

# THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND THE POLICY OF *APARTHEID* IN THE REPUBLIC OF SOUTH AFRICA

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Recently, Westerners and people from many countries around the world shared in the celebrations surrounding the release of African National Congress leader Nelson Mandela — after spending almost a third of his life in a South African prison — and the parliamentary proclamations of President F.W. de Klerk regarding the abolition of *apartheid*. Despite the social and political promise of these actions, calls for lifting of economic sanctions against South Africa have gone largely unheeded. The world powers, it seems, have applauded President de Klerk's bold initial steps, but remain cautious as to the next phase of international relations.

As an ex-South African and former scholar in the Institute for Peace Studies, University of Notre Dame, the author examines the cultural, political, and social structure under an *apartheid* regime immediately prior to the latest chain of events. Notwithstanding the guarded optimism of some commentators, the author speculates that many of the recent changes are superficial and, thus, much uncertainty remains for South Africa's future. Corroboration of this opinion was provided by Bishop Desmond Tutu — one of the most outspoken opponents of *apartheid* — in a most current appeal to the major powers, dated February 10, 1991, to continue economic sanctions against South Africa. Furthermore, almost daily reports of eruptions of violence between Whites and Blacks, and between rival factions of Blacks, bear tragic testimony to the perpetual unrest.

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## I. INTRODUCTION<sup>1</sup>

An individual's ideological and philosophical approach to world affairs is determined largely by exposure to their own immediate social milieu. In modern

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1. For an in-depth look at *apartheid* legislation, see M. HORRELL, *SOUTH AFRICAN INST. OF RACE RELATIONS, LEGISLATION AND RACE RELATIONS* (rev. ed. 1971). Although I have consulted many written sources, a great deal of this essay is the product of my personal experience and observations, as well as from the recollections of many South Africans I have spoken with. I am indebted to a number of people. I gratefully acknowledge Ms. Joanne Beyersbergen of Amnesty International in London; Mr. Meinrad Studer and Mr. Jacques Meurant of the International Red Cross (African Desk and Geneva, respectively); M. Msimang, of the African National Congress in London; Professor A. Mathews, James Scott Wylie Professor of Law, University of Natal; Professor J. Dugard, Professor of Law, University of the Witwatersrand; Professor Eddie Kaufman, Director of the Truman Institute for Peace; and a special thank you to friend and colleague Hillel Eschur, as well as the many people whose names, for their security, I cannot use. May they never cease to fight for the truth in which they believe.

mass society, it is inevitable that most of the time people are only exposed to others in their own social strata. This human trait is exemplified by membership in various social clubs, religious denominations, political parties, and racial and ethnic groups.

Middle-to upper-class Whites, who are in a personal or collective vacuum, rarely know, and definitely do not see, what is happening in the "real world" around them. Their knowledge is largely based on newspapers and television. These media, however, are often distorted in many countries, since they are frequently compelled to follow the government line. Moreover, it is this lack of contact with others not in their social circle that results in individuals' harboring delusions, fallacies, and misconceptions; all of which lead to the distortions that have resulted from class biases and ideological propaganda. Nowhere is this paradigm more in evidence than in South Africa.

The Republic of South Africa presents the analyst with what is probably the world's most fully developed racially dominated State. Primarily, the State exists to uphold the privileges of a white minority and their exclusive interests. To understand the South African situation and the enigma of *apartheid* therein, one must realize that this racial conflict and segregation practice is in reality a class conflict and amounts to racial inequality.<sup>2</sup>

The white population of South Africa only see and meet the black population at work or as domestic servants, and, therefore, perceive them as a lower class of people serving the whims of the white minority.<sup>3</sup> The mass media play an important role in this selective and biased presentation of the black majority. Thus, the average white South African cannot be truly blamed for a lack of awareness and failure to appreciate the situation of the other race groups that make up the population. In a populace where social segregation is legally administered and economic amalgamation is widely practiced, many difficulties and problems thus arise in the inter-racial mixing between these two racial entities. The basis for this predicament is that the sole legal form of contact between the races is the employer/employee relationship. This relationship perpetuates the misconstrued understanding of each race in the minds of *both* groups.

Since its independence from Great Britain in 1910 — although remaining a member of the British Commonwealth — social imbalance and social stratification has been prevalent in South Africa. This is seen by many as unavoidable, as it is necessary to the smooth running of society. Racism, however, is prevalent in most countries of the world. The United States, Great Britain, and the Soviet Union, for example, have their fair share. Africa and the Arab world also have their racist societies.<sup>4</sup> The difference between the rest of the world and South

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2. This social stratification is known today as *apartheid*, which is the policy of legal racial segregation, or, as the South African official documentation calls it, "separate development." *Apartheid* basically means that the color of one's skin is the determining factor of one's social, economic, and political status in regard to political and social participation.

3. Throughout this essay, the reader is requested to construe what has unfortunately become common parlance when collectively describing Caucasians and native Africans; namely, "Whites" and "Blacks." No significance beyond these descriptive terms is intended or implied.

4. Mauritania is the prime example. See Sugarman, *The Superordinate-Subordinate Relations in Africa: The Pan-African and Pan-Arab Conflict* (1989) (available at Hebrew U. of Jerusalem, Department of International Relations).

Africa, however, is that in South Africa racism is legal — there are laws that give legal force and meaning to separation based on color.

For nowhere else do signs state, “Whites only” or “Entrance for Blacks;”<sup>5</sup> nowhere else are there park benches or buses for Whites and others for Blacks; nowhere else are there living areas for Whites and Bantustans [separate development areas, previously known as “reserves”] for Blacks; nowhere else are there laws forbidding marriage between two people of different races or that married couples of different color skins cannot live together;<sup>6</sup> nowhere else are there laws forbidding a person to stay longer than seventy-two hours in a given area<sup>7</sup> or to take part in government.<sup>8</sup> Although many of these laws have *de jure* been repealed, *de facto* application is still quite prevalent in many parts of South Africa. Thus, *apartheid* flourishes under color of law.

The term *apartheid* was first used in an article in *Die Berger*, a moderate Afrikaans newspaper, on March 26, 1943. In this article, reference was made to “the Nationalists’ policy of apartheid.” On September 9, 1943, another story appeared in *Die Berger*, describing the “recognized standpoint of Apartheid.”<sup>9</sup> On January 25, 1944, President Malan used the term for the first time in parliament, wherein he described the character of *apartheid* as a way “to ensure the safety of the white race and of Christian civilization by the honest maintenance of the principles of Apartheid and guardianship.”<sup>10</sup> Thus, the word *apartheid* entered into everyday usage and into South African official policy.

If one tries to classify the legal and political structure prevalent in South Africa with respect to the rudimentary requirements, norms, and prerequisites for the meaningful protection of human rights, it becomes quite clear that South Africa lacks these basic standards. Worldwide concern for human rights protection is perhaps the most dominant aspect of international relations since the Second World War. This concern has been realized by the formation of the United Nations, in 1948, and the specialized committees therein, as well as by other transnational, specialized, non-governmental and regional organizations. Their aim is to secure and protect human rights and to detect human rights violations by governments and other world agencies.

Out of this world cooperation, declarations of various kinds have proliferated; securing human rights in many different fields, including women’s rights, children’s rights, and the abolishment of slavery. The Universal Declaration of Human Rights,<sup>11</sup> the International Convention on the Suppression and Punishment of the Crime of “Apartheid,”<sup>12</sup> the Convention on the Prevention and Punishment of the Crime of Genocide,<sup>13</sup> and the European Convention for the Protection of

5. Reservation of Separate Amenities Act, No. 49 (1953).

6. Immorality Act of 1927; Prohibition of Mixed Marriages Act, No. 55 (1949).

7. The Bantu Abolition of Passes and Co-Ordination of Documents Act and Group Areas Act, No. 36 (1966) and Group Areas Amendment Act, No. 69 (1969).

8. See, e.g., the Election Consolidation Act of 1946, No. 46, art. 3(1), § 1; REPUB. S. AFRICA CONST. Act No. 32 (1961).

9. The separation of the races.

10. See L. LOUIS, DAWIE (1965).

11. G.A. Res. 217 A(III), U.N. Doc. A/810, at 71 (1948) [hereinafter Declaration].

12. G.A. Res. 3068(XXVIII), 28 U.N. GOAR Supp. (No. 30) at 75, U.N. Doc. A/9030 (1974), reprinted in 13 I.L.M. 50 (1974).

13. \_\_\_\_ U.S.T. \_\_\_\_, T.I.A.S. No. \_\_\_\_, 78 U.N.T.S. 277 (1951) (entered into force for U.S., Feb. 23, 1989).

Human Rights and Fundamental Freedoms,<sup>14</sup> are just a few of the human rights conventions in force today. In the contemporary world, human rights have become the new yardstick for evaluating political systems and national governments. This development has resulted in the interference in the political independence of States by the many different bodies connected with human rights issues. Reflections on the current prominence of human rights issues in international relations, and in macro-politics, immediately call attention to the racial discrimination and diabolical system now prevalent in the Republic of South Africa. Unfortunately, very little can be done to wrest this disease, known as *apartheid*, from the South African *wit volk*.<sup>15</sup>

The crucial question, then, is whether the various human rights declarations have any legal authority in international law that is binding on all States as either *jus cogens*<sup>16</sup> or as an aspect of customary international law.<sup>17</sup> It is recognized, of course, that one of the most oft-quoted principles of international law is *pacta sunt servanda* — nations are bound to keep the promises they make. Although an examination of the legality of human rights conventions is beyond the scope of this essay, the question must be discussed briefly as it is central to the *apartheid* issue. I have chosen the Declaration as the yardstick and the theoretical basis for the implementation of this study of South Africa. This Declaration, which was adopted on December 10, 1948, in the form of a U.N. General Assembly Resolution, is regarded as an international Magna Carta and as a transcontinental and transglobal constitution of human rights.

But if this is the case, why are there infringements of the Declaration? What I see as the major problem is that this Declaration is not considered universal international law,<sup>18</sup> and, consequently, international legal steps can not be taken against any State that infringes on the rights enumerated in the Declaration. A further problem lies in the lack of ability to place coordinated international sanctions on countries that infringe these basic human rights.

The lack of sanctions is not the only problem, however, as worldwide sanctions cannot be arbitrarily placed on a country for infringing human rights. It is generally agreed that the Declaration is a statement of the highest moral standing. From its adoption, it was considered a statement, rather than a treaty, and thus did not necessitate ratification by any country. Hence, at least at the outset, it could be argued that the Declaration was not binding in international law. Because the Declaration has been accepted as the highest moral authority

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14. Europ. T.S. No. 5, 213 U.N.T.S. 221 (1953).

15. Literally translated as "white folk."

16. A law that is applicable to all nations and peoples.

17. International lawyers claim that the Declaration, or portions thereof, has legal authority. The argument is based on the fact that the Charter of the United Nations is a treaty that is legally binding. Articles 1, 55, and 56 deal with human rights and fundamental freedoms and impose legal obligation to promote human rights, but do not define such rights. The Declaration is seen as the authoritative interpretation of these norms. Furthermore, its passage was affirmed by a vote of 48 to 0, with eight abstentions.

18. Perhaps more accurately, I should say that I believe it was not intended to become international law when it was adopted. Rather, as the preamble states, it was intended to be "a common standard of achievement for all peoples and nations." As it has been in existence since 1948, and has become a mainstay in the human rights dialogue, however, a cogent argument can be made that the Declaration has become binding in international law, either by way of custom or general principles of law. See M. SHAW, INTERNATIONAL LAW 179 (1986).

by both members and non-members of the United Nations, it may be acknowledged that it does, in fact, possess an unique authority — perhaps more so than any other document.

This essay concerns the *apartheid* system in the Republic of South Africa in light of the Declaration. Although South Africa participated in both the drafting of the Declaration and the Charter of the United Nations, it continues to violate the basic human rights that humanity has pledged to uphold. In particular, two articles of the Declaration will be used to highlight these ongoing violations. The South African system of *apartheid* is thus contrary to the spirit and intent of the Declaration.

True, there have been changes in South Africa, but these changes are only cosmetic, and have not in any way improved the situation in regard to the violations of the articles of the Declaration. I assume that the economic and political power makeup in South Africa will continue to be in the hands of Whites for the foreseeable future and will, therefore, attempt to respond to the reality of the situation. Legislation is contrived horizontally by white decision makers<sup>19</sup> and their electorate. It is then executed vertically throughout the society. The focus of this essay is on the internal horizontal pressures and tensions, their significance, and their consequences for the equilibrium and stability of the political structure.

South Africa's future is clouded with uncertainty. A state of emergency has been imposed. There have been more prison deaths and more arrests, and "petty *apartheid*" has been reintroduced. Unfortunately, I do not foresee a bright future. *Apartheid* is so entrenched that the white minority will fight to the bitter end to save its life support system.<sup>20</sup>

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19. The Broederbond (the brotherhood of white South African Afrikaaners) and others. This secret brotherhood is the true ruler of South Africa. It devises policy and instructs the President to enact this policy.

20. In all fairness to both sides, the points of view of the Afrikaaner, as well as of the black populace, are presented in order to give an impartial answer to the thesis. As an ex-South African who lived under the system, my feelings and emotions have obviously played a part in the final conclusion of this paper. It was my duty as an author to try and refrain from stating personal political views, which could sway a reader in one or another direction. I have tried to give the facts without the emotional trappings associated with such a controversial subject.

A comment is warranted as to the reliability of the figures and statistics stated in this essay. I depended primarily upon two sources of information; namely, the South African government and the press. Given the nature of the circumstances, this information is suspect. It cannot be wholly disregarded, however, for two reasons. First, without it, there would be very little information at all. Second, in many cases, the information can be regarded as at least somewhat reliable.

I relied heavily on information from anti-*apartheid* groups both from within and outside of South Africa. I also gleaned information from university-based think tanks, private non-partisan organizations, international human rights organizations, and the Red Cross. The South African Institute of Race Relations, based in Johannesburg, is an academic organization which produces much information. Their information and statistics are considered to be very reliable. The official government statistics can be partly disregarded, but they too provide at least some idea of the general problem. Amnesty International and the International Red Cross are two organizations whose facts are verified many times to insure that no errors exist.

I did not rely, for the most part, on newspapers, since their reliability is questionable. The South African press is predominantly controlled by Whites. Additionally, the press is regulated by the government. I used newspapers to research political events, casualty rates, number of arrests and basic reporting of the incidents. These numbers have not been taken at face value and have been checked thoroughly. Throughout, I have tried to be as accurate as possible in the use of statistical information. In many cases, more than one source was used, and any discrepancy between figures was thoroughly investigated. It is possible that I have erred — any mistakes are my own.

## II. APARTHEID: THE SYSTEM

*Apartheid* has been an issue of world concern since the early-1940s and particularly following the establishment of the United Nations. When the freedom struggles against colonial rule in Africa came to an end — as a result of independence — this concern became enhanced. It is now a major focus of international politics. Two factors explain this strong interest. First, the South African racial system, and its means and techniques, violate basic human rights. Second, the South African governmental regime does not bother with moral or ethical principles when using force to quell opposition and to prolong the suffering of the black majority.

To counter these claims, and justify their policies, South African politicians and leaders claim they are fighting a war on three fronts. The advancing forces of resistance and liberation within South Africa constitute one front. The re-emergence of strong front-line states, due to the independence of Zimbabwe, Angola, and Namibia, comprises the second. The growing concern and strength of the international community is the third. Thus, it is contended that *apartheid* is necessary to guarantee the White's continued existence.<sup>21</sup>

Racism is not a new phenomenon. Racism has proliferated since the early colonization of Africa by the European powers. In most countries race relations have improved, especially since the Second World War when the issue of human rights became a dominant aspect of international relations. The independence of Black Africa helped in this process, as the Blacks now could rid themselves of the slave masters that ruled their everyday lives.

Although this note is based on modern South Africa, one must delve into the past to understand the situation of today. The *apartheid* system was not arrived at impetuously or without any thought. It is, as will be seen, both a combination of a strong Calvinistic belief in racial inequality, as well as a formula to protect the white minority's existence amid a "sea of Blacks."

### A. Religion: A Source of *Apartheid*

An unique and essential feature of Afrikanerdom is its adherence to religion. This element, which was formulated during the Dutch period of colonization, emphasizes cultural isolation of the two Boer Republics both from the British Whites and the black tribes living in the area. For those Boers that did not live in the Cape, the Christian Bible was the sole cultural diet by which they lived. In short, the Afrikaners believed, and still do today, that they are chosen people who have been placed by God at the southern tip of Africa to fulfill a divine mission. This belief is based on the Calvinistic faith of the early Dutch, German, and French settlers who arrived at the Cape in the seventeenth century. They created a religion based on absolute faith which is closely linked with politics. Thus, according to F.A. van Jaarsveld, "[t]he Afrikaners image of his past is based on national-political values and on biblical foundations."<sup>22</sup>

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21. With its existence threatened, the South African government has undergone a large rearmament program. Many arms dealers and military personnel claim that South Africa possesses nuclear weapons. The truth is unknown, as South Africa has not admitted the veracity of these claims.

22. F. VAN JAARVELD, *THE AFRIKANERS INTERPRETATION OF SOUTH AFRICAN HISTORY* 58 (1964).

An integral part of this belief is that white South Africa is committed to help and assist the less developed peoples of South Africa who "are only at the beginning of the long road towards self-government and economic self-sufficiency."<sup>23</sup> Thus, the average Afrikaner readily accepts the religious doctrine about the diversity of people and assistance to primitive people. Paul Kruger, the president of the Transvaal between 1884 and 1900, revealed God's leadership in the Afrikaner people's history: "Whatever happened to them was His will as He was the Sovereign of history and its central theme."<sup>24</sup> Later, according to another president of South Africa, D.F. Malan, "the history of the Afrikaner reveals a determination and a definiteness of a purpose which makes one feel that Afrikanerdom is not the work of man but a creation of God. . . . We have a divine right to be Afrikaners."<sup>25</sup>

Furthermore, the Nederduitse Gereformeerde Kerk ("NGK") — the Dutch Reformed Church — strenuously defends *apartheid*. It bases its defense on the authority of the Holy Bible. The N.G.K quotes from the scriptures to demonstrate the authenticity of the *apartheid* system. The major biblical base for *apartheid*, according to the NGK, is the theme of the curse of Ham, the younger son of Noah and supposedly the father of the black race. Here in *Genesis* 9:20-24, according to South African theologians, lies the basic right to *apartheid*: "And Noah woke from his wine, and knew what his younger son [Ham] had done to him. And he said, Cursed be Canaan [the decedents of Ham]; a servant of servants shall he be unto his brethren." Other scriptural writings, mainly from *Genesis*, also support the *apartheid* regime.<sup>26</sup>

The Afrikaners see themselves as the Lord's chosen people. According to P.J. Cilliers, editor-in-chief of *Die Berger*, the Afrikaans newspaper, "Africa's unique white tribe of Afrikaners . . . see themselves as a sort of Israel in Africa, with a sense of God-guided destiny."<sup>27</sup> As this is a very significant part of their belief, this suggests, as stated by the scriptures, that the "chosen people must not interbreed with other peoples."<sup>28</sup> Another interesting point is that according to the Afrikaners, they are endowed with a sacred mission of guiding and civilizing the African people. The idea of the promised land is that the chosen people have an inherent and absolute right to all the promised land — in this instance, South Africa. In an early work on this subject, the Reverend Jacob du Toit, a NGK minister, stated that he believed the central concept is that "God Himself placed the Afrikaners in Africa, that He gave them the Afrikaans language, and that He entrusted them with a mission to spread Christian civilization in Africa."<sup>29</sup>

## B. The Development of *Apartheid*

### 1652-1806: The Dutch

South African history, and with it the early beginnings of *apartheid*, started with the arrival of Dutch settlers at the Cape of Good Hope in 1652. At this

23. P. CILLIERS, SOUTH AFRICAN INST. OF RACE RELATIONS, SOUTH AFRICA 1977, at 210 (1977).

24. See F. VAN JAARVELD, *supra* note 22, at 60.

25. M. CORNEVIN, *APARTHEID: POWER AND HISTORICAL FALSIFICATION* 51 (1980).

26. See *Genesis* 11:8 (the tower of Babel); *Genesis* 10:6-20 (the descendants of Noah); *Deuteronomy* 32:8 (the bounds of the people); *Acts* 17:26 (the bound of the inhabitants).

27. P. CILLIERS, *The Case for Africa's White Tribe*, *supra* note 23, at 55.

28. This was the incentive behind the Immorality and Mixed Marriages Acts, *supra*, note 6.

29. M. CORNEVIN, *supra* note 25, at 52.

time, the Hottentots and Bushman tribes comprised the indigenous population. They soon lost their land and livelihood at the hands of the new invaders, who used force unknown in African history. Members of these tribes died, either as a result of the wars, or from illness introduced by the settlers. Slaves were needed to help with the colonization. Blacks from West Africa and the Dutch East Indies were introduced into this area, and thus a new social strata system was instigated. In the ensuing years, the Dutch population grew and geographically expanded, resulting in the need for more slaves. This proliferation of the white society led to the demand for more land and subsequent confrontation with the Hottentots and the Bushmen. Since the white settlers had superior weapons, they were able to advance and occupy the majority of the land. The relationships between the races were relatively cordial and not antagonistic at this time, although problems did begin during this period. The descendants by marriage or affairs between the Dutch and the Hottentots or the Bushman became the early founders of the Afrikaner community. The descendants of slaves from the East Indies formed the nucleus of the new Black community. There were no laws of separation between the races; it was more of an understanding. Problems started with the arrival of a new force in the early-nineteenth century.

#### 1806-1910: *The British*

In 1806, Great Britain took over the Cape and proclaimed it a crown colony. It remained so until 1961, when South Africa became a Republic. Before the arrival of the British, the former occupants of the land (the Blacks) were merely displaced and were allowed to leave the area and live wherever they wanted. The new British policy, however, reduced their status to tenants and virtual slaves. Many were forced into reserves.<sup>30</sup> The Dutch settlers, known now as the Boers (farmers), resented this British interference in their slave policies, the imposition of alien rule over everyday life generally, and the enforced usage of English. The Boers left the Cape in 1837 with 4,000 followers, beginning what was to be known as the Great Trek.

The ultimate results of the British occupation were, on the one hand, an early and rudimentary framework of *apartheid* laws, and on the other, the formation of three main rival groups whose successor relationships would determine the future of South Africa. In the early days, the Boers themselves were not racists. They did believe in slavery and their right to the land, but they did not enforce these beliefs legally. The British, however, always fearful of a black majority and possible black superior power, implemented racial laws and practices. For example, a hut tax, circuit courts for Blacks, and influx control, were some of the measures instituted to show the Blacks who was in charge.

The formation of the three segregated groups was a result of the exploitation of South Africa's mineral wealth. The first group, the employers, were mainly foreigners of British nationality. The second group, the Boers, were predominantly farmers, but they saw this great industrialization of South Africa as part of their heritage and intended to keep the minerals as their own. The final group, the Blacks, were the slave laborers — people with no rights, forbidden by law to

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30. Fenced-in living areas for non-Whites.



own or dig a claim, housed in compounds surrounded by high fences, deprived of basic freedoms, and generally held in contempt by their new masters.

### 1910-1948: *The Union*

Following the Anglo-Boer war of 1899-1902, British rule was placed over South Africa. In 1910, all four provinces — the Union — were handed over to the white population of South Africa to rule as a dominion of the British empire. The constitution of the Union preserved the status quo of the restrictions on the rights of Blacks, but paved the way for the elimination and disqualification of all parliamentary rights for the black population.

The effect of the establishment of the Union was a racially segregated society with white domination in land ownership, the legal system, and administration, and a white monopoly over wealth and in every sphere of social relations. In accordance with the black migrant labor system, it was decided as early as 1922 to maintain the migrant system as a means of controlling the influx of these workers into the cities. Thus, in 1945, the Bantu Consolidation Act (Urban Areas) law was passed. This law was all encompassing. It regulated the inflow and behavior of Blacks in urban areas. In 1911, the first legal color bar was introduced, known as The Mines and Work Act. This law was passed largely as a result of pressure from white trade unionists who were frightened by the likelihood of black workers working alongside their white masters in skilled jobs. Even semi-skilled jobs were soon reserved for the "poor Whites."

The appropriation of land by Whites was achieved with the 1913 Land Act and, later in 1936, by The Native Trust and Land Act. The 1936 Act gave the Whites, who were in the minority, eighty-six percent of the land and the Blacks the remaining fourteen percent. These Acts distinguish certain areas as "reserves," an area where only one race may live and is prohibited to lease or sell land to other races. The Natives (Urban Areas) Act of 1923 restricted the right of movement of Blacks. The Immigrants Regulation Act of 1913 monitored the Indians' right of movement.

The policy behind the Urban Areas Act was to prevent Blacks from freely seeking work in the cities, and had been administered in such a way that this cheap labor was kept on the farms. According to Edgar Brooks, "[t]he law of the land regards him [the black man] as having true freedom of movement only within the circumscribed limits of his own immediate domicile."<sup>31</sup> Within this Act, Section 10 makes it an offense for Blacks to remain longer than seventy-two hours in an urban area. Even if allowed to reside therein, the President of South Africa or the Minister of Bantu Administration and Development could impose curfews and proscribe the frequenting of places of worship, schools, clubs, medical centers, and places of recreation.

By 1936, the United Party, the party of the English speaking Whites, had a monopoly in government. They controlled seventy-four percent of the seats in the National Assembly, while the Nationalists controlled only eighteen percent. In the early-1940s, splits started appearing in the United Party as a result of the Nationalist claim that not enough was being done to help the poor white farmers.

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31. E. BROOKES & J. MACAULAG, *CIVIL LIBERTIES IN SOUTH AFRICA* 53 (1958).

They believed that Blacks should be taxed to fund their own programs, that regulations should be passed in order to help white farmers find black laborers, and, finally, that there should be a severing of ties with Britain and the declaration of an independent South African republic.

#### 1948-1961: *The Nationalists*

In 1948, after the Second World War, the National Party came to power in South Africa. The victory of the Nationalist Party was a victory for Afrikaner (Boer) nationalism — a nationalism that had been sustained and nurtured for more than two centuries. The Great Trek of 1837, the African wars of the nineteenth century, the Anglo-Boer Wars of the late-eighteenth century, and the feelings of degradation and debasement in a white English-speaking country, now resulted in a Boer victory which assured their future as Afrikaans-speaking Whites.

The ensuing laws of *apartheid* were not new. Yet the pre-1948 laws and the post-1948 policy were not the same. The difference lay in the ruthlessness of the application of the laws. What had been to a great extent unwritten custom was now enforced through legislation. The National Party's policies were based on *apartheid*, a policy of segregation and separate development. It proceeded to create a set of laws to codify and perpetuate the racial segregation and domination which already existed. A separate administrative structure was formed on the basis of the 1913 and 1936 land acts, resulting in the Bantustans of today. Many other basic civil liberties, such as the freedom of speech, the freedom of movement, equal education, and basic personal freedoms, were very soon curtailed.

When the National Party came to power in 1948, the seeds of *apartheid* had already been sown. The roots of many of the future laws, such as the Pass laws, the Separate Areas Act and the restrictions on the rights of Blacks to enter urban areas, were just a few of the discriminatory laws inherited by the 1948 government. Because of this, opponents of *apartheid* have claimed that, instead of building upon these laws, the government should have abolished them, thus creating a true democratic society. Sadly, the new government did not do so.

In order to assure their continued existence, the Nationalists institutionalized the laws of discrimination. In order to keep the white race pure,<sup>32</sup> the Mixed Marriages Act (1949) and the Immorality Act (1927, 1950 & 1957) were quickly passed. These laws stated that marriage or sexual intercourse were "immoral or indecent acts"<sup>33</sup> between "a European and non-European."<sup>34</sup> In order to protect themselves from members of other races entering into the white race, the Population Registration Act was passed, classifying individuals into racial groupings.

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32. This presumed sign of superiority has been broken down in the last few years as white South African researches have discovered that the majority of Afrikaners are not thoroughbred, and, in fact, have distant black or colored relatives. According to Dr. M.C. Botha, an immunologist at Groote Schuur Hospital in the Cape, "[c]olored people have only 29% more South African [black] blood than we [whites] have. So what is the big difference between us? Is 29% sufficient to divide us into different groups? I think not." *The Times* (Cape Town) (Sunday ed. Mar. 26, 1972).

33. Act of 1957, No. 23, §§ 16 & 22 (1957). Contravening this act can result in imprisonment of up to seven years.

34. Act of 1949, No. 55 (1949).

The Separate Amenities Act (1953) segregated everyday living. Public facilities, parks, theaters, public transport, banks, beaches, sports stadiums, lavatories, hospitals, shops, and cafes were segregated — one set for Whites and another for Blacks. A number of specific acts within this broad framework were soon passed or revised and added to the statute books. The Liquor Act (1928, revised 1977) forbids the selling of liquor to different race groups in the same premises without a permit. The Motor Transportation Act (1933, revised 1955) empowers the National Transport Board to impose segregation in all public transportation. The State Aided Institution Act (1931, revised 1957) allows the ruling bodies of state-funded institutions to decide for themselves the times that members of other races, excluding Whites, may visit these institutions. Since the late-1970s, as a result of strong world pressure, there has been a relaxation of these and many other “petty *apartheid*” laws. Many claim, however, that these changes are only a window dressing for world consumption.<sup>35</sup>

Other acts are worth mentioning. The Bantu Abolition of Passes and Co-Ordination of Documents Act (“The Pass Laws”) (1952), requires all Blacks to carry special reference books (pass books) at all times. Education was the next victim of *apartheid*. The Bantu Education Act (1953), designates separate education for Whites, Blacks, Coloreds, and Asians. Unfairness in employment was made into law under the Industrial Conciliation Act (1956). This law allows the Minister of Labor to decide what jobs will be allowed for each race group so that there is no inter-racial competition. Under the Factories and Machinery Act (1960), companies must provide separate entrances, changing rooms, toilets, offices, eating utensils, rest rooms, and dining halls, for the different racial groups.

Thus, South Africa entered into its final stage of *apartheid* development. This was not the end to these racist policies. With the declaration of independence, the aspirations of Blacks for political equality emerged once again, only to result in death and destruction. The South African government found that the only way to suppress these revolts was to introduce more legalized racism.

### 1961-Present: *The Republic*

An increasing demand for arms, as a result of the need to maintain law and order, led to the realization that the power struggles of the 1960s. In the late-1960s, a state of emergency had been declared. In that period, sixty-nine peaceful demonstrators were killed in the Sharpsville Riots. The African National Congress (“ANC”) and the Pan Africanist Congress (“PAC”) had been outlawed and thousands of people had been arrested. Mass demonstrations and rallies were planned for May 31, the intended day for South African independence. Thus, the Republic of South Africa was born in the midst of an already strong liberation struggle.

During the first decade of independence, many black leaders were arrested and banned. Robben Island, a deserted island near South Africa, became the new prison for political prisoners. In order to keep control, severe repressions made legal opposition to the government nearly impossible. The Suppression of Com-

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35. SOUTH AFRICAN INST. OF RACE RELATIONS, SURVEY 1979, at 493.

munism Act (1950), the Unlawful Organizations Act (1960), and the General Law Amendment Act (1963), were all passed in order to ban legal opposition to the Nationalist government. Black underground movements started to proliferate. White minority control was starting to weaken as a result of world pressure. Legal internal opposition and a policy of open defiance resulted in the *Case of Twenty Two* trial (1969), the Port Elizabeth Strike (1971), the student riots of 1972, and, finally, in the Sowetto Riots of 1976. Only now did people find hope, and come to the realization that only an armed struggle would free South Africa from *apartheid*.

The South African government lashed back with arbitrary arrests, detention without trial, mass beatings of children, the closure of schools, expulsions, and tighter government control on the opposition. Also, the army was given a free hand in the quelling of the disturbances. Since 1986, a state of emergency has been enforced, giving more power to the army and the anti-Blacks forces. According to the Amnesty International Reports of 1986, 1987, and 1988, thousands of people, including prisoners of conscience, have been detained without trial for alleged political offenses. In 1987, Amnesty International reported:

There are new reports of torture and ill-treatment of uncharged detainees, and there were further deaths in detention in suspicious circumstances. Administrative banning orders were effectively invalidated by an Appeals Court ruling but the government used its emergency powers to restrict critics. The death penalty remained a major concern: there were 121 executions in Pretoria Central Prison and others were carried out in nominally independent 'homelands.'<sup>36</sup>

*Apartheid* has now become a way of life. The law of *apartheid* can be divided into two basic categories: the laws pertaining to the personal status of the individual; and the political institutions of *apartheid*. In short, a person's civil, economic, political, and social rights are governed by the color of his skin. Based on the latest available statistics, the population of South Africa is made up of 12.5 million Blacks, 4.57 million Whites, 2.8 million Coloreds, and 821,000 Asians.<sup>37</sup> Although most people in South Africa fit into one of the basic race classes, there are those who are borderline cases. Undaunted by this problem, the South African system has contrived a racial evaluation procedure based on lineage, appearance, and social recognition. Every aspect of a Black's life is thus regulated — place of residence, job opportunities, type of education received, and even mode of transportation.

The resident Blacks of South Africa are constantly aware of their relative position in society and are perpetually humiliated. Affirmation of this humiliation is evidenced daily, for example, by signs bearing such messages as "Slegs blankes" or "Whites only." In accordance with South African law, separate facilities must be provided for the different race groups. The "separate but equal"<sup>38</sup> approach

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36. AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 1987, at 99 (1987).

37. 1988-89 STATESMAN Y.B. 1077 (1988).

38. For expansion of the "separate but equal" policy doctrine, see, e.g., *Plessy v. Ferguson*, 163 U.S. 537 (1896); *Williams and Adendorff v. Johannesburg Mun.*, 1915 T.P.D. 106; *R. v. Plaaitjes*, 1910 E.D.L.P. 63.

is no longer in force, but rather a policy of "separate and *unequal*." In other words, the government does have to provide facilities to non-Whites, but these facilities do not have to be in the same condition as the Whites' facilities. The Separate Amenities Act of 1953 allows any person in control of public premises to reserve separate but unequal facilities for different races.

The Group Areas Act (1966) and The Bantu Consolidation Act (Urban Areas) (1945) are the statutory bases for residential segregation in South Africa. These Acts provide for the creation of separate living areas within towns and cities for Whites, Blacks, and Coloreds. If persons of the wrong color are residents in a controlled area of another race, they are obliged to move. According to F.P. Rousseau, the law advisor for the Group Areas Board, "[t]he clashes and difficulties between peoples of different races which other countries have experienced have had their origins almost entirely in undesired occupation."<sup>39</sup>

*Apartheid* is not a new phenomenon in South Africa — it has been around for over a century. It was historically used as a hedge against black domination of South Africa, but today it is used to *sustain* the South African [Whites] way of life. Morally, this system is tainted because it does not provide basic human rights to the country's entire population. A white minority rules the black majority. This can not persist much longer, as the situation in South Africa today demonstrates. The white minority government must one day either give up this subordinate rule or resolve to share power with its black brethren. If this does not happen soon, more unnecessary deaths — of both Whites and Blacks — will occur and separatism will become even more deeply entrenched. The final outcome could be a bloody civil war based on color.<sup>40</sup>

### III. APARTHEID AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Throughout history, people have fought and died in the name of freedom. Many wars have been fought to protect liberty, to assert freedom or to attain independence from foreign rule. President Roosevelt posited four freedoms: the freedom of speech; the freedom of religion; the freedom from want; and the freedom from fear.

Following the end of the Second World War and reports of Nazi persecution, torture and genocide, people recognized a need to spell out fundamental freedoms. The United Nations adopted the Universal Declaration of Human Rights on December 10, 1948 as Resolution 217 A (III) of the General Assembly of the United Nations. The Resolution was approved by more than eighty percent of its members.<sup>41</sup> The preamble of the Declaration states that the "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."<sup>42</sup>

It was hoped that the Declaration would become a fundamental tenet of international law applicable to all states. Since its adoption in 1948, the Decla-

39. F. ROUSSEAU, HANDBOOK ON THE GROUP AREAS ACT 8-9 (1960).

40. In addition to the racial violence, inter-tribal violence among Blacks is commonplace and appears to be worsening.

41. Out of a total of 58 states, 48 approved, eight abstained and two were not present. No votes opposed.

42. G.A. Res. 217 A(III), U.N. Doc. A/810 at 71 (1948).

ration has exerted a strong influence on international relations. The United Nations has repeatedly cited the Declaration as justification for its own actions. States have incorporated ideals set out in the Declaration in their national charters. International agreements have been drafted in accord with its principles. Pacts and treaties have also been influenced by the Declaration.

The Declaration has been used both as a yardstick to check human rights violations and as a "basis for appeals in urging or recommending governments to take measures to promote human rights and fundamental freedoms"<sup>43</sup> in the world. The Declaration has been described as an international charter of human rights, and as the first major post-war international declaration of the rights of humankind. It has been accepted as one of the highest moral declarations since the dawn of time.

Politically, the Declaration seems an incredible feat. Recent theories, however, question the ideological basis upon which the Declaration was formed. Relativism rejects the thesis that liberty, privileges, and freedom are inherently, and immutably, good. Rather, relativists believe that social good can only be defined in the context of the circumstances of a particular time and place. It follows, therefore, that proponents feel that human rights cannot be viewed as a stagnant phenomenon. Rather, human rights must be viewed from the vantage of the prevailing circumstances of the time and place. Gustav Radbruch, for example, claimed that a system of human rights may vary in accordance with the natural, social, and judicial circumstances of a given time and place, which will in most cases reflect upon the current legal system.<sup>44</sup> According to J. Martain, human rights evolve because human rights and international law constantly undergo the process of change.<sup>45</sup>

The Declaration is only an outline of how countries should treat their citizens. The thrust of this Declaration is to set new standards and to introduce new moral principles into the State-citizen relationship. With the passing of the Declaration in 1948, member States agreed that no one nation has more rights than the next, and that certain rights inhere in the individual simply by force of humanity.

Although most of the world fully complies with all articles of the Declaration, they are wholly ignored in South Africa.<sup>46</sup> Thus, even the freedoms we take most

43. UNITED NATIONS, *THE UNITED NATIONS AND HUMAN RIGHTS* 13 (1986).

44. G. RADBRUCH, *VORSCHULE DER RECHTSPHILOSOPHIE* 20-23 (1959).

45. J. MARTAIN, *LES DROITS DE L'HOMME ET LA LOI NATURELLE* 110-113 (1945).

46. The two articles of the Declaration selected for study are just two of many examples of this lack of human rights in South Africa today. But all articles can be used as a looking glass to see a litany of transgressions in South Africa and the situation of the black population. The South African authorities have effectively turned the abuse of human rights into an art, and are perpetuating this abuse despite all the allegations brought against it.

South Africa violates the Declaration in nearly all its actions; the entire racial constitution is against Article 2. Judicial executions which negate Article 3 continue unabated in South Africa. Slavery in a modern form continues in South Africa, an act forbidden by Article 4. Article 5, the freedom from torture, is unheard of in the South African jail system, where degrading punishment is a common practice.

The South African legal system is two-tiered. Whites receive one type of justice, while Blacks receive quite another. Articles 6 and 7 forbid this multi-layered system of justice. Article 8 is not heeded as the courts do not recognize, in most cases, charges laid against official persons. The mass arrests, during the three year state of emergency, are evidence that Article 9 is ignored by the South African police. According to the International Red Cross and Amnesty International, over 30,000

for granted are not recognized in South Africa. The South African government claims that many reforms have occurred in the last decade, but most of these changes are merely cosmetic and do not address the heart of the problem. *Apartheid* is simply too deeply entrenched in the system. Anything but radical reform will fall woefully short of the mark.

As stated, this essay focuses on the *apartheid* system in South Africa, examined against the backdrop of Articles 5 and 13 of the Declaration. These important Articles are now considered.

#### IV. ARTICLE 5

Article 5 of the Declaration states in pertinent part: "No one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment."<sup>47</sup> Article 3 of the Declaration states simply that "everyone has the right to life."<sup>48</sup> This right is not unconditional, however. Other declarations recognize the death

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people have been arrested and held without trial during the three year state of emergency. According to the South African legal system, the prisoner is presumed guilty and must prove his innocence. Articles 10 and 11 of the Declaration explicitly forbid such a presumption.

The interception of mail and wiretapping as well as invasion of one's private life is an accepted norm in South Africa today. These methods help the government keep agitators away from public forums and helps them to prosecute them in later trials. Article 12 prohibits the interference in one's private life. The creation of the Homelands and the enforcement of the Group Areas Act are counter to the edict of Article 13. The South African raids into Lesotho and Swaziland in search of ex-South African criminals runs contrary to Article 14, which allows asylum from political prosecution. Article 15 gives the right of citizenship to all. Unfortunately, this is totally negated by the homeland system, a system which bars Blacks from receiving South African citizenship. Article 16 is now adhered to after the repealing of the Mixed Marriages Act. According to South African law, only Blacks may own property in the black areas; Whites can only own land in white areas. This segregation is disallowed by Article 17.

The freedom of religion prescribed by Article 18 is allowed to a large degree by the South African government. There is virtually no discrimination as a result of one's religion. But, the freedom of opinion and expression is one of the most abused articles of the Declaration. At the moment, there are approximately 331 listed people who cannot be quoted and many publications have been banned for not expressing the government's view. Article 19 is thus at the mercy of the South African police and the Internal Security Laws. Articles 20, 21 and 22, which relate to freedom of assembly, freedom of political participation, and freedom of membership in a society are disregarded in South Africa. The banning of the ANC and PAC and restrictions of many other black movements, the laws which forbid multi-racial political parties, and the banning of many black conferences, plainly violates all these acts. The majority of South Africans do not have suffrage and, thus, can not take part in the government of South Africa. Article 23 promises the freedom to choose one's employment. In South Africa there are many jobs that are restricted to Whites, thus denying even them the freedom to choose their own trade. Article 24 is adhered to by the South African government, as a result of its very Christian ethics which allows a day of rest for all. The abuse of Article 25 is a result of the South African employment policy. As black labor is cheap and easy to come by, the pay is low and inadequate to sustain a full family.

The right to an education is an important aspect of the Declaration and is characterized thus in Article 26. The white population of South Africa enjoys a high level of education, while the Blacks receive less than adequate. The Sowetto riots of 1976 were a direct result of this lack of decent education opportunities for Blacks. Blacks may not enter into all South African universities and thus there are universities for Whites and non-Whites. South Africa is known for the proliferated banning of authors, composers, dramatists, and novelists who do not agree with the *apartheid* policies. These freedoms are protected under Article 27 of the Declaration. The last three Articles, 28, 29 and 30, which bestow on all humanity the rights and freedoms that are set out in this Declaration, are abused as well by the South African order.

47. G.A. Res. 217 A(III), U.N. Doc. A/810, at 71 (1948).

48. *Id.*

penalty "for the most serious crimes."<sup>49</sup> This, according to the Covenant, is compatible to the right to life, but care must be taken to insure that the right to life is not encroached upon.

In addition to the provisions on the right to life, three major declarations address proscription of torture. The Declaration (Article 5), the International Covenant on Civil and Political Rights (Article 7), and the European Convention on Human Rights and Fundamental Freedoms (Article 3), all guarantee freedom from torture and from cruel and inhuman or degrading punishment. Amnesty International declared 1989 as the Anti-Death Penalty Year as a way to arouse consciousness about the proliferation of the death penalty in many countries.

As the illegitimacy of the South African government becomes increasingly apparent, the black minority grows restless. Resistance movements have become better organized, but friction among the various factions has increased. The government has been largely unsuccessful in containing this resistance, and its response has been the increased implementation of the death sentence as a way to control the leaders. This tyranny has been invoked mainly against ANC and local grass-root leaders. In April of 1979, Solomon Mahlangu, one of the main leaders in the African peace movement, became the first political prisoner since the early-1960s to be hanged.

The ANC has announced that a state of war exists between itself and the Republic of South Africa. Furthermore, it has indicated its acceptance of the Geneva Convention's rules involving treatment of prisoners of war. The South African government, however, has refused to give prisoner of war status to the apprehended freedom fighters of the ANC. A considerable number of these prisoners have been given the death sentence. Many have been hanged.

Police brutality has long been a feature of South Africa. Discriminatory policies and laws give rise to continual unrest, mainly among the black population, and this, in turn, leads to frequent clashes between the police and the black majority. The government has introduced a number of measures which restrict and repress black uprisings. These measures include the proliferated use of the death penalty, lashings, banning, detention without trial, torture, death in custody, deportation, and expulsion. These measures have existed for many years and have helped keep the black political movements in check. There is very little that the Blacks can achieve politically, as the South African government controls the army, the police, and the court system.<sup>50</sup>

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49. See, e.g., INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, art. 6(2), G.A. Res. 2200(XXI), 21 U.N. GOAR Supp. (No.16) at 52, U.N. Doc. A/6316 (1967), reprinted in 6 I.L.M. 368 (1967) [hereinafter Covenant].

50. An example of the government's monopoly over the court system is its widespread use of evidence which is not available to the defense, on the grounds that it would jeopardize security to allow the defense access to the evidence. Thus, all other factors being equal — and they assuredly are not — the likelihood of the prosecution losing a case based upon the evidence alone is slim.

President de Klerk, in a speech before parliament on February 1, 1991, promised that the extension of equal rights to the black majority would include legal reforms extending beyond a bill of rights to be enshrined in a new constitution. "Our legal system has to be subjected to continuous scrutiny to insure that it meets the needs of the ever changing demands of our society." Wren, *With Apartheid Fading Local Courts Often Lag*, N.Y. Times, Feb. 18, 1991, at A11, col. 2.

Such political rhetoric and optimism should be tempered by reality, however, as a recent grisly case from a conservative rural area in Natal province graphically illustrates. Two white males who



Banning and expulsions of "enemies of the state" are favorite techniques of the South African government. Since 1948, over 200 people have been exiled, and an untold number banned. Banning includes house arrest, town arrest, curtailment of meetings with political activists, relinquishment of the right to work or meet with the media, and prohibition from being quoted. Although whipping has been abolished in England since 1948, and in the United States since 1968,<sup>51</sup> lashings and whippings are commonplace in South Africa.

South Africa has enforced the death penalty for many years. According to many sources, there are about 110 people hanged each year. In addition, the torture of prisoners has proliferated over the last ten years — many have died in prison as a result. The South African government routinely reports these deaths as suicides, but most foreign observers discount these claims.

In Britain, the death penalty has been abolished except in instances of treason, piracy, and arson in dock compounds. In the majority of Western Europe, the death penalty has been rescinded, at least in times of peace.<sup>52</sup> In the United States, it is only prevalent in a number of southern states and Florida.

Unfortunately, South Africa has not followed the progress of the world in the abolishment of the death sentence. In fact, the number of crimes for which the death penalty can be implemented has increased, and the official attitude is that this sort of punishment will not be annulled. Until 1958, there were only three capital crimes: treason, first degree murder, and rape. In the last thirty years, a number of other capital crimes have been added. These include burglary with aggravating circumstances, receiving training that could enhance communism, kidnapping, sabotage, and participating in terrorist actions. More than 3,500 people have been hanged since 1910; over ninety-five percent of which were Blacks.<sup>53</sup> In 1987 alone, 164 people were executed. Eighty-one people were hanged in the first six months of 1988. According to Sheena Duncan of the Human Rights Commission, 274 people now sit on death row.<sup>54</sup>

The South African white community is very supportive of the death penalty and is not in favor of its abolishment. In 1969, Helen Suzman MP, one of the fighters against *apartheid*, introduced a bill which called for a commission of inquiry into the desirability of abolishing capital punishment. As was expected, her bill was rejected. She claims that the Whites in South Africa feel "that the abolition of the death penalty will result in thousands of non-Whites overcome by their primitive instincts, murdering us in our beds."<sup>55</sup> Since the state of

forced a "suspected" thief into an industrial steam-cleaning machine, boiling him alive, were fined the equivalent of between \$80-200; neither man went to prison. According to Ahmed C. Motlala, Lawyers for Human Rights, "this disturbing case indicates once again that our courts are willing to treat differently whites who are accused of having killed a black person." *Id.*

51. See *Trop v. Dulles*, 356 U.S. 86 (1958), wherein the Supreme Court stated that whipping is contrary to "the evolving standards of decency that mark the progress of a maturing society." *Id.* at 101. In 1968, a United States Court of Appeals found that whippings violated the eighth amendment and thus constituted cruel and unusual punishment. *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968).

52. Only Greece, Turkey, Spain, and France have the death penalty. Belgium and Luxembourg retain the capital penalty on their books, but do not practice it.

53. Kahn, *The Death Penalty in South Africa*, 108 *TYDSKRIF VIR HEDENDAAGSE ROMEINSHOLLANDSE REG.* 116-118 (1970). See also Van Niekerk Barond, *Hanged by the Neck Until You are Dead*, 86 *S. AFRICAN L.J.* 458-459 (1969).

54. *Focus on South African Violations*, U.N. Newsletter (Sept. 29, 1988).

55. 25 *PARL. DEB., H.A. REC.* 2570-2612 (March 1969).

emergency declared in South Africa nearly three years ago, the number of prisoners on death row has increased three-fold. Mounting international pressure has forced the South African government to release a number of these prisoners and to prevent them from being hanged, but this is not enough. South Africa must follow the leadership of those countries who have already abolished the death sentence.

If the principles enunciated in the Declaration are to be followed, justice must be administered equally among Blacks and Whites. Those who are on death row must either be freed or assigned honest prison sentences, free of torture and physical abuse.

#### **A. The Prison System: Detention without Trial, Torture, and Death in Prison**

The system of detention without trial is very prevalent in South Africa today, especially since the implementation of the state of emergency in 1986.<sup>56</sup> It is characterized by secrecy and the lack of accountability by the police or prison authorities. No details are made public, so the exact numbers of such detentions can only be guessed. Families are not told of the prisoners' whereabouts. There is no court order demanding prisoner release. Visitation is not allowed and legal advice can be neither given nor received. There seems to be a lackadaisical attitude by the white community regarding this aspect of human rights violations. The police have at their disposal the ninety and 180-day detention laws and imprisonment for three to six months, which can be renewed if needed.

In 1960, the Public Safety Act was implemented in order to apprehend 11,000 people suspected of terrorist activities and crimes against the state. In 1963, the 90 Day Detention Act ("90 Day Law") was initiated, followed, in 1965, by the 180 Day Detention Law ("180 Day Law"). In 1976, the Internal Security Act was amended to allow detention without trial for a period of one year.

Over 1,000 people were subjected to detention under the 90 Day Law; allegations of torture were made in many cases. The operation of this clause was suspended in January, 1965, in the face of widespread violence. In its place, the South African authorities enacted a second law; the 180 Day Law. In some cases this was even worse than the previous law.

Although the statute aimed at protecting witnesses or preventing them from escaping, the 180 Day Law was, in fact, used by the police for other purposes. Detainees were once again subjected to ill treatment and torture. Some were even charged on the basis of evidence extracted, and many were released without even being called as witnesses. The exact number under detention is not known as restrictions on the reporting of such cases were implemented in 1982. Since the 1986 state of emergency, approximately 30,000 people have been imprisoned under the new laws. Children are subjected to the same treatment as adults, and it is claimed that over seven hundred juveniles were imprisoned between 1977 and 1981. In 1981, nineteen school children were held for eighteen months as potential witnesses in a political trial.

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56. The state of emergency gave the South African government extra-judicial powers to implement security laws in order to control the unrest in the black areas and to combat insurgent Blacks.

The treatment of prisoners is often very harsh. Torture and death are not unusual. In the past ten years, inhuman treatment by the South African police and security police has allegedly caused the death of over eighty people. When inquiries were made regarding these deaths, the police claimed suicide as the cause of death. "Plunging from a window," "brain damage," "the bursting of ulcers," and "falling down the stairs," are common causes of death claimed by the police. Abuse and torture of detainees, sometimes so severe as to result in death, is a cardinal component of the South African practice of detention without trial for purposes of interrogation. According to the *Rand Daily Mail*, a leading South African newspaper, "detention without trial was the most important and, to a large extent, the only means the police had of obtaining information about 'subversive activities.'"<sup>57</sup> According to Amnesty International, "torture appears to be used primarily to intimidate detainees, to force them to confess, and to implicate others in political offenses."<sup>58</sup>

Pressure is brought to bear on detainees in order to procure testimony and "confessions," and to coerce people into giving evidence. The secrecy of these acts and the lack of outside knowledge of this treatment allow the police to act under no restraint, since there is really no prospect of discipline. Due to the complete secrecy of the detention laws, it is futile for detainees to seek compensation through the judicial system. A number of detainee stories have recently come to light.

Billy Nair, the vice-president of the United Democratic Front, was detained under Section 29 of the Internal Security Act on August 23, 1985. Section 29 allows senior officers of the South African Police to arrest anyone whom they believe has committed or intends to commit offenses connected with state security or who is withholding information about these offenses. Not only may the officers arrest such persons, but they may hold them for interrogation indefinitely, in isolation, and without access to a lawyer or family.<sup>59</sup> On September 5, 1985, Mr. Nair was referred to a specialist by the district surgeon because he had an injured eye and a perforated eardrum. In a letter smuggled out of prison to his wife, he claimed that he had been beaten about the head by the security officers during interrogation. Similarly, Vusi Dlamini, a fifteen-year-old school boy and member of COSAS, a student organization, was also detained under Section 29 on August 27, 1985. On September 3, 1985, he was admitted to hospital. He had been severely beaten; his injuries included a broken jawbone, deafness in one ear, and suspected fractures of his skull and forearms.

The use of solitary confinement, although condemned by many legal experts and psychologists, is very prevalent in the South African prison system. This sort of punishment is considered by psychologists as "torture by sensory deprivation."<sup>60</sup> The more one is cut off from the world, and the fewer the opportunities to test one's perception against it, the more one becomes distanced from reality.

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57. *Rand Daily Mail*, Feb. 4, 1982.

58. AMNESTY INTERNATIONAL, SOUTH AFRICA: BRIEFING 8 (1986).

59. According to Amnesty International, those who are arrested under Section 29 are at a high risk of being tortured.

60. AMNESTY INTERNATIONAL, SOUTH AFRICA: BRIEFING (June 13, 1980); AMNESTY INTERNATIONAL, SOUTH AFRICA: BRIEFING (Feb. 11, 1982).

Prolonged solitary confinement is recognized as a cruel and inhuman punishment which can cause permanent damage to the psyche. There have been many cases of prisoners being admitted to hospitals for psychiatric care after long periods of solitary confinement. There is much evidence that the practice of solitary confinement has produced mental disorientation among South African detainees. Some have even committed suicide.<sup>61</sup> Johnny Mashianne, another fifteen-year-old schoolboy, was arrested on July 23, 1985, and held incommunicado until September 5, 1985. Upon his release, he displayed serious mental distress and was admitted to a Johannesburg mental hospital. His family said that he was in good health on the day of his arrest.

Other forms of inhuman and degrading punishment are also utilized by the South African police; such as days and nights of ceaseless interrogation during which the prisoner is refused sleep and kept forcibly standing,<sup>62</sup> receives electric shock treatment, and suffers physical as well as mental abuse. Dr. Niel Aggett, a white political detainee, was interrogated for sixty-two hours without a break, and is a prime example of torture in the South African jails. In the last 168 hours of his life, he was interrogated for 110 hours.<sup>63</sup> In official inquiries, the police, with the help of a forged or spurious coroner's report, are never blamed for the crimes that they have committed which result in the death of a prisoner.

In the case of Auret Van Heerden, who was arrested and detained between September 24, 1981, and July 9, 1982, the police used legal bureaucracy to protect themselves. Van Heerden filed a sworn affidavit after his release which contended that, during his time in prison, he was held in solitary confinement, he was tortured with electric shocks, wet canvas bags were placed over his head to frustrate breathing, he was beaten with a *sjambok* (a wooden and leather stick), and was dragged around the room by his hair. When the South African government and prison authorities would not deal with this torture claim, he filed a civil suit against the security officers that tortured him. In September 1984, the judge dismissed the claim against the security officers, ruling that Van Heerden had not submitted his complaint within the six month period allowed by the law. The fact that he was in prison and in solitary confinement for nine months was disregarded.

The South African government has consistently denied that such means of torture are employed in the interrogation of prisoners. They claim that the use of force, the use of mental abuse and other tactics by the police are allowed

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61. See SOUTH AFRICAN INST. OF RACE RELATIONS, SURVEY 1963, at 49-51; SURVEY 1964, at 65-66; SURVEY 1970, at 54-55; SURVEY 1971, at 91. According to B.J. Vorster, a past Minister of Justice and later Prime Minister, five detainees that had been arrested under the 90 Day Law had been committed to mental institutions. PARL. DEB., H.A. REC. 22 (daily ed. Jan. 21, 1964) (statement of Prime Minister B.J. Vorster). This was the first and only time this fact was brought before parliament.

62. See, e.g., *S. v. Weinberg*, 1966 S.A. 66 (A.D.). This sort of torture is called "statue torture" and is used against nearly all detainees. The prisoner is made to stand for periods as long as 60 hours or more, often within a narrow square, normally two feet wide, and is called a 'place.' From this area they are not allowed to move. This treatment most often leads to swollen ankles, fainting and a deprivation of sleep. From a leaflet issued by the *Anti-Apartheid Movement* (1964).

63. In the last number of years, many deaths have been attributed to the South African prison system. Many of these deaths were accidents or suicide and not a result of torture according to the South African authorities. (citations omitted).

under the different detention laws, and that they are not considered torture or cruel, inhuman or degrading punishment. They have refused countless times to subject the matter to a judicial inquiry, as many feel that the results would show great deviation from the concept of basic human rights.

Although designed to combat terrorism and other subversive crimes and actions, the Terrorism Act, as well as the different detention period acts, have themselves become instruments of subjugation, domination, enslavement, and repression. "Both in its form and in its implementation it must be seen as a statute that creates a new species of cruel and unusual punishment, one that runs counter to Western traditions in the field of criminal justice."<sup>64</sup>

Other forms of punishment have proliferated since the days of the Union. Beatings, lashings and whippings with sticks, canes or *sjamboks* have been very common. In the first forty years of the Union, 115,000 offenders received over 910,000 strokes or lashes.<sup>65</sup> Unfortunately, in South Africa today, being lashed with a cane is still an accepted form of punishment *de jure* as well as *de facto*. During the 1950s and 1960s, lashing was a compulsory punishment for sexual molestation, larceny, aggravated assault, and breaking and entering. In 1965, under the Criminal Procedure Amendment, compulsory beatings as punishment were annulled, but still remain as a discretionary form of punishment for certain crimes. Today, beatings are often handed out during interrogation and during demonstrations. According to the South African government, beatings are of "special efficacy especially in a country largely *populated by a people the bulk of whom have not yet emerged from an uncivilized state.*"<sup>66</sup>

## V. ARTICLE 13

Article 13 of the Declaration states in pertinent part: "Everyone has the right to freedom of movement and residence within the borders of each state."<sup>67</sup> According to the Declaration, everyone has the right to reside within the boundaries of his place of birth. In accordance with Article 12 of the 1966 International Covenant on Civil and Political Rights, "[e]veryone lawfully within a territory of a state shall have . . . the right to liberty of movement and freedom to choose his residence."<sup>68</sup> In other words, these two declarations guarantee the freedom to choose one's place of residence, one's place of work, and the freedom to travel freely in one's own country.

In South Africa, however, Blacks may only reside in areas or on land that are either in reserves, in Bantustans or in the "independent Homelands." In order to keep control over South Africa, the government implemented a policy of land reform. Control by Whites over the land and its asymmetric allotment among the population is one of the tenets of *apartheid*. It provides the white minority a power-base, as they have a monopoly over the mineral wealth of the country. The dispossession of those who originally inhabited the country is

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64. J. DUGARD, HUMAN RIGHTS AND THE SOUTH AFRICAN LEGAL ORDER 136 (1978).

65. A. SACHS, JUSTICE IN SOUTH AFRICA 195 (1973).

66. *Id.* at 196 (emphasis added).

67. See Declaration, *supra* note 11.

68. See Covenant, *supra* note 49.

evident in the laws by which the land has been apportioned. The Native Land Act of 1913, as well as the Native Trust and Land Act of 1936, allocates approximately fourteen percent of the land area to seventy-two percent of the population (the black majority). White South Africans have unlimited freedom of movement, while Blacks need permission to move from one locality to the next. "*The law of the land regards him as having freedom of movement only within his circumscribed limits of his immediate docile.*"<sup>69</sup>

When the National Party came to power in 1948, it promised its supporters that it would try and stem the entrance of Blacks into the white urban areas. But the 1970 population census reflected that, although there was an increase of population in the Bantustans, over half of the black population still lived in white areas. When a black visits a white area, he does so under sufferance and has to abide by a host of discriminatory laws and dictates. The problem now facing the South African government is how to appease both its electorate and at the same time be concerned with economic expansion.

The government has thus resorted to a system of fiction and fantasy. It sees the black as a temporary denizen, and, in order that Blacks realize this fact and not intend to stay as permanent dwellers, laws and regulations regulate their behavior. *Apartheid* outlaws the "freedom of movement and residence within the borders of each state," notwithstanding that such action is explicitly proscribed by the Declaration. This method, although crude and discriminatory, is very adroit as it allows the South African government to keep control over the black population and its entrance into white areas in accordance with the *apartheid* policy.

#### A. The Bantu Consolidation Act (Urban Areas) of 1945

The Bantu Consolidation Act (Urban Areas) of 1945 controls the influx of Blacks into the white urban areas and their conduct therein. Under section 10, Blacks may be fined and deported to their tribal homes if found to have remained in the white area for more than seventy-two hours. The only exceptions are if a black: (a) has resided in that white area since birth;<sup>70</sup> (b) has worked consecutively for the same employer for 10 years or more; (c) has lawfully lived in that area for 15 years or more; (d) is the wife, unmarried daughter or minor son of a male falling under (a) or (b) or (c); or (e) has been granted permission by the local labor bureau which states place of work, the class of work permitted, and the length of stay in that area. If Blacks are prosecuted under this Act, they are presumed guilty until proven innocent. As a consequence of this Act, if a black person is born in a white area and has not lived there for a period of time for accepted reasons, such as schooling, he is not allowed to return for more than seventy-two hours without permission.

Blacks who qualify for residence in a white area are still bound by many restrictions. Curfews forbidding Blacks from being in a public domain within an urban area can be imposed and are in force in many white areas, thus assuring

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69. E. BROOKS & J. MACAULAG, *supra* note 31, at 53 (emphasis added).

70. This is nearly impossible. For any Blacks born in a white area cannot live there for very long, as they are not allowed to study at schools in that white area and, thus, have to leave in order to get an education.

that the black residents of that area are not out of their domicile. A permit is needed from one's employer or some other authorized person, in order to be allowed out after curfew. This law was instituted in order to protect the white citizen from being "murdered in his bed by the black peril."<sup>71</sup> The law also gives the Minister of Justice extensive powers to prevent Blacks from attending churches, schools, clubs, places of entertainment and other public institutions in white residential areas.

The Bantustans or Homelands are separate development areas that were known in the past as "reserves," and formulated under the Land Acts of 1913 and 1936. The term "Bantustans" or Bantu Homelands is designed to support the myth that Whites moved into an empty South Africa, and that the present boundaries between Blacks and Whites are the result not of white conquests, but rather of pre-colonial black settlement. The 1913 Act distinguished certain areas known as "reserves" for Blacks and prohibited the transfer or the lease of land by other races within these reserves. At the same time, Blacks were, and still are, forbidden to acquire land in any other part of South Africa. With these new areas thus being formed, stretches of land owned or settled by Blacks outside these "reserves," often surrounded by white farms, were soon expropriated by the government. These "black spots" resulted in the removal of over 211,626 Blacks from their homes to nearby Bantustans.<sup>72</sup> This often resulted in much human suffering because often these new areas lacked the basic requirements for human settlement and lacked employment opportunities for those relocated. Land continues to be added to the Homelands as compensation for the removal of Blacks from these "black spots."<sup>73</sup>

The *apartheid* system divides the African nation into ten different groups based upon linguistics. Each group is considered a separate national unit. The approximately fourteen percent of the land which is designated for Blacks is redivided into ten areas for the various groups. All Blacks, according to the law, have to belong to one of these groups and Bantustans according to the division of the population, regardless of where they have lived all their lives. More than fifty-five percent of all Blacks live outside these Bantustans or Homelands, as they are known today. Basically these Homelands are the legal place of residence of all South African Blacks. In answer to my question regarding the lack of freedom of movement in South Africa, a South African official stated that, in "these homelands, the legal and only place of residence of the black man, he has all the freedom of movement he wants."<sup>74</sup>

Since the 1970s, a number of these Bantustans have become independent and thus are self-ruling. The classification of "self-ruling" is misleading, however, because the Bantustans are completely dependent on South Africa for everything from employment to monetary assistance. Moreover, the South African central

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71. E. THOMPSON, *THEY ARE CURSED* 187 (1983).

72. 64 PARL. DEB., H.A. REC. 721 (1976).

73. Besides not being allowed to move between black and white areas, Blacks of one Homeland cannot freely move to another without permission.

74. This was stated to the author during an interview with a South African official, whose name cannot be used. As many as a 1,000,000 Blacks commute every day from these Homelands to their place of work in the white areas.

government can overrule any law passed and has basic control over any armed forces, such as the police.

There is another place of residence for Blacks outside the Bantustans, and these are known as the townships. These townships are theoretically connected with the Bantustan political system, but the exact connection cannot be ascertained. Residents of townships are under the administration of the township councils, which answer to the Bantustans and to the South African central government. These councils do not make policy but follow the dictates of the South African government. The townships, consistent with the *apartheid* policy of South Africa, do not include any industrial or commercial areas, and thus their income is from the working man only. Many regard this system and these councils as part of a white conspiracy; the members, although Blacks, are considered agents of *apartheid*. According to the *Rand Daily Mail*, many see these councils as "just a system to make blacks do the dirty work."<sup>75</sup>

#### **B. The Bantu Abolition of Passes and Co-Ordination of Documents Act (Pass Laws Act)**

When we consider the phrase "freedom of movement," its meaning seems quite obvious. To the Blacks of South Africa, unfortunately, it is not. Besides living in the Bantustans, the Blacks that live and work in the white urban areas, even if they are there legally, have to carry pass or reference books. This system is one of the key tools of the *apartheid* policy, and one of the ways that economic exploitation is accomplished. The pass laws effectively control the movement of Blacks throughout South Africa. The law states that every African over the age of sixteen that lives, works or travels outside the Bantustan must carry a pass book or reference book. According to the Act, every African, after reaching the age of sixteen, has to be finger-printed and issued a pass book which contains the individual's residential address, the name of his employer, a weekly or monthly signature, tax receipts, driver's and gun licenses, and identity documents. Pass books must be produced whenever asked by officials. Failure to do so constitutes a criminal offense. These Acts are vigorously enforced and comprise about one-fourth of all criminal cases against Blacks. Many of these cases are brought for trial within twenty-four hours, but the majority take much longer. Of course, during the interim, the alleged offender awaits trial in a jail cell.

The power of the pass as an instrument of control rests upon the penalties imposed on those who contravene the regulations. Those not in possession of their passes are either fined, jailed or forcibly removed to the Bantustan. Police raids on certain areas resemble military operations and, in fact, since 1985, military personnel have been used in the raids. Anyone failing to produce a pass book is usually banned from re-entering the white area.

The government of South Africa believes that its policies toward Blacks and their lack of freedom of movement should not be opposed by the judiciary and, thus, passed the Bantu (Prohibition of Interdicts) Act 1956. This law, like many others, forbids the African, *and only the African*, from receiving from the legal system an interdict to delay the banishing order. Therefore, this racist law can

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75. *Rand Daily Mail*, Oct. 13, 1981.



be imposed in order to deport Blacks that live in the Bantustans that do not have the necessary pass or do not have the necessary permits to live in a white area.

In 1986, The Bantu Abolition of Passes and Co-Ordination of Documents Act was abrogated *de jure*, thus allowing Blacks to travel all over South Africa as they wish. Unfortunately, the abolishment of the pass laws are only cosmetic, as the South African Police still demand from Blacks their Bantustan passports, the new name for the pass or reference books. Blacks are still prohibited from living in white areas and even from residing there. The majority of Blacks that do have permits are domestic servants working for white households. They do not live with the white family, but in hovels attached to the white family's home. Their children do not live with them because they are required to live in the Bantustans or townships and go to school there. The children see their parents about once a week, if they are lucky.

## VI. BANNING AND BANISHMENT

The South African government uses banning and banishment orders to restrict and silence opposition. This is allowed under the Riotous Assemblies Act,<sup>76</sup> the Internal Securities Act,<sup>77</sup> and the Bantu Administration Act.<sup>78</sup> These laws license the government and the Minister of Justice to sequester political agitators to specific locales without judicial confirmation and thereby place austere stipulations on free movement. The Minister of Justice is permitted to issue banning orders to any person whom he feels advocates the success of communism, will promote feelings of hostility between the different racial groups or is a danger to state security.

This punishment requires an individual to report to the police, either daily or weekly, and prohibits communication with others. Banishment also forbids one from being quoted in public or private, attending any political meetings or rallies, or moving outside the area to which the individual is restricted. Another form is known as house arrest, which confines the person to his residence and prohibits him from receiving visitors or entering any public institution without prior permission. This has been used successfully against students and teachers at schools and universities. These orders can be enforced for a period of up to five years, with provisions for continuation if needed.

For example, Mrs. Winnie Mandela, wife of formerly banned and imprisoned ANC leader Nelson Mandela, has been banned since 1965. No South African court can overrule these orders as they relate to "security crimes," and are, therefore, placed and rescinded only at the discretion of the Minister of Justice. The exact number of banning orders issued each year is not known, since they are considered security offenses and thus cannot be released. According to different sources, however, the numbers of these orders issued approximate 120 annually.

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76. The Riotous Assemblies Act, No. 17 (1956).

77. The Internal Securities Act, No. 44 (1976). This act was previously called the Suppression of Communism Act of 1950.

78. The Bantu Administration Act, No. 38 (1927).

African political dissidents face further punishment in the form of banishment from their homes. These people are normally banished to areas far away from their previous place of work or abode. Many well-known political activists have endured this sort of punishment. The banishment orders affect almost every aspect of one's life. Usually a different language is spoken in the new area. There may be little or no employment, no education, and a lack of housing. The vagueness of the provisions and the orders makes it virtually impossible for people not to break the law.<sup>79</sup>

The foregoing discussion illustrates how freedom of movement is defined in South Africa. There is freedom for a particular race group — the Whites. But the Blacks, who are in the majority, have no such freedom. The judicial system is not open to Blacks, and they have to accept all decisions by racially-minded jurists without protection. The right of Blacks to move freely within South Africa is non-existent, despite the fact that they are South African citizens. It is this area of discrimination in South Africa which represses the black citizens most severely.

The lack of freedom of movement is contrary to the Declaration. The South African government is aware of this fact, but refuses to alter its policies because the Declaration conflicts and negates the core of its existence. These policies make life arduous for Blacks, who are as much citizens of South Africa as any white man. It is now in the hands of the black leaders to change the situation. If they do not, these policies will become more entrenched.

Unfortunately, the seminal words of Chief Justice Taney of the U.S. Supreme Court cannot be applied to South Africa: “[f]or all the great purposes for which the federal government was formed . . . we are one people, with one common country. We are all citizens of the United States; and as members of the same community, must have the right to pass and repass through every part of it without interruption.”<sup>80</sup>

## VII. CONCLUSION: A DEARTH OF MORALS

The *apartheid* problem, which has engulfed the Republic of South Africa for the last three hundred years, is the result of many factors. Namely, the denial of franchise to the majority of the population, the division of the populace by race, and the bias in the reaping of national benefits. The foundation of *apartheid* is the very antithesis of the concepts laid down in the Declaration and the justification of the existence of the United Nations.

Although the Declaration has many weaknesses, the basic idea to which it aspires is admirable and merits serious consideration by all governments. The foundational principle of human rights can be reduced to a sacred concern for the value of human life. The decision-makers of South Africa, due to the potency of their power, are capable of ignoring the basic human characteristics of the

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79. SOUTH AFRICAN INST. OF RACE RELATIONS, *BANNING IN S. AFRICA: SURVEY FROM 1950-1974* (1974). During the survey period, some 1,240 banning were reported. In 1976, according to the South African Institute of Race Relations, there were 144 banning. Amnesty International reports that in 1980, there were 150 banning, with fifty more in 1982.

80. See J. DUGARD, *supra* note 64, at 78 (quoting *Smith v. Turner*, 48 U.S. (7 How.) 283, 492 (1849)).

populace. The result is that privileges and liberties of Blacks are diminished to the point of enslavement and psychological bondage.

An important and commonly accepted theory states that dissatisfaction with a government by an oppressed people can very often result in upheavals, riots, and finally rebellion, leading to coercive means of compulsion by that authority. History has shown that the greater the inclination for the population to combat the governmental and judicial structures, the greater the need to augment the authority of those entrusted with the preservation of law and order. In order to prevent this sort of situation from occurring, a ruling authority must be complemented by a respect for the laws by the ruled people in addition to respect by the authorities for the dignity and worth of the citizens. In other words, to avoid rebellion, a ruling minority must possess legitimacy. The South African government does not.

South Africa has entered the realm of complete loss of justice and equality for all. The majority of the population has no respect for the government. The government does not respect the people. This lack of mutual respect has led to the deaths of Blacks and Whites on both sides of the political spectrum. Furthermore, this situation has forced the South African government, from 1948 to the present, to institute far-reaching official powers in order to cope with the growing dangers and discord which have resulted from its official policies. These powers that have been conferred are imperious and oppressive and amount to bedlam and anarchy on the part of the government.

These laws have been implemented because of the fear of the "great takeover" — the belief possessed by the majority of white South Africans that the Blacks will come and murder them in their beds. No society can continue in this way, and history has shown that only violence and wastage of lives improves such situations. The religious laws of *apartheid*, and the curse of Ham, are still the ideology and basis for segregation perpetuated in South Africa for the last 300 years. Now, as never before, this diabolical theology has integrated its way into the political arena and influences the everyday working policy of the political elite. Breaking away from this theology is political suicide. The Nationalist Party learned this lesson when they lost a large number of seats to the ultra-right-wing Conservative Party in the 1988 election, as a result of attempted liberalization of the rigid *apartheid* laws.

Many of the petty *apartheid* laws have been abolished *de jure* over the last five years, but unfortunately, *de facto*, they are still as prevalent as ever. The 1985 state of emergency has slowed the official breaking down of *apartheid* by the government. Many Whites have called for the reinstatement of the abolished laws. The South African regime has already realized that a compromise must be reached. In order to preserve their electorate, however, very little has been done. For example, the Bantu Abolition of Passes and Co-Ordination of Documents Act was repealed, but Blacks from the Homelands still had to carry passports. The Mixed Marriages Act was also repealed, but without repeal of the companion Bantu Consolidation Act, mixed couples cannot live together. Therefore, most of the liberalization of South Africa has resulted only in cosmetic change.

*Apartheid* in all its forms runs counter to the theories of human rights and is, thus, contrary to the principles of the Declaration. *Apartheid* does not allow for the freedom of a person, the freedom to live one's life as one wishes or

equal citizenship of the Republic of South Africa for all its residents. The Declaration posits the belief in equality for all; notwithstanding race, color, sex, language and religion, and lays out what should be expected by all members of the human race. The lack of nearly all of these principles in South Africa is intolerable. If people of different races cannot live together in harmony because of state laws, the ideology of the state is unacceptable. The South African regime not only disregards the principles stated in the Declaration, but in many cases, acts blatantly against them. These principles have been accepted for the last four decades as the highest morals to which one can aspire. Unfortunately, this fact seems to have been lost on the South African government.

Ironically, General Jan Christian Smuts, a past South African Prime Minister, was one of the founders of the United Nations. In fact, he was the author of the phrase "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, . . . ." which is found in the preface to the Charter of the United Nations.<sup>81</sup> When one studies this momentous document, it is obvious that the South African regime does not even respect one article: from the right to life, to the right to found a family; from the right to a freedom of thought, to the right to education.

In sum, the South African government overtly abuses the principles of the Declaration. The South African policy of *apartheid* runs counter to the principles which have been set forth in the Charter of the United Nations and the Declaration. The people who are to be blamed for this atrocity are not only the policy makers and parliamentarians in South Africa, but the citizens of South Africa themselves. The citizens constitute the only force that will be powerful enough to change South Africa.

The South African regime has refused to recognize the importance of the Declaration and has abused, exploited and violated twenty-eight of the thirty Articles of the Declaration. This *apartheid*-based regime has become the fulcrum of total oppression. For many, the *apartheid* laws counter the basic understanding of the human race and human behavior. This blatant division of rights and privileges as a result of race or creed is an anachronism. *Apartheid* negates all modern moral principles, and all of humankind should fight for its eradication.

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81. U.N. CHARTER preamble, 1976 U.N.Y.B. 1043.