

*FOR THE RULE
OF LAW*

A STUDY BY THE
INTERNATIONAL COMMISSION OF JURISTS
ON

APARTHEID
in
South Africa
and
South West Africa

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**THE RULE OF LAW
AND
HUMAN RIGHTS**

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INTRODUCTION

Whether it be in regard to the rule of law or to the rules of humanity, the policies of racial discrimination practised in Southern Africa are indefensible.

In areas where racial discrimination is the basis of society and is supported by otherwise formally valid laws, the legislation ceases to be based on justice. Discriminatory laws both in principle and in practice lead inevitably to the erosion, one after the other, of the elements of the Rule of Law. Such an unjust and discriminatory social order inevitably arouses opposition; stern repressive measures are then taken to deal with all opposition and to maintain by force the social order which has engendered the opposition. The opposition is then driven underground and to violence. Thus, a policy of racial, or religious, discrimination ultimately results in the destruction of all legal safeguards, including those which are not directly related to discriminatory laws.

In this Study, we point out the systematic infringements of the Universal Declaration of Human Rights which result from the policies of Apartheid in South Africa. An objective examination of this analysis by those responsible for the continuance of Apartheid should make them realise that these policies are destructive of the concepts of legality and justice and are unacceptable to the international community.

This Study also reveals the effect of these policies in South West Africa, for whose administration South Africa was entrusted with a mandate by the international community of nations. This Study does not deal with the recent Judgment of the International Court of Justice in the South West Africa case; this has been dealt with separately in the Journal of the International Commission of Jurists (Vol. VII, No. 2, and Vol. VIII, No. 1). But, because this judgment has had the effect of focusing world attention on South West Africa, it was considered that this informative Study on South West Africa was relevant.

The disregard for human rights in Southern Africa emphasises the need for effective international machinery for the protection of human rights throughout the world. The task of substituting the Rule of Law for racial intolerance, arbitrariness and force is vital and urgent in Africa and in the rest of the world.

Seán MACBRIDE,
Secretary General.

**INFRINGEMENTS OF THE UNIVERSAL
DECLARATION OF THE HUMAN RIGHTS
IN SOUTHERN AFRICA**

AN ANALYSIS

The Rule of Law does not consist merely in the efficient and correct enforcement of the law irrespective of its content. It also and primarily involves a concept of the purpose of organized society and of the fundamental principles which should govern the content of law in such a society. As understood by the International Commission of Jurists, the Rule of Law requires an ordered legal and constitutional framework which will permit the full development of the individual by ensuring for him the rights and freedoms set out in the Universal Declaration of Human Rights, and it is by examining South African legislation and practice with reference to the different articles of the Universal Declaration that one can best see the extent to which apartheid as practised in South Africa is inconsistent with the Rule of Law.

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

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

“Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

These fundamental, underlying provisions of the Universal Declaration are not accepted by the South-African Government, and, of course, the whole concept and system of apartheid are in direct and express contradiction to the principles embodied in them. There is no claim even that the doctrine of "separate but equal" is applied. South Africa does not attempt to deny that its system is one of "separate because not equal". The system of racial classification embodied in the Population Registration Act of 1950, the provision of separate and not necessarily equal facilities for the different races under the Reservation of Separate Amenities Act of 1953 are but two examples of a system that is based upon the abhorrent concept that men of different races are not equal in value.

An examination of the subsequent articles of the Universal Declaration will show the extent to which the introduction and maintenance of a system which violates the fundamental ideal of equality and non-discrimination has inexorably led to an eroding of the other rights and freedoms embodied in it, not only for the discriminated against but for the discriminators also. In the words of an observer who went to South Africa on behalf of the International Commission of Jurists in 1960: "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 Universal Declaration of Human Rights; and the whites of South Africa will have suffered a grievous impairment of those same rights and freedoms. South Africa will then be a police state." Those words have come only too true.

Article 3. *"Everyone has the right to life, liberty and security of person."*

The provisions introduced by the South African Government authorizing deprivation of liberty without trial are numerous. They are:

1. Proclamation 400 authorizing arrest and detention for questioning for an indefinite period in the Transkei. This is not an emergency provision but part of the permanent law for that region.
2. 90-days detention, now abolished, though capable of re-introduction.

3. 180-days detention under the Criminal Procedure Amendment Act of 1965, which empowers the detention for repeated successive periods of six months of people who are potential state witnesses in political or serious criminal trials.
4. Banishment of Africans under the Native Administration Act of 1927.
5. Detention of a prisoner after completion of his sentence under the "Sobukwe" clause of the General Law Amendment Act, 1963.
6. House arrest under the General Law Amendment Act, 1962.

These very wide powers introduce a permanent element of insecurity into life in South Africa. Security of the person is further diminished for both white and non-white by the constant possibility that banning orders will be imposed, and for non-white by the operation of the pass-laws and the system by which Africans are allowed into white areas on sufferance only and are at any time liable to be endorsed out. They are in constant danger both of arrest and imprisonment for a technical breach of the pass laws and of removal from their home and their job.

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

On the issue of torture, the growing body of evidence that the South African security forces resort to such practices will not be set out in detail: it is sufficient to draw attention to the fact that between 1960 and 1963 — before even the allegations of torture became wide-spread — 103 white and 74 non-white prison officers and 97 white and 80 non-white police officers were convicted of irregular treatment of prison inmates: a total of 354.

Solitary confinement as practised in respect of 90 and 180 days detainees in particular is a clear instance of cruel and inhuman treatment. Solitary confinement is a recognised form of punishment in many jurisdictions; but because of its deleterious effect on the health of prisoners it is always limited to a duration of a few days. The discrimination between different prisoners of different races and the automatic classification of political prisoners in Category D are other instances.

Under the race classification laws, the Race Classifications Appeals Board can receive complaints as regards wrongful or incorrect classification and can ask the courts to re-classify

the race of a person whose appearance, behaviour, way of life, place of residence and place of work are in doubt. Thus the Pretoria Supreme Court has upheld that an 11-year old daughter of White parents has been rightly re-classified as a Coloured person and must henceforth live as such.

Article 6. *"Everyone has the right to recognition everywhere as a person before the law."*

It is hard to contend that Africans are recognized as persons, at any rate outside their reserves, and one can well ask to what extent the coloured and Indian inhabitants are accepted as persons in the full sense.

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."*

The Population Registration Act perpetuates a system under which all are most emphatically not equal before the law. The Population Register Amendment Bill of 1967 provides that the test for racial classification is to be determined by a person's descent and not, as formerly, by physical appearance. The Bill also contains the provision that the Secretary for the Interior may alter a classification if "at any time it appears... that the classification of a person... is incorrect."

Equal protection of the law often appears to be not available in practice, when one reads of the different sentences imposed on whites and Africans in respect of offences against members of the other race. It is also denied in law by, for example, the Natives (Prohibition of Interdicts) Act of 1956 which takes away from Africans threatened with forcible removal the right to apply to the courts for an interdict restraining illegal removal.

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."*

The Natives (Prohibition of Interdicts) Act just referred to denies Africans a remedy in the courts against the execution of an unlawful banishment order.

The jurisdiction of the courts is excluded in cases of detention under the 90 days and 180 days laws.

There is no legal remedy against being listed as a "Communist" or the imposition of house arrest or bans. The Suppression of Communism Amendment Bill of 1967 gives the Minister of Justice power to debar any person who has been a member of an "unlawful organisation" from being or becoming a member of any other organisation the Minister may specify.

Article 9. *"No one shall be subjected to arbitrary arrest, detention or exile."*

Arbitrary arrest of Africans under the pass laws is a common practice.

Arbitrary detention with no means of recourse to the courts and with no statement of reasons other than in the most general terms is practised under the 90 and 180 days laws and the other provisions listed in connection with Article 3.

Detention without trial has now been introduced in the case of those suspected of "terrorist activities" for a period of 14 days, after which it is subject to review by a judge. However, the judge may give his ruling solely on the information provided by the Police Commissioner.

"Idle and undesirable" Africans can be arrested without a warrant and, if unable to give a good and satisfactory account of themselves, are liable to be detained for up to two years in a farm colony or other institution approved under the Prisons Act: Native Laws Amendment Act, 1952.

Exile is becoming the common fate of South Africans now, faced with the choice between house arrest or leaving the country on an exit permit.

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."*

Although in principle the courts in South Africa sit in public, there have been frequent cases — especially in the series of trials in the Eastern Cape — of courts being closed to the public for the whole or part of a trial.

There are many measures which in effect amount to condemnation without trial : the imposing of banning orders, banishment of Africans, house arrest, listing as a " Communist ".

Inroads into the normal system of criminal justice are made by the General Laws Amendment Act of 1962, so that in political cases some of the provisions designed to ensure a fair trial are liable to be suspended. In the first place, the Minister of Justice can direct trial without a jury. Secondly, the Attorney-General can order summary trial, thus depriving the accused of the opportunity, in the course of the preliminary examination, of knowing the case he has to meet.

As a further development in this direction, the General Laws Amendment Act 1967 is now in force. This Act makes terrorism a separate offence punishable with death, and provides for trial without a jury and for the detention for an unlimited period of persons suspected of carrying on terrorist activities or of withholding information about such activities.

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."*

A very wide range of acts are capable of amounting to sabotage under the Sabotage Act of 1962. Once the accused has been shown to have committed an act capable of amounting to sabotage, he will be found guilty unless he can prove that the commission of the act was not calculated to produce any one of a large number of effects. As was said in *Bulletin* No. 14 (at page 33), " the procedural effect here is to shift the burden of proof to the accused, who will be convicted unless he can prove his innocence. Normally in a civilised jurisprudence an accused man is innocent until proved guilty by the prosecution."

Article 11 (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."*

Two offences are created retrospectively by the General Laws Amendment Act of 1963. By Section 5 it is made an

offence punishable with death or imprisonment for not less than five years to undergo military training outside the Republic. This offence was made retrospective by inserting the section into an Act of 1950 (The Suppression of Communism Act), and considerable numbers of Africans who had undergone training abroad before 1963 have been convicted and sentenced in terms of this new provision.

By section 14, the Government is given power to declare organizations unlawful as from April 8, 1960 — three years before the Act. Membership of or activities on behalf of any such organization thus become retrospectively unlawful as from the date inserted in the declaration that the organization is unlawful.

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."*

The effects upon African family life of the regulations controlling African residence in white areas are too well-known to need describing. An African only has the right to live with his wife and family in the reserve which is his national home — and then only if his wife and children also have the right to live in that reserve which may not be the case. The recent introduction of a restriction permitting only one African servant to live on the premises of a white employer has led to further forced separation of African couples.

Under its scheme to clear the urban areas of all non-white groups, the Government is uprooting communities numbering thousands from their former homes into specially assigned areas. The Government plans to carry out the Great Western Cape Removal Scheme by requiring that the African population of Cape Town (Population 85,000) be reduced by 5 % every year.

By the Group Areas Act, 1957, an inspector may enter a person's home in a white group area at any time of the day or night to ascertain whether a non-white is occupying the premises.

By the General Laws Amendment Act of 1963, the Postmaster can detain and confiscate letters, parcels and telegrams if he reasonably suspects them to be concerned with any offence : there is no need for a judicial order.

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

The whole system established by the Group Areas Act and the various laws culminating in the Bantu Laws Amendment Act 1964 denies this fundamental right to the inhabitants of South Africa and more particularly to the non-white population. This aspect of apartheid has received particular attention from the International Commission of Jurists. In its South African Report of 1960, the Commission comments: "The movement and residence of the African labour force is regulated to meet the industrial and agricultural requirements of the European."

"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."

An analysis of the situation after the enactment of the Bantu Laws Amendment Act of 1964 (in *Bulletin* No. 22) led the Commission to the conclusion that :

"The legal powers vested in the Government and local authorities for complete separation of residence now seem to be complete. They can take steps whenever they deem it desirable to remove an unwanted Bantu from an urban area, to restrict severely the number of Bantu residents on white farms, and to secure their removal from those areas in the white farmlands where their presence may disturb white residents."

Article 13 (2). *"Everyone has the right to leave any country, including his own, and to return to his country."*

South Africans have no right to leave their country; it is an offence to leave the country without a permit under the Departure from the Union Regulation Act. Applications for passports are frequently refused — for example to Africans seeking to take up scholarships for study abroad, or to attend meetings of the U.N.

Others — opponents of apartheid — are denied the right to return to their country, and are only allowed to leave on condition that they do so on an exit permit under which they must leave for good.

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."*

Under the Prohibition of Mixed Marriages Act, 1949, marriages between whites and non-whites are illegal. Partners to mixed marriages entered into before that date become guilty of an offence against the Immorality Acts if they continue to cohabit.

The Mixed Marriages Amendment Bill, 1967, has been passed to make null and void those marriages contracted abroad between South African males and women who would be classified as non-white under South African laws. Such South African male citizens would be liable to conviction under the Immorality Acts if they should return to the country.

Article 16 (3). *"The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."*

The difficulties placed in the way of Africans leading a normal family life if they leave their reserves have already been indicated.

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."*

It is sufficient to mention the prohibition on the acquisition of land by non-Europeans in the European areas covering 87% of the territory of South Africa. Not even on trust or tribal land can Africans acquire freehold rights. Severe restrictions also apply to Indians and coloureds.

Arbitrary deprivation of property for the implementation of the Group Areas Acts is a continuing feature of the implementation of apartheid. A recent example is the declaration of District 6 in Capetown as a white area, with the consequent expropriation and removal of thousands of Cape Coloureds.

Article 18. "Everyone has the right to freedom of thought, conscience and religion..."

Under the Native (Urban Areas) Act of 1945, as amended, the Minister of Bantu Administration and Development may prohibit the attendance of Africans at a church in a town if he considers their attendance undesirable, and may thus force apartheid upon churches.

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."

South African law effectively prevents the expression of any opinion advocating the end of apartheid in any real sense. In particular, the expression of any views amounting to "Communism" as defined by the Suppression of Communism Act is prohibited.

Newspapers can be banned under Section 6 of the Suppression of Communism Act as amended in 1963.

Banning orders may be imposed prohibiting the banned person from writing or publishing any material.

It is a criminal offence to publish the words of a banned person. As is commented in *Bulletin* No. 14, "certainly the fact remains that this section silences in an underhand way open critics of the regime".

The situation is well summarized in *Bulletin* No. 8:

"Burning problems exist in South Africa. Differences of opinion naturally follow, but only certain groups of the population are permitted to hold and to express their views. The overwhelming majority, the so-called blacks and coloureds, are not allowed to have or to hold any political views. To express a view contrary to the ruling minority of the privileged race may constitute a crime for which heavy penalty may be paid. The law does not provide a way in which a different opinion can be registered. It cannot be expressed outside of Parliament because that would constitute treason. Nor can it be voiced inside Parliament, because the people who are likely to hold a different opinion have no direct representation in Parliament. The law does not afford equal protection. There appears to be one law for the whites and another for the non-whites."

Finally, the Publications and Entertainments Act of 1963 introduces wide powers of censorship, in addition to the censorship that was already practised on imported materials under the Customs Act.

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

Freedom of association is severely restricted by the Suppression of Communism Act and the Unlawful Organizations Act. Africans are now effectively prevented from organizing politically. In addition, the Liberal Party has been seriously harrassed, in particular by the banning of its leaders and their arrest under the 180 days law. Steps are even being taken to prevent coloured people from participating in the work of and supporting the Progressive Party.

As far as freedom of assembly is concerned, numerous restrictions exist, in particular under the above-mentioned Acts and the Riotous Assemblies Act. Under a Government Notice of 1953 meetings of more than 10 Africans are prohibited without the permission of the Minister for Native Affairs. Under the General Laws Amendment Act of 1963, the Minister is given power to prohibit meetings if it is necessary to combat the achievement of any of the objects of Communism. Under the Natives (Urban Areas) Act 1945, as amended, the Minister may prohibit social gatherings at private houses if Africans are to be present. There are further extensive powers to prohibit mixed gatherings or associations in the fields of education, culture, sport and entertainment.

Further, individuals may be prevented from attending gatherings of any kind — whether political, social or educational — by means of banning orders.

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."

As is well-known, Africans have no vote save in the Transkei for the Transkei Assembly. The coloureds have a limited right of indirect representation, which is shortly to be even more restricted. Only whites can be elected to Parliament, and all the upper echelons of the public service are open to whites only.

As to the Government's answer that Africans are to be given political rights in the Bantustans, the Report on South Africa and the Rule of Law of 1960 commented :

"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."

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."*

The Native Labour Regulation Act and subsequent legislation culminating in the Bantu Laws Amendment Act of 1963 provide the machinery of job reservation under which the Minister of Bantu Administration is able to prescribe classes of work in which Africans may not engage, so that whole sectors of the economy are closed to Africans — and indeed to other non-whites — and to fix the maximum number of Africans who may work in particular classes of employment in particular areas.

Even in the fields of employment which are open to Africans, they can only seek employment through labour bureaux and only retain their employment so long as the labour bureau authorises them to do so.

Banning orders — affecting individuals of every race — frequently have the effect of preventing the person affected from continuing in the employment of his choice because it is inconsistent with the bans.

The Training Centres for Coloured Cadets Act, 1967, now provides for the establishment and maintenance of training centres "for Coloured Cadets for the compulsory training of the Cadets for any kind of employment and for other incidental matters." All Coloured males of 18 years of age must register

for this compulsory training, failure of which leads to a fine and/or up to 3 years' imprisonment. While undergoing this training, the cadets are not covered by the provisions of the Workmen's Compensation Act, the Apprenticeship Act, the Industrial Conciliations Act and the Wages Act.

Article 23 (2). *"Everyone, without any discrimination, has the right to equal pay for equal work."*

This is, of course, not so in South Africa, where members of different races are paid at different rates for the same work, where they are allowed to do it.

Article 23 (4). *"Everyone has the right to form and to join trade unions for the protection of his interests."*

Only white trade unions — or mixed unions existing prior to 1959, provided they establish separate branches for different races and all their elected officers are white — are eligible for registration under the Industrial Conciliations Acts, 1956 and 1959. Only registered trade unions can take part in collective bargaining under the mediation and conciliation machinery set up by those Acts.

Separate machinery for the settlement of African labour disputes is established by the Native Labour (Settlement of Disputes) Act of 1953, which prohibits African labour from striking and provides machinery controlled by the State and mainly in white hands, in which trade unions play no part. Thus while African trade unions are not expressly prohibited, they are not recognized or allowed to play any role in the protection of their members.

The Minister of Labour has explained this policy as follows :

"If that machinery" — i.e. that set up by the 1953 Act — "is effective and successful, the natives will have no interest in trade unions, and native trade unions will probably die a natural death."

Article 25. *"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family..."*

Neither in the reserves nor in the white areas can it be said that the African population as a whole enjoys an adequate standard of living.

As to the 13 % of land reserved for the Africans, the South African Institute of Race Relations has calculated that even if properly planned it could only support about 30 % of its total population.

As to Africans in white areas, the same body estimated that in 1957 about 87 % of the African families in Johannesburg were living below subsistence level.

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 the respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups . . .”*

(3). *“Parents have a prior right to choose the kind of education that shall be given to their children.”*

The object of Bantu education, which under the Bantu Education Acts is under stringent government control, has been described by Dr. Verwoerd as follows :

“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 native education should be controlled in such a way that it should accord with the policy of the State.”

Commenting on this system of education in its Report of 1960, the Commission said :

“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 but certainly deprives the African of full educational opportunity and development.”

While Bantu education thus deprives African children of a free choice of educational opportunities, all forms of education

in South Africa are probably inconsistent with the requirement of the Declaration that education should promote understanding, tolerance and friendship among all racial groups.

The Extension of University Education Act of 1959 applies the principle of separate education to universities, with African universities under strict control of the Minister of Bantu Education.

Article 27 (1). *“Everyone has the right freely to participate in the cultural life of the community . . .”*

After withdrawing grants for all cultural activities catering for both whites and non-whites, the Nationalist Government of South Africa took a series of measures closing mixed entertainments and social activities. Most recently, at the end of 1964, it made permits necessary for the holding of mixed entertainments of social, cultural or sporting events.

In effect, South Africans are only allowed to attend cultural events open to members of their own racial group.

APARTHEID IN SOUTH-WEST AFRICA

The Territory of South-West Africa has been under the observation of the international community for some twenty years, during which time the South African Government has been regularly urged to fulfil its obligation to provide the social, moral and material well-being of the inhabitants placed under its care in the name of "the sacred trust of civilization". The attention that has been focused on the legal and technical arguments involved has pushed into further obscurity the actual social and material conditions of the non-white majority of the people of South-West Africa, who, during forty-five years of South African rule, have been reduced, systematically, to a state of degradation and misery, of which most of the world remains unaware.

This article is not concerned with the International Law governing the League of Nations Mandate* ; nor is it a study of the terms of the Mandate and South Africa's practice in performance of it : its purpose is to show that the legal apparatus and techniques that South Africa employs to carry out its "sacred trust" in South-West Africa, are in defiance of that very basic right "to life, liberty and security" which the Universal Declaration of Human Rights sought to safeguard — after the devastation of another People not very long ago.

Administration

The latest official estimate, made in 1960, of the population of South-West Africa (there has been no census since 1951) places the total at 554,000, of which 464,000 are African, 69,000 are European and 21,000 are Coloured. For administrative purposes, the Territory is divided into two zones, an arrangement inherited from the former German Administration. Lying

* This has been dealt with in *Journal*, Vol. VII, No. 2: "Judgment of the International Court of Justice on South-West Africa" (Staff Study); and Vol. VIII, No. 1: "The International Court and South-West Africa. The Implications of the Judgment", Dr. Rosalyn Higgins.

to the south and comprising nearly two-thirds of the whole country is the European settler area, called the Police Zone, which also contains small, enclosed reserves of Africans who live and work there. These areas are completely segregated and the residential areas of the Europeans and Africans are separated by 500 yard buffer-strips. The rest of the population, that is, the majority of the Africans, lives in the Tribal Areas in the north, comprising the remaining one-third of the total area.

Since 1951, South-West Africa has been represented at the National Parliament at Pretoria by ten European South African nationals, six of whom sit in the House of Assembly and four in the Senate. The Legislative Assembly of the Territory consists of eighteen Europeans, all of them South African nationals living in South-West Africa. The South African Government exercises complete administrative and legislative control over the following internal matters of South-West Africa: African affairs, customs and excise, railways and harbours, police, external affairs, immigration, civil service, health, agriculture, lands, mining, commerce and industry.

The Tribal Areas, where there are no European settlers, are ruled indirectly through traditional chiefs, who function under the authority of the Administrator of South-West Africa. The President of the South African Republic is the declared Supreme Chief of All Africans, in which capacity he has drastic and almost unlimited powers to appoint and remove chiefs, divide or amalgamate tribal communities, deport and banish individuals and groups. He can order the removal of any person from one part of the Territory to another without allowing any form of access or appeal to the courts. Africans do not possess even the most rudimentary political power, and have no participation at all in the making of the laws which govern their lives completely, and which carry rigid sanctions. All independent attempts at political organisation are forcibly suppressed, as are those involving trade union activities. No intention to change this situation has ever been manifested by the South African Government.

South Africa is generally considered to have attained a very high place in the scale of regimes which practise racial tyranny in the modern world. However, the degree of technical refinement to which the application of apartheid has been brought in South-West Africa, where the usual pattern of colonial development was early taken over and adapted by the increasingly

specialised socio-political South African system, shows that the existence and lives of the Africans are expressly and exclusively regulated to further the economic and social progress of the white minority. The system totally disregards the interests of the majority of the people, except in so far as is necessary for the production of maximum results. The Report of the UN-ILO Ad Hoc Committee on Forced Labour - 1953¹ concluded: "The ultimate consequence of the system is to compel the Native population to contribute, by their labour, to the implementation of the economy... It is in this indirect sense therefore, that in the Committee's view, a system of forced labour appears to exist in the Union of South Africa. The evidence before the Committee leads it to confirm in the case of South-West Africa the conclusions it reached in regard to the Union of South Africa".

Long before the South African Government evolved its laws to affect the "separate development" of the different communities by applying the specific concepts of "job reservation", "contract labour", "population control", "group area", "Bantu education", "mother-tongue instruction", not to mention "Bantustan", South-West Africa was already suffering the even yet unrealised effects of a pernicious experiment which used, among other things, the artificial exploitation of tribalism, in order to achieve the isolation of the African from all progressive and educating influences and from all economic benefits within the Territory and outside.

Control of Entry and Residence

The presence and movements of the non-white population within the country are governed by a complex and rigid system of regulations contained basically in the Vagrancy Proclamation 1920 (as amended), the Master and Servant Proclamation 1920 (as amended), the Native Administration Proclamation 1922 (as amended), the Native Reserves Regulation 1924 (as amended), the Native Passes (Rehoboth Gebiet) Proclamation 1930, the Extra-Territorial and Northern Natives Control Proclamation 1935 (as amended), the Natives (Urban Areas) Proclamation 1951

¹ U.N. Document E/2431 ; I.L.O. Studies and Reports (New Series), No. 36.

(as amended) and the Regulations for the Registration, Control and Protection of Natives in Proclaimed Areas 1955 (as amended).

The Natives (Urban Areas) Proclamation governs the position of those Africans in urban areas within the Police Zone, which are those under the jurisdiction of an urban local authority, or which are declared by the Administrator of the Territory to be urban areas for the purposes of the Proclamation. Under Section 22 of this Proclamation, any area, urban or otherwise, which has in it a large number of Africans, may be declared a "proclaimed" area and be subject to the special requirements regarding registration and control of those in it.

Under Section 10 of this Proclamation, no "native" may remain in an urban area for more than 72 hours without official permission unless (a) he was born and permanently resides there, or (b) he has worked continuously in the area for one employer for not less than 10 years, or has continuously remained in the area for not less than 15 years, and has not during either period been convicted of any offence for which he can be imprisoned without the option of a fine, or (c) he or she is the wife, unmarried daughter or son under eighteen years of age of any person mentioned under (a) or (b), who is ordinarily resident with him. As regards entry and stay in proclaimed areas (the areas of all municipalities and most village management boards), the additional and more specific provisions of the Regulations for the Registration, Control and Protection of Natives in Proclaimed Areas apply. These also require special permission to be obtained where the stay is to be for more than 72 hours, but certain categories of persons, such as chiefs and headmen, ministers of religion, teachers at State-aided schools and policemen are exempt from these regulations.

Within the borders of the Territory itself, movements of Africans are controlled by the Native Administration Proclamation which, by Section 11 says, "any native who desires to travel within the Territory may do so upon a pass issued by his European employer, or when he has no European employer, by a magistrate, or officer in charge". Under Section 12, a person so authorised may, at his discretion, refuse to issue a pass "for any reason appearing to him to be sufficient". Exemptions from these requirements are accorded to policemen and messengers on governmental service, missionaries, teachers, natives

accompanying their European master and natives granted a certificate of exemption.

The entry into the Police Zone of persons from the northern Tribal Areas is regulated by the Extra-Territorial and Northern Natives Control Proclamation, which also applies to Africans coming into the Territory from outside, for example, from Angola and Zambia. All those coming under this law must be in possession of an identification pass or a duplicate service contract. After residence of more than 10 years inside the Police Zone, such persons may be considered natives of the Zone and be exempt from the pass requirement.

Entry into and exit from the Tribal Areas (where the majority of the Africans live) come under the Native Reserves Regulation, Section 13: "No native resident of a Reserve may leave or having left may re-enter without a written permit to do so, signed by the Superintendent thereof". Such a permit must state, *inter alia*, the relevant date, period of time and grounds. Under Section 14, a person may enter a Reserve for the purpose of applying for such a permit, provided he does so within 48 hours of entry.

The Rehoboth Gebiet is an area in the central region of the Territory inhabited by the Rehoboth Coloured Community and administered as a separate area under an agreement concluded between the Administrator and the representatives of the community in 1923. Provisions concerning the movements within this area are contained in the Native Passes (Rehoboth Gebiet) Proclamation and these correspond, with slight modifications, to the above-mentioned provisions of the Native Administration Proclamation.

Control and Supply of African Labour

"The prosperity of the white settler community and the foreign corporations depends mainly on cheap African labour. Land policy was deliberately designed to create a labour surplus. The combined pressures of land shortages and poverty have forced Africans to leave their rural homes for the white settler labour areas".²

² U.N. Document A/AC 109/L.290.

An examination of the legislation governing the conditions of work is best begun by considering the official statements of the South African Government on the application of the Vagrancy Proclamation 1920.

"The Vagrancy Proclamation 1920 provides for the suppression of idleness and trespass. Natives are allowed to select their own masters... (But) When a Native is dilatory in finding employment, an employer may be indicated, and if he refuses to engage himself, he may be prosecuted under the Proclamation. Before sentencing Natives under the vagrancy laws, magistrates are required to give the offender an opportunity of taking employment in preference to undergoing imprisonment."³

It would appear that the Vagrancy Proclamation forms a basis for a general obligation of the African to work, and penal sanctions are provided for "idle and disorderly persons", who are variously defined. Section 1, for example, states "Any person found wandering abroad and having no visible lawful means or insufficient lawful means of support, who... shall not give a good and satisfactory account of himself, shall be deemed... to be an idle and disorderly person". On conviction, such a person is liable to up to twelve months imprisonment, with or without hard labour, spare diet and solitary confinement (spare diet and solitary confinement are not to be imposed beyond the first three months of any sentence). Section 3 (i): "Every person found without the permission of the owner (the proof of which permission shall lie on such a person) wandering over any farm, in or loitering near any dwelling-house, shop, store, stable, outhouse, garden, vineyard, kraal or other enclosed place, shall be deemed to be an idle and disorderly person." On conviction such a person is liable to a fine of £100, in default of which, penalties provided in Section 1 above apply. These penalties need not apply to first offenders, who may be assigned as labourers to public works, municipalities or private persons.

As has already been mentioned, official permission is required in order to stay for more than 72 hours in an urban area. The period of validity of a permit to take up employment is limited to the duration of the employment. A permit to seek work may be granted for not less than seven days and not more than fourteen days, unless employment is found. However, no permit

³ Official Yearbook of the Union of South Africa and of Basutoland, Bechuanaland and Protectorate of Swaziland, No. 29, 1956-7.

may be issued for the purposes of employment "except in accordance with regulations which the Administration may issue for the purposes of maintaining a labour quota for a particular urban area," (Section 10 (ii), Natives (Urban Areas) Proclamation).

Every local urban authority is required to submit to the Administrator whenever required, a return showing, *inter alia*, "(d) the number and sexes of natives which, in the opinion of the local authority, is necessary to supply the reasonable labour requirements of the urban area" and "(e) the number and sexes of the natives which the urban local authority considers not necessary for the purposes mentioned in paragraph (d) and desires to have removed," (Section 24). Those not required may be removed where the Administrator "is satisfied that the number of natives within that area is in excess of the reasonable labour requirements of that area," (Section 25).

Similarly, the Regulations for the Registration, Control and Protection of Natives in Proclaimed Areas provide that permits to remain in the area are subject to the same requirements as to labour quotas. No "male native (unless exempted) who is not under a contract of service may remain in the proclaimed area for more than 14 days without a prescribed certificate of registration," (Regulation 4). Upon termination of a contract or after discharge from prison, every male native in a proclaimed area (other than those born or residing permanently within, or otherwise exempted) must report to the competent authority or official within one day. Breaches of contracts of employment are criminal offences.

Recruitment, Conditions of Work and Mines

The system of recruitment of African workers operating in South-West Africa today is unique in its organised and efficient application of conditions that are akin to slavery. Workers are recruited, under contract, in the Tribal Areas by the South African Government-sponsored South-West African Native Labour Association (SWANLA), which classifies the male population into working categories A, B and C, suitable respectively for work in the mines, on land and on the agricultural and livestock-breeding farms of the Europeans. These letters are reproduced on the clothes of the workers, which they have to provide for themselves. Once having been chosen by SWANLA contractors, the men are transported to their areas

of work. The workers have to pay a government tax on each contract of employment. There is no other way of obtaining work or earning a wage except through the SWANLA contract-system, which provides the employers in the mines and farms with the amount and quality of labour that they require. Once under contract, the worker may not leave the area of employment and may not cancel the contract. No African trade unions are recognised, the workers are excluded from all systems of collective bargaining and strikes are a criminal offence.

The general recruitment period is up to 18 months to 2 years. The initial term of contract for an African worker in the mines is 309 working days with a minimum wage of 1s. 9d. (Sterling) for each of the first 155 days and 2s. for the remaining time. The white miners in 1962 were earning an average income of £1,250 per annum. While in the mines, the African worker comes under the Proclamation for the Control of Natives in Mines 1917 (as amended) which authorises, *inter alia*, supervision of the conditions of work, the arrest of offenders, and the setting up of compounds to house 50 or more labourers. On expiry of their contracts, the workers have to return to the Reserves and may only leave again on subsequent recruitment. Their families are not allowed to accompany them, and there exist no obligations on the employers to provide for family allowances or to make provision for the families of those who are injured at work. The South African Government limits the amount of money that may be saved by a worker to £150 over a period of two years. Labourers are not recruited again for the same work in the same area or factory in order that they may not acquire skills. Some of the larger mining companies, such as the Consolidated Diamond Mines of South-West Africa, a subsidiary of De Beers Consolidated Mines, and the Tsumeb Corporation Ltd. (USA) are represented on the Board of Directors of SWANLA.⁴

South-West Africa is unique in the extent to which she is dependent on foreign markets and in the amount of earnings (in 1962, 32% of the gross domestic product) from domestic production that she allows to pass to non-residents. Furthermore, this development of her own resources is based on the rapid exploitation of wasting assets, some of which, for example the known diamond and other mineral deposits, are likely to

⁴ U.N. Document A/6300/Add.2.

be exhausted in 20 to 25 years.⁵ South Africa herself derives direct benefit from the South-West African mineral and other products, in the way of concession payments, import duties and taxes from farm produce. From 1943-1962, payments to the South African Treasury from the Consolidated Diamond Mines alone amounted to £50 million.⁶

Land Distribution

The land distribution figures show that the Africans, who outnumber the whites by 7 to 1, own only half of the total amount owned by the latter. According to the South African Government, on virtually none of the land belonging to the Africans have the people been able to achieve more than a subsistence economy. The per capita income of the white settlers in the Police Zone is £176 a year; while for most of the Africans outside the zone, it is £8.10.0 a year. The African is forced by the poor quality of his land and by the perennial problem of soil-erosion (which problem has always been neglected by the Administration) to become an economic commodity that can be sold to the European industries. This infra-structure is now to be made substantially rigid by the implementation of the recommendations of the Odendaal Commission of Enquiry. Under this scheme, the African population is to be up-rooted, to form 12 artificial territorial and ethnic groupings or "homelands", there to develop separately, each according to its own unchangeable racial talents and resources. The bulk of the habitable land is to be reserved, together with all the diamond and most of the other mines, for the white settlers, who — Boer, German and English — will remain together as before. The demarcations of these homelands are carefully drawn around mineral deposits, sea ports, transportation and communication facilities and urban areas. The Odendaal scheme has been severely criticised in the United Nations, especially by the Special Committee of Twenty-Four (dealing with the granting of independence to colonial countries), which has said that the ultimate effect of this balkanisation of South-West Africa will lead "to the partition and disintegration of the Territory and its absorp-

⁵ U.N. Document A/AC 109/L.290.

⁶ See U.N. Statistical Yearbooks and South African Financial Yearbooks.

tion into South Africa". Already under this plan, the first of the "Bantustans" has been created out of the Ovamboland Reserve in the North, where the majority of the Africans in the territory live. This reserve has been sealed off from the outside world; at least 10% of the male population is always absent, and at least two out of every five able-bodied men are contracted away from their homes and families to work for the government or foreign employers.

Education and Social Conditions

The educational system in South-West Africa is a clear expression of South Africa's racial policy. The education of the white child prepares him for his dominating role as the ruler; while that of the African child is deliberately designed to teach him nothing that will be of value to him as an independent human spirit, but to prepare him to accept his servile condition. In 1962 only 0.3% of the African children were in secondary classes, which never go beyond Standard VI. Of those at school, 90% were in the four lower primary classes and 68% were in the sub-standard streams. No technical instruction is available and university education inside South-West Africa for the African is unknown. If the recommendations of the Odendaal Commission are carried out, the cost of education will have to be borne separately by each community, thus hitting hardest at those who are most in need of education and who are also the least able, under the system, to pay for it. The policy is designed to keep the African child educationally crippled in a way as yet immeasurable.⁷ During 1964-65, the allocation of money for education was authorised as follows:

White children	R 3,315,966
African children	R 799,534
Basters and other Coloureds	R 673,912
(1 Rand = 10 shillings sterling.)	

The Government of South Africa, although regularly asked to do so by the UN Trusteeship Council, gives no figures for the mortality rates and other statistics on health and hospital

⁷ See "Education and Apartheid; Policy and Results", by Marcia McGill, Specialist Paper submitted to the International Conference on South-West Africa, Oxford, March 1966.

conditions for the African population of South-West Africa. Information, however, can be gathered from other sources. "In the case of most non-white population groups who adhere to their traditional way of life, no reference can be made to organised welfare services, since such organisations do not exist," (Odendaal Report, paragraph 916). In the Ovamboland Reserve there are four doctors for a population of about 239,000 people. The rate of infant mortality in South-West Africa is not known, but some idea can perhaps be gathered by looking at the figures given for the African population within South Africa itself. The infant mortality rate of the African children in South Africa is one of the highest in the world, 400 per 1,000; while that of the white children of South Africa is one of the lowest, 27 per 1,000 (Nigeria — 70 per 1,000; Ghana — 90 per 1,000). In eight major urban areas alone, some 10,000 non-white infants die each year of gastro-enteritis caused by malnutrition. The annual morbidity rate of tuberculosis among African children under 5 years of age is 9,469; for white children it is 161. The total mortality rate for all cases in the age group 1 to 4 years shows that the Bantu (i.e. African) children are dying at 25 times and coloured children at 15 times the rate of white children.⁸

With each day that passes, the South African Government is tightening its strangle-hold on South-West Africa, depriving its people of their wealth and their right and ability to develop into a free and self-supporting nation. South Africa is building up its own military strength within the country, and is rapidly implementing measures which will lead to the all but official annexation of South-West Africa. In clear violation of the Mandate, South Africa has constructed what is believed by the UN General Assembly to be a military air base in the Eastern Caprivi Strip, a Tribal Reserve on the borders of Angola, Zambia and Southern Rhodesia. The internal system of arbitrary rule has been extended to South-West Africa, and a wide range of prohibitions and coercive measures have been increasingly applied. The Suppression of Communism Act 1950, The Criminal Procedure Amendment Act 1965 (containing the "180-day clause"), The Official Secrets Amendment Act 1965, The Police

⁸ See Working Paper No. 1/66, July 1966: Extracts from the Reports and Documents of the UN Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa, pp. 51-52.

Amendment Act 1965 (the police force in South-West Africa, including the Special Branch, is part of the South African Police Force) form part of the security legislation of South Africa now in force in South-West Africa. There exist no constitutional or legal channels through which the African population may express its legitimate grievances.

At the International Conference on South-West Africa, held at Oxford in March 1966, it was said that "the inability of the U.N. to solve the South-West African problem could, if allowed to continue, severely damage the world body as an effective political instrument in support of international peace and security. Such inaction would erode respect for the United Nations and the International Court of Justice. It would dangerously undermine the confidence of peoples all over the world in the principles of international authority and commitment. To delay is to fail."

To fail in South-West Africa now, and ultimately in South Africa itself is to be accessory to the blatant plunder of a land, to perpetuate the pain and degradation of its people and to rob its future generations of their inherent dignity and worth as human beings.