principle proceeds from the belief that :

¹ K. L. Roskam, *Apartheid and Discrimination* (Leyden, 1960); at p. 98 Dr. Roskam points out that the term apartheid appeared for the first time in the Afrikaans Dictionary in 1950 where it was defined as :

“ A political tendency or trend in South Africa, based on the general principles

- (a) of a differentiation corresponding to differences of race and/or level of civilisation, as opposed to assimilation;
- (b) of the maintenance and perpetuation of the individuality (identity) of the different colour groups of which the population is composed, and of the separate development of these groups in accordance with their individual nature, traditions and capabilities, as opposed to integration...”

(English translation from the *Report of the United Nations Commission on the Racial situation in the Union of South Africa*, 1953, p. 53).

² The International Commission of Jurists has defined the Rule of Law as follows :

“ The principles, institutions and procedures, not always identical, but broadly similar, which the experience and traditions of lawyers in different countries of the world, often having themselves varying political structures and economic background, have shown to be important to protect the individual from arbitrary government and to enable him to enjoy the dignity of man. ”

“ the Rule of Law is a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible and which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realised. ”³

It is readily apparent that viewed from the standpoint of the lawyers' broad civic responsibility the formal correctness of a legislative measure does not *per se* assure its compliance with the Rule of Law; the absence of the social content in an Act and its incompatibility with the basic principles of human rights makes it devoid of those ethical and moral values that have become an indispensable corollary of legal craftsmanship and do in the final analysis set it apart from an indiscriminate exercise of power.

The Commission holds that the application of the principle of apartheid which has come under scrutiny in this Report is morally reprehensible and violates the Rule of Law. The evil of the policy of separation of races lies in the presumption of racial superiority translated into the deliberate infliction of an inferior way of life on all who are tainted by non-white skins. Not permitted to choose their own way of life, the non-white population are reduced to permanent political, social, economic and cultural inferiority.

The impact of apartheid extends to virtually all aspects of life in the Union. At church, at home, at school or university, the cinema, on the beach, in the courts, in hospital, at the polls; in fact in all conceivable forms of human relations a ruthless discrimination against the non-white population has become the law. The humiliation inflicted by such measures is the testimony on which apartheid can be judged. Its price in terms of human degradation will never be known, but it is one which is high enough to outweigh any of the benefits which it is claimed to bring.

As part of this human suffering, both whites and non-whites have been exposed to steady encroachments on their basic freedoms. Liberty of expression, movement and association are but three of these freedoms which have been drastically curtailed. Judges who

³ The Declaration of Delhi. See *The Rule of Law in a Free Society : A Report on the International Congress of Jurists, New Delhi, India, 1959* (Geneva, 1960), p. 3, and *Newsletter of the International Commission of Jurists*, No. 6 (March-April, 1959), p. 1.

alleviate injustice by refusing to interpret the law in the spirit motivating the Government are vilified openly. That fundamental principle of fair trial, knowing the exact nature of the accusation, appears to have been forgotten, and defendants still stand trial en masse, wondering on which of the many possible permutations resulting from what an English judge once called "the bastard conjunction and/or" they can expect to be attacked by the prosecution.

The pattern of apartheid is examined in this report within the framework of political, social and cultural rights; its effect on the administration of justice and on the legal profession is also considered. The denial of civil and religious liberties in which apartheid has resulted is reflected with equal intensity in the economic disparity between the races, in the discrimination in the use of public services, in the enjoyment of social rights, and in the deliberate denial of opportunities in education. Whilst the white population do not suffer from economic or social injustice, their opposition to apartheid may entail grave restrictions of their civil liberties. Injustice has been inflicted on the liberal white element in the interest of advancing a separate and supreme white community.

The International Commission of Jurists has followed events in South Africa for some time past, and has already published accounts by observers of the proceedings in the apparently interminable Treason Trial, a mass political trial which was initiated by arrests in 1956. The comments of Mr. Gerald Gardiner, Q.C., on the Treason Trial appeared in the *Journal of the International Commission of Jurists*, Vol. I, No. 1 (Autumn 1957); those of Professor Edvard Hambro were published in *Bulletin* No. 8 (December 1958); while those of Mr. Edward St. John, Q.C., appeared in *Bulletin* No. 9 (August-October 1959). The events in South Africa, however, are of much greater concern than the Treason Trial alone, and with the object of preparing a report on South Africa, the Commission asked Mr. Elwyn Jones, Q.C., M.P., to visit the Union in May-June 1960 on its behalf. On his return Mr. Elwyn Jones held a press conference in Geneva and delivered his observations. These are published as Appendix A of the present Report, which has been prepared by the International Commission in the hope that world legal opinion will thereby be informed of the profoundly distressing conditions of life in the Union of South Africa and the perilous state of the Rule of Law in terms of both classic freedoms and social justice.

Among the objectives of the International Commission of Jurists, which as of to-day draws its support from 37,000 judges, lawyers and teachers of law throughout the world, are to strengthen legal procedures and institutions associated with the Rule of Law in those countries where it is already established, and to obtain its acceptance wherever it is denied. In carrying out these objectives, the Commission's range of activities has not been restricted to any exclusive area or single country but has extended to all parts of the world.⁴ It has, for example, recently undertaken a detailed investigation of the maladministration of justice and the violation of human rights in the Dominican Republic, Cuba and Spain, upon which reports are now in preparation. It has protested to the Portuguese Prime Minister over the denial by Portuguese authorities of the rights of certain accused in Portuguese Angola to select counsel of their own choice. Since 1957 the Commission has been concerned about aspects of events in Algeria, the aggravation of which continues to warrant the attention of the Commission. Comments on these situations and those in many other countries generally appear in its regular publications (*Journal, Bulletin, Newsletter*), calling attention to developments throughout the world which bear on the Rule of Law, favourably or otherwise. The International Commission has from time to time prepared special studies on situations of especially grave concern where basic freedom and justice are threatened or denied. In 1957, the Commission published such a study on Hungary,⁵ with supplements; in 1959, on Tibet,⁶ and then in 1960 the report of its Legal Inquiry Committee on Tibet was published.⁷

The situation in South Africa called for a special report on the systematic denial of man's most elementary and fundamental rights, accomplished in this case through an oppressive discrimination based upon race and colour.

The Union of South Africa is still a Parliamentary democracy, although political power is confined to the white population. South African legal institutions have a great tradition of an independent

⁴ For further details with respect to the objectives, organisation and activities of the International Commission of Jurists see the document entitled *International Commission of Jurists : Basic Facts* (Geneva, 1960).

⁵ *The Hungarian Situation and the Rule of Law* (Geneva, 1957).

⁶ *The Question of Tibet and the Rule of Law* (Geneva, 1959).

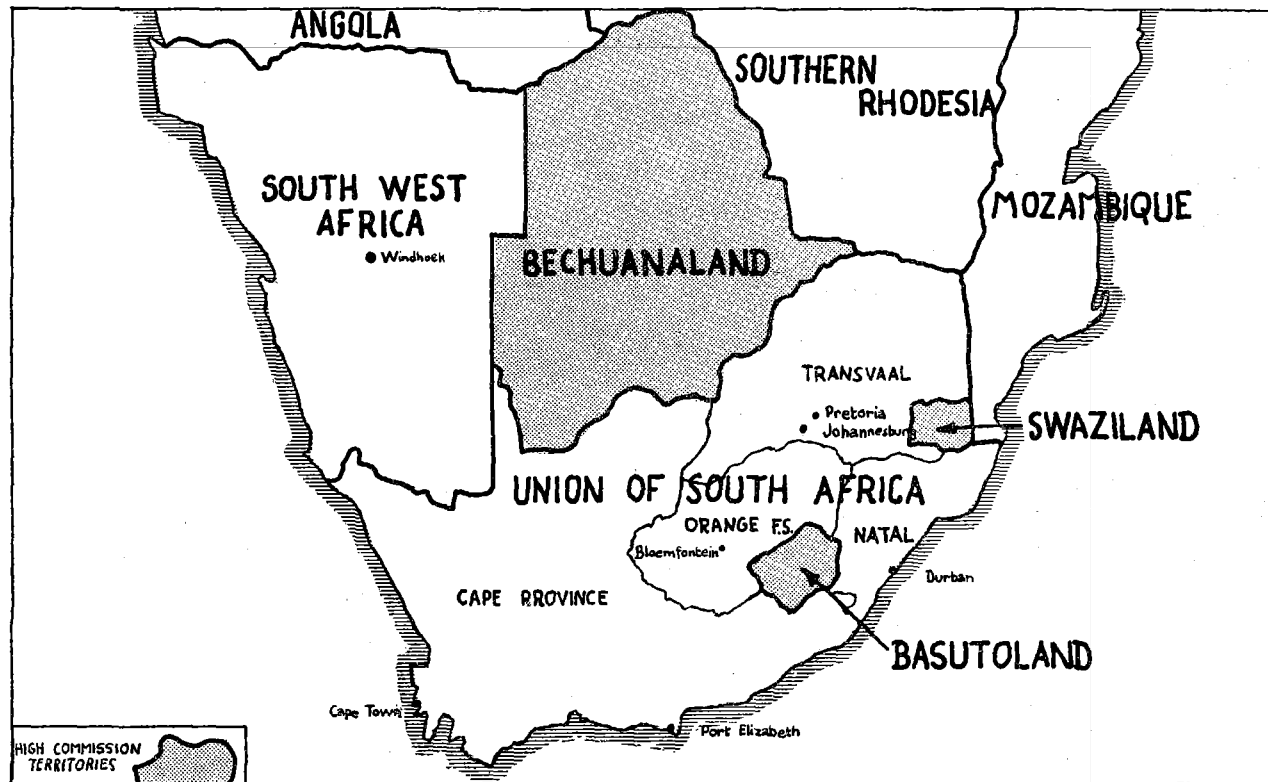
⁷ *Tibet and the Chinese People's Republic* (Geneva, 1960).

Bench and legal profession of the highest quality. An appeal to such authorities cannot be in vain, and it is the earnest hope of the Commission that the systematic decline in the very institutions which exist to promote and protect justice can be arrested by those institutions themselves. The basic guarantees of the Rule of Law must be : government with the consent of the governed; a legislature which is conscious of its responsibility in the field of social justice for all men; and the administration of laws which command the support of the people by a judiciary appointed for no other reason than its own professional capability and assisted by an independent legal profession.

The preparation of this Report by the legal staff of the Commission has been facilitated by the availability of papers and documents from various outside sources. The most useful material submitted by Louis J. Blom-Cooper, Esq., Barrister-at-Law in London, has been especially appreciated.

November 1960

Jean-Flavien LALIVE
Secretary-General



MAP OF SOUTH AFRICA

UNION OF SOUTH AFRICA

THE LAND AND THE PEOPLE

The Union of South Africa is composed of four provinces — Cape, Natal, Transvaal and Orange Free State, with a total area of 472,359 square miles.¹ Within its geographical boundaries is the protectorate of Basutoland, which is controlled by a Resident Commissioner under the direction of the High Commissioner for the United Kingdom, who also administers the contiguous territorial protectorates of Bechuanaland and Swaziland.² Adjacent to the Union of South Africa is the territory of South-West Africa over which the former was granted a "C" Mandate under Article 22 of the Covenant of the League of Nations, December 17, 1920.³

At the time of the last census, May 8, 1951, the total population of the Union of South Africa was 12,646,375, and of this number the official racial classification was as follows: "European" 2,642,713; "African" 8,535,341; "Coloured" 1,103,405; and "Asian" 366,644.⁴ Although the legal aspects thereof are discussed in greater detail later in this Report it seems suitable to give a brief explanation of the aforementioned racial classifications and the general terminology applied in South Africa with respect to the population.⁵ The term "European" applies to all whites as defined by South African law.⁶ (Conversely, "non-white" applies to all non-"Europeans".) Further the white group can be generally divided between "Afrikaners", which includes those whose first or mother-tongue is Afrikaans and who are primarily of Dutch descent (some also of Huguenot and German stock), and the English-speaking, primarily British, element. The "African" classified by law to be "any person who is generally accepted as a member of any aboriginal race or tribe of Africa",⁷ is also referred to as "Native", "Kaffir" (derogatory)

¹ *Official Yearbook of the Union of South Africa*, No. 29, 1956-1957, U.G. 1957-1958, p. 1.

² Lord Hailey, *An African Survey* (revised 1956) (London, 1957), p. 272.

³ See Section XI, p. 84, *infra*.

⁴ Hailey, *op. cit.*, pp. 143-144.

⁵ See Roskam, *op. cit.*, pp. 158-165, for a detailed treatment of terminology.

⁶ See Section I p. 22, *infra*.

⁷ Bantu Education Act, 1953, Section 1(v). An earlier and more extensive description is to be found in Section 49 of the Native Trust and Land Act of 1936.

or, less precisely, "Bantu".⁸ The "Coloureds" are those who are neither Africans nor Asians nor whites. The "Asians" include Indians and other Asiatic groups. Also in current usage are the terms "blacks" and "non-whites". The latter is a convenient comprehensive reference to Africans, Coloureds and Indians.

The present Government of the Union of South Africa is that of the NATIONALIST PARTY under the leadership of Dr. H. F. VERWOERD (previously Minister of Native Affairs), who took over the premiership from J. STRIJDOM in 1958. The Nationalist Party, which draws its support mainly from the Afrikaner rural population, came into power in 1948 with a majority of the House of Assembly of the bicameral Parliament. At that time Dr. D. F. MALAN succeeded Field Marshal J. C. SMUTS as Premier. Field Marshal Smuts had held that position since 1939 as head of the UNITED PARTY. The Nationalist Party platform and the expressed policy of the Government is one of apartheid which, in brief, aims towards the separate development of the non-white ethnic groups.⁹ This concept cannot, however, be uniquely attributed to the present Government or recent times, as will be seen from the analysis of legislative history outlined and discussed below. Indeed discriminatory provisions can be found throughout the legislative history, and as early as 1917 Smuts is quoted as saying that confusion arising from mixing black and white, with the result that the black would be lifted up to degrade the white, could only be prevented by keeping white and black apart.¹⁰ Similarly in the draft constitution, published in 1942 and included herein as Appendix B, one finds a thorough application of this policy.¹¹

⁸ Roskam, *op. cit.*, pp. 161-162, points out :

"Unfortunately the term 'Bantu' is not a fit description of the 9,606,000 Africans either. The term is generally used to denote a group of about 70 million people, whose 200 languages are related and in some aspects uniform. They are differentiated from other population groups on language, and not on racial grounds.

'Bantu' is a plural term, derived from a stem meaning the people. Thus it is impossible to speak of an individual Bantu, unless Bantu were used as an adjective.

Although employed to escape the derogatory connotation the word 'Native' had acquired, the word Bantu is in the opinion of most Africans also an attempt to tie them to their tribal past, without recognition on the part of those who employ Bantu of their detribalisation, westernisation or urbanisation."

⁹ Senate Debates (Official Reports), 1948, col. 237.

¹⁰ Hansard 1948, Vol. 64, col. 1468, quoted by Roskam, *op. cit.*, p. 93.

¹¹ Draft Constitution for the Republic of South Africa, published in *Die Burger* and *Die Transvaler* on January 22 and 23, 1942, by the authority of Dr. Malan, leader of the National Party. See Article 3(2) and (3) limiting the right to vote to white "burgers"; Article 4(12) limiting the selection of Head Minister to a burger who by definition must be white; Article 9 describing the government of the non-registered, non-European groups by segregation (Subsection 1), by shutting out non-Europeans from practice or trade among white people (Subsection 7), and by prohibition of whites being employed by non-European employers

Among other leading figures in contemporary South Africa reference is made to C. R. SWART, Governor General since January 12, 1960, succeeding E. G. JANSON; Dr. T. E. DÖNGES, Minister of Finance; E. H. LOUW, Minister of External Affairs; M. D. de WET NEL, Minister of Bantu (Native) Administration and Development; F. C. ERASMUS, Minister of Justice; Hon. L. C. STEYN, Chief Justice of the Supreme Court; J. F. NAUDE, Minister of Interior; P. A. SAUER, Minister of Land, Forestry and Public Works; and A. LUTHULI, President of the AFRICAN NATIONAL CONGRESS, an organisation opposing the Government policy of apartheid.

Recent events of interest to the reader are the TREASON TRIAL, the SHARPEVILLE SHOOTINGS, and the declaration of the EMERGENCY. The Treason Trial, commencing in 1956 with the arrest of 156 persons on charges of treason, resulted in prolonged detention of the accused, the last of the detainees being released on August 31, 1960, and continues to be in session.¹² The Sharpeville shootings which occurred March 21, 1960, involved police firing on crowds demonstrating against the PASS LAWS requiring that all Africans carry and present upon demand a document of identification.¹³ Finally, on March 30, 1960, a STATE OF EMERGENCY was proclaimed by the Government for 80 districts of the Union of South Africa. The Emergency, with pertinent EMERGENCY REGULATIONS, which are discussed and appended herein,¹⁴ ended on August 31, 1960. The above and other historical events are the subject of a brief chronology set forth immediately below.

(Subsection 8); and Article 11(4) which provides that "the principle of no mixing of blood and of segregation must be maintained as of fundamental importance for the future existence of a white civilisation in the Republic of South Africa".

¹² See also Gerald Gardiner, Q.C., "The Treason Trial in South Africa", *Journal of the International Commission of Jurists*, Vol. I, No. 1.

¹³ See Section II, p. 28, *infra*.

¹⁴ See Appendix F, p. 206, *infra*.

CHRONOLOGY OF EVENTS

1652 : The first Dutch settlers arrive in South Africa and establish Cape Colony.

1806 : The British occupy the Cape.

1835-1837 : British rule is established in Cape Colony.

1835-1837 : The Great Trek of the Boers (descendants of the Dutch settlers) from Cape Colony northwards. Trek in protest to British rule. The Boers establish two northern republics of Orange Free State and Transvaal, the independence of which is recognised by the British.

August 8, 1843 : Natal becomes a British colony. The Boers in the colony trek into northern republics.

1860 : The first Indians arrive in Natal as labourers.

1899-1902 : Anglo-Boer War.

May 31, 1902 : Treaty of Vereeniging. The Boers accept British sovereignty over Orange Free State and Transvaal.

May 31, 1910 : Union of South Africa established under the South Africa Act, 1909, passed at Westminster on September 20, 1909.

1914 : General Louis Botha, the first Prime Minister, takes South Africa into the war against Germany. Abortive rebellion put down firmly but without retribution.

1919 : General Botha dies; succeeded by General Smuts.

1919 : South West Africa, a German colony captured by General Botha during the war, becomes a mandated territory under the League of Nations to be administered by South Africa.

1924 : General Hertzog becomes until 1939 Prime Minister of South Africa, first in coalition with the Labour Party, then for three years with an absolute majority, and from 1933, in coalition and ultimately in fusion with the South African Party of General Smuts, the parent of the present United Party.

1936 : Representation of Natives Act, provided for representation on a communal basis. A significant milestone in the policy of racial segregation inaugurated by the Hertzog-Smuts coalition.

1939 : General Hertzog and General Smuts split over neutrality. General Smuts's stand for entry into the war against Germany endorsed by Parliament. General Smuts becomes Prime Minister.

1946 : Asiatic Land Tenure and Indian Representation Act restricts Indian purchase of land in South Africa but gives Indian community limited franchise for the first time. Indians protest.

- May 26, 1948 :** General Election : Nationalist-Afrikaner bloc, basing their electoral campaign on apartheid, wins a majority of seats in House of Assembly (lower House of Parliament) although United Party wins a larger popular vote. Dr. Malan becomes Prime Minister until November 30, 1954.
- September 30, 1948 :** First step in policy of apartheid is to abolish Indian franchise granted in 1946. The Government declares intention of repatriating Indians.
- June 9, 1950 :** Population Registration Act : compilation of register according to racial groups.
- June 20, 1950 :** Group Areas Act provides for the division of South Africa into separate areas in which only members of the same racial group may live and work.
- June 23, 1950 :** Suppression of Communism Act passed.
- June 11, 1951 :** Separate Representation of Voters Act removes Cape Coloureds from common electoral roll stipulating that all Representatives elected by Coloured voters must be white. Produces a major constitutional crisis because it is passed only by simple majorities in each House of Parliament instead of two-thirds majority of both Houses sitting together required by the South Africa Act, 1909.
- March 20, 1952 :** The Appellate Division of the Supreme Court declares Separate Representation of Voters Act unconstitutional.
- April 22, 1952 :** The High Court of Parliament Act gives Parliament power to establish a High Court of Parliament with right of review.
- August 28, 1952 :** Parliament (sitting as a High Court) overrules the Supreme Court decision of March 20, 1952, and reaffirms the separate Representation of Voters Act.
- August 29, 1952 :** The Cape Provincial Division of the Supreme Court invalidates the High Court of Parliament Act. The Government appeals unsuccessfully (November 13) to the Appellate Division.
- April 1, 1953 :** Bantu Education Act places all Native education under government control.
- April 15, 1953 :** General Election : Dr. Malan's Nationalist party wins a majority of seats. The popular vote is greater for opposition parties.
- November 30, 1954 :** Dr. Malan resigns as Prime Minister. J. Strijdom succeeds him.
- April 1955 :** Parliament passes law to increase number of judges on Appellate Division from 6 to 11 when sitting on constitutional cases.

May 1955 : Senate Act increasing the number of senators from 48 to 89.

February 1956 : South Africa Act Amendment Act gives force of law to the Separate Representation of Voters Act (1951) and limits competence of courts to pronounce upon validity of laws passed by Parliament.

March 27, 1956 : Government Commission (under the chairmanship of Professor Tomlinson) submits plan for large scale development in African reserve areas.

November 9, 1956 : Nationalist Government ultimately triumphs in constitutional struggle with the courts. Appellate Division (by a 10 to 1 majority) upholds South Africa Act Amendment Act and Senate Act.

December 5, 1956 : 137 South Africans of all races are arrested at dawn on charges of treason. More arrests made during the following week.

December 19, 1956 : Preliminary hearing of evidence against 156 persons begins in Johannesburg. This lasts 13 months, whereafter 91 are indicted.

April 8, 1957 : Separate University Education Bill is introduced and passed on May 29.

April 16, 1958 : General Election : Nationalist Party wins 103 out of 163 seats in House of Assembly. The first time that any party has won three elections in a row.

August 1, 1958 : Treason Trial of 91 South Africans of all races opens in Pretoria. Observers are present from the United States and England, and a Norwegian, Professor Edvard Hambro, attends on behalf of the International Commission of Jurists.

September 3, 1958 : Dr. Verwoerd succeeds Mr. Strijdom as Prime Minister on latter's death.

June 8, 1959 : Introduction of Extension of University Education Bill which will prohibit non-whites attending any white university.

August 17-September 16, 1959 : United Party members of Parliament resign from the party.

November 13, 1959 : New political party—Progressive Party—headed by Jan Steytler with H. Lawrence, a former Minister of Justice, as Chairman, established out of nucleus of 15 defecting members of United Party.

November 17, 1959 : United Nations General Assembly adopts a resolution expressing "deep regret and concern" that South Africa has not discarded its apartheid policy.

December 11, 1959 : Twelve Africans are killed and fifty wounded in riots in Windhoek (South West Africa) as police supported by South African troops open fire on stone-throwing crowds.

January 20, 1960 : Dr. Verwoerd announces future referendum on whether South Africa should become a Republic.

January 24, 1960 : Nine policemen killed in African riots in Durban.

February 3, 1960 : "Wind of change" speech by British Prime Minister, Harold Macmillan, to joint session of South African Parliament.

March 21, 1960 : Police open fire on crowds of Africans at Sharpeville near Vereeniging. Sixty-nine Africans killed by police gunfire. On same day firing on Africans at Langa, near Capetown. Demonstrations against imposition of pass cards.

March 26, 1960 : Government suspends temporarily requirement that Africans carry pass cards.

March 30, 1960 : State of Emergency declared in all industrial magisterial districts. On same day 234 whites, Africans and Asians are arrested under Emergency Regulations.

April 1, 1960 : United Nations Security Council adopts resolution (with Britain and France abstaining) calling upon South Africa to "abandon its policy of apartheid".

April 7, 1960 : Unlawful Organisations Act.

April 8, 1960 : Proclamation issued under Unlawful Organisations Act banning the African National Congress and the Pan-African Congress for one year.

April 8, 1960 : More arrests under Emergency Regulations.

April 9, 1960 : Attempted assassination of Dr. Verwoerd by a white cattle breeder at a trade and farm exhibition in Johannesburg.

April 14, 1960 : Scheduled African stay-at-home strike fails.

April 22, 1960 : Minister of Justice, Mr. Erasmus, announces that 1,569 persons have been detained under Emergency Regulations (including 94 Whites, 74 Coloured and 1,451 Africans). Seventeen of those detained are lawyers.

April 25, 1960 : Johannesburg police disclose that more than 4,500 Africans have been arrested in raids on their settlements since the Emergency was proclaimed on March 30.

May 1-13, 1960 : Mr. Eric Louw, Minister for External Affairs, attends Commonwealth Prime Ministers' Conference in London in place of Dr. Verwoerd, who is recovering from bullet wounds. The final communiqué of the Conference makes no reference to apartheid.

August 31, 1960 : State of Emergency ended; the last of the Treason Trial accused released from detention.

October 5, 1960 : Affirmative Republic referendum for white voters only : For a Republic : 849,958—Against : 775,878.

INTRODUCTION

It is the purpose of this Report to analyse and describe the legislative, executive and judicial implementation of the policy of apartheid in the Union of South Africa. This analysis and description is made upon the general basis and in the light of the Rule of Law, as defined in the *Conclusions* of the New Delhi Congress referred to in the Foreword, the Charter of the United Nations, of which the Union of South Africa is a founder member, and the Universal Declaration of Human Rights. In connection with the Charter particular stress is placed upon Articles 1 (3) ¹ and 55 (c) ² which call for the promotion and encouragement of respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion; and Article 56, which states that "all Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purpose set forth in Article 55".³

Specific reference is made in each section of the Report to relevant Articles of the Universal Declaration of Human Rights.⁴ This is

¹ United Nations Charter, Article 1(3) :

"The purposes of the United Nations are...

"3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion..."

² *Ibid.*, Article 55(c) :

"With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote...

"c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

³ The following resolutions were passed by the United Nations General Assembly calling upon the Government of the Union of South Africa to fulfill its obligations under Article 56 of the United Nations Charter: Resolution No. 917 (X), 6 December, 1955; Resolution No. 1016 (XI), 30 January, 1957; Resolution No. 1248 (XIII), 30 October, 1958; and Resolution No. 1375 (XIV), 17 November, 1959.

⁴ United Nations General Assembly Resolutions No. 217 (III), 10 December, 1948. The Universal Declaration of Human Rights is reproduced in full on pp. of this Report.

done in view of the position of the International Commission of Jurists stated in Clause III (1) of the Conclusions of the Committee on the Legislative and the Rule of Law of the International Congress of Jurists in New Delhi that "Every legislature in a free society under the Rule of Law should endeavour to give full effect to the principles enunciated in the Universal Declaration of Human Rights." Further, although the Universal Declaration of Human Rights may not have the legal validity of an international treaty, it does provide fundamental principles and standards of human conduct recognized and subscribed to by all civilised nations.

I. RACIAL CLASSIFICATION

Article 1 of the Universal Declaration of Human Rights :

" All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

The problem of race membership has existed in South Africa since the early days of white settlement but became acute in connection with legislation concerning land tenure, admission to schools, employment, voting rights, etc., and called for regulation in the various areas involved.¹ It was as late as 1950 that the South African Government passed the Population Registration Act which, for the first time, contained a racial classification of the South African population. Until this moment, many people had, according to a press statement of the Minister of the Interior, lived "all their lives in a state of unease because it was uncertain to which racial group they belonged. But now, after the enactment of the Population Registration Act certainty had been given, and the clouds which hovered over them had disappeared."²

This statement may be correct in that from the establishment of the Union of South Africa in 1910 many definitions of various racial groups were incorporated in a number of laws which did not always correspond with one another.³ Prior to 1950, as the position was often fairly flexible, if not uncertain, people could "pass" from one group into another if their physical features allowed this. Sometimes it meant for many of them a considerable improvement of their personal position, such as higher rates of pensions, the right of freedom of movement, broadening of their residential rights, etc. Such

¹ See Muriel Horrell, *Race Classification in South Africa. Its Effect on Human Beings*, A Fact Paper, South African Institute of Race Relations, No. 2, 1958, p. 2.

² *Cape Times*, February 21, 1958, quoted from Horrell, *op. cit.*, p. 1.

³ The Native Labour Regulation Act of 1911, Native (Urban Areas) Act of 1923, Representation of Natives Act of 1936, Native Trust and Land Act of 1936 and others applied various criteria of racial classification.

flexibility ended, however, with the Population Registration Act, which was intended to provide the foundation for the strict implementation of the policy of apartheid. The Act actually introduced a rigid and inflexible system of racial classification with the underlying purpose of determining the racial group of every individual once and for all. Although there was some opposition to the new legislation,⁴ the Act was passed and constitutes an important step in the field of racial administration. It did indeed attempt to establish the basis upon which other legislation such as the Group Areas Acts, the Native Building Workers Act of 1951, the Native Services Levy Act of 1952 and the Native Resettlement Act of 1954 could be carried out.

The Population Registration Act of 1950 provided for the compilation by the Director of Census, from forms submitted to him under the Census Act of 1910, of a list to include the name of every person permanently and temporarily resident in the Union. According to the Population Registration Act the population of South Africa is to be classified as White, Coloured or Native, namely :

- (a) a "White" person means a person who in appearance obviously is, or who is generally accepted as, a white person, but does not include a person who, although in appearance obviously a white person, is generally accepted as a Coloured person;
- (b) "Native" means a person who in fact is, or is generally accepted as, a member of any aboriginal race or tribe of Africa;
- (c) a "Coloured" person means a person who is not a "white" person or a "Native."⁵

To this the Amendment Act No. 71 of 1956 added the following proviso :

"A person who in appearance obviously is a member of an aboriginal race or tribe of Africa shall for the purposes of this Act be presumed to be a Native unless it is proved that he is not in fact generally accepted as such a member."

The Nationalist Government's belief in definite racial categories and a permanent settlement of the racial classification thus found its concrete expression in this Act as amended. In the daily practice of its application, however, manifold difficulties arose. These had

⁴ See Gwendolin M. Carter, *The Policies of Inequality, South Africa Since 1948* (London 1958), pp. 81-84.

⁵ In Proclamation No. 46 of 1959, the Coloured sub-groups were defined as follows :

- | | | |
|--|---|--|
| <ul style="list-style-type: none"> (i) Cape Coloured (ii) Cape Malay (iii) Griqua (iv) Chinese (v) Indian (vi) Other Asiatic | } | <p>in each case, the group includes persons who in fact are or who are generally accepted as, members of the race or class concerned.</p> |
| <ul style="list-style-type: none"> (vii) Other Coloured | — | <p>those who in fact are, or who are generally accepted as, members of a race or tribe whose national home is in any country or area in Asia other than China, India or Pakistan.</p> <p>Persons not included in any of the above groups who are not white persons or Natives.</p> |

already been prophesied by Field Marshal Smuts who in the preparatory stages of the Act pointed out the likelihood of friction, the uncertainty of the definitions, the unreliability of the register and stated : " I think all this probing into private affairs, this listening to informers, this effort to classify what is unclassifiable, what is impossible to achieve, will create a situation which will hit this country hard in years to come. " ⁶ The uncertainty and inequities of such classification is due to the fact that it is almost impossible to set up a general or scientific criterion on the basis of which a clear-cut separation of the different races could be achieved. This lack of workable definitions is reflected in the fact that Acts other than the Registration Act provide different criteria for the classification of the population (e.g., blood, ancestry, appearance, etc.) and that, accordingly, the decisions of the courts and of the Administration often diverge. Thus, the borderline cases affect not only the Coloured-Asian-African group but also the white-Coloured groups. It therefore happens that a person who appears to be white but is generally accepted as coloured might be classified as Coloured under the Population Registration Act, but under the Group Areas Act could be classified as white; or that a man may be an African in terms of the Population Registration Act, but a Coloured person for the purposes, for example, of the Representation of Natives Act. ⁷

Furthermore, there are many South Africans whose appearance does not furnish conclusive evidence as to whether they are white or not. Their classification depends therefore very much on the question of general acceptance. Some whites have found themselves downgraded because they have been classified as Coloured due to their friendly relations with non-whites and their general behaviour, which leads to the acceptance that they actually belonged to another group than to that which they claimed. In this context it may be mentioned that under the Population Registration Act the " passing " from one group to another has become rather unlikely with the result that people no longer have the possibility of improving their personal position by passing to a socially " higher " category.

The decision with respect to all racial classification is taken by the Director of Census on the basis of information in his possession and supplemented, where necessary, by additional information obtained by officials of the Department of the Interior. It must be emphasized, however, that this decision is by no means final. At *any time* after a person has been classified in the Population Register this classifi-

⁶ House of Assembly Debates, Vol. 71, col. 2543; quoted from Carter, *op. cit.*, p. 82.

⁷ See Horrell, *op. cit.*, pp. 7-11. According to Horrell, *op. cit.*, p. 10, the Minister of the Interior appointed some years ago an Interdepartmental Committee to investigate whether it was possible to arrive at common definitions of the various racial groups for the purposes of all legislation. During 1957 this Committee reported that the task was beyond its powers, but the Minister asked the members to try again.

cation can be altered by the Director of Census. He is not compelled to state what has led him to reconsider his previous decision.⁸ It may therefore well be that he gets his information from "informers". The fact that he is not obliged to disclose his sources of information opens the door to "informers" whose motive in denouncing people who are already classified may be to eliminate more successful business rivals, or merely sheer malice. The Population Registration Act does, however, contain safeguards against malicious informing.⁹ Objections raised against someone's classification must be lodged with a Board of not less than three persons, constituted for that purpose by the Minister and presided over by a person who is or has been a judge of the Supreme Court of South Africa, or a magistrate.¹⁰ If the Board is satisfied that the objection is "unfounded or frivolous or vexatious" the informer may be caused to pay a certain sum of money not exceeding the costs incurred in connection with his appearance before the Board.¹¹ It must, however, be stressed that these safeguards do not apply when action challenging classification is taken under an Act other than the Population Registration Act. It is not incumbent upon the officials to prove that a person is not of the racial group in which he claims membership but the burden of proof is placed upon the individual concerned.

According to the Population Registration Act, any person who considers himself aggrieved by his classification by the Director may object in writing, enclosing an affidavit setting out the grounds upon which objection is made.¹² The Amendment Act No. 71 of 1956 limited the time for appeals to thirty days after the classification became known to the person concerned.¹³ The decision of the above mentioned Board is final and binding upon all persons including the Director, with the exception of the person affected who may appeal the decision by application on notice or motion to the provincial or local division of the Supreme Court, the judgment of which is subject to appeal to the Appellate Division of the Supreme Court.¹⁴ Such an appeal is not always easy to lodge. It is often difficult to find substantial evidence in due time, the period of thirty days being obviously too short for such investigation. Furthermore, many people are not familiar with the procedure to be followed and miss the chance of lodging an appeal. In speeches made in 1958 the Minister of the Interior said that the population register was then about 95 per cent up-to-date. It consisted of about 4,500,000 names (white, Coloured and Asian—the register for Africans is kept separa-

⁸ Population Registration Act of 1950, Section 5 (3).

⁹ *Ibid.*, Section 11 (6).

¹⁰ *Ibid.*, Section 11 (3).

¹¹ *Ibid.*

¹² *Ibid.*, Section 11.

¹³ Amendment Act No. 71 of 1956, Section 1.

¹⁴ Population Registration Act of 1950, Section 11 (7-9).

tely). Any person who has attained the age of 16 years receives an identity card, which, according to the Act, must be produced on demand to a peace officer.¹⁵ The penalties for failing to comply with the Act are a fine of £100 or six months' imprisonment or both.¹⁶

The enforcement of the Population Registration Act has caused many difficulties which its originators might not have foreseen. Two examples of these have been selected from a multiplicity thereof. First, during 1954 and subsequently, the South African National Council for Child Welfare was very much concerned about the fact that children born from the illegal union of white and African parents were being registered as African. It is often necessary to arrange for the adoption of such children, and Coloured foster-parents would be the most suitable. In May 1955 the special Appeal Board ruled that these children should be classified as Coloured.¹⁷ Secondly, it appears that children of mixed union are generally classified under the Population Registration Act according to the "lower" of the two categories involved—that is, the group carrying fewer privileges. The children of white and Coloured parents would thus be classified as Coloured, and those of Coloured and African parents as Africans. But under the Group Areas Act the children of Coloured and African parents, or Asian and African parents, would while they were minors presumably be classified according to the racial group of the father, in order that they might live with him and his wife in his group area. The child of an Indian father and an African mother might be brought up in an Indian environment, but upon reaching the age of 16 and receiving his identity card might be forced to leave his parents and change his mode of living and his associates to that of the African group.¹⁸

The legislation has generally caused a good deal of hardship to those finding themselves classified differently than they had hitherto regarded themselves. There are numerous stories of anxiety and humiliation which demonstrate the difficulties and sometimes absurd results of a strict implementation of racial classification. The following story is reported in the South African paper, *Sunday Times*: Two days before her wedding a woman from Port Elizabeth received her birth certificate and found that her race was described on it as "European Mixed". At first she was merely puzzled—she did not realise the implication. She thought it meant her parents were not of the same European descent. A telephone call to the Registrar of Births and Deaths revealed, however, that according to the certificate she was Coloured. "I felt sick with shock," she said. She realised that her wedding might be prevented. The birth certificates of her two brothers and two sisters were carefully examined.

¹⁵ *Ibid.*, Section 13.

¹⁶ *Ibid.*, Section 18.

¹⁷ Horrell, *op. cit.*, p. 12.

¹⁸ *Ibid.*, p. 13.

They were registered as Europeans. "It must have been your father's fault," an official at the Registrar's office volunteered. But the woman's father was dead, so the official's assumption could not be confirmed. Her fears grew. She thought of her two children by a former marriage—two girls aged 16 and 11. "I was horrified at the thought of what it could mean to them," she said. The woman's brothers and sisters are all married and have children. Her mother is a well known Port Elizabeth business woman. They too would suffer. Armed with a sheaf of documents the woman went to see a magistrate at the new Law Courts. The magistrate was satisfied that she was a white. She and her fiancé, a Port Elizabeth man known to many people all over South Africa, were married by special licence. But if she wanted her birth certificate changed she would have to go to the Supreme Court, she was told. She was given a form on which she had to declare that she was white.¹⁹

Another example is that of Mr. T. who is in appearance obviously Coloured and whose sons and daughter are near-white. His sons, in fact, served as Europeans in the army. (Both of them now live as Coloured men and were so classified.) But Mr. T. trades in an African location and wishes to continue to do so. It is said that he asked the official to classify him as an African; this was done without question or consideration of the sons and daughter.²⁰

A final example is that of the Griquas, a group of the Northern Cape who have mixed white, Hottentot and Bushman blood but who over the years became a distinctive group with a distinctive appearance, speaking the Griqua Hottentot language. Their case is a form of discrimination within a discrimination. In recent years some of them have intermarried with Africans and have adopted Afrikaans as their language. They have, however, been regarded as Coloured; those who draw pensions are paid at Coloured rates and most of them hold certificates of non-liability for Native taxation. During 1955 the Population Registration official visited Kimberley, near their headquarters, and classified the Griquas as Africans. This was a serious matter for the Griquas who, as well as having to carry reference books, will have to register service contracts, to obey curfew regulations, to draw pensions at lower rates and to pay poll tax. Their children will come under the Bantu Education Act and will have to be educated through the medium of one of the African languages which is completely alien to them.²¹ Such instances could easily be multiplied, and their existence presents an alarming affront to human rights and dignity which is given legal sanction in pursuance of the policy of apartheid.

¹⁹ *Sunday Times*, Johannesburg, March 9, 1958; quoted from Horrell, *op. cit.*, pp. 47-48.

²⁰ Horrell, *op. cit.*, p. 53.

²¹ Horrell, *op. cit.*, pp. 53-55.

II. MOVEMENT AND RESIDENCE

Article 13 of the Universal Declaration of Human Rights :

" (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. "

A. FREEDOM OF MOVEMENT AND RESIDENCE

The most basic, and at the same time perhaps the most resented, application of apartheid is to be found in the restrictions imposed upon the movement and residence of non-whites. Particularly as applied to the African these restrictions reveal the fundamentally economic purpose of the policy of separation. In short, the movement and residence of the African labour force is regulated to meet the industrial and agricultural requirements of the European. Residence in specific parts of an industrial or agricultural area is in theory limited to such Africans as may be needed there. The surplus are to be relegated to the reserves; and for purposes of achieving this balance most of the African population is subjected to control under a strict system of Pass Laws. In this section we shall therefore first examine restriction of movement and then the regulation of residence in the urban and agricultural areas and on the reserves.

Prior to the establishment of the Union each province had laws applicable to non-whites generally,¹ and Africans² and Asians³

¹ Law to provide against Stock Theft, Vagrancy and the Congregation of Coloured Squatters, Chapter 133 of the Codified Laws of the Orange Free State and Laws No. 8 of 1893 and No. 8 of 1899 of the same State; *Volksraad* resolution [South African Republic (Transvaal)] of August 26, 1896.

² Acts No. 22 of 1867 and No. 30 of 1895 of the Cape Colony; Ordinance No. 2 of 1855 of Natal; Law No. 6 of 1880, the *Volksraad* resolutions of June 10, 1891 and September 6, 1893 and Laws No. 6 of 1880, No. 24 of 1895, No. 15 of 1898, No. 23 of 1899, for the South African Republic (Transvaal).

³ Act No. 37 of 1904, of the Cape Colony (Chinese Exclusion Act); Chapter 23 of the Codified Laws (1892) of the Orange Free State (Law to provide against the influx of Asiatics); resolution adopted by the *Volksraad* of the Transvaal on May 9, 1888.

in particular, mainly to control vagrancy and the flow of labour into specific urban areas. The laws which applied specifically to African movement within the country were broadly termed "Pass Laws".⁴ Subsequently under the Union this term came to cover a wide variety of documents including duplicate service contracts for workers in mines and factories as set forth in the Native Labour Regulations Act of 1911,⁵ and tax receipts, certificates of exemption or extension necessary under the Native Taxation and Development Act of 1925.⁶ As subsequent legislation has greatly amended and possibly streamlined the pass system it is not necessary to discuss here in detail the intricacies of the Native Urban Areas Act of 1923, the Native Administration Act of 1927 and the Native Service Contract Act of 1932, plus a series of other laws under which it has been estimated that the African was required to carry as many as 27 different identifying documents in connection with work, travel and residence.⁷

A consolidation of most of the pass laws was brought about by the Natives' (Abolition of Passes and Coordination of Documents) Act of 1952. The Act eliminated many of the passes and replaced them by a single "reference book" containing the African's employment contract, tax receipt and other references of which proof was formerly required in the form of a separate pass.⁸ This reference book must be carried on the person of the African, must be produced upon demand and failure to do so is a criminal offence.⁹ Thus, far from abolishing the burdensome passes this Act has merely solidified the structure of the pass system. Moreover the Act has even extended the requirements to African women¹⁰ (which was vigorously protested) and to thousands of other Africans previously not required to carry documents producible upon demand. The net effect has been to introduce a new form of pass and to subject a greater percentage of the African population to the powers of summary arrest, and abuses thereunder, some of which are treated in Section VII of this Report.¹¹ To be more specific with respect to arrests available statistics indicate that in 1953 a total of 110,427 Africans were sentenced for "offences

⁴ See South African Institute of Race Relations, Fourth Annual Report, 1933. And see E. Kahn, *Pass Laws* and the report of the Ad Hoc Committee on Forced Labour (Official Records : sixteenth session of the Economic and Social Council, Supplement No. 13), Document E/2431, pp. 600-601 and 604-613.

⁵ As amended by the Native (Urban Areas) Consolidation Act of 1945 which provides for more comprehensive authority to regulate within the urban areas. See p. 32, *infra*.

⁶ Natives Taxation and Development Act, 1925, Section 7 (1).

⁷ Report of the United Nations Commission on the Racial Situation in the Union of South Africa, General Assembly Official Records, Eighth Session, Supplement No. 16 (A/2505 and A/2505 Add. 1), 1953, p. 66.

⁸ Natives (Abolition of Passes and Coordination of Documents) Act, 1952, Sections 2 & 3.

⁹ *Ibid.*, Sections 13 & 15.

¹⁰ *Ibid.*, Sections 1 & 2.

¹¹ See p. 65, *infra*.

against curfew regulations or regulation and production of documents" and 43,951 for "offences against the pass laws".¹² Similarly in 1956 a total of 1,760,237 Africans were arrested for the above-mentioned petty offences and of this number 356,812 were sentenced for pass offences.¹³ It might be observed parenthetically that such discriminatory restriction upon freedom of movement could hardly be said to prevent crime but rather, in the fulfilment of its economic goal, to create an ever-increasing number of convicts. The Native Laws Further Amendment Act of 1957 makes it obligatory for all Africans over 16 years old (male and female) in specified areas to carry said reference books¹⁴ without which they cannot obtain employment.¹⁵

Further encroachment upon the right to movement of the African is to be found under the Native (Urban Areas) Consolidated Act of 1945, as amended.¹⁶ This Act, with supporting amendments, gives wide powers to magistrates to regulate the movement and employment of Africans in or about the urban areas.¹⁷ Specifically under this Act an African must obtain permission to be in a proclaimed area and such permission can be refused

- (i) if there is a surplus of Native labour in said area,
- (ii) if the African cannot prove that he has complied with all pass regulations, or
- (iii) if by his documents it is indicated that the African is domiciled outside the area and has not obtained a release from his previous employer.¹⁸

When questioned with respect to the latter two points the African is presumed to have contravened the regulations until the contrary is proved.¹⁹ Also under the Native Laws Amendment Act of 1952 no African may remain for more than 72 hours in an urban or proclaimed area unless:

- "(a) He was born and permanently resides in such area; or
- "(b) He has worked continuously in such area for one employer for a period of not less than ten years or has lawfully remained continuously in such area for a period of not less than fifteen years and has not during either period been convicted of any offence in respect of which he has

¹² *A Survey of Race Relations in South Africa, 1953-1954*, compiled by Muriel Horrell, South African Institute of Race Relations, 1954, p. 150.

¹³ Hansard 1959, No. 3, col. 602, 603; cited by Roskam, *op. cit.*, p. 72. The latter reveals in footnote 109 that: "647,445 Africans were sentenced for technical offences" in 1959, and that: "in Johannesburg alone 48,126 Africans were charged".

¹⁴ Native Laws Further Amendment Act, 1957, Section 11.

¹⁵ *Ibid.*, Section 17.

¹⁶ Native (Urban Areas) Consolidation Act, 1945. (Amended by Acts No. 42 of 1946, No. 45 of 1947, Nos. 54 & 67 of 1952 and No. 16 of 1955).

¹⁷ *Ibid.*, Section 23.

¹⁸ *Ibid.*, Section 23 (1) (b) & (c).

¹⁹ *Ibid.*, Section 23 (1) (c) (i) & (ii).

been sentenced to imprisonment without the option of a fine for a period of more than seven days or with the option of a fine for a period of more than one month; or

"(c) Such Native is the wife, unmarried daughter or son under the age at which he would become liable for payment of general tax under the Natives Taxation and Development Act, 1925 (Act No. 41 of 1925) of any Native mentioned in paragraph (a) or (b) of this subsection, and ordinarily resides with that Native; or

"(d) Permission so to remain has been granted to him by a person designated for the purpose by that urban local authority."²⁰

It is further provided in this Act that any authorised officer who "has reason to believe" that any African (male or female) within an urban area is "idle, dissolute or disorderly" may "without warrant" arrest that African to be brought before a Native Commissioner or Magistrate.²¹ If the Native Commissioner or Magistrate declares the African "to be an idle or undesirable person" he may order that the African be removed from the urban area or be sent to a work colony or farm for employment.²² Equally arbitrary and restrictive is the power granted to the Minister of Justice under the Suppression of Communism Act of 1950, whereby the Minister may banish from any area any person alleged by the former, without giving reasons, to propagate or to be likely to propagate the aims of Communism,²³ (which as discussed at greater length in Section IV below has a broad and all-inclusive definition.²⁴ Even wider power is provided under the Natives Urban Areas Amendment Act of 1956, whereby local authorities may banish an African whose presence is "detrimental to the maintenance of peace and good order".²⁵ The latter phrase embraces offences under the aforementioned laws, habitual unemployment, vagrancy, idleness and *any attempt to obtain improvement of status*.²⁶ Finally, returning to the Native Laws Amendment Act of 1952, it is seen that the Governor General is empowered whenever he deems expedient and in the general public interest to order an African or a tribe to move from any part of the Union without the right to return unless given the written permission of the Secretary for Native Affairs.²⁷

Although relaxed slightly after the Sharpeville incident of March 21, 1960, at which time it is said that police fired from behind wire fences into a crowd demonstrating against such discriminatory racial policy, the Government has reinstated these harsh restrictions of movement and moreover intensified them during the State of

²⁰ Native Laws Amendment Act, 1952, Section 27.

²¹ *Ibid.*, Section 36.

²² *Ibid.*

²³ Suppression of Communism Act, 1950, Section 10 (1).

²⁴ See p. 50, *infra*.

²⁵ Natives (Urban Areas) Amendment Act, 1956, Section 1.

²⁶ *Ibid.*, read with Natives (Urban Areas) Consolidation Act 1945, Section 23.

²⁷ Native Laws Amendment Act, 1952, Section 38, read with Natives (Urban Areas) Consolidation Act, 1945, Sections 2, 38 & 39.

Emergency.²⁸ While the State of Emergency is now over, an objective analysis of the presently existing restrictions of movement can only bring forth the conclusion that the Government has for the purpose of allocation of labour between industry and agriculture erected a careful system of discriminatory legislation. This legislation does not seem or even pretend to protect, but only restricts the African and is cleverly designed to complement equally discriminatory restriction of residence.²⁹

Residence and its corollary, the right to own property,³⁰ have been subjected to a long and carefully developed policy of apartheid in the Union of South Africa. As early as 1913 the purchase, lease or acquisition of land by an African outside "scheduled Native areas" was declared to be a criminal offence.³¹ Under the Natives (Urban Areas) Act of 1923 the Africans ministering to the needs of white men in urban areas were concentrated in segregated living quarters in villages and locations outside white residential areas or in hostels for single men and women, with the exception of those employed as domestic help in the white communities.³² The Native Trust and Land Act of 1936 provided for further separation of African and European land holding by increasing the limitations imposed upon the purchase of land by Africans to areas reserved for them or released for their occupation.³³ This Act was designed to provide a final settlement of land between the Europeans and Africans entitling the latter to acquire land only in the above-mentioned areas, which totalled approximately 10% of the entire country.³⁴ This Act also added restrictions upon residence of Africans outside reserves and released areas as well as within the released areas. Finally the effect of the Act was to deprive the Natives of Cape Province of their previous right to purchase land outside scheduled Native areas.³⁵

²⁸ See discussion thereof in Section VII, p. 68, *infra.*, and text of Proclamations and Regulations presented in Appendix F of this Report.

²⁹ See also Roskam, *op. cit.*, pp. 74-77, which takes up the question of the "restriction on ownership of immovables and restriction on freedom of movement of Indians".

³⁰ United Nations Declaration of Human Rights, Article 17(1) states: "Everyone has the right to own property alone as well as in association with others".

³¹ Natives Land Act, 1913, Sections 1 & 5 (i.e., purchase of land by an African from a person other than an African).

³² Natives (Urban Areas) Act, 1923, Section 1. But see Section 21 (2) which provides an exemption for certain Natives.

³³ Native Trust and Land Act, 1936, Sections 11 & 12.

³⁴ General Assembly Official Records, Second Report of the United Nations Commission on the Racial Situation in the Union of South Africa, Ninth Session, Supplement No. 16 (A/2719), New York, 1954, p. 12.

³⁵ General Assembly Official Records, First Report on the United Nations Commission on the Racial Situation in the Union of South Africa, Eighth Session, Supplement No. 16 (A/2505 and A/2505 Add. 1) New York, 1953, p. 73.

The Natives (Urban Areas) Consolidation Act of 1945, as amended, not only imposed restrictions upon movement and employment, but also prevented Africans from acquiring any right to land within an urban area from any person other than a fellow African.³⁶ In this connection it is relevant to note that under the Trading and Occupation of Land (Transvaal and Natal) Restriction Act of 1943, transactions for the acquisition of land in Durban by Indians from Europeans were prohibited for a period of three years.³⁷ Further limitation and demarcation of Indian property rights in Natal was set forth in the Asiatic Land Tenure and Indian Representation Act of 1946. Under this Act Natal was divided into exempted and unexempted areas. In the latter areas, as defined, no Asiatic was permitted to acquire or occupy immovable property without the permission of the Minister of Interior.³⁸

The kernel of the policy of apartheid according to Dr. Malan³⁹ is, however, to be found in the Group Areas Act of 1950 and its amendments which represent the final blow to any form of African land ownership and establish the pattern for the development of the African reserves (Bantustan states). The Act is designed to effect complete segregation of different racial groups into areas assigned to each. The Act provides that by proclamation of the Governor-General-in-Council of each province the exclusive rights to own property, reside or carry on a business are to be allocated and restricted to certain racial areas.⁴⁰ The Act, which is also applicable to Coloureds and Indians,⁴¹ provides for "controlled", "separate" and "group areas"⁴² as determined by proclamation. As soon as a proclamation has been issued the area concerned becomes a controlled area wherein the acquisition of immovable property is prohibited to any person of a different race than the owner of said property.⁴³ Immovable property includes real rights therein and any lease or sublease thereof.⁴⁴ No person may enter into an agreement providing for the acquisition of immovable property within a controlled area by a "disqualified person" (i.e., a person belonging

³⁶ Natives (Urban Areas) Consolidation Act, Section 6.

³⁷ Trading and Occupation of Land (Transvaal and Natal) Restriction Act, 1943, Sections 5 & 10.

³⁸ Asiatic Land Tenure and Indian Representation Act, 1946, Sections 2, 4 & 9.

³⁹ G. M. Carter, *The Politics of Inequality, South Africa Since 1948* (London, 1958), p. 76.

⁴⁰ Group Areas Act, 1950, Section 3. See generally *The Group Areas Act. Its Affect on Human Beings* (November, 1956), by Muriel Horrell in association with Mary Draper, South African Institute of Race Relations, which contains a detailed discussion with maps and statistics.

⁴¹ Group Areas Act, 1950, Sections 1 (ix) and 2.

⁴² *Ibid.*, Sections 1 (v) and 3.

⁴³ *Ibid.*, Section 4.

⁴⁴ *Ibid.*, Section 1 (xi).

to a different racial group).⁴⁵ Further, no disqualified person may occupy land or premises in a controlled area ⁴⁶ unless under specified exemptions which include employment.⁴⁷ A special area is part of a controlled area ⁴⁸ to which the restriction of acquisition of immovable property does not include the right to lease or sub-lease.⁴⁹ There are also set forth three classes of group areas in the controlled areas which may be declared by proclamation to be areas for occupation, for ownership or both, pursuant to racial group.⁵⁰

Further encroachment upon the property rights of the African is provided under the Group Areas Amendment Act of 1956 whereby African freehold areas can be declared group areas for other races and Africans can be removed from these freehold areas.⁵¹ Subsequently the Group Areas Amendment Act of 1957 prohibited both residence and presence of Africans in premises in areas which have been proclaimed white.⁵² Under Section 3 of the 1957 Amendment Act the Minister of Native Affairs has the power by proclamation to prohibit African occupation of any land. By Proclamation No. 236 of 1957 the Minister was empowered to cancel the right of any African to occupy land owned by the African Trust and to order him and his family to move. Proclamation No. 249 of 1957 prohibited Africans not already resident from taking up residence on Trust or tribally-owned land in the scheduled areas without the written permission of the Native Commissioner. These proclamations demonstrate the extension of influx control to African reserves as well as to the European industrial and agricultural areas.

Subsequent to and in support of the Group Areas Act of 1950 a concentrated effort has been made to eliminate the presence of non-Europeans in white urban areas. Particular attention has been given to the three townships of Sophiatown, Martindale and Newclare in Johannesburg which are adjacent to the white residential areas. These were the first non-white settled urban areas, populated about the first decade of the century, where Africans previously possessed land in freehold tenure. It was thought that the local authority should build new homes at Meadowlands some eleven miles out of Johannesburg at the expense of the central Government. Ultimately, because of difficulties of arranging compensation to dispossessed owners, the local authority sold the land to the Government. The Government indicated that Africans would be able to buy houses in

⁴⁵ *Ibid.*, Section 8.

⁴⁶ *Ibid.*, Section 10 (1).

⁴⁷ *Ibid.*, Section 10 (2).

⁴⁸ *Ibid.*, Section 11.

⁴⁹ *Ibid.*, Sections 1 (xi), 10, 11 & 12 read together.

⁵⁰ *Ibid.*, Sections 1 (v), 3 & 11.

⁵¹ Group Areas Amendment Act, 1956, Section 1 (b).

⁵² Group Areas Amendment Act, 1957, Section 1 (g).

Meadowlands at cost price or rent or build their own, but as a basic principle there would be no ownership of ground. For the removal scheme it was decided not to exercise the powers under the Group Areas Act of 1950. New legislation was introduced which was not dependent upon the cooperation of local authorities, the Natives Resettlement Act of 1954. Under the Act the Government in fact replaced the freehold rights which some Africans possessed with the right to purchase Native Trust land.⁵³ Compensation was payable to property owners at purchase price plus 6% per annum interest. No compensation was offered for loss of freehold amenities or trade.⁵⁴

These legislative efforts to eliminate and restrict the presence of Africans in urban areas were furthered by the Natives (Urban Areas) Amendment Act of 1955, which prohibited more than five Africans from residing in any building in a proclaimed area.⁵⁵ Africans who are so displaced are forced to live in African hostels or locations.⁵⁶ The Act also extended restrictions to African domestic servants employed and residing in private European households.⁵⁷ Furthermore, the Act prohibited African women servants from having their children living with them without permission from the local authority.⁵⁸ In 1956 the rights of Africans to apply to the Supreme Court for an interim edict against summary removal or ejectment was suspended by the Native (Prohibition of Interdicts) Act.⁵⁹ In 1957 the Native Laws Amendment Act empowered the Native Commissioner or any Magistrate without a court order to remove Africans from urban areas upon three days' notice⁶⁰ and prohibited any Africans except those employed as domestic servants or owning property valued at £75 or over from living in any urban area other than an African location, village or hostel.⁶¹ Finally, the Group Areas Development Amendment Act of 1959 empowers the Group Areas Development Board, which can be vested with the powers and functions of a local authority in connection with certain group areas,⁶² to acquire immovable property outside as well as within the group areas.⁶³ Upon acquisition of

⁵³ Natives Resettlement Act, 1954, Section 23.

⁵⁴ *Ibid.*, Section 20; 6% from the date of prior purchase by the African.

⁵⁵ Natives (Urban Areas) Amendment Act, 1955, Section 4.

⁵⁶ *Ibid.*, Section 4, read with Natives (Urban Areas) Consolidation Act, 1945, Section 9.

⁵⁷ *Ibid.*, Section 4.

⁵⁸ *Ibid.* Reference might also be made to the United Nations Declaration of Human Rights, Article 16 (3), which states: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

⁵⁹ Natives (Prohibition of Interdicts) Act, 1956, Section 2. See p. 62, *infra*.

⁶⁰ Native Laws Amendment Act, 1957, Section 48.

⁶¹ *Ibid.*, Section 29.

⁶² Group Areas Development Act, 1959, Section 8.

⁶³ *Ibid.*, Section 7.

such land ownership of all public places therein is to be vested in the Board.⁶⁴ No compensation is paid for the land but local authorities are to be paid for useful improvements thereon in an amount not exceeding the unredeemed portion of their cost.⁶⁵ This Act of 1959 would seem to complete the legislative machinery necessary for the total fulfilment of the policy of apartheid in connection with residence and ownership of property in the urban areas.

Control and separation have also been extended outside the urban areas as a concomitant to the above-mentioned legislation. In this connection mention shall first be made of the Declaration of February 28, 1958, which was issued by the Governor General as a result of unrest in the Native areas. The Regulations under said Proclamation are intended to have the force of law in any Native area which may be specified by the Minister of Native Affairs by notice in the Gazette.⁶⁶ Relevant to our discussion of restriction of movement and residence is the following summary of a portion of these Regulations :

Part I :

(i) Any African not resident in a prohibited area who enters it without a permit from the Native Commissioner will be guilty of an offence. In deciding whether a permit should be issued the Native Commissioner may consult the local chief or headman. Appeal lies to the Chief Native Commissioner, whose decision is final.

(ii) Anyone in a prohibited area who makes any statement verbal or in writing which

(a) has the intention, or is likely to have the effect, of subverting or interfering with the authority of the State or any of its officials, or of any chief or headman;

(b) contains any threat that any persons will be subject to any boycott or will suffer any violence, loss, disadvantage or inconvenience on account of his loyalty to the State or any of its officials or any chief or headman shall be guilty of an offence.

(iii) Every chief, headman and adult person aware of the unlawful entry of any African in a prohibited area must report forthwith to the Native Commissioner or else will be guilty of an offence.

Part II :

An African resident in a prohibited area who absents himself therefrom without a permit from the Native Commissioner, or from the chief or headman authorised to issue such a permit, will be guilty of an offence.

Exceptions to this regulation are made in the cases of medical practitioners visiting patients, or Africans required to appear before a court of law or to visit any government office.

Part III :

(i) The period of validity and purpose for which they are issued must be stated on all permits. A holder is to report his arrival and departure to the chief or headman.

⁶⁴ *Ibid.*, Section 8.

⁶⁵ *Ibid.*

⁶⁶ Proclamation No. 52, February 28, 1958.

(ii) The onus of proving whether or not he is resident in an area lies on the African concerned.

(iii) Maximum penalties for contravention of the provisions listed above are :

I (i) or (ii) A fine up to £300, or imprisonment up to three years or both;
I (iii) or II or III (i) A fine up to £100, or imprisonment up to six months, or both.

If an African is convicted under I (i) any motor vehicle used for his convenience may be forfeited to the State (unless the owner was unaware that it was being so used).

The final and most concrete expression of this control is, however, to be found in the Promotion of Bantu Self-Government Act of 1959.⁶⁷ This Act aims at the preservation of separate white and African communities, and indeed the Secretary for Bantu Administration has written that the "maintainance of white political supremacy over the country as a whole is a *sine qua non* for racial peace and economic prosperity in South Africa".⁶⁸ This view is supported by the statement of the Prime Minister that the white seeks domination over his part of the country at the price of allowing the Bantus to "develop" their own area.⁶⁹ This area has been estimated as being about 13% of the land area of the entire country. Further, it has been calculated that even if properly planned the area could only support about 30% of its total population.⁷⁰ Added to this is the apparent lack of industrial employment opportunities in view of which the immediate prospects of developing the reserves do not seem very bright.⁷¹ Such a situation does, however, assure European industry and agriculture of a permanent source of labour which will easily be induced to leave the reserves by better economic possibilities.

In sum then, the African's right to residence is limited to certain prescribed areas and his right to ownership of immovable property can be said to have been lost completely in the urban areas. Furthermore in the rural areas the African's residence must be considered in the light of European agricultural labour requirements and the Government's policy with respect to the reserves. All Africans are seen as having their "home" in the reserves from which they are allowed to go out to industrial and agricultural areas only when, and for as long as, their presence may be required by the Europeans.

⁶⁷ See p. 53, *infra*.

⁶⁸ Margaret Cornell, "The Statutory Background of Apartheid", *The World Today*, Vol. 16, No. 5 (May 1960), p. 185, quoting from *Optima*, quarterly published by the Anglo-American Corporation of South Africa Limited, Johannesburg.

⁶⁹ *A Survey of Race Relations in South Africa, 1958-1959*, compiled by Muriel Horrell, South African Institute of Race Relations, 1959, p. 51. (Hereinafter cited as *Survey of Race Relations, 1958-59*.)

⁷⁰ *The Economic Development of the Reserves*, A Fact Paper, South African Institute of Race Relations, No. 3, 1959, p. 12.

⁷¹ *Ibid.*, pp. 14-26.

The basic aims of the Government are clearly expressed in the White Paper related to the Promotion of the Bantu Self-Government Act of 1959, which explained that the purpose of allocating reserves has been and remains to identify each of the African communities with its own land and ensure that the Africans enter the white area as migrant labourers only.⁷²

In conclusion of this analysis of the restriction of movement and residence it is perhaps fitting to quote a portion of the objective statement made by H. F. Oppenheimer, Chairman of the Anglo-American Corporation of South Africa Limited, which in describing the current difficulties in race relations points out the following :

"...There are, however, certain aspects of the pass laws so intolerable to the urban Africans that everything connected with the whole system is included by them in the same condemnation. And what they resent most of all is the provision that the failure by an African to produce his pass to a policeman immediately on demand is in itself a crime punishable by a fine or imprisonment.

"The other features of the pass laws which do most damage to race relations flow from the pretence that permeates all the legislation dealing with the urban African in that he is not a permanent resident where he lives but merely a temporary visitor with his real home in quite a different part of the country. There was a time when it might have been reasonable to regard the bulk of the Africans in the urban areas in this light. But that time is long past and to-day, while large numbers of tribal Africans still come to work in the urban areas, there is a very large and increasing African population in the towns whose connection with their original tribal homes has almost or entirely ceased to exist. Moreover, these urban Africans are absolutely indispensable to the industrial life of the country. Nevertheless, they are treated as though they were migrants, and the pass laws and other legislation operate to prevent their obtaining the right of permanent occupation of the only homes they have. If they lose their jobs and do not find another one within a short period, they may be uprooted and forced to go to quite a different part of the country. In this way, families are broken up and the urban African is denied that sense of permanence and security which is one of the prime needs of all human beings.

"It is difficult to exaggerate the sense of frustration these features of African urban life cause, particularly amongst the growing number of intelligent and educated men who hold responsible positions. And it is these people who are the moulders of African thought and the effective leaders of their people."⁷³

B. IMMIGRATION

Before the Union there was considerable control over the entry into the Boer republics of persons of non-white origin. The Immigration Regulation Act, 1913, of the Union Government expressly carried over the pre-Union laws and restricted both immigration and the movement between provinces on the part of Asians, espe-

⁷² *Survey of Race Relations, 1958-59*, p. 48.

⁷³ *The Observer* (London), May 5, 1960.

cially Indians.⁷⁴ The Africans from the Federation of Rhodesia and Nyassaland, Portuguese East and West Africa and the High Commission Territories are also subject to the pass laws even though they have valid immigration permits.⁷⁵

The Indian community of the Union were further discriminated against in 1953 when the Immigrants Regulation Amendment Act amended the law to prohibit the entry of wives of Indians domiciled in the Union if a marriage were to be entered into outside the Union, or the entry of children of Indians born outside the Union.⁷⁶

The freedom of movement denied to the African within the Union is in not much less a startling form denied to the population in connection with departure from the Union. This has particular significance for many South Africans who have strong ties with Britain; and for a handful of Africans it has been used to deny them the right to go abroad to take up scholarships at universities in Europe and America. Under the Departure from the Union Regulation Act, 1955, it is an offence to leave the Union without a permit⁷⁷ and the Government has the right to withhold such a permit from any citizen.⁷⁸ The Nationalist Government seems to regard the freedom to travel as a privilege and not a right. Several South Africans have suffered from the exercise of this discretionary power. Two prominent leaders of the South African Indian Congress, Dr. Y. M. Dadoo and Dr. G. M. Naicker, were prevented from going to the United Nations in 1948 and Professor Z. K. Matthews in mid-1954. Only last year when Mr. Hans Beukes, a student whose passport was withdrawn, managed to reach the United Nations to give evidence on South West Africa, a General Assembly Resolution requested South Africa to restore his passport.⁷⁹

⁷⁴ Cornell, *op. cit.*, p. 193.

⁷⁵ *Ibid.*

⁷⁶ Immigrants Regulation Amendment Act, 1953, Section 2.

⁷⁷ Departure from the Union Regulation Act, 1955, Section 2.

⁷⁸ *Ibid.*

⁷⁹ United Nations General Assembly Resolution No. 1358 (XIV), 17 November, 1959.

III. WORK AND TRADE UNIONS

Article 23 of the Universal Declaration of Human Rights:

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

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

The rigid distinction between the races which characterises the labour system of South Africa reveals the true basis of the present policy of apartheid as applied to all spheres of African life. "The type and grade of work done by individuals, and hence the wages earned, are determined by their racial group as much as by their individual aptitudes and preferences. On the one hand, opportunities for employment are different for members of different racial groups. On the other hand, the quality of work performed is affected by the unequal opportunities open to the different groups in respect of unemployment, wages and living conditions in general."¹

A century ago the mining and manufacturing industry was almost non-existent and major labour legislation was passed only when the labour market had already developed. The first Act in this field dealt mainly with disputes arising between masters and servants (i.e., domestic servants and agricultural labourers).² Towards the end of the nineteenth century the mining industry became more and more important and called for new labour legislation concerning above all two problems: first, a solution had to be found to satisfy the suddenly accelerated demand for skilled and unskilled workers and, secondly, a system had to be established by which immigrating European workers on the one hand, and the large number of rural Africans newly recruited to industry, the imported Indian, Chinese and other Coloured workers on the other, could be kept under control. For this general purpose various laws were enacted such

¹ Ellen Hellman, *Handbook on Race Relations in South Africa* (London, 1949), p. 109. (Hereinafter cited as *Handbook on Race Relations*.)

² See H. R. Hahlo and Ellison Kahn, *The Union of South Africa* (London, 1960), p. 773.

as the Mines and Works Act of 1911, the Labour Regulation Act of the same year, the Workmen's Wages Protection Act of 1914, the Native Urban Areas Act of 1923.

All this legislation as well its practical implementation is based upon separation of the races : professional, supervisory and skilled work is performed mainly by Europeans, to a lesser extent by Coloureds and Asiatics, while there are almost no Africans in this category. This is true for all branches of economic activity: agriculture, mining, manufacturing, transport, public administration and professional work; exceptions are made only in the fields of teaching and religion where the non-Europeans may serve members of their racial community.³ Indeed, in 1957, the Nursing Act strongly affected this field as well. The Nursing Act laid down that the Nursing Council, which deals with registration, training and discipline of nurses and midwives, is to consist of white persons only. The Council is to keep separate registers for nurses and midwives of the different races and is empowered to prescribe different qualifications for registration and different uniforms and badges.⁴ It provides that except in cases of emergency no white nurse may be employed under the control or supervision of any non-white nurse.⁵ The restrictions upon Africans taking on skilled jobs in competition with whites can be traced back to the early days of industrialism and was developed mainly in connection with the hiring of labour and conditions of work in the mining industry. Thus the Native Labour Regulation Act and the Mines and Works Act,⁶ both of 1911, provided not only for the supervision, control and recruitment of white labour as mentioned above,⁷ but also for a graded system of wages and the establishment of native Labour bureaux in mines and works.⁸ In 1949, the Minister of Labour was empowered by the Native Law Amendment Act to extend the Native Labour Regulation Act to other industries.⁹ While under the Mines and Works Act it was possible to prohibit the employment of Africans as skilled workers in the mines,¹⁰ the Native Law Amendment Act of 1949 provides more specifically that certificates of competency in any occupation in, at or about mines, works and machinery may be granted only to Europeans, Cape Coloureds, Cape Malays and people known as Mauritius

³ *Handbook on Race Relations*, p. 109.

⁴ Nursing Act of 1957, Sections 4 (1) & 11 & 12.

⁵ *Ibid.*, Section 49.

⁶ The latter Act was replaced and re-enacted in more elaborate form in 1956 as the Mines and Works Act of 1956.

⁷ See generally Hahlo and Kahn, *op. cit.*, p. 775.

⁸ Native Labour Regulation Act, Section 23 (1) (o).

⁹ Native Law Amendment Act, Section 1. See Hahlo and Kahn, *op. cit.* p. 775.

¹⁰ Mines and Works Act, Section 4 (1) (n). Certificates of competency were in terms of the existing regulations not granted to Coloured people.

Creoles or St. Helena persons.¹¹ The Act thus debar African mine workers from doing much of the better-paid work regardless of whatever skill they may have acquired. "It constitutes the legal 'colour bar' to the employment of African labour in the types of work specified."¹²

The principle of excluding Natives from a specific kind of work was greatly extended in the years following the victory of the Nationalist Party in 1948. Under the Native Building Workers Act of 1951, a prohibition was placed on the employment of skilled African building workers in the urban areas.¹³ An amendment to this Act was passed in 1955 which prohibited the employment of Native workers except where the work was on the premises owned and occupied by the Native and his dependents or intended for occupation by same.¹⁴

By the legislation a "bulwark has been set up against the encroachment by Africans on skilled jobs that are regarded as the prerogative of Europeans".¹⁵ The effect has been the establishment of what has been described as a "multi-racial system based on industrial caste" with the result that "no important South African industry is composed of a labour force graded in remuneration, skill or type of operation, wholly in accordance with the technical requirements or the objective criteria of the worker's productivity."¹⁶ As a result, whites monopolise all supervisory positions irrespective of their personal capacities. Conversely, the African is prevented from obtaining a qualified professional training which would give him the possibility of earning higher wages. The wage problem is, indeed, one of the most serious consequences of the discrimination against African workers, whose wages are considerably lower than those of any other class or group. Although there have been some increases in the last years,¹⁷ the social situation of the African workers, particularly of unskilled workers, is very unsatisfactory. In fact "the increase in the average of these unskilled wages has not even kept up with the increase in this most minimal of all measures, the Retail Price Index."¹⁸ In this matter the memorandum of the South African Institute for Race Relations on "African Poverty" may be

¹¹ Native Law Amendment Act, Section 12 (2) (a).

¹² *Handbook on Race Relations*, p. 147.

¹³ Native Building Workers Act, 1951, Section 15.

¹⁴ Native Building Workers Amendment Act, 1955, Section 2.

¹⁵ Tom Soper, "Labour Migration and Labour Productivity: Some Aspects of Experience in East, Central and Southern Africa", *Race Relations Journal*, Vol. XXV, Nos. 3 & 4 (July-December, 1958), p. ii.

¹⁶ M. Frankel, *The Economic Impact on Underdeveloped Countries* (Oxford, 1953), p. 121 (quoted by Soper, *op. cit.*, p. 11).

¹⁷ *Survey of Race Relations, 1958-1959*.

¹⁸ *The Star* (Johannesburg), July 14 & 15, 1958.

cited. According to the Institute's statistics the subsistence minimum for a family of five in Johannesburg in 1954 was £23 10s. per month. Since then, costs have risen. On this basis it is calculated that in 1957 about 87 per cent of the African families in Johannesburg were living below subsistence level.¹⁹

These various aspects of racial discrimination in the economic field constitute the primary objective of the policy of apartheid, which is the maintenance of European supremacy in every sphere of life while at the same time promoting the industrial development of the country. The latter cannot be done without the active support of the African workers, who are a major factor in the entire economic system. It may be recalled that to-day approximately 10,000,000 Africans are spread over the whole country, and provide its basic labour force. At present only some 4,000,000 Africans, most of them women, children and older men, live permanently in the reserves while the balance are employed in the mines, industry, agriculture or as domestic help in urban centres.²⁰ According to the 1951 Census, the African population consisted of approximately 27% urban and 73% rural dwellers. Of the rural population, 53% lived in African territories or reserves, 37% on farms owned by Europeans and 10% in country towns and other rural areas.²¹ There is a constant move of Africans into European urban areas, partly as migratory labour but even more as settlers in municipally provided locations or squatters towns.

The economic necessity of African migration from the reserves, arising out of the industrial development in white areas and excluding in advance the achievement of total apartheid, requires the strictest possible government control over the migratory labour force. This control is most clearly manifest in the restrictions on freedom of movement and residence, which have been discussed in Section II above. Further, under the Native Labour Regulation Act of 1911, as amended, labour bureaux have been established and African labour must now be obtained through these bureaux.²² New regulations have for instance been introduced by the municipal authority in Johannesburg. "Africans are no longer given general work-seeking permits, but must report to the bureau within three days of their discharge from a job, and then go into the pool of unemployed."²³

¹⁹ *A Survey of Race Relations in South Africa, 1957-1958*, compiled by Muriel Horrell, South African Institute of Race Relations, 1958, p. 152. (Hereinafter cited as *Survey of Race Relations, 1957-1958*.)

²⁰ Carter, *op. cit.*, p. 19.

²¹ S. J. du Toit, "African Farm Labour", *Race Relations Journal*, April-June 1959, p. 73.

²² Native Laws Amendment Act of 1952, Section 16 (d).

²³ *Survey of Race Relations, 1957-1958*, p. 145.

Closely connected with labour migration inside the Union is the Government's policy of recruiting large numbers of Africans from outside the Union for menial labour in industry, mines and agriculture. The underlying purpose of this governmental policy is to retain in urban areas only as many of the Union Natives as are needed for industrial development. It is believed that the majority of the Natives could eventually be sent back to their respective reserves, with little or no loss in the productivity of the total Native labour force.²⁴ The injection of foreign migratory labour is an essential part of the territorial separation programme within the wider framework of the policy of 'total apartheid'. It has been used already for some time and is promoted by many quite influential Nationalist Afrikaners.²⁵ While this aim is far from being completely realised—and perhaps never can be—it remains a significant feature of the present Government's policy.

The key to the Government's plans for separation in industry is probably the Industrial Conciliation Act. Originally passed in 1924 and re-enacted in more elaborate form in 1937,²⁶ it was then newly drafted with more extensive provisions in 1956. It empowers the Minister of Labour to reserve categories of work defined by him for members of racial groups likewise so defined.²⁷ The Act also empowers the Minister to prescribe the proportion of workers of various racial groups defined by him who may be employed in any industry or occupation.²⁸ The Act prohibited any further registration of "mixed" trade unions.²⁹ Its provisions were again amended in 1959. Under this Industrial Conciliation Amendment Act of 1959 the remaining mixed white and Coloured trade unions will not be permitted to extend their interests beyond their present areas of operation, unless they do so with respect to one racial group or another.³⁰

Although the Amendment Act is based on the principle of collective bargaining between employers and employees, African employees who form the majority of the Union's labour force have always been excluded from its provisions.³¹ Thus, no African may be appointed as a representative or as an alternate to such a representative on any industrial council, which are permanent bodies formed

²⁴ Eugene S. Dvorin, *Racial Segregation in South Africa* (Chicago, 1952), p. 127.

²⁵ Mainly centered in the South African Bureau of Racial Affairs. See the latter's pamphlet *Integration or Separate Development?* (Stellenbosch 1952).

²⁶ See Hahlo and Kahn, *op. cit.*, p. 777.

²⁷ Industrial Conciliation Act of 1956, Section 77 (6) ff. (On the recommendation of the tribunal.)

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Industrial Conciliation Amendment Act, 1959, Section 2.

by employers' organisations and trade unions used as mediating boards on any matters of mutual interest and whose decisions affect also the Native employees.³² Nor may any African be appointed to represent the employee who is a party to a dispute that is referred to the conciliation board, an *ad hoc* body consisting of an equal number of representatives of the employer and employee and authorised to settle a particular dispute.³³ A form of supplementary machinery in the field of wages and conditions of employment is, however, provided by the Wage Act of 1957. Unlike the Industrial Conciliation Act it applies to all employees whether they are white, Coloured, Indian or Africans.³⁴

The problem of settling the labour disputes of Africans, who have never enjoyed participation in the conciliation system available to members of other races, was tackled by the Native Labour (Settlement of Disputes) Act of 1953. Prior to that year, a war measure³⁵ had totally prohibited strikes by Native workers and provided a system of compulsory arbitration.³⁶ The 1953 Act repealed this measure but extended its principles by prohibiting lock-outs, or the instigations of strikes and sympathy strikes.³⁷ Furthermore, the Act set up a separate industrial conciliation machinery which applied to African workers other than those employed in farming, domestic service, governmental or educational services or in the gold and mining industries. This separate machinery consists of Regional Native Labour Committees with African members appointed by the Minister of Labour sitting under a white chairman. The duties of these bodies are to maintain contact with employers and employees, to receive representations and to act as mediators in disputes.³⁸ There is also a central Native Labour Board consisting of white members only, appointed by the Minister after consultation with regional committees.³⁹ To this Board are referred disputes which cannot be settled by Regional Committees.⁴⁰ If the Board is unsuccessful in resolving same, it must report to the Minister of Labour stating whether or not it considers that the dispute should be referred to the Wage Board.⁴¹

³¹ See Hahlo and Kahn, *op. cit.*, p. 777.

³² Industrial Conciliation Act, 1956, Section 48 and Industrial Conciliation Amendment Act, 1959, Section 10.

³³ Industrial Conciliation Act, 1956, Section 35.

³⁴ Wage Act, 1957, Section 1.

³⁵ War Measure No. 145 of 1942.

³⁶ Hahlo and Kahn, *op. cit.*, pp. 783-84.

³⁷ Native Labour (Settlement of Disputes) Act, 1953, Section 18.

³⁸ *Ibid.*, Section 6.

³⁹ *Ibid.*, Section 3 (2).

⁴⁰ *Ibid.*, Section 10 (2).

⁴¹ *Ibid.*, Section 10 (3).

Thus the African workers, although outnumbering all other industrial workers in the Union, are excluded from the benefits of the mediation and conciliation machinery set up for white employees from whom they are differentiated by the terms of the Native Labour (Settlement of Disputes) Act.⁴²

The decision of the Government to set up state-controlled machinery for the settlement of disputes involving Natives in which Native trade unions play no part was explained by the then Minister of Labour as reflecting the belief that "if that machinery is effective and successful, the Natives will have no interest in trade unions, and (Native) trade unions will probably die a natural death."⁴³ It should be added that South African law recognises only those trade unions which are registered under the Industrial Conciliation Act.⁴⁴ Although there is no explicit legal prohibition preventing the formation of African trade unions they cannot be registered and therefore are excluded from rights under the latter Act. All industrial conciliation measures including the Act of 1956 have in general regarded only Europeans, Coloured and Indians as "employees", with the effect that African trade unions are non-registrable.⁴⁵ The Industrial Conciliation Act of 1956 provided that no further "mixed" unions (with both white and Coloured membership) would be registered, and after May 7, 1958, any remaining mixed unions must organise branches for the white and Coloured members, hold separate meetings and elect all-white Executive Committees.⁴⁶ The Industrial Conciliation Amendment Act of 1959 added even more restrictions upon the African trade unions. It states that no African may be appointed as a representative of the employees, or as an alternate to such a representative, on an industrial council.⁴⁷

In sum then, the entire economy of the Union of South Africa would seem to operate under an elaborate system of apartheid which deprives the African worker of the opportunity of obtaining higher-paid jobs, virtually eliminates his free choice of work and prevents his equal representation in industrial councils and trade unions.

⁴² *Ibid.*, Section 1.

⁴³ House of Assembly Debates (Hansard), Vol. 82, col. 872; quoted from Hahlo and Kahn, *op. cit.*, p. 786.

⁴⁴ Industrial Conciliation Act, 1956, Section 2 & 4 (5 & 6).

⁴⁵ Hahlo and Kahn, *op. cit.*, p. 785. And there for do not enjoy the benefits of the Industrial Conciliation Act of 1956.

⁴⁶ Industrial Conciliation Act, 1956, Section 4 (6).

⁴⁷ Industrial Conciliation Act, 1959, Section 5.

IV. RIGHTS AND FREEDOMS

Article 2 of the Universal Declaration of Human Rights :

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

A. POLITICAL RIGHTS

The South Africa Act of 1909 stipulated that members of both Houses of Parliament—Assembly and Senate—must be "of European descent".¹ This provision effectively prevented any non-white South African from standing for election to the supreme legislative bodies of the Union.

As to the right to vote, a limited franchise was granted in the Cape Colony in 1852 and amended in 1892 to cover all male persons regardless of race who possessed property to the value of £75 or who had earned during twelve months not less than £50 and who could write down their name, address and occupation. This Cape franchise was specifically confirmed in Section 35 (1) of the South Africa Act (1909) which had otherwise conferred on the South African Parliament the right to legislate on matters of franchise and had limited its exercise merely by the requirement not to violate the so-called entrenched provisions clauses of the Act, of which the Cape franchise was one. For the amendment of the entrenched provisions, a two-thirds majority of both Houses is required² and

¹ South Africa Act, 1909, Sections 26 (d) & 44 (c).

² The entrenched provisions were established by Section 152 of the South Africa Act of 1909 which provides that "no repeal or alteration of the provisions in this section or ... in sections 35 and 137 shall be valid unless the Bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together, and at the third reading be agreed by not less than two-thirds of the total number of members of both Houses..." Section 35 (1) stated that no Act could disqualify anyone in the Cape who by Cape law at the time of the Union was or might become registered as a voter, from being so registered in the Cape by reason of his race or colour alone, unless the Bill was passed pursuant to Section 152. Section 137 deals with the equality of the two official languages, Afrikaans and English. See Hahlo and Kahn, *op. cit.*, pp. 152.

therefore such a qualified majority is required to pass a Bill disqualifying a voter, registered or capable of being registered in the Union, by reason of race or colour. In fact, there existed outside the Cape Province non-white voting rights only in Natal where the granting thereof was ultimately left to the discretion of the Governor and exercised by him so restrictively that the number of individual Africans franchised at a single election never exceeded five.³

The Cape franchise was extended in 1930 to all white women, thus diluting the potential effect of the restricted native vote.⁴ Further in 1931 previous qualifications for white male franchise were abolished thereby extending the franchise to all white adults while the principle of comparative non-discrimination was maintained in the Cape Province.⁵ The Representation of Natives Act of 1936 introduced an entirely new concept of non-white voting rights. Cape African voters were transferred to a separate African voters roll, qualified to elect three Europeans as their representatives in the House of Assembly.⁶

The Representation of Natives Act provides that only in the Senate do all the Africans of the Union have the right to be represented.⁷ They are to be represented by eight European members: four appointed by the Governor-General, since 1910, and four elected, since 1936.⁸ The Representation of Natives Act of 1936 also created a Natives Representative Council with a non-white majority.⁹ The consultative and advisory functions which this Council was to exercise came to an end *de facto* in 1946 and *de jure* in 1951 as a consequence of the members' refusal to sit unless all discriminatory legislation in South Africa were abrogated.

In 1951, the franchise of the Cape Province was further curtailed by the separate Representation of Voters Act which transferred the Cape Coloureds to a separate roll allowing them to vote for four special European Representatives in the House of Assembly and two—not necessarily European—deputies to the Cape Provincial Council.¹⁰ This Act brought about a major constitutional crisis that lasted for five years, turned the comparatively minor issue of the franchise of 40,000 Cape Coloured into a showdown

³ See Roskam, *op. cit.*, p. 62.

⁴ Women's Enfranchisement Act, 1930, Section 1.

⁵ Franchise Laws Amendment Act, 1931, Section 1.

⁶ Representation of Natives Act, 1936, Sections 6 & 13; in connection with Section 44 of the South Africa Act of 1909.

⁷ *Ibid.*, Section 12.

⁸ *Ibid.*, Section 8.

⁹ *Ibid.*, Section 20.

¹⁰ Separate Representation of Voters Act, 1951, Sections 1, 9 & 11; in connection with Section 70 (2) of South Africa Act of 1909. An additional European senator was to be *nominated* by the Governor General (Section 7).

on some of the fundamental legal aspects of apartheid and left in its wake changes in the legislative and judicial system which abolished all remaining democratic checks on the party in power.

The Separate Representation of Voters Act was passed through the Union Parliament by a simple majority in each House. This procedure violated the provisions of the above-mentioned "entrenched clause" of the South African Act of 1909 requiring a two-third majority for the amendment or repeal of the Cape Coloured franchise, Sections 35 and 152 of the South Africa Act being read together. On these constitutional grounds the Act was challenged in the Appellate Division of the Supreme Court of South Africa and declared invalid, the case commonly known as *Harris v. Dönges*.¹¹ There followed a protracted struggle during which the Government sought to rid itself of the requirement of a qualified majority for the abolition of the entrenched clauses and to limit the Supreme Court's supervision over the constitutionality of legislative enactments. The issues thus far outgrew their original frame of reference and became a veritable test of the legality of the Government's intention to bypass constitutional provisions which impeded full implementation of apartheid in all sectors of public life.

The uncompromising stand of the Appellate Division of the Supreme Court in *Harris v. Dönges* led to an attempt to eliminate this powerful guardian of legality by means of the High Court of Parliament Act of 1952 authorising Parliament to sit as a High Court of Parliament with power to review any judgement or order of the Appellate Division whereby any provision of any Act of Parliament is declared invalid.¹² The existence of this special jurisdiction was short-lived. Two days after Parliament, sitting as a High Court, had set aside the Appellate Division's judgement in the Harris case, the Cape Provincial Division of the Supreme Court declared the High Court of Parliament Act invalid as being made in contravention of Section 152 of the Constitution.¹³

The next step taken by the Government consisted of a Bill passed in April 1955, increasing the quorum of the Appellate Division of the Supreme Court from six judges to eleven, in any case where validity of an Act of Parliament is considered.¹⁴ The new majority on the Court assured control by the party in power in such cases.

Almost simultaneously, in May 1955, the Government secured the passing of the Senate Act, increasing membership in that body

¹¹ *Harris v. Minister of the Interior*, 1952, SALR 428 (A.D.).

¹² High Court of Parliament Act, 1952, Section 2.

¹³ See Geoffrey Marshall, *Parliamentary Sovereignty and the Commonwealth* (Oxford, 1957), pp. 185-250, especially p. 214.

¹⁴ Appellate Division Quorum Act, 1955, Section 1; replacing Section 110 of the South Africa Act, 1909.

from 48 to 89¹⁵ and introducing a new system of election assuring the majority party in each province all the Senate seats for that area.¹⁶ This reform enabled the Government to depend on a safe two-thirds majority of both Houses required for constitutional amendments.

In February 1956, this new Senate majority lived up to expectations in the joint-sitting passing of the South Africa Act Amendment Act which not only gave the Separate Representation of Voters Act of 1951 the force of law¹⁷ but also provided that no Court of Law shall be competent to enquire into or to pronounce upon the validity of any law passed by Parliament other than the altering or repealing of Sections 137 or 152.¹⁸

Both the Senate Act and the South Africa Act Amendment Act were attacked in court on grounds of unconstitutionality, but upheld by the decision of the Cape Provincial Court of May 18, 1956.¹⁹ A last attempt to invalidate the two Acts on these grounds failed on November 9, 1956, when the final judgement on appeal, delivered by the enlarged Appellate Division, upheld their validity by a vote of 10 to 1.²⁰

The Government's victory in the constitutional crisis enabled it to proceed at an accelerated pace with the abolition of the last vestiges of non-white democratic rights. The Separate Representation of Voters Amendment Act, No. 30 of 1956, decreed that all Representatives elected by the Cape Coloureds must be white.²¹ Finally, the Promotion of Bantu Self-Government Act, No. 46 of 1959, brought the requirements of apartheid in the matter of political rights to their logical conclusion. In an effort to achieve a total separation of white and non-white communities and to secure permanent political supremacy of the whites, the Act abolished all representation of Africans in Parliament after the expiry of their term in June 1960.²²

B. REPRESSION OF OPPOSITION

The right of a sovereign nation to protect itself from external and internal subversion cannot be questioned. In a multi-racial

¹⁵ Senate Act, 1955, Section 2.

¹⁶ *Ibid.*, Section 2 (2), the senators not nominated by the Governor General were now to be elected *jointly*, and no more by proportional representation by the electoral college.

¹⁷ South Africa Act Amendment Act, 1956, Section 1.

¹⁸ *Ibid.*, Section 2.

¹⁹ See Marshall, *op. cit.*, pp. 238-248.

²⁰ *Ibid.*, p. 240.

²¹ Separate Representation of Voters Amendment Act, 1956, Section 1 (Amendment of Section 12 of the Separate Representation of Voters Act, 1951).

²² Promotion of Bantu Self-Government Act, 1959, Section 15; repealing the Representation of Natives Act, 1936. The Native representatives retained their seats until the expiry of their term in June 1960. See Cornell, *op. cit.*, p. 185.

state, however, subversion may assume forms defined in the South African Riotous Assemblies Act 1946 as any action "calculated to engender feelings of hostility between the European inhabitants of the Union on the one hand and any other section of the inhabitants of the Union on the other hand".²³ With the advent of intensive application of the policy of apartheid, the yardstick applied to this offence has worked to the detriment of the non-white population. The Act which is clearly designed to prevent any agitation against apartheid, provides for banishment from any area of any person guilty of fomenting hostility between Europeans and other races.²⁴

Also in this category of discriminative measures, under the guise of non-racial political legislation, comes the Suppression of Communism Act No. 44 of 1950 as amended in 1951. The most alarming feature of this legislation is the loose definition of "communism" which is phrased as follows :

" 'Communism' " means the doctrine of Marxian Socialism as expounded by Lenin and Trotsky, the Third Communist International (the Comintern) or the Communist Information Bureau (the Cominform) or any related form of that doctrine expounded or advocated in the Union for the promotion of the fundamental principles of that doctrine and includes, in particular, any doctrine or scheme— (a) which aims at the establishment of a despotic system of government based on the dictatorship of the proletariat under which one political organization only is recognized and all other political organizations are suppressed or eliminated; or (b) which aims at bringing about any political, industrial, social or economic change within the Union by the promotion of disturbance or disorder, by unlawful acts or omissions or by threats of such acts or omissions or by means which include the promotion, of disturbances or disorder, or such acts or omissions or threats; or (c) which aims at bringing about any political, industrial, social or economic change within the Union in accordance with the directions or under the guidance of or in cooperation with any foreign government or any foreign or international institution whose purpose or one of whose purposes (professed or otherwise) is to promote the establishment within the Union of any political, industrial, social or economic system identical with or similar to any system in operation in any country which has adopted as system of government such as is described in paragraph (a); or (d) which aims at the encouragement of feelings of hostility between the European and non-European races of the Union the consequences of which are calculated to further the achievement of any object referred to in paragraph (a) or (b)." ²⁵

In connection with the above definition, Gerald Gardiner observes pointedly : "It is not inappropriate to comment that if the Government passes a law which discriminates against non-Europeans, and therefore causes a feeling of hostility between Europeans and non-Europeans, that is not 'communism', but if anybody protests

²³ Riotous Assemblies Act, 1956, Sections 2 & 3; amending the Riotous Assemblies and Criminal Amendment Act of 1914.

²⁴ *Ibid.*, Section 3 (5). A person convicted of any offence under the provisions of Sections 2 & 3 who was born outside the Union, may be removed from the Union (Section 5).

²⁵ Suppression of Communism Act, 1951, Section 1 (1).

against that law in a manner which causes disorder, that is 'communism'.²⁶ "

The definition of a "communist" in the Suppression of Communism Amendment Act of 1951 is the following :

" 'Communist' means a person who professes or has at any time before or after the commencement of this Act professed to be a Communist or who, after having been given a reasonable opportunity of making such representation as he may consider necessary, is deemed by the Governor-General or, in the case of an inhabitant of the territory of South West Africa, by the Administrator of the said territory, to be a Communist on the ground that he is advocating, advising, defending, or encouraging or has at any time before or after the commencement of this Act whether within or outside the Union, advocated, advised, defended or encouraged the achievement of any of the objects of communism or any act or omission which is calculated to further the achievement of any such object or that he has at any time before or after the commencement of this Act been a member or active supporter of any organization outside the Union which professed, by its name or otherwise, to be an organization for propagating the principles or promoting the spread of communism, or whose purpose or one of whose purposes was to propagate the principles or promote the spread of communism, or which engaged in activities which were calculated to further the achievement of any of the objects of communism." ²⁷

To this, Mr. Gardiner has rightly remarked : " So if you were a Communist forty years ago, you are a Communist today. And, whether you are a Communist or not, you are a Communist if the Governor-General says that you are." ²⁸

The legal pitfalls and the dangers to fundamental human rights of such loose definitions were illustrated dramatically in the proceedings of the so-called South African Treason Trial which started by a mass arrest of 140 persons on December 5, 1956. While the last of the 156 accused was released from detention after almost four years, on August 31, 1960, the trial is going on, and though but indirectly related to the issue of apartheid, presents a strong case against an administration of justice motivated by intolerance of criticism of its racial policies.

In 1953, two laws were passed which on the surface were not discriminatory and applied equally to whites and non-whites; yet they were directed against those who might organise resistance to apartheid or even state their opposition to legislation introduced by the Government. The Public Safety Act (No. 3 of 1953) empowered the Governor-General to proclaim a state of emergency under which virtually all laws could be suspended in any part of the Union where public safety was threatened.²⁹ This measure, applicable even with retrospective effect of four days,³⁰ authorised the promulgation of

²⁶ Gardiner, *op. cit.*, p. 49.

²⁷ Suppression of Communism Amendment Act, 1951, Section 1 (a).

²⁸ Gardiner, *loc. cit.*

²⁹ Public Safety Act, 1953, Sections 2 and 3.

³⁰ *Ibid.*, Section 2 (1).

the Emergency of March 30, 1960, and of the ensuing regulations which led to the arrest of great numbers of South Africans. Needless to say, the threat to public safety as foreseen by this Act must be interpreted as any public manifestation of opposition to particular Government measures. The fact that their sanctions may be imposed on white as well as non-white citizens does not conceal the discriminatory purpose underlying such legislation. The Criminal Law Amendment Act of 1953 was designed to increase penalties for political offences.³¹ Campaigns in defiance of apartheid legislation were certainly the target of this Act which again added to the difficulties of all who—without racial distinction—work for revision of the South African policy of unchallenged white supremacy. Penalties for supporting campaigns of passive disobedience of any law, or for soliciting or accepting help for such a campaign, were raised to five years' imprisonment or £500 fine or ten lashes or any two of these.³²

C. RESTRICTIONS ON POLITICAL ASSOCIATION

Until 1953, there were no serious limitations upon the freedom of Africans to associate for political purposes. In that year, Government Notice No. 2017 prohibited meetings of more than ten Africans without permission of the Minister for Native Affairs. In 1954, a controversy arose out of complaints against the attendance of detectives from the special branch of the police at certain political meetings not open to the public. While the courts have taken a position against police intervention, the Ministry of Justice blamed judges so ruling for neglecting their duty. As a result, a Bill was passed to strengthen the police control over political activities. The Criminal Procedure and Evidence Amendment Act of May 13, 1955, gave the police explicitly wider powers of search and attendance at meetings.³³ It also empowered the police to proceed without warrant if it was believed that the delay would defeat the object of the intervention.^{34a}

The proclamation of Emergency in March 1960 introduced a major political persecution. On April 7, 1960, there was passed the Unlawful Organisations Act, on the basis of which a proclamation was issued on April 8, 1960, banning the African National Congress and the Pan-African Congress, two leading political organisations of the native population, for a period of one year.^{34b}

³¹ Criminal Law Amendment Act, 1933, Sections 1 & 2.

³² *Ibid.*, Sections 1-3.

³³ Criminal Procedure and Evidence Amendment Act, 1955, Section 7.

^{34a} *Ibid.*, Section 6.

^{34b} Proclamation No. 119, April 8, 1960.

D. TERRITORIAL RIGHTS

By the Bantu Authorities Act of 1951 the Government sought to provide a substitute for the abolished Natives Representative Council. It recognised local authorities in the Native areas by establishing tribal, regional and territorial councils acting in an advisory capacity and authorised to make representations to the Minister of Native Affairs.³⁵ The Act empowered the Governor-General to ascertain the trends in the Native population through Native chiefs assembled in conference.³⁶ (It must be remembered, however, that these chiefs are themselves Government servants.)

Government-imposed rule of Bantu authorities did not satisfy the Native population. In some areas, unrest broke out and the Government had to resort to violence and strong repression to enforce its legislation. In a proclamation gazetted on February 28, 1958, the Governor-General stated that in certain native areas there were campaigns by certain organisations and individuals to subvert, resist or interfere with the authority of the State and of the chiefs. Unrest had resulted. Those responsible, continued the statement, either visited the native areas from outside, or departed from those areas to other centres, with the object of furthering the campaigns and agitation. It was thus considered desirable to prevent such campaigns by introducing regulations which would have the force of law in any area which might from time to time be specified by the Minister of Native Affairs by notice in the Gazette.³⁷

The opposition to the Bantu Authorities Act has been widespread and in some areas particularly violent. Two such areas, Zeerust and Sekhukhuneland, have provided examples of the Government's reaction to opponents of the setting up of Bantu chiefs of the Government's choosing. The incidents at Sekhukhuneland suffice to tell the tale of similar occurrences in many other native reserves. They reflect the abuses to which the Native population is subject from ruthless agents of the Government against whom there is no recourse and no legal defence. The impact on the local population has to be kept in mind in evaluating the repression that follows manifestations of discontent or desperate self-defence.

Another important step in the field of discrimination in political rights on grounds of territorial separation was undertaken by the Promotion of Bantu Self-Government Act of 1959. The main aim of this legislation was to preserve separate white and African communities. Its effect on popular representation has been mentioned above in that henceforth no spokesmen—white or non-white—of the Native population were to appear in Parliament. The major

³⁵ Bantu Authorities Act, 1951, Sections 2-7.

³⁶ *Ibid.*, Section 15.

³⁷ Proclamation No. 52, February 28, 1958.

assumption from which the Act proceeds is the incompatibility of apartheid with the sharing in any proportion of parliamentary institutions by whites and non-whites. Along the same lines of thinking, important measures were taken under this Act to reorganise the territorial administration. One of its striking features is the application of the Act to those Africans who reside in white urban centres. Again, the logic of apartheid excludes the possibility of an African being legally domiciled in an urban centre with a predominantly white population; consequently, however prolonged his stay in such an area may be, he has to remain legally a stranger among the whites and his domicile is assumed to be in a Native reserve regardless of the fact that he may have never been there.³⁸

In practice, the Africans working in white urban centres are administered by the territorial authorities in the reserves which may be represented by officials looking after their interests.³⁹ Because these representatives as well as the authorities that appointed them are agents of the Government, subordinated to the Ministry of Bantu Administration and Development (formerly Department of Native Affairs) and subject to approval by the Governor-General, the effect of the Act of 1959 is to assure that:

"... at all times executive authority in the person of the Native Affairs Department must have virtually unlimited control to the exclusion of both Parliament and the courts. There are no points of importance governed by law enforceable in the courts and overriding administrative orders."⁴⁰

As to the actual residents of the reserves, eight national Bantu units are recognised and five Commissioners-General are to be appointed by the Governor-General in the areas of these national units and to guide the Bantu authorities.⁴¹ A system of tribal and regional authorities, and eight territorial authorities, is to be established by the Governor-General;⁴² all enactments of these authorities are to be subject to the approval of the Governor-General and the Minister of Bantu Administration and Development.⁴³ The territorial authorities may, in consultation with the Minister, nominate African representatives to act as "ambassadors" in urban areas.⁴⁴

The Promotion of Bantu Self-Government Act, like the Bantu Authorities Act and the Bantu Education Act, confers upon the

³⁸ See Roskam, *op. cit.*, p. 116.

³⁹ Promotion of Bantu Self-Government Act, 1959, Sections 5 & 12.

⁴⁰ Brookes and Macaulay, "Civil Liberty in South Africa 1905-1930-1955", *Race Relations Journal*, Vol. XXII, No. 4, 1955, p. 164.

⁴¹ Promotion of Bantu Self-Government Act, 1959, Sections 1 & 2.

⁴² Bantu Authorities Act, 1951, Sections 2 *et seq.*, and Promotion of Bantu Self-Government Act, 1959, Sections 1 *et seq.*

⁴³ Bantu Authorities Act, 1951, Sections 4 *et seq.*, and Promotion of Bantu Self-Government Act, 1959, Sections 8 & 12.

⁴⁴ Promotion of Bantu Self-Government Act, 1959, Section 4 (1).

Governor-General extremely wide powers to make regulations; it states that these may be made by him "generally in regard to any matter which he may consider necessary for the attainment of the objects of this Act, the generality of the powers conferred by this paragraph not being limited by the particular provisions contained in the preceding paragraphs."⁴⁵

It is possible to welcome the development of the native reserves and the extension of the powers of local government to them. But the plan for the Bantustans does not hold out any promise of full rights of self-government in these separate areas. And the areas are certainly not being developed as integral parts of the Union. What the Bantustan plan does is to remove finally all existing political rights based on parliamentary representation, however disproportionate and inadequate they may have been, and to offer nebulous promises for the future in their stead.⁴⁶

⁴⁵ *Ibid.*, Section 14 (1) (c).

⁴⁶ See Section II, p. 36, *supra* for discussion of the development of the Bantu reserves.

V. MARRIAGE

Article 16 of the Universal Declaration of Human Rights :

" (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

" (2) Marriage shall be entered into only with the free and full consent of the intending spouses.

" (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

One of the main arguments on behalf of apartheid in South Africa has always been the problem of miscegenation. Sexual intercourse between Europeans and non-Europeans was limited already in the Colonial period preceding the foundation of the Union when in the Cape and the Orange Free State it was a criminal offence for a white women to have sexual intercourse with an African for purposes of gain.¹ In Natal and the Transvaal similar provisions were applied but *both* parties were liable to punishment and the prohibition was not confined to Africans, but included, in Natal, "Hottentots, Coolies, Bushmen, Lascars and Kaffirs," and in the Transvaal, any person "manifestly belonging to any of the native or coloured races of Africa, Asia, America or St. Helena".² In 1927 the Immorality Act was passed, prohibiting on a Union-wide level any carnal intercourse outside marriage between Europeans (whites) and Africans.³ In 1950 an Amendment to this Act extended this prohibition to all classes of non-Europeans, namely Natives as well as Asiatics and Coloured persons.⁴ The rationale of this legislation was a mixture

¹ Betting Houses, Gaming Houses and Brothels Suppression Act, 1902, Section 34; Suppression of Brothels and Immorality Ordinance No. 11 of 1903, Section 14. Cited in Hahlo and Khan, *op. cit.*, p. 397.

² Criminal Law Amendment Act, 1903, Section 16; Immorality Ordinance No. 46 of 1903, Section 19. Cited in Hahlo and Khan, *op. cit.*, p. 397.

³ Immorality Act, 1927, Section 1-3.

⁴ Immorality Amendment Act, 1950, Section 1. The original Immorality Act of 1927 has now been replaced by the Immorality Act of 1957.

of notions of immorality and of the desire for a strict implementation of apartheid in this important sector of life.

The intermarriage between whites and non-whites was, although "socially taboo", not prohibited prior to 1949. This situation changed completely with the introduction of the Mixed Marriages Act in 1949 which made illegal any intermarriage between whites and non-whites.⁵ The Act cannot have been one of the more important pieces of legislation in terms of the mischief it sought to remedy. In fact, between 1943 and 1946 fewer than a hundred mixed marriages a year were celebrated; and in the three years before the Act the figure was even lower. But from the point of view of maintaining racial purity it was certainly essential to complete the policy of apartheid. Dr. T. E. Dönges even declared that the bill was based on the desire of the population to maintain this purity. He pointed out that there were "social problems arising out of mixed marriages and that the position of innocent children born of such unions had to be considered". The Government also alleged that the number of mixed marriages was slowly increasing.⁶ The Act declares that any such marriage concluded in the Union shall be null and void⁷. This applies also to a marriage into which a male person domiciled in the Union enters in contravention of the Act outside the Union.⁸ In the case of a marriage solemnised in good faith by a marriage officer, the children born or conceived of it before it has been declared to be invalid by the court are deemed to be legitimate.⁹ Further, if not only the marriage officer, but the parties themselves acted in good faith and they are in appearance what they profess to be, or habitually consort with the racial group to which they profess to belong, the marriage is valid for all purposes.¹⁰ But the Act provides that "any marriage officer who knowingly performs a marriage ceremony between a European and a non-European shall be guilty of an offence and liable to a fine exceeding fifty pounds".¹¹ There is no prohibition on intermarriage between the different non-European groups.

Although prosecutions are not numerous under the Immorality Amendment Act and the Prohibition of Mixed Marriages Act, there

⁵ Mixed Marriages Act, 1949, Section 1.

⁶ "Ban on Mixed Marriages", *Weekly Newsletter*, No. 494, May 21, 1949, p. 2 (A); quoted from Dvorin, *op. cit.*, p. 89.

⁷ Mixed Marriages Act, 1949, Section 1.

⁸ *Ibid.*, Section 1 (2). This rule does not apply to a woman who is domiciled in the Union. Hahlo and Kahn, *op. cit.*, p. 328, suggest: "It would, therefore, seem that she may validly contract an interracial marriage abroad and return with her husband to the Union as a legally married couple. This is, presumably, subject to the proviso that she did not go abroad for the express purpose of evading the Union's restrictions on marriages of this kind".

⁹ *Ibid.*, Section 1 (1).

¹⁰ *Ibid.*, Section 1 (1) (a).

have been instances which have aroused public concern, and which highlight the particular difficulties created by these two Acts. A couple in Durban, who have two children, were on December 23, 1957, both sentenced to six months' imprisonment of which four months were suspended. While they were in goal their attorney approached the Minister of Justice, who eventually decided that after their release they could continue to live together as man and wife and would not be prosecuted again under the Prohibition of Mixed Marriages Act.¹² The second case is that of a young white man from Capetown, who shortly before World War II met and fell in love with a coloured girl. During the war he served in the South African Air Force and afterwards became a railway worker. The Mixed Marriages Act of 1949 prevented the couple from marrying and the Immorality Amendment Act of 1950 prohibits carnal intercourse between whites and Coloured people or Asians. The couple nevertheless decided to live together. In January 1959 the man was prosecuted under the Immorality Act. When it transpired that the relationship had continued over many years, the Attorney General abandoned the case. The man said in his evidence that he had no intention of leaving the woman. He was told by the magistrate that if he wished to continue his association with her he would have to ask the Population Registrar to classify him as a Coloured man. This would mean resigning from his job and foregoing association with other white people. He is reputed to have said that he had no qualms about accepting these conditions.¹³

When the Minister of Justice was asked what steps were contemplated to grant relief in such cases, he replied: "The matter enjoyed so much publicity at the time the Immorality Act, 1950, was under discussion that it is felt that persons in similar circumstances were given ample opportunity to get married. It is, accordingly, not considered to take steps to grant relief as a general rule in all such cases... Each case will be dealt with on its merits..."¹⁴

It has to be added that in many cases a non-European who was charged separately often pleaded guilty to the charge because of lack of funds or unfamiliarity with the proceedings, whereas the European was often acquitted or given a suspended sentence for the offence arising from the same incident. Numerous organisations have urged this unjust treatment be discontinued, but no action has yet been taken to incorporate these suggestions in the law.¹⁵

¹¹ *Ibid.*, Section 2.

¹² *Survey of Race Relations 1957-1958*, p. 231.

¹³ *Survey of Race Relations 1958-1959*, p. 320.

¹⁴ *Survey of Race Relations 1957-1958*, p. 231.

¹⁵ See Carter, *op. cit.*, pp. 80-87.

VI. EQUALITY BEFORE THE LAW

Article 7 of the Universal Declaration of Human Rights :

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

Every visitor to the Union is immediately struck by the separation of the facilities provided for and used by the white and non-white communities. There are separate entrances to post offices, railways stations; separate carriages on trains, separate buses, separate benches in the parks, separate beaches and even separate parts of the law courts (the witness box from which all take the same oath is partitioned off). With rare exceptions in certain municipalities there are separate hospitals, public pools and conveniences.

The evolution of separate, but not necessarily equal, facilities and amenities can be traced in recent years as a legislative reaction to judicial decisions. The first in a line of decisions came in the Cape in 1943 dealing with Cape bathing beaches. The Cape Provincial Division of the Supreme Court held that the courts could annul a municipal by-law if the difference in the facilities provided for the white and Coloured peoples reflected an inequality of treatment which was in all circumstances " manifestly unjust or oppressive ".¹ An extension of the principle was made in 1950 by the Appellate Division which ruled that a regulation reserving a portion of all trains to whites, but not restricting them to those sections, led to " partiality and inequality in treatment ". This, the court declared, was not authorised by the Railways Act of 1916 and Mr. Justice Centlivres, then Chief Justice and now Chancellor of Capetown University, said : " The State has provided a railway service for all citizens irrespective of race and it is unlikely that the legislature intended that users of the railways should, according to their race, have partial or unequal treatment meted out to them. " ² While that case was actually

¹ *R. v. Carelse*, (1943), S.A. 242 (Cape P.D.).

² *R. v. Abdurahman*, (1950) 3 S.A. 136 (A.D.).

being considered, the Government acted without waiting to see whether a challenge to their policy of racial separation was to become a reality. The Railways and Harbours Acts Amendment Act, 1949, enabled the administration to reserve railway premises and trains for the exclusive use of particular races provided that equal facilities were available for all races.³

No government had in fact provided separate but equal services. The failure to do so has been clearly proven. The effect of the 1949 legislation was tested in 1953 when an African, as part of the passive resistance campaign, entered the waiting room of the Capetown railway station. The African was acquitted by the Appellate Division on the grounds that the facilities available to him were far inferior to those provided for the whites. In spite of the new legislation the court repeated that the administration was not permitted under the Railways Act to show such a degree of partiality and inequality as existed in the railway station at Capetown.⁴ That the Government had no intention of providing parallel facilities for the different races in any of the social or public services was made explicit by Mr. Swart when he said, "we will always find that reasonable amenities are provided for all classes according to their standard of civilisation and according to their need", and then there were the ominous words that "to leave the interpretation in the hands of the courts...is an impossible task for which we are not prepared".⁵

The Reservation of Separate Amenities Act of 1953 legalised the provision of separate, and not necessarily equal, facilities for the different races in South Africa⁶ and made it impossible for the courts to adjudicate upon the validity of any regulation in terms of any inequality it involved.⁷ This trend was continued in 1959 with the Factories Machinery and Building Work Amendment Act which required that separate amenities had to be provided in factories for all four races.⁸ Also in 1959 the Separate Amenities Amendment Act enforced segregation for bathing in the sea up to the limit of territorial waters.⁹

Another illustration of the same process is provided in the realm of motor transport. An Indian named Tayob in a small Transvaal town had run a taxi service there longer than any white man. He served all races, regardless of their colour. A local transport licensing Board deprived him of his licence because, it said, it was reason-

³ Railways and Harbours Acts Amendment Act, 1949, Section 4.

⁴ *R. v. Lusu*, (1953) 2 S.A. 484 (A.D.).

⁵ House of Assembly Debates (Hansard), Vol. 82, col. 2165.

⁶ Reservation of Separate Amenities Act, 1953, Section 2 (1).

⁷ *Ibid.*, Section 3.

⁸ Factories, Machinery and Building Work Amendment Act, 1960, Section 21.

⁹ Reservation of Separate Amenities Amendment Act, 1960, Section 1.

nable for white people to be conveyed only by white people and the remainder by non-whites. The Transvaal Provincial Division of the Supreme Court refused to disturb the finding of the Board but the Appellate Division reversed the decision. It held that the Transport Act does not empower a local Board to do unreasonable things such as decline to renew a licence because the applicant is an Asian.¹⁰ Under the Motor Carrier Transportation Amendment Act of 1955, the licensing Board is now allowed to refuse a licence on the basis of race.¹¹ Under the Motor Carrier Transportation Amendment Act of 1959, the power of the local Boards has been widened.¹² While under the Motor Carrier Transportation Act of 1930 the Transport Boards had been empowered to specify the class or classes of persons who might be conveyed,¹³ a proviso added that these Boards could not debar an operator from carrying persons of a certain class if any other law permitted him to do so.¹⁴ (Municipal by-laws in the Cape and Natal apparently require taxi-drivers to accept all fares of whatever racial group unless the passenger behaves unreasonably.) The Motor Carrier Transportation Amendment Act of 1959 has, however, removed this inconsistency.¹⁵ The Act enabled Transportation Boards to enforce apartheid in taxi services in those two provinces. It dealt similar blows to any limitation upon apartheid in the bus or tram services.

Whereas the courts had previously been free to interpret the laws, they were gradually either deprived of their right to adjudicate or, in the few instances when judicial interpretation was still permitted, some judges began to follow popular opinion. In the Natal Supreme Court, Mr. Justice J. C. de Wet, refusing to follow long-established precedents, said that "the race of the community which has to be served (in this case an African bus service) is a factor that is to be taken into account, just as is the state of the roads, the density of the population, and other features in the particular area which are weighed up when the Board has to decide whether or not a certificate of transportation should be granted."¹⁶

The other major discrimination with respect to social rights relates to liquor. It has always been an offence in the Union to supply any alcoholic drink to Africans; the legislation, the Liquor Act of 1928 and the Liquor Law Amendment Act of 1951, enforce this

¹⁰ *Tayob v. Ermelo Local Road Transportation Board*, (1951) 4 S.A. 440 (A.D.), at p. 447.

¹¹ Motor Carrier Transportation Amendment Act, 1955, Sections 5, 6 & 11 (d).

¹² Motor Carrier Transportation Amendment Act, 1959, Section 2.

¹³ Motor Carrier Transportation Act, 1930, Section 7 (i) (c).

¹⁴ *Ibid.*,

¹⁵ Motor Carrier Transportation Amendment Act, 1959, Section 3 (b), which provides for the deletion of the proviso to paragraph (c) of the principal Act.

¹⁶ *Dass v. Durban Local Road Transportation Board*, (1952) 3 S.A. 401, at p. 408.

principle. Africans are supplied with Kaffir beer which is distributed under the control of local authorities through a system of licensing or under a municipal monopoly.¹⁷ The prohibition of home brewing has led to a large-scale illicit trade in the large towns carried on by the "shebeen queens".¹⁸ The constant police raiding of these "shebeens" has been the cause of many of the disturbances that have taken place in recent years in the townships. Possibly only the Pass Laws and, for the scholarly minded African, the Bantu Education Act, among the many instances of discriminatory legislation and administrative action, have aroused greater resentment.

Mention should also be made of mass trials which have become such a feature of the South African scene that justice in all cases could not possibly be carried out by the courts. Under any system of law designed to protect the rights of every individual accused it has proved impossible to conduct a mass trial fairly. The Treason Trial with its vast array of documentary evidence which has taken it into its fourth year is not an isolated example.¹⁹

There are two significant points about these mass trials which run counter to the principles of the fair administration of justice. First, they tend to shift the weight of repressive law from the political ringleaders to the rank and file of any political resistance movement. Thus they may be used to deter people from joining political organisations with which the government may clash. Further, these trials, because of their inevitable length, constitute a great burden on the accused and their families. However independent the judiciary is and however fairly the trials are conducted, there is no effective way of preventing or redressing the injury suffered by the prolonged nature of the trial. The award of costs against the prosecution is rarely experienced in South Africa, there is little if any form of legal aid for the accused.

The initiation of these trials, and hence the length they inevitably take, depends largely on the arrangements made by the Attorneys General of the four provinces who are civil servants under the Ministry of Justice. It is therefore in South Africa a direct governmental responsibility when such mass trials are permitted.

Finally it should be noticed that it did not require any emergency legislation before the right to resort to the courts was taken away. The Natives (Prohibition of Interdicts) Act, June 22, 1956, was a foretaste of what the Government would do in an emergency. Any

¹⁷ Liquor Act, 1928, Sections 31-87.

¹⁸ *Ibid.*, Sections 122, 123-125, 130 & 164.

¹⁹ See *Journal of the International Commission of Jurists*, Vol. I No. 1 (Autumn, 1957), p. 43; *Bulletin of the International Commission of Jurists*, No. 8 (December, 1958), p. 45; and *Bulletin of the International Commission of Jurists* No. 9 (August, 1959), p. 21.

African threatened by an official with forcible removal from any land, building or area, whether unlawful or not is by that Act precluded from access to the courts to obtain a restraint upon such illegal action.²⁰ His sole remedy is to obtain compensation after the wrong has been committed.²¹

²⁰ Natives (Prohibition of Interdicts) Act, 1956, Section 2. See Section II, p. 34, *supra*.

²¹ Natives (Prohibition of Interdicts) Act, 1956, Section 4.

VII. ARBITRARY ARREST AND DETENTION

Article 9 of the Universal Declaration of Human Rights :

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

Article 10 of the Universal Declaration of Human Rights :

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

Article 11 of the Universal Declaration of Human Rights :

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

As mentioned earlier in this Report in connection with the restrictions imposed upon African movement, the Native Laws Amendment Act of 1952 authorised the arrest " without warrant " of Africans suspected of being idle or undesirable.¹ The African so arrested is brought before a Native Commissioner or Magistrate,² at which point the Act provides as follows :

" If a Native Commissioner or Magistrate declares any Native to be an idle or undesirable person, he shall :

- (a) By warrant addressed to any police officer order that such Native be removed from the urban or proclaimed area and sent to his home or to a place indicated by such Native Commissioner or Magistrate, and that he be retained in custody pending his removal; or
- (b) Order that such Native other than a female referred to in sub-paragraph (iv) of paragraph (b) of subsection (1) be sent to and detained in a work colony established or deemed to have been established under the Work Colonies Act, 1949; or
- (c) If such Native is declared to be an idle person, order that he be sent to and detained for a period of not exceeding two years in a farm colony,

¹ Native Laws Amendment Act, 1952, Section 36.

² *Ibid.*

work colony, refuge, rescue home or similar institution established or approved under Section 50 of the Prisons and Reformatory Act, 1911 (Act No. 13 of 1911), and perform thereat such labour as may be described under that Act or the regulations made therein; or

- (d) If such Native agrees to enter and enters into a contract of employment with such an employer and for such a period as that Native Commissioner or Magistrate may approve, order that such Native enter into employment in accordance with the terms of that contract and, if he deems fit, that such Native be detained in custody pending his removal to the place at which he will in terms of that contract be employed..."³

The wide possibilities for abuse of the rights of Africans by arbitrary arrest and detention pursuant to the terms of this Act and under the Pass Laws have found concrete expression in a farm labour scheme. The scheme was based in part upon a formal General Circular issued by the Secretary of Native Affairs, 1954.⁴ Under the General Circular it was provided that Africans who were arrested for specified technical offences should not be charged immediately by the police but should be handed over to the local Employment Officer of the Native Affairs Department. Said Employment Officer then "offered" the Africans "employment" in non-prescribed rural areas. A vivid example of the practical application of this scheme with all its connotations is given in a petition and supporting affidavits connected with a *habeas corpus* application for delivery of an offender. The full documentation of the afore-mentioned case and another, both occurring in 1959, is included in this Report as Appendices D and E respectively. The supporting statements made under oath are sufficient in number and each so similar in substance that full credence can be given to the almost unbelievable description contained therein. Read collectively they constitute appalling evidence of a complete violation of fundamental human rights and utter degradation of human beings during a period of involuntary detention, termed employment. Part of the statement made by one of the many detainees is set forth below:

"I, the undersigned, JAMES MUSA SADIKA do hereby make oath and say that:

"In October 1958 my wife and children left for Evaton where they were going to spend a short period with her uncle.

"During my wife's absence I lost my Reference Book which was in all respects regular and which was endorsed to the effect that I was a "daily labourer", the effect of which is that I did not require to be registered with an employer but that I could work on my own account. I made an application for a duplicate Reference Book and I paid the sum of 10/- and was given a document and asked to return in two weeks' time.

"Some time later I returned to the Pass Office, where I was informed that I had to pay the sum of 5/- for a permit. I had never before paid 5/- for a permit and I informed the person there in charge accordingly. However, I there and then tendered the 5/-, but I was told it was now too late to pay the 5/- and that I was to be sent to Nigel to work on the farm for six months.

³ *Ibid.*

⁴ See Appendix C, p. 129, *infra*.

I protested at this and informed the official that I could not go to the farm as I was a self-employed man and I produced my Certificate of Membership of the Herbalists' Association. I was told that the official was not concerned with the document that I had tendered and that I was compelled to work on the farm. I was then taken into custody on the Friday and kept in custody until the Tuesday of the following week. Whilst in custody I again protested and I was told that as I was late in paying my fees. I was to be punished by being sent to work on a farm for a period of six months.

" On the Tuesday following the Friday when I was detained, I, together with eight others, was taken under guard to Nigel by van, manned by three policemen. Among the eight was a person named John who has since died.

" At the Nigel Farm Labour Bureau the official in charge told us that we had to wait for farmers who wanted boys to work for them. I again protested and informed this official that I had not done farm work before and that I was a self-employed man. The official struck me across my face with his hand and he told me that it was not for me to choose, but that I would have to work on the farm.

" Four of us were taken into an office and we were ordered to place our thumb prints on a document, which we did. Having been kept in custody for a number of days, having been slapped across my face, having been told that I had no choice in the matter and thinking that it would be easier for me to escape from the farm than from the cells where I was kept, I placed my thumb on a piece of paper when it was placed before me. We were told by the official that we were to work on the farm for a period of six months and receive three pounds per month. We were further told that having placed our fingerprints on a piece of paper, we could very easily be traced in the event of any one of us escaping and that we would be caught and punished if we escaped.

" We arrived at the Respondent's farm at approximately 3.30 p.m. and were immediately ordered to go to the fields and work. During the afternoon the boss boy named Philip, who is also known as Julaka, hit me on the head with a knobkerrie. The scar caused by that blow is still visible on my head. After Philip struck me he demanded money from me. I was then in possession of the sum of £2/12/6 which I gave him. Later in the same afternoon, the boss boy Abram struck me on various parts of my body four times and he demanded my shoes, watch and pants. I gave them to him. I thought that I would be killed by these boss boys if I did not do as I was told. The other new arrivals, including John, were also beaten by the boss boys and their belongings were also taken from them.

" Before we were given food and locked up for the night, we were allowed to drink water from a certain big oil drum which was outside the prison.

" We slept in a small prison which has only one door on the outside consisting of iron bars and which locks from the outside. The premises were filthy and infested with vermin. There were no sanitary arrangements other than two drums which were placed within the prison to be used as lavatories. The space available was not enough for us to move about and our bedding consisted of dirty sacks and dilapidated blankets. Most of the workers slept on the cement floor although there were a few beds. We were locked in daily from sunset to sunrise during the weekdays and from Saturday evening to Monday morning each week.

" After my clothing had been taken away from me I was given a sack with armholes to wear and also again some sacks to use as blankets.

" During the whole period that I worked on the farm from the first day until the day I was brought to Court and even on Sundays, assaults were committed on me or one of the other workers regularly and daily. It is impossible for me now to give details of what assaults were committed on a

particular day, as assaults were too numerous and I was on the farm for six months...

"I remember JOSIAH NOKO, GEORGE DUBE, ROBERT NCUBE, JULIUS MUDA, ARON CHUMA, ENOCH SIBANDI and EDWARD SHAMWARIRA were all on POTGIETER's farm and were assaulted with the other workers. I say that there was not one worker who worked on that farm who was not assaulted during the period he remained on the farm. None of these workers escaped being assaulted.

"I remember one Saturday I was called with the other workers around to where one, John, was lying. I do not know what happened to John but I gathered from the talk that he was dead. We all knocked off early that day. I was pleased at knocking off early as I could have some rest. I was too tired to take much notice of what was going on. I was told by the others about the burial of John, but I myself took no part in his burial. I was beaten more than the others as I was slow in my work and too sick to work fast. The boss boys hit me on my feet and I could not work very fast. I knew that I could never escape from that farm. I was sure in my own mind that I would never see my wife and children again.

"I state that I worked on the farm against my will and was kept on the farm by force and under guard. I was too crippled to escape, otherwise I would have done so. I say further that if the other workers could honestly believe and be convinced that if they were given a choice they would be allowed to act freely and voluntarily, they would leave Potgieter's farm immediately and never return. However, most of the workers would react in the way in which I did and remain unconvinced if they were told that they could leave and asked to say what had happened to them on the farm. It took me some time to really believe that it was not necessary for me to return to the farm when I first came to Court, but I am convinced that no one in his right senses would remain on that farm freely and voluntarily."

.....
"Signed and Sworn at Johannesburg on this the sixth day of May, 1959, the Deponent having acknowledged that he knows and understands the contents of this Affidavit. Before me,
....."

No further comment seems necessary at this point. It is however, highly recommended that both Appendices D and E be read in full.

Another attack on individual rights began in 1953 following the defiance campaign of the previous year by a large section of the non-white population. The Nationalist government introduced the Public Safety Act, 1953, which received only muted opposition both in and out of Parliament. It was under this Act that the recent Emergency was proclaimed which demonstrated to the South African public the breadth of the powers which the Parliament had accorded to the Governor-General in 1953. The Public Safety Act provides that the Governor-General can proclaim a state of emergency in the Union or parts of it if any action or threatened action is of such an extent that the safety of the public or the maintenance of public order is seriously threatened.⁵ The Act does not itself provide for detention without trial but clearly envisages that the Government

⁵ Public Safety Act, 1953, Section 2.

may by proclamation under the emergency apply it without establishing any adequate procedure whereby the power to detain without trial could be challenged or whereby the need for detention can be assessed by an impartial tribunal.⁶ The Act also provides that a proclamation can only remain in force for 12 months but a new proclamation can be made within the year or at the end of one year.⁷ Regulations made under the Act can impose any penalties, and offences can be made retroactive.⁸

The Emergency Regulations are published as Appendix F to this Report. Under Section 4 of Annexure B to the Proclamation No. 91 of March 30, 1960, it is provided that :

“(1) The Minister, or a magistrate or commissioned officer, may cause to be arrested and detained or himself arrest and detain with or without warrant or other order of arrest or detention any person whose arrest and detention is, in the opinion of the said Minister or such magistrate or commissioned officer desirable in the interest of the public order or safety or of that person or for the termination of a state of emergency.

“(2) The Minister may cause any person arrested and detained as aforesaid to be detained during such period as the Minister may determine, and may release him at any time either unconditionally or upon any condition which the Minister may think fit to impose.”

A further Regulation took away the right of any detainee to apply to the courts for any relief in connection with the detention of any person.⁹ Thus *habeas corpus* no longer existed for detainees who most needed its protection. By another Regulation, any act, as long as it was done in good faith, was immune from being called in question in any court.¹⁰ By Regulation No. 28 (2) the detainee had the burden of proving bad faith on the part of the Government servant. A final Regulation deprived the detainee of the right to consult with a legal adviser without the consent of the Minister of Justice.¹¹

Detainees were regarded in many ways as worse than convicted criminals. The prison rules for detainees were extremely harsh. The list of disciplinary contraventions in a later Proclamation indicates the nature of detention.¹² Rule 13 of the Proclamation made it an offence for any detainee who “... (c) is disrespectful towards a member of the South African police force during the execution of his duties;... (g) without the necessary permission converses with another detainee or other person or in any way holds intercourse with him; (h) sings, whistles or makes unnecessary trouble or is a

⁶ *Ibid.*, Section 3. Subsection (4) provides for laying the name of a detainee “on the Tables of both Houses of Parliament”.

⁷ *Ibid.*, Section 2 (2).

⁸ *Ibid.*, Section 3 (2) (a) and (b).

⁹ Proclamation No. 167, May 17, 1960, Regulation 29.

¹⁰ *Ibid.*, Regulation 28 (1).

¹¹ *Ibid.*, Regulation 30.

¹² Proclamation No. 551, April 11, 1960.

nuisance;... (n) lodges false, frivolous or malicious complaints;... (r) in any way acts contrary to good order and discipline.”¹³

Anyone guilty of any contravention may have imposed upon him by a local magistrate or a prison officer one of three sanctions. They are: imposition of certain work for fourteen days, a fine not exceeding £10, or confinement for not longer than thirty days.¹⁴ The proceedings have to simulate as far as possible cases before a magistrate's court “provided that the legal representation of the accused shall only be permitted with the approval of the officer concerned of the place of detention after consultation with the police authorities”.¹⁵

Although the Emergency Regulations were suspended on August 31, 1960, the increasing encroachment on individual liberty reflected in South African legislation indicates a real danger that provisions similar to those contained in the Regulations will be incorporated in subsequent laws.

¹³ See Appendix F, P. 206, *infra*.

¹⁴ Proclamation No. 551, April 11, 1960, Rule 13 (1).

¹⁵ *Ibid.*, Rule 13 (2).

VIII. FREEDOM OF OPINION AND EXPRESSION

Article 19 of the Universal Declaration of Human Rights :

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

Under the terms of the Suppression of Communism Act of 1950 it was possible for the Government to ban officially any newspaper which fell within the wide terms of the definition of " Communism ".¹ The newspaper, *The Guardian*, had its offices raided in November 1950 but not until May 1952 was it banned. Even if this was seen as an interference with the freedom of the press, the owners of *The Guardian* revived the paper under the new name *The Clarion*, or as it became later *New Age*. The Government decided to leave the paper undisturbed until the 1960 Emergency² when it was finally suppressed. In addition its proprietors have been the subject of prosecution in the Treason Trial. The English-speaking press, which largely supports the United Party or the recently formed Progressive Party, has on many occasions been highly critical of the Government and its policy of apartheid. There are also one or two African papers which not unnaturally have attacked the Government in even stronger terms than the English-speaking press.

There have been isolated bannings under the Suppression of Communism Act, such as the ban imposed in August 1959 on Mr. Ronald Segal, editor of the monthly, *Africa South*. Mr. Segal was prohibited from attending any gathering in South Africa for five years, a serious if not prohibitive restriction upon an editor. Shortly after the Emergency was declared in March 1960, Mr. Segal left for Bechuanaland, whence he came to England, where he has published *Africa South in Exile*.

¹ See Section IV, p. 50, *supra*.

² See Section IV, p. 52, *supra*.

There has naturally been some sign of self-imposed censorship by the newspapers. Many events have not been reported because the press is excluded; under the proclamations made under the Bantu Authorities Act of 1951 discussed on p. 53 of this Report, the press has been prevented from reporting many of the disturbances in the reserves.

There has, however, been more resentment expressed in government circles about the foreign press and in particular about those local correspondents who send despatches to newspapers abroad. There is also compulsory and arbitrary censorship of imported books and periodicals. This is not sanctioned by specific legislation but is operated under the Customs Act, 1955, whereby the "importation is prohibited of goods which are indecent, obscene, or on any ground whatsoever objectionable."³ The question whether the goods are objectionable shall be for the final decision of the Minister of the Interior.⁴ A publication of the list of banned books in 1957 showed some 3,000 titles. Apart from the books and magazines regarded as sexually improper, the list included many hundreds of books, pamphlets and newspapers held to be Communist, as well as such as the race relations pamphlets of UNESCO. The banning has even extended to anti-Nazi literature, such as Edward Crankshaw's book, *Gestapo*.

Under the Emergency Regulations there have been granted wide powers for seizure of any publications which are suspected of being of a "subversive" nature. A subversive statement is defined in the Regulations as "any statement which is calculated or likely to have the effect

- (a) of subverting the authority of the Government or the legislature; or
- (b) of inciting the public or any section of the public or any person or class of persons to resist or oppose the Government... in connection with any measure adopted in pursuance of any of these regulations or in connection with any other measure relating to the safety of the public, or the maintenance of public order or the application of the law; or
- (c) of engendering or aggravating feelings of hostility in the public or towards any section of the public or person or class of persons; or
- (d) of causing panic, alarm or fear among the public or any section of the public, or of weakening the confidence of the public or any section of the public, in the successful termination of the state of emergency, unless the statement is proved to be a true and complete narrative.⁵ Any person who disseminates a subversive statement is guilty of an offence."⁶

There is also a regulation which makes it an offence "without proper authority" to "destroy, remove, deface or obliterate any document" which consists of or contains "any of these regulations."⁷

³ Customs Act, 1955, Section 21 (1) (f).

⁴ *Ibid.*, Section 21 (3).

⁵ Proclamation No. 91, March 30, 1960. See pp. 210-211, *infra*.

⁶ *Ibid.*, Regulation 5 (1).

⁷ *Ibid.*, Regulation 15 (a) (i).

While these laws were only temporary during the Emergency, a Bill has been recently presented to Parliament which would translate many of the censorship clauses in the Emergency Regulations into permanent legislation. The quaintly entitled Publications and Entertainments Bill stems from the Government Commission's report of 1957. That Commission, under the Chairmanship of Professor Cronje of Pretoria University, proposed that the Government establish magazine censorship and a form of press control. Under its recommendations a Publications Board would advise the Minister of the Interior on questions of policy and exercise wide powers of prohibiting the publication of books and periodicals.⁸ All the English-speaking papers roundly condemned the Commission's report as a proposal for total censorship. Even the Afrikaans speaking newspapers, while agreeing that a serious evil had to be dealt with, said the Commission had gone too far.⁹

The proposed legislation, however, goes much further than the Commission's recommendations. It provides that no one shall print a book or periodical without the approval of a Publications Board to be set up by the Minister of the Interior.¹⁰ The Board shall not approve any book (the Bill also extends to films) which "in its opinion is indecent, obscene or on any ground objectionable".¹¹ The Board may also prohibit the printing or publishing of, or any dealing with any book that is "undesirable".¹² "Undesirable" is anything which;

- (a) prejudicially affects the security of the state;
- (b) can have the effect of—
 - (i) disturbing the peace or good order;
 - (ii) prejudicing the general welfare;...
 - (v) bringing any section of the inhabitants of the Union into ridicule or contempt;
 - (vi) harming relations between any sections of the inhabitants of the Union;...
- (d) is otherwise on any grounds objectionable."¹³

The procedure for newspapers is slightly different from that for books and periodicals. The Bill provides that newspapers shall fall under the exclusive jurisdiction of the courts,¹⁴ but that the court might consult with the Publications Board regarding the question

⁸ *South Africa Times*, October 1, 1957. (Attention is called to the misleading titles often given to South African legislation; e.g. Natives Abolition of Passes and Coordination of Documents Act, Extension of Universities Education Act.)

⁹ *Ibid.*

¹⁰ Publications and Entertainments Bill (As Read a First Time), Section 4 (1) (a) and (b).

¹¹ *Ibid.*, Section 4 (2).

¹² *Ibid.*, Section 5 (1).

¹³ *Ibid.*, Section 5 (2) (a) and (b) (i-vi).

¹⁴ *Ibid.*, Section 6.

whether any particular part of any edition of any newspaper is undesirable and the Board would inform the court of its opinion in writing.¹⁵ The Bill lays down that no one shall publish an undesirable newspaper and for the purposes of legislation "undesirable" has the same meaning as it has in relation to books and periodicals, including the omnibus clause which says that a newspaper is undesirable if it "is otherwise on any grounds objectionable".¹⁶ Prosecution under this section is to be instituted only on the authority of the Attorney General.¹⁷ (The Attorneys General in South Africa—one for each of the four provinces—are not the heads of the Bar with direct responsibility to Parliament. They are civil servants under the direction of the Minister of Justice who is answerable to Parliament). There are wide powers given to anyone authorised by the Publications Board to go upon premises and seize and keep any publications which he has reason to believe might have action taken against it under the legislation.¹⁸ Any person aggrieved by a decision of the Publications Board may appeal to an Appeal Board presided over by a Supreme Court judge, and that Appeal Board's decision shall be final.¹⁹ No decision or step taken by the Publications Board or the Appeal Board is to be subject to review by the courts.²⁰

It can be seen that with the final passage of this Act freedom of opinion and expression will be subject to severe restrictions pursuant to governmental policy. Equally disturbing in this connection are the legislative limitations upon the right to peaceful assembly and association.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*, Section 11 (1).

¹⁹ *Ibid.*, Section 12.

²⁰ *Ibid.*

IX. RIGHTS TO PEACEFUL ASSEMBLY AND ASSOCIATION

Article 20 of the Universal Declaration of Human Rights :

" (1) Everyone has the right to freedom of peaceful assembly and association."

In 1957, legislation was introduced that applied the principle of apartheid to the social contact between the races in the exercise of their right to assembly and association. Under the Native Laws Amendment Act, 1957, the Minister of Native Affairs may direct that the attendance of Africans at any church or religious service or function conducted within any urban area outside a native residential area shall cease as from a specified date.¹ The Minister may do so if in his opinion :

- (1) the presence of the natives is causing a nuisance on such premises or in any area traversed by them for the purpose of attending at such premises;
- (2) it is undesirable that they should be present in the numbers in which they ordinarily attend.²

To issue such notice, the Minister must further (a) obtain the concurrence of the local authority concerned, (b) allow the church concerned a stated and reasonable time to make representations and (c) consider the availability or otherwise alternative facilities for holding of services within a native residential area.³

If a notice under these provisions is disobeyed the African concerned, and not the church, will be guilty of an offence for which the penalty is a fine of up to £10 and/or imprisonment with or without hard labour, for a period not exceeding two months.⁴ The Act has thus subjected to criminal prosecution Africans who do not abide by the Minister's orders and who continue to attend services at their chosen place of worship. Should church leaders be found

¹ Native Laws Amendment Act, 1957, Section 29 (d).

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

guilty of contravening the law by way of protest, they can be imprisoned for up to three years or receive ten lashes, or suffer the combination of the two penalties.⁵

Furthermore, the Act extended the Minister's authority to restrict the freedom of association with regard to school attendance, club activities and hospital treatment. No school, club or hospital in a "white" area may be attended by, or admit an African without the Minister's permission, given with the concurrence of the urban local authority concerned, unless such institution existed before 1938.⁶ (There is an exception in the case of emergency treatment at a hospital.⁷) Even with regard to the pre-1938 institutions, the attendance of Africans may be prohibited if the Minister deems their presence to be a nuisance or "undesirable" or if the institution is conducted in a manner "prejudicial to public interest".⁸ The Minister may prohibit any gathering or meeting including a social gathering to be attended by any African in a "white" area.⁹ This prohibition may apply to the whole urban area, to part of it or to specified premises; or the Minister may direct his prohibition to a particular person.¹⁰

In spite of the fact that the Act has merely formalised pre-existing social custom, it has fundamentally altered the proper province of the law and of the State. It has imposed penal sanctions on social contact between black and white people and failed to justify such measures by anything more specific than the undesirability of such contact, the "nuisance" which it may entail and a vague reference to "public interest". Nothing more need be said to expose this breach of a most basic human right. Yet the warning of John Locke comes forcefully to mind:

"Just and moderate governments are everywhere quiet, everywhere safe; but oppression raises ferments and makes men struggle to cast off an uneasy and tyrannical yoke. . . Suppose this business of religion were let alone, and that there were some other distinction made between men and women upon account of their different complexions, shapes and features, so that those who have black hair (for example) or grey eyes should not enjoy the same privilege as other citizens; that they should not be permitted either to buy or sell, or live by their callings; that parents should not have the government and education of their own children; that all should either be excluded from the benefit of the laws, or meet with partial judges; can it be doubted but these persons, thus distinguished from others by the colour of their hair and eyes, and united by one common persecution, would be as dangerous to the magistrate as any others that had associated themselves merely upon account of religion. . . There is only one thing which gathers people into seditious commotions, and that is oppression."¹¹

⁵ Criminal Law Amendment Act, 1953, Section 1.

⁶ Native Laws Amendment Act, 1957, Section 29 (d).

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ John Locke, *The Second Treatise of Civil Government and A Letter Concerning Toleration* (Oxford, 1946), p. 158.

X. EDUCATION

Article 26 of the Universal Declaration of Human Rights :

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

“ (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious 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.”

As applied to education the policy of apartheid provides the Government with complete control of the economic and cultural status of the non-white. Such control has now been taken by the central Government from the provinces. The latter had, pursuant to the South Africa Act of 1909, supervised education which was largely in the hands of missionaries, by separate provincial regulations, orders and ordinances.¹ Government control, however, commenced with the passage of the Bantu Education Act of 1953. This Act was, moreover, not initiated by the Minister of Education but by the then Minister of Native Affairs, Dr. Verwoerd, who said while introducing the Bill :

“ Education must train and teach people in accordance with their opportunities in life, according to the sphere in which they live. Good racial relations cannot exist where education is given under the control of people who create wrong expectations on the part of the native himself. . . Native

¹ South Africa Act, 1909, Section 85.

education should be controlled in such a way that it should be in accord with the policy of the State... Racial relations cannot improve if the result of native education is the creation of frustrated people."²

It is not difficult to perceive that the Bantu Education Act of 1953, its amendments and subsequent Acts pertaining to education are necessary to complement the African reserve, group areas and pass law legislation which aim at separate and restricted development of the non-white only to the labour level required by the Europeans. This fact was concisely stated by Dr. Verwoerd again in 1954 when he said that "the Bantu must be guided to serve his own community in all respects. There is no place for him in the European country above the level of certain forms of labour... it is of no avail for him to receive a training which has as its aim absorption in the European community, where he cannot be absorbed."³

The Bantu Education Act of 1953 pursues this aim by transferring the administration and control of African education to the Union Government.⁴ The direction of education was placed under the newly created Bantu Education Division of the Department of Native Affairs.⁵ The Act provides for three types of schools. First, the Bantu community schools which are to be established by an African council, tribe or community.⁶ These schools are to be subsidised by the Government but it is within the discretion of the Minister of Native Affairs to withdraw, reduce or suspend this financial support.⁷ Secondly, Government Bantu schools are to be set up and run by the Minister of Native Affairs, under whose authority are transferred the already existing Bantu schools.⁸ Thirdly, missionary schools, to whom the Minister of Native Affairs can give financial assistance subject, however, to similar discretionary withdrawal, suspension or reduction.⁹ It is a punishable offence to establish, conduct or maintain a school, other than the second type—Government Bantu schools—unless the school is registered; and the Minister of Native Affairs has the right to refuse registration if he does not believe that the establishment thereof is in the interest of the African people.¹⁰ Indeed, one 76-year-old African, who allowed young children to use his stable as a club where the children learned to sew, knit and make dolls, was arrested and indicted under this Act. He was acquitted six months later after appearing thirteen times in court because there

² 14 House of Assembly Debates (Hansard), Vol. 83, col. 3575.

³ R. van der Ross, "Segregation Rules the Schools", *The Times* (London), Supplement on South Africa, May 31, 1960, p. xvii.

⁴ Bantu Education Act, 1953, Sections 2 & 3.

⁵ *Ibid.*, Sections 1 (ii) and 3 (1).

⁶ *Ibid.*, Section 6.

⁷ *Ibid.*

⁸ *Ibid.*, Section 7.

⁹ *Ibid.*, Section 8.

¹⁰ *Ibid.*, Section 9.

was no evidence of a person qualified as a teacher nor that actual school instruction was taking place.¹¹

It is apparent that this provision deprives parents of the essential right to choose freely the kind of education to be given to their children. Further, the introduction into Bantu education of different syllabuses which place greater emphasis upon manual training, may be consistent with the Government's economic policy referred to above, but certainly deprives the African of full educational opportunity and development.¹² The Act entrusts wide control and administration of African education to the Minister of Native Affairs. His powers include the appointment and discipline of teachers, and the suspension and expulsion of pupils.¹³ Complete control of the Government Bantu schools is vested in said Minister by Section 15 of the Act.

Two amending Acts were passed, one in 1954, another in 1959. Under the Bantu Education Amendment Act of 1954, the Minister of Native Affairs was empowered to delegate control and management of Government and community schools to regional, local and domestic councils "for such periods as he may from time to time determine".¹⁴ These concluding words were deleted in the 1959 Bantu Education Amendment Act,¹⁵ and the latter also empowered the Minister to make extensive regulations in connection with community and state-aided schools¹⁶ and extended his control over teachers therein.¹⁷ Finally it is relevant to note that the 1959 Act provided that no civil action could be instituted with respect to any act performed under the Bantu Education Act by the State or any entity responsible for schooling thereunder.¹⁸

The significance of such complete Government control of African education and the results it is intended to produce has perhaps best been summed up by Dr. Verwoerd as follows :

"What is the use of teaching the Bantu child mathematics when it cannot use it in practice? That is quite absurd... Education must train and teach people in accordance with their opportunities in life, according to the sphere in which they live... It is therefore necessary that the Native education should be controlled in such a way that it should accord with the policy of the State."¹⁹

¹¹ "Apartheid, The Threat to South Africa's Universities", *Bulletin of the Committee on Science and Freedom*, No. 9 (August 1957), p. 5.

¹² Van der Ross, *loc. cit.*

¹³ Bantu Education Act, 1953, Sections 10 & 13.

¹⁴ Bantu Education Amendment Act, 1954, Sections 1 & 2.

¹⁵ Bantu Education Amendment Act, 1959, Section 4.

¹⁶ *Ibid.*, Section 5 (a).

¹⁷ *Ibid.*, Section 5 (b).

¹⁸ *Ibid.*, Section 6.

¹⁹ House of Assembly Debates (Hansard), Vol. 83, col. 3585 et seq. (September 14-18, 1953).

Recently as a logical corollary to the above expression of Government policy, university education also has been brought within the framework of apartheid legislation. Prior to 1957 the situation was as follows: two "open" universities of Capetown and of the Witwatersrand (Johannesburg) admitted both whites and non-whites on equal academic footing, with attendance at the same lectures and freedom to become members of the same student societies. The Durban branch of the University of Natal admitted non-whites but maintained segregated lectures and societies. The Pietermaritz branch of the University of Natal admitted only white students, as did also the Afrikaans-speaking universities of Stellenbosch, Pretoria, the Orange Free State and Potchefstroom. Rhodes University admitted non-whites as research workers and its affiliate Fort Hare University College was for non-whites only.²⁰ In terms of statistics as measured in 1954 the attendance of non-whites at these institutions was as follows:

University of Capetown	271
University of Witwatersrand	214
University of Natal (Durban only)	327
University College of Fort Hare (Non-whites only) . .	370
University of South Africa (Tuition by correspondence only)	1,145
Total	2,327 ²¹

Even this scant attendance (i.e., 2,327 out of a currently estimated population of 11,500,000 non-whites) existing under the above-mentioned situation soon became an object of concern to the Government which desired to complete its policy of total separation. In fact as early as 1948 Dr. Malan clearly announced the Government's intention of applying the policy of separation to the universities where he considered that "an intolerable state of affairs has arisen... in the past few years in our university institutions, a state of affairs which gives rise to friction, to an unpleasant relationship between Europeans and non-Europeans... We do not want to withhold higher education from the non-Europeans and we will take every possible step to give both the Native and the Coloured peoples university training as soon

²⁰ A. van der Sandt Centlivres, "University Apartheid in the Union of South Africa", *Bulletin of the Commission on Science and Freedom*, No. 9 (August 1956), p. 26.

²¹ Donald Stuart, "Fort Hare University College and the Separate University Education Bill", *Bulletin of the Commission on Science and Freedom*, No. 9 (August 1957), p. 32. Based upon the statistics provided by *The Yearbook of the Universities of the Commonwealth* (1956), the attendance of whites at these universities in 1954 is estimated as follows:

University of Capetown	3,381
University of Witwatersrand	4,123
University of Natal	1,538

as we can, but in their own sphere; in other words in separate institutions.”²² This view was not shared by the Hon. A. Van der Sandt Centlivres who, as Chancellor of the University of Capetown, wrote that “in making this statement Dr. Malan appears to have been misinformed. As far as the present writer is aware there was neither in 1948 nor in any subsequent year any unpleasant relationship between Europeans and non-Europeans in those universities which admitted both Europeans and non-Europeans. In these racially mixed institutions the relationship has always been satisfactory. For example, although the proportion of non-Europeans has only been from 6 to 7%, non-Europeans have been elected on a common roll to the Students’ Representative Council. On the other hand experience has shown that when the policy of segregated university institutions is applied, there is a very real possibility of trouble...”²³ Similarly a Commission appointed in 1953 by the Government “to investigate and report on the practicability and financial implications of providing separate facilities for non-Europeans at universities”²⁴ voiced grave doubts about the results thereof, along the following lines :

“The Commission finds it necessary, however, to discuss certain objections of a general nature against such segregation, since these very objections can be adduced as arguments against its practicability. These objections relate to the autonomy of the universities, academic freedom and extra-curricular activities at universities... It cannot be regarded as axiomatic that restrictions upon the autonomy of universities are always and necessarily to be condemned on the score of general social considerations. Any limitation of a university’s autonomy is, however, a serious matter because it may open the door to interference in the purely internal policy of universities. Another question demanding careful consideration is whether such limitations will not have a deleterious effect upon the status which South African universities at present enjoy in the academic world abroad.”²⁵

Apparently ignoring such advice the Government in 1957 introduced the Separate University Education Bill, which was after much protest re-entitled and passed in 1959 as the Extension of University Education Act.²⁶ The Extension of University Education Act effectively removes non-whites from the Universities of Capetown and Witwatersrand and the Durban branch of the University of Natal. The removal is completed by providing that as of January 1, 1960, no non-white students may register at or attend such universities without the written consent of the Minister of Bantu Education.²⁷ The Act provides for the establishment of three separate colleges for Africans,

²² House of Assembly Debates (Hansard), Vol. 64, col. 219.

²³ Centlivres, *op. cit.*, pp. 25, 26.

²⁴ *Ibid.*, p. 26.

²⁵ *Ibid.*, p. 27.

²⁶ See *The Open Universities in South Africa*, published on behalf of a conference of representatives of the Universities of Capetown and Witwatersrand, Witwatersrand University Press, 1957.

²⁷ Extension of University Education Act, 1959, Sections 31 & 32, with the exception of registration and attendance at Medical School.

each according to a particular ethnic group. These are Xhosa College in the Cape, Zulu College in Natal and Sotho Tswana College in the Transvaal, which are to be financed from the Bantu Education Fund.²⁸ Colleges for Coloureds and Asians are to be established and supported from the general revenue account.²⁹ Broad, far-reaching powers with respect to the non-white colleges are extended to the Minister of Bantu Education as follows :

- (i) Appointment of the Principal of the university college and of the other members of the staff.
- (ii) Determination of the establishment of posts for teaching staff and for administrative and clerical staff and of, "such other posts as the Minister may deem necessary".
- (iii) Appointment of all members of the staff of the university colleges.
- (iv) Regulation of all aspects of staff working conditions : "grading, remuneration, promotion, transfer, discharge, discipline, conduct, powers, duties, hours of attendance, leave and other privileges, and the conditions of service including the occupation of official quarters".
- (v) Regulation of the constitution and functions of the boards of faculties and of any other aspect of faculty and departmental organisation.
- (vi) Regulation of the "course of instruction and training at each university college".³⁰

It should be noted that the Minister has the power to dismiss staff members for causes, including criticism of the Government and if, in the opinion of the Minister, discharge will facilitate improvements in the organisation of the university college".³¹ The teacher can therefore be said to be almost completely at the mercy of the Minister.

The Minister's control over the students is equally broad. He may refuse admittance to any person if he considers it to be in the interest of the university college concerned³² and he may limit the entry of students to particular courses.³³ The Act also provides that different regulations may be made with respect to different university colleges and with respect to different persons or groups, classes or races employed by them.³⁴ The latter provision proved

²⁸ *Ibid.*, Section 2.

²⁹ *Ibid.*, Section 3.

³⁰ *Ibid.*, Sections 23-26.

³¹ *Ibid.*, Sections 29, 30 & 36; read with the Public Service Act of 1957, Section 17.

³² *Ibid.*, Section 14.

³³ *Ibid.*, Section 13.

³⁴ *Ibid.*, Section 36 (2).

particularly objectionable to the non-white Fort Hare University College which, financed mainly by Churches, had previously practised no separation or discrimination among its staff.³⁵ Fort Hare University College has, however, now come under the control of the Minister of Bantu Education by virtue of the University of Fort Hare Transfer Act of 1959.³⁶ A new all-white college council has been appointed, the former principal of the college has been replaced and the famous African Professor Z. K. Matthews, upon being told that he would be reappointed as a state employee if he resigned from the African National Congress, refused to do so. Thus by early 1960 most of the previous staff had resigned or been dismissed for refusal to co-operate with the Minister of Bantu Education and were replaced by a largely Afrikaner staff.³⁷

* * *

The preceding sections indicate the completion of the framework of apartheid as applied to all aspects of the life of the non-white in the Union of South Africa. This systematic violation of the most fundamental rights of mankind which we have examined in this Report is, however, applied and practised not only in the Union of South Africa itself but has unfortunately also been extended to the contiguous territory of South West Africa.

³⁵ Stuart, *op. cit.*, p. 37.

³⁶ University College of Fort Hare Transfer Act, 1959, Section 2.

³⁷ *The Economist*, January 2, 1960, p. 21.

XI. SOUTH WEST AFRICA

Ever since the end of the Second World War, and more stubbornly since 1948, the Union Government has regarded South West Africa¹ as the fifth province of South Africa. Apartheid has been as much a part of the policy pursued in South West Africa as it has been in the Union. Whereas the Union Government might argue that whatever policies it pursued in the Union were a matter of domestic jurisdiction the same cannot be said of South West Africa. Here is a territory whose welfare is, by virtue of the mandate, a matter of international concern, and to which the application of apartheid cannot be considered solely a domestic problem.

This large area of the African continent, as indicated on the map provided on the overleaf page to the Foreword of this Report, is about two-thirds the size of the Union of South Africa. It has a population of some 418,000 including 49,612 Europeans, of which approximately 15,000 are of German stock.² The northern regions are inhabited by tribal Africans while the more southerly parts of grassy uplands, tin, copper, marble or diamond mines are populated by the European population which is now a mixture of Afrikaners, Germans and a few English-speaking peoples. The main urban centre in the middle of the territory is Windhoek.

¹ While space does not permit this Report to cover all aspects of the intricate problem of the international legal status of South West Africa, more detailed treatment thereof can be found in the following sources:

J. Y. Brinton, "Mandates, Trusteeships and South West Africa," *Revue Egyptienne de Droit International*, Vol. 6 (1950), pp. 82-102.

Claude-Albert Colliard, "Le Statut International du Sud-Ouest Africain," *Revue Juridique et Politique de l'Union Française*, 5^e année, No. 1 (1951, Janvier-Mars), pp. 94-112.

J. L. F. van Essen, "Zuid-West Afrika voor het Internationale Hof van Justitie," *Tydskrif vir hedendaagse Romeins-Hollandse Reg*, Pretoria-Amsterdam, 13^e Jaargang, No. 3 (1950, August), pp. 187-204.

Manley O. Hudson, "The Common Interpretation of the Mandates of International Law," *Proceedings of the American Society of International Law*, 45th Meeting, Washington, D.C., April 26-28, 1951, pp. 44-55.

F. Ivanov, "Mezhdunarodny Sud o Mezhdunarodnom Statuse Yugo-Zapadnoi Afriki," *Sovetskoe Gosudarstvo i Pravo*, No. 8 (1956), pp. 73-81.

Donald S. Leeper, "Trusteeship Compared with Mandate," *Michigan Law Review*, Vol. 49 (1950-1951), pp. 1199-1210.

Joseph Nisot, "The Advisory Opinion of the International Court of Justice on the International Status of South West Africa," *The South African Law Journal*, Vol. LXVII, Part III (1951, August), pp. 274-285.

Michael Scott, "South West Africa," *Women's International League Monthly News Sheet*, March 1951, p. 1.

After the territory had been captured during the first world war from the Germans, who had declared it a protectorate in 1884, General Botha, South Africa's first Prime Minister, claimed the annexation of the territory at the Peace Conference. Since President Wilson was against any outright cessions of territories won during the war, a compromise was arrived at which placed South West Africa as a "C" mandate to be administered by the South African Government. This mandatory administration meant virtual incorporation of the territory subject to the important limitation, designed to safeguard the interests of the Native population, that South Africa should report annually to the Permanent Mandates Commission of the League of Nations. Under Article 22 of the Covenant of the League of Nations the mandatory States agreed to administer the mandated territories on behalf of the League. There could be no cession of the territory without the League's consent and the mandatory power was under various restrictions as to the recruiting and training of the inhabitants except for purposes of internal police and local defence.³

The dominant motive of the mandatory system, as it is under the trusteeship concept of the United Nations, was to assist towards self-government those who at present are "not yet able to stand by themselves under the strenuous conditions of the modern world".⁴ The reports on the territory were studied by the Permanent Mandates Commission. The inhabitants were subsequently granted by the Council of the League of Nations the right to petition the League, a right frequently exercised by the inhabitants of South West Africa.⁵

A resolution passed in May 1934 by the Legislative Assembly of South West Africa, in favour of incorporating the mandated territory in the Union, was brought before the 27th Session of the Permanent Mandates Commission, but no positive action was taken thereon.⁶

In 1946 the Legislative Assembly of South West Africa again adopted a resolution requesting the Administrator of the territory to urge upon the Government of the Union of South Africa formal annexation.⁷ By Memorandum (U.N. Document A/123) which

² *The Statesman's Yearbook* (London, 1959), p. 278.

³ League of Nations Covenant, Article 22.

⁴ *Ibid.*

⁵ Rules of Procedure in Respect of Petitions Concerning Inhabitants of Mandated Territories, adopted by the Council on 31 January, 1923, Publications of the League of Nations, VI.A.3., Mandates, 1927.

⁶ League of Nations Permanent Mandates Commission Minutes for 27th Session, 1935, pp. 158-165.

⁷ United Nations General Assembly Official Records, Second Part of 1st Session, 4th Committee Trusteeship, Part 1, Summary Record of Meetings (1 November-12 December, 1946), p. 232.

included the text of the aforementioned resolution, the delegation of the Union of South Africa requested that the future status of the territory be determined along these lines by the General Assembly.⁸ In spite of Field Marshal Smuts's proposition that the territory be internationally recognised as an integral part of the Union⁹ the United Nations did not accede to the incorporation of the territory of South West Africa in the Union of South Africa. The General Assembly recommended that the mandated territory be placed under the international trusteeship system and invited the Government of the Union to propose a trusteeship agreement for the territory.¹⁰ Subsequently the South African Representative to the General Assembly declared that "the Union Government reserves its position as the administering authority, and in the meantime will continue to administer the territory in the spirit of the mandate".¹¹

The Nationalist Party victory of 1948 produced a radical change in policy which was much less conciliatory towards the United Nations. In 1949 not only did the Union Government cease sending reports.¹² (which have never been supplied since)¹³ but a direct step of annexation was taken in the form of the representation of the inhabitants of South West Africa by Europeans only in the Union Parliament, six members in the House of Assembly and two in the Senate. All six seats were won on the "white only" franchise by the Nationalists.¹⁴ The South West African Affairs Amendment Act, 1949, allowed for the abolition of the Advisory Council.¹⁵ The Act also provided for the election of all members of the South West Africa Legislative Assembly and increased its rather limited legislative powers.¹⁶ The

⁸ *Ibid.*, pp. 199-235.

⁹ *Ibid.*, pp. 235-244.

¹⁰ United Nations General Assembly Resolution, No. 65 (I), 14 December, 1946.

¹¹ *Handbook on Race Relations*, p. 757.

¹² The Government of the Union of South Africa in a letter to the Secretary-General of the United Nations dated 11 July, 1949, which was transmitted to all Member States, stated that no further reports would be forwarded. See United Nations General Assembly Official Records, 4th Session, Report of the Trusteeship Council Covering its 4th and 5th Sessions (6 August, 1948-22 July, 1949), Supplement No. 4 (A/933), p. 103.

¹³ In 1959, however, Ambassador B. G. Fourie of the Union of South Africa announced to the Fourteenth Assembly that in 1960 his country would submit official reports issued by the South-West Africa Administration and the Union Government with respect to the territory. See General Assembly Official Records, 14th Session, 4th Committee, 924th Meeting (26 October, 1959), para. 2.

¹⁴ "South West Africa Before the United Nations," *The World Today*, Vol. 16, No. 8 (August, 1960), p. 339.

¹⁵ South West Africa Affairs Amendment Act, 1949, Sections 2 & 6. The Advisory Council had been constituted under section 1 of the South West African Constitution of 1925. Its duties were to advise the Administrator of the territory with regard to "those matters in respect of which the Assembly is not competent to make Ordinances including matters of general policy and administration...".

¹⁶ *Ibid.*, Sections 7, 8, 18 & 19.

Trusteeship Council had previously stated that "great efforts should be made to eliminate, through education and other positive measures, whatever reasons may exist that explain segregation".¹⁷ The Union Government was, however, firmly convinced that the policy of encouraging the separate development of the indigenous population in its own environment was to the advantage of that population.¹⁸

At the same time the Union Government raised a fundamental legal issue that has complicated relations ever since. The Union Government's Representative at the United Nations announced that no more reports would be submitted to the United Nations, but added that his Government could not agree that its submission of reports was indicative of its accountability to the United Nations for the administration of the territory.¹⁹ The South African Government was in effect saying that the mandate had come to an end with the passing of the League of Nations. The General Assembly, threatened with a denial of its power over the former mandated territories (all of which, with the exception of South West Africa, had by agreement become trust territories under the new procedure of the United Nations), resolved to refer certain questions to the International Court of Justice at the Hague.²⁰

On July 11, 1950, the Court gave its views on the various questions as follows :

1. The Union continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa, as well as the obligation to transmit petitions from the inhabitants of that territory to the United Nations, which had taken over the supervisory functions formerly exercised by the League. The Court decided that the basis of the mandate was status and not contract and that the succession of the United Nations from the League carried over the status of the mandate (the vote of the Court on this point was 12 to 2).
2. The provisions of the Charter of the United Nations relating to trusteeship are applicable to South West Africa in the sense that they provide a means by which the territory may be brought under the trusteeship system (unanimous vote).
3. But these provisions do not impose on the Union a legal obligation to place the territory under the trusteeship system (8 votes to 6).
4. The Union, acting alone, has not the competence to modify the international status of South West Africa, which competence rests with the Union acting with the consent of the United Nations (unanimous vote).

¹⁷ United Nations General Assembly Official Records, 3rd Session, Report on the Administration of South West Africa for 1946, contained in Report of the Trusteeship Council Covering its 2nd and 3rd Sessions (29 April-5 August, 1948), Supplement No. 4 (A/603), p. 44.

¹⁸ United Nations General Assembly Official Records, 4th Session, Summary Records of the 4th Committee, 128th Meeting (18 November, 1949), p. 202.

¹⁹ *Ibid.*, p. 200.

²⁰ United Nations General Assembly Resolution, No. 338 (IV), 6 December, 1949.

5. The Union was under an obligation to accept the compulsory jurisdiction of the International Court of Justice in disputes relating to the interpretation or application of the provisions of the mandate (unanimous vote).²¹

South Africa's first response to the Court's view was to regard the "advisory opinion" as not binding in the way a judgement would be. Later the Government was prepared to engage in talks on the basis that there was no question of a trusteeship agreement.

The succeeding years witnessed the following developments. The United Nations General Assembly accepted the Court's advisory opinion.²² An *ad hoc* committee was set up but its labours were fruitless, both sides reiterating their positions.²³ When it presented to the 1953 Assembly the justification of its continued refusal to accept the United Nations supervision over South West Africa, the South African Government said that it was carrying out the "sacred trust" of the mandate.²⁴ The United Nations kept the committee in being.²⁵ Thereafter the situation was studied from published sources and on evidence from individual petitioners. In 1954 the United Nations became involved in a procedural issue and referred to the International Court.²⁶ The Court approved the view that a two-thirds majority vote of the General Assembly was required on matters pertaining to South West Africa.²⁷ Mr. Louw, the Minister for External Affairs, imputed ill motives to the Court by suggesting that it had been guided by other than strictly legal reasoning. And bluntly added: "We do not care twopence whether the United Nations observes the two-thirds majority rule or the unanimity rule in dealing with the South West African affairs, because we have consistently said the United Nations has no right to concern itself with the affairs of South West Africa".²⁸

²¹ International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950, p. 143.

²² United Nations General Assembly Resolution, No. 449 A (V), 13 December, 1950.

²³ United Nations General Assembly Resolutions, No. 449 (V), 13 December, 1950, and No. 5070 (VI), 19 January, 1952. The latter Resolution authorised the *ad hoc* Committee to negotiate with the Government of the Union of South Africa as far as possible within the procedure of the former Mandates System.

²⁴ United Nations General Assembly Official Records, 8th Session, 4th Committee, 375th Meeting, 6 November, 1953, Question of South West Africa in Report of the *ad hoc* Committee on South West Africa (A/2475 and Add.1), p. 265.

²⁵ United Nations General Assembly Resolution, No. 651 (VII), 20 December, 1952.

²⁶ United Nations General Assembly Resolution, No. 851 (IX), 23 November, 1954.

²⁷ South West Africa, Voting Procedure, Advisory Opinion, I.C.J. Reports 1955, p. 78.

²⁸ 42 *South Africa*, 25 June, 1955.

The same year the administration of Native affairs was transferred to the Union Minister of Native Affairs.²⁹ Further, all Native Reserves in South West Africa were placed under the South African Native Trust.³⁰ A "purely administrative arrangement" was in practice a further integration of the territory into the Union, which left only such minor matters as local taxation under local control. In essence, there was now no difference between the native policy in the territory from that employed in the Union. The United Nations Committee on South West Africa reported to the General Assembly in 1955 that racial discrimination was prevalent throughout the territory.³¹ There have been persistent condemnations of the Union's policy ever since, without any change of policy on the Union's part.

Although Article 2 of the Mandate provides that the Mandatory may apply the laws of the Union of South Africa to the territory,³² this provision is prefaced, and in theory limited, by the explicit requirement that the Mandatory "shall promote to the utmost the moral well-being and social progress of the inhabitants of the country".³³ When full consideration is given to the nature and extent of the legislation pertaining to apartheid, which we have reviewed above, the impossibility of reconciling the application of these laws with the latter requirement becomes manifestly apparent. The actual application of the policy of apartheid in the territory is not consistent with the spirit and intent of the Mandate. The results thereof are extremely disturbing.

A particularly vivid description of these results is contained in the statements made by Michael Scott, Honorary Director of the African Bureau,³⁴ to the 653rd meeting of the Fourth Committee of the General Assembly on 26 September, 1957, portions of which are set forth below :

"... The whole apparatus of the State is designed to keep control in the hand of the privileged white caste and to enforce the restrictions on ownership of land and restrictions on movements and opportunity of acquiring education and skills, so that cheap labour is kept available for the master caste where it needs it, on the mines and on the farms..."

²⁹ South West Africa Native Affairs Administration Act, 1954, Section 2.

³⁰ *Ibid.*, Section 4.

³¹ General Assembly Official Records, 10th Session, 1955, Report of the Committee on South West Africa to the General Assembly, Supplement No. 12 (A 2913), Section IV "Social Conditions", pp. 23-25.

³² Mandate for German South West Africa, League of Nations Official Journal, January-February 1921, Article 2, e.g., the Natives (Abolition of Passes and Coordination of Documents) Act of 1952 states in Section 16 that the provisions thereof may by proclamation of the Governor General be applied to the territory of South West Africa.

³³ *Ibid.*

³⁴ He is also the author of *A Time to Speak* (London, 1958).

"Social and residential segregation is strictly enforced and no non-whites, except for a handful of coloured, live in white areas. The non-whites have no access to the best cultural shows, which are unfailingly staged in white areas. Embodied in the Mandate is the obligation to raise the social and cultural standards of the people, though surely the behaviour of the Administration would not suggest it.

"Immorality in the South African sense, or private relations between white and non-white, is strictly prohibited by law, whilst the Mixed Marriages Proclamation of 1953 has made all marriages between whites and non-whites illegal. By law the non-whites may not be in possession of liquor—either so-called European or home-brewed—though this is the salary many chiefs receive in private from administrative officials for silence in the face of discriminatory legislation...

"... the Pass Laws are strictly enforced. In terms of the Native Urban Areas Proclamation of 1951, all the towns in South West Africa have been declared "proclaimed" areas, areas in which the various curfew and pass regulations apply. All non-whites, African or coloured, have to carry passes once they leave the 'Reserves'. Women also, cannot move from one place to the other without a pass similar to that required of the men. The 'Permit' system for non-white women is scrupulously enforced in the Territory. No non-white woman may remain in an urban area without a permit, even in the slums of her people. It seems that the whole Pass system, with all its terrors and cruelties, will be extended to women next year, when the deceitfully termed "Abolition of Documents Act" will be made applicable to South West Africa..."³⁵

Mr. Scott's description is borne out by the statement made in the Union Senate by Dr. Bedder, representative of South West Africa's non-Europeans, that "In South West Africa the foundations of apartheid were laid fifty years ago... We already have the institution of reserves, and the Union government has continued along these lines. The German government started this... The mixing between Europeans and non-Europeans has since 1918 been prohibited by law... It is obvious that upon working days Europeans and Natives have to work together, but at 9 o'clock at curfew all the Natives have to be in their locations and are not seen in the town after this time unless they have a permit... In South West Africa we have the only country in the world where apartheid has been exercised in an increasing degree for fifty years."³⁶

In October 1957, the United Nations appointed a goodwill mission of three persons, which reported in September 1958.³⁷ It produced suggestions of a character most favourable to the Union Government. It proposed a South West Africa Council consisting either of the Trusteeship Council adjusted to include South Africa as a member, or based on the original composition of the Council of the League, to whom all reports would be sent. The mission further propounded

³⁵ *Ibid.*, pp. 334-339.

³⁶ Hansard (South Africa), Senate, 28 May, 1956.

³⁷ United Nations General Assembly Resolution No. 1143 (X), 25 October, 1957. Only two members were appointed by this Resolution. The third member was appointed at the 714th Plenary Meeting, 1 November, 1957.

the idea of partition. The southern part, wealthier and less predominantly Native in its population, would be annexed by the Union, and the northern tribal area should become a trust territory administered by the Union Government.³⁸

The Trusteeship Council of the United Nations rejected the suggestion for partition and the counter-proposal from South Africa that the other party to the mandate should be a three-power council consisting of Britain, France and the United States.³⁹ This forthright rejection was endorsed by the General Assembly by 61 votes to 8.⁴⁰ The Good Offices Committee was asked to continue negotiations.⁴¹ The Standing Committee, which the Union Government still refused to recognise, reported in the summer of 1959 to the effect that apartheid was still being practised in full vigour in the territory.⁴² The United Nations again called upon South Africa to co-operate with any United Nations committee with a view to continue to regard the territory as having as a whole an international status. South Africa was asked to report at the 1960 session on the action it had taken.⁴³

When the United Nations considers the matter at the 1960 session there will be further factors to consider in the light of the Windhoek riots of last year followed by the Sharpeville incident in the Union itself, which led to the Resolution of the Security Council deploring the policies and actions of the Government of the Union of South Africa which have given rise to the present situation.⁴⁴

³⁸ United Nations General Assembly Official Records, 13th Session, Agenda item 39, Annexes, 1958, pp. 1-10.

³⁹ *Ibid.*, p. 14.

⁴⁰ United Nations General Assembly Resolution No. 1243 (XIII), 30 October, 1958, para. 1.

⁴¹ *Ibid.*, para. 2.

⁴² United Nations General Assembly Official Records, 14th Session, Report of the Committee on South West Africa, Supplement No. 12 (A/4191), 1959, p. 21.

⁴³ United Nations General Assembly Resolution No. 1360 (XIV), 17 November, 1959.

⁴⁴ United Nations Security Council Resolution (S/4300), 1 April, 1960.

CONCLUSION

The material presented in this Report reveals an increasing application of a systematic policy of racial separation to all spheres of life in the Union of South Africa. In pursuit of this objective the Government has established a rigid and all-embracing network of legislation which denies to a vast majority of the population those opportunities without which the legitimate aspirations and dignity of a human being can not be realised.¹

As pointed out in the Report, rigid racial classification provides the basis upon which all movement and residence of the non-white is controlled and determined according to the labour needs of industry and agriculture. Real freedom of selection and change of employment or improvement of status is virtually non-existent, and collective representation of this massive labour force is strictly limited. Denied the right to vote in general elections or plebiscite, such as the recent determination of the Republic, more than 10,000,000 people are to all intents and purposes precluded from having any effective political voice or organisation. Moreover, the very expression of opposition to or protest against the present policy of apartheid constitutes a criminal offence. The non-white is therefore by law relegated to a permanently unequal status. Perhaps most objected to are the comprehensive requirements that a document of identification, which indicates membership in a less privileged group, must be carried and presented on demand. The Pass Law system has been seen to result in flagrant abuses of the law involving arbitrary arrest and detention and to create a situation of which certain aspects can be described only as legalised slavery. No less disturbing are the negation of social rights, of free choice of marriage or religious worship, restriction of assembly and, to many, the irritant of the liquor prohibition. Finally, completing and assuring the continuation of the policy of inequality is a carefully supervised educational system whereby non-whites are to receive instruction solely in preparation for their acceptance of an inferior social, economic and political status. Such a discriminatory policy is not only contrary to generally accepted concepts of justice and principles of human rights, but also creates a potentially

¹ See the Declaration of Delhi contained in *The Rule of Law in a Free Society : A Report on the International Congress of Jurists, New Delhi, India, 1959*, Geneva, 1960, p. 3.

explosive situation which might soon lead to even more widespread internal violence than has already been experienced.

The ultimate interpretation of apartheid legislation lies with the Judiciary, which has up to now always enjoyed a high reputation for independence, impartiality and concern for fundamental human rights. Yet the judge can only apply and interpret the law as he finds it. If then there exists little justice for many in South Africa today, it is primarily because the laws themselves are not just.

A number of resolute members of the South African Bar have set fine examples in defending individuals and groups victimised by the application of the current legislation. It is possible, however, that the relative independence of the Bar will soon be subject to a serious threat. Mr. Erasmus, the Minister of Justice, stated in Parliament on April 25, 1960, that "in South Africa lawyers come too easily into the position where they could act as lawyers under the protection of 'officers of the court'".² He added that he had instructed his department to inquire into and make recommendations as to how the admission of lawyers could be submitted to stricter control than is applied by the Law Societies today and mentioned the possibility of creating a Selection Board not only to control admission but possibly also to "take action in regard to the recommendations for the removal of names of attorneys from the roll".³ This statement has sinister implications. It may foreshadow a direct challenge to the independence of the Bar as well as an attempt to restrict the right of the individual to be represented by counsel of his own choice.

While the deep sociological problems confronting the Government of South Africa certainly cannot be minimised, it is manifestly apparent that the pursuit of its present policy constitutes a serious encroachment upon the freedom of all inhabitants, white and non-white alike. There is strong evidence that the implementation of this policy is not supported by the entire white population. Indeed, constructive criticism of apartheid is clear and articulate. It is in the light of these vital factors that the International Commission of Jurists has prepared this Report. It does not wish to submit to the world legal community a mere indictment of the ideology and political practise currently applied in the Union. The Commission desires rather to create an awareness, both in South Africa and abroad, of the full legal and moral implications of the current situation and to stress the pressing need for a change of policy that will bring about understanding and cooperation between the various races. To renounce hope that wiser counsel will eventually prevail and that South Africa will meet the challenge of the future by solving its complicated internal problems with justice and foresight would mean to lose faith in the power of free institutions and in the decency of man.

² Senate Debates, Union of South Africa, April 25, 1960, col. 2329.

³ *Ibid.*, col. 2330.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

PREAMBLE

WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

WHEREAS it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

WHEREAS it is essential to promote the development of friendly relations among nations,

WHEREAS the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

WHEREAS Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

WHEREAS a common understanding of these rights and freedoms is of the greatest importance for the full realisation of this pledge,
NOW THEREFORE

THE GENERAL ASSEMBLY

proclaims

THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

ARTICLE 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

ARTICLE 2. (1) Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether this territory be an independent, Trust, Non-Self-Governing territory, or under any other limitation of sovereignty.

ARTICLE 3. Everyone has the right to life, liberty and the security of person.

ARTICLE 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

ARTICLE 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ARTICLE 6. Everyone has the right to recognition everywhere as a person before the law.

ARTICLE 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

ARTICLE 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

ARTICLE 9. No one shall be subjected to arbitrary arrest, detention or exile.

ARTICLE 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

ARTICLE 11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence; under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

ARTICLE 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

ARTICLE 13. (1) Everyone has the right to freedom of movement and residence within the borders of each state.

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

ARTICLE 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

ARTICLE 15. (1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

ARTICLE 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

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.

ARTICLE 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

ARTICLE 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

ARTICLE 20. (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

ARTICLE 21. (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

ARTICLE 22. Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

ARTICLE 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

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

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

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

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

ARTICLE 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious 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.

ARTICLE 27. (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

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

ARTICLE 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.

ARTICLE 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

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

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

ARTICLE 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

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APPENDIX A

Statement of June 6, 1960, by Mr. F. Elwyn Jones Q.C., M.P., on his Mission to South Africa on Behalf of the International Commission of Jurists

1. During my visit to South Africa on behalf of the International Commission of Jurists I heard two days of the evidence at the Sharpeville Inquiry at Vereeniging and I spent one day at the Treason Trial at Pretoria. I also attended the Native Commissioner's Court at Forbsburg and heard 18 cases alleging Pass Law offences being tried.

I talked to the Judges at the Treason Trial and to Mr. Justice Wessels, who is conducting the Sharpeville Inquiry. In the absence of Mr. Erasmus, the Minister of Justice, I had an interview with Dr. C. J. Greef, Secretary of the South African Ministry of Justice. In addition, I talked to many of the Judges, Barristers and attorneys of South Africa, Members of Parliament and many other people, European and African, in various walks of life.

2. My purpose was to inquire into the state of human rights and fundamental freedoms in the Union. I regret to say that I found much despair and anxiety among most of the people to whom I spoke. This does not mean that there is not a great deal of indifference or unconcern among much of the European population (English as well as Afrikaner) about what is going on. However I did find a good deal of awareness of what was at stake among not only Africans, but Europeans.

When I went to the Native Commissioner's Court for instance, I saw two ladies from the Black Sash Movement—"the conscience of the Northern Suburb" of Johannesburg, watching and noting what was going on. To give another illustration of the work which is being done to fight for proper standards and in particular for healing the breach between white and non-white, which is so very evident, the work of the Institute of Race Relations is quite outstanding.

The Africans to whom I spoke or whom I heard giving evidence showed no sign of being cowed, despite the 69 African dead of Sharpeville and the other grim events that have happened this year.

3. (i) They had reached the last stages of the evidence at the Sharpeville Inquiry at Vereeniging when I went there on May 23. The Inquiry is being conducted by the Honourable Petrus Johannes Wessels, Judge of the Natal Provincial Division of the Supreme

Court of South Africa. Its terms of reference are simply "to inquire into the events in the Districts of Vereeniging (at Sharpeville Location and Evaton) and Vanderbijl park on March 21, 1960". The terms of the Langa Inquiry however are "to inquire into and report upon the events in Langa Location on March 21, 1960". Nevertheless there is no doubt that Mr. Justice Wessels will report on Sharpeville and it would not therefore be appropriate for me to try to prejudge his conclusions. It is regrettable that the South African Government has not exercised similar restraint. Mr. Louw and Mr. Erasmus, the Minister of Justice, have both made public statements expressing opinions on the main issues the Inquiry Judge must decide. The Government's Information Office in New York has issued a statement that "the disturbances at Sharpeville were the result of a planned demonstration by some 20,000 Bantu in which demonstrators made a deliberate attack on a police station with assorted weapons, including firearms". Every allegation of fact made in this statement was being energetically challenged by the able counsel appearing for the victims at the Inquiry. Were these ordinary criminal proceedings, such comments (and other similar comments have been made publicly by leading members of the Government) would constitute a flagrant contempt of Court.

(ii) Just as surprising in a country which has had a notable tradition of respect for the law, was the activity going on in the adjoining Vereeniging Court on May 23. About 50 singing and cheering detainees were brought there in two wire-enclosed lorries on charges of "public violence" at Sharpeville on March 21. Some of them had themselves been shot that day. Relatives and friends crowded the yard at the back of the Court to give them parcels of food and clothing.

One of the detainees complained in Court about the bad conditions in prison—assaults and lack of blankets. He told the magistrate that if the attacks continued, the prisoners would retaliate. The magistrate said that there was a visiting magistrate to whom the complaints could be made. The prisoner said he had not seen one. Another prisoner was an African schoolmaster named Lechael Musibi who had given evidence in the adjoining Inquiry Court. He was arrested after he had given evidence. He applied for bail. The magistrate requested recognizances of £50. This the Schoolmaster could not provide and so he stays in prison. I asked the Attorney-General, Mr. Claasens, and also Dr. Greef, of the Ministry of Justice, whether it was proper for the Government to lay charges alleging public violence against members of the crowd before Mr. Justice Wessels had made his report and determined the important issue whether the crowd had been peaceful or violent. Dr. Greef admitted that the circumstances might give "some slight cause for misgivings". Both he and the Attorney-General thought that probably none of the public violence cases would be heard before Mr. Justice Wessels reported. The Attorney-General did not think these cases impinged

directly on the terms of reference of the Sharpeville Inquiry. I have however obtained a copy of the summonses against the 50 Africans concerned and charges 11 to 18 are based in terms on the police version of the Sharpeville incidents. Here again there seems to be a flagrant contempt of the Inquiry judge. Dr. Greef's justification was that unless these accused were held "they will disappear, as they are part of a migratory population". But the fact is that they can be detained without trial under the emergency regulations.

(iii) One of the witnesses I heard giving evidence at the inquiry was a grave African Presbyterian Minister, Rev. Robert Maja. By the time he testified the little Court room (partitioned for Africans on the right and Europeans on the left) was packed. There was apartheid in the witness box, too; it, too, was partitioned. Though witnesses swore the same oath, the Africans took it in the half of the witness box further away from the Bench and Europeans in the other half. Most dramatic was the moment when a youthful policeman (who, sten gun in hand, had been on top of one of the Saracens within the police station compound) was shown the amazing photographs taken by a cameraman before, during, and after the shooting; these photographs may well be of the greatest assistance to Mr. Justice Wessels when he comes to make his report.

The judge was courteous and patient. I detected a faint smile on his face when one African witness said that when the Police came to arrest him they took away two of his books, Alan Paton's "Cry the Beloved Country", and "Up from Slavery", Booker T. Washington's famous classic. This witness shared the fearlessness of the Africans. He was asked by the judge, "who was the leader of the crowd?", to which he replied "the special branch can find that out. I refuse to disclose his name". He was not compelled to answer the question.

4. The Treason Trial is being held in a de-consecrated synagogue in Pretoria. There was only one person present in the vast public gallery upstairs. I heard ex-Chief Luthuli under cross-examination in the fifth week of his evidence (this is partly because illness has meant that he cannot testify for more than two hours a day), during the fourth year of these proceedings. All the defendants are now in custody as detainees under the emergency regulations. Again I will not comment on the proceedings, but one wonders whether the trial has not been rendered abortive by the fact that the African National Congress (which in a broad sense is the principal accused) has been banned by the Government as an unlawful organization, and the individual defendants have all been detained under the emergency regulations; during the previous three years they have been on bail.

5. I visited the Native Commissioner's Court at Forbsburg on May 30 which was the day before the 50th Anniversary of the Act of Union; in consequence there was an amnesty for certain classes of

prisoners. This was presumably why 16 out of 18 of the prisoners charged with offences against the Pass laws (whom I heard dealt with in 38 minutes) were remanded for inquiry. One prisoner was a barefooted schoolboy of 16 who has never had a Pass. "The fact that you are at school does not mean that you don't need a Pass," said the Magistrate. "You must get a Reference book and the Principal of the school must sign it every quarter and the Registrar must sign it to show that you are permitted to be here." There followed a barefooted African in rags who said "I am a miner. I was discharged on Friday and arrested on Saturday. I'm going to another mine". "See you get your papers in order", said the Magistrate. In an adjoining Court another Magistrate was also hearing these pathetic Pass cases, eloquent of the personal degradation the Pass laws cause.

One dignified African woman I met told us that two things distressed her most. "One is the Bantu Education System. They are teaching our children just enough to keep them as menial servants. They have shut the door on our progress. The other thing is the Pass system. It is a torture and a humiliation, made worse by the way it is enforced. A young policeman will stop an elderly African and say: "Kaffir, where is your Pass?" The African is struck in the face if he is slow in producing it.

A lawyer I met told me he had once given a lift to an African during the bus boycott days. A young policeman questioned him about it. The lawyer asked him why he was molesting people like this African who had been "working for us all day in a factory". "By God, Sir", said the Policeman, "they are our enemies". Incidentally, only African policemen have numbers on their tunics to enable them to be identified by the public. European policemen have none.

The Population Register, the Pass system and the establishment of Group Areas are the main pillars of apartheid. Race classification is now taking place in South Africa. Humiliating inquiries are being made into people's social antecedents and many individual tragedies have been caused. Recently, the Minister of the Interior justified these actions by saying that many people had lived all their lives in a state of unease because it was uncertain to which racial group they belonged, that now certainty has been given and the clouds which hovered over them had disappeared. In truth a case can be reopened should it be alleged that a person had been wrongly classified, so that unless a case has been taken to appeal there is no certainty.

The *Cape Times* on February 19, 1958, reported the case of a Capetown man, Mr. X, who was asked to visit a Population Registration office. He was told that it had been reported that he was of "mixed" ancestry. He insisted that he was a European. His entire family were then summoned to the office. His father had died years

before but his mother and four brothers were scrutinized and questioned. It was decided that they were all obviously Europeans, except for Mr. X, who was darker in colour than the rest. All the sons were then asked to leave the office and their elderly mother was left alone to face further questioning by the official. After a time, for the sake of the four other sons, she was forced to admit for the first time that Mr. X had been born out of wedlock.

6. To the lawyer brought up in the traditions of the English common law, South Africa presents a sombre scene particularly as that law prevails in wide areas of the criminal and constitutional law of the land. For the Nationalists regard the Rule of Law, as interpreted by an independent judiciary, as an unfortunate legacy of British colonial rule of the 19th Century. Boer farmers resented then the influence of the English criminal law which, for example, allowed coloured farm workers in the Cape to bring charges against their white masters. Incidents which arose soon after the British occupied the Cape showed that racial discrimination and equality before the law were incompatible.

The Nationalists' attitude to the Rule of Law was never more apparent than in the struggle between the Government and the Courts during the constitutional crisis of the 1950's.

7. I was particularly concerned with the legal situation which has resulted from the emergency. When I visited the Ministry of Justice in Pretoria, Dr. Greef told me that 1,813 non-whites and 84 whites were still in detention. He said that the interrogation of mothers with children was being speeded up and that the release of detainees would continue. Those who will remain in detention have not yet had any charge made against them, nor has the nature of the proposed charges yet been decided upon. Dr. Greef said that of the 18,011 Africans arrested during the emergency, 1,700 were detained under the emergency regulations. The cases of approximately 16,300 of those arrested were disposed of by the beginning of May.

I asked Dr. Greef when the emergency was likely to be ended. He said that 27 of the ring leaders had "escaped the net" and that 20 of them were in the High Commission Territories, of whom 14 were in Swaziland and 6 in Basutoland and Bechuanaland. The others had "disappeared into thin air. Until the British authorities deliver them to us, we are in a position of stalemate", Dr. Greef told me. I said that it was manifest that no British Government would be a party to the handing over of political refugees. Dr. Greef said that even if the stalemate continued this did not mean that the emergency would go on indefinitely. I have since had a letter from Dr. Greef in which he states: "I now wish to place on record the following three further reasons advanced by the Honourable the Minister of Justice in the House of Assembly for the continuation of the state of emergency:

- (a) The 26th day of June is known and annually observed by members of the congress movement as the so-called "Freedom Day". It is considered unwise to lift the state of emergency prior to that date and so soon after the recent disturbances.
- (b) The interrogation of a number of persons who have been arrested and are being detained in terms of the Emergency Regulations had not yet been completed.
- (c) In terms of the Emergency Regulations the main urban areas are at present being cleared of Bantu idlers who during the disturbances, proved to be the shock troops of the inciters. "

8. I did not have the time nor the opportunity to visit the detainees in prison.

9. The original emergency regulations containing 26 sections are well-known. On May 17, 1960, the Governor General made a further proclamation in which three further very important regulations were added. The most disturbing is the Section which declares that the Courts cannot entertain any application arising out of the detention of any individual. Thus *Habeas Corpus* does not exist for detainees (who most need its protection) nor can there now be any application to the Courts such as was made in the case of Miss Hannah Stanton.

In these circumstances, a legal adviser can be of little assistance except to hear the complaints of the detainee against the manner and circumstances of his detention, upon which he might be instructed to make representations to the appropriate authorities. But even this modest protection has been removed. The new Proclamation states that "no person, who has been arrested and is being detained under regulation 4 or 19, shall, without the consent of the Minister or person acting under his authority, be allowed to consult with a legal adviser in connection with any matter relating to the arrest and detention of such a person". I asked the Ministry of Justice for an explanation of this infringement upon the rights of the detainees. I was told that certain defending lawyers would be likely to tell their clients not to answer any questions during interrogation.

There is a 3rd Clause in the new Emergency Regulations which states that no proceedings, whether civil or criminal, shall be brought in any court of law against "the Governor-General, any member of the Executive Council of the Union, a Commissioned Officer, or a Magistrate, or any person employed by the Government" and even any person "acting by the direction or with the consent of" any Government employee, by reason of any act done in execution of his powers or the performance of his duties in pursuance of the Regulations. So long as such persons have acted in good faith, no proceedings can be brought against them in any Court of Law and, moreover,

the Regulations create a presumption that the acts done by them were done in good faith.

10. One of the few areas of freedom remaining in South Africa has been the legal profession, which has played an honourable part in resisting encroachments upon the Rule of Law and has fearlessly taken up the cases of those concerned, for example, in the Treason Trial, the Sharpeville and Langa Inquiries and many criminal proceedings of a political character.

The threat therefore of a system of governmental control over the Bar is a grave one. A Bill has been drafted by the Ministry of Justice which is now being considered by the Bar. Under its terms there will be established a body to be known as the Advocates' Admission Board which would consist of a Chairman, who would be the Chief Justice of South Africa, two practicing barristers appointed by the Minister from persons nominated by the Bar Council, two professors of law, again appointed by the Minister, from a list of nominees made by the University Law Faculties, and finally the Secretary for Justice or his nominee. This Board is to have the power "to make rules in regard to the admission to practice, suspension and removal from practice" of Barristers.

Mr. Erasmus, the Minister of Justice, stated in the Senate on April 25, 1960, that "in South Africa, lawyers came too easily into the position where they could act as lawyers under the protection of 'Officers of the Court'." He added that he has instructed his Department to inquire into and to make recommendations as to how the admission of lawyers could be undertaken under stricter control than the Law Societies applied to-day and how the plateland lawyer could come into his own again. The Selection Board could possibly also act in regard to a recommendation for removing lawyers from the roll. The definition of who was a "suitable or proper" person to become a lawyer, as was required by law, would have to be more strictly interpreted.

In view of this statement by the Minister of Justice and the terms of the proposed Bill, it is not surprising that the South African Bar is apprehensive that the proposed measure is a challenge to the independence of the Bar, particularly since there is no indication in the draft Bill as to the ground upon which a barrister may be refused admission or disbarred. I understand that a similar measure is being proposed to control the side-bar (solicitors).

11. The other freedom which has persisted in South Africa (with occasional infringements) is the freedom of the Press. Under proposed legislation this freedom is under very great peril. The Bill, which is quaintly entitled "Publications and Entertainments Bill" is in fact a far-reaching measure of censorship on all forms of reading matter and visual entertainment.

The Bill, which has now gone to a Select Committee of Parliament, provides that nobody shall publish "any undesirable newspaper" [Clause 6 (1)]. A newspaper or even part of it is undesirable if it:

- (a) prejudicially affects the safety of the State;
- (b) can have the effect of—
 - (i) disturbing the peace or good order;
 - (ii) prejudicing the general welfare;...
 - (v) bringing any section of the inhabitants of the Union into ridicule or contempt;
 - (vi) harming relations between any sections of the inhabitants of the Union."

To crown it all, a newspaper is undesirable if it "is otherwise on any ground objectionable" [Clause 6 (2) (d)].

No newspaper is required to submit anything for approval, but any contravention of the Act would constitute an offence. In the case of a first conviction the penalty is a fine not exceeding £100 or three months imprisonment, or both; in the case of a second or subsequent conviction, a fine of not less than £50 and not more than £200 or not less than three months imprisonment up to a maximum of twelve months or both. The Court, convicting any person of an offence under the Act, may declare the newspaper article to be forfeited to the State.

There are also wide powers granted to people under the authority of a Publications Board to enter upon a publisher's premises and to seize anything which might constitute an offence under the Act. This Board is to be set up mainly to control publications of books and periodicals as well as the exhibition of films. Every person who has anything to do with the production of books or periodicals or films must seek the approval of the Board before publishing.

The Board shall not approve any book or any periodical or film which in its opinion is "indecent, obscene, or on any ground objectionable" [Clause 4 (2)].

The Board also may prohibit as it thinks fit the production or distribution of any book or film which is "in the opinion of the Board undesirable". The definition of what is undesirable is the same as that for newspapers. This proposal if it takes effect falls little short of complete censorship.

12. If the recently introduced measures are continued and the proposed legislation on Censorship and on the Bar is put on the Statute Book, the twelve years of Nationalist rule will have finally deprived all non-whites of almost all the Human Rights and Fundamental Freedoms set out in the United Nations Declarations of Human Rights; and the whites of South Africa will have suffered the grievous impairment of those same Rights and freedoms. South Africa will then be a Police state.

APPENDIX B

Draft Constitution for the Republic of South Africa

The following Draft Constitution for the Republic of South Africa was published in *Die Burger* and *Die Transvaler* on January 22 and 23, 1942. It was published by the authority of Dr. D. F. Malan, leader of the Herenigde Nasionale Volksparty, who became Prime Minister of the Union of South Africa in 1948. At the time of publication Dr. Verwoerd was an editor of *Die Transvaler*. It will be interesting to note whether this Draft Constitution will be adopted by the recently determined Republic in substitution for the South Africa Act of 1909 which is the present Constitution.

The Draft Constitution reads as follows :

CONSTITUTION FOR THE REPUBLIC OF SOUTH AFRICA

Article 1

INTRODUCTION : In obedience to God Almighty and His Holy Word, the Afrikaans people acknowledge their national destination, as embodied in its Voortrekker past, for the Christian development of South Africa, and for that reason accepts the Republican Constitution which follows, to take place of all the existing regulations in law, which are in conflict with it, and especially with the total abolition of the British Kingship over the British subjects within the Republic.

Article 2: THE STATE

- (1) The name of the State is " The Republic of South Africa ".
- (2) The Republic is grounded on a Christian-national foundation and therefore acknowledges, as the standard of the Government of the State of, in the first place, the principles of justice of the Holy Scriptures; secondly, the clearest direction of the development of the national history; and third, the necessary reformation of the modern government of States, especially with an eye to the circumstances of South Africa.
- (3) The Republic is as a perfectly sovereign and independent State, the successor of the rights of the Union of South Africa.
- (4) The national Flag is the Vierkleur of the Old South African Republic, with the red band replaced by one of orange; the National Anthem of the Republic will be " Die Stem van Suid-Afrika ".
- (5) Afrikaans, as the language of the original white inhabitants of the country will be the first official language. English will be regarded as a second or supplementary official language which will

be treated on an equal footing and will enjoy equal rights, freedom and privileges with the first official language, everywhere and whenever such treatment is judged by the State authority to be in the best interests of the State and its inhabitants.

Article 3: CITIZENSHIP

(1) All people whatsoever, settled within the bounds of the Republic, are its subjects and subject to its authority. They will retain their citizenship of the Republic, with a right to its protection, even when out of the country, unless they are subjects of a foreign State or have forfeited their citizenship.

(2) The white subjects who are acknowledged as members of the State by the Government, will be called "burgers", without distinction of race, as long as they do not abandon or forfeit their citizenship. Such recognition will only be accorded to subjects of whom it can be expected that they will act as builders up of the nation, whatever status they might have possessed before.

(3) Only "Burgers" can obtain the right to vote with regard to the Government of the Republic as such, and that on reaching their 21st birthday.

(4) The State may not bestow any titles (with the exception of academical degrees) or in any other way give rise to what might develop into class distinctions. Nor may any citizen accept titles from foreign powers.

(5) The State makes a call upon the consecrated national service of every citizen, in every capacity whatsoever, and has the power to make sure that the individual citizens, as well as the organs of public opinion, such as the existence of parties, the radio, the press, and the cinema, whilst their rightful freedom of expression, including criticism of the government policy, will be protected, shall not be allowed, by the actions, to undermine the public order or good morale of the Republic internally or externally.

(6) The State acknowledges the fundamental interests of the household and of a sound family life for the community, and undertakes to protect this against all onslaughts. The State especially recognises that, by her work within the house, the woman gives a support to the State without which the general welfare cannot be attained, and will thus ensure that mothers should not be forced by economic conditions to seek work outside of the house, where this might give rise to neglect of the household duties.

(7) The State grants recognition to all organisations which, within the national community exercise service to the State in different spheres, with deference to their internal independence.

(8) The State acknowledges the full freedom of the Christian Churches in their own spheres.

Article 4: THE HEAD OF THE STATE

(1) At the head of the State will be the State President.

(2) Only a registered citizen of the Republic is eligible for the post of President.

(3) A citizen can be nominated as a candidate for the presidency by Parliament on a recommendation from the Cabinet (Minister-raad), or by the requisition signed by at least 2½% of the registered burgers.

(4) The State President is chosen by the registered burgers (citizens) within a period of three months before the term of office of his predecessor elapses, or within three months after the post has become vacant for any other reason. If only one candidate is duly nominated, he will be declared duly elected without voting, by the Chief Justice of the Republic, or his lawful substitute, under whose supervision the election of the State President must be held.

(5) The State President will hold this position for a period of five years from the date on which he takes up his work, unless he dies, resigns, is put out of his position, as hereafter defined, or becomes permanently unfit, such unfitness to be proved before a Court consisting of the Chief Justice, supported by all the Judges of the Appeal Court. The State President is further directly and only responsible to God and over against the people for his deeds in the fulfilment of his duties, and in his actions in connection with the last-named as well as the carrying out of the holding of his office, he is altogether independent of any vote in Parliament.

(6) The State President may not be a member of Parliament, or of the Community Council, or hold any post of position to which any payment is attached, except the position of President.

(7) When taking up his high position, the President lays down the following oath and declaration : " In the presence of the Almighty God I declare solemnly and uprightly that I will serve the people of South Africa, will maintain the Republic and do everything in my power to honour its constitution and laws and to cause them to be honoured. I shall put forth all my strength to further the good of the people and the welfare of the whole of the population of South Africa, to carry out all the duties laid upon me, to protect the inde-

pendence, safety and honour of the Republic against all attacks, and to maintain the authority and respect for the Christian religion and the public Christian morals in this country. May the God of my fathers lead me and make me strong therein to the glory of His Name ”.

(8) The State President shall take the lead in all State ceremonies.

(9) The State President declares war and peace in the name of the Republic as hereafter defined.

(10) The State President stands at the head of the Defence Force of the Republic, but the manner of the exercise of the supervision must be defined by legislation.

(11) The State President decides on all laws, which can only become valid by his personal signature.

(12) The State President is charged with the task of choosing a burger to serve as Head Minister, and with the approval of the State President, he must call together an Executive Council, to be known as the Council of Ministers, who, together with the Head Minister, will be responsible to the State President for the effective control of matters relating to the country. The State President also has the power to dismiss the Head Minister or any other Minister.

(13) The State President will summon Parliament, or prorogue it or dissolve it, on the recommendation of the Head Minister, unless the State President is convinced that the latter no longer is trusted by Parliament, when he will act according to his own discretion, either to relieve the Head Minister of his post, or to dissolve Parliament and to let a new election take place, as later defined (Article 6, para. 7).

(14) In time of National danger the State President can, within the period of his term of office, suspend the customary obligations as laid down in this Constitution, as long as it may be in the interests of the people and grant full powers to the Head Minister and the Council of Ministers, for the government of the Republic, which must, however, be carried out under the direct supervision of the State President, and will only continue as long as it meets with his approval.

(15) The State President may not leave the country during his term of office without the consent of two-thirds of the members of Parliament. Disobedience to this regulation means the immediate laying down of his high position.

(16) The State President may send messages to Parliament and/or to the Community Council about any matter of great national interest, and indicate the direction which he considers such body should take in this connection. Likewise, he can convey messages about such

matters to the nation and, in case of need, call for a referendum which shall be final. He *must* exercise this right of calling for a referendum when a Draft Act is accepted which will have the effect of violating the republican independence of this country, or which threatens ultimately to have the effect of violating such independence.

(17) Should the State President die, or become incapacitated in any other way during his term of office, then his post shall be filled by the Chairman of the Community Council, until such time as a new State President has been elected, or until the State President is fully restored.

(18) When the State President acts in conjunction with the Council of Ministers he will be called the President-in-Council. Any decision of the President-in-Council demands the approval of the State President as well as that of the Council of Ministers, which, with this object in view, can meet under the Chairmanship of the State President.

(19) The right of exempting from or alleviating sentences passed by any Court of Law is granted to the State President, who, however, is expected under ordinary circumstances, to do this on the advice of the Head Minister supported by the Council of Ministers.

(20) The State President cannot, during his term of office, be brought to trial before any of the ordinary courts of the land, whether in connection with an accusation of an ordinary transgression, or in connection with his carrying out of the duties of the position laid upon him. His behaviour can, however, be brought to the notice of Parliament by means of a written document, signed by at least one-third of the members of Parliament or one-half of the members of the Community Council. In the case of such an accusation the Parliament must investigate it or cause it to be investigated, and when this has been served on him, the State President shall have the right to appear personally and/or to let himself be represented at the investigation. If a motion is accepted by a two-thirds majority, in which it has been laid down that the complaint against his behaviour or the exercise of his duties connected with his position, is found to be correct and that the behaviour has been of such a nature that it has made him unfitted to continue in his position, then such resolution of Parliament will remove him from his high position.

Article 5: REPRESENTATION BY THE PEOPLE

(1) The people will be represented in (a) a Parliament of not more than 150 members and (b) a Community Council, in which the spiritual, cultural, economic and social interests of the community, and of groups within the community, will be represented in an advisory capacity.

(2) The members of Parliament will be elected : one for every electoral division. Their payment will be fixed by legislation. Any registered citizen is eligible. Every registered citizen may exercise only one vote at an election and voting is secret. The election will be held throughout the whole of the country on the same day.

(3) The constituencies will be divided every five years by a judicial commission, appointed by the President-in-Council, which has to take proper account of the interests of the platteland and the towns and with the different dissemination of the population in such territories. It may fix the number of electors in a platteland constituency at under 20% and in urban constituencies up to 20% over the quota fixed by legislation after the first census after the Republic has come into being.

(4) The election for the Parliament takes place every five years, unless Parliament has been dissolved by the State President, and it must be held *after* the Presidential election, should that take place in the same year, but not longer than three months after that.

(5) A member of Parliament cannot, at the same time, be a member of the Community Council or vice versa.

(6) Parliament must meet at least once every year.

(7) Meetings of Parliament are held in public. Secret meetings may be held in connection with highly important affairs of the country, which appear to demand secrecy, if two-thirds of the members present vote for such secret session.

(8) Parliament chooses its own Chairman and Vice-Chairman from the members of Parliament on the occasion of each new composition of Parliament. Their powers, rights and payments are determined by legislation.

(9) Resolutions of Parliament are taken by a majority of votes. The Chairman has only a casting vote when the votes on a resolution are a draw.

(10) Parliament lays down rules and punishments for the maintenance of order for itself and for the Community Council, and makes provision for freedom of debate, for the prompt dealing with matters by means of members and for the protection of official documents as well as of private documents or papers to and from its members, and guards against all attempts, by violence or otherwise, to prevent members from carrying out their duties by means of bribes, threats or otherwise.

(11) The granting of the right to maintain any other armed forces in the State and the granting of money therefor, will rest with Parliament alone.

(12) Treaties with other Powers must be approved of by Parliament before they can come into effect.

(13) Parliament is responsible for the fixing of all the country's laws, on the initiative of the Government or of a member of Parliament itself. Laws of the Union of South Africa will be regarded as valid until such time as the Parliament of the Republic recalls them or replaces them.

(14) Parliament holds control over the administration in general and in particular of the financial interests of the Republic, receives a financial statement annually and a budget of the income and expenditure of the Government, and must give its approval to this before any taxes can be imposed or any expenses can be incurred. All Acts for laying on of taxes or authorising expenses must be recommended by the Government.

(15) Parliament must properly discuss any messages sent by the President, as laid down in Article 4, para. 16, and take clear resolutions in connection therewith.

(16) A Community Council, consisting of not more than 50 members, and with exclusively advisory powers, will be constituted to provide the State President, the Parliament and the Council of Ministers, with expert advice, and through public discussion to keep the people informed continuously with regard to ideas of the people directly interested in the country's problems.

(17) The members consist of (a) 15 persons appointed by the President-in-Council, on account of their knowledge and experience in connection with the treatment of important problems of the country, such as the poor white (white poverty) question, the interests of the coloured people, the government of the Natives, the Indian penetration and the surplus Jewish population, with excessive economic powers; and (b) 35 members chosen by suitable organisation, as decided upon or instituted by legislation, which represent decided spiritual, economic, cultural or social groups, for example, acknowledged Church organisations, and culture institutions of country wide nature, employers and employees who exist in connection with different branches of industry and profession. Where the necessary machinery is lacking or is ineffective or badly organised, legislature will see to the institution of suitable organisations which will be able to put forward and choose candidates to represent such groups properly. The groups and the numbers of members necessary for each problem or for each group, will be decided from time to time, when the State President, after consultation with the Head Minister and the Council of Ministers, considers that such change is necessary.

(18) The Community Council will be elected every five years, within three months after the election for Parliament and the State President, when they fall in the same year.

(19) The meetings of the Community Council take place separately but at the same time as the meetings of Parliament and at the same place.

(20) The meetings of the Community Council take place in public unless otherwise determined by the President-in-Council, in particular cases.

(21) The Chairman of the Community Council is appointed by the State President and fills the post as long as it pleases the State President. The Community Council chooses its own Vice-Chair who, together with the Chairman and three additional members, forms a committee of ways and means, and which is the link with the State President and the Council of Ministers. The Chairman, or members of the Council, appointed by him, can, with the consent of Parliament appear in Parliament to answer questions, or to give information in connection with the point of view of the Council with regard to Acts or Amendments proposed.

(22) The Government will lay all Draft Acts which concern the economic, social and peculiarly cultural and spiritual interests, or the problems aforesaid, before the Community Council for impartial and expert discussion and advice. Such a Draft Act must be sent through to Parliament with recommendations, amendments or approval and Parliament will then give the final decision.

(23) If a Draft Act is rejected in principle, or a great portion of it, by the Community Council, then the Council must put forward another Draft Act, which it considers to be in the best interests of the country, in connection with the matter in question. Both Draft Acts must then be laid before Parliament, with the explanation of the general grounds on which the rejection and the recommendations are founded.

(24) The Government may consult the Community Council before the drawing up of a Draft Act, but with an eye to it. Then it will not be necessary to lay the Draft Act before the Council before it is dealt with by Parliament.

(25) The Community Council divides its members into different expert committees for different problems, and they can investigate suggestions in secret meetings before they are placed before the full Council, or they can separately consult with the Government while it is still busy with the preliminary investigations in the matter.

(26) The member or members of the Government, who are concerned in the matter, or a personal representative of him or them, must attend meetings of the Community Council at which Draft Acts or matters concerning them or their Departments are considered. Such member or members may take part in these discussions like any ordinary member, and give information on the matter, or put

forth arguments from the standpoint of the Minister and his Department.

(27) The Community Council may also, on its own initiative, discuss matters with regard to the solution of the problems mentioned, without a Draft Act on this matter having been brought before Parliament, and without the request or approval of the Government, or about the furthering or co-ordinating of effective co-ordination of the economic, social, cultural and spiritual interests of the population and of the Government with the intention of giving advice by means of a respectful motion, to Parliament as to how the furtherance of these objects can be achieved by legislation.

Article 6: THE GOVERNMENT

(1) The Government of the Republic depends on the State President as Head of the State, who, however, entrusts the government of the State, except what is specifically laid down in this Constitution as being the direct duties of the President himself, to a Head Minister who is also called the Head of the Government, and to a Council of Ministers, which does not necessarily have to consist of Members of Parliament, constituted by the Head Minister with the approval of the President. The Head Minister, together with the Council of Ministers is also called the Government and the members thereof act as a body with collective responsibility. All executive powers, subject to the limitation of this Constitution, are exercised in the name of the Government as constituted. Members of the Council of Ministers, who are not Members of Parliament, can attend the meetings of Parliament and take part in the debates, especially when their Departments are being discussed, but they have no right to vote.

(2) The Council of Ministers will consist of, at the most, 12 members amongst whom the supervision of the different State Departments is divided by the Head of the Government. The members are described each one as the Minister in Charge of such Departments or Department which has been entrusted to him. The Head Minister acts as Chairman of the Council of Ministers, and can appoint an Acting Chairman from the members to act in his place during absence or illness.

(3) The creation or dissolution of a State Department can only take place with the consent of Parliament, but internal re-organisation and the appointment or dismissal of officials rests with the Government with the advice of an expert Civil Service Commission. Each Department which corresponds with a Committee of the Community Council, must hold such consultation in connection with its governing policy. Any Department where it is desirable, can also be supplemented with specialised institutes with separate legal personality.

(4) The Head Minister may not, during his term of office, leave the country on official or partly official visits to any foreign powers, without the expressed consent of the President-in-Council.

(5) If the Head Minister, as Head of the Government, is removed from his position, whether by the State President, or on his own initiative, or as a direct recommendation of Parliament, or because he has resigned, it means that the whole of the Council of Ministers resigns. They must, however, continue to carry out their duties until their successors have been appointed or until they themselves have been reappointed.

(6) The State President must accept the resignation or the dismissal of a member of the Council of Ministers, if the Head Minister recommends it. Any member of the Council of Ministers may vacate his high position by handing in his resignation to the Head Minister for submission to the approval of the State President.

(7) The Head Minister with his Council of Ministers is not dependent for the retention of the power of ruling upon the fate of Draft Acts laid before Parliament, but the Head Minister must continually judge whether he still commands the necessary support and confidence of Parliament for the effective carrying and governing of the affairs of the country, or the Parliament must prove by means of an expressed motion of no-confidence that such is not the case. In case the Head Minister no longer commands a majority in Parliament, but the State President considers that the majority of the people support his policy he can, instead of removing the Head Minister and the Council of Ministers from their position, dissolve Parliament and call for a new election. Only, if after this, the Head Minister does not gain a majority in Parliament will it be necessary to dissolve the Government.

(8) The Government must lay before Parliament audited accounts and also budgets of the income and expenses of the State; must prepare Draft Acts for laying before Parliament and the Community Council, take charge of the Administration of the affairs of the country; look after the maintenance of the laws of the land; supervise the defence of the country; arrange friendly and sounder relations with other States; and carries further, in general the responsibility for the complete and effective management of State affairs unless otherwise provided for in the Constitution. Each international agreement in which the Government takes part must, however, be approved by Parliament, with the exception of arrangements of a purely technical or administrative character.

(9) War may not be declared and the State may not take part in any war, because of the decisions of the Head Minister and the Council of Ministers alone. The decision rests with the President-in-Council, who must beforehand obtain the approval of Parliament, except in

the case of an attack directly made on the actual boundaries of the Republic, which makes immediate action necessary, when he will enjoy full powers.

(10) In the case of unsettling conditions in the country, the State President, as laid down in Article 4, para. 14, can suspend the Constitution, including amongst others, the legislative powers of Parliament as far as necessary, and give full powers to the Government, which however is subject to the supervision and approval of the State President, and which according to his judgment can be abolished. In such a time of national danger, legislation can be carried on by means of proclamation and through emergency regulations which will however lapse, as soon as they are recalled or as soon as the normal maintenance of the Constitution can be resumed, according to the judgment of the State President. Then all special powers for the time being entrusted to the Government will also lapse.

(11) The Head Minister must keep the State President informed with regard to all matters in connection with the government of the country or international foreign policy.

(12) Meetings of the Council of Ministers can, if he so wishes, be attended by the State President. He must know all about such meetings and what is going to be dealt with at them.

Article 7: ADMINISTRATION OF JUSTICE

(1) A High Court of the Republic of South Africa will be instituted, consisting of the Chief Justice, Judges of Appeal and Judges of the different local and special divisions of the High Court of Justice of the Republic of South Africa.

(2) The Appellate Division of the High Court of South Africa—named the Court of Appeal—consists of the Chief Justice and four Judges of Appeal. The Court of Appeal is the highest and final Court of Appeal of the Republic. Local Divisions will be instituted by legislation in three provinces or other divisions of the country for special circumstances.

(3) The Judges are appointed by the State President on the recommendation of the Minister of Justice. The salaries of the Judges are fixed by special legislation, but can only be reduced by a two-thirds majority in Parliament. Judges can only be dismissed by the State President on written request from Parliament to the State President, supported by two-thirds of the members of Parliament. Each Judge must, when taking up his position, lay down an oath of loyalty to the Republic and the people of South Africa, and a declaration before God that he will maintain justice and righteousness without fear or prejudice.

(4) The Roman-Dutch Law will be the Common Law of the country.

(5) The procedure which will be followed by the High Court of the Republic of South Africa will be fixed by special legislation, as also in what cases there will be an appeal from the one Court to the other, with the understanding that the decision of the Appeal Court in every case is final and binding. The procedure will be instituted with an eye to the maintenance of Justice and righteousness in a simple, cheap and prompt manner.

(6) The lower administration of justice will be taken in charge by vice judges: Landdrosts, Justices of the Peace, in this order of importance. All of them will be appointed by the Minister of Justice. The territorial and other jurisdiction of the Courts and the right of Appeal from the lower to the higher as well as to the High Court of Justice will be fixed by special legislation. Administrative duties and activities which were carried out by the former magistrates of the *late* Union of South Africa, can be laid upon the Landdrosts and Justices of the Peace.

Article 8: LOCAL GOVERNMENT

(1) The State President appoints a full time official as Administrator for each Province, or other division or the State territory which will be laid down by legislation, on the recommendation of the Head Minister.

(2) The functions of the Administrator will be fixed by legislation.

(3) The Administrator can be dismissed from his office by the State President upon recommendation of the Head Minister.

(4) An Administrator carries personally the full responsibility for the governing of his Province or other division of the country.

(5) Every Administrator is assisted by an Advisory Council, consisting of at least five, and at most of fifteen members, who are appointed by the State President with an eye to the representation of the most important groups of interests in the province, in the first instance from a list of at most 21 candidates which have been drawn up by the members of Parliament for that particular Province or Division, at a special meeting and in a manner which will be fixed by legislation. The meetings will be held under the Chairmanship of the Administrator.

(6) The Advisory Council will be newly appointed every five years and that within three months of the Parliamentary election if it falls within the same year. If vacancies arise these will be filled by the State President on the advice of the Advisory Council concerned.

(7) Town or City Councils, with duties also over against the surrounding districts, are taken in charge of Mayors, who will be appointed as whole time officials, and dismissed by the Administrator, subject to the approval of the Minister for the Interior.

(8) The powers of the Mayors will be fixed by legislation and must include the rule over the whole of the local administration, that is of the town or city, *and* the district, as well as over local general administrative activities which in the late Union of South Africa were carried out by the former magistrates, for the Union and Provincial Governments.

(9) The Mayors are responsible to the Administrator for all the powers exercised by them except in the case of duties which they are taking charge of directly in the name of the Government of the Republic. In last-mentioned instance they are responsible to the Minister concerned, whose department must pay for the personnel needed for the carrying out of any duties or the expenses incurred in connection therewith. All other expenses must be covered by local taxes and collections allowable under the law.

(10) Mayors are supported by local Advisory Councils, called Heemrade (Country Courts) representing the economic, social, cultural and spiritual groups of interests for the whole community, that is to say, the town and district. The number of representatives and the method of election will be fixed for each locality by the Administrator, assisted by the Advisory Council for the Province or division of the country.

(11) While Mayors are responsible, directly and personally to the Administrator or the Minister concerned, as officials, they are not forced to act according to the resolutions and recommendations of their Advisory Council. In all cases of deviation from the standpoint of the local Advisory Council, in matters of importance, the Mayor must however, immediately give report of his actions and his reasons for such deviation to the Administrator or the Minister concerned. The right is also accorded the Advisory Council, in such case, to hand in a report on their standpoint and their reasons for it, to the Administrator or the Minister concerned. The last-mentioned then has the right to decide to have the doings of the Mayor revised if this is thought desirable.

Article 9: GOVERNMENT OF THE NON-REGISTERED NON-EUROPEAN GROUPS

(1) Every Coloured group of Races, Coloured, Natives, Asiatics, Indians, etc. will be segregated, not only as regards the place of dwelling or the neighbourhoods dwelt in by them, but also with regard to spheres of work. The members of such groups can, however,

be allowed to enter white territories under proper lawful control for the increase of working power and also for the necessary increase of their own incomes.

(2) To each of such segregated race groups of Coloured subjects of the Republic, self-government will be granted within their own territory under the central management of the general government of the country, in accordance with the fitness of the group for the carrying out of such self-government for which they will have to be systematically trained.

(3) In urban non-European residential areas, non-European town councils with a paid White or non-White official as the head of the village, will be instituted and carry out functions, which will be laid down by law, under the supervision of the Mayor. (Appointed official.)

(4) In Reserves Native Chiefs will carry out the rule over their own race in accordance with the system and customs of the tribe, but under supervision of the government of the country and subject to the demands that such rule shall not work against the interests of the Republic, and may not lead to the deterioration of the ground in the Reserve or of anything else of value. For this reason guidance must be made available by the Republic and supervision exercised by special officials of the Government.

(5) Accordingly, as the different non-European groups become fit for it, a Coloured People's Council, a Native Council, an Asiatic and an Indian Council must be developed for the whole of the Republic. Each of these Councils will be chosen by the Heads or representatives of the race group concerned out of their race members who are major subjects of the Republic, in a manner which will be laid down by legislation. Provision will be made for the appointment of a number of non-European representatives of the race group concerned, or of the Council of the Group by the President-in-Council to make sure that the different groups of interest in the race groups will be adequately represented in each non-European Council, and also of having a number of White advisers to give guidance.

(6) The government and functions of such Councils will be fixed by legislation but the object must be quite clear that each Council must discuss the interests of its race group, in a constitutional manner, in public, and that any recommendations concerning these must be laid before the State President, the Government, Parliament or the Community Council.

(7) Non-Europeans, educated for any of the professional callings, and non-European traders, are shut out from practice or trade among White people, except with special permission from the Mayor, who must be convinced that such exception in such special cases is in the

interests of the whole of the local community concerned. At the same time such non-European professional persons and non-European traders must be encouraged to work among their own race group in their special lines. They will be protected there by the Government against White competition, except in cases where the non-European group concerned is not yet itself able to make sufficient provision for the services needed by the non-European community in a specified place.

(8) White employees may not be employed by non-European employers.

Article 10: THE OATH OF LOYALTY

An oath of exclusive loyalty to the Republic and to the people of South Africa and of readiness to protect and strive for its independence at all times and to honour and to maintain its Constitution in all things must be taken by all strangers when they become citizens, and by all servants of the Republic when taking up service. This concerns not only the State President, as Head of the State, but also the Head Minister, the members of the Council of Ministers, members of Parliament, and of the Community Council, appointed or elected representatives of the people in local bodies, Civil servants, including teachers, and members and officials of the non-European Councils.

Article 11: BASIC PRINCIPLES OF (NATIONAL) STATE POLICY

(1) The public tone of life of the Republic is Christian-National, without any forcing of conscience and the honouring of this tone of life is demanded in all public activities which have a formative influence upon the spirit of the people. The propagation of any State policy and the existence of any political organisation which is in strife with the fulfilling of this Christian-National vocation of the life of the people is forbidden.

(2) The Republic acknowledges the freedom of the organisation and government of Churches, provided their acts do not disturb the public order, undermine the national morale or attack the authority of the State. But the acknowledged Christian Churches, as established in a Protestant Christian people, will be protected and supported by the Republic, especially as regards Sunday rest and mission and the Republic expects from them support for their authority and advice with regard to education, public morale and other things of the same kind.

(3) The public education and instruction is a national duty, and schooling must be available for every child. The education must link up with the general Christian-national principles for public life,

but with proper supervision for acknowledged deviating groups in the population. In particular, the home language of the child and the religious tendencies of the parents must receive the fullest consideration. Culture of the body as well as that of the mind must be attended to and especially also with regard to the awakening of the proficiency. The task of supervision over national education, so that it will not become undermining for the State, or for the national morale, does not cease in the ordinary educational institutions in the community, but also stretches out to the Youth organisations and other social and philanthropic organisations and in particular to the radio, and amusements in all their divisions. A general cultural development in pure Christian-National spirit must be furthered (fostered).

(4) The attitude of Whites over against non-Whites is being regulated in the spirit of Christian guardianship, the former over the latter. The Principles of no mixing of blood and of segregation must be maintained as of fundamental importance for the future existence of a white civilisation in the Republic of South Africa.

(5) The economic and social organisation of the Republic must be directed to the highest measure of production, coupled with prosperity and happiness, which shall not be the privilege of a limited group, but must be evenly spread as far as possible over all layers of the population, so that there shall be no extremes of great wealth and great poverty in the Republic. Everyone must get paid work and a reasonable compensation, taking into account his capabilities and his value to the community, and there must be a minimum scale of wages so that each one out of the earnings of his calling will be able at least to provide decently the ordinary household needs for his family. The principle of private assets is acknowledged, but all exploitation on the ground of private assets, or private undertaking, must be fought as well as economic competition, when it assumes a character that is destructive and impoverishing instead of spurring on and building up the people. The duty of labour in the service of the people rests upon all subjects and citizens of the Republic.

(6) It is the right and also the duty of the State Government to take the control and co-ordination of the economic and social life under its supervision beginning with the agricultural basis of the national life, with the object of keeping the balance between the different population groups in the different callings and trades, and between capital and labour, and to protect against agricultural, industrial and commercial undertakings of a parasitic nature or undertakings which come into conflict with the interests of the community as a whole.

(7) All natural resources of the country must be placed by the Government at the services of the people, but cultivation can be allowed private people or bodies by law. The State must, however,

on the principle of utility or otherwise, take such cultivation, industrial undertaking or other economic activities under its control when the general interests of the people demand it, or when an activity is not being conducted in the best interests of the Republic and its citizens. The State must exercise strict control over economic activities of importance to the country which are in the hands of subjects of foreign States.

(8) The currency of the Republic must bear a purely indigenous character, and to assure this a State Bank must be developed with all necessary divisions and branches throughout the whole of the country with the object that this institution shall directly control the money and credit transactions of the Republic for the good of the people.

(9) The State must encourage industrial development and also help to finance it, but not only with an eye to the greatest amount of profit but also to serve social interests alongside of the economic objects. Industries on the platteland should be specially encouraged with an eye to maintaining as large as possible a rural population, including the population of the towns.

(10) Country-wide group organisations for employers and employees in the various trades and callings, must receive the recognition of the State, which can also call them into being or reform them, in accordance with the object of organising them for self-government, by the official licensing of suitable persons for undertaking the work and by linking them up with the say of such groups in the governing of the State by means of the Community Council.

(11) The State must establish as many citizens as possible and economically desirable on the land, control the division and capitalisation of agricultural land economically and must also further the increase of the White population by the encouragement of immigration or assimilable elements.

(12) The health of the nation is a special care resting upon the shoulders of the Government. It must take steps which will be reckoned to make the necessary nursing and medical treatment available to all.

(13) The State must act in a protecting, supporting and uplifting manner towards the weaker portions of society. In conjunction with private social welfare and charitable work, it must make provision for the proper handling of the widow and the orphan, the weak in body or mind and the old of age.

(14) The Republic must regulate its dealings with other countries in such a way that friendship and peace with all can be assured, without allowing itself to be dominated by anybody or on any sphere. It must however realise its special destination and task in the Christian development of Southern Africa and will therefore develop its own

powers to the full, and in particular maintain an independent defence force, consisting of a standing army and a citizen force on a national basis.

(15) Every citizen is obliged to serve in the Defence Force of the Republic. This military service can also be extended to all subjects and classes of subjects.

Article 12: REVISION OF THE CONSTITUTION

(1) This Constitution of the Republic of South Africa recalls and replaces the Constitution of the Union of South Africa of 1909 as well as any Statutes or regulations of any kind whatsoever, of the Union or of another country, which may be looked upon as supplementing or amending the Constitution of the Union of South Africa. This Constitution comes into immediate efficacy.

(2) Any regulation of the Constitution can be amended or recalled, but this can only be done by a Special Amending Act of the Constitution which must be published in the Government Gazette at least two months before it is dealt with by Parliament.

(3) A Draft Act which contains a suggestion for amendment of the Constitution may not contain any other proposals.

APPENDIX C

Administrative Scheme for the Recruitment of African Farm Labour

The following is the text of a general circular issued by the Secretary for Native Affairs in 1954. As far as is known, this circular, which was issued with the concurrence of the Secretary for Justice and the Commissioner of the South African Police, is still in force for foreign natives, but is no longer in operation for natives of South African nationality.

District Office file Nos. N.3/11/1
N.9/18/1

UNION OF SOUTH AFRICA

Department of Native Affairs,
P.O. Box 384, PRETORIA.
14th June 1954.

GENERAL CIRCULAR No. 23 of 1954.
FILE No. 646/280

SCHEME FOR THE EMPLOYMENT OF PETTY OFFENDERS IN NON-PRESCRIBED AREAS

1. It is common knowledge that large numbers of natives are daily being arrested and prosecuted for contraventions of a purely technical nature.
2. These arrests cost the state large sums of money and serve no useful purpose.
3. The Department of Justice, the South African Police and this Department have therefore held consultations on the problem and have evolved a scheme, the object of which is to induce unemployed natives now roaming about the streets in the various urban areas to accept employment outside such urban areas.
4. This scheme aims primarily at assisting unemployed natives to obtain employment, but it is self-evident that one of its results will be that the number of unemployed natives in the urban

areas will be greatly reduced and there would be less temptation for such natives to resort to crime as a means of livelihood.

5. The operation of the scheme is confined to technical contraventions amongst which the following offences may be classed :—
 - (a) Contraventions of paragraph (g) of section eight and section nine of the Natives Taxation and Development Act 1925 (Act 41 of 1925) as amended;
 - (b) Contraventions of sections ten and twelve of the Natives (Urban Area) Consolidation Act 1945 (Act No. 25 of 1945) as amended;
 - (c) Contraventions of regulations three, eleven and twenty-three of Proclamation No. 150 of 1934, and contraventions of Chapter II of Government Notice No. 1032 of 1949 (Registration Regulations framed under section thirty-eight (1) of Act No. 25 of 1945);
 - (d) Contraventions of the Labour Bureau Regulations published under Government Notice No. 2495 of 31st October, 1952.
6. The scheme has now been in operation in the large centres for some time, and with certain exceptions necessitated by local conditions, the procedure described below is followed in dealing with natives arrested for the above mentioned offences :—
 - (a) Natives arrested between 2 p.m. on Sundays and 2 p.m. on Fridays are not charged immediately after arrest, but merely detained by the Police.
 - (b) Natives so detained are removed under escort to the district labour bureau and handed over to the employment officer, at such times as suits local conditions, daily except Saturdays, Sundays and Public Holidays. The times at which arrested natives are to be handed over should be arranged between the South African Police and the Employment Officer.
 - (c) A nominal roll, as per *pro forma* attached, is prepared by the South African Police in quadruplicate in respect of all natives sent to the labour bureau and taken to the bureau by the escort together with the natives.
 - (d) One copy of the nominal roll is signed by the Employment Officer and returned to the escort. This serves as a receipt for the prisoners handed over.
 - (e) At the bureau, the Employment Officer completes card NA. 1 in respect of each native so received, if he has not been previously registered.
 - (f) The natives must be offered such employment as is available in non-prescribed (rural) areas. Priority should be given to farm labour in this connection.

- (g) Natives who on account of their declining to accept employment are not released, are returned to the South African Police for prosecution.
 - (h) Two copies of the nominal roll received with the prisoners are returned to the South African Police. In the remarks column thereof, the Employment Officer indicates how each native not returned had been dealt with and in respect of the others adds any suggestions or information which may assist the Police in formulating the charge.
 - (i) One of the two copies of the nominal roll thus returned to the Police is completed by them in respect of those natives returned for prosecution showing particulars of the charge and the result of the trial or enquiry in column 7 and 8 of the *pro forma*. This copy is returned to the Employment Officer to enable him to complete his records. The charge and the sentence (if any) should be endorsed on card NA. 1 for the native concerned.
- 7. The operation of the scheme has been extended to urban areas through the Union, and officers are requested to adhere to the procedure described in paragraph 6 as far as possible, having regard to variations in local conditions.
 - 8. Employment Officers must render monthly returns in the form of the attached annexures to their respective Chief Native Commissioners, who will submit a consolidated return for the area to the Central Labour Bureau in Head Office.
 - 9. The provisions of this Circular will be incorporated in the proposed Native Affairs Code relating to Labour Bureau.
 - 10. This circular must be placed on file No. N.3/11/1 and a suitable reference thereto must be placed on file N.9/18/1.
 - 11. This circular is issued with the concurrence of the Secretary for Justice and the Commissioner of the South African Police.

(sgd.).....
for Secretary for Native
Affairs.

TO ALL OFFICERS OF THE DEPARTMENT OF NATIVE AFFAIRS, ALL MAGISTRATES, DETACHED ADDITIONAL AND ASSISTANT MAGISTRATES AND WHOLE-TIME ADDITIONAL JUSTICES OF THE PEACE.

APPENDIX D

In the Supreme Court of South Africa (Transvaal Provincial Division)

In the matter between :

DORKUS SADIKA (born TLHARIPE), Applicant
and

P. J. POTGIETER, Respondent

AFFIDAVIT OF SERVICE

I, the undersigned JOEL CARLSON do hereby make oath and say :

1. I am an Attorney of the Supreme Court of South Africa duly admitted and practising as such at 134 Annan House, 86 Commissioner Street, Johannesburg.

2. On Tuesday the 28th day of April, 1959, at 2.15 p.m., I served a copy of the Petition and Annexures together with a Notice of Motion on the Respondent at his farm Witkleifontein, District Heidelberg, Transvaal Province, and explained the nature and exigency thereof to him. I stressed the fact that this was an urgent matter and would be heard at 2.30 p.m. in the Supreme Court in Pretoria on Wednesday the 29th day of April, 1959. I further intimated to him that this was a most serious matter and suggested he see his Attorney as soon as possible.

3. I advised the said Potgieter that I was the Attorney for the Applicant and asked him to allow me to see the Applicant's husband, JAMES MUSA SADIKA. The Respondent and his son who was present at the time advised me that there had been about eighty escapes in the past few months and it was not known whether MUSA was one of those that had escaped, and it was not known whether he was then on the farm or not. I asked the Respondent in the presence of his son whether I could see where MUSA slept, and at the same time told him that he was not obliged to permit me to see the sleeping quarters. The Respondent's son then asked me whether I was an inspector. I said I was not, whereupon the son said in the presence of his father that I could not see the sleeping-quarters. I then left the farm of the Respondent.

4. During the service and the discussions as outlined above, a member of the Staff of the Deputy Sheriff, who is also a member of the staff of the Respondent's firm of Attorney's was present.

(sgd.) J. CARLSON

SWORN to at JOHANNESBURG on this 29th day of APRIL, 1959, by the Deponent who has acknowledged that he knows and understands the contents of this Affidavit.

(sgd.) ?
Commissioner of Oaths.
Attorney-Transvaal.

To : THE HONOURABLE JUDGE PRESIDENT AND OTHER THE HONOURABLE JUDGES OF THE ABOVE HONOURABLE COURT.

PETITION

The petition of

DORKUS SADIKA (born TLHARIPE)

HUMBLY SHEWETH :—

1. Your Petitioner is Dorkus Sadika (born Tlharipe) the wife of James Musa Sadika, and your Petitioner resides at 46—9th Avenue, Alexandra Township.

2. The Respondent is P. J. Potgieter, a farmer of Witkleifontein, District Heidelberg, Transvaal Province.

3. Your Petitioner is married to James Musa Sadika by Native law and custom. Your Petitioner's husband paid a lobola price of £50/—/— to Jacob Setima, who prior to the marriage was your Petitioner's guardian. Your Petitioner was born at Evaton and your Petitioner's husband arranged to marry your Petitioner in 1940. There are two children of the marriage, both girls, the eldest aged 4 years and the youngest aged 9 months. Your Petitioner resided with her husband at her present address since 1952.

4. Your Petitioner states that her husband was born in Nyasaland and came to Johannesburg in 1936, where he practised as a herbalist and is fully qualified as a member of the Dingaka Association. The Dingaka Association is an association of herbalists with offices at Meadowlands, Johannesburg, and as far as your Petitioner is aware, it is recognised by the authorities and its activities are known to the authorities. Practising as a herbalist your Petitioner's husband earned between £10/—/— and £15/—/— per month. He was happy and content in his work and was a good father to the children and a good husband to your Petitioner.

5. Your Petitioner last saw her husband in October 1958 when your Petitioner went to pay a visit to her relatives in Evaton. When

your Petitioner returned home your Petitioner's husband was not there. The following day your Petitioner began making enquiries as to the whereabouts of her husband from friends and relatives of the family, but no one knew where he had gone, or what had happened to him. Your Petitioner then made enquiries from the South African Police at Wynberg and at the gaol in Johannesburg, but your Petitioner was unable to find any trace of her husband. Your Petitioner made further enquiries at the Native Commissioner's Court at Forbsburg, but was again unable to find any trace of her husband.

6. Your Petitioner then thought that her husband may have been injured and made enquiries at the General Hospital and at Baragwanath, but once again found no trace of her husband. One Petrus Mapanga who is known to the Petitioner as an acquaintance of her husband, advised your Petitioner that he had seen Musa going to Johannesburg after your Petitioner had left for Evaton, but thereafter he had never seen Musa return. Your Petitioner states that when she left for Evaton she was on good terms with her husband, their married life was a happy one, and there was no reason whatsoever for her husband to disappear as suddenly as he did without even advising your Petitioner or any of his friends and relatives of his intention to leave his home. Your Petitioner says further that her husband has certain bags in which he may have packed his clothes had he had any intention of leaving, but the bags and all his clothes are still in the house. In the past, when your Petitioner's husband went away for a short time of two or three days, he would pack his medicines and some clothes in his bag, but he did not pack any of his belongings when he disappeared after October last year.

7. Your Petitioner continued making enquiries from the police and from friends to ascertain where her husband was, but your Petitioner's efforts were unavailing and it appeared that her husband, Musa, had either been killed or completely disappeared. Your Petitioner never received any word whatsoever from her husband.

8. On or about the 14th day of April 1959 your Petitioner was paid a visit from one Josiah. The said Josiah advised your Petitioner that he had come from a certain farm belonging to the Respondent and which was in the Heidelberg district. Your Petitioner states that the said Josiah further advised her that your Petitioner's husband, Musa, was on the farm of the Respondent and had been asked by Musa to contact your Petitioner and advise your Petitioner where he, Musa, was working. Your Petitioner begs leave to refer the above Honourable Court to the Affidavit of the said Josiah, which is attached hereto and marked "A".

9. Your Petitioner states that from this Affidavit it will appear that your Petitioner's husband has been *injured and assaulted by certain boss boys* employed by the Respondent and is being forced to remain on the Respondent's farm against his will.

10. Your Petitioner states that her husband was arrested in Johannesburg for a pass offence. Your Petitioner's husband was not charged with the offence for which he was arrested and was never brought before any court of law, but was taken to the Pass Office where *against his will* and without being given any opportunity whatsoever of communicating with the Petitioner or any of his relatives or friends, or the Dingaka Association, *was taken under guard to the farm of the Respondent and compelled to work there*. Your Petitioner states that once before her husband had been arrested for a pass offence and had been fined after appearing in Court and had paid his fine. Your Petitioner received word from her husband and had gone with the money to the Court to pay the fine.

11. Your Petitioner begs leave to refer the above Honourable Court to the Affidavit of George Dube and Robert Ncube, which said Affidavits are attached hereto and marked "B" and "C" respectively. From these Affidavits it will appear that your Petitioner's husband is one of many cases where people are arrested in Johannesburg for some pass offence and are forced thereafter by the authorities concerned to enter into some kind of agreement to work for farmers who are short of labour. These agreements compel the workers to remain working on the farms for periods of six months or more and your Petitioner is convinced that her husband would never have freely and voluntarily entered into any such agreement with the Respondent on whose farm he is at present working.

12. Your Petitioner does not understand why her husband was not brought before a Court and prosecuted after he had been arrested by the Police. Your Petitioner further states that in the light of the information contained in the Affidavits attached, to which Your Petitioner begs leave to refer, your Petitioner's husband while he remained in his right senses would not have volunteered to work or willingly remain on the Respondent's farm. Your Petitioner states that she can think of no reason why her husband should work for the Respondent at a wage of £3/—/— per month when he received more than three times this amount while he remained in Johannesburg.

13. In any event your Petitioner has not received any money from her husband or from the Respondent or from anyone else since her husband began working for the Respondent. Further, your Petitioner verily believes that it is most unlikely that her husband has been paid anything at all. If her husband had received any money your Petitioner is sure that he would have sent some of the money to your Petitioner to assist her in supporting his family and your Petitioner's home. Your Petitioner's friends and relatives have had to contribute towards the maintenance of the Petitioner and her family.

14. From the Affidavits attached to this Petition and to which your Petitioner begs leave to refer, it will appear that your Petition-

ner's husband has tried to escape from the Respondent's farm and is being compelled to work there under the most appalling conditions. From the information received, which is set out in these Affidavits, your Petitioner has every reason to believe that her husband has been crippled and may very well be killed if he remains employed on the Respondent's farm. Your Petitioner begs leave to refer to the Affidavits of George Dube and Robert Ncube, attached hereto and above referred to, from which Affidavits it will appear that in the course of six months last year two workers were assaulted and died and were buried in great haste and before the Police or any Doctor had examined the bodies of the deceased. It is highly likely, therefore, that her husband may suffer the same fate.

15. At your Petitioner's request, one Joe Nqubu, visited your Petitioner's husband at the Respondent's farm last week, but as will appear from his affidavit attached hereto and marked "D" the said Joe was nearly killed by the Respondent's son, who drove his jeep at Joe and forced him to leave the farm. However, it is clear that your Petitioner's husband is still alive and working on the farm and told the said Joe that he had been arrested for a pass offence. The respondent was obviously reluctant to allow any visitor to speak to your Petitioner's husband, and most unlikely to release your Petitioner's husband from the farm.

16. Your Petitioner submits that the only reasonable inference to be drawn from the Affidavits attached hereto and from the facts set out herein is that your Petitioner's husband has been forced to remain on the Respondent's farm and is working there in forced labour, and under the constant surveillance of the Respondent's boss boys and the Respondent, who guard your Petitioner's husband and the other workers day and night and keep them under lock and key. Your Petitioner states that the Respondent is aware of the conditions which exist and makes no effort to dissuade his boss boys from committing the assaults perpetrated on your Petitioner's husband and the other workers, and has forced your Petitioner's husband to remain on the farm against his will.

WHEREFORE your Petitioner prays for an order calling upon the Respondent to produce the body of your Petitioner's husband, the said JAMES MUSA SADIKA, to the above Honourable Court on the 29th day of April, 1959 at 2.30 o'clock in the afternoon or so soon thereafter as Counsel can be heard, to show cause why your Petitioner's husband, the said JAMES MUSA SADIKA, should not be released from the Respondent's farm and why the Respondent should not pay the cost of this application.

And your Petitioner prays for alternative relief.

AND YOUR PETITIONER AS IN DUTY BOUND WILL EVER HUMBLY PRAY.

(sgd.) D. SADIKA
Petitioner

VERIFYING AFFIDAVIT

I, the undersigned, DORKUS SADIKA (born Tlharipe) do hereby make oath and say :—

1. THAT I am the Declarant in the foregoing Petition.

2. THAT I have had the Petition interpreted and explained to me and that to the best of my knowledge and belief declare the same to be true and correct.

(sgd.) D. SADIKA

SWORN TO AND SIGNED AT JOHANNESBURG, this 27th day of April, 1959, the Deponent having acknowledged that she knows and understands the contents of this Affidavit.

Before me,

(sgd.) J. LEVITAN
Commissioner of oaths
(Attorney-Transvaal)

I, Vivian Nyoka, have interpreted this Affidavit to the Petitioner and explained the contents thereof to her in her own language, Tswana.

(sgd.) V. NYOKA

ANNEXURE "A"

AFFIDAVIT

I, the undersigned, JOSIAH NOKO, do hereby make oath and say :—

1. I am an adult Native male and came to Johannesburg in 1947. I was born in Bulawayo and am now 38 years of age.

2. From 1947 until 1951 I worked for various employers but in 1951 I obtained work with Mr. Sam Cohen of O. K. Bazaars. I worked for Mr. Cohen until 1957, when he left for a trip Overseas. Thereafter I drove a taxi in Johannesburg.

3. On the 13th December 1958 I was arrested by a "ghost squad" in Diagonal Street at the Sophiatown Bus Stop for failing to produce a valid document. I was then handcuffed to other prisoners and subsequently taken to the Braamfontein Police Station. I slept in the cells that night and the following day was taken to the Old Pass Office, Market Street, Johannesburg.

4. At the Old Pass Office I was told that unless I could pay for a train ticket back to Rhodesia I would have to go and do farm work.

Many others were told the same thing. I had no money, but I had money in the Bank at Rosebank and I also had a Post Office Savings Account. I told the Official this, but he said he was not interested and if I had no money I would have to do farm work. After spending a number of days at this Pass Office I was taken with some others into a van, the back door of which was locked and I was transported to the Nigel Farm Labour Bureau.

5. When I arrived at this Bureau in Nigel, I was told again if I had no money to go home I would be sold to a farmer. I again said I had money in the Bank but they said they were not interested in that and that I was going to be sold to a Mr. Potgieter. I together with two others was taken that day from Nigel in Mr. Potgieter's truck to his farm at Grootvlei, via Heidelberg. We were guarded by Potgieter's boss boys while we were being taken to the farm. As soon as we arrived at the farm the boss boys told me to remove my jacket, my shoes and (I) was given a hoe and told to join the other group working in the field. I was not given an opportunity to take a drink of water and was rushed into the field.

6. In the field we worked under the supervision of boss boys carrying knobkerries. I noticed a number of the workers had wounds on their heads which were unbandaged and full of sand. Most of the workers wore sacks with armholes and they were all barefooted.

7. When I arrived in the field that afternoon I saw Potgieter sitting on the bonnet of his Ford car, watching all the workers in the field. Soon after I started working, two of the boss boys whose names I later learned were Abram and Philip, approached me and asked whether I had any money. I said no, I had not; I spent the money I had before I got to the farm. They then started to beat me all over the head and body with the knobkerries which they carried. My mouth started to bleed, and I fell to the ground, and one of them hit me all over my head with his booted foot. All this time Potgieter was there. I saw him when I got up again. I also saw that the two boss boys moved to the other new ones who had just come to the farm and beat them up also, and then they went on beating everyone as they walked amongst them.

8. These beatings occurred regularly and I noticed that whenever Potgieter arrived at the place at which we were working and hooted in his car, the boss boys immediately started moving amongst us and hitting out at anyone within striking distance with their knobkerries. At the same time the boss boys would shout to us to work faster. Often Potgieter would also shout "Slaan hulle dood." *

9. At first I wanted to retaliate when I was assaulted, but the ones who had been there longer than me warned me not to do so.

* Beat them to death.

I was told that one of the boss boys had killed a man in November by hitting him with a knobkerrie on the head after this man had been there only three days. The dead man's grave was pointed out to me.

10. The building which we slept in at night was the dirtiest place I had ever slept in in my life. When I was arrested for passes and spent some nights in prison the prison was clean and free from vermin, but this building like a prison in which we were forced to sleep on the farm was so filthy that it is hard to describe it. The floors were littered with all sorts of rubbish. A big 44-gallon drum had been cut in half and the two halves were used by all the workers as a lavatory. These half drums were brought in when we were locked up in the night and were removed in the morning. We ate our food in the same room and we slept in the same room. The place stank, especially on Sundays when the lavatory tins remained with us all day until Monday morning. In one room most of us slept crammed together and the blankets were full of vermin and covered in blood-stains. All the time I was there the blankets were never washed and were never aired. We used to sleep on the cement floor.

11. We were only allowed to drink water after we came back from the field in the evening and before we went out to work in the morning. It was a rare occasion that we were ever allowed to drink water during the day. There was (such) a scramble for the water in the evening that sometimes I had to go without water in the evening as we were all given one 44-gallon drum out of which to take our water supplies. The drum often did not contain sufficient water for the needs of all of us. As a result of the shortage of water for drinking purposes there was no question of my being able to wash during the whole of my time on the farm.

12. I have seen it happen that my fellow workers who have been beaten or who had fainted for want of water on a hot day, when they were lying unconscious on the ground, the boss boys Abram and Philip have passed water into the mouth of the man lying on the ground, and have also invited us to urinate in this manner to revive the unconscious man. Only these two boss boys did this to the workers who had fainted. At other times those who had fainted were further beaten even by Potgieter himself who came and said they were only faking and did not want to work.

13. In addition to the beatings we got to force us to work harder the boss boys also used to beat us if they wanted something from us. The boss boy Philip beat me up until he took my shoes against my will. I was beaten all over my body during all these assaults and I still carry the scars of the beatings. My feet were hit with hoes and were badly injured and are still troubling me. The injuries to the feet were made deliberately by the boss boys who said that when my feet were hurt I could not run away.

14. Plans for escape were discussed continuously amongst the workers and I never gave up hoping being able to escape. My first attempt at escape failed and I was picked up the day after I left the farm. In that escape attempt thirty-four managed to escape but I and one LEONARD were found by Potgieter's son the next day when he was out looking for those who had escaped. LEONARD was found near the Vaal river and I was found on the main road to Johannesburg. When I was recaptured I was taken back to the farm and Potgieter beat me with a knobkerrie. He hit me in the small of my back and one blow behind my neck and I fell to the ground. Potgieter's son saw this assault on me, as well as the boss boys and some of the other workers. He called me a baboon and told me I could do nothing to him.

15. Among the co-workers was JAMES MUSA. He told me he came from Alexandra and he told me where his family were in Alexandra. He told me that he had been in Johannesburg for over twenty-five years, and was a herbalist. He too was regularly beaten, much in the same way as I was, and although he discussed escape with me, when I left the farm he was still there. He is so badly crippled as a result of the assaults that he cannot walk far and he cannot walk fast, and I do not think he will ever succeed in escaping. He was a very sick man when I left him.

16. I was on the farm of Potgieter for about four months. I never received a penny for the work I did. I never saw any worker being paid any money. At last in March my opportunity came to escape and I was successful in escaping. A number of others escaped at the same time as I did.

(sgd.) JOSIAH NOKO

Thus signed and sworn to at Johannesburg this 27th day of April 1959, the Deponent having acknowledged that he knows and understands the contents of this Affidavit.

Before me,

Signature illegible
Commissioner of oaths
Attorney, Transvaal

1/ — Rev. Stamp Cancelled.

ANNEXURE "B"

AFFIDAVIT

I, the undersigned, GEORGE DUBE, hereby make oath and say that :

1. I am an adult Native male being 27 years of age and was born near Salisbury, Southern Rhodesia.

2. I came to the Union of South Africa in 1949 and was only allowed by the authorities to work as a domestic servant. I obtained employment in Wynberg, Johannesburg, and remained in this employment for nearly 8 years. I received a salary of £7/10/0 per month. Thereafter I was employed by Miss Ida in Sandringham, Johannesburg and received a salary of £8 per month. I was happy and satisfied in my work, but was forced to abandon my employer and work elsewhere after I had been arrested.

3. On or about 22nd October 1958, I was arrested at Joubert Park by the "Ghost Squad". I showed the police a document given to me by the authorities who had told me that until I received my duplicate reference book this document was a valid one. The police insisted that it was not a valid document and tore it up. They said I was a foreign native, then and there handcuffed me, with others, and took us to the Braamfontein Police Station.

4. I slept in the cells at the police station during that night and on the following day I was taken to the big Pass Office in Market Street, Johannesburg, together with others. I was kept in custody at the big Pass Office for about a week. I was never charged with any offence and never taken before any Court.

5. On one occasion an official at the Pass Office told us that those who had their own money to buy a ticket would be sent home, but those without money would have to work. No opportunity was given to those without money on them to get money, nor was any opportunity given to contact employers, relatives or friends. *I had my employer's telephone number and had asked the police to contact her. They refused and said they were not interested.* The officials at the Pass Office gave me no reason to believe that they would adopt a more reasonable attitude.

6. Because I had worked for 3 weeks in October, 1958, money was due to me and at a latter date I collected the sum of £6/16/0 from my employer.

7. After staying at the Pass Office for approximately 1 week I, amongst others, was taken to Nigel in a locked prison van. An official, there again said that those who had money to buy train tickets could go home and the others would work on the farm. None of us had any money, and we were then told that we would be sold to a farmer who was waiting outside. The farmer chose the six biggest and strongest of us. We were told the name of the farmer was Potgieter. We were told to pay 5/- for a permit which permit we needed to enable us to work for Potgieter. I do not know why we were asked to pay 5/- because we had already told the officials that we had no money. It was also made clear to us that if we could not pay for a ticket to go home we would have to work on the farms. There was

no other alternative given to us. The 6 of us were then sold to the farmer who told us that he would lend us the 5/— and would deduct this amount from our wages.

8. In the presence of the farmer a European official then told us to place our finger prints on a certain document. I placed my fingers on the document as I was ordered to do. I cannot read and I do not know the contents of the document. Again it was obvious to me that I had to obey orders.

9. The 6 of us were then placed on Potgieter's truck and guarded by two of Potgieter's boss boys who were armed with knobkerries. Later that afternoon we arrived at Potgieter's farm. Immediately after our arrival we were ordered to work and were taken to the fields and began to work.

(George Dube here describes the living quarters, food and water shortage, continual assaults, etc., as in the previous affidavit.)

10. That evening all the workers in the fields were taken to a building near Potgieter's house. It is a brick building with only one entrance and all the windows of the building have iron bars. There are a number of rooms in the building in which the workers sleep and also a small room where I was told the injured and the dead are kept. When all of us were in the building the door was locked and for the rest of the night and every night thereafter the door was kept locked and the building guarded by boss boys.

11. That first evening all my clothes, except my trousers, were taken by one of the boss boys who gave me a sack and told me to wear it.

12. I soon found that the living conditions were of the most primitive kind and worse than anything I had ever heard of. As a rule, we were only allowed to have water to drink on our return from the fields in the evening and before we started work in the morning. Only occasionally were we allowed any water during the day. During the whole time I was on the farm I was not able to wash or shower and I never saw any other worker wash or bath himself. Every evening there was a wild scramble for the drum of water and on some occasions the water in the drum was finished before some of the workers could get any. We were all only allowed about 15 minutes to get water.

13. The building in which we slept was in a filthy condition. There were 2 half drums provided as a lavatory and these 2 half drums remained inside the building where we slept and all the workers, who numbered about 60, had to use these drums. During the whole time that I was there the blankets and sacks given to us were never washed or even aired. They were bloodstained, full of insects, and stank. The walls crawled with bugs and insects and were never

cleaned while I was there. The floors were never cleaned during the week, but on Sundays when we did not work we used to sweep the floors and take the scraps of food and place them in a bag which remained with us throughout the week.

14. In what was known as room No. 5 about 45 of us slept squeezed next to one another. In the next room there were about 1 dozen workers and in the last room there were only a few. All the newcomers who were the most persecuted had to sleep in the big room but those who had served on the farm for periods of 6 months or more were granted the privilege of sleeping in the less crowded rooms.

15. The food consisted of porridge and coffee three times a day every day of the week. On Sunday midday a piece of meat was added to the porridge. The food was served in tins and sometimes it was hot, sometimes it was cold, and sometimes it smelt so that many of the workers could not eat it. No other food whatsoever was given to us.

16. During the day whilst we worked in the fields we were continuously guarded by boss boys who were armed with knobkerries. Altogether there were 9 boss boys and about 60 workers. The boss boys continuously assaulted the workers. The assaults took place whenever the boss boys wanted to hurry us in our work or because the boss boys wanted some fun or because new arrivals had to be initiated into the way of things. The boss boys would assault new arrivals in order to persuade them to hand over articles of clothing and other valuables. In these assaults the boss boys used either their knobkerries or a hoe which was taken from a worker. The hoe was used to injure the feet so that the workers could not run away. The assaults took place in the presence of Potgieter and his sons and in their absence. Sometimes Potgieter and 2 of his sons also took part in the assaults but the one son Pieter, who is married does not assault the workers.

17. Like the other worker, I myself received wounds on the head and elsewhere and I still have scars of wounds received. Most workers are hit on the head. Sometimes they are knocked unconscious and are then carried to the room for the injured or dead. The new arrivals receive more beatings than the workers who have been there a long time.

18. After I had been on the farm for just over a month a new arrival by the name of John came to the farm. I spoke to him and he told me he came from Alexandra Township. 2 days after he arrived, it was on Saturday morning about midday, he was assaulted by boss boys Abram and Philip. Abram was walking up and down the lines of workers and striking them to get them to work faster. I was slightly in front of John and saw Abram strike John on the back of the

head with a knobkerrie. John fell backwards on to the ground and Abram struck him again. Abram then called Philip and they tried to get him up holding John under the arm pits. All the other workers stopped their work and looked on. We saw John's head rolling on his neck. Abram and Philip signalled to us to come to them. When we came John was lying on the ground. I went over to him. I tried to close his eyes but they would not close. I realised he was dead. Philip then started to tell us that John had died because of the heat and he told us to take John's body and put it on a trailer. The other workers put John's body on my back and I took the body and put it on a trailer. The trailer was then taken by the tractor and all of us returned with the body to the prison. John's body was then placed in the room for the injured and the dead and we were then locked up.

19. On Sunday morning Philip called me and gave me a hammer and some nails and told me to look around for some planks for a coffin for John. I made the coffin and later helped Philip place John's body in the coffin. I and Philip then carried the coffin in which the body was to a grave which had already been dug by other workers on the farm. John was then buried. There are other graves at the place where John was buried. When the incident was discussed by the workers later I was told that John was not the first one to die as he had died on the farm.

20. John's body was not examined by any doctor after he died. The police were not called to examine the body. Had anyone examined the body either that Saturday or the Sunday morning before we buried him I would have known about it because the body was in the room which was kept for the injured and the dead and to enter that room anyone must come through the door to our prison.

21. I met James Musa on Potgieter's farm. Musa told me that he came from Alexandra Township, Johannesburg, and that he had been a herbalist there for many years. He told me he was married and had a family. Musa told me he was arrested for passes and had then been forced to work on Potgieter's farm. He longed to return to his family, whom he had not seen since he was arrested. He begged me to see his family if I escaped before he did as his family did not know where he was, and he had no opportunity to tell them. Musa and I and all the other workers talked about escaping from the farm regularly and many plans to escape were made. I remember one occasion when Musa hid in one of the rooms to avoid the attention of the boss boys, but a boss boy called Tumalo found him and struck him on the head with an iron bar.

22. Musa complained to me about the conditions on the farm, the assaults, the hard work, the poor food and all the rest of it and waited anxiously for a chance to escape. I do not know how people leave that farm other than by escaping from it.

23. Throughout the period when I worked on the farm until I escaped I received no pay. I worked on the farm for 2 months. Although the Farm Labour Bureau officials told me that I would receive £3 per month I never received a penny. I never once saw anyone being paid while I was there. I was happy to be able to leave the farm and lose the few pounds due to me than continue working there under conditions of forced labour and semi-slavery.

(sgd.) GEORGE DUBE

Thus signed and sworn to at Johannesburg this 25th day of April, 1959, the Deponent having acknowledged that he knows and understands the contents of this affidavit.
Before me,

(sgd.) J. LEVITAN
Commissioner of Oaths.
Attorney-Transvaal.

Administration of Oath and Affidavit interpreted by me to the Deponent in the Zulu language.

(sgd.) J. GOABI

ANNEXURE "C"

AFFIDAVIT

I, the undersigned, ROBERT NCUBE do hereby make oath and say :

1. That I am an adult Native male and am 39 years old, having been born in Plumtree, Southern Rhodesia.

2. I first came to Johannesburg in or about 1946 and worked for a Mrs. Gering in Saxonwold, Johannesburg, as a domestic servant. I remained working for her for about nine years and then left her and worked elsewhere for about two years and thereafter returned to Rhodesia for a holiday. In my last job in Johannesburg I earned the sum of £8/15/— per month.

3. When I returned to Johannesburg I went to report to the Old Pass Office in Johannesburg. The office in this old Pass Office in Market Street is no. 41 and there I was interviewed by an official and was then taken to be finger-printed. I was thereafter told I was going to be sent to Nigel and was locked in a cell at the old Pass Office. The following day, I and four others were taken under guard to a van and were told to get into the van and the van was then locked and we were taken to Nigel. At the Native Affairs Department at Nigel I

was told that if I did not do farm work I would be kept in gaol in Nigel, but if I did farm work I would be paid £3 per month. I had no alternative and I was forced to volunteer for farm work and was told to join other workers who had volunteered to work on Potgieter's farm.

4. A man called Potgieter, who I later discovered was the son of the old man Potgieter, then took me and four others to his farm in the Heidelberg District. There were two boss boys guarding us while we went to Potgieter's farm. We arrived at the farm at about half past four and were immediately taken into the fields to start working.

5. I arrived on the farm on May 13, 1958. The first day I arrived I saw no-one being beaten on the farm and I was also not assaulted. (Robert Ncube describes assaults, living conditions, similar to those in the other affidavits.) However, on the following day I and the other four workers who arrived with me were beaten by the head boss boy, Stephen, who demanded money from us. He beat me with a knobkerrie all over my back but I told him I had no money to give him. After hitting me several times with the knobkerrie he left me and started hitting the other new arrivals. We were then taken to work in the fields. During the morning, while we were all working in the fields the said Stephen beat me again and also beat many other people. The other boss boys also carried out several beatings on all the workers present. These beatings were done in the presence of the old man, Potgieter. I soon learnt that it was no use complaining about being beaten.

6. I worked on Potgieter's farm for about nine months and I say that there was not one single day from Monday to Saturday, during every week of the whole nine months when I was on the farm, when assaults did not take place on either myself or on my fellow workers. The assaults were committed mostly by the boss boys, but the old man Potgieter and his sons also took part in the beatings. The son Pieter, who is married, never assaulted me, and never assaulted anyone else. But the other members of the family took part in the assaults and must have known of the assaults and what the boss boys were doing to the workers.

7. I say that during all the nine months that I worked on the farm I never saw an official from the Native Affairs Department or anyone else to whom I could complain.

8. Over and above the assaults which were the most terrible thing about the conditions on the farm, the other conditions were worse than anything I have ever experienced in my life. I was once arrested for a pass offence in Johannesburg and spent two months in the gaol in Johannesburg. I would rather spend a year in gaol than spend a month on Potgieter's farm, for the following reasons :

(a) I could never sleep at night because I was continually bitten by lice which were in the blankets and on the walls of the place in which we slept. Lice used to fall from the ceiling and mice used to run around the floors at night and all over me. We first slept in a big room in which there were about fifty others sleeping, packed close to one another. The blanket which I was given was filthy and smelt but it was so cold that I was nevertheless forced to use it. We slept on a cement floor in a locked room which had iron bars across the windows. There was no light. I would have washed my blanket but we were never given enough water to drink and it was impossible to wash blankets. I never managed to wash myself once while I was working on the farm. The same applied to the other workers.

(b) The food was the same every day and every week during all the time I was there. It consisted of porridge and coffee in the morning, midday and at night. On Sunday midday we were all given one piece of meat each. Scraps of food which the workers could not eat were left in the place where we slept and only on Sunday were we given the opportunity of taking it out of our prison and throwing it outside the door. The reason that scraps of food were left was that there were worms in the food.

(c) Two halves of drums were used by the workers for lavatory purposes. These were brought in by the workers when they locked up at night and were placed in the rooms in which we ate and slept. But for Saturday night till Monday drums remained with us but sometimes we were given an opportunity of emptying them on Sunday morning. But they stayed with us the whole of Sunday.

(d) After I had been there about four months I noticed one day that a boss boy Tumela, who was only about 16 years old, beating one of the workers who was cutting firewood. After the assault I noticed this man's nose was bleeding a lot. The man sat down and his nose continued to bleed and he was left there until we were locked up at six o'clock. He was then able to walk to our prison. The following morning he was unable to get up and work. He was shivering all the time and his body shook badly. He was not beaten again. He did not work for three days and on that Sunday morning after he had not worked the previous days he died. The boss boy Philip told four of the workers to carry the dead man into the room where the dead are kept and the body was left there until Monday morning. On Monday morning the said Philip and four others put the body in a coffin. That Monday afternoon about half past four I and seven others including boss boy Philip carried the body and buried it on the farm. There were other graves where we buried the dead man. I never saw a doctor or the police come to see the body before it was buried.

(e) (Here Robert describes the death of John as recorded in Affidavit B.) About two months after the death of the first man that I buried there was another death on the farm. A worker that

I knew by the name of John died in the fields whilst working one day. It was about midday. The boss boys called us together and I saw John's body on the ground. Boss boy Philip told some of the workers to take John's body and put it on the trailer. Then all of us got on to the trailer and boss boy Abram drove the trailer back to our prison. When we arrived there boss boy Philip told George Dube and some others to take John's body and put it in the room for the dead. This was on Saturday. On Sunday I saw boss boy Philip and George making the coffin. When the coffin was finished I assisted George and boss boy Philip put the body in the coffin. After that boss boy Philip selected some others for the purpose of burying John. I was not present when John was buried. Again no police or doctor examined the body before it was buried.

9. Before I had finished my first month there I tried to escape with some other workers, but I was caught and brought back to the farm. When I arrived in the field the son, Jan Potgieter, ordered me to lie down on the ground and then told boss boy Stephen to beat me up. Stephen hit me on the back with his knobkerrie. I could not count the number of blows I received. I screamed loudly but he only stopped beating me when I started to cough blood. I coughed blood for a week after the assault. I still went on working. After that I never tried to escape again. In all I worked there for nine months and at the end of nine months I was paid £14.

10. James Musa, who was known to me as Sandhla and as Chems, came to the farm after I had been there about six months. We used to call him by his nicknames, Sandhla because of his small hand, and Chems because he was a chemist. I saw Musa being beaten on more than one occasion and when I left the farm he still had wounds on his head from the beatings he received. He also tried to escape and received severe beatings when he was caught. He told me that he lived in Alexandra Township and had been arrested for "passes". He wanted to get back to his family in Alexandra but was unable to do so.

X his mark

Thus signed and sworn to at Johannesburg this 27th day of April, 1959, the deponent having acknowledged that he knows and understands the contents of this Affidavit.

Before me,

(sgd.) J. LEVITAN
Commissioner of Oaths.
Attorney-Transvaal.

Administration of oath and Affidavit interpreted by me in the Zulu language which he understands.

(sgd.) V. Nyoka

ANNEXURE " D "

AFFIDAVIT

I, the undersigned JOE GOABI do hereby make oath and say :

1. At the request of DORKUS SADIKA, the wife of MUSA SADIKA, I visited the farm of a Mr. Potgieter in the Heidelberg District, where MUSA SADIKA is at present. I approached the farmer, Mr. Potgieter, and advised him that I wished to see MUSA SADIKA and had news for him from his home. After questioning me the farmer said that he would take me to see MUSA SADIKA.

2. The farmer took me on his car to the lands where Mr. SADIKA was working. He called MUSA who came over to me. I then spoke to MUSA and told him that I had come from his wife to see him and I asked MUSA how he came to be on the farm. He said he was approached for passes and was then brought to the farm.

3. Before any further discussions could take place between myself and MUSA, the farmer's son interrupted us and sent MUSA back to work, and said he was not allowed to talk. I told the farmer's son that his father had given me permission to talk to MUSA. The farmer's son then told me he was not interested in this and I must get off the property. I tried to plead with him, whereupon he got in his jeep and drove against me. He drove behind me until he came to the boundary of the farm and told me to get off and not to come back or else he would give me a hiding.

(sgd.) J. GOABI

Sworn to at Johannesburg on this the 27th day of April 1959 by the Deponent who has acknowledged that he knows and understands the contents of this Affidavit.
Before me,

(sgd.) ?
Commissioner of Oaths
Attorney-Transvaal.

DECLARATION OF REPLY BY RESPONDENT

I, the undersigned, PETRUS JOHANNES POTGIETER do hereby make oath and say :

1. That I am the Respondent in this petition.

2. This petition was given to me on Tuesday, 28 April, 1959 at 2.15 p.m. I live on the farm Witkleifontein, which is situated 30 miles from Heidelberg and about 90 miles from Pretoria.

3. In the short time at my disposal I have not been able to make a full declaration in reply to the statements made in the petition and in the additional declarations, and I can only reply briefly to some of the allegations made therein.

4. This being the case, I would like to state that I have no reason to believe that the native MUSA SADIKA came against his will to my farm. On the contrary, he has just settled by his own choice on my farm and he is free to leave if he wishes, but it is his own wish to remain so as to complete the six months period during which he is engaged to work for me. I do not, however, have any objection to him leaving my farm immediately and not remaining in my employ, under the one condition that he agrees to return at once to the Labour Bureau at Nigel, from which I obtained his services in the first place. In this connection I would point out that by virtue of the contract he is obliged to return to the said Bureau at the end of a period of six months, starting from the moment when he commenced working for me. This period of six months expires on May 19, 1959.

5. I formally deny the allegations of acts of violence which are made in the petition and in the attached statements. I am 69 years old, and because of the state of my health I cannot go into the fields to supervise the workers. Furthermore, the said native MUSA SADIKA will be at the disposal of the tribunal at the time of the hearing of this petition to give evidence as to whether some of these allegations are true or not.

6. Let me say that most of the allegations contained in the petition and in the attached statements are irrelevant and inadmissible; if necessary I shall in due time demand the withdrawal of these allegations.

It is for this reason that I demand that the petition be dismissed, with expenses.

(Signed) P. J. POTGIETER

Signed and sworn at Pretoria the 29th day of April, 1959 by the Respondent who knows and fully understands the contents of this statement.

(Signed) E. J. WHITE
Commissioner for Oaths
Sherif ex officio
of Transvaal.

to the Clerk of the High Court of Justice, Pretoria and to Messrs.
VORSTER and PRINSLOO, van der Stel Gebou, Pretoriusstraat 179,
Pretoria.

IN THE SUPREME COURT OF SOUTH AFRICA
Transvaal Provincial Division

Before SNYMAN, A. J.

29th April 1959

DORKUS SADIKA v. P. J. POTGIETER

Mr. Maisels, Q. C. and Mr. Beyers for Applicant.

Mr. Eloff for Respondent.

SNYMAN, A. J. : The Court is calling him here to give evidence.

MUSA SADIKA, sworn, states (interpreted by Mr. Dearlove :)

BY THE COURT : Is that your wife (in Court)?—Yes.

An application has been brought before me on the basis that you have been detained in custody by people unlawfully. No person is entitled to keep you in custody except the state and then only for good reason and according to proper process of law. The man against whom these allegations are made says that you are working on his farm on your own free will. Do you understand?—Yes.

I want to ask you certain questions about this, but before I do so I want you to understand your position very clearly. I want you to feel safe and certain that you may answer my questions without any fear. No person can harm you for answering the questions I am going to put to you. The Court has a special duty to protect people and their freedom and their rights?—Yes, I follow.

I want to carry that out to the fullest. I want you to be assured of that. I want to get quite clearly from you that you are not afraid to tell me, whatever the position is, in regard to you and the man for whom you were working on this farm. If you have been taken there and held there against your will you must tell me. If, on the other hand, you had gone there of your own free will on a labour contract you must tell me that. I want you to tell me the full truth without any fear, and before you start telling me I want you to assure me that you have no fear?—No. To be afraid—I'm not afraid.

And if you feel, if you would like . . . Before you go on with this, if you would like to talk to your wife about this I will allow you to talk to your wife?—I would like the indulgence of the Court and permission of the Court to speak to my wife before I say anything in Court.

You will be given that permission. Your wife has appointed counsel—that is the two gentlemen sitting over there—to appear for her because she believes you are being detained on that farm against your will. If after having spoken to your wife, you want to adopt that counsel as yours then you will be free to do so?—Yes.

I am going to adjourn this court so that he can see his wife and if he wants to see counsel he is to do so, and I want you to assist so that he is properly dealt with and that he is certain that he is not under any strain or any fear.

(Court adjourns 3.10 p.m.)
(On resuming)

MUSA SADIKA, still under oath : (Interpreted.)

BY THE COURT : What do you say—what have you decided to do?—
In what connection?

Do you want to just leave the matter or do you want to be represented here? Have you arranged for your representation?—I want them to represent me.

Mr. MAISELS : I have not interviewed Musa at all—my learned Junior and my attorney have, together with the wife. I have no desire to lead the witness unless your Lordship thinks it would be helpful. I'd like it explained that I am appearing for him and I wish to put questions in the manner I think your Lordship would. This is a peculiar case. Before any questions are interpreted my learned friend can object.

Mr. ELOFF : I'd like to make observations about the general aspect of the case. The position with the respondent is that he was served with these papers at a very late stage. It may be that, depending on what the witness says, I may have to cross-examine him at some length; I may have to call a number of witnesses. I indicate at this stage, while I submit it is correct that he give evidence, that I should be given an opportunity, depending on what he says, to claim for a postponement. As far as the respondent is concerned he may go; he is at liberty to go.

SNYMAN, A. J. : This man is now a free person but I am concerned with the fact that he is a foreign native. Mr. Maisels, what do you say about this native putting an affidavit before the Court?

Mr. MAISELS : It seems to me that this is not a case to be decided on the papers. The further hearing of this matter should be by viva voce evidence and in that connection we will be prepared to submit to my learned friend an affidavit by my client setting out what he says happened.

SNYMAN, A. J. : There are provisions in regard to foreign natives and I am concerned about that position to see that he is allowed a proper opportunity to put his case before the court.

Mr. MAISELS : Perhaps your Lordship should express the view that until the matter is concluded he should not be arrested and that he should remain at his home until the proceedings continue. We undertake to place his evidence on affidavit by tomorrow afternoon, and the matter can be postponed.

SNYMAN, A. J. : This matter is postponed to a date to be determined by the Registrar on early date, but not earlier than three weeks from today. The applicant is given permission to amend her petition, and if she is so advised she has to do so by the 6th May 1959. She is also given leave to amend her petition in the light of facts which have come to her knowledge now that her husband is available. Two weeks after the 6th the matter may be set down by the Registrar for further hearing, and the Registrar is directed to fix a date as soon after the two weeks as possible.

SNYMAN, A. J. : Musa, as far as you are concerned I just want to repeat what I have said; you are a completely free person; you are not in prison; you are not subject to any prison control, and you are free to go to your home. I must just utter this warning that there are certain restrictions in regard to foreign natives, and apparently you are one, but your legal advisers will no doubt advise you more fully on that and of course you will have to observe whatever lawful restrictions are placed upon you. Your previous employer, Mr. Potgieter, does not claim to have any right of control over you. He has come to this Court and he has freely admitted that he has no right of control over you, and he does not claim any such right. He agrees that you can move away immediately; you need not even return to the farm. I say that specifically to you because I want to set your mind at rest if you are worrying about your employer. The law of the land is that nobody can make you work for them, and nobody can keep you on their farm against your will. Is that quite clear to you?

MUSA : Yes.

SNYMAN, A. J. : In regard to your position as a foreign native I will ask the Register to communicate with the appropriate police officer and an officer of the Native Affairs Department, and tell them that it is the wish of this Court that you should be allowed to remain at your home until the termination of this case, that you should be allowed to see your legal advisers and to go to them and to see them, and to attend the Court whilst this case is on.

MUSA : I thank you.

£—/5/— revenue
Stamp cancelled.

IN THE SUPREME COURT OF SOUTH AFRICA
TRANSVAAL PROVINCIAL DIVISION

Pretoria, Wednesday the 29th day of April, 1959.
Before the Honourable Mr. Justice Snyman, Acting
In the matter between :

DORKUS SADIKA (born TLHARIPE), Applicant
and

P. J. POTGIETER, Respondent

HAVING heard Mr. Maisels, Q.C., with him Mr. Beyers, of Counsel
for the Applicant and Mr. C. F. Eloff, of Counsel for the Respondent,
and having read the Petition and affidavits filed of record,

THE COURT ORDERS :

1. That the application be, and is hereby, postponed to a date
to be arranged with the Registrar not later than three (3) weeks from
the date hereof;
2. That leave be granted to the Applicant
 - (i) to file affidavits to supplement her petition and, if she is
so advised, it is to be done by 6th May, 1959, and
 - (ii) to amend her petition;
3. That two weeks after the 6th May, 1959, the matter may be
set down for further hearing.

THE COURT further directs the Registrar to notify the Bantu
Affairs Commissioner, Johannesburg, and the Station Commander,
South African Police, Wynberg, district, Johannesburg that it is
the wish of the Court that JAMES MUSA SADIKA be allowed to remain
at his home and be allowed to proceed to and interview his legal
advisers and to attend Court whilst this Application is pending and
until the determination thereof.

BY ORDER OF THE COURT
Signature illegible
Registrar

Vorster & P. C.J.M.

APPLICANT'S SUPPLEMENTARY AFFIDAVIT

I, the undersigned, DORKUS SADIKA do hereby make oath and say that :

1. I am the Applicant in the above matter and I have been advised that the Court granted me leave to amend and supplement my Petition after I had spoken to my husband. Since his release my husband has been living with me and I have from time to time discussed the contents of my Petition with him. As a result of these discussions I have now been told that my husband was not born in Kenya as stated in Paragraph 4 of my Petition but that he was born in Nyasaland and pray that my Petition be amended accordingly. Since my Petition was filed I have received certain further information and certain other persons have made Affidavits about the conditions prevailing on the Respondent's farm and I pray that I be allowed to supplement my Petition by annexing the said Affidavits hereto.

2. On Wednesday the 29th day of April, 1959, I was in the foyer of the Supreme Court from approximately two o'clock in the afternoon. Shortly I saw two Native men standing next to each other in the foyer. I thought that my husband may be brought to Court that afternoon and I particularly looked at these two men in order to find out whether one of them was my husband. I did not at first recognise my husband and after I had been given certain information I went up to the two men and realised that although he was changed one of these two men was in fact my husband. He did not look his usual self, and there was obviously something wrong with him. I called him by name and he answered me. I was about to go nearer to him when a European, whose name I do not know, moved between me and my husband and ordered me not speak to him. The Non-European was standing close to my husband and was obviously guarding him.

3. I made a report to my Attorney about this matter and I received certain advice as a result of which I again attempted to approach my husband. The Non-European who was guarding him ordered my husband to move away from me, and the European came towards me almost at the same time and ordered me away. My husband obeyed the order given to him and moved away. He did not look up towards me, but kept his head bent down and appeared to be under the complete control of his guard. I again reported to my Attorney and as a result of certain advice given to me I again attempted to speak to my husband, but once again I was prevented from doing so by my husband's guard.

4. When my husband entered the witness box I noticed that he was trembling; that he kept his head bent downwards and looked ill at ease and nervous. When the Court adjourned to give my

husband an opportunity of speaking to me I asked my husband what it was like on the farm. My husband said that Potgieter was hitting him. I told him not to be afraid to speak and I told him that he must tell the Court everything that had happened to him on the farm. To this my husband did not reply at first, but after hesitating he said he was afraid and could not tell the truth. He said that he would be beaten if he made any complaint. I told him that he need not be afraid as he would not go back to the farm. He then asked me how the children were and I told him that my little baby was coughing but not too much. My husband then began to cry and his body shook. I then approached my Attorney and acting on his advice I led my husband into a small room at the back of the court. In this room I again attempted to persuade my husband to tell the Court everything and not to be afraid of doing so and having to return to the farm. My husband again did not answer me and burst out sobbing and his body trembled. He clasped his head and said "Look at my head" and said "I am afraid" and went on sobbing.

5. I then decided to speak to my legal representative and showed them my husband's injuries. My husband wanted to be reassured that he was not going to be taken back to the farm as he feared that he would be beaten further and was in fear of his life. My husband then said that he wished to be represented by my lawyers and did not want to go to the farm.

6. After my husband had been told by the Court that he was free to go he again broke down and cried outside the Court Room. My husband told me he did not believe that he would not again have to return to the farm. He was very confused in what he said and was very unsure of what was going on about him. He continually scratched his body. I could see that he had lost a lot of weight, and was very much blacker than before, and was unshaven. I have never seen him look so dirty before.

7. On the night of his release my husband was examined by Dr. HARLEY GORDON and in addition to the injuries which were already visible on his head my husband's back was also extensively injured. I annex hereto an Affidavit by the said Doctor, Marked "F", and to which I beg leave to refer.

8. The clothing which my husband wore when he was brought to Court from the farm consisted of a relatively new blue overall, underneath which was a torn shirt and torn pants which were in a filthy condition. I beg leave to produce the clothing worn by my husband under his overall to the above Honourable Court at the hearing hereof.

9. In my presence certain photographs were taken of my husband's injuries, which photographs I shall make available to the above Honourable Court at the hearing hereof.

10. In view of the Respondent's general denial in his affidavit, dated the 29th day of April, 1959, of the living and working conditions on the farm and in view of his general denial of the systematic assaults on his employees and the allegations that my husband was on the farm voluntarily I annex hereto Affidavits by JAMES MUSA SADIKA, JULIUS MIDA, ARON CHUMA, ENOCH SIBANDI, EDWARD SHANWARIRA and Doctors RALPH GUSTAVUS HIRSCHOWITZ and HARLEY GORDON and Mrs. A. H. VILJOEN, which Affidavits are marked "G", "H", "I", "J", "K", "L", "M" and "N" respectively and to which Affidavits I beg leave to refer.

11. Prior to my husband's disappearance we lived happily and I repeat that my husband had no reason whatsoever to leave home without informing me, abandoning his children and working for a sum of money approximately one-fifth of the sum which he usually earned as a herbalist. My husband is at present undergoing medical treatment and at the hearing hereof I shall apply for leave to file a further Affidavit which will show the condition my husband was in when he first went to receive treatment and the condition after receiving treatment for a few weeks.

12. As will more fully appear from a photograph of my husband taken prior to his disappearance, which photograph will be produced at the hearing hereof, my husband was usually well dressed and was in good health. My husband was not accustomed to heavy manual labour and I can think of no reason why he should at the age he has now reached choose to change his occupation.

13. I humbly submit that my husband was on the Respondent's farm against his will, that whilst on that farm he was perpetually guarded or kept locked in prison and often assaulted.

WHEREFORE I pray that the Respondent be ordered to pay the costs of this Application.

(sgd.) DORKUS SADIKA

Signed and Sworn at Johannesburg on this the 6th day of May, 1959,
by the Deponent who has acknowledged that she understands and
knows the contents of this Affidavit.

Before me,

(sgd.) REUBEN PER
Commissioner of Oaths
Attorney-Transvaal

This affidavit and the administration of the oath have been interpreted by me to the Deponent in the ZULU language which she knows and understands.

(sgd.) MICHAEL MAKGOTA (oath)
(sgd.) VIVIAN NYOKA (Contents)

AFFIDAVIT

I, the undersigned, JAMES MUSA SADIKA do hereby make oath and say that :—

1. I am an adult native male presently residing at 46, 9th Avenue, Alexandra Township, Johannesburg.

2. I was born in the Blantyre district, Nyasaland, approximately 45 years ago.

3. I came to Johannesburg when I was still a young boy, I stayed with my parents and grandparents in 3rd. Avenue, Alexandra Township.

4. My grandfather was a herbalist and from a young age I decided that I should become a herbalist. I learned the art from my grandfather and I have always earned my living as a herbalist.

5. Prior to 1952, and indeed from the time of my arrival, I considered Alexandra Township my permanent home. I no longer have any contact with the place of my birth. I have no relatives in Nyasaland and I have no other home other than (that) which my family have established in Alexandra Township. I have lived in Alexandra Township for the past 30 to 35 years and I know no other home. All my relatives and friends are in Alexandra Township.

6. My herbalist business enabled me, my wife and two children to live in relative comfort. The relationship between my wife and myself has always been a happy one and we have never lived apart for longer than two or three weeks from time to time, when it was necessary for me to go away on business.

7. Whenever it became necessary for me to leave my wife for a short period I always informed my wife of my intention to do so and she packed sufficient clothing for my trip and I packed my herbs, which I took with me.

8. I have never in my life, prior to finding myself on the Respondent's farm, done any manual labour and have never lived or worked on a farm, save for the period that I spent on the Respondent's farm.

9. No special circumstances existed in October 1958 to induce me voluntarily to change my mode of living and I most certainly had no desire whatsoever to go and work on a farm.

10. In October 1958 my wife and children left for Evaton where they were going to spend a short period with her uncle.

11. During my wife's absence I lost my Reference Book which was in all respects regular and which was endorsed to the effect that I was a "daily labourer", the effect of which is that I did not require

to be registered with an employer but that I could work on my own account. I made an application for a duplicate Reference Book and I paid the sum of 10/— and was given a document and asked to return in two week's time.

12. Some time later I returned to the Pass Office, where I was informed that I had to pay the sum of 5/— for a permit. I had never before paid 5/— for a permit and I informed the person there in charge accordingly. However, I there and then tendered the 5/—, but I was told it was now too late to pay the 5/— and that I was to be sent to Nigel to work on the farm for six months. I protested at this and informed the official that I could not go to the farms as I was a self-employed man and I produced my Certificate of Membership of the Herbalists' Association. I was told that the official was not concerned with the document that I had tendered and that I was compelled to work on the farm. I was then taken into custody on the Friday and kept in custody until the Tuesday of the following week. Whilst in custody I again protested and I was told that as I was late in paying my fees, I was to be punished by being sent to work on a farm for a period of six months.

13. On the Tuesday following the Friday when I was detained, I, together with eight others, were taken under guard to Nigel by van, manned by three policemen. Among the eight was a person named John who has since died.

14. At the Nigel Farm Labour Bureau the official in charge told us that we had to wait for farmers who wanted boys to work for them. I again protested and informed this official that I had not done farm work before and that I was a self-employed man. The official struck me across my face with his hand and he told me that it was not for me to choose, but that I would have to work on the farm.

15. Later, on the same day, a man arrived whom I later learned to be the son of the Respondent and we were informed by the official there in charge that this was the man that was going to employ us.

16. Four of us were taken into an office and we were ordered to place our thumb prints on a document, which we did. Having been kept in custody for a number of days, having been slapped across my face, having been told that I had no choice in the matter and thinking that it would be easier for me to escape from the farm than from the cells where I was kept, I placed my thumb on a piece of paper when it was placed before me. We were told by the official that we were to work on the farm for a period of six months and receive three pounds per month. We were further told that having placed our fingerprints on a piece of paper, we could very easily be traced in the event of any one of us escaping and that we would be caught and punished if we escaped.

17. The four of us were placed at the back of the van and two natives, whom we later learned to be boss boys employed by the Respondent, also sat at the back carrying sticks and were obviously guarding the four of us.

18. We arrived at the Respondent's farm at approximately 3.30 p.m. and were immediately ordered to go to the fields and work. During the same afternoon the boss boy named Philip, who is also known as Julaka, hit me on the head with a knobkerrie. The scar caused by that blow is still visible on my head. After Philip struck me he demanded money from me. I was then in possession of the sum of £2/12/6 which I gave to him. Later in the same afternoon, the boss boy Abram struck me on various parts of my body four times and he demanded my shoes, watch and pants. I gave them to him. I thought that I would be killed by these boss boys if I did not do as I was told. The other new arrivals, including John, were also beaten by the boss boys and their belongings were also taken from them.

19. At about sunset we returned from the fields to the prison which we used as our sleeping and eating quarters.

20. Before we were given food and locked up for the night, we were allowed to drink water from a certain big oil drum which was outside the prison.

(Musa then describes assaults, living conditions, etc., in a manner similar to those in other affidavits.)

21. We slept in a small prison which has only one door on the outside consisting of iron bars and which locks from the outside. The premises were filthy and infested with vermin. There were no sanitary arrangements other than two drums which were placed within the prison to be used as lavatories. The space available was not enough for us to move about and our bedding consisted of dirty sacks and dilapidated blankets. Most of the workers slept on the cement floor although there were a few beds. We were locked in daily from sunset to sunrise during the weekdays and from Saturday evening to Monday morning each week.

22. We were fed with porridge and coffee three times a day and received a piece of meat on Sundays for lunch.

23. After my clothing had been taken away from me I was given a sack with armholes to wear and also again some sacks to use as blankets.

24. During the whole period that I worked on the farm from the first day until the day I was brought to Court and even on Sundays, assaults were committed on me or one of the other workers regularly and daily. It is impossible for me now to give details of what assaults were committed on a particular day, as assaults were too numerous

and I was on the farm for six months. The boss boys whose names I remember are JALUKA, STEVEN, TUMELA, ABRAM and MBUTI. Of these boss boys JALUKA and ABRAM committed the most assaults on me and these two committed most of the assaults on the other workers. When the workers used to faint, JALUKA would urinate into their mouths to revive them. He did this to a number of those who fainted. Sometimes POTGIETER used to come into the fields in his car and he would shout "come on, come on!" or blow his hooter and then the boss boys would use their sticks to beat the workers to make them work faster. This was done in POTGIETER's presence.

25. I remember JOSIAH NOKO, GEORGE DUBE, ROBERT NCUBE, JULIUS MUDA, ARON CHUMA, ENOCH SIBANDI and EDWARD SHAMWARIRA were all on POTGIETER's farm and were assaulted with the other workers. I say that there was not one worker who worked on that farm who was not assaulted during the period he remained on the farm. None of the workers escaped being assaulted.

26. I remember one Saturday I was called with the other workers around to where one, John, was lying. I do not know what happened to JOHN but I gathered from the talk that he was dead. We all knocked off early that day. I was pleased at knocking off early as I could have some rest. I was too tired to take much notice of what was going on. I was told by the others about the burial of JOHN, but I myself took no part in his burial. I was beaten more than the others as I was slow in my work and too sick to work fast. The boss boys hit me on my feet and I could not walk very fast. I knew that I could never escape from that farm. I was sure in my own mind that I would never see my wife and children again.

27. I remember one day recently someone came to visit me and told me he had a message from my wife. Before, however, I could enter into conversation with him and obtain details from him about the purpose of his visit, Potgieter's son interrupted us, and ordered my visitor off the farm and ordered me back to work. Thereafter I was given a blue overall to wear above the clothes which I wore when I was taken to Court and I had these clothes on me under my overall when I was released.

28. On Wednesday the 29th April, 1959, I was called early by one of the boss boys and later accompanied him and the Potgieters in a car to Heidelberg. I was told that I was being taken to a Court and that if I made any complaint in Court I would be killed. After remaining in Heidelberg for some time I was taken to an office in Pretoria where I was interviewed by a man unknown to me.

29. I was that same afternoon taken to a building in Pretoria which I am told was a Court. I was guarded by one of the boss boys who came with me from the farm. I saw my wife in this building but I was not allowed to speak to her. My wife tried to speak to me

on a few occasions but I was not permitted to speak to her and was kept under the guard of the boss boy. I was terrified of what was going to happen to me, especially when I got back to the farm. I had no idea that there was a possibility that I would not have to go back to the farm. I was convinced that I would have to return to the farm and never imagined that I would be free to go.

30. That day I had only been given coffee early in the morning and had not received any other food. My body was sore and the insects were biting me. When I was allowed to speak to my wife I remembered what had been said to me and I knew that when I returned to the farm I would be beaten if I made complaints. I was too frightened to speak to my wife and complain to her or to anyone else. I remember that my wife reported to me about my children and I remember crying. I did not understand what was happening to me. I was later taken into a room with my wife who again tried to talk to me and persuade me to tell the Court everything that had happened to me on the farm. I told her I was afraid. I showed her my head and said that I would be beaten. I cried and I was feeling very sick. My wife continued to talk to me. I remember she asked me to trust her and believe in her lawyers. I said I wanted her lawyers to act for me.

31. I was then taken back to the Court and the Judge freed me, and I left the Court with my wife.

32. That evening my wife and my representatives suggested that I be examined by a doctor and I agreed. I also agreed to have certain photographs taken of me. That night I washed my body completely for the first time since I was arrested and was given clothes to wear and taken home to my house in Alexandra.

33. I have attended a clinic in Alexandra and I wish that the above Honourable Court grant me permission to hand in certain further doctor's affidavits concerning the result of the doctor's examination and treatment. I also beg leave to hand in to above Honourable Court certain photographs taken of me when I returned from the Court and after I had been examined by a doctor.

34. I state that I worked on the farm against my will and was kept on the farm by force and under guard. I was too crippled to escape, otherwise I would have done so. I say further that if the other workers could honestly believe and be convinced that if they were given a choice they would be allowed to act freely and voluntarily, they would leave Potgieter's farm immediately and never return. However, most of the workers would react in the way in which I did and remain unconvinced if they were told that they could leave and were asked to say what had happened to them on the farm. It took me some time to really believe that it was not necessary for me to return to the farm when I first came to Court, but I am convinced

that no one in his right senses would remain on that farm freely and voluntarily.

.....

Signed and Sworn at Johannesburg on this the sixth day of May, 1959,
the Deponent having acknowledged that he knows and understands
the contents of this Affidavit.
Before me,

.....

This Affidavit and the Administration of the oath have been interpreted by me to the Deponent in the ZULU language which he knows and understands

.....

AFFIDAVIT " G "

I, the undersigned, JULIUS MUDA do hereby make oath and say :

1. I am an adult Native male 32 years of age having been born in Plumtree, Southern Rhodesia.

2. I first came to Johannesburg in 1949 and thereafter worked in three different places until 1953 when I returned home to Rhodesia. Thereafter I returned to Johannesburg to my previous employer and again returned to Rhodesia in 1956. In April 1957 I returned to Johannesburg where I took up employment at Robindale, Johannesburg. I earned the sum of £7 per month plus food and quarters.

3. I arranged with my employers that I leave my place of employment for a trip to Rhodesia and had promised to return to my employers once more on my return to Johannesburg.

4. I had planned to leave for Rhodesia on a Saturday but two days before then on 22nd October 1958, I was arrested by the police in Oak Street, Robindale, Johannesburg for failing to produce my pass. I was taken by the police to the Linden Police Station where I was kept in the cells that night.

5. The following morning I was taken to the Old Pass Office in Market Street Johannesburg. There I was asked by a European official whether I had any money for a train ticket back to my home in Rhodesia and I told the official that I had money at my room. The official asked me whether I wanted to be taken back to my room

to fetch my money and my things before being sent home. I said that I did want to be taken to fetch these things. However, I was then locked up in a room with 3 other people and in this room I remained until the following Wednesday. After having been locked up for 7 days I with a number of others was removed in a police van to the Nigel Farm Labour Bureau. Altogether 10 of us were taken to Nigel that day, being 4 from the room in which I was and 6 who had been locked up in another room and whom I met each day when we were taken out of the locked room for exercises. Amongst the people in my room were GEORGE DUBE, JOSEPH and LEONARD. When we arrived at Nigel the 10 of us were locked up in a room with 4 others.

6. Among the 4 whom we found in the room in Nigel was one SAMUEL. SAMUEL told me that he had been locked up in that room for the past 3 weeks. He said that he had been kept there because he refused to go to work on the farm. The others told me a similar story and I had no reason to disbelieve what they told me.

7. All of us were kept in this room from morning until that afternoon during which time we received no food. That afternoon all 14 of us were taken before an official and told that we were going to be given farm work. No one, not even SAMUEL, protested because we had every reason to believe that if we did protest or refuse to work on the farm we should be kept in Nigel in the same way as SAMUEL had been kept there. The manner in which all the officials dealt with us led us to suppose that it would be useless protesting and it would be better for us if we obeyed their orders.

8. Thereafter six of us, namely GEORGE, DOUGLAS, ALFRED, LEONARD, SAMUEL and myself were picked out by the farmer whom I later learnt was one of Potgieter's sons and we were taken on his van under the guard of 2 boss boys to his farm in the Heidelberg district.

9. We arrived on that farm the same afternoon and were ordered to go into the fields and start work. We worked that afternoon and were later taken with all the workers to a house which had an entrance through an iron door and there were iron bars on the windows. We then went into a large room and later received porridge and coffee. After we ate we were locked in the room and I slept there with many others. I could not sleep properly because we were packed so closely together. Also there were mice in the room and insects that bit us. Our lavatory consisted of a half drum which was placed in the same room in which we ate and slept. I had been given a sack that evening which sack had a neck and 2 armholes and which I was told to wear.

10. The next day in the morning I, with all the others, were given porridge and coffee again and allowed to drink water and taken

to the fields to work. That day for the first time I saw various assaults committed by boss boys ABRAM, PHILIP, and TUMELA. I saw ABRAM assault LEONARD by hitting him across the face with a stick made from a hoe handle. He stuck LEONARD a number of blows and further assaulted LEONARD a number of times that day. That evening SAMUEL told me that this was a very bad place. I saw a large number of injuries on his face and that he was unable to open his eyes. There were so many assaults that day that I cannot now say which boss boy assaulted which worker or how many times this occurred but I clearly remember the assault on LEONARD. That night while we were in our compound the boss boys ABRAM and PHILIP came into the room and beat up SAMUEL and forced him to surrender his shirt. They also beat LEONARD until he was prepared to give them his shirt.

11. On the following day, that is the Friday, ABRAM, PHILIP and TUMELA assaulted many of the workers including GEORGE DUBE, SAMUEL and LEONARD. Assaults seemed to be part of the daily routine and were carried out throughout the course of my employment at the farm. All the workers worked in fear of these assaults. I cannot understand why so many assaults were committed on the workers. The boss boys seemed to enjoy themselves assaulting people. On Saturday I was assaulted first by PHILIP and then by ABRAM who hit me on the head with the hoe handle sticks. I fell to the ground and I received a number of injuries including an injury to my nose which would not stop bleeding. Both these boss boys demanded money from me and I told them I had no money to give them.

12. Assaults took place every single day of the week and also on some Sundays. On one occasion I saw a worker whom I knew as DAVIS escaping from the farm. I did nothing to prevent his escape. After that the owner of the farm, old man POTGIETER, came to me and ordered me to lie down on the ground. He took a length of hose-pipe and gave me six lashes across my back telling me that that will teach me in future not to stop workers from escaping. The blows caused me to scream. This assault was committed in the presence of a number of people one of whom was JOSIAH NOKO.

13. On many occasions not only did POTGIETER Senior commit these assaults but he was present when the boss boys assaulted the workers. The assaults in POTGIETER's presence were mostly made when he came to the fields in his car and hooted and told the boss boys to kill us. He apparently enjoyed the fun. On a number of occasions ABRAM and PHILIP assaulted the workers by forcing them to lie down when they would grip them by their neck and so force their mouth open. When their mouths had been forced open they would push sand into it and then urinate into their mouths and into their ears. One of those who was assaulted in this manner was ENOCH. I saw ABRAM and PHILIP doing this to ENOCH.

14. Towards the end of November on Saturday at midday were we working in the fields and I was next to GEORGE DUBE. I saw ABRAM strike on JOHN who had just come to the farm. He struck him a blow on the back of his head. Again he used a hoe handle stick. JOHN fell to the ground and ABRAM shouted at him "Wake up Nyasa", and picked him up. When he released him JOHN fell. ABRAM struck him again. ABRAM struck him many blows but JOHN did not get up and did not move or scream. ABRAM then called to PHILIP "Come and see this Nyasa he doesn't want to get up". PHILIP then came to where JOHN was lying and propped JOHN up on his knees and at the same time held him by the chin. JOHN's head lolled about. ABRAM then called the workers to where JOHN was lying and I saw that JOHN was dead. I helped GEORGE DUBE carry JOHN to the trailer and John was then taken back to the compound. We all stopped work that day although it was only midday. JOHN's body was taken into the room for the dead and the injured.

15. This room where John's body was kept that whole night is a room adjoining the room in which I slept. There is no door into that room but a piece of corrugated iron is placed across the entrance. That is the only entrance to that room. If anyone went into the room where the body was he would have had to pass through the room in which I slept. I am sure that no doctor or policeman examined JOHN's body that night or the following morning. The next day PHILIP and GEORGE DUBE made a coffin and ROBERT, DAVID and three other workers dug the grave in the cemetery. Later that day we buried JOHN's body in that grave.

16. At no time throughout my stay on the farm was a doctor ever called to examine or treat me or as far as I know of the other workers who had received severe injuries as a result of the assaults committed on them.

17. On the 15th January 1959, while we were working in the fields I saw some of the boss boys sitting down to eat. When I saw that they were paying no attention to the workers I got up and ran as fast as I could away from that farm. For this reason because I was running away from the farm I was unwilling to go to the officials of the Native Affairs Department or to the police to make any report or complaint to them. As the police and the officials of the Native Affairs Department had caused me to go to POTGIETER's farm in the first place I had every reason to believe that it was highly likely that they would return me to that farm if I complained to them. In fact I know of 2 people who had served their time on the farm but POTGIETER refused to release them or pay them. They then escaped and reported to the Nigel Farm Labour Bureau and were sent back to serve a further period of time on POTGIETER's farm. When I escaped they were still there. One of them was known to me as WILLIAM.

18. JAMES MUSA was known to me as CHEMIS because he was a herbalist. He was also known as SANDHLA. He told me he came from Alexandra Township. He was severely assaulted, even more so than the other workers as he could not use his arms properly and one arm was not as good as the other one and this made him unable to work as quickly as the other workers. The boss-boys would beat him without mercy because he was slow. He was small and weak in the body and his legs would not carry him very far. His feet were cut and were injured. The feet of many workers were cut with hoes as this would cripple them and make it harder for them to escape. I know that Musa was not willing to remain on the farm but I do not think it would be possible for him to escape as he was too sick and too weak. He had a number of head-wounds which he got from assaults committed by the boss-boys who hit him on the head with the sticks that they carried.

19. Previously POTGIETER had convict labour on his farm. In 1952 I was arrested for passes and was sent to the Johannesburg Gaol and was then sent as a convict to work on Potgieter's farm. I still remember the conditions which existed then. We slept in the same prison that we slept in when I was there last year. I remember also that there were assaults committed by the boss boys every day while I was there. About two years ago Potgieter's farm was black-listed by the prison authorities and he received no more convict labour.

20. I have never experienced in all my life such horrible and frightening conditions as existed on Potgieter's farm. It was as if he had worked out everything to make it as unpleasant as possible for his workers with the regular assaults, bad food and sleeping conditions, and I would rather go to prison or be deported than serve one week on his farm.

21. During all the time that I worked on the farm until my escape and up to this day I have never received one penny for all the work I did there.

.....

Thus Done and Sworn to at Johannesburg on this the 4th day of May, 1959, by the Deponent who acknowledges that he knows and understands the contents of this Affidavit.
Before me,

.....
Commissioner of Oaths
Attorney-Transvaal.

The contents hereof and the administration of the oath have been interpreted and explained by me to the Deponent in the Ndebele language which he knows and understands.

.....

AFFIDAVIT " H "

I, the undersigned, AARON CHUMA do hereby make oath and say :

1. That I am an Adult Native Male, thirty-four years of age. I was born near Bulawayo, Southern Rhodesia.

2. I first arrived in Johannesburg in 1945. Between 1945 and 1958 I worked as a domestic servant in various houses in Johannesburg. Between 1952 and March 1958 I worked as a flat cleaner in Johannesburg and I was earning £8/4/7 a month. In March 1958 I went back to Southern Rhodesia on holiday and returned in October 1958. On my return I was arrested for being in the area without permission and sentenced to two months imprisonment with compulsory labour. I served this term and on my release in December 1958 I obtained employment as a cook with a European family in Rosebank, Johannesburg. I am presently employed by the same family.

3. After I had obtained employment at Rosebank and on the 22nd January 1959 I went to the Pass Office at Johannesburg for the purpose of obtaining a renewal of my Permit to be in the Union of South Africa. On my arrival at the Pass Office I went to room 41, where I received a note from a European official who instructed me to go to Room 22.

4. At room 22, I was told by a European official whose name I do not know, that I was not wanted in the Union of South Africa and that he could offer me work on the farms. I told him that I had no experience of farm work and that I had no desire to do this type of work. This European official then telephoned room 41 and thereafter he instructed a policeman to escort me to that room.

5. On my arrival at Room 41 the European official tore up my permit and instructed the Policeman to take me to a cell where I was locked up together with about eleven other Natives.

6. All the occupants of the cell were locked up from Thursday 22nd January to Tuesday 27th January. None of us were brought before any Court of Law.

7. On Tuesday the 27th January we were taken out of the cell, put in a closed van and transported to Nigel.

8. When we arrived at Nigel we were taken to a room at the Pass Office depot where our finger prints were taken. We were then removed to another room and three of us were told that a European person, who I subsequently discovered was Potgieter's son, had "bought" us. I tried to ask questions, but the European official at the Nigel Pass Office told me that he had no time to answer my questions and that I would have to go to the farm. I was then taken to Mr. Potgieter's farm by the said Mr. Potgieter's son.

9. From the day of my arrest until my arrival at the said farm on the 27th day of January 1959 I was never asked to sign any document. I did put my thumb print on a document at the Nigel depot after being instructed to do so by the European official. I do not know what sort of document this was and nobody explained to me why I had to put my thumb print on it.

10. On our arrival at the farm we were taken to a room in which the labourers sleep. In the presence of both Mr. Potgieter and his son, and the three boss boys, we were undressed. I do not know the real names of these boss boys. I know one of them as "Jaluka", the other as "Xosa" and the third as "Stephen". I could point all of them out.

11. The aforementioned three boss boys searched us and an amount of 17/6 was taken from me by "Stephen". My jacket and trousers were taken by "Jaluka". "Stephen" gave me an old filthy sack to wear.

12. I asked "Stephen" why my clothes and money were being taken away from me. I did not get a reply and I was immediately assaulted by the three boss boys. They used knobkerries and other sticks. I was hit on the back and one of them hit me with great force on my feet and on my ankles. I tried to protest but I was told that they were not prepared to speak to a prisoner. The other two labourers who were with me were also beaten by the three boss boys. In the case of one of them, whose name I do not know, Mr. Potgieter instructed the boss boys to beat him more severely as he was fat. In the course of this beating three of the latter's teeth were knocked out.

13. Immediately after the assault we were all taken to the fields and put to work. We worked until sundown. When we returned we were given porridge and coffee to eat. This was the first food that we had received the whole of that day.

14. I remained on the farm for five days until the 31st January. On each day during my stay on the farm all the labourers, including myself, were beaten by the three boss boys. We worked in different groups. The three boss boys that I have mentioned were in charge of our group and each day they assaulted every one of us with heavy

sticks. I also noticed that labourers working in other groups were being similarly assaulted by their boss boys. As far as I could make out the boss boys never had any cause to assault any of the labourers, nor did they give reasons for doing so. When any one of us asked for reasons the boss boys answered that they did not speak to prisoners and threatened to assault us for asking for reasons. It was impossible to protest because we were all in fear of our lives. On WEDNESDAY the 28th January I was severely beaten by all three boss boys on my legs. Two of them used sticks and "Xosa" used a hoe. I was told by "Xosa" that their purpose was to cripple me so that I could not escape.

15. All the beatings I have referred to used to become more severe whenever any of the Potgieters arrived on the scene. The procedure used to be that one of the Potgieters would hoot on the hooter of his car and that would be regarded by the boss boys as a signal for more severe and more brutal assaults.

16. On one occasion I saw the boss boy "Jaluka" assault a labourer who fell to the ground and fainted as a result of the beating. "Jaluka" urinated into the mouth of this man while he was unconscious. On another occasion the boss boy "Xosa" assaulted another labourer, who fell and fainted, and "Xosa" similarly urinated into his face. Mr. Potgieter was present and watched these events on both occasions.

17. During the five days that I spent on this farm I never received any food other than porridge and coffee. The living quarters were filthy and crowded. There was always a shortage of water and lice and vermin were in abundance. Each night after work we were locked in like prisoners. In the sleeping quarters two half drums were used as lavatories and the stench from these drums became almost unbearable.

18. On Sunday the 31st January 1959 the three boss boys came to the living quarters. One of them stood at the door while the other two proceeded to assault a number of the labourers. While this was taking place the door, which is normally locked, was left open and about 25 of us rushed out through this door past the boss boy who was guarding it, and escaped. Despite very severe pains in my legs I walked from the farm to Vereeniging. At Vereeniging I begged for some money in the street and having collected a few shillings I proceeded back to Johannesburg.

19. My right leg is still painful, swollen and tender from the assaults. There are still a number of scars visible on my left leg.

20. My clothes are still at the farm and I never received any payment whatsoever.

21. I know James Musa Sadika. I met him at Potgieter's farm, where he was known by the name of "Sandlana". On two occasions

I saw him being severely beaten up by the boss boys. On the second occasion one of the boss boys, "Stephen", hit Sandlana with a hoe, which caused a cut across the palm of his left hand.

22. I was only on Mr. Potgieter's farm for five days but it feels as if I was there for two years.

(sgd.) AARON CHUMA

Signed and Sworn to at Johannesburg on this the 3rd day of May, 1959, by the Deponent who has acknowledged that he knows and understands the contents of this Affidavit.

Before me,

(sgd.) HEYMAN
Commissioner of Oaths.
Attorney-Transvaal.

1/— Revenue stamp cancelled.

AFFIDAVIT "I"

I, the undersigned, ENOCH SIBANDA do hereby make oath and say :

1. I am an adult Native male being 24 years of age. I was born in the District of Bulawayo, Southern Rhodesia.

2. I first came to Johannesburg in 1953 and have during this period worked for two employers as a domestic servant. In December 1958 I was employed by a certain Mrs. Snaier earning £7 per month, and in addition received food and accomodation.

3. On Sunday the 14th December 1958 I was arrested in Linden, Johannesburg, by a member of the "ghost squad" and taken to the Linden Police Station on the ground that I did not have a valid document in my possession. I spent the night in the Linden Police cells and was taken the following day to the Old Pass Office in Market Street, where I was kept until Thursday of the same week.

4. I together with others was taken before a European official and was asked whether I had any money which was to be used for my deportation and I replied that I did have the sum of £5 in my room and that in addition half my monthly wages were now due to me for the month of December 1958. The official informed me and the others present that there was no time for me to go and fetch the money which I had at home and that I was to go to Nigel.

5. I together with the others were then placed in a van which was manned by a European constable and two native constables.

The European constable and one Non-European constable sat in front whilst the other Non-European constable sat at the back with us. The door of the van at the back was locked from the outside and we were taken to Nigel in custody.

6. At Nigel a European official asked us to divide ourselves into two groups, the one being those who had money in their possession and the other those who had not. As I only had 2/— in my possession I fell into the group that had no money. The group that I was in was told by this official that we would be sold to a farmer for a period of six months and those who did not want to be sold to a farmer had the alternative of remaining in custody at Nigel for a similar period of six months. I believed that this official had the power to keep me in custody for the period stated by him and for that reason I decided that I would allow myself to be sold to the farmer, especially as I thought that escape may be easier from the farm than from the cell.

7. The European official produced a document and informed me and the others that upon placing my finger-print on a document we would be sent to the farm of one Potgieter, where we would receive £3, food and accommodation, and where we would work happily. I placed my thumb on this document and later on that day the said Potgieter's son arrived in a van accompanied by the two Natives whom I later found to be boss boys employed by Potgieter. Two others and I arrived on Potgieter's farm at about four o'clock in the afternoon. The two boss boys were sitting with us in the back of the van and were carrying sticks.

8. Upon our arrival at the farm we were told to remove our jackets and shoes and to place them on a trailer and we were taken to the fields. We were given hoes and were instructed to join a large number of workers, approximately forty to fifty, who were guarded by seven boss boys who were carrying heavy sticks. That afternoon I saw ABRAM and PHILIP, two of the boss boys, striking a number of the workers with the sticks in order to induce the workers to work faster.

9. My jacket and shoes were not returned to me and a few days after my arrival I saw ABRAM wearing my shoes whilst supervising the work on the fields and on Sunday I saw him wearing my jacket.

10. We were taken to our sleeping quarters at sunset. We slept in a small prison which has only one door to the outside, consisting of iron bars and which locks from the outside. The premises were filthy and infested by vermin. The prison was used as sleeping quarters and as eating quarters and contained two half drums which were to be used as lavatories. There was no water provided in these quarters. The space available was hardly sufficient for sleeping purposes and did not allow for any movement. Our bedding consisted of dirty sacks. There were a few beds but most of us slept on the

cement floor. We were locked into these quarters from sunset to sunrise during weekdays and from Saturday evening to Monday morning each week.

11. We were fed with porridge and coffee three times a day and never received other food except on Sundays when we were given a piece of meat for lunch. Sometimes the food was so badly cooked that it was inedible.

12. On the second day of my stay on the farm we went to work on the fields and while working ABRAM struck me on the head with a stick saying that I was not working fast enough. My head bled but I was given no treatment or attention. Many other workers were assaulted on that day but I am unable to give their names. I was assaulted on numerous occasions by ABRAM, PHILIP and sometimes by both.

13. Potgieter visited the fields daily and hooted, which was generally taken as a signal for faster work and more severe assaults by the boss boys, which was watched by Potgieter.

14. During my stay on the farm seven persons escaped and a great number of persons, including myself, broke out of the gaol on a Sunday evening after a boss boy had come into the gaol to assault some workers, leaving the door open but guarded by another boss boy: we all rushed past the person guarding the door. I reached Johannesburg four days later, having walked all the way and having slept in the veld during the day and walked at night.

15. I saw Musa on the farm. He was frequently assaulted and received a large wound on the head. He was also beaten across the back and had many wounds and marks. Because of his injuries and more especially as his leg was injured, Musa was unable to work as fast as the others and was therefore assaulted more often. There was a general fear amongst all the workers of the boss boys and of Potgieter, as the beatings were systematic.

16. The conditions on the farm were such that no one in his right senses would remain there of his own free will.

(sgd.) ENOCH SIBANDA

Signed and Sworn to at Johannesburg on this the 3rd day of May 1959 by the Deponent who has acknowledged that he knows and understands the contents of this affidavit.

Before me,

(Signature illegible)
Commissioner of Oaths
Attorney-Transvaal

AFFIDAVIT "J"

I, the undersigned, EDWARD SHAMWARIRA, do hereby make oath and say that :

1. I am an adult native male, 21 years of age and was born in Salisbury, Southern Rhodesia.

2. I came to Johannesburg in 1957 and worked as a domestic servant in Oaklands and earned the sum of £7/10/0 per month, plus food and quarters.

3. In November 1958 I was arrested by the Police at Oaklands for a pass offence and taken to the Norwood Police Station. The following morning I was taken to the Native Commissioner's Court in Fordsburg and told that if I paid a fine of £10. I could go free. I did not have £10 with me but the servant girl at the place where I worked brought the money to the Court and I paid the £10. fine. I was not released, however, and was taken to the Pass Office in Market Street, Johannesburg, where I expected to be released as I had been told that I would be released at the pass office.

At the Pass Office I was asked whether I had enough money to pay for a train ticket to Rhodesia. I said I had no more money as I had already paid all my money at the Native Commissioner's Court. I was then told I would have to work on the farms. I protested and said I had been crooked. I had paid a fine and now they were not releasing me. I was told not to talk nonsense and that I was being sent to the farms.

5. I spent a night and a day at the Pass Office and all the time I only received bread and tea on one occasion. I did not receive any other food. After having spent a whole day and a whole night at the Pass Office, the following morning I, with a number of others, was taken under guard of the Uniformed police of the Native Affairs Department to Nigel.

6. When I arrived at Nigel the other seven prisoners and myself were taken into a room and my thumb-print was placed on some document. I do not know what the document was, nor did anyone explain to me what was contained in the document. After I had thumb-printed the document, I was told that I would have to do six months farm work. I was then taken to the cells at Nigel. As far as I could see the other seven of the group in which I was experienced the same procedure. At about 4 o'clock that day, I remember it was on a Friday, three others and myself were taken to a lorry which was guarded by two boss boys and we got on to the lorry and were taken then under guard to a farm, which I later learned was owned by Potgieter. We arrived at the farm late that night.

7. It was too late for us to work on the day that we arrived and we were locked up in a prison. It was like "No. 4", that is the

gaol in Johannesburg. The prison on the farm had iron doors and iron bars as windows and it was guarded at night by a watchman who carried a pick-handle.

8. The food I was given that night was meal-pap and coffee. I was given this food subsequently at every single meal which I had on the farm and only on Sundays was a piece of meat added to this diet. I was unable to drink any water that night. I later found that the only time water could be drunk was in the evening and in the early morning. Sometimes there was insufficient water for the workers to drink.

9. We slept in this prison all together, there were about 70 of us. I slept in a room together with most of the 70 and we were packed close to one another. The floors were filthy and full of lice. The same applied to the walls of the building. Mice jumped over our heads and our bodies all night.

10. The lavatory which we used consisted of a half drum which was kept in the room in which we used to eat and in which we slept. Sometimes the lavatory over-flowed and "worms" would crawl about. The whole of Sunday these lavatory drums remained with us in the said rooms.

11. The day following after my arrival boss boys, STEPHEN, PHILIP and ABRAM assaulted me with sticks. They beat me all over the head and body and I screamed. They knocked me down and tramped on me. I bled from the nose, the mouth and ears and I could not breathe properly. The boss boys took my shoes, my jacket and my trousers and gave me a sack to wear. After a while I managed to get up and I was forced to go and work, although I had never been so badly assaulted in all my life.

12. During the whole of that day the same three boss boys committed further assaults on me and also upon the other workers, especially the three new arrivals who had arrived at the same time as myself. These three boss boys committed most of the assaults but the other boss boys whose names I cannot remember, also assaulted the workers.

13. During December 1958, I was assaulted by old man Potgieter in the fields while I was working. He hit me twice across the back with a whip and told me to work harder. He also hit a number of others that same day. Often old man Potgieter would come into the fields in his two-coloured Ford car and he would blow the hooter of the car. The boss boys would then take this as a sign to hit the workers left and right and make them work even faster. Potgieter must have seen these assaults and regularly used his hooter when he visited the fields in his car and this resulted in the boss boy beating the workers wildly and more often than usual.

14. I remember one Saturday at the end of November 1958, there was an assault by ABRAM on a man called John. JOHN had only come to the farm a few days previously. I saw ABRAM hitting JOHN on his head and on his back and he struck him many times. About an hour later, I saw JOHN lying on the ground. I did not see who hit him before he fell to the ground. When I saw John on the ground I heard boss boy Jaluka (Philip) call us to the place where John was lying. PHILIP tried to make JOHN stand up but JOHN would not stand up. JOHN fell to the ground again but his eyes were wide open. I knew then that JOHN was dead and many of us said he is dead. It was about two o'clock that Saturday when this happened. JOHN's body was then placed on the trailer and we all stopped work and went back to the compound.

15. When we arrived at the compound the body was put in the room of the prison in which we slept. I do not know what happened to the body after that. I did see PHILIP making a coffin but I did not see the body being placed in the coffin and I do not know what happened to the body.

16. During the whole time I was on the farm I never once saw any doctor coming to examine anyone on the farm. I did not see any Police or any inspectors from the Native Affairs Department come to the farm.

17. On a number of occasions when a worker fainted in the fields I saw PHILIP and ABRAM reviving them by urinating into their mouths. They would also stuff sand into their mouths and urinate into their mouths and over their faces. While I was on the farm there was also a number of escape attempts. Those who failed in their attempts were beaten by the boss boys with a hose-pipe and in the presence of old man Potgieter who ordered the ones who had been recaptured to lie down and watch the beatings.

18. I remember Musa but I knew him as James. He was a small man and I remember that his feet were crippled by the boss boys. They used to hit him on the feet and they hit him many blows on the head. His head had many wounds. He was so badly wounded that he could not escape from the farm. All of us discussed plans for escaping from that farm. MUSA asked me to contact his family in Alexandra Township when I escaped as he did not think that he himself would escape.

19. On 1st February, 1959, I managed to escape from the farm. I never received a penny for all the work I did on the farm, but I would rather be deported to Rhodesia than go back to the farm.

(sgd.) EDWARD SHAMWARIRA

Thus done and Sworn to at Johannesburg on this the 4th day of May 1959 by the Deponent who acknowledges that he knows and understand the contents of this affidavit.
Before me,

(?)

.....
Commissioner of Oaths
Attorney-Transvaal

This Affidavit and the administration of the oath have been interpreted by me to the Deponent is the Zulu language which he knows and understands.

(?)

.....

AFFIDAVIT " K "

I, the undersigned, RALPH GUSTAVUS HIRSCHOWITZ being a duly registered Medical Practitioner, do hereby make oath and declare as follows :—

1. That I examined AARON CHUMA on the 3rd day of May, 1958, and noted the following recent injuries :—

- (i) A depressed linear scar half inch long over the vertex of his skull.
- (ii) A healed scar half inch long on the fifth finger of his right hand.
- (iii) A malopposed tender fracture in approximately the middle of the fifth metacarpel of his right hand. Some callus appeared to be present.
- (iv) One healed broad linear scar and one small healing scar on the anterior aspect of his left foot.
- (v) One oval-shaped healing scar, and one grossly infected oval wound approximately one inch in diameter over the anterior aspect of the right foot. The distal aspect of the right foot showed signs of gross cellulitis.
- (vi) A healed half inch linear wound over the distal aspect of the right great toe.

2. I consider the injuries named above as Items (i) to (vi) to be not inconsistent with the history given of assault at the end of January 1959.

3. I also noted extensive old scarring of both feet, and what appears to be an old fracture of the right tibia. I do not consider these to be of recent origin.

(sgd.) R. G. HIRSCHOWITZ

Thus signed and Sworn to at Johannesburg on this the 4th day of May, 1959, the Deponent having acknowledged that he knows and understands the contents of this Affidavit.
Before me,

(?)
Commissioner of Oaths
Attorney-Transvaal

AFFIDAVIT " L "

I, the undersigned, HARLEY GORDON do hereby make oath and say :—

1. That I am a duly qualified medical practitioner holding the degrees M. B., B. Ch., D. C. H. (RCP & S) practising at 106 Tower Hill, corner Kotze and Klein Streets, Hillbrow, Johannesburg.

2. I examined MUSA SADIKA on April 29th, 1959 at 6. p.m. He complained that he had been repeatedly assaulted during the period November 1958 to April 1959 and that he had continual pain of the left side of the chest. He said he had never had enough to eat during this period.

3. On examination I found him dressed in an overall which appeared to be new under which he wore three filthy, tattered and patched garments. These garments were the remains of what once were a jacket, a pair of shorts and an unrecognisable garment serving as a vest. The garments were neither adequate to provide warmth and protection nor to maintain dignity and I recommended that they be burnt.

4. Continuing my examination I found :

- (a) The subject was in a filthy condition and continuously scratched his body.
- (b) He was thin and showed signs of weight loss.
- (c) There were numerous scars on the back of the head.
- (d) A pustular rash of the back and arms.
- (e) Typical dermatitis of pellagra of the legs, forearms and face.

(f) His gums showed severe pyorrhoea.

(g) His general muscle tone and skin turgor were suggestive of severe malnutrition.

5. The scars present were of different stages, varying from recent to some months old :

(a) Seven were seen on the head, each about half an inch in diameter (others may have been present under the hair).

(b) Fourteen roughly circular scars on the upper back, each about quarter of an inch in diameter.

(c) There was a 3" linear scab postero-medially on the right upper arm.

(d) A two inch scab on the right elbow, where there was also a circular scar $\frac{1}{4}$ " in diameter.

(e) There was a $\frac{1}{2}$ " linear scar on the left ankle.

6. In my opinion the examination and findings are consistent with repeated severe assaults with a blunt instrument. The linear scars on the arms and left ankle being consistent with assault, with a thin or possibly sharp instrument. His nutritional state suggests severe deprivation of food during recent months.

(sgd.) H. GORDON

Sworn to at Johannesburg on this the 27th day of April, 1959, by the Deponent who has acknowledged that he knows and understands the contents of this affidavit.

Before me,

(?)
Commissioner of Oaths
Attorney — Transvaal

AFFIDAVIT " M "

I the undersigned HARLEY GORDON do hereby make oath and say :—

1. That I am a duly qualified medical practitioner holding the degrees M. B., B. Ch., D. C. H. (R.C.P. & S.) practising at 106 Tower Hill, corner Kotze and Klein Streets, Hillbrow, Johannesburg.

2. I examined JOSIAH NOKO on Monday 27th April, 1959. He complained of having been assaulted repeatedly from December 1958 to March 1959, and as a result thereof suffered continuous pain in the left chest, and that his feet were painful and used to swell

on occasions, and further complained that he had become sexually impotent.

3. On examination I could not see scars on his head because of the presence of thick hair. On his back between his waist and shoulder were six scars, diffusely distributed and varying from a quarter to half an inch in diameter. There were also two linear scars on the shoulder each about half an inch long which in appearance were older than the scars on the back.

4. Above the left knee, antero-medially were two linear scars, half an inch and one inch long. On the dorsum of the left foot were two scars, one half an inch and one quarter of an inch in diameter. A linear scar one inch long was found on the dorsum of the left foot as well as a linear scar about quarter of an inch long on the base of the dorsal surface left second toe. Over the mid point of the right leg anteriorly was a scar about half an inch in diameter.

5. All the scars with the exception of the two linear scars on the shoulders are consistent in appearance with having been caused during the period December, 1958 and March 1959 and are consistent with having been caused by severe assault with a blunt instrument.

In the case of the two linear scars of the dorsum of the left foot the appearance is consistent with having been caused by a sharp instrument.

(sgd.) H. GORDON

Sworn to at Johannesburg on this the 28th day of April, 1959, by the Deponent who has acknowledged that he knows and understands the contents of this affidavit.

Before me,

(Signature illegible)
Commissioner of Oaths
S.A. Police, Rosebank

AFFIDAVIT "N"

I, the undersigned, ARMISTICE HELENA VILJOEN do hereby make oath and say :—

1. That I together with my husband carry on the business of Blue Valley Dairy Farm on a small-holding in the District of Bryanston, Johannesburg.

2. On or about the 24th October, 1958, the husband of a domestic servant of mine, was taken by me to the Pass Office in Roodepoort

to ascertain whether it was in order for me to employ him on the farm. The name of the boy was DOUGLAS KUMALO and was known to me as the husband of our servant and the father of her three children. At the Roodepoort Office we saw a Mr. Wheeler who examined Douglas' permit and then advised that his permit had expired in 1957. He said that DOUGLAS was a foreign Native and would have to go back to Rhodesia for six months. Mr. Wheeler said that he would have to keep DOUGLAS at the Pass Office and on the following day, Monday he would be sent to Johannesburg and from there to the Native Commissioner's Office in Nigel.

3. In view of the fact that the 24th October was a Friday and DOUGLAS could not then be taken to Johannesburg until the following Monday, I asked Mr. Wheeler to allow me to take the boy home to enable him to collect his few belongings and say goodbye to his wife and children. I gave Mr. Wheeler an undertaking that I would see that DOUGLAS was taken to the relevant office of the Johannesburg Pass Office on Monday. My request was refused and Mr. Wheeler said "I can't let you take him out of that door". I then gave DOUGLAS an envelope bearing my name and address and told him to write to his wife, Susie, care of myself, and let her know where he was and when he reached Rhodesia.

4. At no time was DOUGLAS asked, in my presence, whether he had the fare to go to Rhodesia, nor in my presence that he had to have his fare. I was not told and nor was DOUGLAS told in my presence that he would have to do farm work, this subject was not discussed at all.

5. During February of this year, at his wife's request, I telephoned the Native Commissioner's Office in Nigel to ascertain when he had left for Rhodesia and when and whether he may be expected back. I was then told for the first time that he had not in fact left the Union at all and had been sent to work on the farm of Mr. P. J. Potgieter in the Heidelberg District. I was surprised at this information as it conflicted with what I had been told earlier by Mr. Wheeler. I was further informed that DOUGLAS had been asked whether he would like to sign a six month's contract to work on a farm and that he had agreed. This contract had been signed and his six months would be up on the 29th April 1959. I asked the Native Commissioner's Office why DOUGLAS had been sent to work on a farm when he had been given to understand that he was being returned to Rhodesia. I was then told that DOUGLAS did not have the train fare to go to Rhodesia and he had to earn it in this way. I expressed my surprise at it being necessary to work for six months to earn sufficient money to pay for his return to Rhodesia, which fare only amounted to between £3 (three) £4 (four) pounds, but I was unable to take the matter further with the official to (whom) I spoke at that office.

6. I then wrote a letter to Mr. P. J. Potgieter requesting him to release DOUGLAS and allow him to work the unexpired portion of his contract on our dairy farm, as his wife and children were destitute, and in this way DOUGLAS could contribute to their support. I received no reply to my letter.

7. I explained the foregoing to the wife of DOUGLAS and promised to communicate with the official again on the 29th April, 1959, when his contract with Potgieter had expired and find out when DOUGLAS would be leaving for Rhodesia.

8. On or about Saturday the 28th March, 1959, DOUGLAS arrived at our farm and stated that he had run away from Potgieter's farm on the previous Thursday. He stated that he had been beaten continuously by the Boss boys on Potgieter's farm. I saw scars on his head and body and his skin was scaly. He stated that he had been told by Potgieter that a letter had been received in which it was suggested that he be released and be sent to our farm, but Potgieter told him that he would have to serve another 4 (four) months until the mealies were reaped. DOUGLAS stated that he was in fear of his life and did not wish to go back to the farm. He told me about boys being badly beaten and others who were broken in spirit.

9. DOUGLAS stated that he wished to go to the Police in Roodepoort and give himself up and that he preferred to go to jail than to go back to Potgieter's farm. However, I suggested taking him to Roodepoort Pass Office when a thorough investigation could be made.

10. On the following Tuesday, I phoned Mr. Cook of the Native Commissioner's Office, Roodepoort, and asked whether I could bring DOUGLAS to see him and made an appointment for Wednesday. On Wednesday I saw Mr. Cook with DOUGLAS and advised him of the allegations of ill-treatment and more especially of the more serious allegations of the serious assaults and the alleged death which had occurred on the farm arising out of the assaults. Mr. Cook advised me that Inspectors were sent to the farms and if the farmer had assaulted their workers the farmers were "black-listed".

11. DOUGLAS and I were then referred to Mr. Wheeler and I repeated the allegations to Mr. Wheeler. Mr. Wheeler advised that DOUGLAS had a remedy in that a report could be made to the Police. I advised Mr. Wheeler that in a large farming area Police Stations were far apart and further that there was the fact that DOUGLAS stated that he was under guard all the time.

12. I again asked if I could myself employ DOUGLAS on my farm. I also pointed out that his wife had been left destitute and that if he was employed on my farm they would receive support from him. I also pointed out that he was an elderly, quiet Native, sober and law abiding. Both Mr. Cook and Mr. Wheeler were adamant that I could not employ DOUGLAS and that he would be sent back to Pot-

gieter's farm. They further stated that DOUGLAS would have to serve a further week on the farm to make up for the time he was absent when he ran away. Thereafter I was told that DOUGLAS would return to Rhodesia.

13. DOUGLAS was then removed from the office by a Native constable and I have not seen him since or heard from him, and he has not returned to his wife despite the fact that his contract expired.

(sgd.) A. H. VILJOEN

Thus signed and Sworn to at Johannesburg, this the 6th day of May, 1959, the Deponent having acknowledged and declared that she knows and understands the contents of this Affidavit.

Before me,

(?)
Commissioner of Oaths
Attorney - Transvaal

APPENDIX E

In the Supreme Court of South Africa (Transvaal Provincial Division)

In the matter of:

MARIA MAHLOANE (Widow), Applicant
and
BAZIL FELDT, Respondent

*TO THE HONOURABLE THE JUDGE PRESIDENT AND
OTHER THE HONOURABLE JUDGES OF THE ABOVE
HONOURABLE COURT*

PETITION

The petition of MARIA MAHLOANE (Widow) HUMBLY SHEWETH:

1. Your Petitioner is Maria Mahloane (Widow), the mother of Daniel Mahloane and of four other sons, including James Mahloane, all residing at 74, 17th Avenue, Alexandra Township, Johannesburg. Your Petitioner is approximately seventy years old and came to Alexandra Township about 30 years ago.

2. The respondent is Basil Feldt, a farmer of the farm "Strafontein", in the district of Kendal, Transvaal.

3. Your Petitioner's son Daniel was born on the 5th day of July, 1929, and a baptismal certificate was issued by the Transvaal Basuto Church. Your Petitioner's said son Daniel was born at 3rd Avenue, Alexandra Township and has always lived with your Petitioner. Alexandra Township is your Petitioner's permanent home and is the permanent and only home of your Petitioner's said son Daniel.

4. Your Petitioner states that her said son Daniel has always worked in Johannesburg, and just before Easter of this year he was employed by Schweppes, the cold-drink people, in Doornfontein, Johannesburg, where he earned £3/10/0 per week.

5. During the week following Easter Monday of this year your Petitioner received a message to the effect that Daniel had been arrest-

ed in Alexandra Township on his way to the bus. The same day on which your Petitioner received this message your Petitioner made enquiries about her said son Daniel at the Wynberg Police Station, and your Petitioner was advised that her son was at Court at Wynberg. Your Petitioner then went to the Court where your Petitioner was told that the prisoners had not yet arrived in the Court. These events took place during the early course of the morning of that day.

6. Your Petitioner left the Court and returned home, but again later that day returned to the Wynberg Police Station and asked a Native policeman for permission to see Daniel. Your Petitioner was again told that Daniel had not arrived and was advised to wait outside the Police Station. Your Petitioner waited a long time and later that day your Petitioner saw her said son Daniel accompanied by police together with a number of other men, who had been arrested, coming towards the Wynberg Police Station. Your Petitioner spoke briefly to her son Daniel and Daniel gave your Petitioner his jacket to take home for him and Daniel was then removed and taken to the cells at the said Police Station. Your Petitioner then returned home.

7. On the following day your Petitioner again went to the Police Station at Wynberg and made enquiries from the policeman about her son Daniel and was advised that he was already at the Court.

8. Your Petitioner immediately went to the Court and asked the Native policeman again where her son Daniel was. Your Petitioner was then told to sit in the Court and duly did this. Your Petitioner waited a long time and eventually Daniel's name was called out, but he was not present and did not respond to his name, and as he did not appear at Court the Court dealt with other cases. Your Petitioner then made further enquiries about her son from the police and was directed to a certain building at the back of the Wynberg Police Station. Your Petitioner then went to this building and saw her son in what she was told was the recruiting office. Your Petitioner was told by a native police sergeant to wait outside this office.

9. While your Petitioner was waiting outside the recruiting office your Petitioner was able to see through the door and your Petitioner saw a European man in plain clothes reading from a list and heard that he was calling out the names of the prisoners. As this man called out the names of prisoners, the prisoners came out of the group standing in the room and got into a lorry which had a canvas cover over it. Your Petitioner's son Daniel came outside after his name had been called and your Petitioner spoke to him asking him where he was going, whereupon the said Daniel said that he was being sent to a farm.

10. Your Petitioner then went inside the office and spoke to the European man, who had called out the names, and asked this Euro-

pean man where the said Daniel was going. The said European man advised Your Petitioner that Daniel was going to a farm. Your Petitioner then told this man that her son was too ill to go to a farm. The said man then asked your Petitioner for a doctor's certificate. Your Petitioner advised this man that she did not have a doctor's certificate and dealt only with Native doctors. The European man then said that there was a hospital at the farm and that her son was going to work on the farm for £3 per month. This European man then walked outside and was followed by your Petitioner. The lorry which the prisoners had boarded was just then passing through the gate and it turned and disappeared from sight. Your Petitioner did not know what to do and returned home.

11. Your Petitioner states that she is certain that her son would never have gone to the farm of his own free will. The said son Daniel had never done farm work before and he was ill and needed attention and was certainly not fit enough to do such work even if he wanted to do farm work. In all his work in Johannesburg the said Daniel had always received more than £3 a month and was getting £3/10/0 per week in his last place of employment in Johannesburg. If your Petitioner's son had changed his mind about working in Johannesburg he would most certainly have advised your Petitioner and also your Petitioner would never have consented and agreed to her son working far away and on the farms. Your Petitioner would have got together her said son's few things yet strangely her said son made no mention whatsoever to her of any intention of his to work on the farms. Your Petitioner was nursing her son and looking after him and your Petitioner was satisfied with the way in which her son respected her and supported her in the past. There were no strong arguments or bad feelings between your Petitioner and her son when your Petitioner left home that morning when he was arrested. There was no reason whatsoever why your Petitioner's said son should not advise your Petitioner of any intention to leave Alexandra Township that day or go to the farms.

12. Your Petitioner respectfully refers the above Honourable Court to the Affidavits of the following people, which Affidavits are attached hereto and marked as set out hereunder.

- "A" Basil William Dymond Hitchcock;
- "B" George Kazamule Maluleka;
- "C" Moses Zikalala;
- "D" James Mahloane and "D1"
- "F" Moses Tami Mathebula.

From these Affidavits it is clear to your Petitioner that her said son is being detained on the farm against his will and is guarded day and night by the Respondent and/or his employees. If your Petitioner's

said son Daniel had in fact gone to the farm of his own free will your Petitioner cannot understand why her said son together with many others are locked up at night and during weekends, and are guarded by armed men during the day.

13. Your Petitioner states further that her said son, as will appear from the Affidavit of James Mahloane and the letter received from your Petitioner's said son, which is attached as annexure "D1" to the Affidavit of James Mahloane, that the said son in fact wishes to leave the farm but is unable to do so. Further your Petitioner requested a Mr. Hitchcock of the "Golden City Post" to take her out to the farm to see her son and if possible to bring him back to Johannesburg.

14. Your Petitioner in fact visited that farm on Sunday, the 17th of this month. Your Petitioner was not permitted herself to see where her said son was kept, but her son was brought to her by a European from the farm and by Mr. Hitchcock. When your Petitioner saw her said son your Petitioner was shocked and could not keep from crying in the sight of all. Your Petitioner states that her said son had gone very thin and he looked very ill. He was obviously a very sick man and was wasting away. Your Petitioner's said son asked your Petitioner to take him back and to get him released from the farm. Your Petitioner was unable to talk much to her son as her tears and her crying prevented her from talking, and your Petitioner was too upset at the sight of her son.

15. Your Petitioner was then advised that she could not have her son back, but that the owner of the farm was in Johannesburg and he could not be asked to release your Petitioner's son. Your Petitioner returned to Johannesburg and went to see her attorney. Your Petitioner then instructed her attorney to go with her to the owner of the farm and ask him to return her son. Your Petitioner begs leave to refer to a letter dated the 18th May, which was sent by her attorney to the owner of the farm. From this letter it appears that the owner of the farm refused to release your Petitioner's son stating that her son was required as a witness for the owner of the farm. The said letter is attached hereto marked "E".

16. In the circumstances your Petitioner submits that her said son was sent to the farm against his will and is being forced to remain on the farm where he is being confined wrongfully and unlawfully and against his will and in the custody of the Respondent.

WHEREFORE Your Petitioner prays for an Order calling upon the respondent to produce the body of your Petitioner's son, the said DANIEL MAHLOANE, to the above Honourable Court on the 21st day of May 1959, at 2.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard, to show cause why your Petitioner's

son, the said DANIEL MAHLOANE, should not be released from the Respondent's farm and why the Respondent should not pay the cost of this application, and that short service be condoned.

And Your Petitioner prays for alternative relief.

AND YOUR PETITIONER AS IN DUTY BOUND WILL EVER HUMBLY PRAY.

(sgd.) M. MAHLOANE
Petitioner.

Dated at Johannesburg this the 19th day of May 1959.

VERIFYING AFFIDAVIT

I, the undersigned, MARIA MAHLOANE (Widow) do hereby make oath and say :—

1. That I am the Declarant in the foregoing Petition.
2. That I have had the Petition interpreted and explained to me and that to the best of my knowledge and belief declare the same to be true and correct.

Sworn to and signed at Johannesburg this 19th day of May, 1959, the Deponent having acknowledged that she knows and understands the contents of this affidavit.

Before me,

(sgd.) B. WISEMAN
Commissioner of Oaths
Attorney - Transvaal

I, Have interpreted this Affidavit and the administration of the oath to the Petitioner and explained the contents to her in her own language, Sesutho.

(sgd.)

AFFIDAVIT " A "

I, the undersigned, BASIL WILLIAM DYMOND HITCHCOCK do hereby make oath and say :

1. I am a full-time journalist and newspaperman in the employ of the Sunday Newspaper known as the " Golden City Post ".
2. One James Mahloane consulted the said " Golden City Post " about his brother Daniel, and my assignment was to investigate

this matter. At the request of James Mahloane and Maria Mahloane, the brother and mother respectively of Daniel Mahloane, I accompanied them on Sunday 17th May 1959, to Mr. Basil Feldt's farm "Straffontein" at Kendal in the Eastern Transvaal, to see Feldt and to ask for Daniel's release from the farm.

3. We arrived at the farm "Straffontein" just after 2 p.m. At the farm house a white man asked me what I wanted. I said we wanted to see Daniel Mahloane and that Maria, his mother, wanted her son to leave the farm and to return home with us.

4. This man then advised me that he was the Manager and that the owner, Mr. Feldt, was in Johannesburg for the week-end. He stated that he could not release Daniel without Mr. Feldt's consent. I then repeated the request to see Daniel and the manager agreed to bring him to the yard outside the farm house. He intimated that we should remain where we were and he would bring Daniel to see us. Nevertheless I asked him to allow me to accompany him to fetch Daniel and he agreed to my request and we drove across a field to an outhouse.

5. When we arrived the main gate was locked. The Manager called to two Natives armed with knobkerries, one of whom produced a key and unlocked the gate. The manager and I walked through the gate and went across a small yard to a half-open door leading to a room.

6. When we entered the room I was appalled at what I saw. I have in the course of my journalistic career over many years investigated living conditions in notorious jails, slums and refugee camps in the Far East, England and Africa, but I have never before seen human beings living in more squalid surroundings and in such abject filth and misery as those I encountered when I entered that room. That Sunday was a bitterly cold day and the men had gathered some wood and had lit a fire in the room. There was no open window and the room was in semi-darkness. The smoke was so thick that it was almost impossible to see from one end of the room to the other. Sacks were scattered on the floor which was filthy, as were the walls. The stench of dirty bodies, smoke and general filthiness was overpowering. There were about thirty men in the room sitting in groups on the floor. They looked gaunt and ill and were inadequately clothed. Some sat head in hands on three rickety sack-covered wooden benches.

7. After stumbling around this room, we found that Daniel was not there and I followed the manager into the room next door. Conditions in this room were even worse and I did not see any windows at all. The room was practically in darkness. It was then about 2.45 p.m. Daniel was found and I left the room accompanied by the Manager and Daniel.

8. After we had walked out of the main gate a Native with a knobkerrie locked the gate again.

9. When we arrived at the farm house Daniel's mother Maria broke down when she saw her son. It took her some time before she was able to control her sobbing. She said something to Daniel which I did not understand but she was obviously in distress at his appearance. Daniel looked thin and ill. He was also overcome with emotion at seeing his mother and brother, and told me that he was hungry and ill. He wore tattered trousers, a shortsleeved jersey and broken shoes. He was shivering. His collar bones protruded.

10. I asked Daniel whether he wanted to go home. He said he was sick with dropsy and he wanted to go home because the conditions on the farm were bad.

11. I asked the Manager what hours the labourers worked. He said they started at 6.30 a.m. and worked until 5 p.m. with a break for lunch. He said that the men were locked up all day on Sundays and that on weekdays they were locked up from about 5 p.m. until 6.30 a.m. I asked the Manager what food the labourers received and he said that they were fed on porridge, and received meat on Saturdays. They were given water to drink.

12. Before I left the farm Daniel again said he wanted to return home, but the Manager called a Native armed with a knobkerrie and Daniel was escorted back to his cell.

(sgd.) B. W. D. HITCHCOCK

Signed and Sworn to at Johannesburg on this 21st day of May 1959, the deponent having acknowledged that he knows and understands the contents of this affidavit.

Before me,

.....
Commissioner of Oaths
Attorney - Transvaal

AFFIDAVIT " B "

I, the undersigned, GEORGE KAZEMULE MALULEKA, do hereby make oath and say :

1. I am a Native male, carrying Reference Book No. 3552395, and I was born in Sophiatown on the 15th August 1942. My mother died when I was very young and I came to Alexandra Township to stay with my guardian and my aunt, SALMINA MODI. My father died in the past few years, but I do not know in which year he died.

2. I came to Alexandra Township when I was still small and I stayed at the house of Salmina Modi at 93, 8th Avenue, Alexandra Township. I have always lived with Salmina for as long as I can remember. I have never attended school but for many years before I received my Reference Book I worked for shopkeepers in Alexandra Township. I could not afford to go to school and I worked without a pass, and without trouble, until April of this year.

3. In April 1959 I obtained a Reference Book. I first went to the Peri-Urban authorities at Wynberg and they gave me a note to the Pass Office in Market Street, Johannesburg. I went to the Pass Office in Market Street, Johannesburg, where I obtained my reference book. Thereafter I was sick for about a week and I then went to the Peri-Urban authority again and asked them to give me a document to permit me to seek work. They refused, however, to give me such a document. They also refused to tell me why they refused to give me a document. I did not know what to do and I returned home.

4. I then obtained work for a builder in our yard and he paid me £1/10/0 per week. On or about 4th May 1959 I was at home at about 1 o'clock midday when two Native constables dressed in private clothes came into the house. They asked me for my pass. I gave them my reference book. They looked at my book and ordered me to go with them. Just then my cousin Magdalena, the daughter of Salmina, who stays in the same house as us, arrived home. She saw the constables arresting me and asked them why I was being arrested. They said I was being arrested for "passes". She asked them what the fine was and I think she was told that the fine was £5. I was then removed outside and did not hear what else was said by Magdalena to the police. I was then taken by the police and walked with them through the streets and many other people were collected by the police and later that day we arrived at the Wynberg Police Station. We were taken at first to the Charge Office and later were taken to a cell where we slept.

5. The following morning I was then taken with the others back to the Charge Office where they handed back to me my Reference Book and the belt which they removed from me the day before. A European policeman then called out the names of certain of the people who were together with me and he said they would go to Court. I was then taken with many others to the corrugated iron camp enclosure behind the police station.

6. While I was in this place behind the police station a tall European man, who was not in uniform but wore private clothes came and addressed a group of people with whom I was. He said that if we did not want to go to the farms we would be taken to Bobbejaanspoort for two years. He said further that at Bobbejaanspoort we would work for nothing, but if we went to the farms we would get paid. He told us that the farm to which we were going was called

Straffontein and that we would be paid £3/10/0 per month. He said that we would leave for the farm that day. Some of my group said that they had a job in Johannesburg. This European then told them to stand aside and they then left the camp. I did not protest although I did not want to go to the farm because I thought it would be better to go to the farms for six months than to Bobbejaanspoort for two years.

7. That same afternoon before I left for the farm I saw Salmina. She asked me if I had been to Court and I said no. She asked about paying a fine and then a Native policeman interfered and said that for those who were to go to the farms there was no fine. This native policeman then told Salmina to go away as I was being taken to the farms. A lorry came, it was one with a covered top, with wire netting in the inside. There were three natives with knobkerries and they guarded us when we got on the lorry. About eight of us were taken from Wynberg to the farm that day and we arrived at the farm that evening.

8. When I arrived at the farm a European called me and took my Reference Book from me. He told me that I would get my reference book back when I finished there. He took the Reference Book of the others and certain other articles from them and told them the same thing that he had told me. The same European then told the boss boys to take us to the compound.

9. The compound was a building with one entrance from the outside. We entered the building and the outside door was then locked behind us. When all the volunteers were in the building at night and over the weekends this door was always locked and was guarded by boss boys or night watchmen.

10. That night I was given porridge and potatoes, no other food was given to me. I was able to drink water from a tap. I was given a number of mealie-meal bags for blankets and for my bed. The room was very dirty. The concrete floors were very dusty and were black and there were lice on and in the sacks given to us.

11. I soon found that the food consisted of porridge made out of No. 3 mealie-meal. Occasionally potatoes were added to the porridge and very rarely we got beans as well. On Saturday we also received offal with our porridge, and also a small helping of brown sugar. We never ever received anything hot to drink. On two occasions while I was on the farm I received a portion of skimmed milk.

12. As lavatories we used half-drums. These drums stood in the passage-way and were emptied by us each day into a pit. They were usually emptied before breakfast. Some of the workers, however, did not always use the lavatories when they wished to urinate and our room smelled. Although we were locked in each night and

over the weekends we were nevertheless allowed to get water for ourselves but we were always guarded. At night a big light lit up the building. I think this was done to prevent us escaping.

13. We began work at 5 a.m. There was a break for lunch and we returned from the fields after sunset. Throughout the day we were guarded by boss boys while we worked. There was one boss boy on horseback. Some of the boss boys carried sticks and kerries. There was also a white man who carried a stick. We worked the whole of each day from Monday to Friday but on Saturday we knocked off at three o'clock in the afternoon. Although we knocked off on Saturday we were nevertheless kept under guard all the time but some of the workers who had been there a long time were allowed to wander in the vicinity of the compound.

14. Last Saturday after I knocked off work the owner of the farm told me to wait for him as he was bringing me back to Johannesburg. I waited. He went to his shop which was on the farm and gave me a ten-shilling note and some half-crowns. He also gave me my Reference Book. Later that afternoon he brought me to Johannesburg and dropped me that evening at a certain house in Johannesburg.

15. That night I was examined by a doctor and was given an injection and told to go regularly to the Alexandra Health Clinic.

16. While I was on the farm I never saw a doctor or any inspector. I remember Daniel Mahloane. He was on the farm when I arrived. He was sick and had dropsy and wanted to leave the farm.

X His mark.

Signed and Sworn to at Johannesburg on this 21st day of May, 1959, the deponent having acknowledged that he knows and understands the contents of this affidavit.

Before me,

(sgd.) G. TREVOR
Commissioner of Oaths

This Affidavit and the administration of the oath have been interpreted by me to the deponent in the Zulu language which he knows and understands.

.....

AFFIDAVIT "C"

I, the undersigned, MOSES ZIKALALA do hereby make oath and say that :

1. I am a native male of 17 years, having been born in Alexandra Township at 162, 6th Avenue on the 10th September 1942.

2. I acquired a reference book in 1957 when I was attending school at the Dutch Reformed Church School in 3rd Avenue, Alexandra. I began work in November 1957 at the Post Office in Jeppe Street. I started at a salary of £7 per month.

3. In December 1958 I left the Post Office and did garden work for a certain nursery in Bramley and earned £2/2/6 per week. This work was not completely satisfactory as there were some weeks when I was not able to work a full week as there was not sufficient work.

4. During April 1959 I was arrested after my girl friend had laid a charge of assault against me. I was in gaol for approximately 11 days waiting for my case to come up. I was detained in the Fort at Johannesburg. I came to Court on the last Thursday in April and I was found guilty and received a suspended sentence.

5. Before I went to gaol I lost my Reference Book and reported the loss to the Peri-Urban authorities at Wynberg. The Peri-Urban authorities gave me a note and told me to return in five days' time. When the five days expired I was in gaol and unable to report to the Peri-Urban authorities.

6. On the Friday following my release from gaol I reported to the same Peri-Urban authorities at Wynberg and told them what had happened to me. They gave me a note telling me to return on Monday. They could not attend to me on Friday because the queue was too long.

7. On Monday, 4th May, early in the morning, I started on my way to the same Peri-Urban pass office and had my note on me. Just outside my house in 6th Avenue, I was stopped by two natives, both of whom wore gaberdine trousers, but otherwise wore plain clothes. They demanded my pass. I showed them the note which had been given to me by the Peri-Urban authorities. They told me that the latter had expired. They said that they were not interested in that note. They handcuffed me. They nevertheless allowed me to go to my house and put on a jacket.

8. In the house I asked my mother to take out the two papers that I had in my shirt pocket. She did so and showed them to the police. The one paper was a "ticket" which I had received from the gaol at Johannesburg and the other was the note I had received from the Peri-Urban officials. The police asked me why I did

not report to the Peri-Urban officials on the 13th April. I told them I could not report as I was in gaol.

9. One of the policemen then suggested that I should be released, but the other one insisted on arresting me. They handcuffed me again and arrested me. Before we arrived at the police station the police arrested many more people. We arrived at the police station at about lunch time, and were taken to the "place of corrugated iron" which is situated behind the police station. We were then told by a native constable that we would not be going to Court and would be sold (*thengsile*) to the farms. My name was called out together with the names of many others by a Xhosa policeman who has a scar on his face. I will be able to recognise him and I know where he lives. His name is Lonex. We then all had our thumb prints taken. Our right thumb prints were taken and my right thumb print was placed on three different documents. I do not know what the documents were about, nor were they explained to me, but later one of these documents was given to the driver of the lorry which took us to the farms.

10. After we had been thumb-printed, we were taken outside this corrugated iron place and I then spoke to my mother. I told her that I was sold to the farms. I told my mother I did not want to go and that I was being forced to go. The police then ordered my mother away, asking her at the same time what she wanted to see. My mother told the police that she wanted to see where her son was being taken to. The police then chased my mother away and I did not see her again.

11. At about 2 p.m. a lorry with a canvas top arrived and inside the lorry there was wire netting. We did not get into the lorry until about five p.m. that day. There were three boss boys armed with sticks in the lorry. There was also a Non-European driver. Altogether there were eight of us who were taken to the farm. Two of the eight who were taken to the farm are Moses Matibulu and George Kazamoola.

12. Before I left for the farm a tall white man who I thought was the Native commissioner tore up the documents which I had on me.

13. We arrived at the farm that same night and we were shown who our boss boy was and we were then taken to a building in which we were told we would sleep. There were many others in the building, altogether about 70. We slept on the floor on sacks.

14. We began work at 5 a.m. We were given black porridge and allowed to have water. That was all we had. We were then taken to the fields where we worked until three o'clock when we were again given the same black porridge and water. That was all that we were given. We worked until six and were then taken back to that same building.

15. That night we were given porridge as before and were allowed to drink water. Those who had money were allowed to buy sugar from the store and were escorted to the store. The store is nearby.

16. There were four separate rooms in the building and in the room in which I slept there were about 15 others. The room was full of lice and the mice that were there were very big. The lavatories are in a passage and consist of a half drum which is emptied every morning.

17. Every night the door to the building is locked and a night watchman is on guard. We were kept under lock and key during weekends and the only visitor I ever saw was my mother who came to see me on the Sunday before I left. As far as I know no other people received any visitors.

18. Our bed and blankets consisted of a sack. It was bitterly cold in the night and there was a cement floor. On the first day I arrived I was hit by a white man who was carrying a stick and hit me across my back and complained that I was not working fast enough. That was the only time on which I was assaulted. There were not so many assaults on the farm but I saw others being hit with sticks.

19. My mother came to see me on the Sunday before I left and I complained to her about the ill-treatment and told her I wanted to leave the farm.

20. At 2 a.m. on Wednesday morning, I was woken by the night watchman together with Moses Matibula and we were told to get on the truck which was taking potatoes to town and we came to Johannesburg. We were taken to Wynberg and were then released.

21. I was given no money for the time that I worked on the farm.

22. I know Daniel Mahloane, I met him on the farm. He had arrived there previously. He was sick and wanted to return to Alexandra, he was too sick to escape and is kept on the farm against his will.

(sgd.) MOSES ZIKALALA

Thus signed and sworn before me at Johannesburg, this 19th day of May, 1959, the deponent having acknowledged that he knows and understands the contents of this Affidavit.

.....
Commissioner of Oaths.
Attorney - Transvaal

This Affidavit and the administration of oath have been interpreted by me to the deponent in the Zulu language which he knows and understands.

AFFIDAVIT "D"

I, the undersigned, JAMES MAHLOANE do hereby make oath and say :

1. During April 1959 I received a letter from my mother who asked me to read same to her.

2. The letter was from my brother Daniel. The letter told me Daniel was very ill at the time and said that he had been assaulted. He complained to the farmer about being sick and that the farmer would not give him any medicine. The letter was in his own handwriting and signed by him and he used his nickname Dan as Stranger. He said he wished to return here but the farmer refused to allow him to go. He said the food was very poor.

3. I handed the letter to a Golden City Post Reporter and the copy of the letter is an exact copy and at the hearing of this Application the original will be produced. The letter is attached marked "D 1".

4. On Sunday the 17th of May I accompanied my mother Maria and Mr. Hitchcock to the farm of Mr. Feldt. I saw my brother. He was very thin and ill and his fingernails looked as if they were about to fall off. He was very black. I asked him if he wanted to remain on the farm and he said he wanted to come home as conditions were very bad on the farm. I also heard him tell my mother that he wanted to come home.

(sgd.) JAMES MAHLOANE

SIGNED and SWORN at Johannesburg on this the 20th day of May, 1959 by the Deponent who has acknowledged that he knows and understands the contents of this Affidavit.

Before me,

(sgd.)
Commissioner of Oaths
Attorney-Transvaal

COPY AFFIDAVIT "D1"

B. Feldt
Straffontein,
Box 12,
KENDAL, Tvl.

Dearest Mother,

I want to tell you this. I am still ill. Since we came here everything has not been very good. Now two of the boys are dead, through running away. Their fathers came here to take them away but the boss told their fathers that their sons had run away.

I am waiting for your reply and as soon as I get it I will go to hospital. Maybe I can get a chance there, if I get a chance there you will see me. If I run away I could be shot dead. If one tells them that you are ill it makes them mad. They fight with you and the old-time boys who are killers fight too.

This is for my father who is always my father. *I am very pleased to let him know that I am not well.*

Albert I am glad to let you know that James too is working. I am glad too that Greeve is going to school. I will be very glad if he goes to school and you do not let him loaf.

When I wrote this I cried and my heart was full of tears I just hope that God can help me.

Yours faithfully,
Dan as Stranger.

Mr. Carlson/JM.

AFFIDAVIT "E"

18th May, 1959

EXPRESS REGISTERED POST :

Mr. B. Feldt,
"Straffontein",
KENDAL
Transvaal

URGENT

Dear Sir,

This serves to confirm my telephone conversation with you at approximately 4 p.m. on Sunday, the 17th day of May, 1959.

In this conversation I advised you that I had been instructed by Maria Mahloane and James Mahloane, the Mother and Brother of Daniel Mahloane, to demand from you the immediate release of the said Daniel Mahloane.

I informed you that my instructions were that the said Daniel was being detained on your farm wrongfully and unlawfully and against his will. Further, I informed you that my clients had that very morning gone to your farm with a view to demanding the return of the said Daniel from you personally, but had been told to contact you

by phoning a certain number when they returned to Johannesburg. My instructions are further that when Daniel was seen he intimated that he wished to return to his home in Alexandra immediately. It would appear that you are keeping Daniel locked up at night and over the week-ends and that he is working under guard during the day and you have no right whatsoever to do this.

Finally, I confirm that you refused to release Daniel and stated that you needed him as a Witness in a certain case. I advised you that this was not a good reason for retaining Daniel on the farm as he could be Subpoenaed to give evidence. You then advised me that in any case Daniel had told you that he wished to remain on the farm and that he was not a juvenile. You were not prepared to consent to his return to his home or to release him.

Application is now being made to the Transvaal Provincial Division of the Supreme Court of South Africa for the release of Daniel and for such further relief as is deemed necessary.

Your faithfully,

(sgd.) J. CARLSON

AFFIDAVIT " F "

I, the undersigned, MOSES TAMI MATHEBULA do hereby make oath and say :

1. I was born at 165, Ninth Avenue, Alexandra Township, Johannesburg, about fifteen years ago. Both my parents are deceased. I have always lived at the place where I was born and I know no other home. I attended school at St. Mary's School, Orlanda, and stayed at the Bantu Lads Hostel which is an orphanage at Orlando. I left school about two years ago.

2. I was too young to get a pass and I did gardening work for my relatives who supported me. At about 3 p.m. on a Saturday two months ago five Native Peri-Urban policemen came to my house and demanded my pass. I told them that I was too young to carry a pass. They ordered me to accompany them. Just then my sister arrived and questioned the police and was told that I would be taken to the Wynberg Police Station where my sister could pay a fine of £1. I was then handcuffed and left the house with the police and went to the Peri-Urban offices.

3. At the Peri-Urban office I was told that I was being charged with not having a pass and I was then taken to the Wynberg Police Station where I was locked up for the night. The following morning I was taken to the Wynberg Court and told by the Native Commissioner that I would receive four cuts. I was then taken to "S" Court, Magistrates Court, Johannesburg, where I arrived at about 10 a.m. I waited all day until about 4 p.m. and I was then taken out of Court and into an office. There were eight of us in this office and four Native Policemen in uniform. One of them called us by name and when my name was called I was told to undress and lie down on a bench. I then received four cuts with a cane on my buttocks. Iodine was then applied to my wounds and I was ordered to wait outside for the others. When all of us had been punished we were told to go home. Although I was in pain I had to walk to Alexandra Township that night.

4. About two weeks later I was again arrested in my home. This arrest took place on a Monday morning when Native policemen came into the house and demanded my pass. I again told the police that I was too young to carry a pass but that I was prepared to go to the Peri-Urban office to see if I could get a pass. The police, however, said that they were not interested in my story. They handcuffed me and arrested me.

5. I arrived at the police station at Wynberg about midday and was then taken to a corrugated iron enclosure behind the Police Station. That night I slept in the cells at the Police Station and returned again to the corrugated iron place the next morning.

6. After I had been in this enclosure for some time two European Police came and one of them asked how old I was. I said I was fifteen and he told me to stand aside saying that I would receive cuts. The European police then left and a Native Policeman then told me that I must join the other group as I was going to be sold to the farms. Later a tall European man came and told us that if we did not want to go to the farms we would go to goal and then to Babaanspoort for two years and would work for the Government for nothing. He said if we went to the farms we would get £3/10/0 per month, food and blankets, and that we would do farm work for six months. He did not tell us anything else about the farm, the name of the farmer, or where the farm was.

7. Later a lorry with a canvas top arrived and we were ordered to get inside the lorry. There was wire netting around the lorry underneath the canvas. We were guarded in the lorry by three boss boys who carried sticks. The lorry then took us to the farm and we arrived there after dark.

8. On arrival at the farm we were taken to a building where there were many other people and we were given a number of sacks each

to use as our bed and blankets. The room in which I was told to sleep was very dirty. There were lice and insects crawling around. Our lavatory consisted of a half drum which was placed in the passage outside the room. I was given porridge that night and soon learned that porridge was given for all meals but sometimes we had potatoes as well. On Saturday we were given offal and on one occasion I received some skimmed milk, but never received anything hot to drink. The food was very bad.

9. About three days after my arrival I was hit with a stick across my back by the European foreman. He hit me a number of blows and ordered me to work harder. This happened in the fields. I also saw two other people being assaulted by the boss boys but the European was not present. The foreman usually carries two sticks and a shambok.

10. We worked in the morning from about 6 o'clock until 6 p.m. and we had a break for lunch about midday. While we worked during the day we were guarded by about four boss boys, one on horseback, and also the European foreman came around and watched us every now and then.

11. At night when we returned to the building where we slept the door to the building was kept locked and there were always at least two Natives on guard. There was also a big light which lit up the place and which was put there to prevent us escaping. On week-ends we were kept in our rooms under guard.

12. I know Daniel Mahloane. He was already on the farm when I arrived and he was still there when I left. He was sick but nevertheless worked. He is too sick to escape and because he like all the other workers is always kept under guard he will never escape. He wants to return home but is unable to do so. Indeed everyone who is a labourer and kept in the building wants to leave as the conditions are so bad but they are unable to get away.

13. Last week on Tuesday afternoon Moses Zikalala and I were called by the owner of the farm and told by him that we would be taken back to Johannesburg the following morning. At 2 a.m. the following morning the watchman woke us up and we were told to get on to the lorry delivering potatoes to the market. After we had delivered the potatoes to the market we were taken to Wynberg and then released. I was not paid anything for the work I did on the farm.

(sgd.) MOSES TANI MATHEBULA

Signed

Signed and Sworn to at Johannesburg on this 20th day of May, 1959,
the deponent having acknowledged that he knows and under-
stands the contents of this Affidavit.

Before me,

G. TREVOR
Commissioner of Oaths
Attorney-Transvaal.

This Affidavit and the administration of oath has been interpreted by
me to the Deponent in the Zulu language which he knows and
understands.

.....

IN THE SUPREME COURT OF SOUTH AFRICA

Transvaal Provincial Division

Delivered :

MARIA MAHLOANE, Applicant

versus

BAZIL FELDT, 1st Respondent

The Native Commissioner, ALEXANDRA TOWNSHIP, 2nd Respondent

DE WET, J. :

In this matter an application was brought by the mother of Daniel Mahloane in which she asked for an order that the said Daniel should be produced to the Court and ordered to be released by the first Respondent whom she alleged was wrongfully detaining the said Daniel on his farm.

The matter came before WILLIAMSON, J. who heard the evidence of Daniel and by consent an order was made for his release. At the request of the applicant the second respondent was joined and a rule was issued calling upon both respondents to show cause to this Court on the 4th June, 1959, why they should not jointly pay the applicant's costs or alternatively why one or other of them should not pay such costs.

It appears from the evidence given by Daniel, read with the affidavits sworn to by him later, that the circumstances leading to his

alleged detention on the farm are the following: He had been discharged from employment in January and had thereafter reported at the pass office and had been given a document entitling him to seek employment in the Johannesburg area. He says he had reported regularly at the pass office but had not yet found employment and that the document given him had expired the previous day because there was a long queue and he had not been able to get the document renewed. He was arrested while on his way to the pass office to obtain a renewal. He says that after being arrested he was taken to the Wynberg Police cells and locked up and next morning he was taken to a building at the back of the Wynberg Police Station occupied by officials of the Native Commissioner's Department. He was informed by a native policeman that if his trial proceeded he would be sent to Baviaanspoort for two years, whereas instead he could go to work on a farm and earn money. He says that he and other natives were then interviewed by a European named Wilkens who persuaded him to accept employment on a farm. A form was filled in by Wilkens and he and other natives put their thumbprints on the form and were then shepherded into a lorry and driven to the farm of the respondent. He understood from Wilkens that they would work for six months at a wage of £3/10/0 per month with free quarters, blankets, rations and free medical attention, but says that after he arrived at the farm he found that the rate of pay was £3/10/0 for thirty working days, Sundays being excluded and also rainy days on which it was impossible to work as also days on which he could not work through illness. He says that the housing conditions and food were extremely poor and that they were locked up in a compound under guard when they were not working. He wrote to his mother complaining about the conditions. At no time did he work on this farm or remain there willingly and he says that he regarded his detention on the farm as a punishment.

It appears from the evidence put before the Court by the second respondent that the alleged contract was entered into in pursuance of a scheme in terms of which unemployed natives arrested for petty offences are offered the choice of accepting a contract to work on a farm as an alternative to their being brought before the Court on the charge in respect of which they are arrested. The evidence of Wilkens is that such natives are informed that they have a free choice to accept employment on the farm or not. They are informed that if they refuse to accept such employment they will be returned to the custody of the police. Wilkens denies that he threatened Daniel in any way but is of course not able to say what other officials in his department told the latter while he was waiting to be interviewed by Wilkens. It was also clear from Wilkens' evidence that Daniel was not told by him that the alternative to his accepting the proposed work was that he would be brought to court and probably only ordered to pay a small fine. If he had in fact been fined it seems probable that his

relations would have paid the fine for him. His mother was at the native commissioner's office waiting to ascertain what was being done with him but only saw him at the stage when he was being driven away to the farm.

Some argument was addressed to the Court in regard to the validity of the scheme in question inasmuch as there are specific provisions in the Criminal Procedure Act in regard to the procedure to be followed in respect of arrested persons and it is suggested that the scheme in question conflicts with these provisions. In the view I take of the matter it is not necessary to express any opinion on this question. The question for decision is whether Daniel remained on the respondent's farm in pursuance of a valid contract.

It does not appear from the papers before the Court exactly what the charge against Daniel was nor does it appear that he was aware of what the charge was. He may very well have been under the impression that he was likely to be charged under the Urban Areas Act with being an idle or undesirable native in which case he might possibly have been sent to a Work Colony for a period of two years. There is in my opinion no reason to disbelieve his evidence that he was induced to enter into the contract by fear of being sent to a Work Colony. It is necessary to state at this stage that neither respondent wishes evidence to be heard in the matter and the Court is asked by the Respondents to decide the matter on the paper before it. The applicant has tendered the *viva voce* evidence of the witnesses who have deposed on her behalf, but it is conceded that the hearing of such evidence will only be necessary if the Court holds that the probabilities favour the respondents. There is, however, no contradiction of Daniel's evidence that threats were uttered by employees of the department who Daniel could reasonably believe spoke with authority. It is also conceded by Wilkens that there might have been a misunderstanding in regard to the terms of employment accepted by Daniel. At the stage when Daniel is alleged to have entered into the contract he was a prisoner under arrest. He was offered the choice of what he considered to be two evils. If the two alternatives had been clearly and fairly explained to him it might be argued that he had entered into the contract freely and voluntarily. But it is clear that he had no proper understanding of the position and this vitiates the consent which he is alleged to have given. There is the additional factor that there was no agreement in regard to the terms of employment as far as salary and period of work is concerned. For these reasons it must be held that the contract was not binding on Daniel and was not enforceable against him.

The only remaining question is whether Daniel at a later stage voluntarily agreed to remain working for the first respondent. It appears from the evidence of an attorney that he interviewed Daniel at the request of the first respondent, and that Daniel told him that

he had been unwilling to accept the contract in the first place but that he was now willing to finish the contract. But when Daniel gave evidence before WILLIAMSON, J. he said that he had been forced to enter into the contract and did not wish to remain on the farm. If in fact he told the attorney that he was willing to remain it seems probable that he said this only on the assumption that his contract was valid and enforceable or, as he says, because his employer told him to say so.

In view of the conclusion to which I have come it is unnecessary to decide whether the allegations that the labourers on the first respondent's farm are treated like prisoners or slaves can be substantiated. There is a conflict of evidence on this point on which I wish to express no opinion except that the matter calls for investigation by the Native Affairs Department. It is clear that Daniel was induced to remain on the farm on the basis of a contract which the Court now finds was not a binding one and that he was entitled to be released and to approach the Court for his release. It is also clear that the conduct of the second respondent's officials has been responsible for this state of affairs. The first respondent on the other hand cannot escape blame for keeping a labourer on his farm without a contract. An official of the Department acted as his agent in entering into the contract and if no binding contract eventuated he cannot escape responsibility for attempting to enforce a non-existent obligation.

Accordingly the first and second respondents are ordered to pay the costs of these proceedings jointly and severally.

APPENDIX F

Proclamations by the Governor-General

EXTRAORDINARY GOVERNMENT GAZETTE

Cape Town, 30 March, 1960 - No. 6396

PROCLAMATION

BY HIS EXCELLENCY THE HONOURABLE CHARLES ROBBERTS SWART,
GOVERNOR-GENERAL OF THE UNION OF SOUTH AFRICA.

No. 86.]

[30th March, 1960.

CALL OUT AND MOBILIZATION OF PORTION OF THE CITIZEN FORCE

UNDER the powers vested in me by sub-section (1) of section *ninety-two* of the Defence Act, 1957 (Act No. 44 of 1957), I hereby call out and mobilize the units of the Citizen Force named in the subjoined schedule for service in the prevention or suppression of internal disorder in the Union or in the preservation of life, health or property or the maintenance of essential services and I hereby command every member of each of such Citizen Force units to report personally for such service at a time and place determined and appointed by the Commandant-General, South African Defence Force, or any other officer authorized thereto by him.

GOD SAVE THE QUEEN !

GIVEN under my Hand and Great Seal at Cape Town on this Thirtieth day of March, One Thousand Nine Hundred and Sixty.

C. R. SWART,
Governor-General.

By Command of His Excellency the Governor-General-in-Council.

J. J. FOUCHÉ.

SCHEDULE

Natal University Regiment (N.F.A.)
Transvaal Scottish
Royal Durban Light Infantry
Natal Mounted Rifles
Umvoti Mounted Rifles
S.A. Irish Regiment
Johannesburg Regiment
Regiment Noord Natal
Pretoria Highlanders
Regiment Algoabaai
Regiment Boland
Regiment Groot Karoo
Regiment Vaalrivier
2 Seineskadron
6 Seineskadron
8 Seineskadron
3 Light Field Ambulance
4 Field Ambulance

EXTRAORDINARY GOVERNMENT GAZETTE

Cape Town, 30 March, 1960 - No. 6403

PROCLAMATION

BY HIS EXCELLENCY THE HONOURABLE CHARLES ROBBERTS SWART,
GOVERNOR-GENERAL OF THE UNION OF SOUTH AFRICA.

No. 90.]

[30th March, 1960.

WHEREAS in my opinion it appears that circumstances have arisen in the areas specified in the attached Schedule which seriously threaten the safety of the public and the maintenance of public order, and the ordinary law of the land is inadequate to enable the Government to ensure the safety of the public and to maintain public order :

NOW THEREFORE, acting under the powers vested in me by section *two* of the Public Safety Act, 1953 (Act No. 3 of 1953). I hereby declare that a state of emergency exists within the areas specified in the attached Schedule as from the 29th March, 1960.

GOD SAVE THE QUEEN !

GIVEN under my Hand and Great Seal at Cape Town on this
Thirtieth day of March, One Thousand Nine Hundred and Sixty.

C. R. SWART,
Governor-General.

By command of His Excellency the Governor-General-in-Council.

F. C. ERASMUS.

SCHEDULE

Magisterial districts of Barkly-West, Bellville, Bizana, Caledon, Cradock, Grahamstown, Herbert, The Cape, Kimberley, King William's Town, Kokstad, Kuruman, Mafeking, East London, Paarl, Peddie, Port Elizabeth, Queenstown, Simonstad, Somerset West, Stellenbosch, Taung, Uitenhage, Umtata, Umzimkulu, Victoria East, Vryburg, Warrenton, Wellington, Worcester and Wynberg, Cape of Good Hope;

Alfred, Durban, Estcourt, Inanda, Ixopo, Klip River, Lower Tugela, Newcastle, Pietermaritzburg, Pinetown, Port Shepstone, Umbumbulu and Umzinto, Natal;

Benoni, Bethal, Boksburg, Brakpan, Ermelo, Germiston, Groblersdal, Heidelberg, Johannesburg, Kempton Park, Klerksdorp, Krugersdorp, Letaba, Lichtenburg, Lydenburg, Marico, Middelburg, Nigel, Pietersburg, Piet Retief, Potchefstroom, Pretoria, Randfontein, Roodepoort, Rustenburg, Schweizer-Reneke, Sibasa, Soutpansberg, Springs, Standerton, Vanderbijlpark, Vereeniging and Witbank, Transvaal;

Bloemfontein, Harrismith, Kroonstad, Parys, Sasolburg and Welkom, Orange Free State.

PROCLAMATION

BY HIS EXCELLENCY THE HONOURABLE CHARLES ROBERTS SWART,
GOVERNOR-GENERAL OF THE UNION OF SOUTH AFRICA.

No. 91.]

[30th March, 1960.

WHEREAS a state of emergency has been declared in terms of section *two* of the Public Safety Act, 1953 (Act No. 3 of 1953), to exist within the areas specified in the attached schedule as from the 29th March, 1960 and

WHEREAS I deem it necessary and expedient to provide by regulation for the safety of the public, the maintenance of public order, the termination of the said state of emergency and for dealing with circumstances which in my opinion have arisen or are likely to arise as a result of the said state of emergency;

NOW THEREFORE, acting under the powers vested in me by section *three* of the Public Safety Act, 1953 (Act No. 3 of 1953), as amended, I hereby make the regulations contained in the Annexure hereto to be of force and effect in the said areas, and in terms of paragraph (*b*) of sub-section (2) of the said section I hereby declare that subject to the provisions of regulation *twenty-six*, the said regulations shall be deemed to have come into operation on the 29th March, 1960.

GOD SAVE THE QUEEN !

GIVEN under my Hand and Great Seal at Cape Town on this Thirtieth day of March, One Thousand Nine Hundred and Sixty.

C. R. SWART,
Governor-General.

By Command of His Excellency the Governor-General-in-Council.

F. C. ERASMUS.

SCHEDULE A

Magisterial districts of Barkly-West, Bellville, Bizana, Caledon, Cradock, Grahamstown, Herbert, The Cape, Kimberley, King William's Town, Kokstad, Kuruman, Mafeking, East London, Paarl, Peddie, Port Elizabeth, Queenstown, Simonstad, Somerset West, Stellenbosch, Taung, Uitenhage, Umtata, Umzimkulu, Victoria East, Vryburg, Warrenton, Wellington, Worcester and Wynberg, Cape of Good Hope;

Alfred, Durban, Estcourt, Inanda, Ixopo, Klip River, Lower Tugela, Newcastle, Pietermaritzburg, Pinetown, Port Shepstone, Umbumbulu and Umzinto, Natal;

Benoni, Bethal, Boksburg, Brakpan, Ermelo, Germiston, Groblersdal, Heidelberg, Johannesburg, Kempton Park, Klerksdorp, Krugersdorp, Letaba, Lichtenburg, Lydenburg, Marico, Middelburg, Nigel, Pietersburg, Piet Retief, Potchefstroom, Pretoria, Randfontein, Roodepoort, Rustenburg, Schweizer-Reneke, Sibasa, Soutpansberg, Springs, Standerton, Vanderbijlpark, Vereeniging and Witbank, Transvaal;

Bloemfontein, Harrismith, Kroonstad, Parys, Sasolburg and Welkom, Orange Free State.

ANNEXURE B

EMERGENCY REGULATIONS

INTERPRETATION

1. In these regulations, unless the context otherwise indicates—
 - (i) “Act” means the Public Safety Act, 1953 (Act No. 3 of 1953); (xii)
 - (ii) “commissioned officer” means a commissioned officer in the forces; (vi)
 - (iii) “forces” means the South African Defence Force established under the Defence Act, 1957 (Act No. 44 of 1957), the South African Police established under the Police Act, 1958 (Act No. 7 of 1958) and the body of persons appointed under subsection (1) of section *fifty-seven* of the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957) for maintaining law and order upon the railways and at the harbours; (iv)
 - (iv) “*Gazette*” in the application of the regulations to the Union, means the *Government Gazette* of the Union, and in the application of the regulations to the Territory, means the *Official Gazette* of the Territory; (x)
 - (v) “magistrate” means a magistrate in charge of a magisterial district and includes an acting magistrate; (iii)
 - (vi) “Minister” means the Minister of Justice; (v)
 - (vii) “peace officer” means a peace officer as defined in section *one* of the Criminal Procedure Act, 1955 (Act No. 56 of 1955); (xi)
 - (viii) “person” includes any authority or institution; (ix)
 - (ix) “print” means produce by printing, typing or by any method of multiplication; (i)
 - (x) “public place” means any place to which the public or a section of the public has access, whether on payment or not, or a bar, lounge, drawing-room or other room in an hotel or boarding-house to which the guests generally have access; (viii)
 - (xi) “subversive statement” means any statement which is calculated or likely to have the effect—
 - (a) of subverting the authority of the Government or the legislature; or
 - (b) of inciting the public or any section of the public or any person or class of persons to resist or oppose the Govern-

ment or any Minister of State or Administrator or official or member of the forces, in connection with any measure adopted in pursuance of any of these regulations or in connection with any other measure relating to the safety of the public, or the maintenance of public order or the application of the law; or

- (c) of engendering or aggravating feelings of hostility in the public or any section of the public or any person or class of persons towards any section of the public or person or class of persons; or
- (d) of causing panic, alarm or fear among the public or any section of the public, or of weakening the confidence of the public or any section of the public in the successful termination of the state of emergency, unless the statement is proved to be a true and complete narrative; (vii)

(xii) "writing" means any visible representation of letters, figures, signs or symbols. (ii)

PROHIBITION OF CERTAIN GATHERINGS OR PROCESSIONS

2. (1) A magistrate or commissioned officer may by means of a notice published or conveyed in any manner which the said magistrate or the said officer deems most suitable to inform the public in any area, prohibit the holding in that area or any defined portion thereof of any particular gathering or procession of more than a number of persons determined by him, or all gatherings or processions of more than the number of persons so determined (except such gatherings or processions as the said magistrate or commissioned officer may have specially authorized): Provided that the preceding provisions of this sub-regulation shall not apply in connection with—

- (a) a gathering held exclusively for the purpose of divine worship in a building ordinarily used for such worship, or for the purpose of instruction imparted under any law; or
- (b) a gathering or procession held exclusively in connection with a funeral or the cremation of the body of a deceased person who has died from causes other than violence committed during a state of emergency; or
- (c) a meeting of the members of a statutory body of persons, held exclusively for the purpose of transacting any business of that body; or
- (d) a meeting of the members of an Industrial Council, Employers Organization or Trade Union duly registered in accordance with the provisions of the Industrial Conciliation Act, 1956 (Act No. 28 of 1956) convened in accordance

with its constitution and held exclusively for the purpose of transacting the lawful business of the said Council. Organization or Union; or

(e) a gathering held exclusively for the purpose of a theatrical or cinematographic entertainment; or

(f) a gathering held exclusively for the purpose of a wedding; or

(g) a gathering or procession of a nature or for a purpose specified in the notice.

(2) Any person who is present at a gathering or takes part in a procession which has been prohibited under sub-regulation (1) shall be guilty of an offence, unless it is proved that he did not know and could not reasonably be expected to have known that the gathering or procession was prohibited, or that he did not voluntarily take part in the said gathering or procession.

(3) In any proceedings before a court in which it is relevant whether a certain gathering or procession was a gathering or procession to which the provisions of sub-regulation (1) apply it shall be presumed that the said gathering or procession was a gathering or procession to which the sub-regulation applies unless the contrary is proved.

DISPERSAL OF GATHERINGS OR PROCESSIONS

3. Whenever as the result of a gathering, procession or the conduct of certain persons, whether lawful or prohibited, a magistrate or commissioned officer is of the opinion that the public safety or the maintenance of public order is or may be thereby endangered, or that such gathering, procession or conduct could result in life or property being exposed to danger, such magistrate or commissioned officer or a police officer of a rank not lower than the rank of sergeant duly authorized thereto by a magistrate or commissioned officer, may order the persons so gathered or conducting themselves or forming the procession to disperse or to discontinue such conduct and to this end he shall endeavour to draw the attention of such persons in a manner which appears to him best suited to the circumstances and he shall command them in a loud voice to disperse or to discontinue the conduct in question forthwith and shall warn them that if they fail to disperse or discontinue such conduct within a space of time stipulated by him, force will be used. The command shall be uttered thrice and if the persons in question fail to disperse or to discontinue the conduct within the time specified such magistrate, commissioned officer or authorized police officer may order the gathering or procession to be dispersed or the conduct to be terminated by the use of force : Provided that the degree of force so used shall as far as possible be limited to the achievement of the objects for which it is applied; and provided further that firearms or other weapons likely to cause serious bodily injury shall not be used unless in the

opinion of the magistrate, commissioned officer or authorized police officer such a course is essential in the public interest or for the protection of life or property.

ARREST AND DETENTION OF PERSONS

4. (1) The Minister, or a magistrate or commissioned officer, may cause to be arrested and detained or himself arrest and detain with or without warrant or other order of arrest or detention any person whose arrest and detention is, in the opinion of the said Minister or such magistrate or commissioned officer desirable in the interest of the public order or safety or of that person or for the termination of a state of emergency.

(2) The Minister may cause any person arrested and detained as aforesaid to be detained during such period as the Minister may determine, and may release him at any time either unconditionally or upon any condition which the Minister may think fit to impose.

(3) If authorized thereto by the Minister a magistrate may, without ordering arrest or detention, as is provided in sub-regulation (1), impose conditions on any person whose conduct in the opinion of the said magistrate has been such as to make it desirable in the interests of public order or safety or of that person that his activities be controlled. In every such case the magistrate shall issue to the person concerned a certificate, styled "A Certificate of Exemption from Detention", which shall set forth the conditions imposed upon him and such further particulars and conditions as the Minister may direct.

(4) Any person who contravenes or fails to comply with any conditions imposed upon him under sub-regulation (2) or (3) shall be guilty of an offence.

(5) The Minister may make rules for the administration and good government of and the maintenance of order at any place where persons are being detained pursuant to the Act or these regulations and may appoint so many fit and proper persons as to him seems necessary in order to give effect thereto.

(6) Such rules may provide for sanctions for their enforcement by way of—

- (a) the imposition of the duty to perform certain specified work in the said place of detention and in connection therewith during a specified period not exceeding fourteen days; or
- (b) a fine not exceeding ten pounds or in default of payment of such fine confinement in a specified room, building or locality for a period not exceeding ten days; or
- (c) confinement in such a room, building or locality in company with others or apart from any other person for a period not exceeding thirty days.

(7) Any person arrested or detained under this regulation who—
(a) escapes; or
(b) knowingly assists any person who has been so arrested or is so detained to escape or to attempt to escape from custody; or
(c) gives any such person who escapes or attempts to escape any assistance with intent thereby to prevent or hinder his apprehension,
shall be guilty of an offence.

(8) Any person other than a person who has been arrested or is detained under this regulation who—

- (a) knowingly assists any person who has been so arrested or is so detained to escape or to attempt to escape from custody; or
- (b) knowingly harbours any person who has been so arrested or detained and who has escaped from custody, or gives any such person any assistance with intent thereby to prevent or hinder his apprehension; or
- (c) without the authority of the officer in command of any place of detention—
 - (i) delivers or transmits any article whatsoever to any person who is so detained in that place; or
 - (ii) assists any such person to effect the conveyance of any article whatsoever out of that place,

otherwise than in accordance with the rules made under sub-regulation (5) or through any channel other than the channels provided by those rules,
shall be guilty of an offence.

DISSEMINATION OF SUBVERSIVE STATEMENTS

5. (1) Any person who—

- (a) prints or causes to be printed any subversive statement; or
- (b) distributes or circulates any subversive statement among the public or any section of the public or who supplies or offers to supply any written or printed subversive statement to any other person, whether at a price or not; or
- (c) displays any writing conveying any subversive statement in such a position that it is visible from any place to which the public has access; or
- (d) utters or by means of a recording apparatus plays any subversive statement in the hearing of any other person.

shall be guilty of an offence.

(2) No prosecution shall be instituted for any contravention of sub-regulation (1) except by the express direction of an attorney-general.

THREATS OF HARM, HURT OR LOSS

6. Any person who directly or indirectly—
- (a) verbally threatens to inflict upon any other person any harm, hurt or loss, whether to his person or his property or in any other way; or
 - (b) writes, prints or transmits or is a party to the writing, printing or transmission of any document which threatens the infliction upon any other person of any harm, hurt or loss, whether to his person or his property or in any other way.
- shall be guilty of an offence.

SEIZURE OF BOOKS OR DOCUMENTS

7. The Minister or a magistrate or commissioned officer may by order under his hand authorize the seizure of any book or document specified in the order which in his opinion contains any information capable of being used in any attempt to hamper the maintenance of public order or to endanger the safety of the public.

SEARCH FOR PUBLICATIONS SUSPECTED TO BE OF SUBVERSIVE CHARACTER

8. If at any time the Minister or a magistrate or a commissioned officer has reason to suspect that any person or association of persons has on his premises any publication which, in the opinion of the Minister, the said magistrate or commissioned officer is of a subversive character, the Minister or such magistrate or commissioned officer may by order under his hand authorize a search of the said premises and the removal therefrom of any publication for examination.

SEIZURE AND CONFISCATION OF PUBLICATIONS OF A SUBVERSIVE CHARACTER

9. (1) If the Minister is satisfied, solely on examination of any publication or series of publications published by any person or association of persons, that there is in the said publication or series of publications a systematic publishing of matter which is, in his opinion, of a subversive character, he may by order under his hand, published in the *Gazette*, apply the provisions of this regulation to that particular publication or to all publications published by that person or association of persons.

(2) No person shall import, print, publish or distribute or be in any way concerned in the importation, printing, publishing or distribution of any publication to which this regulation applies.

(3) If an order of the Minister under this regulation specifies by name a publication which is a newspaper, journal, magazine or other periodical publication, such order shall apply also—

- (a) with respect to all subsequent issues of such newspaper, journal, magazine or other periodical publication; and
- (b) with respect to any publication published under any other name, in continuation of or in substitution for the publishing of the publication named in the order.

(4) If an order of the Minister under this regulation applies the provisions of this regulation to all publications published by a specified person or association of persons, such order shall apply with respect to all publications published by that person or association of persons whether published before or after the date of making such order.

(5) The Minister may by order under his hand direct the seizure, confiscation and disposal as he may deem fit of any publication or series of publications in respect of which an order under sub-regulation (1), applies.

DEFINITION OF PUBLICATION FOR PURPOSES OF REGULATIONS *Eight* AND *Nine*

10. In regulations *eight* and *nine*, the expression "publication" means any book, paper, newspaper, pamphlet, magazine, periodical, letterpress, writing, print, picture, engraving, lithograph, painting, drawing or other similar representation and any gramophone, machine or tape record or similar device for reproducing speech and the expression "subversive character" has a meaning corresponding to that of "subversive statement" as defined in regulation *one* of these regulations.

INVESTIGATION CONCERNING SUSPECTED ASSOCIATIONS

11. (1) If the Minister has reason to suspect that any association is in any way connected with any matter relating to the state of emergency, he may by order under his hand addressed to a magistrate or any named person require him to summon any person whom the Minister has reason to believe may have any information or may have in his possession or custody or under his control any book, document or object relating to that association.

(2) On receipt of the Minister's order the magistrate or named person (in this regulation referred to as the authorized officer) shall summon or cause to be summoned the said person to appear before him at a time and place specified in the summons.

(3) The authorized officer may put to the person so summoned any question—

- (a) which relates to the proceedings, activities and policies of the association;

- (b) the purpose of which is to ascertain which persons are or have been members of the association, and the dates on which they became or ceased to be members thereof;
 - (c) concerning any act or omission which has a bearing on the question whether any person is or has at any time been a member of the association;
 - (d) which the Minister has directed to be put, and may require him to produce any book, document or object in his possession or custody or under his control, which relates to or is suspected to relate to the affairs of the association.
- (4) The authorized officer is hereby empowered to retain any book, document or object produced and to administer an oath or affirmation to the person so summoned, and all statements made in answer to any question put under sub-regulation (3) shall be made under oath or affirmation if the authorized officer so requires.
- (5) The person so summoned shall take an oath or make an affirmation if required to do so by the authorized officer, and shall answer any question put to him by the authorized officer, clearly, directly and fully, to the best of his ability, and shall produce any book, document or object in his possession or custody or under his control which he is required by the authorized officer to produce.
- (6) Any person who has been summoned as aforesaid and who fails or refuses to attend or to answer any lawful questions in the manner specified in sub-regulation (5) or to produce any book, document or object or who knowingly gives a false answer or makes a false statement shall be guilty of an offence.

SUPPRESSION OF SUBVERSIVE ASSOCIATIONS

12. (1) If in the opinion of the Minister the activities of any association of persons, corporate or unincorporated, are detrimental to the public safety or the maintenance of public order or are in any way connected with any matter relating to the state of emergency he may by notice in the *Gazette* direct the said association to discontinue its activities.
- (2) Any association which fails to comply forthwith with any direction in terms of sub-regulation (1) shall be guilty of an offence.
- (3) Any person who in any way participates in the proceedings, or promotes the activities of any association which has been directed to discontinue its activities shall be guilty of an offence whether or not he is a member thereof.

INVESTIGATION CONCERNING AN ASSOCIATION WHICH HAS
BEEN DIRECTED TO DISCONTINUE ITS ACTIVITIES

13. (1) A magistrate or commissioned officer may summon any person whom he has reason to believe may have any information or may have in his possession or custody or under his control any book, document or object relating to any association which has been directed to discontinue its activities under regulation *twelve* to appear before him or before a person mentioned in the summons (in this regulation referred to as the authorized officer) at a time and place specified in the summons, or fixed by the authorized officer and communicated to the person so summoned, to be interrogated or to produce a book, document or object related to or suspected to relate to the affairs of the said association which is in his possession or custody or under his control.

(2) The provisions of sub-regulations (3), (4), (5) and (6) of regulation *eleven* shall apply *mutatis mutandis*, to any interrogation and the production of books, documents and objects under this regulation.

INTERFERENCE WITH LAWFUL GATHERINGS

14. (1) No person shall—

- (a) do any act (which shall include the uttering of any words or other sounds) which is calculated or likely to have the effect of preventing, interfering with or disturbing any lawful gathering or procession; or
- (b) by words or conduct at a gathering or procession at which any such act is done indicate his approval thereof.

(2) No person shall by words or conduct convey any threat that any other person or any member of any class of persons will be subjected to any boycott or will suffer any violence, loss, disadvantage or inconvenience if that person or any member of that class of persons attends or takes part, or fails to attend to take part, in any lawful gathering or procession.

DEFACEMENT OF DOCUMENTS ISSUED BY AUTHORITY

15. No person shall without proper authority destroy, remove, deface, obliterate or alter any document which—

- (a) consists of, contains or sets forth or purports to consist of, contain or set forth—
 - (i) any of these regulations; or
 - (ii) any rule or order made or notice issued under any of these regulations or any notice issued under any such rule or order; or

- (b) has been issued or purports to have been issued by or on behalf of the Government of the Union or the Administration of the Territory or by any person employed by that Government or that Administration, and which consists of, contains or sets forth any information, instruction, request or appeal relating to the safety of the public or the maintenance of public order.

and which has been posted on or affixed to any building, structure or other object: Provided that if the document was posted on or affixed to a building, structure or object without the consent of the person who as owner or lessee or in any other capacity is entitled to occupy that building or exercise control over that structure or object, this regulation shall not apply to the removal of the document from that building structure or object by that person.

SEIZURE OF ARMS

16. (1) The Minister may whenever he deems it necessary for the safety of the public of *the maintenance of public order by notice in the *Gazette* make a general order for the seizure of arms as defined in the Arms and Ammunition Act, 1937 (Act No. 28 of 1937) of the Union or the Arms and Ammunition Proclamation of the Territory (Proclamation No. 28 of 1938, as amended) in the possession or under the control of all persons or of any class of persons and may make an order for the safe custody of any arms so seized.

(2) A magistrate or commissioned officer may whenever he deems it necessary for the safety of the public or the maintenance of public order, by writing under his hand order the seizure of any arm, as defined by the Arms and Ammunition Act, 1937 (Act No. 28 of 1937) of the Union or the Arms and Ammunition Proclamation of the Territory (Proclamation No. 28 of 1938, as amended) in the possession or under the control of any person named in such order and may make an order for the safe custody of any arm so seized.

(3) Any arm seized in terms of sub-regulations (1) or (2) may at any time upon the direction of the Minister be restored to the person in whose possession or under whose control it was at the time of seizure.

RIGHT OF SEARCH

17. (1) If at any time a magistrate or commissioned officer has reason to suspect that there is in the possession of any person or upon any premises or at any place or in any vehicle or vessel or any receptacle whatsoever, any book or document the seizure of

* *Sic*

which has been authorised by an order issued under regulation *seven* or any book or document relating to an association which has been directed to discontinue its activities under regulation *twelve* or any article in respect of which an offence has been committed under any of these regulations or which may afford evidence of the commission of any such offence, he may cause to be searched or himself search that person or those premises or that place or vehicle or vessel or receptacle; and any person who, as a result of a search in terms of this regulation, finds any such book, document or article, shall deal with it in accordance with any direction contained in any such order which relates to it, or in the absence of any such directions, shall deliver it to the magistrate or commissioned officer who may, subject to any general or particular instructions which may be issued by the Minister deal with it in such manner or make such order for its disposal as he thinks fit.

(2) If at any time a magistrate or commissioned officer has reason to suspect that any person who has been arrested or detained under regulation *four* and has escaped from custody, is upon any premises or at any place or in any vehicle or vessel, he may cause to be searched or himself search those premises or that place or vehicle or vessel; and any person, who as a result of a search in terms of this regulation finds any such person, shall arrest him and shall as soon as may be bring him to a place of detention authorised by the Act.

EXAMINATION OF BOOKS

18. Any magistrate or commissioned officer or any person generally or specially authorized thereto by any magistrate or commissioned officer may at any time enter upon the premises of or place occupied by any person who has furnished, or whom he has reason to suspect is a person who is required by or under these regulations to furnish any information referred to in these regulations, and may examine all books, accounts and documents there being, and may demand an explanation of any entries therein, and seize and retain any such books, accounts and documents as may afford evidence of any contravention of or failure to comply with the provisions of these regulations, and may make extracts from and copies of all such entries as may afford evidence of any such contravention or failure.

MEASURES TO TRACE OFFENDERS

19. (1) Whenever the Minister, the Commissioner of the South African Police, a magistrate or commissioned officer is satisfied that any offence has been committed by any person with intent to hamper the maintenance of public order or to endanger the safety of the public or whenever the Minister, the said Commissioner, magistrate or commissioned officer has reason to suspect that any person has

or had the intention to commit any offence with intent so to hamper the maintenance of public order or so to endanger the public safety as aforesaid, the Minister, the said Commissioner, magistrate or commissioned officer may arrest or cause to be arrested any person whom he suspects upon reasonable grounds of having taken part or intending or having intended to take part in the offence or intended offence in question or who in the opinion of the Minister, the said Commissioner, magistrate or commissioned officer is in possession of any information relating to the said offence or intended offence, and the Minister, the said Commissioner, magistrate or commissioned officer may question or cause to be questioned the said person in regard to any matter which has any bearing upon the said offence or intended offence and may detain or cause to be detained him at any place which the Minister, the said Commissioner, magistrate or commissioned officer deems suitable for the purpose until the Minister, the said Commissioner, magistrate or commissioned officer is satisfied that the said person has answered fully and truthfully all questions put to him which have any bearing upon the said offence or intended offence.

(2) The Minister may at any time upon such conditions as he may determine, cause to be released any person arrested and detained under sub-section (1), and if such person fails to comply with any such condition, he shall be guilty of an offence.

ARREST OF OFFENDERS

20. (1) A magistrate or a commissioned officer may with or without warrant cause to be arrested or himself arrest any person who has committed an offence under these regulations or who is suspected upon reasonable grounds, of having committed such an offence.

(2) Any peace officer may without warrant arrest any person whom he sees or has seen committing any offence under these regulations.

(3) Any person arrested as aforesaid shall be dealt with in accordance with the provisions of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

ORDERS

21. (1) The Commissioner of the South African Police may issue such orders as are not inconsistent with these regulations for—

- (a) the demarcation of areas;
- (b) the control of all traffic;
- (c) the closing of any private or public place or any business or industry;

- (d) the removal of the public or any section of the public out of or to any particular area in the interests of public order or safety or the termination of a state of emergency;
- (e) the control of essential services and the security and safety of installations and works connected therewith;
- (f) the periods and hours during which persons may or may not be in the streets or public places; and
- (g) without prejudice to the generality of the powers conferred by this regulation for all matters necessary and desirable to maintain public peace and order and to end the state of emergency.

(2) The Commissioner is hereby empowered to prescribe fines for the contravention of any order issued by him but not exceeding in any case the sum of twenty-five pounds.

(3) In any proceedings before a court in which it is relevant whether the Commissioner has made a particular order, a copy of such order certified under his hand shall be accepted as proof of the making and of the contents thereof.

PROMULGATION OF ORDERS, DIRECTIONS AND NOTICES

22. Any order, or direction made or any notice issued under these regulations shall be sufficiently promulgated if that order, direction or notice—

- (a) is published in a newspaper circulating in the locality in respect of which such order, direction or notice is to apply; or
- (b) is distributed amongst the public and affixed upon public buildings or in prominent public places in that locality; or
- (c) is promulgated by sufficient oral announcement in that locality when, owing to the urgency thereof or for any other cause whatever, it cannot be printed or published or distributed or affixed in terms of paragraph (b); or
- (d) is, in the case of a locality subject to the control of a Bantu chief or headman, notified to that chief or headman.

OFFENCES

23. (1) Any person who—

- (a) contravenes or fails to comply with any of these regulations or with any condition of, or any direction contained in a certificate referred to in these regulations*; or

* *Sic* (regulations).

- (b) fails to comply with any order issued, direction given or demand made under these regulations; or
 - (c) obstructs any person in the performance of any duty or the exercise of any power imposed or conferred under these regulations; or
 - (d) makes any false statement in any information which he is required to furnish by or under these regulations, or gives any false explanation of any entry referred to in regulation *eighteen* knowing it to be false; or
 - (e) falsifies any notice or other document which was issued or which purports to have been issued under these regulations; or
 - (f) in any manner organizes, advises, incites or encourages other persons to stay away from or to retard their work with intent to thwart the Government or to force it to make concessions or to cause general dislocation or to disable any industry or undertaking and any person who is absent from his work or retards his duties with the aforesaid intent; or
 - (g) by word or conduct conveys a threat to any other person or to any class of persons that such person or class of persons will be subjected to any boycott or will suffer any violence, loss disadvantage or inconvenience if the said person or class of persons does or does not take up a certain attitude or follow a certain course of conduct or commits or does not commit a certain act; or
 - (h) without the written permission of the Minister or any person delegated thereto by him discloses in any manner the name or identity of any person arrested or detained under these regulations unless the Minister or the said person delegated has already disclosed the name or identity of the said person; or
 - (i) fails to take adequate steps for the safe custody of any arm or ammunition as defined in the Arms and Ammunition Act, 1937 (Act No. 28 of 1937) of the Union or the Arms and Ammunition Proclamation the Territory (Proclamation No. 28 of 1938), or any explosive referred to in the Explosives Act, 1956 (Act No. 26 of 1956) of the Union or the Explosives Ordinance, 1931 (Ordinance No. 15 of 1931) of the Territory, or any dangerous weapon referred to in section *ten* of the General Law Amendment Act, 1949 (Act No. 54 of 1949) of the Union or section *four* of the General Law Amendment Ordinance, 1956 (Ordinance No. 12 of 1956) of the Territory, or any poison or habit-forming drug referred to in the Medical, Dental and Pharmacy Act, 1928 (Act No. 13 of 1928), which is in his possession or under his control,
- shall be guilty of an offence.

(2) In any proceedings before a court in which it is relevant whether the conduct referred to in paragraph (f) of sub-regulation (1) was committed or undertaken with any particular intent, it shall be presumed until the contrary is proved that it was committed or undertaken with the intent referred to in the said paragraph.

(3) If in any proceedings in which any person is charged with a contravention of paragraph (i) of sub-regulation (1) it is proved that any arm, ammunition, explosive, dangerous weapon, poison or habit-forming drug which was in his possession or under his control was found in the possession or under the control of any person arrested, detained or charged under these regulations, it shall be deemed, unless the contrary is proved, that he failed to take adequate steps for the safe custody of such arm, ammunition, explosive, dangerous weapon, poison or habit-forming drug.

ADMISSIONS AND PRESUMPTIONS

24. (1) In any proceedings in which any person is charged with the commission of any offence under these regulations, any statement contained in any information which he is required to furnish under these regulations, and which has been furnished by him or on his behalf and any statement or record contained in any book, account or document kept by him or by his employee or agent or found upon his premises or upon any land or place occupied by him shall be admissible in evidence against him as an admission of the facts set forth in that statement or record.

(2) Whenever any person is charged with having made or caused to be made a false statement in information which he is required to furnish under these regulations, and it is proved that a false statement appears in the information furnished by him or on his behalf, he shall be deemed, unless the contrary is proved, to have made such false statement or to have caused it to be made, knowing it to be false.

(3) If, in any proceedings before a court of law the question arises whether any association which has been directed to discontinue its activities under regulation *twelve* (hereinafter called the original association), is identical with an association (hereinafter called the later association) formed after the publication in the *Gazette* of the notice containing the direction concerning the original association and it is proved that—

(a) any of the property or books of the original association have been taken over by the later association; or

- (b) the majority of the persons who at the date of the said publication were members of the original association have become members of the later association; or
- (c) the majority of the persons who at the said date were members of the committee or other body which managed the affairs of the original association have become members of the committee which manages the affairs of the later association, the original association shall, notwithstanding the fact that it bears or bore a name other than the name borne by the later association, be deemed to be identical with the later association, unless it is proved that the later association was not formed for the purpose, or partly for the purpose, of bringing about the evasion of the purpose of regulation *twelve*.

(4) If in any proceedings in which any person is charged with the commission of an offence arising out of any act done at any lawful gathering or procession whereby any physical injury was inflicted upon any person, it is proved that at that gathering or procession the person charged contravened the provisions of sub-regulation (1) of regulation *fourteen*, he shall be convicted of the offence with the commission of which he is charged, unless it is proved that in contravening the said provisions he was not acting in the prosecution of a common purpose which existed between him and any other person.

PENALTIES

25. (1) Any person convicted of an offence under these regulations shall, where no penalty is specially provided for such offence be liable to a fine not exceeding five hundred pounds or in default of payment imprisonment for a period not exceeding five years, or such imprisonment without the option of a fine, or both such fine and such imprisonment; and the court by which he is convicted may declare any article by means of which or in respect of which the offence was committed to be forfeited to the State, if the offence was committed in the Union, or to the Administration of the Territory, if the offence was committed in the Territory.

(2) A magistrate's court shall have jurisdiction to impose the penalties prescribed by sub-regulation (1).

ACTS AND OMISSIONS NOT PUNISHABLE AS OFFENCES WITH RETROSPECTIVE EFFECT

26. No act or omission committed prior to the promulgation of these regulations shall be punishable thereunder as an offence unless such act or such omission was punishable as an offence at the time when it was committed.

EXTRAORDINARY GOVERNMENT GAZETTE

Cape Town, 2nd April, 1960 - No. 6406

PROCLAMATION

BY HIS EXCELLENCY THE HONOURABLE CHARLES ROBBERTS SWART,
GOVERNOR-GENERAL OF THE UNION OF SOUTH AFRICA.

No. 94.]

[2nd April, 1960.

CALL OUT AND MOBILIZATION OF PORTION
OF THE CITIZEN FORCE

UNDER the powers vested in me by sub-section (1) of Section *ninety-two* of the Defence Act, 1957 (Act No. 44 of 1957), I hereby call out and mobilise the units of the Citizen Force named in the subjoined schedule for service in the prevention or suppression of internal disorder in the Union or in the preservation of life, health or property or the maintenance of essential services and I hereby command every member of each of such Citizen Force units to report personally for such service at a time and place determined and appointed by the Commandant-General, South African Defence Force, or any other officer authorized thereto by him, *but not before such time and place have been so determined and appointed.*

GOD SAVE THE QUEEN !

GIVEN under my Hand and Great Seal at Cape Town on this First day of April, One Thousand Nine Hundred and Sixty.

C. R. SWART,
Governor-General.

By Command of His Excellency the Governor-General-in-Council.

J. J. FOUCHÉ.

SCHEDULE

South African Army
University of Cape Town Regiment
Duke of Edinburgh's Own Rifles
The Queen's Own Cape Town Highlanders
3 Field Squadron
46 Survey Squadron
3 Signal Squadron

Regiment Tygerberg (C.F.A.)
1 Opsporingsbattery
Regiment Universiteit Stellenbosch
7 Seineskadron
The Kaffrarian Rifles
First City
Prince Alfred's Guard
Regiment Transkei
Durban Regiment

EXTRAORDINARY GOVERNMENT GAZETTE

Cape Town, 2nd April, 1960 - No. 6407

PROCLAMATION

BY HIS EXCELLENCY THE HONOURABLE CHARLES ROBBERTS SWART,
GOVERNOR-GENERAL OF THE UNION OF SOUTH AFRICA.

No. 96.]

[2nd April, 1960.

**CALL OUT AND MOBILIZATION OF PORTION
THE RESERVE**

UNDER the powers vested in me by sub-section (1) of Section *ninety-two* of the Defence Act, 1957 (Act No. 44 of 1957), I hereby call out and mobilize the Permanent Force Reserve, the Citizen Force Reserve and the Reserve of Officers for service in the prevention or suppression of internal disorder in the Union or in the preservation of life, health or property or the maintenance of essential services and I hereby command every member of the said Reserves to report personally for such service at a time and place to be notified by the Commandant-General, South African Defence Force, or any other officer authorized thereto by him, *but not before such times and place have been so notified.*

GOD SAVE THE QUEEN!

GIVEN under my Hand and Great Seal at Cape Town this Second day of April, One Thousand Nine Hundred and Sixty.

C. R. SWART,
Governor-General.

By Command of His Excellency the Governor-General-in-Council.

J. J. FOUCHÉ.

EXTRAORDINARY GOVERNMENT GAZETTE

Pretoria, 11 April, 1960 - No. 6416

GOVERNMENT NOTICE
DEPARTMENT OF PRISONS

No. 551.]

[11 April 1960.

RULES MADE IN TERMS OF THE EMERGENCY
REGULATIONS

By virtue of the powers vested in me by sub-regulation (5) of regulation 4 of the Emergency Regulations set out in Annexure B of Proclamation No. 91 of the 30th March, 1960, and published by *Government Gazette Extraordinary*, No. 6403 of the 30th March, 1960, I, FRANÇOIS CHRISTIAAN ERASMUS, Minister of Justice for the Union of South Africa, hereby make the rules for the administration and good government of and the maintenance of order at any place where persons are being detained pursuant to the Public Safety Act, 1953 (Act No. 3 of 1953) or the above-mentioned Emergency Regulations as set out in the Schedule hereto.

F. C. ERASMUS,
Minister of Justice.

SCHEDULE

RULES FOR THE ADMINISTRATION AND GOOD GOVERNMENT OF AND THE MAINTENANCE OF ORDER AT ANY PLACE WHERE PERSONS ARE BEING DETAINED PURSUANT TO THE PUBLIC SAFETY ACT, 1953 (ACT No. 3 OF 1953), OR THE EMERGENCY REGULATIONS.

RULE 1.—APPLICABILITY OF RULES

The provisions of the Prisons Act, 1959 (Act No. 8 of 1959), the Prisons Regulations, the Prison Service Orders and official instructions of the Commissioner of Prisons, shall apply to all detainees unless such provisions or instructions are inconsistent with any of the following rules.

RULE 2.—INTERPRETATION OF TERMS

In these rules, unless inconsistent with the context—

- (a) "detainee" means a person detained in terms of the provisions of the Public Safety Act, 1953 (Act No. 3 of 1953), or the Emergency Regulations;
- (b) "place of detention" also means a prison.

RULE 3.—VISITS

No person detained in terms of the Public Safety Act, 1953, or the Emergency Regulations shall, during his detention, receive a visit from any person, including a legal adviser, except with the permission of the officer in command of the place of detention in consultation with the local Police authorities.

RULE 4.—LETTERS AND OTHER MEANS OF COMMUNICATION

No person detained in terms of the Public Safety Act, 1953, or the Emergency Regulations shall, during his detention, communicate with any person outside the place of his detention except with the permission of the officer in command of the place of detention in consultation with the local Police authorities.

RULE 5.—READING MATTER

(1) No detainee shall receive daily papers (newspapers), Sunday newspapers or any other literature containing general news and no magazine, book or other literature, except Bibles, sent to or delivered at the place of detention by friends, relatives, other persons, bodies, or organizations, shall be received by the officer in command of the place of detention on behalf of any detainee.

(2) A detainee may purchase out of his private money, by the agency of the officer in command of the place of detention, approved magazines and reading books and if a library is available at the place of detention, books available there may be placed at the disposal of a detainee.

RULE 6.—TOILET REQUISITES

(1) The officer in command of the place of detention shall not receive on behalf of a detainee any toilet requisites sent to or delivered at the place of detention by relatives or friends of a detainee or by another person, body or organization.

(2) A detainee may purchase from private funds to his credit at the place of detention, by the agency of the officer in command of the place of detention, toilet requisites within reasonable limits.

RULE 7.—SMOKING REQUISITES

(1) The officer in command of the place of detention shall not receive on behalf of any detainee any smoking requisites from friends or relatives of a detainee or from any other person, body or organization.

(2) A detainee may purchase from private funds to his credit at the place of detention, by the agency of the officer in command of the place of detention, a reasonable quantity of cigarettes and/or tobacco and matches.

RULE 8.—FOOD

(1) The officer in command of the place of detention shall not receive any food, fruit, sweets, cake or any other edibles or any drink sent to or delivered at the place of detention by relatives, friends, any other person, body or organization on behalf of any detainee.

(2) A detainee may purchase from private funds to his credit at the place of detention, by the agency of the officer in command of the place of detention, food, including cake, sweets, fruit, tinned food and unfermented drink. The officer in command of the place of detention shall, in his discretion, determine the quantity and variety.

RULE 9.—MONEY

The officer in command of the place of detention shall receive and bring into account a reasonable amount of money, paid in on behalf of a detainee.

RULE 10.—PRIVATE CLOTHING

(1) A reasonable supply of private clothing may be received at the place of detention on behalf of a detainee.

(2) Private clothing shall be washed at the place of detention.

RULE 11.—RELIGION

Ministers of Religion or religious workers appointed or to be appointed in terms of the provisions of section *seven* of the Prisons Act 1959 (Act No. 8 of 1959), shall perform the necessary religious duties in respect of detainees belonging to the different religions, denominations or sects, but the local Police authorities shall indicate which of these Ministers of Religion or religious workers, if any, may not have access to the detainees. If there are any detainees belonging to a religion, denomination or sect for which no Minister or religious worker has been appointed, a Minister or religious worker may be appointed subject to the approval of the local Police authorities.

RULE 12.—MEDICAL TREATMENT

(1) All detainees shall, upon admission, be examined by the Medical Officer appointed in terms of section *six* of the Prisons Act, 1959 (Act No. 8 of 1959), and thereafter he shall visit them regularly.

(2) Any medical or dental treatment prescribed by the Medical Officer shall be carried out promptly.

(3) Medical or dental treatment by a doctor who is not the Medical Officer or by a specialist, or hospital treatment outside the

place of detention may be permitted on the recommendation of the Medical Officer in consultation with the local Police authorities.

RULE 13.—DISCIPLINARY CONTRAVENTIONS

(1) A detainee who contravenes the provisions of any of these rules or who fails to comply therewith or who—

- (a) wilfully furnishes false replies to questions put to him by a person employed at the place of detention;
- (b) disobeys a lawful command or order by a person employed at the place of detention or ignores any rule or order;
- (c) is disrespectful towards a person employed at a place of detention or towards a member of the South African Police Force during the execution of his duties;
- (d) uses blasphemous, insolent, threatening, or any other improper language;
- (e) is indecent in language, acts or gestures;
- (f) commits any minor assault;
- (g) without the necessary permission converses with another detainee or other person or in any other way holds intercourse with him;
- (h) sings, whistles or makes unnecessary noise or causes unnecessary trouble or is a nuisance;
- (i) leaves his appointed place of sleeping, eating or recreation without permission;
- (j) in any way disfigures or damages any part of the place of detention or any article therein or any other State property;
- (k) has in his sleeping quarters or possession an unauthorised article or attempts to obtain such an article or commits a petty theft;
- (l) without permission receives from or gives to any person any article, or obtains it without permission in any other way;
- (m) causes discontent, excitement or insubordination among his fellow detainees or participates in an unauthorised conspiracy;
- (n) lodges, false, frivolous or malicious complaints;
- (o) lodges, false and malicious accusations against a person employed at the place of detention, a fellow detainee or other person;
- (p) wilfully loses, destroys, alters, defaces or damages an identification card, document or any other article issued to him;

- (q) commits an act with the intention of endangering his life, injuring his health or otherwise conducts himself to the prejudice of good order and discipline;
- (r) in any way acts contrary to good order and discipline;
- (s) attempts to commit one of the aforementioned acts;

is guilty of a contravention of these rules, and upon conviction an officer of the Prisons Service or the Magistrate of the district in which the place of detention is situated may impose any one of the following sanctions :—

- (a) the imposition of the duty, to perform certain specified work in the said place of detention and in connection therewith during a specified period not exceeding fourteen days; or
- (b) a fine not exceeding ten pounds or in default of payment of such fine confinement in a specified room, building or locality for a period not exceeding ten days; or
- (c) confinement in such a room, building or locality in company with others or apart from any other person for a period not exceeding thirty days.

(2) The procedure of trial of any alleged contravention mentioned in sub-rule (1) shall be in the manner and form, as nearly as practicable, as in summary proceedings in a magistrate's court at the hearing and determination of magisterial cases : Provided that the legal representative of the accused shall only be permitted with the approval of the officer in command of the place of detention after consultation with the local Police authorities.

EXTRAORDINARY GOVERNMENT GAZETTE

Cape Town, 17th May, 1960 - No. 6452

PROCLAMATION

BY HIS EXCELLENCY THE HONOURABLE CHARLES ROBBERTS SWART,
GOVERNOR-GENERAL OF THE UNION OF SOUTH AFRICA.

No. 167.]

[17th May, 1960.

AMENDMENT OF EMERGENCY REGULATIONS

BY VIRTUE of the powers vested in me by the Public Safety Act, 1953 (Act No. 3 of 1953), I hereby amend in accordance with the Annexure hereto, the Emergency Regulations promulgated under Proclamation No. 91 of the 30th March, 1960, and the Emergency Regulations promulgated under Proclamation No. 93 of the 1st

April, 1960, as well as the Emergency Regulations promulgated under Proclamation No. 124 of the 11th April, 1960, as amended by Proclamation No. 97 of the 2nd April, 1960, Proclamation No. 127 of the 22nd April, 1960, Proclamation No. 139 of the 28th April, 1960, Proclamation No. 151 of the 3rd May, 1960, and Proclamation No. 153 of the 12th May, 1960, and hereby declare that the amendment shall be deemed to have come into operation on the 13th May, 1960.

GOD SAVE THE QUEEN !

GIVEN under my Hand and Great Seal at Bloemfontein this Seventeenth day of May, One Thousand Nine Hundred and Sixty.

C. R. SWART,
Governor-General.

By Command of His Excellency the Governor-General-in-Council.

F. C. ERASMUS.

ANNEXURE

The following regulations are inserted after regulation 27 :

" INDEMNITY

28. (1) No proceedings, whether civil or criminal, shall be brought in any court of law against—

- (a) the Governor-General; or
- (b) any member of the Executive Council of the Union; or
- (c) a commissioned officer; or
- (d) a magistrate; or
- (e) any person employed by the Government of the Union; or
- (f) any person acting by the direction or with the consent of any person mentioned in the preceding paragraphs of this sub-regulation,

by reason of any act in good faith advised, commanded or done by him in the execution of his powers or the performance of his duties in pursuance of these regulations with intent to provide for the safety of the public, the maintenance of public order and the termination of the state of emergency declared by Proclamation No. 90 of the 30th March, 1960, Proclamation No. 92 of the 1st April, 1960, and Proclamation No. 123 of the 11th April, 1960, to exist within certain areas, or for dealing with circumstances which have arisen or are likely to arise as a result of the aforementioned state of emergency.

(2) If in any proceedings brought against any person referred to in sub-regulation (1) the question arises whether any act advised, commanded or done by him was advised, commanded or done by him in good faith, it shall be presumed, until the contrary is proved, that that act was advised, commanded or done by him in good faith.

LIMITATION OF POWERS OF COURTS OF LAW

29. Subject to the provisions of regulation 28, no court of law shall be competent to entertain any application or action relating to any act done or cause of action arising under or by virtue of the application of these regulations.

CONSULTATION WITH LEGAL ADVISERS

30. No person who has been arrested and is being detained under regulation 4 or regulation 19, shall, without the consent of the Minister or person acting under his authority, be allowed to consult with a legal adviser in connection with any matter relating to the arrest and detention of such person."

NOTE ON PUBLICATIONS OF THE INTERNATIONAL COMMISSION OF JURISTS

Listed below are some recent publications of the International Commission of Jurists which are still available on request.

Journal of the International Commission of Jurists, issued bi-annually.
Among the articles are :

Volume I, No. 1, (Autumn 1957):

The Quest of Polish Lawyers for Legality (Staff Study)
The Rule of Law in Thailand, by Sompong Sucharitkul
The Treason Trial in South Africa, by Gerald Gardiner
The Soviet Procuracy and the Right of the Individual Against the State, by Dietrich A. Loeber
The Legal Profession and the Law : The Bar in England and Wales, by William W. Boulton
Book Reviews

Volume I, No. 2 (Spring-Summer 1958):

Constitutional Protection of Civil Rights in India, by Durga Das Basu
The European Commission of Human Rights : Procedure and Jurisprudence, by A. B. McNulty and Marc-André Eissen
The Danish Parliamentary Commissioner for Civil and Military Government Administration, by Stephan Hurwitz
The Legal Profession and the Law : The Bar in France, by Pierre Siré
Judicial Procedure in the Soviet Union and in Eastern Europe, by Vladimir Gsovski and Kazimierz Grzybowski, editors
Wire-Tapping and Eavesdropping : A Comparative Survey, by George Dobry
Book Reviews

Volume II, No. 1 (Spring-Summer 1959)

International Congress of Jurists, New Delhi, India : The Declaration of Delhi, Conclusions of the Congress, Questionnaire and Working Paper on the Rule of Law, Reflections, by V. Bose and N. S. Marsh
The Layman and the Law in England, by Sir Carlton Allen
Legal Aspects of Civil Liberties in the United States and recent Developments, by K. W. Greenawalt
Judicial Independence in the Philippines, by Vicente J. Francisco
Book Reviews

Volume II, No. 2 (Winter 1959 - Spring-Summer 1960):

Democracy and Judicial Administration in Japan, by Kotaro Tanaka
The Norwegian Parliamentary Commissioner for the Civil Administration,
by Terje Wold
The New Constitution of Nigeria and the Protection of Human Rights and
Fundamental Freedoms, by T. O. Elias
Law, Bench and Bar in Arab Lands, by Saba Habachy
Problems of the Judiciary in the "Communauté" in Africa, by G. Mangin
Legal Aid and the Rule of Law: a Comparative Outline of the Problem,
by Norman S. Marsh
The "General Supervision" of the Soviet Procuracy, by Glenn G. Morgan
Preventive Detention and the Protection of Free Speech in India, by the
Editors
The Report of the Kerala Inquiry Committee
Book Reviews

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Bulletin of the International Commission of Jurists, publishes facts
and current data on various aspects of the Rule of Law. Numbers
1 to 6 are out of print.

Number 7 (October 1957): In addition to an article on the United Nations
and the Council of Europe, this issue contains a number of articles dealing
with aspects of the Rule of Law in Canada, China, England, Sweden, Algeria,
Cyprus, Czechoslovakia, Eastern Germany, Yugoslavia, Spain and Portugal

Number 8 (December 1958): This number deals also with various aspects
of the Rule of Law and legal developments with regard to the Council of
Europe, China, United States, Argentina, Spain, Hungary, Ceylon, Turkey,
Sweden, Ghana, Yugoslavia, Iraq, Cuba, United Kingdom, Portugal and
South Africa

Number 9 (August 1959): The Organization of American States and Human
Rights. Aspects of the Rule of Law in Algeria, Cyprus, Soviet Union,
South Africa, Spain, Hungary, Kenya, Cuba, Iraq, Rumania, Nyasaland,
East Germany. United Nations and the European Court of Human Rights

Number 10 (January 1960): Contains information on Ceylon, China, Czecho-
slovakia, Greece, India, Kenya, Poland, Tibet, and on The United Nations
and the World Refugee Year

Number 11 (December 1960): This number deals with the various aspects
of the Rule of Law and recent legal developments with regard to Algeria,
Cyprus, Dominican Republic, East Germany, Hungary, United Nations and
the United States

Newsletter of the International Commission of Jurists describes current activities of the Commission :

Number 1 (April 1957): Commission action as related to the South African Treason Trial, the Hungarian Revolution, the Commission's inquiry into the practice of the Rule of Law, activities of National Sections, and the text of the Commission's Questionnaire on the Rule of Law

Number 2 (July 1957): A description of the Vienna Conference held by the International Commission of Jurists on the themes: "The Definition of and Procedure Applicable to a Political Crime" and "Legal Limitations on the Freedom of Opinion"

Number 3 (January 1958): "The Rule of Law in Free Societies", a Prospectus and a progress report on an international Congress of Jurists to be held in New Delhi in January 1959

Number 4 (June 1958): Notes on a world tour (Italy, Greece, Turkey, Iran, India, Thailand, Malaya, Philippines, Canada and United States), comments on legal developments in Hungary, Portugal and South Africa

Number 5 (January 1959): Preliminary remarks of the New Delhi Congress, summary of the "Working Paper on the Rule of Law", information on activities of National Sections

Number 6 (March-April 1959): The International Congress of Jurists held at New Delhi, India, January 5-10, 1959, summary of proceedings, "Declaration of Delhi" and Conclusions of the Congress, list of participants and observers

Number 7 (September 1959): The International Commission of Jurists: Today and Tomorrow (editorial), Essay Contest, Survey on the Rule of Law, Legal Inquiry Committee on Tibet, United Nations, National Sections, Organizational Notes

Number 8 (February 1960): The Rule of Law in Daily Practice (editorial), Survey on the Rule of Law (a questionnaire), Report on Travels of Commission Representatives in Africa and the Middle East, Legal Inquiry Committee on Tibet, Essay Contest, National Sections

Number 9 (September 1960): African Conference on the Rule of Law (editorial), New Members of the Commission, South Africa, Mission to French speaking Africa, Dominican Republic, Portugal and Angola, Tibet, Missions and Tours, Essay Contest, National Sections, The Case of Dr. Walter Linse, Organizational Notes

* * *

The Rule of Law in the United States (1957): A statement prepared in connection with the Delhi Congress by the Committee to Co-operate with the International Commission of Jurists, Section of the International and Comparative Law of the American Bar Association.

The Rule of Law in Italy (1958): A statement prepared in connection with the New Delhi Congress by the Italian Section of the International Commission of Jurists.

The Rule of Law in the Federal Republic of Germany (1958): A statement prepared in connection with the New Delhi Congress by the German Section of the International Commission of Jurists.

The Hungarian Situation and the Rule of Law (April 1957): Account of the Hague Conference on Hungary and compendium of the material submitted by the International Commission of Jurists to the United Nations Special Committee on the Problem of Hungary.

The Continuing Challenge of the Hungarian Situation to the Rule of Law (June 1957): Supplement to the above report, bringing the Hungarian situation up to June 1957.

Justice in Hungary Today (February 1958): Supplement to the original report, bringing the Hungarian situation up to January 31, 1958.

The Question of Tibet and the Rule of Law (July 1959): Introduction, The Land and the People, Chronology of Events, Evidence on Chinese Activities in Tibet, The Position of Tibet in International Law, 21 Documents.

Tibet and the Chinese People's Republic (July 1960): Report to the International Commission of Jurists by the Legal Inquiry Committee on Tibet, Introduction, the Evidence relating to Genocide, Human Rights and Progress, the Status of Tibet, the Agreement on Measures for the Peaceful Liberation of Tibet, Statements and Official Documents.

International Commission of Jurists, Basic Facts (June 1960): A brochure on the objectives, organization and membership, history and development, activities and finances of the International Commission of Jurists.

The Rule of Law in a Free Society (July 1960): A report on the International Congress of Jurists held in New Delhi, India, January 1959, which includes: *Act of Athens*; *Declaration of Delhi*; *Conclusions* of the Congress; List of Participants; Programme; Proceedings of the Plenary Sessions and the four Committees of the Congress — (1) The Legislative and the Rule of Law, (2) The Executive and the Rule of Law, (3) The Criminal Process and the Rule of Law, (4) The Judiciary and the Legal Profession and the Rule of Law; Questionnaire on the Rule of Law; Working Paper on the Rule of Law in a Free Society; and a statement on the objectives, organization, history and activities of the International Commission of Jurists.

Thanks to the generosity of individual jurists and legal institutions in a number of Countries, the Commission has been able, upon request, to distribute free of charge its publications. The unprecedented increase of its readers has now made it imperative to invite them to contribute, in a small measure, to the printing costs of the Journal by payment of a small subscription fee.

Apart from subscriptions, the International Commission of Jurists is dependent on voluntary contributions, gifts, and bequests for the continuation and expansion throughout the world of its activities to strengthen and promote the Rule of Law and the guarantee of human rights inherent in that concept. All such financial contributions towards the expansion of the work of the Commission are welcome; cheques should be made payable to the Secretary General, International Commission of Jurists, Geneva, Switzerland.

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