SPECIAL STUDY OF RACIAL DISCRIMINATION IN THE POLITICAL, ECONOMIC, SOCIAL AND CULTURAL SPHERES

(Interim report submitted by the Special Rapporteur, Mr. Hernán Santa Cruz)

The Secretary-General has received from the Special Rapporteur, Mr. Hernán Santa Cruz, the attached report and has the honour to communicate it to the Sub-Commission on Prevention of Discrimination and Protection of Minorities.
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INTRODUCTION

Resolutions relating to the study

1. At its seventeenth session in 1965, the Sub-Commission adopted resolution 6 (XVII), 1/ on "Measures to be taken for the cessation of any advocacy of national, racial and religious hostility that constitutes an incitement to hatred and violence, jointly or separately", in which it decided to carry out, in the light of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, a special study of racial discrimination in the political, economic, social and cultural spheres.

2. The Commission on Human Rights, at its twenty-first session, considered and took note of the report of the Sub-Commission. 2/

3. The Economic and Social Council, in resolution 1076 (XXXIX) of 28 July 1965, welcomed the decision of the Sub-Commission to undertake a special study of racial discrimination in the political, economic, social and cultural spheres and asked the Secretary-General to give the necessary assistance to the Sub-Commission in the preparation of the study. The Council requested the Commission on Human Rights to include in the agenda of its twenty-second session the question: "Measures for the speedy implementation of the Declaration on the Elimination of All Forms of Racial Discrimination" and decided to maintain this question on its own agenda.

4. The General Assembly, in resolution 2017 (XX) of 1 November 1965, noted with satisfaction Council resolution 1076 (XXXIX), and in particular the decision of the Sub-Commission to undertake the special study of racial discrimination in the political, economic, social and cultural fields. It requested the Council to invite the Commission and the Sub-Commission to recommend, in the light of the special study, any further measures which could be undertaken by the appropriate United Nations bodies with a view to eliminating all forms of racial discrimination, and to submit these recommendations to the General Assembly.


2/ See Official Records of the Economic and Social Council, Thirty-ninth Session, Supplement No. 8, chap. VII.
5. At its eighteenth session in 1966, the Sub-Commission decided, in resolution 8 (XVIII), to initiate the special study of racial discrimination in the political, economic, social and cultural spheres and appointed the undersigned Special Rapporteur for 1966. The Sub-Commission requested the Special Rapporteur to bear in mind, in formulating his plan of work, the standard directives relating to the preparation of studies on discrimination set out in resolution 8 adopted by the Sub-Commission at its sixth session, as amended by the Commission on Human Rights at its tenth session (E/CN.4/703, para. 97).

6. The Economic and Social Council, in resolution 1103 (XL) of 3 March 1966, requested the Commission on Human Rights to submit to the Council at its forty-first session its views concerning the speediest possible accomplishment of the task designated by the General Assembly.

7. The Commission on Human Rights, in resolution 5 (XXIII) of 1 April 1966, requested the Sub-Commission to take appropriate steps to carry out the study as rapidly as possible, in accordance with an accelerated procedure.

8. The Commission, in resolution 12 (XXIII) of 20 March 1967, again requested the Sub-Commission to complete the study as rapidly as possible.

9. In accordance with resolution 8 (XVIII) of the Sub-Commission, the Special Rapporteur submitted a preliminary report (E/CN.4/940, para. 435, resolution 12 (XXII)) to the Sub-Commission at its nineteenth session, including the draft of an outline for the collection of information to be used in the study.

10. In resolution 3 (XIX), the Sub-Commission decided that the Special Rapporteur should continue to act in that capacity for the study until its completion in 1969. It requested the Special Rapporteur to proceed with the study, following the standard directives for the preparation of studies of discrimination, bearing in mind the discussion at the nineteenth session and in particular the suggestions concerning new techniques to be applied owing to the special character and urgency of the study. In the same resolution the Sub-Commission requested the Special Rapporteur to present a progress report at its twentieth session, to prepare a chapter analysing the available materials relating to racial discrimination in the

political, economic, social and cultural spheres, including those in studies carried out under the auspices of the United Nations, the specialized agencies and the United Nations Institute for Training and Research (UNITAR), and on this basis to put forward, if possible, the preliminary conclusions he considered appropriate for inclusion.

Procedure for the preparation of the study

11. The procedure to be followed in the preparation of the study was considered in 1967 during the nineteenth session of the Sub-Commission. Several members expressed their awareness of the need to complete the study as rapidly as possible and referred to the various resolutions to this effect that had been adopted by the Commission on Human Rights, the Economic and Social Council and the General Assembly. However, they agreed that the quality of the study should not be sacrificed in the interest of speed. It was recalled that the preparation of country monographs, and verification of their contents by the Governments concerned, had in previous studies furnished the respective Special Rapporteurs with an orderly and reliable basis for their work, and it was felt that the procedure should be applied in the case of the present study. They feared that undue haste might adversely affect the quality of the work produced.\footnote{E/CN.4/930, para. 234.}

12. The normal procedure for preparing studies on discrimination, as laid down by the Sub-Commission at its sixth session and approved by the Commission at its tenth session (E/2572, para. 418), called for the work to be carried out in three successive stages: (a) the collection, analysis and verification of material; (b) the preparation of a report, and (c) the formulation of recommendations for action. Under this procedure the Special Rapporteur began by preparing summaries of material dealing with each Member State. The summaries included material collected from (a) Governments, (b) the Secretary-General, (c) specialized agencies, (d) non-governmental organizations and (e) the writings of recognized scholars and scientists. Each summary was forwarded to the Government concerned for comment and supplementary data, after which it was revised by the Special Rapporteur and circulated to the Sub-Commission as a conference room paper.

\footnote{E/CN.4/930, para. 234.}
13. The standard directives (E/CN.4/703, para. 97) may be summarized as follows:

(i) The report should be undertaken on a global basis and with respect to all the grounds of discrimination condemned by the Universal Declaration of Human Rights, but special attention should be given to instances of discrimination that are typical of general tendencies and instances where discrimination has been successfully overcome.

(ii) The report should be factual and objective and should deal with the de facto as well as the de jure situation...

(iii) The report should point out the general trend and development of legislation and practices with regard to discrimination... stating whether their tendency is towards an appreciable elimination or reduction of discrimination, whether they are static or whether they are retrogressive.

(iv) The report should also indicate the factors which in each instance have led to the discriminatory practices, pointing out those which are economic, social, political or historic in character and those resulting from a policy evidently intended to originate, maintain or aggravate such practices.

(v) The report should be drawn up not only to serve as a basis for the Sub-Commission's recommendations, but also with a view to educating world opinion.

(vi) In drawing up the report full advantage should be taken of the conclusions already reached with respect to discrimination by other bodies of the United Nations or by the specialized agencies.

(vii) In addition to the material and information which he is able to collect and which he shall embody in his report in the form of an analysis, the Special Rapporteur shall include such conclusions and proposals as he may judge proper to enable the Sub-Commission to make recommendations for action to the Commission on Human Rights.

14. After the close of the Sub-Commission's nineteenth session, the Special Rapporteur gave careful consideration to all the comments which had been made in the debate and prepared a slightly revised outline. (For text, see E/CN.4/Sub.2/288, annex 1.)
15. At the request of the Special Rapporteur, the Secretary-General transmitted the outline to the Governments of States Members of the United Nations and of the specialized agencies on 17 February 1967. In the note of transmittal, the Secretary-General stated that he would be grateful for any help that the Governments could give the Special Rapporteur in the preparation of his study, and that the Special Rapporteur would particularly appreciate having, at that stage, any material that the Governments could furnish pertaining to the study, including the texts of laws, administrative arrangements, judicial decisions and statistical data. The Secretary-General added that he would also be grateful for any other information that could throw light on the situation in the country concerned, including information on each of the particular points mentioned in the outline. Governments were requested to send such material, if possible, by 15 April 1967.

16. A similar request was sent on 16 February 1967 on behalf of the Secretary-General by the Director of the Division of Human Rights, to the Director-General of the United Nations Educational, Scientific and Cultural Organization; to the Director-General of the International Labour Office and to the Executive Director of the United Nations Institute for Training and Research. In his letter, the Director of the Division of Human Rights reminded the above-mentioned organizations of paragraph 7 of resolution 3 (XIX) of the Sub-Commission, in which the Secretary-General had been requested to give the Special Rapporteur all necessary assistance in the preparation of his report, and of the importance of the assistance of the specialized agencies which had been particularly stressed by the members of the Sub-Commission. The organizations in question were requested to prepare, for inclusion in the chapter of the report analysing the available materials relating to racial discrimination, a brief summary and analysis of such materials as was available to them.

17. The outline was transmitted to a selected number of non-governmental organizations having consultative status with the Economic and Social Council on 24 February 1967. In the accompanying letter, the organizations were invited to place at the disposal of the Special Rapporteur, by 15 April 1967 if possible, any information which they considered to be relevant to the study.

On 20 March 1969 a similar note was addressed to the Governments of Equatorial Guinea, Mauritius, Southern Yemen and Swaziland, requesting information to be sent, if possible, by 15 May 1969.
Replies received, country monographs and Conference Room Papers prepared

18. As of 29 May 1969, replies had been received from the Governments of the following thirty-seven countries:

- Albania
- Austria
- Bulgaria
- Cambodia
- Colombia
- Denmark
- Finland
- Hungary
- Italy
- Ivory Coast
- Laos
- Malta
- Morocco
- Norway
- Poland
- Singapore
- Trinidad and Tobago
- United Kingdom
- United States of America
- Venezuela
- Argentina
- Brazil
- Byelorussian SSR
- Canada
- China
- Dominican Republic
- Guyana
- India
- Japan
- Luxembourg
- Mexico
- Nigeria
- Pakistan
- Romania
- Togo
- Ukrainian SSR
- USSR

19. In addition, replies have been received from the following Territories under United Kingdom administration: Bermuda, British Honduras, British Solomon Islands Protectorate, Brunei, Cayman Islands, Falkland Islands, Gibraltar, the Gilbert and Ellice Islands, Mauritius (which has since achieved independence), St. Helena and the Seychelles.

20. The Special Rapporteur has also received replies from two specialized agencies: UNESCO and the ILO.

21. Replies have been received from two non-governmental organizations: the World Young Women's Christian Association and the World Women's Christian Temperance Union.
22. Using all the available information and supplementing it, where necessary, by material obtained from other authorized sources, including the writings of recognized scholars and scientists, the Special Rapporteur prepared, with the assistance of the Secretariat, draft monographs summarizing the situation in the countries listed below. Each monograph was (or will be) forwarded to the Government concerned with a request that comments and supplementary data should be supplied within a two-month period. As of 21 May 1969 thirty-one countries had transmitted their comments. The draft monographs concerning these countries have been revised as necessary and will be circulated as Conference Room Papers to the members of the Sub-Commission at its twenty-second session. The following tabulation indicates the present status:

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<td>Albania</td>
<td>14 May 1968</td>
<td>5 March 1968</td>
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<td>Argentina</td>
<td>22 April 1968</td>
<td>7 May 1969</td>
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<td>Austria</td>
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<td>Barbados</td>
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<td>Belgium</td>
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23. As of 29 May 1969, thirty-six Conference Room Papers had been prepared in the manner indicated in paragraph 22, containing material relating to racial discrimination in the political, economic, social and cultural spheres in the following countries:
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Scope of earlier reports submitted by the Special Rapporteur

24. In 1967 the Rapporteur submitted a progress report (E/CN.4/Sub.2/276) to the twentieth session of the Sub-Commission. The report was examined by the Sub-Commission at its 517th to 522nd and 524th meetings. In resolution 1 (XX), the Sub-Commission invited the Special Rapporteur to take into account, in preparing his report for the twenty-first session of the Sub-Commission, the discussions in the Sub-Commission at its twentieth session and to give due consideration in his report to the problem of measures which should be taken to halt Nazi activities wherever they might occur.

25. The Special Rapporteur submitted a draft report (E/CN.4/Sub.2/288) to the twenty-first session of the Sub-Commission. The report containing an introduction, three parts and five annexes. Part I, which consisted of five chapters, dealt with the current situation regarding racial discrimination in the political, economic, social and cultural spheres and with the measures taken within States to eliminate it. Part II, which contained two chapters, dealt with two extreme phenomena of racial discrimination, namely, the policy of apartheid of the Republic of South Africa and the revival of Nazism and racial intolerance, and included recommendations on measures which could be taken to halt Nazi activities wherever they might occur. Part III set out the Special Rapporteur's preliminary conclusions and proposals.
The draft report was examined by the Sub-Commission at its 547th to 550 meetings. In resolution 6 (XXI), the Sub-Commission invited the Special Rapporteur, taking into account the exchange of views which had occurred, to submit a final report in time for it to be considered by the Sub-Commission at its twenty-second session.

Scope of the interim report

26. The Special Rapporteur, however, finds it impracticable to comply fully with this request for a number of reasons. First, the problem of racial discrimination has become increasingly significant within recent years. New developments, which ought to be carefully examined and analysed, are taking place in various parts of the world. Time does not permit this to be done in any meaningful manner in a report prepared for presentation to the Sub-Commission at its twenty-second session. Secondly, the Special Rapporteur would like to base the final report on the greatest possible number of Conference Room Papers, in order that the study might be as comprehensive and well-documented as possible. As of 29 May 1969, thirty-six Conference Room Papers had been completed, twenty-seven country monographs had been submitted to the respective Governments for comments and supplementary data, and four others were in various stages of preparation. The Special Rapporteur anticipates, however, that with the assistance of the Secretariat, he will be able to complete no less than eighty Conference Room Papers to serve as a basis for the final report, which he now plans to submit to the Sub-Commission at its twenty-third session. Thirdly, the Special Rapporteur believes that the presentation of the final report to the Sub-Commission immediately preceding 1971, the International Year for Action to Combat Racism and Racial Discrimination, would enhance the impact of the report on public opinion.

27. Finally, it will be recalled that at its 1022nd meeting on 7 March 1969, the Commission on Human Rights adopted resolution 10 (XXV) in which it requested the Sub-Commission to deal, in the present study, with the danger of the revival of nazism and with the way in which it may affect the existence and safeguarding of fundamental rights and freedoms. The Commission also invited the Governments of Member States and organizations possessing information on the subject to send such information to the Special Rapporteur early enough to be taken into consideration in the study. At the request of the Special Rapporteur, the Secretary-General...
addressed a circular letter to the Governments of Member States on 18 April 1969, transmitting resolution 10 (XXV) to them. The Secretary-General indicated that he would be grateful if the Governments concerned could transmit information on the revival of nazism, including the danger of the revival of that ideology and the way in which it might affect the existence and safeguarding of fundamental human rights and freedoms to the Special Rapporteur by 30 June 1969. A request along the same lines was sent on 13 May 1969, on behalf of the Secretary-General, by the Director of the Division of Human Rights to the Director-General of the United Nations Educational, Scientific and Cultural Organization and to the Director-General of the International Labour Office, the Arab League, the Council of Europe, the Organization of American States and the Organization of African Unity, as well as to a selected number of non-governmental organizations having consultative status with the Economic and Social Council. Only a few replies to those requests had been received at the time the present report was prepared.

28. The Special Rapporteur accordingly submits to the Sub-Commission at its twenty-second session an interim report which he hopes would enable the old and the new members of the enlarged Sub-Commission to hold a useful exchange of views on the matter as a whole and, in particular, on the Special Rapporteur's proposals and recommendations.

29. The interim report consists of an Introduction and eleven chapters. Chapter I deals with the historical background of racial discrimination. Chapter II defines the scope of the study. These chapters represent a revision of Chapters II and III, respectively, of the draft report (E/CN.4/Sub.2/288). Chapter III of the present report corresponds to Chapter VII of the draft report but has been substantially revised. Chapters IV, V, VI and VII of the present report analyses the current situation in various parts of the world regarding racial discrimination in the political, economic, social and cultural spheres, and are based mainly on the information derived from the Conference Room Papers that have been completed since the preparation of the draft report. Chapter VIII deals with a new question, not included in the draft report, namely that of the treatment of indigenous people. Chapter IX deals with the policy of apartheid of the Government of the Republic of South Africa and reproduces substantially Chapter IX of the draft report, together with information regarding new developments that have taken
place since the preparation of that report. Chapter X, which deals with the question of nazism, replaces Chapter X of the draft report. Chapter XI sets out draft proposals and recommendations as revised in the light of the debate at the twenty-first session of the Sub-Commission.
CHAPTER I

HISTORICAL BACKGROUND

The development of the concept of "race" as a ground for prejudice and discrimination

30. "Of all the vulgar modes of escaping from the consideration of the effect of social and moral influences upon the human mind, the most vulgar is that of attributing the diversities of conduct and character to inherent natural differences."

Thus H.T. Buckle, in The History of Civilization in England, published in 1864, quotes with complete approval the opinion which John Stuart Mill had expressed in his Principles of Political Economy, which first appeared in 1848. It would appear, however, that this "vulgar mode" of which both spoke had been popular for a long time and had expressed itself in the folklore, the literature and the institutions of various countries. With regard to its expression in literature, Klineberg\(^1\) points out that while the argument and the conclusions may have varied with each writer, they were almost invariably directed toward the glorification of his own people.

"This fact alone", he writes, "will probably convince the serious student that in the field of racial theories he cannot hope for objectivity. The greater frequency with which one race or one people is praised may depend upon on accidental majority among those who write the books, and truth is not necessarily on the side of the most articulate."\(^2\)

31. The earliest exponents of "racial" theories based their explanations for alleged group differences on the physical environment. To Aristotle, the Greek philosopher of the fifth century, B.C., the people living in northern Europe were brave, but lacking in intelligence and consequently unfitted for political organization or the exercise of power. Asiatics were inventive and intelligent, but lacking in spirit. The Greeks, however, being geographically well situated, were accordingly by nature fitted to rule the earth. Some three hundred years after Aristotle, a Roman, Vitruvius, described the people of southern Europe as having a keen intelligence owing to the rarity of the atmosphere and the heat, and the people of the north as having a dull intelligence on account of the density and coldness of the air.


2/ Ibid., p.1.
32. In the sixteenth century, the question of "race" became a matter of practical concern for the conquerors of the New World. They felt the need to justify their enslavement of the indigenous "Indians". Quevedo, Sepulveda and others did that for them by maintaining that the "Indians" were an absolutely different race of men, not human in the same sense as were the Spaniards, and therefore requiring different treatment.

33. In the seventeenth century a number of English writers glorified the Anglo-Saxon "race" and proclaimed the destiny of the English to rule the earth.

34. A French writer, Joseph Arthur, Count de Gobineau (1816-1882) is usually regarded as the father of modern "racial" theories. In his Essai sur l'inégalité des races humaines, he attempted to prove the superiority of the "white race" over other races, and of the Aryans over all other whites. The black peoples of the earth, according to Gobineau, were passionate, lyrical and artistic in temperament; the yellow man represented utility, order and mediocrity; but the white man was the expression of reason and honour.

35. One of Gobineau's most devoted followers was Houston Stewart Chamberlain, who was born in England but lived and wrote in Germany. According to him, it was not always easy to identify an "Aryan" and one had sometimes to use intuition or "spiritual divination", which he referred to as "rational anthropology". In his view the Teuton or "Aryan" was dominant everywhere; all the great minds of Western Europe were Teutons; Dante must have been a Teuton; Paul and Jesus were, without doubt, members of the "Aryan race".

36. Another of Gobineau's followers, who lived in the United States, was Madison Grant. In his books, The Passing of the Great Race and The Conquest of a Continent, he sought to espouse the theory of Nordic supremacy. In the former, published in 1916, he expressed the view that in Europe at that time "the amount of Nordic blood in each nation is a very fair measure of its strength in war and standing in civilization". With regard to the United States, he felt that the greatest danger lay in the "gradual dying out among our people of those hereditary traits through which the principles of our religious, political or social foundations were laid down, and their insidious replacement by traits of less noble character". In the second book, he developed this point and argued that the original and best stock in America, which was "Nordic", should
not be allowed to be diluted or smothered by more recent arrivals from central and southern Europe.

37. In Germany, even before the emergence of the Nazi party, expressions of pro-Nordic or pro-Aryan supremacy were to be found in the writings of various authors. Notable among these, in addition to Houston Stewart Chamberlain, were Baur, Fischer, Lenz and Günther. In *Human Heredity*, translated from the original German and published in New York in 1931, Baur, Fischer and Lenz (joint authors) presented an explanation of human species in which scientific knowledge and objectivity were largely ignored in favour of personal impressions. Negroes, Mongols, Alpines and Mediterraneans were characterized in various ways, but in general were said to lack the noble qualities which distinguished "Nordics" and placed them at the very pinnacle of mankind.

38. Thus prejudice based upon "race", whatever its origins, at times became fixed as part of a culture; it was embodied in folklore, developed in literature, and built into the institutions, and frequently persisted even after the circumstances giving rise to the prejudice had vastly changed.

39. According to some social scientists, the fundamental attitude underlying the use of prejudice as a group weapon is ethno-centrism, that is to say, the firm belief in the extraordinary value and worth of one's own group coupled with a dislike for whatever or whoever is different. Moreover, ethno-centrism is functional and thus serves the group in its struggles for power and wealth. It flourishes best in conflict situations. Thus, as Toynbee has pointed out, an East Indian travelling in England in the eighteenth century was received as an honoured guest, and there was also a general admiration for the Chinese; with the growth of conflicts between Britain and the East, however, this attitude changed; there was a loss of enthusiasm for the Eastern lands; ethno-centrism and prejudice grew.

40. Although racial discrimination is a major problem of our time, that has not always been the case nor will it necessarily continue to be so. A few centuries ago the tendency was to discriminate against people of other groups more because

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3/ See for example, Simpson and Yinger, *op. cit.*, pp. 99-100.

of their religion than because of their race. In Europe, for example, where there was at that time little contact with non-white peoples, differences in religious belief were frequently reflected in different social status. Social changes and conflicts were frequently accompanied by religious differentiation. At a time when religion had a fuller impact on daily life, it was easy to believe that a group whose religion was different from one's own was therefore inferior. However, if this prejudice were subjected to closer scrutiny one would find that other considerations besides religion were usually involved. In the inquisition of the thirteenth century, for example, the inquisitor or those whom he served often stood to benefit either financially or politically. As Ruth Benedict has put it, "Heresy-hunting was profitable, and all those who sought riches and power eagerly took advantage of the opportunity, masking their satisfactions behind the dogma that the heretics were guilty of treason against the Almighty".

Today, religious differentiation no longer has the same importance as a cause of group conflict that it once possessed. To a large extent, "racial" differentiation has now taken its place. People now fight their political or economic opponents not by claiming that they believe the wrong things but that they are "naturally" inferior because of their "race".

Concerning this transition from the religious to the racial frame of reference in group conflict, Simpson and Yinger write:

"It was not difficult to make the transition from the religious to the racial line of demarcation. Europe's first extensive contacts with the Negroes of Africa, and the Orientals, occurred at a time when religious differences were still regarded as vitally important. The relative reign of tolerance in religious matters had not yet developed. The members of other races were, in most cases, not only racially different but also religiously different. If, at first, the white European did not condemn the Negro because he was a Negro, he could condemn him because he was a pagan. But what if the black pagan were converted to Christianity? When there were only a few such persons, the adjustment was not difficult; they could be given a higher status or even admitted to the dominant group. MacCrone states that the earliest practice in South Africa was to free slaves who had been baptized. But in time this threatened to become a costly economic burden and a challenge to the whole status structure. When, in 1792, the question was explicitly raised by the Church Council of Stellenbosch, whether owners who permitted or encouraged their slaves to be baptized would be obliged to emancipate them, the matter was referred to the

Church Council of Capetown for its opinion. That body replied that neither the law of the land nor the law of the church prohibited the retention of baptized persons in slavery, while local custom strongly supported the practice...."* Thus the line of cleavage, originally symbolized by religion, had come to be symbolized by race." 6/

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44. Race as a ground for discrimination, as well as for persecution, has spread in modern times because of the greatly increased contact among the different peoples of the world and the multiracial nature of many societies. Modern scientists too, in their efforts to measure physical differences and to study racial origins, have drawn attention to race, and the results of their work have been distorted by those who have wished to justify the use of racial differences in group relations. There is also a measure of relative permanence in the racial line of demarcation which is not true of such other lines of demarcation as poverty, occupation, language or religion. It should perhaps be mentioned, nevertheless, that even the racial line is not as permanent as it might at first appear and that wherever races have come into contact, miscegenation has produced a mixed group. This has led in some cases to a revision of the line of demarcation, depending on the power needs of the dominant group.

45. In considering the shift from a religious to a racial line of demarcation, it is clear that to understand race conflict in the modern world one must concentrate on conflict rather than on race. Ruth Benedict sums it up in this way:

"Persecution was an old, old story before racism was thought of. Social change is inevitable, and it is always fought by those whose ties are to the old order.... Those who have these ties will consciously or unconsciously ferret out reasons for believing that their group is supremely valuable and that the new claimants threaten the achievements of civilization. They will raise a cry of rights of inheritance or divine right of kings or religious orthodoxy or racial purity or manifest destiny.

6/ Simpson and Yinger, op. cit., pp. 103-104.
These cries reflect the temporary conditions of the moment, and all the efforts of the slogan-makers need not convince us that any one of them is based on eternal verities." 1/

The role of slavery in the development of racial prejudice and discrimination

46. Once differences on the ground of race had been firmly established as symbols of a superiority-inferiority relationship, they were used as weapons in group conflicts. Until the latter part of the eighteenth century, when the slave trade began to become very profitable business, there was not a great deal of racial prejudice. Then the nominally Christian slave-trader found belief in the inferiority, and even non-human nature, of the black man. Philip Mason in the Daedalus issue on Race (Spring 1967) points out that this affirmation of the inferiority of black people was an attempt to balance the rather unbalanced equation of the western Christian ethic that preached human brotherhood and equality of all people, not only before God but also in any democracy, while seeking to enslave some human beings. Mason notes that a similar dilemma had existed in ancient Greece, and that Aristotle had solved it by finding that some people were by nature slaves from birth. Mason concludes that "to affirm this had become, by the end of the nineteenth century, a corporate need of the community." 2/

47. According to Eric Williams:

"Here, then, is the origin of Negro slavery. The reason was economic, not racial; it had to do not with the colour of the labourer, but the cheapness of the labour. As compared with Indian and white labour, Negro slavery was eminently superior. 'In each case' writes Bassett, discussing North Carolina, 'it was a survival of the fittest. Both Indian slavery and white servitude were to go down before the black man's superior endurance, docility, and labour capacity.'* The features of the man, his hair, colour and dentifrice, his "sub-human" characteristics so widely pleaded were only the later rationalizations to justify a simple economic fact: that the colonies needed labour and resorted to Negro labour because it was cheapest and best. This was not a theory, it was a practical conclusion deduced from the personal experience of the planter. He would have gone to the moon, if necessary, for labour. Africa was nearer than the moon, nearer too than the more populous countries of India and China; but their turn was to come." 3/

* J.S. Bassett, Slavery and Servitude in the Colony of North Carolina, Baltimore, 1896.

2/ The Revolt Against Western Values, Daedalus, Spring 1967, p. 329.
48. Earl Conrad writes to the same effect:

"So came the Europeans, so they conquered: so, in the name of God, the church and the Pope made they their earliest divisions of human personnel; so began the most numerous and barbaric enslaving in the annals of man; so began the invention of new human moralities and immoralities; so was unearthed and formed the black human lever which would, in large part, pry and uproot and build the new world; so began, in prayers to God and a turning away from God, that debasement of values and ideals which led to the invention of the modern American Negro and to so much of the shaping of a modern universal race concept." 10/

49. It has been observed that in the United States of America, the planter became engaged in capitalistic agriculture with a labour force entirely under his control.11/ The personal relationship between master and slave became far less important than the economic necessities which had forced the slave into this "unnatural" organization in the first place. So that the plantation might operate efficiently and profitably, the necessity of training the slaves to work long hours and to give unquestioning obedience to their masters and overseers superseded every other consideration. The master had absolute power over the slave's body. Physical discipline was made virtually unlimited and the slaves chattel status unalterably fixed. In such a setting, those rights of personality traditionally regarded as inherent and private were left without defence.

50. There can be no doubt that this process of dehumanization left an indelible mark on slave and master alike. It may be that some contemporary whites still react to the Negro in a given way, to a certain extent because he once was a slave. Attitudes were then formed which have become part of the culture.

The role of colonialism in the development of racial prejudice and discrimination

51. Colonialism has also played a significant role in the development of racial prejudice and discrimination. Commenced as an economic enterprise, aimed at creating sources of raw supplies and markets for the manufactured goods of the European country concerned, it later became a political adventure whereby distant pawns in Africa, Asia and America were arranged to reflect the political power

constellations in Europe. Political and economic factors combined to establish the imperial policy whereby - by force of arms, unequal treaties and any other methods - oppressive measures were imposed and maintained by people of European stock over "native" peoples to enable the exploitation of the resources of their land for the benefit of the European "mother countries". All this was done under the umbrella of a "civilizing" mission where the assumed superiority of European culture, religion, etc., was to replace "primitive" ones in the process of "civilizing" the native peoples, who were characterized as childlike or mentally-retarded and unable to take care of themselves.

52. Indeed, most elaborate rationalizations have been built around the domination of foreign land by Europeans. European nations, it was explained, colonized lands in Africa or Asia to preserve the indigenous peoples from barbarism, to convert them to Christianity, and to bring to them the benefits of civilization. It was often regretted that the "natives" were incapable of self-government, not ready for independence, and unable to manage the machinery of modern technology. They were, it was said, "the white man's burden". And yet, as has been aptly remarked, the greater part of this burden consisted of transporting colonial natural resources to the empires' homelands. This, of course, is not intended to imply that some benefits have not also been carried the other way. The relation, however, between what was received and what was given has tended to be obscured for the European by his comforting beliefs in his mission to civilize "the lesser breeds without the law", as Rudyard Kipling once expressed it.

53. Like slavery, colonialism brought economic power and prestige gains to the groups engaged in it. In their attempts to maintain or increase these gains, these groups have found it easy to invent or accept the idea that other groups are inferior and thus less deserving of life's benefits. Thus, both slavery and colonialism contributed significantly to the increase of race prejudice and racial discrimination. Slavery, for example, has been abolished from many lands more than a hundred years ago, but to a degree its evil effects still linger on.
The effect of decolonization on the development of racial prejudice and discrimination

54. Since the establishment of the United Nations, and particularly since the adoption on 14 December 1960 by the General Assembly of resolution 1514 (XV), containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, most of the former colonial Territories have acceded to full independence and are now Members of the United Nations. Apart from a few notorious situations, the majority of peoples of the world no longer live under foreign domination. The process of decolonization has brought a new dignity and a new meaning of life to millions who, when living under foreign domination, had been the victims of racial discrimination in their own lands. As free people, they are now able to chart their own course, plan their own destiny. The way has not always been easy. People subjected to prejudice, discrimination and exploitation for centuries could not be expected to catch up overnight with their former masters.

55. Moreover, it must be remembered that in some cases the retiring colonial powers left behind a number of problems. For example, most of the new nations of Africa today were not originally what they are now. The colonies out of which these new nations have sprung were arbitrary creations of the colonial Power. Consequently, there are in Africa nations with no correspondence between the geographical and political entity and the tribal and ethnic reality of the area.
56. The United Nations Declaration on the Elimination of All Forms of Racial Discrimination, proclaimed by the General Assembly on 20 November 1963, reaffirms the principles of the dignity and equality of all human beings on which the United Nations Charter and the Universal Declaration of Human Rights are based. Noting that discrimination based on race, colour or ethnic origin in certain areas of the world continues to give cause for serious concern despite the progress achieved in that field, the Declaration affirms the necessity of speedily eliminating such discrimination throughout the world, in all its forms and manifestations, and of securing understanding and respect for the dignity of the human person. The Declaration states that discrimination between human beings on the ground of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples.

57. As mentioned above (para. 1), the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided in 1965 to carry out a special study of "racial discrimination in the political, economic, social and cultural spheres. The decision was subsequently approved by the Commission on Human Rights, the Economic and Social Council, and the General Assembly. The Assembly, in resolution 2017 (XX) of 1 November 1965, called upon all States in which racial discrimination is practised to take urgent effective steps, including legislative measures, to implement the United Nations Declaration on the Elimination of All Forms of Racial Discrimination; and requested the States where organizations are promoting, or inciting to, racial discrimination to take all necessary measures to prosecute and/or outlaw such organizations. In the same resolution, the Assembly requested the Sub-Commission, the Commission and the Council to recommend, in the light of the special study, "any further measures which could be undertaken by the appropriate United Nations bodies with a view to eliminating all forms of racial discrimination, and to submit these recommendations to the General Assembly".

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58. On 21 December 1965 the General Assembly, in resolution 2106 (XX), adopted and opened for signature and ratification the International Convention on the Elimination of All Forms of Racial Discrimination. The Convention, designed to implement the principles proclaimed in the Declaration and to secure the earliest possible adoption of practical measures to that end, sets out a series of measures for eliminating all forms of racial discrimination. These measures will undoubtedly greatly help to promote understanding between races and to build an international community free from racial segregation and discrimination. The Convention entered into force on 4 January 1968.

59. On 21 December 1966 the General Assembly, in resolution 2200 (XXI), adopted and opened for signature, ratification and accession (a) the International Covenant on Economic, Social and Cultural Rights, (b) the International Covenant on Civil and Political Rights. The International Covenant on Economic, Social and Cultural Rights sets out the steps which States parties undertake to take, individually and through international assistance and co-operation, especially economic and technical, to the maximum of their available resources, with a view to achieving progressively the full realization of the rights recognized therein. One such undertaking (article 2) "to guarantee the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

60. Under the terms of the International Covenant on Civil and Political Rights (article 2), each State party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Each State Party further undertakes to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the Covenant.

61. Article 26 of this Covenant provides that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion,"
national or social origin, property, birth or other status". Article 27 reads as
follows: "In those States in which ethnic, religious or linguistic minorities
exist, persons belonging to such minorities shall not be denied the right, in
community with the other members of their group, to enjoy their own culture, to
profess and practise their own religion, or to use their own languages.

62. Thus the United Nations may be said to have undertaken an impressive series
of concrete measures with a view to eliminating all forms of racial discrimination.
These measures are reinforced by those provided in the Discrimination (Employment
and Occupation) Convention, adopted by the International Labour Conference in
1958, and the Convention against Discrimination in Education, adopted by the
General Conference of UNESCO in 1960. The matter at issue at present is
therefore the application in practice as well as in law of the various measures
for the elimination of racial discrimination prescribed in the relevant
international instruments of the United Nations family. It is with this question
that the present study will be mainly concerned.

A. The meaning of racial discrimination

63. One of the saddest and most shameful social phenomena of our time is the
persistence of racial discrimination in many parts of the world. In respect of
numerous civil, political, economic, social and cultural rights, and in many
other areas of human relations, individuals encounter discrimination not on
account of anything they may have done or failed to do, but because of a single
factor over which they could have no control: the colour of their skin or the
race to which they belong.

64. Racial discrimination, race hatred and conflict thrive on scientifically
false ideas, and are nourished by ignorance. With a view to exposing such ideas
and combating racist propaganda, UNESCO has undertaken to study and collect
scientific materials concerning questions of race and has given wide diffusion
to the information collected.

65. A committee of experts on race problems, composed of anthropologists,
psychologists and sociologists, convened in December 1949 in Paris, under the
auspices of UNESCO, agreed that the term "race" designates "a group or population
characterized by some concentrations, relative as to frequency and distribution,
of hereditary particles (genes) or physical characters, which appear, fluctuate, and often disappear in the course of time by reason of geographic and/or cultural isolation”. The Committee added that "the biological fact of race and the myth of "race" should be distinguished. For all practical social purposes "race" is not so much a biological phenomenon as a social myth. The myth of "race" has created an enormous amount of human and social damage. In recent years it has taken a heavy toll in human lives and caused untold suffering. It still prevents the normal development of millions of human beings and deprives civilization of the effective co-operation of productive minds. The biological differences between ethnic groups should be disregarded from the standpoint of social acceptance and social action. The unity of mankind from both the biological and social points of view is the main thing. To recognize this and to act accordingly is the first requirement of modern man.

66. A second group of scientists, composed of physical anthropologists and geneticists, was convened by UNESCO from 4 to 9 June 1951. In concluding their Statement on the Nature of Race and Racial Differences, they set out what they considered to have been scientifically established concerning individual and group differences, as follows:

"(a) In matters of race, the only characteristics which anthropologists have so far been able to use effectively as a basis for classification are physical (anatomical and physiological).

"(b) Available scientific knowledge provides no basis for believing that the groups of mankind differ in their innate capacity for intellectual and emotional development.

"(c) Some biological differences between human beings within a single race may be as great as, or greater than, the same biological differences between races.

"(d) Vast social changes have occurred that have not been connected in any way with changes in racial type. Historical and sociological studies thus support the view that genetic differences are of little significance in determining the social and cultural differences between different groups of men.

"(e) There is no evidence that race mixture produces disadvantageous results from a biological point of view. The social results of race mixture, whether for good or ill, can generally be traced to social factors."

1/ UNESCO Statement on Race, 18 July 1950, para. 4.
67. A conference of experts assembled in Moscow by UNESCO in August 1964 to give their views on the biological aspects of the race question, adopted a set of proposals on this subject. They stated *inter alia* that all men living today belong to a single species and are derived from a common stock (article I); that pure races in the sense of genetically homogeneous populations do not exist in the human species (article III); and that there is no national, religious, geographic, linguistic or cultural group which constitutes a race *ipsa facto* (article XII). The proposals concluded:

"The biological data given above stand in open contradiction to the tenets of racism. Racist theories can in no way pretend to have any scientific foundation."

68. In none of the statements issued by UNESCO committees or conferences is there a categorical definition on the term "race". The closest approach to a definition of the term is that appearing in paragraph 3 of the 1950 statement, viz.: "A race, from the biological standpoint, may therefore be defined as one of the group of populations constituting the species *Homo sapiens*. These populations are capable of inter-breeding with one another but, by virtue of the isolating barriers which in the past kept them more or less separated, exhibit certain physical differences as a result of their somewhat different biological histories. These represent variations, as it were, on a common theme".

69. Popular notions of "race", however, have frequently disregarded the scientific evidence. Prejudice and discrimination on the ground of race, colour or ethnic origin occur in a number of societies, where physical appearance - notably skin colour - and ethnic origin are accorded prime importance. "The word race" says Ronald Segal, "has commonly come to mean a division of mankind by

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colour, just as 'racism' has increasingly come to mean the hostility that one man feels for another because of his colour alone. 4/ And as events in various parts of the world have shown recently, the concept of "race", for all its demonstrated irrationality, is playing an increasingly important role in the affairs of modern life, a role characterized by deep-seated, often violent passions generated and existing irrespective of any scientific or rational truths. As Professor Kenneth L. Little has put it, race, in the biological sense, is irrelevant to racial attitudes and thinking. 5/

70. The meeting of experts which adopted the Paris Statement on Race and Racial Prejudice wrote, in the final Statement, the following:

"The human problems arising from so-called 'race' relations are social in origin rather than biological. The basic problem is racism, namely anti-social beliefs and acts which are based on the fallacy that discriminatory inter-group relations are justifiable on biological grounds." 6/

The statement notes elsewhere that "Racial prejudice and discrimination in the world today arise from historical and social phenomena." 7/ It makes specific reference to such historical phenomena as the conquest of the New World, the colonizing of Africa and Asia, and the growth of anti-Semitism in western Europe. 8/ A historical relevance is also noted in the "social" origins of racism. As Professor Little points out, if the origins of racism are social, "this means that they must be the product not only of existing circumstances, but of the kind of contact which the groups concerned have had with each other in the past". 9/

71. The problem of race, as has been indicate, is fundamentally political and social, and relevant biological data serve mainly to clarify the problem in its political, economic, social and cultural sense. When biologists speak of race

4/ The Race War by Ronald Segal, p. 9.
8/ Ibid., paras. 7 and 8.
or population groups, they usually mean small groups of human beings having the same ancestors. This definition of race is obviously of little relevance to those concerned with the social aspects of race. However, a sociological definition of "race" is, in fact, non-existent. What exist are racial theories and policies, no matter how unjustified they might be.

72. The verb "to discriminate", in its popular usage and in the sense in which it is used in this study has been defined as meaning "to make a distinction in favour of or against a person or thing on the basis of the group, class, or category to which the person or thing belongs, rather than according to actual merit". Discrimination has been described as "the differential treatment of individuals considered to belong to a particular social group". It is the overt expression of prejudice; it is the categorical treatment of a member of a group because he is a member of that group, and supposedly, therefore, of a particular type. Prejudice, on the other hand, is a term which has been applied to categorical generalizations based on inadequate data and without sufficient regard for individual differences. In the psychological context, it refers to a pattern of hostility in interpersonal relations directed against a group of persons or against individual members of the young group; usually it fulfils a specific irrational function for its bearer. Prejudice, therefore, may be regarded as the state of mind giving rise to the practice of discrimination.

73. The universally proclaimed democratic principle that "all human beings are born free and equal in dignity and rights" stands in jeopardy wherever discrimination is practised and political, economic, social and cultural inequalities affect human group relations.

74. The principle of equality does not, as one might assume, exclude all possible differentiations between individuals. In particular, it is not concerned with

13/ Nathan Ackerman and Marie Jahoda, Anti-Semitism and Emotional Disorder, Harper and Brothers, 1950, pp. 3-4.
differentiations based upon such individual qualities as mental or physical
capacity, talent or innate ability; nor is it concerned with differentiations based
upon the individual's capacities, merits, or behaviour in so far as these are
within his control. It is rather concerned with differentiations based on factors
over which he has no control, such as his race, his colour, his descent, and his
national or ethnic origin.
75. The principle of equality, in short, recognizes that those elements of body
and spirit in which all human beings are essentially alike far outweigh and
transcend those purely accidental differentiations over which the individual has
no control. The principle flows from a basic ethical concept, that of human
dignity, which implies, in its simplest terms, that every human being is an end
in himself, not a mere means to an end.
76. Racial discrimination is the very negation of the principle of equality,
and therefore an affront to human dignity. It is a negation, also, of the social
nature of man, who can reach his fullest development only through interaction with
his fellows.
77. The most carefully prepared and widely accepted definition of the term
"racial discrimination" is that which the General Assembly adopted in article 1 of
the International Convention on the Elimination of All Forms of Racial
Discrimination. That definition reads as follows:

"1. In this Convention, the term 'racial discrimination' shall mean
any distinction, exclusion, restriction or preference based on race, colour,
descent, or national or ethnic origin which has the purpose or effect of
nullifying or impairing the recognition, enjoyment or exercise, on an equal
footing, of human rights and fundamental freedoms in the political, economic,
social, cultural or any other field of public life.

"....

"4. Special measures taken for the sole purpose of securing adequate
advancement of certain racial or ethnic groups or individuals requiring such
protection as may be necessary in order to ensure to such groups or
individuals equal enjoyment or exercise of human rights and fundamental
freedoms shall not be deemed racial discrimination, provided, however, that
such measures do not, as a consequence, lead to the maintenance of separate
rights for different racial groups and that they shall not be continued after
the objectives for which they were taken have been achieved."
78. This definition, while intended only for the purpose of the Convention, serves to clarify the meaning of "racial discrimination". It specifies the grounds upon which such discrimination may be based: race, colour, descent, and national or ethnic origin. It indicates the kind of acts which lead to discrimination: distinctions, exclusions, restrictions and preferences. It stipulates that discriminatory acts include not only those having the effect of discriminating, but also those having this intent or purpose. It brands as discriminatory acts which wholly nullify, as well as those which only partially impair, the recognition, enjoyment or exercise of human rights and fundamental freedoms. It spells out not only what discrimination is, but also what it is not, and provides for the measures necessary to secure the advancement of backward racial or ethnic groups or individuals in order to ensure to them the equal enjoyment or exercise of human rights and fundamental freedoms.

79. Racial discrimination will be assumed, for the purpose of this study, to have its most all-inclusive meaning. Moreover, the study will deal not only with forms and manifestations of discrimination which can be controlled or supervised by Governments, but also with those forms and manifestations which can only be dealt with by getting rid of racial prejudice, such as is evidenced in discrimination in matters governed by private law and in matters regulated by custom.

Causes of racial discrimination

80. As indicated above, prejudice is regarded as the state of mind giving rise to the practice of discrimination. Consequently, in examining the causes of racial discrimination, we must also, to a great extent, direct our attention to the mind of the person who practices discrimination. However, it must also be noted that there can be prejudice without discrimination, and there can also be discrimination without prejudice.

81. In *The Roots of Prejudice*, published by UNESCO, Arnold Rose points out that although the question of prejudice has not been studied by scientists sufficiently to make them certain of its causes, there have been some startling discoveries and stimulating suggestions. The author considers the varied sources of prejudice, moving from the more obvious and rational causes to the less apparent and unconscious ones.
82. One of the most obvious causes of prejudice, no doubt, is the fact that it creates advantages and material benefits. Prejudice can provide an excuse for a person to engage in political domination or economic exploitation over others. It may offer opportunity for unprincipled men to take advantage of women belonging to the non-dominant group, and it may give to people even at the bottom of the dominant group's social ladder an apparent superiority over the highest-ranking members of the non-dominant group.

83. Colonialism has frequently been accompanied by prejudice and racial discrimination. Even though no marked degree of racial discrimination may exist in the metropolitan country, those who go out to the colonial territories as administrators, traders, or exploiters of natural resources, frequently acquire an attitude of racial superiority which they believe may aid them in their dealings with the subject peoples. The exploiters sometimes maintain their dominant position by dividing their subordinates and encouraging them to be hostile to one another by maintaining or building up racial, national or religious antagonism to deflect class antagonisms.

84. Similar techniques may be employed within an independent nation. Prices or rents of houses are, in some cases, kept at a high level by forcing people to live within certain small, segregated areas. Wages are kept low for certain dominated groups by not allowing their members to work in any but inferior jobs.

85. This use of prejudice and discrimination for purposes of exploitation may be either conscious or subconscious. Some that appear to be unplanned and unconscious are occasionally revealed to be carefully planned and deliberate. This, however, is of little consequence, since the effects and underlying causes are the same. Deliberate use of prejudice to exploit a group of people can hardly be any different from the unplanned utilization of group differences to gain advantage from the situation.

86. The advantage to be gained may be political as well as economic. Group differences are sometimes exploited to keep a particular party in power. In certain countries, some politicians base their campaign for office on theories of racial supremacy; indeed, a number of organizations formed for the purpose of fostering race hatred have been shown to have political domination as their ultimate goal.
87. It must be pointed out prejudice and racial discrimination as a motive for economic or political gains have certain limitations. It is probable that in the long run colonial Powers could have gained greater economic advantages for themselves had they not pursued a policy of discrimination.

88. There are, however, still some apparent advantages of prejudices. In this connexion, it may be mentioned that there are prestige gains in a society based on prejudice. Members of the dominant group who have no other basis of prestige derive satisfaction in simply being members of that group. As mentioned earlier, even though they might be at the bottom of their own racial, national or religious groups, they can still feel superior to members of the non-dominant group. Indeed, it is often persons of this type who manifest the greatest degree of prejudice. This kind of feeling of superiority is however disadvantageous in the long run to those who encourage it as it is annoying to those against whom it is directed. Those who encourage it are diverted from the pursuit of more real prestige goals and allow themselves to be manipulated by better-placed members of their own dominant group.

89. Prejudice is nearly always accompanied by incorrect or ill-informed opinions regarding the people or group against whom it is felt. Many of these false beliefs take the form of what the social scientists call "stereotypes", exaggerations of certain physical or cultural traits which are found among members of the non-dominant group and are then attributed to all members of the group. When stereotypes exist, an individual is judged not by his own characteristics and merits but on the basis of exaggerated and ill-founded beliefs of what are thought to be the real characteristics of the group.

90. One of the conditions for ignorance about a group of people is social isolation, which can occur even where there is considerable contact. Sometimes people live next door to each other as neighbours or work side by side and yet never get to know each other as human beings. Social as well as physical segregation are concomitants of prejudice. They are among its effects as well as among its causes, since they promote ignorance and ignorance bolsters prejudice.

91. Ignorance among the masses of people - those belonging to the dominant racial group as well as those belonging to the non-dominant group - enables...
the propagandist for economic exploitation and political domination to succeed more readily. If one group of people knows little about another group or has false and ill-founded beliefs about it, it is more susceptible to the camouflaged demands of the exploiter.

92. Racism, or "the superiority complex", is a strong cause of prejudice and racial discrimination. It consists of a set of popular beliefs which includes the following elements: (1) the differences between groups are due to hereditary biology and nothing can change them, (2) habits, attitudes, beliefs, behaviour, and all the things we learn are determined for us before we are born, (3) all differences between the non-dominant group and the dominant group are thought to be examples of inferiority on the part of the members of the non-dominant group, (4) if there should be biological crossing of the groups, the children will be more degenerate than either of the parent groups.

93. These racist beliefs have been so widespread that although authoritatively and consistently proved to be erroneous, they still continue to be an important cause of prejudice.

94. This brings us to the question of the extent to which ignorance of the costs of prejudice is in itself a cause of prejudice and discrimination. Many people who are prejudiced and indulge in various acts of discrimination believe that their prejudices and discriminatory acts affect only those against whom they are directed. There can be no doubt that restriction of employment opportunities, lack of access to places or services intended for use by the general public, bias and antagonism of public officials, and various other manifestations of racial prejudice, are directly harmful to those people whom they affect. What is not so obvious, however, is the fact that those who are prejudiced and who discriminate are themselves the victims of their own attitude and behaviour. Failure to recognize this fact may be regarded as one of the causes of prejudice and discrimination since fewer people would engage in that type of behaviour if they realized that it was harmful to themselves.

95. Some of the ways in which prejudice and discrimination can be harmful to those who indulge in them may be briefly summarized as follows:

(1) significant economic waste results from failure to employ the full productivity of manpower and to make use of the fullest demands of the market;

(2) discrimination breeds unhealthy social conditions which directly or indirectly must inevitably affect all sections of the community, including those who discriminate;
(3) the peoples of the world who practise racial discrimination impose on themselves a great burden by having to determine how and to what extent they shall hold down the people against whom they discriminate;

(4) efforts on the part of some nations to gain the goodwill or esteem through diplomacy, international economic assistance and participation in international activities may be partially nullified by acts of discrimination within those nations;

(5) prejudice and discrimination create barriers to communication between those who discriminate and those who are victims of discrimination and in the process both tend to lose;

(6) according to recent researches, the correlation between prejudice and other kinds of rigidity and narrowness is so clear that it may be reasonably inferred that the maintenance of prejudice will be accompanied by a closed mind towards anything new and an inability to accept and reciprocate fully any human relationship;

(7) prejudice is partially characterized by fear and anxiety in relation to the groups against which it is directed and even though such fears and anxieties are based on false beliefs they contribute to the unhappiness of those who hold them;

(8) when prejudice is part of the culture of a people, it can shift its direction from one group to another;

(9) closely associated with prejudice is disrespect for law and an unwillingness to settle disputes by peaceful means, with the result that unchecked violence and deprivation of human rights directed against one group can eventually spread to other groups.

96. It is customary in countries where racism prevails to assume that prejudice is natural and inborn in a person since it is found in fairly young children. In point of fact, however, studies show that prejudice is learned by children as young as four years old. The transmission of prejudice to children is carried out in the same informal manner in which other aspects of non-material culture are taught. This informal teaching is performed by parents, teachers, friends, older children and others.

97. Some school textbooks and literature intended for young readers help to create prejudice. Some textbooks, especially history and biology books used by
students in some countries, occasionally distort facts and give derogatory
descriptions of people of other nations, or disparage non-dominant groups within
the country itself.

98. Psychologists maintain that part of the prejudice which people entertain is
due to their frustration and unhappiness in a general way. Failure to understand
the cause of their frustration, or recognition of their inability to prevent it,
leads them in search of scapegoats on whom they might project their anger, hatred,
fear and disillusionment. With regard to this psychological aspect of the cause
of prejudice, Simpson and Yinger write as follows:

"Whatever the degree of truth in the Freudian contention that social
norms inevitably lead to hostility, it is clear that many societies... do
have individuals who carry within themselves both propelling needs and
inhibitions against the satisfaction of those needs. Such individuals
must block overt response to these tendencies in order to avoid social
pressure and guilt feelings (to the degree that they have taken the
cultural standards into their own personalities); but the tendencies
continue to work on them. This situation is favourable to the development
of prejudice. The inhibition seems more bearable if it is only inferior
people who behave that way anyway; or the violation of a norm is less
of a blow at one's self-respect and conscience if the violation has been
aimed at a member of a 'lower' group. Here the familiar process of
projection comes into use. Many studies have shown, for example, that
a ruling group which has exhibited violent aggression against a racial
minority and has exploited it sexually is likely to be firmly convinced
that members of the racial minority are uniformly violent and sexually
unrestrained. MacCrone states that the sexual life of the 'natives' has
a perennial fascination for the South African whites. There is a
widespread belief that native men are more potent sexually and native
women more voluptuous. This is combined with morbid fear of miscegenation
and great emotional fear of rape* - a strange combination of beliefs in
light of the fact that virtually all sexual contact has been initiated
by white men, despite intense social disapproval. This prejudice against
the natives - we have described only a part of the whole cluster of
attitudes that defines the native as inferior and evil - seems to be a
clear case of projection. The picture of the natives as vicious and
violent can be interpreted in the same way, since the whites have often
been ruthless in their use of violent suppression.

"Having ignored their own standards regarding the use of violence and the
control of the sex impulse, the ruling whites find the strains on their
consciences too heavy to bear. They attempt to reduce the tension by
projecting the traits of violence and sexuality into the native group. As
already noted, this attempt to reduce strain may not work, for it may be

* See I.D. MacCrone, Race attitudes in South Africa, Oxford University Press,
1937, pp. 294-310.
accompanied by a sense of guilt, which leads to further anxiety, more hostility, the need for even more projection - and thus a vicious circle which can be broken only by a change of action or of conscience on the part of the projecting person." \[14\]

99. Perhaps no single one of these factors that we have mentioned as a cause of prejudice and discrimination is adequate by itself. Frustration, no doubt, does not always lead to aggression and hostility; it may very well make a person more susceptible to prejudice, but the various other factors discussed must be taken into account. The part played by slavery must also be borne in mind.

100. Prejudice is a deep-seated part of the culture of some societies. It is a vital part of the adjustment systems of many individuals. It is a weapon in political and economic conflict, a significant part of the stream of tradition that brings the influences of the past to bear upon the present and puts them to use in contemporary conflicts.

Racial discrimination in the political sphere

101. The right of all persons to take part in the government of their country as well as in the conduct of public affairs and to have equal access to public service is set out in the Universal Declaration of Human Rights and in the International Convention on the Elimination of All Forms of Racial Discrimination under article 5 of the Convention. "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

"(a) ...

"(b) ...

"(c) Political rights, in particular the rights to participate in elections, to vote and to stand for election - on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service..."

102. In the political sphere, racial discrimination occurs on several levels. Essentially, and in its broadest sense, it involves the political domination by

one group of another which is differentiated from it by race, colour, descent or national or ethnic origin, and in particular the imposition by the dominant group of its political conceptions and political organization upon other peoples.

103. In southern African countries, control of power is in the hands of a white minority and the overwhelming majority of the inhabitants is deprived of political, civil and economic rights. The majority is denied the right to vote, the right to organize political parties and the right of self-determination. The policy of apartheid and racial discrimination pursued by the Government of the Republic of South Africa seeks to ensure the domination of a racial minority by making race, colour, descent and national or ethnic origin the sole basis of political participation and power, and by enforcing the complete physical, economic, political and social separation of Europeans and non-white peoples. This is allegedly justified on the ground that the indigenous peoples are incapable of exercising political power, and that the "purity" of the "superior" white race can only be maintained through its continued dominance. The effect of apartheid is to leave the majority of the population completely at the mercy of a minority, and thus in effect to abolish the exercise and enjoyment of human rights and freedoms.

104. Similar patterns of political control exist in Namibia, a Territory under the direct responsibility of the United Nations and now illegally occupied by the Government of the Republic of South Africa; in Southern Rhodesia, and in the Portuguese colonies in Africa and Asia where colonialism masquerades as an extension of the metropolitan State. In all these cases, it is the black man who is the victim of racial discrimination.

105. Racial discrimination may also occur in other countries where different racial groups exist. Some of these countries proclaim equality and non-discrimination as their official policy, but for one reason or another are unable to enforce it. However, whether these countries are outwardly racist or not, the results are the same and the non-dominant group may, among other things, find itself unable to participate in the electoral and political processes on a footing of equality with the dominant group.

106. There are present in the world today some important factors which will inevitably undermine some of these patterns of racial discrimination in the
political sphere. The intellectual factor based on ideas which manifest themselves as true, cannot be disregarded. Man's contact with his fellow men is being constantly facilitated through new media of communication, and unscientific and fanatical statements about "inherent inferiority" or "sub-human nature" applied to any group of people can no longer find ready acceptance. Moreover, every community where patterns of racial discrimination exist is now part of a larger community - the United Nations - which emphatically rejects all doctrines of racial superiority, and any policy which may be based upon them, and actively endeavours to promote and to protect the exercise and enjoyment of human rights and fundamental freedoms by all peoples.

Racial discrimination in the economic sphere

107. In the economic sphere, racial discrimination is frequently invoked as a device for maintaining a cheap and continuous labour force at the expense of the human rights and fundamental freedoms of working masses differentiated by colour.

108. In such economic systems, policies of exploitation frequently develop. In some cases these take the form of involuntary servitude; in others, they involve artificial divisions of labour along racial lines or other forms of racial discrimination in respect of employment and occupation.

109. The involuntary servitude of persons because of their race, colour, descent or national or ethnic origin constitutes perhaps the most serious form of racial discrimination in the economic sphere. Such involuntary servitude may take the form of slavery, involving the exaction of labour for economic gain, or forced labour.

110. Slavery, which is defined in the International Slavery Conventions of 1926 and 1956 as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised", and which as an institution is the very negation of the dignity and worth of the human person, has not yet been eliminated in all parts of the world. The slave trade, which that Convention refers to as including "all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves", /...
apparently still subsists. Institutions and practices akin to slavery, such as traffic in women and children, debt bondage, and serfdom, have not yet been completely abolished or abandoned. And new forms of involuntary servitude have emerged to plague modern society, such as the systems of forced labour which were prevalent during and after the Second World War and the slavery-like practices of apartheid and colonialism which regrettably continues to exist in some areas.

III. A contemporary problem in this field stems from the tendency of the Governments of some countries to resort to forced labour in their struggle to increase the pace of economic development. The question of forced labour has been the object of a convention adopted by the International Labour Conference in 1930. Following several resolutions adopted by the Economic and Social Council on the initiative of the Sub-Commission, the ILO adopted in 1957 a new Convention entitled "The Abolition of Forced Labour Convention" under which each State Party undertakes to suppress and not to make use of any form of compulsory labour for purposes of economic development or as a means of racial, social, national or religious discrimination. Forced labour has been described in that Convention inter alia: as including compulsory work imposed "as a means of racial, social, national or religious discrimination".

112. Racial segregation in the field of labour is resorted to in some countries and territories as a device to safeguard against competition for jobs. Often this segregation takes the form of an industrial colour bar, by which employment opportunities are purposefully and artificially limited or reserved on racial grounds. Such a colour bar may assume a number of forms. In some cases members of a particular racial group are excluded from most if not all responsible and skilled jobs, or from the civil service, either directly or indirectly, by law or by licensing procedures. In other cases the scope of employment is delimited in the case of members of a particular racial group but not in the case of members of the predominant group. In still others there is a differentiation between wages paid workers doing similar work, based solely upon racial consideration.

113. In the field of industrial relations, racial segregation in the field of labour is sometimes enforced either by law or by employers and labour unions working in agreement. In some cases unions composed of members of the dominant racial group are recognized while those composed of members of the non-dominant...
group are considered legally non-existent. In other cases unions exclude members of the non-dominant group from membership on the ground that employers will not hire them, while employers maintain that they cannot hire anyone not referred by the union. Sometimes employers are prohibited by law from hiring members of the non-dominant group for certain types of skilled work. In a few instances unions made up of members of such a group are excluded by law from the operation of the Government's industrial conciliation machinery. Numerous other methods which lead effectively to racial division of labour exist, such as the exclusion of members of the non-dominant group from technical training institutes or from apprenticeship programmes.

114. A more subtle form of racial segregation in the field of labour is sometimes employed to channel the movement of workers belonging to non-dominant groups into otherwise unattractive sectors of the economy of a country or territory. By restricting the freedom of movement of members of particular racial groups, the authorities are able to provide a ready supply of cheap labour to certain areas while employment in desirable centres is subject to strict control. Even in the absence of such systems, labour mobility and efficiency are often adversely affected by compulsory territorial separation of races within the same country.

115. Still another form of discrimination involved the recruitment of foreign "cheap" labour, depressing the market for indigenous labour by limiting competition. Workers from adjoining territories are welcomed at subsistence wage levels but are not allowed to settle permanently or even long enough to acquire skills.

116. In areas where there is no formal segregation or "colour bar", racial discrimination in respect of employment and occupation nevertheless may be prevalent, nullifying or impairing equality of opportunity or treatment in these fields. Such discrimination takes many forms, such as outright denial of access to jobs or to the prerequisite vocational training, or differentials in respect of matters such as remuneration, conditions of employment, and health, welfare and social security provisions.

117. Most often racial restrictions on the right to work stem from custom rather than from law, and tend to affect the type of employment available to members of particular racial groups rather than to prevent their employment altogether.
Private employers are usually quite free to determine who to hire, who to promote and who to discharge, and generally make their choices in conformity with prevailing social patterns. In many cases their attitude towards a qualified worker of another race is determined largely by their own prejudices, or by doubts or hesitations as to the possible reactions of their employees or their customers. Public authorities, while more often enjoined by law not to discriminate on the ground of race, nevertheless may find ways to evade the principle of equal employment opportunity based on merit which is the keystone of most systems of civil service. The net result is that members of some racial groups find that in the majority of establishments in their community, whether privately or publicly operated, there are types of employment to which in practice they are not admitted. These usually include the majority of executive, administrative, supervisory, clerical and production posts. On the other hand, the tradition that certain types of employment are reserved to members of their race is very difficult to combat and extremely difficult to eliminate. These types of employment usually include heavy manual labour, sweeping, cleaning, and production jobs requiring no skill.

118. Racial restrictions on the right to work are frequently buttressed by the inability of members of particular racial groups to obtain the requisite vocational training, either because the high cost of such training makes it inaccessible, or because inequality of access to education at an earlier point prevented the proper preparation for technical training, or because the available training establishments exclude members of particular racial groups or limit the type of training offered them. Similarly members of such groups may find apprenticeship schools closed because prejudiced skilled workers are unwilling to teach their skills to them, or because unions of skilled workers have dissuaded employers from engaging them as apprentices in certain trades.

119. The abuse of union security arrangements, under which certain forms of employment are made conditional on union membership, has in some cases led to racial discrimination in employment, as in the case of a union which includes in its rules discriminatory provisions barring persons of a certain race, colour, descent, or national or ethnic origin from membership.

120. Differential rates of remuneration for identical work, based upon race, are becoming somewhat rare in view of the current world-wide tendency to fix
a salary rate for each job regardless of what individual is employed to do the work. However, racial differentials in respect of earnings continue to exist in many parts of the world; thus in some African countries the average yearly earnings of a European are more than ten times as much as those of an African doing a comparable job. Racial discrimination in respect of welfare and social security benefits is also a serious problem in some areas, as in cases where lower scales of workmen's compensation are applied to members of particular racial groups or where welfare or social security benefits are less advanced for indigenous than for non-indigenous workers.

Racial discrimination in the social sphere

121. The right of all persons to enjoy a social life free of discrimination on the ground of race has been set forth in the Universal Declaration of Human Rights and in the International Convention on the Elimination of All Forms of Racial Discrimination. Article 2 of that Convention provides:

"...

"(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

"(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

"(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

"(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

"...

122. Racial discrimination in the social sphere constitutes a very serious problem in multiracial societies since it may affect a number of people in the course of their ordinary day-to-day affairs. In this connexion, members of a non-dominant group may suffer discrimination in domestic relations, housing, public accommodations, health and hospital services, social security and insurance, and community relations.
123. Racial discrimination in the field of domestic relations is practised when the laws of a State forbid persons of different races to marry. This most crude form of racial discrimination constitutes a direct violation of the Universal Declaration of Human Rights which provides.

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

The International Convention on the Elimination of All Forms of Racial Discrimination provides:

"Article 5

"... States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

"(d) Other civil rights, in particular:

"....

"(iv) the right to marriage and choice of spouse;"

Article 24 (1) of the International Covenant on Civil and Political Rights reads:

"Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State."

124. Besides criminal penalties, the civil consequences of the laws prohibiting marriage between persons of different races are often severe for the parties to the marriage and their offspring: the marriage may be declared void; the parties may be prosecuted for illicit cohabitation; and the children of such marriages held illegitimate.

125. Sometimes, cohabitation of unmarried persons is prohibited by law. In such cases, discriminatory penalties are often imposed if the violators are of different races.

126. Discrimination occurs also in the area of domestic relations when, in respect of adoption, the law requires that the adopted and the adoptee must be of the same racial background. Therefore, without regard to the best interest of the child,
adoption can be denied on the basis of race alone. Custody cases may present similar issues when divorced or widowed parents are denied custody of their children because they have married a person of a different race.

127. Discrimination in housing is a particularly serious matter because many of the problems confronted by members of a non-dominant group may be the consequence of housing segregation alone. For example, housing segregation creates school segregation in many countries; public accommodations, generally, in some way, reflect the housing situation which surrounds them. Housing segregation also leads to the establishment of ghettos and all the evils that follow.

128. The main techniques by which racial discrimination in housing has been carried out are zoning ordinances and so-called "restrictive covenants". Under racial zoning ordinances, members of different racial groups are assigned specific areas, or occupancy by members of one race is forbidden in areas where the majority of the houses are occupied by members of another race. The ordinance may also stipulate that a member of a particular race can occupy property in certain zones only with the consent of the residents. Besides statutory laws, other more subtle techniques have been used to make racial discrimination less apparent: zoning regulations bar co-operative arrangements which might sell apartments to persons of a non-dominant racial group; special requirements provided by the law might be more strictly enforced in the case of members of a particular racial group; or whole zones might be reserved for exclusive industrial or municipal use in order to prevent the movement of a racial group into an area where it is not wanted.

129. Another legal device has been the restrictive covenant, whereby property owners in an area agree that during a certain period, no members of a particular race may own or occupy any portion of the land in the area.

130. As a result of the discriminatory practices above-mentioned, residential areas open to members of non-dominant racial groups are generally in neighbourhoods where the housing facilities have deteriorated. Where restrictive covenants have been declared invalid, other conditions which discriminate against racial minorities are often laid down by property owners, although they may not contain any direct reference to race. For example, an agreement may prohibit the sale of property without the consent of the original owner or of a number of
neighbours. Secondly, by a system of lease-hold, the occupant's title rights may not be transferred. In some cases there are also various requirements as to income or occupant density which furnish a pretext for the exclusion of persons on the ground of race. Finally, the original transaction may contain an option agreement whereby the original owner retains the right to repurchase the property in priority.

131. Racial discrimination in housing may result not only from questionable devices, but also from the actions of private persons or groups. In some cases, builders and mortgage lenders belonging to the dominant racial group enter into a formal agreement not to sell or to finance housing for members of non-dominant racial groups. Sometimes associations of real estate boards adopt rules under which their members are forbidden to participate in transactions with a person belonging to another racial group, and must pledge to respect neighbourhood racial patterns. Even in situations where there is no concerted action by any groups, discrimination may still exist. It occurs, for example, when members of a non-dominant group, trying to rent privately-owned apartments or houses, are refused accommodations under the pretext that the accommodation is not available, or are charged a higher rent. If, on the other hand, they enlist the help of a real estate agent, they are often not offered anything, or are given less assistance than an applicant belonging to the dominant group. Members of non-dominant groups may also suffer the same types of discrimination in attempting to buy property. In addition, they often experience great difficulty in obtaining mortgages, and when they do obtain them, their conditions are likely to be much less favourable than those set for applicants of the dominant racial group in similar situations.

132. Racial discrimination in the area of public accommodations is generally imposed either by law or by custom. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination which prohibits such discrimination, reads as follows:

"Article 5. In compliance with the fundamental obligations laid down in article 2, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

"..."
"(f) The right of access to any place or service intended for use by the general public such as transport, hotels, restaurants, cafés, theatres, parks."

133. Discrimination in transport occurs when common carriers refuse to accept all passengers without regard to race. For example, separate coaches in trains may be provided for members of a particular race; in a bus they may be required to sit in a particular section of the vehicle. Frequently in such cases the conductor or driver is granted police power to enforce this form of segregation. In a place where such a system was in force until recently, it has been observed that this humiliating type of racial discrimination was "resented more bitterly than any other form of segregation". Needless to say, the separate accommodations are never equal to those provided for members of the dominant racial group. The obvious difference in treatment serves to emphasize the racial classification of passengers and the inferior status of members of the non-dominant racial group.

134. Discrimination in access to recreational facilities is enforced either by custom or by law; it affects not only members of the public, who suffer inconvenience and humiliation, but also businessmen of all races, whose patronage is thereby limited to one race. Many techniques are used. In some cases, municipalities lease public accommodations and recreational facilities to private management, or close them, in order to circumvent national laws which prohibit discrimination by governmental bodies. In other cases public accommodations are labelled "private", although in fact they are open to the public. Discrimination in access to hotels is a particularly serious matter, since there are generally few hotels controlled by members of non-dominant racial groups.

135. In many cases discrimination, while not legal, results from a concerted pressure. While hotel, restaurant and theatre owners may not desire to discriminate, they are however exhorted to exclude members of particular racial groups by their trade association or other affiliation. In areas where prejudice is strong, the victim of such discrimination may find it difficult, if not impossible, to find a remedy even though the law prohibits these practices. Most persons, for example, are unwilling to return to distant places in order to sue for small and problematical damages.

136. The effectiveness of anti-discrimination laws in the field of public accommodation is often doubtful. It has been widely observed that when the law
makes discrimination a penal offence, the violator often goes unpunished because prosecutors are more concerned with other offences, and juries are normally reluctant to convict. On the other hand, the small penalties that are assessed in civil suits have practically no effect. Many restaurants and hotels... pay whatever small penalties are assessed and then continue discriminating. These penalties become a license fee for discrimination rather than a means of preventing it. Furthermore, a civil suit is in many countries a very slow process.

137. Discrimination in health services occurs when separate hospitals and clinics, or special wings in a hospital, are reserved for patients of different racial groups. It occurs also when doctors, because of their race, are forbidden to enter a hospital to treat their patients, or are barred from membership in medical societies. These practices force the doctors who are victims of discrimination to attend only patients who do not need or cannot afford hospitalization, while patients who are able to pay for hospital care must unwillingly choose doctors who belong to the dominant racial group. The right of a patient to be treated by a doctor of his own choosing is thus negated. Equal access to health services in a multiracial society is important, since generally the disparity in facilities provided for the different racial groups is alarmingly wide. Segregation in the health services is often carried out not by law, but by the private action of doctors, hospital boards and medical societies. Furthermore, even when a policy of discrimination does not exist, doctors who belong to non-dominant racial groups seldom receive a proportionate share of hospital appointments.

138. Besides outright segregation of units, racial discrimination in the armed forces may take various forms. For example, occupations of rank and status may be denied to members of particular racial groups, who are assigned to menial jobs or to unimportant positions. The application of the draft laws may result in de facto discrimination against members of non-dominant racial groups, particularly when draft boards operate without adequate representation of the various racial groups in the country. In war zones the number of enlisted men of a particular race may greatly exceed the proportion of members of that race in the total population.

139. Racial discrimination may affect the rights to social security and social services, as provided by the Universal Declaration of Human Rights and the
International Convention on the Elimination of All Forms of Racial Discrimination. It occurs, for example, when the laws on old-age pensions, or the laws on Accident and Disability Insurance, differentiate in respect of the amount of payments on the basis of the beneficiaries’ race. Moreover, racial discrimination may even affect the sale of private insurance in a multiracial society. Indeed, certain conditions required from beneficiaries cannot be met, most of the time, by members of non-dominant racial groups. In addition, as a result of economic deprivation, their life expectancy is, as a class, less than for members of the dominant racial group, and consequently they are sometimes offered insurance at less advantageous terms than comparable persons belonging to the dominant racial group.

140. Good and harmonious relations between various racial groups and the political leadership of a local community may be hampered by practices of racial discrimination. The action of law enforcement officers is a particularly sensitive matter and is the source of constant recriminations. The non-dominant racial group often develops a feeling of persecution, as the conduct of the local authorities leads them to believe that they are looked upon, as a rule, as virtual enemies. In such cases, repeated complaints of brutality and humiliating treatment create an atmosphere of bitterness harmful to the welfare of the whole community.

Racial discrimination in the cultural sphere

141. Both international covenants on human rights include provisions intended to prevent racial discrimination in the cultural sphere. Thus articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights read in part as follows:

"Article 13. (2) The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;"
"(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; ..."

"Article 15. (1) The States Parties to the present Covenant recognize the right of everyone:

"(a) to take part in cultural life; ...

"(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.""

Article 27 of the International Covenant on Civil and Political Rights reads as follows:

"Article 27. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

Article 3 of the Convention against Discrimination in Education adopted by UNESCO in 1960 provides:

"Article 3. In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:

"a. To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;

"b. To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;

"c. Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;

"d. Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;

"e. To give foreign nationals resident within their territory the same access to education as that given to their own nationals."
142. Among the non-dominant racial groups living in various States, some desire equality with the dominant groups in the sense of non-discrimination alone, while others desire equality in the sense of non-discrimination plus the recognition of certain special rights and the rendering of certain positive services which they consider essential to the preservation of their racial and cultural heritage. These rights and services vary widely, but usually include:

(a) provision of adequate primary and secondary education for the group in its own language and cultural traditions;

(b) provision for maintenance of the culture of the group through the establishment and operation of schools, libraries, museums, media of information, and other cultural and educational institutions;

(c) provision of adequate facilities to the group for the use of its language, either orally or in writing, in the legislature, before the courts, and in the administration, and the granting of the right to use that language in private intercourse;

(d) provision for respect of the family law and personal status of the group and of its religious practices and interests;

(e) provision of a certain degree of cultural autonomy.

In some cases the racial group concerned is willing to effect these provisions at its own expense. In other cases it requests that they be effected out of public funds and facilities.

143. The racial groups which have little or no interest in preserving their own cultural heritage, but prefer to be assimilated in whole or in part by the dominant group, are primarily concerned that there should be no discrimination as between groups, particularly in respect of the rights and freedoms set out in the Universal Declaration of Human Rights. The racial groups which display an interest in preserving their own cultural heritage are equally concerned with the principle of non-discrimination, but feel that without the rights and services enumerated above, their equality with respect to the dominant group would be only formal and not real.

144. Racial discrimination in the cultural sphere, accordingly, may be said to have two separate and distinct aspects. There is the problem of differential treatment in schools, libraries, museums, media of information, and other cultural...
institutions maintained for the public. There is also the problem of the provision of the rights and services which a particular racial group considers essential to the maintenance of its own distinctive culture.

145. Racial discrimination in the cultural sphere is somewhat more complicated to deal with than racial discrimination in other areas, largely because it involves many variables and subjective elements. "Culture" itself is almost undefinable, consisting as it does of a mixture of distinctive traditions, moral and religious ideas, and patterns of behaviour. Moreover, while some individuals within a given racial group may identify themselves with what they consider to be the group's cultural heritage, others prefer to disregard that heritage and to identify themselves with the culture of the dominant group. Those in the first category reject as discriminatory any efforts on the part of the dominant group to induce or compel them to maintain the traditions or characteristics of their group. Thus it may seem that the only solution to the problem lies in giving the individual complete liberty of action.

146. However, the matter is often further complicated by the action of Governments which sometimes promote the assimilation of those who are willing to abandon their own cultural heritage into the cultural pattern of the dominant group, and at the same time permit or encourage discrimination against those who insist upon retaining and further developing their own customs and traditions.

147. Perhaps the most serious form of racial discrimination in the cultural sphere is that which was, in earlier drafts of the Genocide Convention, described as "cultural genocide" - acts committed with the deliberate intent to destroy the culture of a racial group as such. Among such acts are the destruction or serious curtailment of the use of schools, libraries, museums, historical monuments, places of worship, and other cultural institutions and objects of the group.

148. However, racial discrimination in the cultural sphere may have other aspects which are even more important. It may include, for example, discrimination based upon race, colour, descent, or national or ethnic origin in the matter of education. It may also include the deliberate "miseducation" of members of racial groups.

149. Discrimination in the matter of education is probably the most widespread form of racial discrimination in the cultural sphere. It includes, as specified in
article 1 (1) of the UNESCO Convention Against Discrimination in Education, "any
distinction, exclusion, limitation or preference which, being based on race,
colour,... national or ethnic origin... or both... has the purpose or effect of
nullifying or impairing equality of treatment in education," and in particular
(a) of depriving any person or group of persons of access to education of any
type or at any level; (b) of limiting any person or group of persons to education
of an inferior standard; or (c) of establishing separate educational systems or institutions for persons or groups of persons.

150. Such discrimination takes a wide variety of forms. For example, in some
areas the State may provide education only for children of the dominant racial
group, while others must enter private schools set up and supported either by
their parents or by outsiders, such as missionaries. In other areas education
may be compulsory for children of the dominant racial group to the age of
fourteen or fifteen, but is either not compulsory at all for those of the
non-dominant group or compulsory only to a much lower age. In still other areas
children of the dominant group may receive complete instruction up to the
secondary level, while those of the non-dominant group may attend school only
up to a much lower standard or are not eligible to take the courses which would
qualify them for vocational or professional education. Where children of both
groups are offered the same courses but in segregated schools, there may be wide
disparities in the quality of the teaching and the conditions under which it is
given, because teacher-training is provided exclusively, or at least primarily,
for members of the dominant group.

151. "Miseducation" of members of the non-dominant group is another serious form of
racial discrimination in the cultural sphere. Guidance counsellors and other
school officials often prevent qualified students from enrolling for certain types
of vocational or professional training on the spurious ground that no opportunities
for employment will be open to them because of their race.

152. Moreover, teachers of the dominant group often have no understanding of, or
sympathy for, the customs and traditions of peoples other than their own.
Sometimes such teachers seek to interfere with, or even to uproot, indigenous
ways of life and to impose their own group's culture upon those whom they consider
"backward".
CHAPTER III
MEASURES TAKEN WITHIN STATES TO ELIMINATE RACIAL DISCRIMINATION

153. Various measures have been adopted to prevent and eliminate racial discrimination. These include constitutional provisions and legislative acts. They also include measures taken in the fields of teaching, education, culture and information with a view to combating prejudices likely to give rise to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups. The value of constitutional provisions and legislative enactments against racial discrimination cannot be over-emphasized, but no less important is a sustained effort aimed at bringing about changes in attitudes, habits, customs and practices. When public opinion supports such changes, compliance is more readily obtained. Educational and promotional action is therefore a necessary complement to legal action.

Constitutional provisions

(1) General principles

154. There is a clear trend to include in constitutions provisions not only guaranteeing equality before the law but specifically providing against racial discrimination. Almost all the constitutions or basic laws of States contain provisions relating to human rights and fundamental freedoms, and a great majority of States have enacted legislation or taken other measures aimed at preventing or combating racial discrimination and achieving equal rights for all without distinction. A majority of constitutions promulgated in recent years contain provisions giving effect to the human rights and fundamental freedoms set out in the Universal Declaration on Human Rights.¹/

¹/ Cameroon (Article 1 of Act No. 51/24 of 1 September 1961 revising the Constitution); Congo (Brazzaville) (Preamble of the Constitution of 8 December 1963); Congo (Democratic Republic of) (Preamble of the Constitution of 1 August 1964); Dahomey (Preamble of Ordinance No. 8 GFRD/SGG of 11 January 1964 establishing the Constitution); Gabon (Preamble of the Constitutional Law No. 1/61 of 21 February 1961); Ivory Coast (Preamble of the Constitution of 1 July 1960); Madagascar (Preamble of the Constitution of 29 April 1959); Mali (Preamble of the Constitution); Mauritania (Preamble of the Constitution of 1961); Niger (Preamble of the Constitution of 8 November 1960); Senegal (Preamble of the Constitution of 7 March 1963); Somalia (Article 7 of the Constitution of 1 July 1960); Togo (Preamble of the Constitution of 5 May 1963); Upper Volta (Preamble of the Constitution of 27 November 1960).
155. Most modern constitutions specifically provide against discrimination. Countries have prohibited discrimination on the following grounds: of nationality or race; of ethnic origin, race, colour; of race, colour, descent or national or ethnic origin; of race or religion; of racial origin, philosophical or religious opinions; of origin, race or religion; of race, religion or social condition; of origin, race, sex or religion; of race, sex, creed or social condition; of origin, race, sex, religion or political affiliation; of sex, religion, nationality; of sex, race, colour, class; of sex, religion, race, class or party affiliation; of origin, race, sex or religion; of race, sects, groups,
sex; of religion, race, sex, caste, tribe; of religion, tribal association, sex, ancestry, place of birth or residence; of birth, religion, race or sex; of sex, nationality, race, creed, degree of education or residence; of religion, race, descent or place of birth; of birth, social status or race; of race, origin, colour, religion or sex; of race, origin, language, religion or creed; of language, race, sex, political opinion, philosophical views, or religion or religious sect; of sex, racial and national origin, religion or social origin and position; of race, nationality, sex, religion, education, profession or domicile; of sex, race, language, religion, political opinions or personal and social status; of race, religion, caste, sex, residence or place of birth; of religion, race, caste, sex, descent, place of birth, residence; of race, place of origin, political opinions, colour, creed or sex; of race, tribe, place

16/ Mexico (Article 3 of the Constitution).
18/ Congo (Democratic Republic of) (Article 14, Constitution).
19/ Sudan (Section IV of the Constitution of 1964).
20/ Albania (Article 16 of the Constitution of 4 July 1950).
21/ Japan (Article 14, para. 1 and Article 44 of the Constitution of 3 November 1946).
22/ Nicaragua (Article 36 of the Constitution).
23/ Trinidad and Tobago (Chapter I, Section I, Constitution - Order in Council of 1962).
25/ Turkey (Section I, Article 12 of the Constitution of 1961).
26/ Mongolia (Article 76 of the Constitution of 6 July 1960).
28/ Italy (Article 3 of the Constitution of 27 December 1947).
29/ Pakistan (Chapters VII and VIII, Articles 16 and 17 of the Constitution).
30/ India (Articles 15-1 and 16-2 of the Constitution).
31/ Gambia (Chapter II, Article 11 of the Independence Order 1965); Jamaica (Chapter III of the Constitution 1962 - Order in Council 1962); Malawi (Chapter II, Article 11, Constitution of 6 July 1964); Malta (Chapter IV, Article 33 and Article 46 of the Constitution. Malta Independence Order, 1964); Uganda (Chapter III, Article 17 of the Constitution of 9 October 1962); Zambia (Chapter III, Article 13 of the 1964 Constitution).
of origin, political opinions, colour, creed or sex; of sex, national and
racial appurtenance, creed, education, residence, social extraction, profession;
of religion, belief, race, language, wealth, kinship, political or social
opinion; of race, colour, sex, religion, birth, economic or social position
or political opinion; of nationality, race, religion, sex, language, education
or social status; of race, national origin, birth, language, religion, sex, economic or social status, or opinion.

156. With a view to outlawing inequality among its citizens, the constitutions
of several countries studies abolished slavery. A similar goal motivated the
framers of the constitutions of India and Pakistan when they included provisions
prohibiting the practice of "untouchability".

157. In some countries, there are no specific constitutional provisions but
there are laws guaranteeing freedom from discrimination on the ground of race.
For example, one Government has stated that "... human rights are not based
on any fundamental laws entrenched, like the constitutions of some countries,
against the normal processes of repeal and amendment, nor is the constitution
enshrined in a formal document. The general body of the law is comprised of
common and statute law and of convention. The laws of the United Kingdom
recognize no distinction on grounds of race, colour or ethnic origin; every
individual has a right to his personal liberty; to access to the courts and the
legal remedies available there."

32/ Kenya (Article 14 of the Constitution of 12 December 1963); Sierra Leone
(Chapter II, Article 11 of the Constitution of 1961); United Republic of
Tanzania (Preamble, Constitution).
33/ Poland (Electoral Law of 24 October 1956).
34/ Libya (Article 11 of the Constitution).
35/ Guatemala (Article 43 of the Constitution of 15 September 1965).
37/ Somalia (Article 3 of the Constitution of 1 July 1960).
38/ Argentina, Chile, Laos, Pakistan, Singapore and the United States of America.
39/ United Kingdom.
158. A similar situation obtains in another country where the Bill of Rights is not entrenched but was established in 1960 by an Act of Parliament entitled "An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms". This Act provides for the enjoyment of certain legal rights and freedoms without discrimination by reason of race, national origin and colour.

(ii) Specific provisions

159. The constitutions of many countries guarantees to everyone the exercise of certain human rights and fundamental freedoms. In some countries, the constitution specifically provides that such rights are to be enjoyed without regard to race, colour or national or ethnic origin. For example, in India and Pakistan, the right of access to places of public accommodation, without regard to race, is ensured by the constitution. The Pakistani Constitution provides that citizens may not be barred from "places of public entertainment or resort, not intended for religious purposes only" on the ground of race, caste or place of birth.

160. Ethnic, linguistic or national groups within a country are sometimes the subject of special constitutional provisions dealing with rights such as the use of language and the establishment of special educational or cultural institutions.

161. The Romanian Constitution of 1965 specifies that co-inhabiting nationalities are guaranteed the free use of their mother tongue and books, newspapers, magazines, theatre and education at all levels in their own language. Moreover, in districts inhabited "... also by a population of other than Romanian nationality, all organs and institutions shall also use the language of that nationality in speech and in writing and shall appoint officials from among that population or from among other citizens conversant with the language and way of life of the local population" (art. 22).

162. In Canada, under sections 93 and 133 of the British North America Act (Canada's basic constitutional document), special provision is made for the

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40/ Canada.
protection of schools for minorities and for the use of the French and English languages in the federal Parliament, the Quebec Legislature, and in the federal Government and Quebec courts.

163. Some constitutions grant special status to certain racial groups. For example, the constitution of one country\(^2\) states that the Government shall accord "legal protection to the status of the various racial groups in the border regions, and shall give special assistance in their local self-government work".

164. A like situation obtains in another country\(^3\) where the constitution charges the Government with responsibility "to care for the interests of the racial and religious minorities". The Government, however, must exercise its functions in such a way as to recognize the special position of the Malays who are the indigenous people of Singapore and therefore it must safeguard and promote their political, educational, religious, economic, social and cultural interests and the Malay language.

**Legislative acts**

165. Many of the countries surveyed have indicated that they have enacted laws aimed at preventing or eliminating racial discrimination or for punishing or remedying individual acts of racial discrimination.

166. One country\(^4\) which has deep-rooted problems of racial discrimination has stated that legislative enactments are one of the most effective means of combating the problem. For example, the Civil Rights Act of 1964 outlaws discrimination in public accommodation and employment; it strengthens provisions to enforce desegregation in the public schools and in all federal facilities and federally-assisted programmes, such as housing, hospitals, health and welfare services. The Voting Rights Act of 1965, which prohibits the use of literacy and other "tests and devices" where used to deny the right to vote on account of race or colour, authorizes intervention by the federal Government

\(^2\) China.

\(^3\) Singapore.

\(^4\) United States of America.
where registration of voters is impeded by discriminatory action. It sets forth criminal penalties for intimidating persons attempting to vote. More recently, the civil rights legislation adopted in 1968 makes it a criminal offence to interfere with any person exercising his basic human rights and also forbids discrimination in the sale and rental of housing, both private and public. Agencies established to enforce these laws have regularly included provision for public education and reports, and also for informal consideration and hearings on complaints in advance of court action.

167. Other countries also rely on persuasion and conciliation as a means of dealing with complaints alleging racial discrimination prior to court action.

168. Regarding the question of conciliation procedures, the report of the ILO Meeting of Experts on Discrimination in Employment and Occupation states:

"that legislation must contain effective methods of enforcement, but that conciliation and investigation procedures have better chances of reaching solutions of positive redress, while sanctions (pecuniary, penal, administrative) resulting from judicial procedures can be reserved in particular for cases where the former procedures have failed. Conciliation and investigation procedures can have a greater educational value, and they also have the advantage of being more easily accessible to the interested parties."

169. Many countries have adopted legislation making incitement to racial hatred a crime. The criminal code of the Union of Soviet Socialist Republics, for example, contains such a provision. Criminal liability for infringement of equality of rights on the ground of race is provided for under an act, valid throughout the Union, concerning criminal liability for crimes against the State. The legislation provides that:

"Any propaganda or agitation aimed at inciting to racial or national enmity or discord, or any direct or indirect restriction of the rights of, or conversely, any establishment of direct or indirect privileges for, citizens on account of their race or nationality, shall be punishable by deprivation of liberty for a term of six months to three years or by compulsory change of residence for a term of two to five years."

45/ Canada and the United Kingdom.


47/ Albania, Argentina, Brazil, Bulgaria, Denmark, India, Hungary, Poland, Trinidad and Tobago, Ukrainian SSR, the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland.
170. In connexion with the question of incitement to racial hatred, a Commission of Inquiry in Guyana observed:

"Whatever the Government of the day..., it must, in the interest of peace and progress, set its face against racial discrimination in all areas in which it has responsibility. But there are certain types of conduct, such as the intentional stirring up of racial hatred and violence, which require not merely to be stopped, but to be punished as crimes. Such conduct, whether it be found in the public service or outside, is inimical to the common good and accordingly falls within the area of governmental responsibility. It is difficult to see why certain acts that are committed for the purpose of injuring people on the ground of race should not be made criminal offences. We recommend that such acts be made criminal offences with appropriate penalties."

171. One country\(^{48}\) has indicated that, on the adoption by the General Assembly of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, it incorporated into its Penal Code the provisions of article 9, paragraphs 1 and 2 of the Declaration. Accordingly, it is now a criminal offence in that country to participate in organizations or to support any propaganda based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin with a view to justifying or promoting racial discrimination in any form.

172. The Race Relations Act 1968 of the United Kingdom defines discrimination, for the purposes of the Act, as follows: "... a person discriminates against another if on the ground of colour, race or ethnic or national origins, he treats that other less favourably than he treats other persons. ... segregating a person from other persons ... is treating him less favourably". The Act also deals with discrimination in employment, trade unions and employers' and trade organizations, housing and advertisements. It establishes a Race Relations Board to investigate and conciliate, where possible, complaints alleging discrimination.

173. Several countries\(^{49}\) have drawn attention to their legislation which declares genocide to be a crime. For example, under the provisions of article 149 of the Mexican Penal Code, the deliberate destruction of national, ethnical or racial groups gives rise to penalties ranging to twenty years' imprisonment.

\(^{48}\) Argentina.

\(^{49}\) Albania, China, Mexico and Romania.
Court decisions

174. Some countries have indicated that the judiciary has played an important role in combating discrimination and that certain cases involving discriminatory practices have become key precedents in this regard. In the case of Brown v. Board of Education, climaxing a series of complaints regarding segregated schools, the Supreme Court of the United States of America ruled that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal". The Court referred to studies of the psychological effect of segregation on children attending segregated schools, thus providing a basis of experience for its judgement. The 1954 decision became the basis for further court rulings, invalidating separate facilities for Negroes and whites in public recreation, public housing, employment and other areas of public concern.

175. Decisions made in other countries likewise indicate that courts can play a role in establishing equality of treatment for all persons, regardless of race. In one country where it is a crime to promote feelings of ill-will and hostility between different classes of the population, it was held that the Syrian community was a sufficiently well-defined class for an attack calculated to promote feelings of hostility against them to be considered an offence within the meaning of the Code. In another country a court held in favour of the plaintiff when he alleged, without claiming special damages, that he had unjustifiably been refused accommodations in a hotel.

Administrative and quasi-administrative arrangements

176. It is important that actual day-to-day practice should not lag behind the provisions of the law. In some countries there are administrative bodies whose

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50/ Canada, the United Kingdom and the United States.
52/ Nigeria.
53/ R. vs. Ajei and Another (1951), 13 WACA 253.

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function is to ensure equality of opportunity and treatment in every sphere of governmental responsibility. Thus, Elections Commissions are established for the purpose of ensuring impartiality, fairness and compliance with the provisions of the law in the registration of electors and the conduct of elections. Public Service Commissions are established with a view to ensuring access to the public service on a footing of equality.

177. In the United States of America, in recent years a series of civil rights laws have been enacted by the Federal Congress to combat racial discrimination in fields such as housing, voting and job opportunities. Various administrative agencies of the federal Government have been charged with the implementation of such laws. For instance, the Civil Rights Division of the U.S. Department of Justice has ultimate responsibility for enforcing rights guaranteed by Federal law in a broad range of areas, including denial of rights to citizens by state or local officials or private individuals; intimidation of and discrimination against voters; obstruction of justice; peonage and slavery. The Commission on Civil Rights, established by the Civil Rights Act of 1957, investigates alleged denials of the right to vote and vote fraud. The Commission studies legal developments and appraises Federal policies and programmes relating to equal protection of the laws in such areas as education, housing, employment, the administration of justice, use of public facilities and transportation. The Community Relations Service of the U.S. Department of Justice, established by the Civil Rights Act of 1964, assists communities in resolving disputes arising from discriminatory practices which impair rights guaranteed by Federal law or which affect interstate commerce. The U.S. Civil Service Commission supervises and provides leadership and guidance for all Federal agencies in carrying out an equal employment opportunity programme in Federal employment. It also reviews agencies' practices, develops training and counselling programmes to encourage improvement of employees' skills. By request of the Justice Department, it conducts training programmes for officers of those Federal agencies which have responsibilities to eliminate job discrimination in federally-assisted programmes.

178. Similar machinery has been established in other countries. The Canadian Government and nearly all the provinces at one time or another have

55/ Canada and the United Kingdom.
enacted positive anti-discrimination legislation aimed at the achievement of equal opportunity, and treatment in employment, trade union membership, and public accommodation, regardless of race, colour, religion or ethnic origin. The administration of these statutes lies in the hands of specified government agencies and penalties for discriminatory practices are invoked after discussion, conciliation and persuasion have failed.

179. In the United Kingdom, the Race Relations Acts of 1965 and 1968 set up the following bodies to secure and to encourage compliance with its provisions: the Race Relations Board, which in turn is empowered to constitute local conciliation committees; and the Community Relations Commission. The Board and the committees investigate complaints of racial discrimination and attempts to make a settlement. If settlement is not secured, civil proceedings may be brought, in which claims may be instituted for damages or for an injunction. The Community Relations Commission has the responsibility of encouraging and assisting in the establishment of harmonious community relations and of giving advice to the Secretary of State. The Commission is authorized to establish services for giving advice on community relations to local authorities and other local organizations and for collecting information with respect to community relations; to provide courses of training in connexion with community relations; and to arrange or promote the holding of conferences on matters connected with community relations.

180. In some countries the institution of Ombudsman or its equivalent offers an opportunity for individual complaints against public officers which may or may not have a racial background. In Canada, some of the provinces have established Ombudsmen to provide safeguards against discrimination.

Educational measures

181. Several countries depend largely upon the effectiveness of education and an enlightened public opinion as a means of eliminating racial discrimination in the political, economic, social and cultural spheres. They emphasize the education of children at the primary level, where appropriate programmes within

56/ Canada, Guyana and Norway.
the framework of courses of instruction in civics can be undertaken to good advantage. This approach is reflected in the Political Constitution of Mexico of 1917, which sets out the principle that education shall be directed against ignorance and its consequent prejudices (art. 3 (2)), and that it shall fortify the student "... in his appreciation of the dignity of the human person ... and by its care to maintain the ideals of fraternity and equal rights of all men avoiding privileges of races, ... groups ... (art. 3 (2) (c))". A similar provision appears in the Haitian Constitution of 1964, which provides that education should "... held to inculcate respect for human rights, to combat any feeling of intolerance and hate" (art. 178).

182. Measures to inform and educate the public on the evils of discrimination are also undertaken in some countries. These include the publication and dissemination of studies and reports, the circulation of brochures, posters, films, radio and television broadcasts, and the organization of public lectures. Several Governments have reported on the activities undertaken by government agencies and non-governmental organizations to disseminate information on the principles of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination. Another area of governmental effort in this area has been the promotion of United Nations aims and objectives in each country, including the publication of such instruments as the Declaration on the Elimination of All Forms of Racial Discrimination, Human Rights Day, as well as the establishment of active organizations such as United Nations Associations, national commissions for human rights, committees for Human Rights Year and other activities emphasizing the role of the United Nations and the specialized agencies.

Special measures of protection and development

183. Various Governments have taken steps to ensure the development and protection of groups not fully integrated into the political, economic or social structure of the country. These steps have taken various forms such as abolition of

57/ E.g., Togo, Pakistan and Canada.
discriminatory practices, special social and educational programmes, reservation of seats in legislative bodies.

184. Special measures of protection have taken the form of enactments designed to ensure the participation of disadvantaged groups in the political processes of a country. The Scheduled Castes (the so-called "untouchables") and the Scheduled Tribes of India, which have been described by the Government as the "weaker" sections of the population, are entitled to proportionate representation in state Assemblies and the national Parliament. One of the consequences of this arrangement is, according to the Government, the fact that the legislative bodies are constantly "alive" to their needs. A certain proportion of posts in the public services has been set aside for members of the Scheduled Castes and Tribes and the Government provides special tutoring facilities in order to accelerate advancement to senior posts in the federal civil services. While the provision regarding reservation of seats in the Parliament and State Assembly expires in twenty years after the commencement of the Constitution, those constitutional provisions concerning reservation of posts in public service are entrenched.

185. Among the entrenched provisions of the Pakistan Constitution is one that provides that steps should be taken to bring, on terms of equality with other persons, the members of "under-privileged castes, races, tribes and groups" and, to this end, such groups should be identified by the Government and entered in a schedule of underprivileged classes. Moreover, the Constitution states that the people of different areas and classes, through education, training, industrial development and other methods, should be enabled to participate fully in all forms of national activities, including employment in the service of Pakistan. The Government reports that the representation of the minorities has not been neglected in the higher cadres of administration. The Government has relaxed the age limit up to three years for minority communities and tribal candidates in certain districts. In another country special provision has been made for the "various racial groups in border regions". The Constitution specifies

58/ China.
that with regard to these groups, the State shall positively undertake and assist in the development of education, culture, communications, water conservancy, health and other economic and social enterprises. In addition, the educational and cultural expenses for distant border regions may be subsidized by the national Treasury.

186. Finally, reference may be made to the actions taken by some Governments to ensure the use of the mother tongue by various national or ethnic groups within their borders (see paras. 160-162).

Other measures

187. Tattooing, scarring or other means whereby the human body is disfigured for reasons of ethnic identification are prohibited under the Penal Code of one country.59/ The Government of that country draws attention to that provision as a measure taken to eliminate barriers among the races.

59/ Ivory Coast.
CHAPTER IV

RACIAL DISCRIMINATION IN THE POLITICAL SPHERE

188. The exercise of political rights constitutes a factor indispensable to the progressive development of conditions in which economic, social and cultural rights can be fully enjoyed, and conversely the steady and progressive development of the latter rights can be ensured only through the exercise of political rights in a climate of freedom and equality. Thus, the full enjoyment of political rights is of the utmost importance.

189. In the earlier Study of Discrimination in the Matter of Political Rights (E/CN.4/Sub.2/213/Rev.1)\(^1\) the Special Rapporteur outlined the nature and scope of discrimination in the matter of political rights, and dealt in particular with distinctions on the ground of race or colour. In chapter VI of that report, entitled "Trends, Conclusions and General Principles", he put forward a series of general principles, for consideration by Governments and by the international community, relating to freedom and non-discrimination in the matter of political rights. These general principles were considered and reformulated by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its fourteenth session, in 1962. The revised principles, which the Sub-Commission transmitted to the Commission on Human Rights for further consideration and adoption, are to be found in annex I of the report. The Commission on Human Rights began its consideration of the report at its nineteenth session, in 1963, but was unable to complete the task because of the lack of time. The Commission decided, at its twenty-fifth session in 1969, to continue and conclude its examination of the report and draft principles at its twenty-sixth session, to be held in 1970. The earlier report contains a great deal of information on discrimination in the political sphere; it was not, however, confined to discrimination based upon race, colour or ethnic origin. The present study concentrates upon the discrimination which occurs on those particular grounds.

\(^1\) United Nations publication, Sales No.: 63.XIV.2.
190. As the United States Commission on Civil Rights points out, even though legislation has been enacted guaranteeing the right of all citizens to participate equally in the political process, many problems remain in securing the effective application of such legislation. The Commission examined the effects of the political participation by Negroes in ten southern states since the passage of the Voting Right Act (see para. 172), and described some of the stratagems designed to prevent or dilute Negro political participation.

191. The number of Negroes who are registered to vote are disproportionately low. Some Negroes, discouraged by past discrimination, in effect are penalized for residing in areas where there has been no local registration drive. In areas where registration has increased, a new phase of the problem emerged. Political boundaries were changed in an effort to dilute the newly gained voting strength of the non-dominant group and various devices were used to prevent Negroes from becoming candidates or obtaining office. Discrimination has occurred at the polls and discriminatory practices—ranging from the exclusion of Negro watchers to discrimination in the election of election officials and vote fraud—have been pursued which violate the integrity of the electoral process. Moreover, in some areas there has been little or no progress in the entry and participation of Negroes in political party affairs—the key to meaningful participation in the electoral process. Nor can Negroes be said to have an equal opportunity for political participation where, as is still true in some areas, they are subjected to threats and reprisals, or where they occupy, as they commonly do, positions of economic subservience making political independence and full participation virtually impossible.

The right to vote and to stand for election

192. The right to vote and to stand for election is in general dependent on citizenship, though in two of the countries surveyed aliens may vote in municipal...
elections provided they satisfy certain conditions such as residence. In most of the countries for which information is available, the law makes provision for all citizens, without distinction as to race, colour, or national or ethnic origin, to enjoy equality with respect to political rights, in particular the rights to participate in elections, to vote and to stand for election and to take part in the Government as well as in the conduct of public affairs. In some cases, these rights are enshrined in the constitution. Usually the constitution prescribes the qualifications and disqualifications of persons entitled to vote at an election of members to the national Parliament and to be elected as members of the Parliament, the electoral system to be followed at such elections, and the times at which such elections shall be held, and established machinery in such forms as an Elections Commission for the purpose of ensuring impartiality, fairness and compliance with the provisions of the law in the registration of electors and the conduct of elections.

193. In many countries, citizens of either sex, over eighteen years of age and not subject to civilian interdiction or political disqualifications, are considered eligible to vote. In some countries, in addition to the qualification as to age, the right to vote is subject to the fulfilment of other conditions, such as literacy. In one country, minors under eighteen years of age are permitted to vote if they hold an academic degree.

194. Almost all the countries for which information is available indicate that persons may be denied the right to vote because of certain disqualifications. These disqualifications include insanity, moral turpitude and conviction of serious crime.

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4/ Albania, Bulgaria, Burma, Byelorussian SSR, Czechoslovakia, Dominican Republic, Ecuador, Peru, Polish People's Republic, Ukrainian SSR, USSR, Yugoslavia and Venezuela.

5/ Mexico, Bolivia, Nicaragua and Peru.

6/ Nicaragua.
195. In one country, for example, no person is entitled to have his name entered or retained in any register of electors if such person (a) has taken any oath or made any declaration or acknowledgement of allegiance, obedience or adherence to any foreign Power or State, or (b) is serving a sentence of imprisonment for an offence punishable with imprisonment for a term exceeding twelve months, or (c) is found or declared to be of unsound mind, or (d) is incapable of being registered by reason of his conviction of a corrupt or illegal practice under the Election Law or (e) is a person whose name is entered on a register of electors in any other country. The conditions for standing for election are similar. In none of the instances referred to in the preceding paragraphs is the question of race, colour, or national or ethnic origin considered a condition for disqualification from voting or standing for election.

196. It must be observed, however, that even though the law accords to all persons within a country the right to vote and to stand for election, there may be a number of circumstances which prevent the right from being exercised by all persons on a footing of equality. In some cases, the failure of members of a non-dominant group to take full advantage of the right in question may be due to historical factors, economic opposition, educational opportunities or some form of existing de facto discrimination. For example, no racial or minority group is today excluded by law from United States suffrage. Nevertheless, the members of certain non-dominant groups appear to face a number of obstacles in achieving full and free participation in the electoral and political process. Negro voter registration and political participation have lagged in some areas. As recently as May 1968, there remained counties in six southern states where less than 50 per cent of the eligible Negroes were registered to vote and which had been designated by the United States Attorney General for Federal examination. Despite significant progress in many areas of the south, Negro candidates and voters are reported to have experienced hostility on the part of white persons and many forms of discrimination by state and local governmental bodies, political parties, and public and party officials. Devices ranging from false information to fraud and outright intimidation are apparently still used in some states to

\[7/\] Singapore.
in order to block or neutralize the Negro vote. Measures have been adopted which take the form of switching to "at-large" elections where Negro voting strength is concentrated in particular election districts, facilitating the consolidation of predominantly white counties, and redrawing the lines of legislative districts to divide concentrations of Negro voting strength.

The right of equal access to public service

197. In this connexion, reference should be made to the provisions prevailing in some countries whereby certain seats in the local and national assemblies are reserved for certain disadvantaged groups in the population (see paras. 184-186).

198. In most of the countries for which information is available, the law imposes no restriction on the eligibility of nationals to access to the public service on the ground of race, colour, national or ethnic origin. The right to take part in the Government, as well as in the conduct of public affairs at any level, and to have equal access to public office is based only on personal competence and merit with no restrictions other than those established by law. In many countries, the right to hold public office is restricted to citizens.

199. Initial appointments to career posts in the Administration are in most cases made on the basis of competitive examinations. Similar provisions apply to the armed forces and the diplomatic service. In some cases there is an exception, namely, that certain of the highest administrative and political offices must be held by citizens by birth and not by naturalized persons.

200. In some countries which have recently acceded to independence there is an avowed policy to replace non-citizens by citizens at all levels of the government service. In this connexion, one country indicates that efforts are being made to "Africanize" (see below para. 217) the Civil Service and the Public Service

8/ Albania, Barbados, Belgium, Burma, Bulgaria, Cambodia, Colombia, Chile, Cuba, Czechoslovakia, Dominican Republic, Denmark, Ecuador, France, Haiti, Hungary, Italy, Jamaica, Peru, Lebanon, Luxembourg, Malta, Mexico, Madagascar, Morocco, Philippines, Peru, Romania, Sudan, Togo, Trinidad and Tobago, Venezuela, Yugoslavia.

Commission in making appointments to the national civil service endeavours, as far as is practicable, to ensure that the establishment is staffed at every level by a reasonable number of persons from each province and, in the case of particular provincial services, by a substantial number from that province.

201. A few countries reserve for culturally deprived groups a certain proportion of positions in the public services and provide special training facilities to candidates belonging to these groups to enable them to compete for higher posts in the administrative and allied services.

The right to form and join political parties

202. In a number of countries surveyed, citizens enjoy the right of assembly provided that the right is exercised peacefully, that those assembling are unarmed, and that there is no breach of the peace. In some countries, the right to associate in order to participate in political affairs and to express political views is specifically recognized.

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10/ India and Pakistan (see paras. 184-186).

11/ E.g., Argentina, Albania, Algeria, Bolivia, Bulgaria, Cambodia, Colombia, Ivory Coast, Cuba, Czechoslovakia, Chile, Denmark, Dominican Republic, Ecuador, France, Guyana, Haiti, Hungary, Iraq, Iran, Italy, Jamaica, Japan, Kenya, Laos, Lebanon, Luxembourg, Madagascar, Morocco, Malta, Mexico, Nicaragua, Philippines, Poland, Panama, Romania, Sudan, Togo, Trinidad and Tobago, United Kingdom, United States, Venezuela, Yugoslavia.
CHAPTER V
RACIAL DISCRIMINATION IN THE ECONOMIC SPHERE

203. Racial discrimination in respect of employment and occupation is a matter of great concern, in the opinion of the International Labour Office, as reflected in its manual "Fighting Discrimination in Employment and Occupation". That office points out that the problems of discrimination on grounds of race or colour which arise in connexion with employment and occupation are even more important than those that are met with in other fields. The lives of members of non-dominant racial groups are affected by employment opportunities even more profoundly than by other rights such as the right to vote or to be elected, to be served in the same shops and restaurants as members of the dominant group, to send their children to the same schools and colleges, and to enjoy the civic rights on terms of equality with members of the dominant group, though all these rights are also essential.

204. Several international instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, establish standards for eliminating racial discrimination in the field of employment and occupation. One of the most significant instruments in this field is the Discrimination (Employment and Occupation) Convention adopted by the International Labour Conference on 25 June 1958.

205. Under the terms of article 2 of the Convention, each member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

206. By article 3 the contracting parties undertake, by methods appropriate to national conditions and practice:

"(a) to seek the co-operation of employers' and workers' organizations and other appropriate bodies in promoting the acceptance and observance of this policy;

"(b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;"
"(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

"(d) to pursue the policy in respect of employment under the direct control of a national authority;

"(e) to ensure observance of the policy in activities in vocational guidance, vocational training and placement services under the direction of a national authority;

"(f) to indicate in their annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action."

207. As of 26 May 1969, the Convention had been ratified by sixty-seven member States.\(^1\)

208. Among recent international labour conventions which have reaffirmed the principle of non-discrimination may be mentioned the Employment Policy Convention 1964 (No. 122). It provides for the declaration and pursuit of a policy designed to promote full, productive and freely chosen employment, and lays down, inter alia, that this policy shall aim at ensuring that there is freedom of choice of employment and the fullest opportunity for each worker to qualify for, and to use his skills and endowments in a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

209. The Governing Body of the ILO has set up a Special Committee on Discrimination to consider the most effective manner in which to strengthen the action of the organization in the field of discrimination in employment and occupation, and a special service has also been established in the International Labour Office with responsibility for implementing a comprehensive programme in the field.

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1/ Argentina, Brazil, Bulgaria, Byelorussian SSR, Canada, Central African Republic, Chad, China, Colombia, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, Ethiopia, Gabon, Federal Republic of Germany, Ghana, Guatemala, Guinea, Honduras, Hungary, Iceland, India, Iran, Iraq, Israel, Italy, Ivory Coast, Jordan, Kuwait, Liberia, Libya, Malagasy Republic, Malawi, Mali, Malta, Mauritania, Mexico, Morocco, Nicaragua, Niger, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Portugal, Republic of Viet-Nam, Senegal, Sierra Leone, Somalia, Spain, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, Upper Volta, Ukrainian SSR, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia.
The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work and to just and favourable remuneration.

210. In some countries non-discrimination in employment and occupation is implied from the general principle of equality rather than specifically provided for by law. The situation obtaining in Trinidad and Tobago may serve as an example.

The Constitution recognizes that certain human rights and fundamental freedoms (i.e. right to liberty, equality before the law, freedom of association) exist without discrimination on the grounds of race, origin or colour; the Government concludes that these provisions make it unnecessary to include anti-discrimination clauses in specific legislation such as the Trade Unions Act (Cap. 22, No. 9). In addition, that country, like other countries studied, has established procedures whereby any person who considers himself aggrieved by discriminatory practices may avail himself of redress in the courts.

211. A significant court decision has upheld the principle of non-discrimination in employment in Canada. In Winner v. S.M.T. (Eastern) Ltd. (1951 - S.C.R. 887), a case involving the validity of a provincial statute restricting interprovincial bus service, the Supreme Court ruled that provincial competence to enact laws concerning particular groups is limited. The Court declared that possession of Canadian citizenship entails possession of certain fundamental rights and freedoms. In its words, "a Province cannot, by depriving a Canadian of the means of working, force him to leave it: it cannot divest him of his right or capacity to remain and to engage in work there: that capacity inhering as a constituent element of his citizenship status is beyond nullification by provincial action".

212. A different approach is reflected in the constitutions and legislative enactments of other countries studied. The Government of one country reports that all the laws and ordinances are formulated and applied on the basis of the principle of prohibition of racial discrimination set forth in the Constitution, and many of the laws and ordinances express for the prohibition of

2/ Barbados, Denmark, Jamaica, Nigeria and Norway.

3/ Japan.
racial discrimination. Similarly, the Labour Code of another country states that all workers are equal before the law and are entitled to the same protection and benefits.

The right to work

213. Work is considered a duty or right, or both, in the constitutions of many of the countries examined. The Constitution of Bolivia is typical; it specifies that labour is a duty and right and constitutes the basis of the economic and social order. Labour enjoys the protection of the State and the Constitution requires that the law specify the minimum wage, working hours and other conditions of employment. In addition, the State has the function of creating conditions to guarantee employment, stability of work and fair remuneration. In one of these countries, the Government states that the right to work entails not merely the right "of employment but the right not to be dismissed by the administration without the approval of the trade union committee". Provisions such as these are the legal basis for implementing a policy of non-discrimination.

214. Another Government draws attention to several methods by which it protects the right to work. For example, a labour court, presided over by a judge who is assisted by an equal number of employee and employer assessors, has jurisdiction on questions affecting employment. Staff representatives and government inspectors also have responsibilities regarding the protection of workers' rights. 215. One country states that the right to work is a matter "of economic as opposed to constitutional significance, so that while no legal rights as such accrue to any person in relation to these matters, there is available to all such opportunities and facilities as the economic climate of a developing country will allow". The Government draws attention to the Industrial Stabilisation Act No. 8 of 1965 and amendments (Nos. 6 and 11 of 1967) as an attempt to introduce the

4/ Haiti.
5/ Albania, Byelorussian SSR, Bulgaria, China, Czechoslovakia, Ecuador, Hungary, Romania, Ukrainian SSR, the Union of Soviet Socialist Republics and Venezuela.
6/ The Union of Soviet Socialist Republics.
7/ Togo.
8/ Trinidad and Tobago.
concept of social justice into labour relations within the confines of the country's economic resources. The Government's economic policy is geared towards combating unemployment.

216. The right to work and other economic rights are sometimes restricted in the case of aliens. This restriction is more likely to occur in those countries where the economy is not yet able to furnish full employment. In Jamaica, the Foreign Nationals and Commonwealth Citizens (Employment) Act 1964 provides that a foreign national or a Commonwealth citizen should not be employed without a valid work permit. The Government points out that the Act is designed to ensure that as far as possible local jobs are filled by qualified Jamaicans and to encourage them to seek training to acquire the necessary skills. This is considered essential in a country, especially a developing one, where the incidence of unemployment is very high.

217. In some countries, preference given to citizens can adversely affect a particular racial or ethnic group within the country. In Kenya, where as a result of colonial policies the African majority was excluded from meaningful participation in the economic life of the country, after independence the Government introduced a policy of Africanization of both the public and private sectors. In this connexion, an official publication has stated:

"Government recruitment and training programmes continue to lay emphasis on the replacement of non-citizens by citizens as soon as possible.

"Along with its efforts to Africanize the Civil Service, the Government is also taking steps to hasten a similar process in the private sector. New immigration rules to control the flow of expatriates into the country have already been announced. A more important step, the introduction of work permits, will provide the means for more effective practical steps in this direction."

These measures, along with others of similar import, have reduced the pre-eminence of Europeans and Asians in the economy. In Singapore, until the separation from Malaysia, the right to work was exercised by non-citizens equally with citizens. Work permits however are now issued to non-citizens, enabling them to continue in certain jobs.

218. Several of the countries surveyed have attempted to ensure the right to work to everyone by outlawing discrimination in recruitment, retention, promotion and dismissal. In one country, under the Employment Security Law, no one "shall be discriminated in employment exchange, vocational guidance, etc. because of race, nationality, political or religious belief, sex, social status, family origin, previous profession, affiliation or non-affiliation with a labour union, etc., provided that the same shall not apply where otherwise provided for in the agreement entered into between employers and unions in accordance with the Trade Union Law". Under another law, no employer may discriminate against any worker by reason of nationality, creed or social status in wages, working hours and other working conditions. In another country, discrimination in the fixing of salaries is expressly forbidden. If the conditions of work, the professional qualifications, and the output are equal, then the salary must also be equal irrespective of origin or status.

219. In another country, denial of employment or work to anyone owing to prejudice based on race or colour may be a criminal offence. In the case of a private enterprise, the offender may be imprisoned and fined, in the case of an independent undertaking, mixed undertaking or public service, the offender may be dismissed.

220. Canada indicates that it recognizes the problems of racial discrimination in the country and has undertaken to solve these problems in a meaningful manner. A number of legislative measures enacted by the Federal Parliament and by the provincial legislatures prohibit discrimination in employment. For example, Canada's national employment service - administered by the Department of Manpower and Immigration - follows a policy of non-discrimination in accordance with Section 22(2)(b) of the Unemployment Insurance Act. The various federal and provincial Fair Employment Acts also prohibit discrimination by private

10/ Brazil, Canada, Japan, Togo, the United Kingdom and the United States of America.

11/ Japan.


13/ Brazil.
employment agencies. The Act provides that it is the duty of the Commission appointed for the purpose to ensure that in referring a worker seeking employment there is no discrimination because of race, national origin, or colour. In addition, new anti-discrimination measures were adopted in two provinces and in the Yukon Territory. For instance, in Quebec, a new law entitled "An Act respecting discrimination in employment" prohibits an employer or any person acting on behalf of an employer or an employers' association from resorting to discrimination in hiring, promoting, laying-off or dismissing an employee. The Act applies to all employers in Quebec with five or more employees, including the provincial government. The Act makes it illegal to publish discriminatory job advertisements or to display signs or notices in connexion with employment, and also prohibits trade unions and employers' associations from engaging in discriminatory membership practices.

221. Considering that an important aspect of any anti-discrimination programme is public awareness, both the federal and the provincial governments and other bodies have undertaken a wide range of publicity and educational measures designed to let Canadians know what their rights are, especially in respect of discrimination. Pamphlets and other materials concerning rights and anti-discrimination legislation, for example, are published and distributed to the public by federal and provincial Departments of Labour and provincial Human Rights Commissions and the federal Department of Labour sponsors educational advertisements in ethnic newspapers from time to time. Use also is made by the Department of spot announcements on radio and TV. Display posters are used on various occasions, such as conferences, to publicize the laws concerning employment and accommodation.

222. A report\(^{14}\) on racial discrimination in the United Kingdom has revealed substantial discrimination against coloured immigrants in employment. The differential treatment and experiences of coloured immigrants as against other minority groups (such as Cypriots and Hungarians) left no doubt that the discrimination was largely based on colour. Discrimination in employment was the

\(^{14}\) A PEP (Political and Economic Planning) Report on Racial Discrimination sponsored by the Race Relations Board and the National Committee for Commonwealth Immigrants: Research by Research Services Limited.
biggest single criticism in immigrants' spontaneous criticisms of life in Britain and it was the area in which the greatest number of individual claims of discrimination were made. Of all immigrants interviewed, 36 per cent claimed discrimination and provided evidence to that effect. Claims of discrimination were similarly high among people with formal qualifications obtained before migrating to the United Kingdom. The report indicated that it was those immigrants with the highest qualifications and general ability who experienced the most discrimination. This fact was reinforced by the evidence of the owners and managers of employment bureaux, all of whom claimed that the majority of employers would not accept coloured office staff, even when properly qualified. Some of their estimates were that 90 per cent of their clients would not accept coloured office staff.

223. On the other hand, the Government has indicated that, at the time of interviewing, 94 per cent of the immigrants were in regular employment. Moreover, only twenty-two had English trade qualifications, and twenty-seven English school-leaving qualifications compared with 727 with no qualifications, so that although a higher proportion in the qualified groups claimed experience of discrimination their relative numbers were small. The Government has also pointed out that despite the reports of employer resistance made by private employment bureaux, of twenty-five major national employers seen by the investigators, all employed coloured immigrants in a wide range of positions, including clerical and secretarial posts. Furthermore, of the 150 local employers seen by the investigators, only thirty-seven did not employ immigrants, and of these only four said they would not. Among the national employers, all had some coloured personnel in skilled technical positions and some in executive posts. The Government has observed that although the PEP report undoubtedly uncovered some discrimination in employment, it also disclosed that most immigrants had either not encountered, or had overcome, employment problems. According to the latest available figures (November 1967), Commonwealth immigrants accounted for exactly 3 per cent of the total number of unemployed adults in Great Britain, a percentage which, according to the Government, has remained constant despite the recent increases in the unemployment figure.
224. The Race Relations Act 1968 which deals with discrimination on the ground of race, colour or origin, will eliminate some of these discriminatory practices, by making it unlawful for employers and other persons concerned with employment to discriminate in the following circumstances: (i) in refusing to hire a qualified person; (ii) in refusing to afford the same terms of employment, conditions of work, training and promotion as is available to others; and (iii) in dismissing a person on a discriminatory basis. Investigation and conclusion procedures are initiated prior to seeking redress in the courts for complaints of discrimination.

225. The Government of the United States of America reports that fair practices and equal opportunity in employment became the objective of wide governmental action during and since World War II, and many of the larger industrial states continued prohibitions in job discrimination. Labour union contracts included similar provisions. From about 1945 non-discrimination policies were established throughout federal agencies, both civil and military. Requirements were also imposed on private employers performing on contracts for supplies, construction and all other services paid by federal funds.

226. A national policy of non-discrimination in employment is set out in the Civil Rights Act of 1965; this policy is implemented by several federal agencies, including the Equal Employment Opportunity Commission which was established by Title VII of the 1964 Civil Rights Act. The Act of 1965 prohibits employment discrimination on the basis of race, colour, religion, sex or national origin by private employers, unions and employment agencies. Furthermore, by 1967, thirty-six states, Puerto Rico and the District of Columbia had mandatory legislation forbidding discrimination in employment, and more than 200 cities also had adopted anti-discrimination ordinances.

227. There is substantial statistical evidence to show that the legislation has contributed to improving the employment opportunities of the non-dominant groups in the United States of America. For example, non-white workers are increasingly entering higher-paying jobs. On the other hand it is also clear, as was said at a White House Conference ("To Fulfill These Rights", held in June 1966)\textsuperscript{15} that

the employment and income problems of the Negro population are complex, long-standing, and rooted deeply in economic, social, and political disabilities. More than anything else, they are the consequence of cumulative disadvantages imposed by racial discrimination in employment, education, training, and housing. This statement holds true of other non-dominant groups in the country, such as the Indians, Mexicans and other Spanish-speaking groups.

228. The Government has also indicated that while fair employment legislation assures Negroes and whites equal opportunity for jobs at all levels, the effect of discrimination is still apparent in the gap between the usual income of Negroes and whites, i.e., in 1964 Negro family incomes averaged about 55 per cent of white families. The disproportion between minority and white in incomes has persisted so long as to indicate discrimination as a major factor. Provision of social and other services to meet the needs of low-income Negro families is only one of many economic costs resulting from the income gap. For this reason both federal and state governments are putting increasing effort into broad social, educational and economic programmes designed to bring Negroes and other minorities abreast with the rest of society.

(ii) Free choice of employment

229. None of the countries studied reveal any constitutional provision or legislative enactment whereby a person would be restricted in his choice of employment on the ground of race or colour or national or ethnic origin. In some countries, such as Malta and Pakistan, the constitution expressly prohibits forced labour.

230. In some developing countries employment opportunities vary according to the interplay of the availability of resources, the supply of labour and the relative skills. To the extent that there is a larger labour force than there are available jobs, the free choice of employment may be considered limited.

231. One of these countries reported that its present stage of development does not enable it to maintain full employment of the labour force but that every

16/ Jamaica, Nigeria and Trinidad and Tobago.
17/ Nigeria.
person has the right to work wherever he can find employment, to change his employment freely and either individually or within his trade union to negotiate for just and favourable conditions.

232. Certain practices and policies, such as denying persons access to apprenticeship programmes, training programmes and trade unions, have the effect of restricting the choice of employment. In the United States of America, the fact that apprenticeship programmes have been closed to minority groups has the effect of excluding them from certain trades and crafts. A Government Commission reported on the situation in 1963 and stated:\textsuperscript{18/}

"In all sections of the country, the artisans of the skilled trades are overwhelmingly of the white race. Apprenticeship programmes are maintained jointly by unions and employers to sustain the pool of skilled craftsmen; they contain almost no Negroes. The causes for lack of participation by Negroes... vary, but most important are: traditional racial patterns of the skilled crafts; lack of encouragement and motivation of Negro youth to aspire to these occupations; discriminatory practices by unions and employers; and practices that have the effect of excluding Negroes, such as family preference in selections by joint apprenticeship committees. These factors, singly or in combination, have resulted in an almost complete exclusion of Negroes from employment in the skilled trades where a labour shortage almost always exists. Consequently, Negroes are forced to seek the dwindling opportunities for unskilled labour. The apprenticeship problem contributes to the Negro unemployment rate, which is over twice that of the white."

233. A subsequent report\textsuperscript{19/} of the Commission indicated that craft unions were still engaging in practices of excluding some Negroes from membership and from union apprenticeship programmes.

(iii) Just and favourable conditions of work

234. Just and favourable conditions of work are constitutionally guaranteed in many countries surveyed.\textsuperscript{20/} For example, the Argentinian Constitution (Art. 14 bis)

\begin{thebibliography}{99}


\item 20/ Albania, Argentina, Bolivia, Byelorussian SSR, Bulgaria, Czechoslovakia, Dominican Republic, Ecuador, Hungary, Romania, the Ukrainian SSR, the Union of Soviet Socialist Republics and Venezuela.

\end{thebibliography}
states that the law will assure to workers the following: rest and paid vacations, just salaries, equal work for equal pay and the right to form trade unions. Similarly, the Constitution of Bulgaria\(^{21/}\) specifies that the State guarantees the right to work by planned economy, by systematically and continually developing the productive forces of the country and by creating public works. It also states that Citizens' Labour Service obligations are determined by a special law. Moreover the right to rest is guaranteed by limited working hours, by holiday with pay once a year, and by the establishment of an extensive system of rest-homes, clubs, etc.

235. In other countries\(^{22/}\) similar protection is laid down in a series of statutes governing conditions of work. In some of these countries\(^{23/}\) labour courts protect workers from unwarranted actions by administrators and other supervisory personnel; this would permit claims of racial discrimination to be heard by such courts. In Trinidad and Tobago questions of the conditions of work can be brought before the Industrial Court and can be the subject of a binding order.

(iv) Protection against unemployment

236. Protection against unemployment is usually ensured only in those countries\(^{24/}\) where full employment has already been realized. On the other hand, some countries\(^{25/}\) indicate that, because of the state of their economic development, they are not in a position to grant such protection. For example, the Government of Jamaica has indicated that protection against unemployment is to be found in the employment opportunities occasioned by an expanding development programme, and in the sugar and other (labour-intensive) industries. There exists a number of Government Employment Agencies which operate on the "first come, first serve" basis.

\(^{21/}\) Arts. 73 and 74.
\(^{22/}\) Austria, Guyana, Jamaica and Trinidad and Tobago.
\(^{23/}\) Austria, Nigeria and Trinidad and Tobago.
\(^{24/}\) E.g., Ukrainian SSR and the Union of Soviet Socialist Republics.
\(^{25/}\) Jamaica, Nigeria and Trinidad and Tobago.
237. The principle of equal pay for equal work has received wide acceptance in the legal systems of the various countries studied. Even if the principle is established by law, discriminatory practices against particular racial groups may nullify the effectiveness of such laws. For example, in the United States of America, where the principle is accepted, a government study reports that in 1966 at each educational level, non-white men received lower median incomes than white men. Moreover, the income disparity was greatest among those with university education. For example, those who have completed high school, the median income for whites was $7,668 and for non-whites $5,188, or 75 per cent of the white income. For those who have a university education, whites obtained median income of $9,423 and non-white $5,928 or 66 per cent of the white income. The report notes that in the year 1966, the gap between the income of whites and of non-whites had significantly narrowed and that in that year over 28 per cent of the non-white families received more than $7,000 a year - more than double the proportion with incomes as high seven years ago, as measured in constant dollars taking into account changes in prices.

238. One country reports that foreign companies often imported their nationals at higher wages than were paid to local staff. In order to discourage this practice, the Government has set up the Expatriate Quota Allocation Committee. The main function of the Committee is to control the number of foreign nationals coming to take up employment in the country. Permission is not usually granted to any foreign company to bring foreign nationals to take up employment where qualified local persons are capable of performing the same job.

(vi) Just and favourable remuneration

239. Remuneration may be fixed by statute, collective bargaining agreements or individual contracts, and in many of the countries surveyed provision has been made for redress if guidelines concerning salaries have been disregarded.

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26/ Argentina, Austria, Bulgaria, Byelorussian SSR, Czechoslovakia, Ecuador, Haiti, Hungary, Nicaragua, Poland, Romania, Togo, Ukrainian SSR, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America.


28/ Nigeria.
240. One country reports that the act entitled "Schedule for changeover to the shorter working day and regularization of wages of manual and non-manual workers" of 1959, provides for uniform wage-rates, scales of wage-rates for the various categories of manual workers, and fixed salaries for technical and non-manual posts. The Government states that the labour legislation, which establishes an obligatory procedure for measuring work and a corresponding method of measuring remuneration for the quantity and quality of work performed, excludes the possibility of discrimination in remuneration for labour on the ground of nationality or race. The amount of wages is said to be determined by the quality of the work performed by the worker and work of equal duration, intensity and quality receives the same wage. The trade unions are responsible for verifying compliance with labour legislation. Remuneration on the basis of the quantity and quality of the work accomplished is a constitutional principle in several countries.

241. Several countries studied have relied on the minimum wage law as one of the ways to ensure a just and favourable remuneration. For example, in one country the constitution guarantees a minimum salary compatible with human dignity; in some of these countries collective bargaining agreements also ensure a favourable wage to workers.

242. Adequate compensation is considered in some countries an implied term in a labour contract. Thus, in Austria (Civil Code, art. 1152) an adequate wage is deemed to be agreed upon, even if no wage is specified in the contract. In Nigeria, a National Wage Board reviews complaints about wages.

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29/ The Union of Soviet Socialist Republics.
30/ Bulgaria, Byelorussian SSR, Czechoslovakia, Hungary, Poland, Romania and the Ukrainian SSR.
31/ Argentina, Bolivia, Jamaica, Nicaragua, the United States of America and Venezuela.
32/ United States of America and Venezuela.
The right to form and join trade unions

243. The right to form and join trade unions, is, in many countries, implied or derived from the right to form associations. Trade unionism is almost universally accepted among the countries examined. 33 /

244. The constitution of one country 34/ surveyed spells out the functions of trade unions. It states that (Art. 159) unionization is recognized and guaranteed as a means of protection, representation, welfare, education, and culture for workers. Union immunity is guaranteed to the directors of unions while carrying out the legal activities connected with their mandates, for which they may not be prosecuted or arrested. The right to strike is recognized as the legal right of workers to suspend work in the defence of their rights after complying with legal formalities.

245. In some countries, 35/ unions are given a special position not only in the economic but the political structure of a country. For example, in the Union of Soviet Socialist Republics, under the constitution, citizens are ensured of the right to unite in public organizations such as trade unions. Mass organizations such as unions are designed to develop the organizational initiative and political activity of the members (Art. 126). Trade unions along with other public organizations and societies of working people have the right to nominate candidates to organs of political power, such as the Supreme Soviet.

246. In many countries surveyed, exclusion of persons by a trade union on the ground of race would be deemed illegal as it would violate the right to freely associate and under the constitutions of several countries 36/ this discriminatory action would be overturned by a court.

33/ Albania, Argentina, Austria, Barbados, Bolivia, Bulgaria, Byelorussian SSR, Canada, Czechoslovakia, Dominican Republic, Guyana, Haiti, Hungary, Jamaica, Kenya, Malta, Nigeria, Poland, Romania, Singapore, Togo, Trinidad and Tobago, Ukrainian SSR, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and Venezuela.

34/ Bolivia.

35/ E.G. Byelorussian SSR and the Ukrainian SSR.

36/ Canada and Denmark.
247. In a few countries trade unions are specifically enjoined from discrimination on the grounds of race, colour, national or ethnic origin. In Japan the law provides that the constitution of the trade union rules include a provision that no one may be disqualified for union membership because of race, social status or family origin.

248. The Race Relations Act 1963 of the United Kingdom makes it unlawful for an organization of workers to discriminate against a non-member by refusing to admit him to membership on the like terms as other persons applying for membership. A union is deemed to discriminate against a member by refusing to accord him the same benefits as are accorded to other members or to take the like action on his behalf as is taken on behalf of others or by expelling him from the organization. Investigation and conciliatory procedures are established by the Act in order to obtain agreed settlement of disputes.

249. The United States reports that the right to form and join trade unions is protected by the National Labor Relations Act, and by similar State laws. Racial minorities have by and large shared in the benefits of collective bargaining and the labour movement has a long record of espousing civil rights legislation. As early as 1944, the Supreme Court recognized the responsibility of unions to non-dominant groups, and required them to represent "fairly and without hostile discrimination" non-union Negro workers, for whom the union has been designated the spokesman with management. In 1964 the National Labour Relations Board ruled that a union's failure to provide fair representation for Negro workers violates the law and is cause to impose the severe penalty of revoking the union's certification as an exclusive bargaining agent. The Civil Rights Act of 1964 further enjoined unions to treat workers indiscriminately and outlawed discrimination in federally assisted projects.

250. The directives prohibiting discrimination in federally-assisted projects have often been evaded by the holders of federal contracts. The Commission on Civil Rights, after noting that many craft unions restricted or excluded Negroes and members of other non-dominant groups from membership, pointed out

37/ Japan, the United Kingdom and the United States of America.
38/ Trade Union Law (Act 5 (2) (4)).
39/ See para. 167.
that contractors often dealt with such unions, in hiring persons to fulfill contracts financed by federal funds.

251. In this connexion, the Commission cited the situation prevailing in the skilled construction trade: 40/

"The Federal Government is attempting to provide entry for Negroes into the skilled construction trades by requiring equal employment opportunity on Federal construction contracts. Under the terms of a Presidential Executive order, federal contractors may not discriminate in hiring or employment practices on the basis of race and are required to take 'affirmative action' to insure equal opportunity in employment. Failure to comply can result in termination of the contract and ineligibility for future contracts...."

"Most construction contractors obtain their employees through unions with whom they have collective bargaining agreements providing for a union hiring hall under which workers are referred exclusively by the union. Theoretically the union is required to refer non-union as well as union workers. But if a union discriminates against non-union members in referring workers and has few or no minority members, it will refer few or no minority workers.

"... Additionally, because the traditional avenue for acquiring the necessary skills - the union - has been closed to them, few non-union minority workers have such skills. Contractors fear that if they hire or train minority workers outside the hiring hall the unions will enforce their collective bargaining agreements, through a strike or otherwise."

252. In Kenya prior to independence, registered employee associations were organized along racial lines and this practice has persisted to some extent. According to a government report, as of 21 December 1955, 41/ of the forty-six employees unions, seven were open to persons of a particular race.


CHAPTER VI
RACIAL DISCRIMINATION IN THE SOCIAL SPHERE

253. As has already been stated, discrimination in the social sphere constitutes a serious problem since it touches on a wide range of fields and thus adversely affects the daily life of the individual.

The right to housing

254. Discrimination in housing is a serious obstacle to social justice and social progress. Such discrimination may originate either in law or in practice, and in either case may be direct or indirect in nature. Information relating to discrimination in this field is available, however, only with respect to a few countries. Some countries merely indicate that legislation exists prohibiting any infringement of the right of its citizens to housing, but supply no information regarding the implementation of the law.

255. One country\(^1\)/ reports that under a National Housing Act, loan regulations for resale or rental of property provide that a condition of every loan made by any approved lender and insured by the federal Central Mortgage and Housing Corporation, be that the borrower will not discriminate against any person by reason of race, colour, religion or national origin. The regulations also provide for a review by an independent arbitrator of any complaint of discrimination. In addition, anyone to whom a loan is made under the regulations, who is found guilty of practising discrimination, is debarred for three years from obtaining further loans. Although borrowers may obtain loans from other sources which do not provide anti-discriminatory conditions, a significant portion of housing construction in the country is financed by government-insured loans under the Central Mortgage and Housing Corporation. In some provinces, legislation has been enacted making it illegal to refuse any person occupancy of an apartment in any building containing more than six self-contained dwelling units or to discriminate against any person with respect to any condition of occupancy.

\(^{1/}\) Canada.
256. One country\(^2\) indicates that regardless of the type of housing coloured immigrants seek, they encounter either substantial discrimination or severe handicaps. According to a report,\(^3\) the percentage of non-white immigrants who claimed discrimination in private letting was relatively low compared with the discrimination shown in certain tests that were actually conducted. That fact was due to two factors, namely, (1) the majority of immigrants did not expose themselves to possible discrimination by looking for accommodation on the open market, and (2) as the actual tests had shown, substantial discrimination could occur without the knowledge of the immigrant who visited an agency or applied to a landlord.

257. The report indicated that in London only 11 per cent of privately-let property was both advertised and did not specifically exclude coloured people. When this section of the private letting market that was notionally open to coloured applicants was tested, it was found that two thirds excluded them in practice. Of sixty advertised properties called on by English, Hungarian and coloured testers, forty-five resulted in discrimination against the coloured tester - forty cases of refusal and five cases of higher rent. When subsequently interviewed the landlords admitted that they had discriminated.

258. The report pointed out that in the case of house purchase, discrimination was also encountered. Vendors in certain types of areas were not prepared to sell to coloured persons and building societies were loath to give them mortgages. This resulted in many immigrants having to accept mortgages at higher interest rates or initial deposits. The report noted that there were some suggestions from people in a position to discriminate that time would reduce discrimination and that familiarity would reduce hostility and make immigrants more acceptable. Such optimism, according to the report, was not borne out by the findings of the research which showed two main trends: (i) as immigrants became more accustomed to English ways of life, as they acquired higher expectations and higher qualifications, they experienced more personal direct

\(^2\) United Kingdom.

\(^3\) PEP Report on Racial Discrimination, op. cit.
discrimination; and (ii) awareness of discrimination, prejudice and hostility tended to make immigrants withdraw into their own closed communities.

259. The Race Relations Act of 1968 makes some of the above-mentioned practices unlawful. It forbids "any person having power to dispose of housing from discriminating against a purchaser or occupier". The Act also prohibits discrimination in obtaining mortgages. The Act makes it unlawful to publish or display any advertisement or notice which indicates an intention to commit an act of discrimination.

260. Certain important exemptions are established by the Act. For example, the anti-discrimination clauses do not cover certain owner-occupied premises. Direct sales between the owner and the purchaser are not always subject to the Act. In fact, it is specified that it is lawful to discriminate in the sale of premises owned and occupied by the seller, unless he uses the services of an estate agent or uses advertisement in the disposal of the property.

261. The former President of the United States of America, Lyndon Johnson, in his message to Congress of 15 February 1967, stated in reference to discrimination in housing:

"For most Americans, the availability of housing depends upon one factor - their ability to pay. For too many, however, there are other crucial factors - the colour of their skin, their religion or their national origin. When a Negro seeks a decent home for himself and his family, he frequently finds that the door is closed. It remains closed - though the Negro may be a serviceman who has fought for freedom. The result of countless individual acts of discrimination is the spawning of urban ghettos, where housing is inferior, overcrowded and too often overpriced."

262. One difficulty faced by non-whites seeking good housing is the refusal of banks, insurance companies and other financial institutions to grant them mortgages. This holds true even for government-supported loans. An official study \[1/\] revealed that proportionately fewer non-white veterans received Veterans Administration home, farm or business loans.

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263. A United States Government report stated, in regard to housing, that "it appears Indians suffer extensive denials... analogous to those confronting other minority groups".

264. According to an official document, the proportion of non-white households living in housing that either is dilapidated or lacks basic plumbing facilities decreased sharply since 1960 in all areas especially large cities. Yet about three in ten non-white households still live in such dwellings compared to less than one in ten of the whites.

265. In the southern states, nearly half of all non-white households live in dwellings that either are dilapidated or lack basic plumbing facilities, compared to less than one fifth in the north and west. In all regions, housing is far worse in smaller cities, towns and rural areas than in the metropolitan centres for both non-whites and whites.

266. According to the Report of the National Advisory Commission on Civil Disorders, the reasons many Negroes live in decaying slums are not difficult to discover. First and foremost is poverty: most ghetto residents cannot pay the rent necessary to support decent housing. This prevents private builders from constructing new units in the ghettos or from rehabilitating old ones. The second major factor condemning vast numbers of Negroes to urban slums is racial discrimination. Discrimination prevents Negroes from obtaining access to many non-slum areas, particularly the suburbs, and has a detrimental effect on ghetto housing itself.

267. The report describes various discriminatory practices which perpetuate "almost complete" segregation in metropolitan areas. Deliberate efforts are made to discourage black families from purchasing or renting homes in all-white neighbourhoods. Intimidation and threats of violence range from throwing garbage on lawns to burning crosses in yards and even dynamiting property. More often,

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7/ March 1968.
real estate brokers simply refuse to show homes and apartments to blacks. Many middle-class Negro families, therefore, cease looking for homes beyond all-Negro areas or nearby "changing" neighbourhoods. For them, trying to move into all-white neighbourhoods is not worth the psychological efforts and costs required.

268. By restricting the area open to a growing population, discrimination in housing makes it profitable for landlords to break up ghetto apartments for denser occupancy, hastening housing deterioration. By creating a "back pressure" in the racial ghettos, discrimination keeps prices and rents of older, more deteriorated housing in the ghetto higher than they would be in a truly free and open market.

269. Under the Civil Rights Act, which came into force in April 1968, it is now an offence for anyone to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, colour, religion or national origin. Under this Act, it is unlawful to discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connexion therewith, because of race, colour, religion or national origin. It is also unlawful to make, print or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, colour, religion or national origin or to represent to any person because of race, colour, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available. The Act at present exempts single-family houses sold or rented by an owner provided, among other things, that such private individual owner does not own more than three such single-family houses at any one time.

270. In 1966, the Supreme Court, on the basis of the Civil Rights Act of 1866, ruled that racial discrimination in all sales and rental of property is prohibited. The Reconstruction Era statute had been previously regarded as a measure only to secure the rights of former slaves to own property. The Court referred to the provisions of the Civil Rights Act of 1866 which provide that:
"All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

The ruling does not provide for any exemption and thus goes beyond the Civil Rights Act of 1968.

The right to public health, medical care, social security and social services

271. In some countries, the constitution specified that the State has an obligation to ensure and protect the health and welfare of its citizens. The constitution of one country states that social services and welfare are functions of the State and that the rules relating to public health are compulsory and obligatory. In another country, the system of social security is not centralized but channelled through "autonomous institutions with their own juridical personality"; the constitution also provides that the State, employers and the insured are to be represented on the board of directors.

272. Under the constitution of some countries, all citizens enjoy the right to maintenance in old age and also in case of sickness or disability. In some of these countries, the right is ensured by the extensive development of social insurance of industrial, office and professional workers at State expense, free medical service for the working people, and the provision of a network of health resorts for the use of the working people.

273. In a country where there is no established legal right to public health, medical care and social services, the Government reports that such services as are made available, whether by government or private institutions, are administered without distinction as to race, colour, national or ethnic origin. There is a Public Health Law which regulates standards in regard to a comprehensive area of national activity. This ensures the maintenance of a high standard of public

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8/ Argentina, Bolivia, Ecuador and Venezuela.
9/ Bolivia.
10/ Ecuador.
11/ Bulgaria, Czechoslovakia, Byelorussian SSR, Hungary, Poland, Ukrainian SSR, USSR.
12/ The USSR and the Ukrainian SSR.
13/ Jamaica.
health. Moreover, there is an equitable deployment of hospitals, medical officers, and medical centres, which ensure appropriate treatment to those in need. It is also reported that a social security scheme of a limited and contributory nature has recently been initiated under a National Insurance Act. This National Insurance Act applies to persons employed in the country and provides them with benefits without discrimination.

274. One 

14/ country indicates that discrimination in the field of health services has declined rapidly in recent years. Under the Civil Rights Act of 1964, hospitals constructed with federal funds are required to serve all patients without regard to race, colour, or national origin. This Act was a change from earlier laws which permitted "separate but equal" rules in regard to hospitals. By 1967, over 7,000 hospitals, more than 95 per cent of the total in the nation, had signed formal agreements to provide health services without discrimination, and others were preparing to do so. In all other social services, including medical insurance and social security programmes, the law requires that all elements of the population be given equal benefits. Since Negroes and other non-dominant racial groups often have greatest need for these welfare services, this provision is especially important to them. The National Advisory Commission on Civil Disorders 15/ found that the residents of the racial ghetto are significantly less healthy than other Americans. They suffer from higher mortality rates, higher incidence of major diseases, and lower availability and utilization of medical services. They also experience higher admission rates to mental hospitals.

275. The Commission also noted that although widespread use of health insurance has led many hospitals to adopt non-discriminatory policies, some private hospitals still refuse to admit Negro patients or to accept doctors with Negro patients, and many individual doctors still discriminate against Negro patients. As a result, Negroes are more likely to be treated in hospital clinics than whites, and they are less likely to receive personalized service.

14/ United States of America.

15/ Report of the National Advisory Commission on Civil Disorders, chapter 8, section II.
276. In the case of Indians, another government commission\textsuperscript{16} found that while Indians receive the same benefits under the Federal-State social security programmes, this is not always true in the case of "general public assistance programmes" administered by the States. General public assistance programmes include all of the programmes giving aid to the needy. The Commission found that States with significant Indian population often did not extend assistance programmes to reservation Indians.

277. In some cases, the prohibition of racial discrimination with regard to the right to public health, medical care, social security and social services is not expressly stated in the law. For example, Canadian welfare legislation such as the Canada Assistance Plan, Canada Pension Plan, Old Age Assistance and Old Age Security Acts, Family Allowance and Youth Allowance Acts, as well as equivalent provincial statutes, implicitly prohibit racial discrimination since equal treatment is afforded to all persons satisfying standard eligibility requirements.

273. One country\textsuperscript{17} indicated that the Government's legislative programme provided for the early introduction of a system of national insurance which would include sickness and old age benefits. A full social security system was in the process of being formulated and, like the country's health facilities, would be open to everyone irrespective of race, colour or ethnic origin.

The right of access to public accommodations

279. In some countries\textsuperscript{18} the right of access to any place or service intended for use by the general public is expressly guaranteed by the Constitution to everyone without distinction as to race, colour, or national or ethnic origin. According to the Constitution of one country,\textsuperscript{19} no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment, or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

\textsuperscript{16} Justice, op. cit., p. 151.

\textsuperscript{17} Guyana.

\textsuperscript{18} India and Pakistan.

\textsuperscript{19} India.
280. In some other countries, the right in question is guaranteed in the Constitution by a general provision of non-discrimination. In this connexion the Government of Austria indicates that so far as facilities provided by public authorities are concerned, the principle of equality proclaimed in the Constitution, in conjunction with the available judicial remedies, and especially the decisions of the Constitutional Court, provide an extensive guarantee of equal access. According to the prevailing doctrine, however, the fundamental rights set out in the Austrian Federal Constitution have no "third-party effect"; in other words, the fundamental rights concern only the relationship of the individual to the State, and not relations between individuals. In the case of privately-owned facilities, therefore, the principle of freedom of disposal prevailing in civil law applies.

281. It would appear, however, that general words in a constitution, proclaiming the protection of the individual, are in some situations inadequate to ensure effective protection from discrimination. Consequently, some countries have enacted positive legislation aimed at ensuring equality of treatment in such areas as public accommodations. Thus, in Canada, the Federal Government and nearly all the provinces at one time or another have enacted positive anti-discrimination legislation aimed at the achievement of equal opportunity and treatment in public accommodation and in other fields regardless of race, colour, religion or ethnic origin. The administration of the relevant statutes lies in the hands of specified government agencies, and penalties for discriminatory practises are invoked after discussion, conciliation and persuasion have failed. Generally, anyone who feels that he has been discriminated against may make a written complaint to the government department (whether federal or provincial) and an inquiry is made. In most cases as well, a person making a complaint is protected by law from retaliatory action.

282. Brazilian law establishes the penalty of imprisonment and a fine for whoever "through racial or colour prejudice", refuses, on the part of a commercial or educational establishment of any kind, to house, serve, attend or receive a client, customer or pupil; or whoever refuses lodging in a hotel, boardinghouse inn or other establishment for similar purposes, or refuses to sell goods in stores or shops of any kind, or to serve customers in restaurants, bars, tea-shops or similar premises, open to the public, where food, drink and refreshments are normally served.
233. In Norway, as in some other countries, there are no special laws or administrative decisions prohibiting discrimination between different races as regards public transport and hotel and restaurant services. It is considered a matter of course, however, that anyone, regardless of race, has the same right to use public transport and hotel and restaurant services. Refusal of transport, hotel or restaurant services on grounds of race, colour or nationality would be contrary to the normal regulations on boycott and would lead to criminal proceedings on that basis. It would also violate the obligation to provide transport which is a consequence of a license granted for commercial transport, and would then lead to withdrawal of the license.

234. In Denmark, under the Innkeeper's Act, an innkeeper who fails to provide a traveller with necessary lodging, food and drink shall be liable to a fine. It has been established in legal practice that an innkeeper may not refuse guests on racial grounds. The Innkeeper's Act imposes no similar obligation on ordinary restaurants and cafes.

235. In the United Kingdom, under the Race Relations Act 1968, certain goods, services and facilities are to be made available on a non-discriminatory basis. The following are given as examples of such facilities and services: places where the general public has the right of access and use; hotels and boarding houses; banking and insurance facilities; schools; places for entertainment, recreation or refreshment; facilities for transport and travel; and the services of any business, profession or trade or local or public authority.

236. Up to and including 31 December 1967, the Race Relations Board had received a total of 863 complaints of alleged discriminatory treatment in public houses, hotels, cafés, clubs, hospitals, public transport, municipal entertainment centres, public utilities and other matters. Of these complaints, 228 were investigated or under investigation; 72 of them were settled by conciliation, 109 were not sustained by the local conciliation committee, 4 were still under investigation by local conciliation committees. Six hundred and thirty-five complaints were not investigated as it was considered that they were outside the scope of the Act.

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287. Recent legislation in the United States of America provides equal access to public accommodations. Title II of the Civil Rights Act of 1964 establishes the right of everyone without regard to race, colour, religion or national origin to the full and equal use of places of business open to the public, such as hotels, restaurants, lunch counters, and restrooms, gasoline stations, theatres, sports arenas, and other places of exhibition or amusement. Previously, the matter of public accommodations had been largely a matter of State and local regulation. In an early test of the constitutionality of this section of the Act the Supreme Court upheld its validity. The result is that throughout the nation, public events and public facilities are now required to be open equally to all. The Government also indicated that rapid progress has been made in implementing the public accommodation provisions in the 1964 Civil Rights Act, partly because such discrimination is hard to camouflage, and also because businessmen find treating all customers alike increases revenues.

The right to marriage and choice of a spouse

288. Only a few countries have furnished information concerning the right of everyone of full age, without any limitation due to race, colour or national or ethnic origin, to marry and to choose the spouse. Some countries have indicated in general terms that their laws recognize no distinction as to race, colour, or national or ethnic origin in the enjoyment of this or any other human right. In most countries, the only restriction seems to be that the parties to the marriage should be of a certain minimum age and should have consented of their own free will to the marriage.

289. One country\(^{20}\) reports that there is no restriction on the right in question except that a non-Christian person who is married cannot, after the coming into force of the Women's Charter, 1961, marry again during the lifetime of the other spouse. In this respect, it is pointed out, Muslims are exempted as they are governed by their own marriage laws. On choice of spouse, a man may marry whomsoever he pleases.

\(^{20}\) Singapore.
290. The United States has reported that for many years the right to choice of spouse was limited in some states by anti-miscegenation laws. However, the Supreme Court of California some years ago declared the law in that state unconstitutional, and a recent decision in the U.S. Supreme Court (Loving v. Virginia, 1967) has made it evident that all such laws are inconsistent with the United States Constitution, and therefore invalid.

291. In one country, the law prohibiting marriage between its citizens and foreigners was repealed. The Citizenship Act was also amended to take account of the change so that marriage by a citizen to an alien does not entail a change of citizenship.

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21/ The Union of Soviet Socialist Republics.

22/ Decree of 26 November 1953 on the repeal of the Decree of 15 February 1947 on the prohibition of marriages between citizens of the USSR and foreigners.
CHAPTER VII

RACIAL DISCRIMINATION IN THE CULTURAL SPHERE

292. Culture, in the broad sense of the term, is all pervasive. It underlies the many problems posed in this study and its effects inevitably penetrate the whole fabric of the societies considered. It determines the base and pattern, sets the pace, and directs the course of development especially in respect of human investment and the efficient mobilization of human resources. If education is in many ways the key to the solution of the general problem of political, economic and social development, then racial discrimination in the cultural sphere is the most important and most crucial form of discrimination.

293. In the Study of Discrimination in Education,¹/ the Special Rapporteur pointed out that if the non-dominant, exploited group had access to elementary education under normal conditions, and secondary and higher education were available to it, the function of racial inferiority would be destroyed. It would be difficult if not impossible to deny the group the full exercise of its political rights and the group would take over the reins of power, or would at least put an end to the exploitation from which it suffers.

294. It was also emphasized that in some cases discrimination in education is used as a means of delaying or preventing the awakening of national consciousness. That policy is aimed both at the mass of the population and at élite groups. For when an élite group, however small, succeeds in gaining access to higher education, it may become a disturbing factor since it is a warning of what would happen if conditions were normal and may create feelings of guilt in the dominant group. Consequently, the latter may take counter-measures by setting up separate higher educational institutions of inferior quality. If the individual cannot be inferior, then at least his education, even at the highest level, must be inferior.

295. These are also the very factors which may condemn certain groups to an inferior status in perpetuity. Any policy of a dominant racial group based on fear of losing their privileged position necessarily entails measures to deny access to education of the non-dominant racial group or to allow it access to education only at a lower level.

¹/ United Nations publication, Sales No.: 1957.XIV.3.
296. What is crucial and economically significant about discriminatory practices in education is the fact that they often operate in societies where there is a shortage of skilled and professionally-trained manpower, where skills often have to be imported from abroad at inflated rates of pay, when desegregation in education and employment might open up immense possibilities for the expansion of the economy and the absorption of indigenous labour. The whole process entails an immense wastage in human resources and further burdens the economy by creating an artificial shortage of skilled labour which favours narrow sectional interests.

297. For example, the consequences of discriminatory practices in the United States of America were translated into monetary terms in 1966 by the participants at the White House Conference "To Fulfill these Rights". After noting that the employment problems of Negroes were rooted in part by discrimination in education and training, the Conference concluded that:

"The economic loss to the entire nation, although a secondary consideration, cannot be ignored. If Negro unemployment were lowered to the current unemployment level of whites, the resulting gain in the Gross National Product would be $5 billion. If the average productivity of the Negro labor force equaled that of the white, the resulting gain in the GNP would be $22 billion. These gains, totaling $27 billion, do not include the further increment that would result if Negroes obtained jobs commensurate with their abilities and training. However, some investment is necessary to achieve these gains.

"This annual economic loss is the result of discrimination - past and present. The losses translate themselves at the community level into depressed purchasing power for goods and services, social tensions, and the high costs of welfare assistance, delinquency and idleness."

The right to education and training

298. Free access to schools by all racial and ethnic groups has been given legal recognition in almost all of the countries for which information was

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3/ Albania, Bolivia, Brazil, Byelorussian SSR, Canada, Chile, China, Colombia, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Guyana, Haiti, Hungary, India, Japan, Luxembourg, Mexico, Nicaragua, Nigeria, Poland, Romania, Singapore, Togo, Trinidad and Tobago, Ukrainian SSR, Union of Soviet Socialist Republics, United States of America and Venezuela.
available. Discriminatory practices have persisted in some countries because the anti-discrimination laws have not been vigorously enforced or because economic under-development has prevented educational facilities from being made available to all ethnic groups, particularly isolated or rural groups. Lastly, some countries have been seriously hampered in eliminating the discrimination which developed during their colonial past.

299. The Constitution of several countries surveyed specify that the State has a special duty and interest in regard to education. For instance, the Constitution of Bolivia provides that education is the primary function of the State (art. 177) and that literacy is a social necessity and all inhabitants must contribute to its attainment (art. 179). The Constitutions of several countries surveyed have provisions which specify that one of the purposes of education is to promote harmony between groups. The Constitution of Ecuador states that the object of education is the full development of the personality and shall teach respect for fundamental rights and liberties; it should favour comprehension and tolerance between social and religious groups, and the maintenance of peace (art. 36).

300. Free compulsory education, particularly at the primary level, is a common legal provision in the countries examined. Effective enforcement of such laws ensures equal access to school by all groups, when educational facilities are of a uniform quality throughout the country.

301. Some countries have taken steps to improve the education offered to certain ethnic or racial groups which have lower levels of achievement. For example in China, the Constitution provides for special measures for minority groups in border regions (arts. 163, 168 and 169). The Government reported that it recognized that the level of learning of students from less developed regions was below the general level and has made special arrangements to assist them. In its view this was a positive step, constituting an improvement on the negative concept of non-discrimination. With regard to primary education, particular

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4/ Bolivia and Chile
5/ Ecuador, Haiti and Mexico
6/ Albania, Bolivia, Byelorussian SSR, Chile, China, Colombia, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Guyana, Haiti, Hungary, Luxembourg, Mexico, Nicaragua, Poland, Romania, Ukrainian SSR, Union of Soviet Socialist Republics.
attention is paid to educating the people in the mountain regions in Taiwan Province. Special consideration is given to students (of minority groups) from border regions, who may be admitted to secondary schools without entrance examination, and who are given a number of Government scholarships for study at universities abroad.

302. In Guyana, A Commission of Inquiry found that in 1965 in the field of secondary education, East Indian pupils are at a disadvantage in that virtually no facilities for secondary education exist in the rural areas where the large majority of them live. The Government indicated that it was "not unaware" of the fact that the facilities for secondary education are more extensive in urban than in rural areas. As a consequence of this imbalance, the entire rural population, irrespective of race, had been placed at a disadvantage. Measures were taken to remedy this situation.

303. The Government reported that of the twenty-eight Government secondary schools, twenty-three are in the rural areas and of the thirteen Government-aided, five are in rural areas. Education is distributed throughout the country to ensure that equal opportunities are available to all.

304. Similarly in the United States of America steps are now being taken to improve the educational opportunities offered to non-dominant groups. The lag in educational achievement among Negroes, Indians and other non-white groups is said by the Government to derive in large measure from poor health, cultural deprivation and similar factors. Children without inspiration from the home or community tend to start behind, stay behind and often become dropouts. The Government reports that Federal and other resources are now providing "Headstart Programs" for pre-school children, along with special teachers, smaller classes and other techniques to help children improve at school.

305. Adult education programmes are also being expanded to retrain workers who find their skills inadequate for the increasingly-mechanized and rapidly-changing industrial needs, and to equip workers with literacy skills sufficient to enter apprenticeship and other training programmes. Living allowances are provided to workers under some of these programmes.

306. The Commission on Civil Rights in its 1963 report examined the question of Negro participation in federally-administered job re-training and "job-generating" programmes and found it to be "generally favourable". It noted, however, that
vocational education programmes in southern States were offered on a segregated
basis and negro participation was meagre". It concluded that "... while the
Federal Government has succeeded in reducing the ranks of Negro unemployed
through job retraining, it has been slow to insist that Negroes be given adequate
vocational education opportunities in skills that are in current demand."\(^7\) This
view has been reiterated in the 1967 report of the Commission, which summarized
the testimony given by persons who live or work in racial ghettos.\(^8\)

307. In the United Kingdom, where there are approximately one million immigrants,
mainly from India, Pakistan and the West Indies, provision is made on an
increasing scale for special courses of training for the teachers of immigrant
children, to help them to deal with the techniques of teaching English as a
second language and with questions of school and class organization, and to
give them a more thorough understanding of the economic, social and religious
background of the countries from which so many of their pupils come. New courses
are also being evolved to help immigrant teachers to overcome their difficulties
with the English language and to train them in the use of the educational techniques
employed in the country, so that they can become effective members of the teaching
force. Special classes and centres have been established in some areas where
children may attend full-time until they are able to be absorbed into normal
classes; elsewhere peripatetic specialists in language teaching visit schools
to give intensive tuition.

308. The Kenya Government, after independence was faced with the problem of
making educational and other facilities available on an equal basis to Africans
who constitute more than 95 per cent of the population. The colonial
policy, had deliberately excluded or severely restricted Africans from the
educational system of the Territory.\(^2\) Separate systems of education and separate
schooling facilities were maintained for each racial group - African, Asian,
European and Arab. It has been reported that\(^10\) during the ten years before

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\(^7\) "Civil Rights '63", op. cit., pp. 90-91.
\(^8\) "A time to listen... a time to act", op. cit., pp. 49-52.
pp. 21-22.
\(^10\) Ibid.
independence, more capital was invested in European and Asian education, representing 3 per cent of the population, than in the education of the African 97 per cent.

309. In order to overcome the consequences of the discriminatory practices which prevailed in the colonial period, policies and programmes have been initiated whereby the participation by Africans in all phases of public life has been accelerated. The Government has placed great emphasis on the expansion of secondary school facilities. A Government report notes:

"Although the expansion of secondary and higher education was greatly accelerated in the years just prior to Uhuru, Kenya was left in a highly unprepared state for Independence from the point of view of the availability of indigenous skills and experience. Not only were local personnel in the middle and higher level manpower groups in short supply, but it was even difficult to find enough qualified candidates to take advantage of places offered in higher education institutions. It has therefore been essential to break the bottleneck of the shortage of well-qualified secondary school leavers..."

310. An integrated educational system was introduced after independence. One of the innovations initiated by the Government was the introduction of a bursary scheme for Africans to attend "high-cost" former Asian and European schools and the preparation of common syllabuses for all schools. By 1966, the proportion of Africans at former European and Asian secondary schools had risen to 30 per cent. In 1967, the Government directed that 50 per cent of the intake into Form I classes in former European and Asian schools be African.

311. Ethnic, religious or rational minorities are, in some countries, permitted to maintain separate educational institutions or to receive instruction in their mother tongue. In a few countries the constitution provides that religious and linguistic groups may establish and administer educational institutions of their choice. The Constitution of India provides that the

12/ Ibid., p. 2.
14/ E.g. India, Romania, Singapore and the Union of Soviet Socialist Republics.
15/ India and Singapore.
State shall not, in granting aid to educational institutions, discriminate on the ground that the educational institution is under the management of a religious or linguistic minority (art. 30 (2)). In Singapore, where every religious group has the right to establish and maintain institutions for the education of children, the Constitution provides that there shall be no discrimination on the ground only of religion in any law relating to such institutions. Federal law or State law however may provide for special financial aid for the establishment or maintenance of Muslim religion or for persons professing that religion (art. 12 (2)).

312. In Canada several provinces have established independent school systems to accommodate the children of adherents of specific religious faiths. Where special provision for denominational schools does not include a particular sect or religion, the courts have ruled that these children must be accepted by a public school.

313. Several multi-national States have drawn attention to provisions protecting the right of national minorities to establish their own educational institutions or to be educated in whole or in part in their mother tongue.

314. One Government reports that in its country there is complete freedom for its citizens to educate their children in the language of their own choosing. The Constitution of Romania guarantees to national minorities education at all levels in their own language (art. 22).

315. Specific prohibitions against discrimination on the ground of race in educational facilities are found in some of the countries studied. In some of these countries, these prohibitions have not ensured to non-dominant groups equal access to schools or equivalent levels of educational achievement. For example, in Brazil there is a penalty for refusing instruction to a pupil in a teaching establishment of any type or level for reasons of racial or colour prejudice. Yet, it is a generally recognized fact that the white population starts with the advantage of a better education. The statistics on school enrolment are not classified according to the racial characteristics of the

16/ Romania and the Union of Soviet Socialist Republics.
17/ The Union of Soviet Socialist Republics.
18/ Brazil, Japan and the United States of America.
students, but the ratio of Negro, Mestizo and Indian pupils in the primary grades is probably smaller than the ratio of these groups within the total population. This, it is pointed out, is chiefly due to economic conditions and to the cultural level of the parents rather than to any discrimination on grounds of race, colour, or national or ethnic origin. Although by law primary education is universal and compulsory, there are not enough public schools in most areas to meet the needs of the entire school-age population. On the other hand, the attendance of children at school entails a certain economic hardship for the parents, as the children, even when young, frequently help their parents in the less strenuous farm work or in domestic tasks. Although all classes of the population want their children to be educated at school, the desire is stronger among the better educated classes, who are also better able to dispense with the economic assistance of their children of school age. This means that the number of children attending school from the poorer and economically underprivileged classes of the population is proportionately smaller.

Accordingly, in the population of twenty years of age and over, literacy is much higher among the whites than among the people of mixed blood and the Negroes. In the United States of America, the Supreme Court in the case of Brown v. Board of Education established the principle of non-segregation of educational facilities; the decision declared that segregation imposed by State law is a denial of the equal protection of the laws guaranteed in the Fourteenth Amendment. The Civil Rights Act of 1964 also affects education by prohibiting the use of federal funds in any programme where there is discrimination, including separation, on the ground of race, colour or national origin. This prohibition applies to private as well as public institutions. Title IV of the Civil Rights Act also speeds the pace of desegregation by requiring assignment of students to public schools without regard to race, colour or national origin. In addition, it authorizes the Federal Office of Education to give technical and financial


assistance, if requested, to local public schools systems planning or carrying out programmes of desegregation. In spite of the legal prohibition, racial segregation in schools has persisted.

317. In seventy-five major central cities surveyed by the United States Commission on Civil Rights in its study, "Racial Isolation in the Public Schools", 21/ 75 per cent of all Negro students in elementary grades attended schools with enrolments that were 90 per cent or more Negro. Almost 90 per cent of all Negro students attended schools which had a majority of Negro students. In the same cities 83 per cent of all white students in those grades attended schools with 90 to 100 per cent white enrolments. Racial isolation in the urban public schools is the result principally of residential segregation and the employment of the "neighbourhood school" policy which has the effect of imposing the segregation from housing to school. The results of the segregated education system is indicated in a survey made in 1965 comparing the achievement of Negro and white students. For example, the average Negro youngster in the final year of high school is performing at a ninth-grade level. The gap in achievement level between Negro and white students widens between the sixth and twelfth grades.

Achievement on National Standardized Tests of Reading and Other School Subjects, 22/ Fall 1965

<table>
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<tr>
<th>Test level grade</th>
<th>Grade in school:</th>
<th>Negro</th>
<th>White</th>
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</thead>
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<td>Sixth</td>
<td>4.4</td>
<td>6.8</td>
</tr>
<tr>
<td></td>
<td>Ninth</td>
<td>7.0</td>
<td>9.9</td>
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<tr>
<td></td>
<td>Twelfth</td>
<td>9.2</td>
<td>12.7</td>
</tr>
</tbody>
</table>


318. The Commission on Civil Rights drew the following conclusions on the effects of racial segregation in the schools. 23/

"The outcomes of education for Negro students are influenced by a number of factors including students' home backgrounds, the quality of education provided in their schools, and the social class background of their classmates. In addition to these factors, the racial composition of schools appears to be a distinct element. Racial isolation in the schools tends to lower students' achievement, restrict their aspirations, and impair their sense of being able to affect their own destiny.

"By contrast, Negro children in predominantly white schools more often score higher on achievement tests, develop higher aspirations, and have a firmer sense of control over their own destinies.

"Differences in performance, attitudes, and aspirations occur most often when Negroes are in majority-white schools. Negro children in schools that are majority-Negro often fail to do better than Negro children in all-Negro schools. In addition, the results stemming from desegregated schooling tend to be most positive for those Negro children who began their attendance at desegregated schools in the earlier elementary grades."

The right to equal participation in cultural activities

319. Information relating to this question is scanty. Those countries which have supplied information indicate that all citizens have an equal right to participate in all cultural activities. The cultural rights and activities of non-dominant groups in a country have been given special protection in some countries. 24/ For example, the Constitution of India provides that citizens "having a distinct language, script or culture" have the right to conserve the same (art. 29 (1)).

320. In Kenya, it would appear that as a result of section 21 (12) (b), which establishes customary courts, African custom is preserved. Moreover the same Constitution establishes courts of a Kadhi to determine questions of Moslem law relating to personal status, marriage, guardianship or inheritance in proceedings where all the parties are Moslems. These type of provisions help to ensure that non-dominant groups are granted cultural activities of their own choosing.

24/ Brazil, India and the United States of America.
321. In several countries surveyed, cultural organizations are encouraged as a means to develop the "organizational initiative" of the people. Citizens are ensured of the right to unite in such organizations (Constitution, art. 126). The Constitution of the Union of Soviet Socialist Republics gives such mass organizations the right to nominate candidates to political organs (Constitution, art. 141).

322. The culture of a society is considered to be the subject of special attention by the State, under the Constitution of several countries studied. The Constitution of the Dominican Republic is but one example; it provides that the State will provide the widest diffusion of science and culture in such a manner that all persons can benefit from scientific and moral progress (art. 16).

323. The Government of the United States of America reports that the right to participate in cultural activities is fully recognized for all citizens as the result of the 1964 Civil Rights Act and related Supreme Court decisions. Libraries, museums, night schools, concerts, and other cultural media are available to all people without discrimination.

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25/ Byelorussian SSR, Ukrainian SSR and the Union of Soviet Socialist Republics.
CHAPTER VIII

MEASURES TAKEN IN CONNEXION WITH THE PROTECTION OF INDIGENOUS PEOPLES

324. Indigenous peoples often suffer doubly from prejudice and discrimination based upon their race, colour or ethnic origin. They encounter racial prejudice and discrimination simply because they constitute a group which differs in race, colour or ethnic origin from the predominant population group. Sometimes the "special measures" taken by the authorities to protect their unique culture and identity - which they themselves earnestly wish to maintain - may with the passage of time become unnecessary or excessive and therefore also discriminatory.

325. For this reason the international community must devote particular attention to the problems of indigenous peoples if it is to succeed in its endeavour to eliminate all forms of racial discrimination. The question of what further measures may be required, on the national as well as on the international levels, should be the subject of further comprehensive study.

International measures

326. Various aspects of the treatment of indigenous peoples have been considered from time to time by the United Nations and the specialized agencies. For example, the ad hoc Committee on Slavery, appointed by the Secretary-General under resolution 238 (IX) of the Economic and Social Council, submitted reports to the Council in March 1950 and September 1951 containing descriptions of various forms of labour of semi-feudal origin (personal services, etc.) that were still in force in certain Indian areas in Latin America and which could be compared to slavery. The ad hoc Committee on Forced Labour, in a report published in June 1953, set forth the findings of some of its members regarding certain alleged forms of servitude prevailing among Latin American Indians as a legacy from the semi-feudal colonial past. The International Labour Office prepared a comprehensive study entitled "Indigenous Peoples"1/ in 1953, in which it examined

in detail the living and working conditions of aboriginal populations in independent countries; and the International Labour Conference in 1957 adopted the Indigenous and Tribal Populations Convention.2/ UNESCO has also from time to time conducted studies of the methods and techniques employed for facilitating the social integration of groups which do not participate fully in the life of various national communities by reason of their ethnical or cultural characteristics. 327. However, neither the United Nations nor any of the agencies concerned appears as yet to have dealt effectively with the component of racial discrimination which is almost invariably an important factor affecting the treatment of indigenous peoples. 

328. The problem which indigenous peoples present is usually viewed as one of social integration. These people - who include the aboriginal populations and underdeveloped social groups of many States - need to be helped to participate fully in the life of their national communities. There are many programmes, on the national as well as on the international level, designed to achieve this goal. But it cannot be overlooked that the basic cause for the social isolation which so many indigenous peoples experience is the prejudice and discrimination directed against them because of the difference between their ethnical and cultural characteristics and those of the predominant racial group in their country, and the segregation imposed upon them by that group. Until such racial prejudice, discrimination and segregation have been eradicated, there can be no hope for effective social integration.

329. Indigenous peoples are essentially the "native" or original inhabitants of a particular land at the time of its invasion by persons from other parts of the world. Differing from the conquering invader in physical appearance, they were either forced by the invader's superior technology into a master-serf relationship, or escaped by moving into forests, mountains or other inaccessible areas where they could maintain their own distinct culture and way of life.

330. As "Indians", "Natives", or "Aboriginals", these peoples have in many countries been made subject to a special system of law which places them under the protection of the State and gives them a special legal status, but which at the same time restricts the exercise of certain civil and political rights, theoretically until they have acquired the degree of cultural and economic development which will enable them effectively to enjoy the rights conferred by law on citizens in general but in practice for an indefinite period.

331. The International Labour Organisation's Indigenous and Tribal Populations Convention, 1957, recognizes "that there exist in various independent countries indigenous and tribal and semi-tribal populations which are not yet integrated into the national community and whose social, economic or cultural situation hinders them from benefiting fully from the rights and advantages enjoyed by other elements of the population". The Convention establishes general international standards to assure the protection of the populations concerned, their progressive integration into their respective national communities, and the improvement of their living and working conditions.

332. The following provisions of the Convention are of special interest:

"PART I. GENERAL POLICY"

"Article 1"

"1. This Convention applies to:

"(a) Members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

"(b) Members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong..."
"Article 2"

1. Governments shall have the primary responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries.

2. Such action shall include measures for:

(a) Enabling the said populations to benefit on an equal footing from the rights and opportunities which national laws or regulations grant to the other elements of the population;

(b) Promoting the social, economic and cultural development of these populations and raising their standard of living;

(c) Creating possibilities of national integration to the exclusion of measures tending towards the artificial assimilation of these populations.

3. The primary objective of all such action shall be the fostering of individual dignity, and the advancement of individual usefulness and initiative.

4. Recourse to force or coercion as a means of promoting the integration of these populations into the national community shall be excluded.

"Article 3"

1. So long as the social, economic and cultural conditions of the populations concerned prevent them from enjoying the benefits of the general laws of the country to which they belong, special measures shall be adopted for the protection of the institutions, persons, property and labour of these populations.

2. Care shall be taken to ensure that such special measures of protection:

(a) Are not used as a means of creating or prolonging a state of segregation; and

(b) Will be continued only so long as there is need for special protection and only to the extent that such protection is necessary.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures of protection.

"Article 4"

In applying the provisions of this Convention relating to the integration of the populations concerned:
"(a) Due account shall be taken of the cultural and religious values and of the forms of social control existing among these populations, and of the nature of the problems which face them both as groups and as individuals when they undergo social and economic change;

"(b) The danger involved in disrupting the values and institutions of the said populations unless they can be replaced by appropriate substitutes which the groups concerned are willing to accept shall be recognized;

"(c) Policies aimed at mitigating the difficulties experienced by these populations in adjusting themselves to new conditions of life and work shall be adopted.

"Article 5

"In applying the provisions of this Convention relating to the protection and integration of the populations concerned, Governments shall:

"(a) Seek the collaboration of these populations and of their representatives;

"(b) Provide these populations with opportunities for the full development of their initiative;

"(c) Stimulate by all possible means the development among these populations of civil liberties and the establishment of or participation in elective institutions...

"Article 7

"1. In defining the rights and duties of the populations concerned regard shall be had to their customary laws.

"2. These populations shall be allowed to retain their own customs and institutions where these are not incompatible with the national legal system or the objectives of integration programmes.

"3. The application of the preceding paragraphs of this Article shall not prevent members of these populations from exercising, according to their individual capacity, the rights granted to all citizens and from assuming the corresponding duties.

"Article 8

"To the extent consistent with the interests of the national community and with the national legal system:

"(a) The methods of social control practised by the populations concerned shall be used as far as possible for dealing with crimes or offences committed by members of these populations;
"(b) Where use of such methods of social control is not feasible, the customs of these populations in regard to penal matters shall be borne in mind by the authorities and courts dealing with such cases.

"Article 9"

"Except in cases prescribed by law for all citizens the exaction from the members of the populations concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law.

"Article 10"

"1. Persons belonging to the populations concerned shall be specially safeguarded against the improper application of preventive detention and shall be able to take legal proceedings for the effective protection of their fundamental rights.

"2. In imposing penalties laid down by general law on members of these populations, account shall be taken of the degree of cultural development of the populations concerned.

"3. Preference shall be given to methods of rehabilitation rather than confinement in prison ..."

333. The Convention further includes detailed provisions relating to such matters as recruitment and conditions of employment; vocational training, handicrafts and rural industries; social security and health; education and means of communication; and administration.

334. In addition to supervising the application of the Convention, the International Labour Organisation has joined with other specialized agencies and international organizations in operational programmes designed to improve the assimilation of various indigenous peoples into their national cultures. Perhaps the best known of these is the Andean Programme, which is directed towards improvement of the conditions in which some 7 million Indians live in the Altiplano, the high and barren plateaux of the Andes, 10,000 or more feet above sea level and straddling across six South American countries: Argentina, Bolivia, Chile, Colombia, Ecuador and Peru. For decades this Indian population has lived in conditions of great poverty, suffering from lack of housing, water, food, clothes and medical care. The aim of the Andean Programme, according to the Director-General of the ILO, is "to raise the living standards of these people
to integrate them into the life of their nations, to bring them hope for the future and to give their countries the full strength of their hitherto untapped human resources”.

335. As early as 1951, the ILO had established a Committee of Experts on Indigenous Labour, composed of a tripartite delegation from its Governing Board of one expert from each of the following countries: Bolivia, Brazil, Canada, Ecuador, Guatemala, India, Mexico, New Zealand, Peru, the Philippines and the United States of America. The Committee's report and recommendations, approved by the Governing Body at its 114th session, in March 1951, formed the basis of much of the subsequent work of the ILO in this field.

336. The United Nations Educational, Scientific and Technical Organization (UNESCO) has also been active in work relating to indigenous peoples, and on several occasions has conducted critical inventories of the methods and techniques employed for facilitating the social integration of indigenous groups. Other specialized agencies, including FAO and WHO in particular, have also carried out useful technical assistance activities, in addition to participating in the Andean Programme.

337. It may be noted, however, that in all the activities referred to above, the issue of the elimination of racial prejudice and segregation directed against indigenous peoples was never considered to be a basic objective; indeed, the segregation of those people on "reservations" or "locations", and the other "special measures" taken for their protection, were not considered to be discrimination at all, but merely temporary steps which were necessary until they had achieved the progress required to merit full integration.

338. That this approach may, in some circumstances, be justified or even required is clear from Article 2 (3) of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, which provides that: "Special concrete measures shall be taken in appropriate circumstances in order to secure adequate development or protection of individuals belonging to certain racial groups with the object of ensuring the full enjoyment by such individuals of human rights and fundamental freedoms. These measures shall in no circumstances have as a consequence the maintenance of unequal or separate rights for different racial groups".

/...
339. Likewise Article 2 (2) of the International Convention on the Elimination of All Forms of Racial Discrimination provides that: "States Parties shall, when the circumstances warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved".

340. These provisions may be said to constitute a practical recognition of the fact that special action is required, in certain circumstances, in favour of indigenous peoples. But both the Declaration and the Convention make it quite clear that if these special measures have as a consequence the maintenance of unequal or separate rights for different racial groups, or if they are continued after the objectives for which they were taken have been achieved, the result is racial discrimination.

341. As noted above, the ILO's Indigenous and Tribal Populations Convention, 1957, calls for care to be taken lest the special measures adopted to protect the institutions, persons, property and labour of indigenous populations "are not used as a means of creating or prolonging a state of segregation", and "will be continued only as long as there is need for special protection and only so long as there is need for special protection and only to the extent that such protection is necessary".

342. Thus while it is fully recognized in these instruments that special measures taken to protect indigenous peoples are justified when the circumstances warrant, it is also recognized that such measures may be applied in such a way as to be discriminatory.

343. There can be no doubt that the indigenous peoples of some countries, or at least individual members of such groups, consider the "special measures" maintained for their protection to constitute a form of racial discrimination, either because they have been continued beyond the time when they were necessary or because they have been applied to an extent which can be justified no longer. Indians in the United States of America, for example, are permitted to maintain certain tribal courts. In such a court an Indian defendant may be tried before
a layman judge without the right to counsel or the right to appeal, a situation which would not occur in the case of Indians tried in State or federal courts. Such a defendant may feel that the "protective measure", which may have been useful at one time, did not protect him at all but instead constituted a measure of discrimination against him.

344. Such discrimination is sometimes made even more unendurable because the indigenous peoples concerned suffer, in addition, from discrimination on purely racial grounds in such matters as access to education, to housing and employment, and to public accommodations. According to one report:

"Complaints by Indians of discrimination in employment are similar to those of Negroes. A preliminary survey indicates some State employment offices accept and process discriminatory job orders. There are also charges that the Bureau of Indian Affairs frequently ignores its announced policy of preferential employment for Indians. Some schools, it is said, urged by parents not to permit "squaws" to teach white children, have resisted hiring qualified Indian teachers. As to private employment, many Indians express resentment over the reluctance of some employers to hire them for suitable jobs.

"Indian complaints of unequal treatment in the administration of justice include charges that law and order are not adequately maintained on reservations in States to which jurisdiction has been ceded, and that there is outright ill-treatment by police and courts in towns adjacent to Indian reservations.

"A final area of unequal treatment is that of public welfare - a matter of vital concern for Indians because of their general poverty. In this preliminary study there were no complaints of discrimination in the administration of public assistance programmes operated by States with Federal funds. Complaints were received, however, of unequal treatment in the administration of programmes financed from State and local revenue. Investigation disclosed that some States with large Indian populations do not extend their general assistance programmes to Indians living on reservations. Indians, it is argued, are the special responsibility of the Federal Government. And since the legal power of a State does not ordinarily extend to Indians living on reservations - for example, Indian lands are exempt from State taxes - some States insist that their legal duty to provide care for reservation Indians is limited. Another argument is that while some individual Indians may be destitute, the tribes to which they belong are well off and should take care of their needs.

"Thus the denial of equal protection of the laws to Indians appears to be severe and widespread. Some of the denials (those concerning welfare, the administration of justice and, in the recent past, voting)
stem at least in part from the unique legal and political status of Indians. Others stem from the fact that, as a minority, Indians are subject to the same kinds of discrimination inflicted on other minorities...." 

**National measures**

345. Various Governments have taken steps to ensure the development and protection of indigenous groups, and their integration into the political, economic or social structure of the country. These steps have taken various forms such as abolition of discriminatory practices, special social and educational programmes and reservation of seats in legislative bodies.

346. The indigenous people of the Western Hemisphere, including the American Indians and Eskimos, were decimated during the period of colonial expansion. Those that survived were, in many instances, scattered, deprived of land, refused access to schools and jobs and denied the right to vote. A number of countries in the hemisphere have adopted measures to overcome the backwardness, illiteracy, and land loss affecting their indigenous peoples. Many of these countries have established special institutes, commissions, bureaux or departments designed to promote the economic and social well-being of the indigenous population. For example, in Mexico, there is established in accordance with a law of 10 November 1948 the Instituto Nacional Indigenista, with the following functions: to investigate the problems relating to the native Indians and to remedy them; to co-ordinate and direct, in case of necessity, the action of the competent governmental organs, and to publish as it deems fit and through all adequate means, the results of its investigation and study.

347. In a few countries the indigenous person has a special legal status. The Amerindian of Brazil has been the object of special legislation to protect him so long as he continues to lead a primitive existence. The Civil Code of 1961 places such persons on a par with the relatively incapable, such as minors. One relevant statute places forest-dwellers under a special jurisdiction as wards of the State, from which they can emerge progressively until they are

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4/ Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Ecuador, Guyana, Mexico, United States of America and Venezuela.

5/ Brazil and the United States of America, for example.
fully integrated in the Brazilian community. It secures Indians in the ownership and possession of the land they occupy; the Federal Government is authorized to purchase land for them and permits uninhabited or uncultivated land belonging to the State to be used for the purpose of settling indigenous groups. The statute also encourages protection of indigenous social organizations and endeavours to secure preservation of the cultural values where they do not run counter to fundamental humanitarian principles.

348. In the United States of America, where the Indian is also a ward of the Federal Government, special legislation has established tribal courts, Indian schools and special rules governing the alienation of tribal land.

349. The Canadian Government reports that its Department of Indian Affairs and Northern Development administers various programmes designed to ensure the adequate development and protection of Canadian Indians and Eskimos. Special vocational training and counselling programmes, federal-provincial agreements for integrated schooling and various health, welfare and community development programmes for the indigenous peoples of Canada are aimed at accelerating their achievement of full participation on the same basis as other citizens. No legal restrictions are placed in the way of Indians and Eskimos seeking jobs, housing or other political, social, economic and cultural opportunities. However, conflicts in culture and values as well as the limited social acceptance of the indigenous races by the majority groups, are nevertheless real barriers to successful achievement by the indigenous peoples.

350. Finland, on the other hand, where special commissions have been set up to promote the full integration of the Gypsy and Lapp communities, the Government states that these bodies "are not necessitated by any practices of racial discrimination and they do not entail the establishment or maintenance of unequal or separate rights".

351. In India, special measures of protection have taken the form of enactments designed to ensure the participation of disadvantaged groups in the political processes. The Schedules Castes (the so-called "untouchables") and the Scheduled Tribes, which have been described by the Indian Government as the "weaker" sections of the population, are entitled to proportionate representation in State Assemblies and the National Parliament. One of the consequences of this arrangement, is, according to the Government, the fact that the legislative bodies are constantly "alive" to their needs. A certain proportion of posts
in the public services has been set aside for members of the Scheduled Castes and Tribes and the Government provides special tutoring facilities in order to accelerate advancement to senior posts in the federal civil services. While the provision regarding reservation of seats in the Parliament and State Assembly expires in twenty years after the commencement of the Constitution, those Constitutional provisions concerning reservation of posts in public service are entrenched.

352. Among the entrenched provisions of the Pakistan Constitution is one that provides that steps should be taken to bring, on terms of equality with other persons, the members of "under-privileged castes, races, tribes and groups" and, to this end, such groups should be identified by the Government and entered in a schedule of under-privileged classes. Moreover, the Constitution states that the people of different areas and classes, through education, training, industrial development and other methods, should be enabled to participate fully in all forms of national activities, including employment in the service of Pakistan. The Government reports that the representation of the minorities has not been neglected in the higher cadres of administration. The Government has relaxed the age limit up to three years for minority communities and tribal candidates in certain districts.

353. In China special provision has been made for the "various racial groups in border regions". The Constitution specifies that with regard to these groups, the State shall positively undertake and assist in the development of education, culture, communications, water conservancy, health and other economic and social enterprises. In addition, the educational and cultural expenses for distant border regions may be subsidized by the national Treasury.
CHAPTER IX

THE RACIAL POLICY OF THE REPUBLIC OF SOUTH AFRICA

I. Background information

Composition of the population

345. The population of South Africa has been traditionally divided into four ethnic groups: Europeans (White), Natives, Asian and Coloureds. These terms have been officially defined as follows:

1/ This chapter is mainly based on materials contained in the following documents prepared by various organs of the United Nations or under the auspices of the United Nations:


Economic and Social Consequences of Racial Discrimination Practices (E/CN.14/132/Rev.1).


Sections I and II of this chapter reproduce the analysis of the policy of apartheid which appeared in chapter IX of the draft report (E/CN.4/Sub.2/288) submitted by the Special Rapporteur to the Sub-Commission at its twenty-first session. Section III deals with recent developments since the draft report mentioned above was issued.
"'White person' means a person who -

"(a) in appearance obviously is a white person and who is not generally accepted as a coloured person; or

"(b) is generally accepted as a white person and is not in appearance obviously not a white person;

"but does not include any person who for the purposes of his classification under the Act, freely and voluntarily admits that he is by descent a Bantu or a coloured person unless it is proved that the admission is not based on fact.

"'Bantu' means a person who in fact is or is generally accepted as a member of any aboriginal race or tribe of Africa.

"'Coloured person' means a person who is not a white person or a Bantu.

"'Asians' mean Natives of Asia and their descendants, mainly Indians."

355. According to the Population Registration Act, every person in South Africa must be classified and entered in the population register according to his classification. As from the age of sixteen, every person is issued with an identity card which he must produce on request to any person authorized by law to demand its production. The Act provides that a person's classification may be altered at any time, though he must be given an opportunity of being heard beforehand. There is machinery for appealing against classification...

356. African inhabitants of South Africa outnumber the Europeans four to one. Of the total South African population, the European sector amounts to less than 20 per cent. In no province do the Europeans form the majority. According to the 1960 census, the population of South Africa by ethnic composition was as follows.3/

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bantu</td>
<td>10,927,922</td>
</tr>
<tr>
<td>White</td>
<td>3,038,492</td>
</tr>
<tr>
<td>Coloured</td>
<td>1,509,258</td>
</tr>
<tr>
<td>Asian</td>
<td>477,125</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>16,002,797</strong></td>
</tr>
</tbody>
</table>

357. Although the South African population was traditionally divided into four racial groups - Africans, Europeans, Coloureds and Asians - difficulties in interpreting these terms legally often arose. The Population Act constituted an attempt to solve these problems.

358. The Act established a racial register to be compiled in order to classify the population into three main groups: European, Coloured and African. The race of an individual is to be determined by appearance, general acceptance and repute, and is to be stamped indelibly on his identity card. Besides every African and Coloured must be classified according to the ethnic or other group of which he belongs, and the proper authorities are empowered to prescribe and define, by proclamation, the ethnic or other groups into which Coloureds and Natives should be classified.

359. The Group Areas Act No. 41, 1950 and its numerous later amendments, have been referred to by members of the Government as the corner-stone of apartheid policy. It is based on the idea that racial juxtaposition is dangerous. The failure of the policy of voluntary segregation has therefore made necessary the establishment of separate areas for different racial groups. The Act empowers the Government to reserve designated areas for white, Asian, Coloured and African racial groups, and since its purpose is to segregate them into separate areas set aside for each, the two underlying fundamental notions are "group" and "areas".

360. The definition of "groups" was dealt with by the Population Act, the essential features of which are described above. As regards areas, the Act provided for different classes of group areas and a number of categories of areas ("controlled areas" and "special areas") but its ultimate aim was the proclamation of "group areas". There are three classes of group areas: (a) for occupation; (b) for ownership; (c) for both. Each group area is established by proclamation of the competent Cabinet Minister. The Group Areas Amendment Act of 1965 eliminated the provision contained in the original Act which required the approval of both Houses of Parliament for proclamation of group areas.

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General principles

361. Since 1948, under the name of apartheid, the traditional South African policy of racial discrimination and segregation has been intensified and pursued with relentless vigour. Apartheid has been defined as follows:5/

"(1) The condition of being separate or isolated: the apartheid of two buildings.

"(2) The condition of being different from the rest....

"(3) Something forming a separate unit by itself: historians consider the nations as apartheid.

"(4) A political tendency or trend in South Africa based on the general principles: (a) of a differentiation corresponding to differences of race and/or colour and/or level of civilization; as opposed to assimilation; (b) of the maintenance and perpetuation of the individuality (identity) of the different colour groups of which the population is composed, and of the separate development of these groups in accordance with their individual nature, traditions, and capabilities, as opposed to integration."

362. Basis of apartheid. While no leader of the Dutch Reform Church claims today that apartheid is dictated by the precepts of the Bible, the view was expressed6/ that in the nineteenth century the racial ideas of the Boers were based on a strict and narrow interpretation of these precepts.

363. The official statements of the leaders of the Nationalist Party suggest that the driving force behind apartheid is the discredited concept of the superiority of the white race. As historical circumstances brought the white people into contact with non-white races which are at a less developed stage of civilization, they argue that their duty is to maintain at any cost the purity of the race, even though the members of that race constitute a minority. They consider, therefore, that if the whites in South Africa, as heirs to the Western civilization, are to fulfil the mission to protect and defend that civilization, it must secure its domination over the non-whites, and repudiate the principle of racial equality.

For this reason, the non-whites cannot be granted the same political rights that the whites enjoy. Otherwise the whites would be engulfed.

364. In addition, as each of the racial groups in South Africa presents different hereditary characteristics and has not attained the same level of culture, racial integration will be detrimental to all of them. Whites and non-whites form distinct social and economic groups and consequently should live separately. However, each group will enjoy within its own sphere all the rights of citizenship.

365. Programme. Apartheid requires therefore a gradual elimination of all points of contact between the races, while at the same time the necessary assistance will be rendered to the non-whites in order to enable them to obtain a certain level of prosperity in their own sphere.

366. As regards the Africans, a national programme of agricultural development and industrialization should be undertaken in the reserves, the structure of which must be strengthened. In the rural areas also, there is no danger of racial equality since the relations between Europeans and non-whites are strictly those of masters and servants. The pattern of living conditions can thus be maintained in these areas. However, in the cities and towns, the problems of racial intermixing are acute. A series of radical measures must be envisaged in order to avoid a deterioration of the situation. Apartheid should be rigorously applied in all aspects of interracial relations: social, economic, industrial, cultural. In the case of the Coloureds and Asians, similar types of solutions should be found, and the elite of these groups must be prevented from trying to integrate an already mixed society. With regard to the Indians, the previous programmes of voluntary repatriation must be pursued, in view of the fact that this group has not lost the characteristics of immigrants.

367. The legislative measures envisaged under the programme of apartheid do not actually represent a sharp departure from the traditional South African racial policy of white supremacy. Only the method proposed to achieve that objective differs. Apartheid repudiates the concept of coexistence of the various racial groups. Its goal is not only to maintain, as before, non-whites in an inferior status, but to eliminate them totally from any kind of participation in the political, social, economic and cultural life of the country, and ultimately achieve complete territorial separation.

/...
368. Up to 1948, two concepts dominated the racial policy in South Africa: white supremacy and territorial unity. Apartheid, on the contrary, rejects the idea of territorial unity and maintains that the policy of "separate development" is the only effective guarantee of white domination. A united South Africa, even under white command, would lead to a "head-on collision" between the races.\(^7\)

**Historical background**

**The policy of apartheid - The racial policy in South Africa prior to the adoption of apartheid as the official State doctrine**\(^8\)

369. The European population has two different origins: (a) those speaking Afrikaans, descendants of the early Dutch colonists. The Afrikaners, until recently, formed a rural and agricultural population, but the rise of industries has brought about a change in this situation; (b) the English-speaking population, descendants of the British immigrants. The two branches of the European population are nearly equal in size.

370. Although data taken in 1946 show that 89.4 per cent of the white population were born in South Africa, differences in cultural background between the two branches and the wounds inflicted by past political events have not yet totally disappeared. Distrust between them is notably reflected in their different attitude towards the British Commonwealth. While the English-speaking have always favoured close ties with England, the Afrikaners have traditionally displayed a strong nationalist spirit. However, in spite of their differences, the Union of South Africa emerged as a perfectly viable State, and although the English-speaking branch was until 1948 the dominant political force the racial attitudes of the Dutch majority gradually prevailed.

371. Since its creation in 1910, South Africa committed itself to a policy of segregation and racial discrimination. The Act of 1909 which organized the Union provided, inter alia, that only the whites could vote in the parliamentary elections but granted to the Africans and Coloureds the right to elect ten white

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members to represent the interest of other racial groups. From the beginning, then, both branches of the European population agreed to deny to non-whites the basic rights of direct representation in Parliament, even though they constituted more than three fourths of the population.

372. While the policy followed until 1948 was severely discriminatory in its nature, it recognized, none the less, the multiracial character of South African society. It limited to a considerable extent the role of the non-white racial groups but did not seem to contemplate their total elimination from any kind of participation in the life of the community. Furthermore, it was based on the assumption that South Africa is and should remain a unified State despite its racial diversity. In 1944, the leadership of the United Party\[9/\] even admitted that the whole policy of segregation had completely failed and had therefore become obsolete. The National Party\[10/\] rejected this point of view and successfully campaigned during the 1948 elections under the new slogan of apartheid.

**Economic and social consequences of racial discrimination**

373. Once the population has been classified into racial groups precisely defined and the principle of relocation of the population groups within separate geographical areas adopted, the Government proceeded with ruthless vigour to carry out in all aspects of life the rigid apartheid programme of racial discrimination and segregation.

374. The objectives of the South African régime as regards political rights are the full implementation of a so-called "four-stream" policy of unlimited development of Africans, whites, Coloured people and Asians in their own sphere. This policy is ultimately aimed at the physical separation of the racial groups as far as possible, and immediately at the total political separation. Therefore, the movement of Africans from the reserves (13 per cent of the territory) to the white areas (the rest of the country) must be stopped. As a corollary, the reserves should be developed to accommodate not only the natural growth of the

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9/ White political party dominated by the English-speaking population.
10/ The party of the Afrikaners.
African population in those areas, but also the Africans who would eventually be removed from the white areas. As regards the Coloureds and Asians, they would be assigned to separate residential areas in the white areas and be given certain minority rights.

375. The policy of apartheid has also inevitably affected the civil rights of the non-whites. Generally recognized fundamental rights and freedoms such as the right to a fair trial, the protection against arbitrary arrest and degrading treatment, the freedom from arbitrary detention and exile, the right to privacy, the freedom from interference with correspondence, the right of assembly and association, are denied to the non-white population.

376. The white population enjoys the highest standard of living while the Africans, the Coloured people and the Asians are denied the opportunities to obtain a fair share of the national income. The non-white population is thus living in a state of economic distress, as illustrated by the following facts: in 1960 the whites accounted for 67 per cent of the national income, while the Africans and the Coloureds received respectively 26.5 and 6.5 per cent. In 1959 the whites had a per capita income of £425 a year; the Africans, £39; the Coloureds, £54.

377. The plight of the non-white population is the direct result of a number of discriminatory measures which set up a system designed to secure for the whites complete and effective monopoly of economic power.

**Measures concerning the ownership of land and agriculture**

378. The non-white population and especially the Africans had been victims of a discriminatory policy on ownership and cultivation of the land before the creation of the Union of South Africa in 1909. The Native Land Act of 1913 was the initial legislation which laid down the principle of territorial segregation between Africans and non-Africans. Under this Act Natives were prohibited from purchasing, leasing or acquiring any land situated outside certain areas, the so-called "scheduled Native areas". In 1936, the Native Trust and Land Act

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established a body known as the "South African Native Trust" to administer the land reserved to Africans and to purchase, with funds provided by the Government, additional lands for the settlement of the Africans. As regards urban areas, the Natives Consolidation Act 1945 prohibited an African from acquiring from any person other than an African any land situated within an urban area without the approval of the Governor-General. The Group Areas Act, 1950 aggravated these discriminatory practices. 12/

379. The basic injustice of these measures lies in the fact that land reserved to Africans (69 per cent of the population) amounts to 13 per cent of the total land area of South Africa while 87 per cent is set aside for the Europeans (19 per cent of the population). In addition, in the African reserves, which contain only about 20 per cent of the total land cultivable in the country, irrigation is practically non-existent and a high proportion of the soil is eroded. Unlike the white land area, which is continuous and contains all the natural resources, the reserves consist of the Transkei, a solid area of over 10 million acres, and 263 additional blocks of land which are small and irregularly shaped.

380. Furthermore, while the white areas contain all the large cities, the seaports, the airfields, the railways and highways and the gold and diamond mines, the reserves have no industries, no cities, no important sources of employment. 13/ This inequitable distribution has produced considerable economic and social evils. Because of the rapid growth of the population, the Africans are unable to live decently in the lands made available to them. While, in 1946, the density of population over the whole of South Africa was 24 per square mile, the average for the African areas was 60, but in the southern semi-coastal regions, it rose to 350-400 per square mile. 14/ Overcrowding of the reserves resulted in the creation of a large migratory labour force, as more and more Africans became dependant for their living upon wages earned in European areas. This system of migratory labour produced in turn two economic ills: neglect of agricultural production on the reserves and unstable, uneconomic labour force. 15/

15/ Ibid., para. 141.
Restricting measures affecting the right of Indians to the ownership of land have been enacted in the Province of Natal. From 1922, anti-Asian clauses in land transactions between Europeans became a common practice. The Asiatic Land Tenure and Indian Representation Act, 1946 divided Natal into "exempted" and "unexempted" areas. In the latter, Asians were prohibited from buying or occupying any immovable property without a special permit.\\n\\nBesides the inequity displayed in its policy of land distribution, the Government's agricultural policy tends to favour the white farmer over the African farmer. The programmes elaborated and the services provided are primarily intended to increase the productivity of the white farmer. The Native Agricultural Land Branch, a special agricultural service in the Native Affairs Department entrusted with the soil conservation programme, has failed to take the necessary step to carry out projects on a large scale. In 1955, only half a million morgen of land out of a total of 20 million morgen had been stabilized. Its programme of "Betterment Areas" is also ineffective. Even in areas where the betterment programmes have been completed, an average of only 3.6 morgen of arable land per family, yielding an annual income of £29, has been allotted while it is estimated that the average Bantu family of six persons required about fifteen bags of grain per annum plus a gross annual income of at least £60 to satisfy its basic needs. The Division of Veterinary Services, which serves the whole of South Africa, has not set standard rules for dealing with European and African farmers. Finally, with regard to other agricultural services, such as training demonstrations, the granting of financial help, the African farmer draws little benefits. For example, in 1952-1953, 1.9 million morgen of the total farm area in the reserves were ploughed; of these only 13.3 per cent was fertilized or manured. While the estimated need of fertilizer and manure is 8-10 tons of manure plus respectively 200-300 pounds of fertilizer per year and per morgen, the application of fertilizer in the fertilized areas (254,380 morgens) was 1.60 of manure and 110 pounds of fertilizer.


Economic and Social Consequences of Racial Discriminatory Practices, ..., paras. 145, 150-155.

A morgen of land equals 2.12 acres.
Marketing is another instance where the African farmer finds himself in a most inferior position because of apartheid. Generally speaking, there is no organized marketing of agricultural produce in the reserves. However, the Marketing Act of 1937 has provided the administrative machinery for the marketing of the agricultural products of white farmers on a very large scale: a National Marketing Council, a Producers' Advisory Committee and a Consumer's Advising Committee have been set up.

Lack of credit and capital has also hindered the development of African farm production. In accordance with the policy of apartheid, the Government has created the Bantu Investment Corporation of South Africa Ltd. to assist existing African industrial enterprises created in the reserves, and to take over industrial enterprises from non-African people. However, credit granted to African farmers is too small to be of great benefit and despite grants and investments by the State, agricultural production in the reserves is steadily declining.

The Government has encouraged the establishment of European-owned industries on the borders of, rather than in, the African areas. It has given various concessions for that purpose and over half of the expenditure for the first five-year development plan of "bantustans" is allocated for the establishment of villages to house labour forces for "border industries" in white areas.

Measures concerning labour

Numerous discriminatory measures which directly or indirectly affect the earning ability and the productive capacity of the non-white labour force, especially African, have been enacted. Those measures deal primarily with the control of the labour movement, the fields in which employment can be made available to Africans, the policy on wages and the organization of trade unions. It has, however, been pointed out that the "colour bar" found in industry is not the result of a few legislative measures only, but the logical consequence of a whole series of complex and interrelated factors, which place the African

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19/ Economic and Social Consequences of Racial Discriminatory Practices, op. cit., paras. 208 and 209.

at an immense disadvantage when competing with the European: (a) the lack of education and training; (b) the fact that he does not have political rights, which deprives him of any bargaining power; (c) the general attitude of the South African whites, who believe that each race has different "needs" to which occupation and jobs should be fitted; (d) the belief of South African whites that if competition were allowed, the principle of white supremacy would be destroyed.

387. To control the movement of the African population within the territory, the measures known as the "pass system" have been enacted. Although the Government claims that the "pass system" was a significant step towards the stabilization of African rural labour and agriculture, it is, however, generally recognized that these measures not only help to regulate unemployment in urban areas, but what is more important, they enabled the Government to channel African labour to European farms and other ill-remunerated employment centres.

Measures concerning education

388. Education. The policy of apartheid has been most forcefully applied in nearly all aspects of the South African educational system: the administrative structure, the syllabus, opportunities of access to primary and secondary education, the organization of higher education. The Government has during the recent years stepped up its effort to segregate completely the educational system on the basis of race and tribe and train the non-whites for the inferior position assigned to them in South African society. The Government policy on education has been set forth as follows:

"Education must train and teach people in accordance with their opportunities in life, according to the sphere in which they live. Good racial relations cannot exist where education is given under the control of people who create the wrong expectations on the part of the native itself. Native education should be controlled in such a way that it

22/ See para. 433 infra.
should be in accordance with the policy of the State... Racial relations cannot improve if the result of native education is the creation of frustrated people." 24/

II. Implementation of the policy of apartheid as regards certain human rights

A. The right to equal treatment before the tribunals and other organs administering justice 25/

389. There are cases in which a person can be detained or banished or condemned without trial. The most serious type of ban is house arrest, which in some cases is for twenty-four hours a day but more often is for twelve hours on weekdays, from 2 p.m. on Saturday until Monday morning and all day on public holidays. A person under house arrest may not receive any visitor save a medical practitioner without leave of a magistrate. House arrest is normally for a period of five years. Persons under twelve-hour house arrest usually have to report to the police, in some cases daily, in others weekly. 26/

390. There are many other types of bans that may be imposed, and the number of specific bans to which an individual may be subjected varies considerably. It is usual to impose a whole series of bans which have the effect of cutting off the banned person from normal life and social contacts as well as political activity.

391. Banning orders are issued by the Minister of Justice without previous notice and without giving the person concerned an opportunity to be heard. There is no appeal and no means of challenging them in the courts. Public protest is impossible as it is illegal to publish the banned person's statements. The grounds on which banning orders are stated to be based are of the most general kind, for example, that the Minister is "satisfied that you engage in activities which are furthering or are calculated to further the achievement of any of the objects of communism". 27/ The result is that a person may be condemned


27/ Bulletin No. 27 of the International Commission of Jurists, September 1966, p. 34.
unheard to five years of twilight existence, cut off from normal communications with his fellow men, constantly aware of surveillance, and of the fact that if he breaks any of the terms of his banning order he may find himself sentenced to a term of imprisonment, for breach of an order is a criminal offence.

392. Under Section 9 of the Bantu Administration Act, 1927, as amended, Bantu affairs commissioners' courts are established, broadly with the powers of magistrates' courts in relation to offences committed by Africans. They can impose a maximum sentence of six months' imprisonment or a fine of £100 or ten strokes of the whip.

393. Depending upon the seriousness of the offence charged, an accused person may be tried in a magistrates' court (which can impose up to six months' imprisonment or a fine of R 200 to ten strokes of the whip); in a regional magistrates' court (which can impose up to three years' imprisonment or a fine of R 600 or ten strokes of the whip) or in the appropriate division of the Supreme Court.

394. Many political trials - mainly of rank and file members of organizations that have been declared unlawful - take place in regional magistrates' courts, which can impose a sentence of three years' imprisonment in respect of each charge, so that where several charges are brought at one time their powers are very considerable.

395. The sentences imposed have invariably been extremely severe, with consecutive sentences being imposed for each separate charge. For example, one accused was found guilty of allowing his house to be used for an African National Congress (ANC) meeting, subscribing to ANC funds and distributing three ANC leaflets - with a separate charge for each leaflet.

396. Traditionally, trial was by jury in the Supreme Court, but this practice has been steadily abandoned as described below. Indeed, it is unlikely that jury trial would help political offenders to obtain a fair trial since the jurors are European males between the ages of twenty-five and sixty-five.

397. By Section 152 Bis of the Criminal Procedure Act, 1955, as inserted by the General Law Amendment Act, 1963, the attorney-general may direct summary trial
in the Supreme Court without preparatory examination of any offence whenever he
deems it in the interest or the safety of the State or in the public interest,
or whenever he thinks there is any danger of interference with or intimidation
of witnesses. Charges under the Terrorism Act, 1967, must be tried summarily
by virtue of section 5 (d) of that Act.

398. The accused in such cases comes to trial with very little knowledge of the
case that will be made against him or the evidence that he will have to answer.
He himself has almost certainly been in custody and thus hampered in the
preparation of his defence. The witnesses against him may have been in custody
and thus subjected to psychological if not physical pressure to testify against
him.

399. South African security legislation raises a number of presumptions against
a man accused of certain offences, and the onus is placed upon him to disprove
them. The traditional requirement that the prosecution must prove its case beyond
reasonable doubt is thus restricted. Under Section 12 of the Suppression of
Communism Act, 1950, as amended, for example, if it is proved that a man attended
a meeting of, or distributed or assisted in the distribution of publications of,
an unlawful organization, he is presumed to have been a member of that organization;
and if on a charge of undergoing military training outside the Republic, it is
proved that a man left South Africa without a valid passport, it is presumed,
until the contrary is proved beyond a reasonable doubt, that he underwent or took
steps to undergo military training.

400. Under Sections 2 and 3 of the Terrorism Act, 1967, a person who is presumed
to have committed certain acts with intent to endanger the maintenance of law
and order in the Republic is thus guilty of the offence of terrorism, unless he
proves beyond a reasonable doubt that he did not intend any of the results listed
in the law. Further, a person who undergoes any training which could be of use
to any person intending to endanger the maintenance of law and order in the
Republic and a person who possesses any explosives, ammunition, fire-arm or
weapon, are both similarly guilty of terrorism unless they prove beyond a
reasonable doubt that they did not intend to commit any act likely to have any
of the results listed above.
401. Persons detained under the 90-day law could only see a lawyer with the consent of the Minister of Justice or a commissioned police officer. Persons detained under the 180-day law can only see a lawyer with the consent of, and subject to the conditions determined by, the attorney-general or an officer in the service of the State delegated by him.

402. Detainees under Proclamation R 400 in the Transkei can only see a lawyer with the consent of the Minister of Bantu Administration and Development or someone acting under his authority.\textsuperscript{28}

403. The conditions of detention of "terrorists" under Section 22 of the General Law Amendment Act, 1966, are determined by the Commissioner of Police, and cannot be reviewed by a court during the first fourteen days. It is presumably therefore for the Commissioner to decide whether a detainee may see a lawyer. If a judge authorizes the continued detention of a person, he may under the Act amend the conditions of detention, and thus presumably may grant access to a lawyer as a condition of continued detention.

404. In respect of suspected terrorists detained indefinitely under Section 6 of the Terrorism Act, 1967, however, sub-section (8) provides:

"No person, other than the Minister or an officer of the State acting in the performance of his official duties, shall have access to any detainee, or shall be entitled to any official information relating to or obtained from any detainee."

This provision appears to exclude entirely the possibility of a detainee's having access to his lawyer, even with the consent of the Minister of Justice.

B. The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution

405. Interferences with personal freedom and security and powers of arrest and detention without trial under South African legislation are in large part directed against all opponents of apartheid, irrespective of their racial group. There are, however, a large number of provisions, designed to uphold and implement apartheid, and these will be dealt with first.

\textsuperscript{28}/ Proclamation R 413 of 1960, Regulation 20, Government Gazette, 14 December 1960.
406. A number of laws provide for the arrest and detention of Africans only.

407. By the Bantu Administration Act, 1927, section 8, as amended, the State President is "Supreme Chief of all Bantu", and may order the arrest of any African whom he considers dangerous to the peace and detain him for a period of three months.

408. By Section 5 of the Natal Code of Native Laws, a Bantu Affairs Commissioner may command the attendance of any African "for any purpose of public interest, public utility, or for the purpose of carrying out the administration of any law, at any reasonable time and under reasonable circumstances, and... require them to render obedience, assistance and active co-operation". Disregard of such a command is an offence, as is also disrespect to a Bantu Affairs Commissioner, and may be punished summarily by the Commissioner, after giving the offender an opportunity to give an explanation, with a fine not exceeding £10 or imprisonment not exceeding two months.

409. "Peace Officers", who have powers to arrest under Section 22 of the Criminal Procedure Act No. 56 of 1955, are defined to include certain officials whose sole powers of arrest are in connexion with Africans.

410. In view of the very wide range of offences created by the influx control legislation in relation to the movement, residence and employment of Africans and in view of the power granted to a peace officer by Section 21 (1) (a) of the Criminal Procedure Act, 1955, to arrest "any person who commits any offence in his presence", the powers of arrest without warrant of Africans are very extensive indeed. Most offences under influx control legislation are committed "in the presence of" a peace officer if the African, for example, fails to produce the necessary documents or cannot show that he is at that moment authorized to be in the area.

411. Since the National Government came to power in 1948 over 5 million convictions have taken place under the pass laws in a country where the total African population, including children, is 13 million.29/

412. "Idle and undesirable" Africans may be arrested without warrant, by any officer authorized to demand production of an African's documents and brought

before a Bantu Affairs commissioner who may, by Section 29 of the Bantu (Urban Areas) Consolidation Act, No. 25 of 1945, in addition to powers to remove him from the area or place him in employment, order his detention in a retreat or rehabilitation centre or for not over two years in a farm colony, refuge, rescue home or similar institution established under the Prisons Act, 1959.

§413. While it is not strictly a form of detention, banishment of an African under Section 5 of the Bantu Administration Act, 1927, as amended, can have much the same effect. This provision enables the State President to order any tribe or part of a tribe or any individual African to remove from his home to a place indicated in the order and to stay there as long as the order is in force. If an African fails to comply with such an order, the State President may order his arrest and forcible removal, and no court may intervene to stop the removal pending an investigation into the legality of the order.²⁰/

§414. Section 2 of the Criminal Procedure Act, 1955, gives peace officers powers of arrest without warrant in respect of offences committed in their presence and persons reasonably suspected of committing certain listed serious offences. In other cases a warrant of a magistrate is necessary.

§415. Bail is rarely granted in political cases, particularly if the accused is non-European.

C. Political rights

§416. The objectives of the South African régime as regards political rights are the full implementation of a so-called "four-stream" policy of unlimited development of Africans, whites, Coloured people and Asians in their own sphere. This policy is ultimately aimed at the physical separation of the racial groups as far as possible, and immediately at the total political separation. Therefore, the movement of Africans from the reserves (13 per cent of the territory) to the white areas (the rest of the country) must be stopped. As a corollary, the reserves should be developed to accommodate not only the natural growth of the African population in those areas, but also the Africans who would eventually be removed from the white areas. As regards the Coloureds and Asians, they would

²⁰/ Bantu (Prohibition of Interdicts) Act, 1956.
be assigned to separate residential areas in the white areas and be given certain minority rights.

417. The so-called "four-stream" policy would therefore mean that: (a) 87 per cent of the country would be dominated by the whites who constitute one fifth of the population; (b) eventual sovereignty over 13 per cent of the country would be progressively granted to Africans who constitute seven tenths of the population; (c) Coloureds and Asians who constitute over a tenth of the population would, under white domination, be granted some limited local powers. 31/

418. This policy has been summarized in 1965 by Mr. Verwoerd, the then Prime Minister, in the following terms:

"Political separation is the essence of the matter. It is in fact essential for us to get physical separation, but physical separation is the secondary object, not the primary."

419. The political rights of the non-white population have consequently ceased to exist, and except for the Coloured representation, the token and indirect representation that it previously enjoyed in Parliament has been eliminated. The following statement, in May 1965, of the then Minister of Justice reflects the general attitude of the Government as regards the participation of non-white groups in the institution where the centre of political power lies: 33/

"We have kept the Coloured representation in Parliament as a historical fact that was forced on us.

"In this Parliament which must decide the fate of the Republic of South Africa, the white man and the white man alone, will have the right to sit."

420. The South African régime has rejected the concept of a democratic system of government and the generally recognized principle of equal rights. In its view the survival of the "white nation" depends on the perpetuation by all means of "white domination." 34/ The policy of segregation is implemented without consulting the non-white people, and, indeed, in the face of their opposition. Their fate is decided by a Government elected and run by whites alone.


32/ Ibid., p. 64, para. 29.

33/ Ibid., p. 25, para. 71.

421. Political rights of the Africans. Prior to 1948, the political rights of the Africans were regulated by the Representation of Natives Act, 1936, which established a separate electoral roll for the Africans living in the Cape Province. All Africans in the country were given the right to elect four white senators, and those in Cape Province were, in addition, entitled to elect three white representatives to the House of Assembly. Besides, the Act set up a Natives Representative Council composed of a majority of elected representatives, but exercising purely advisory functions.

422. Since 1948, with the advent of apartheid as the official State doctrine, the idea of special and limited representation of Africans became obsolete. The Government's stated position was that equality of political rights could be assured only by segregation. Under the Government's plan the Africans would lose their existing rights in the white areas in return for a promise of self-government in the reserves. In the white areas, Africans would virtually be reduced to the status of aliens who are allowed to stay temporarily because of the need for their labour. The Government's policy was laid down in the following terms:

"... The Bantu may be present in the white areas to offer his labour, but not for the sake of enjoying all sorts of privileges such as citizenship rights, political rights, social integration..."

423. Consequently, the Government carried out a dual policy: it has gradually but systematically taken away the few rights previously enjoyed by the Africans outside of the reserves, and, at the same time, instituted what has been known as the "Bantustan policy." Under that policy the Africans would exercise their political rights only in the reserves, while the whites would have no rights in the African reserves. The Bantu Authorities Act of 1951 abolished the Natives' Representative Council and authorized the establishment of a number of Bantu tribal authorities. Later on, the Bantu Self-Government Act of 1959 abolished

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\text{37/ Ibid., 1963, paras. 115, 116, 119-123.}
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the restricted franchise of the Africans and their limited and indirect representation in Parliament. Over the opposition of the African leaders, the Act provided for the gradual consolidation of the 264 scattered African reserves into eight self-governing national units and the establishment of territorial authorities in these units. While declaring that these measures were intended to establish the framework for the gradual and harmonious development of Bantu national units, the Government stressed at the same time that the only alternative to its schemes was an unthinkable common multiracial society where the blacks would outnumber the whites.

424. A number of African "national units" have been consolidated according to the policy laid down. Apart from the Tanskei reserve, where a territorial authority was established as early as 1956, five others were created by the end of 1962. More are planned, and ultimately eight "nations" will be created.

425. The Bantu Laws Amendment Act of 1963 and 1964 put into effect the Government's contention that the African should be a mere temporary immigrant in the white areas. Not only did these laws in effect denationalize him, but they made him rootless, rightless and insecure in these areas.

426. The Transkei Constitution Act, 1963 created the first "Bantustan". The Act, which provides for a national flag and a national anthem, confers self-government on the territory of Transkei and vests executive functions in a Cabinet consisting of a Chief Minister and five Ministers and responsible for the administration of six departments, namely, finance, justice, education, interior, agriculture and forestry. The Legislative Assembly consists of 109 members, of whom sixty are appointed individuals, four tribal chiefs, and forty-five elected by the Transkei citizens resident in the Territory or in the rest of South Africa. All bills passed by the Assembly are subject to the assent

39/ Ibid., 1964, p. 61, para. 152.
40/ Ibid., 1964, p. 60, para. 147.
of the State President of the Republic, and the Assembly is prohibited from legislating on such matters as: (a) the establishment of military forces, the manufacture of arms and ammunition; (b) foreign affairs, immigration, police and internal security; (c) post office, railway and harbours, civil aviation, currency and customs. Moreover, the powers and functions of the traditional tribal authorities are not superseded by the establishment of the Legislative Assembly.

427. With the progress of residential segregation, the Government set up in 1961 local advisory bodies on the basis of race. The Urban Bantu Council's Act, 1961\(^{42}\) provided that urban local authorities could establish an urban Bantu Council for an African residential area or for Africans belonging to any "national units". Also, in certain African townships, advisory boards, wholly or partly nominated by the Government, could be created to advise the city council on matters affecting the Bantu tenants. However, the Bantu Laws Amendment Act put an end to this limited experiment.

428. Although the Government claims that the "Bantustan" scheme is a policy of "separate development or orderly coexistence, whereby each racial group may exercise freely its rights within its own sphere", the formula represents, however, in the light of the present realities, a serious attack on the right of the great majority of inhabitants.\(^{43}\) It means that Africans will lose all hope of equal rights in 87 per cent of the country in return for self-government in 13 per cent. Also, the idea that the African reserves constitute the homelands of the Africans is contradicted by the fact that only 38 per cent of Africans live in the reserves, while they form a majority in both the white urban areas and white rural areas and have little or no contact with the reserves. Furthermore, the reserves do not even possess the economic resources to adequately support their population. The fact that the first "Bantustan" in the Transkei can raise no more than a small fraction of its budget from local taxes shows clearly the limits of opportunities for Africans under apartheid.

\(^{42}\) Ibid., 1963, para. 201.

As the "national units" envisaged are devoid of industries, they depend largely on the export of their labour to the white areas. Economically they are not viable. Since its beginning, the "Bantustan" experiment in Transkei functions under the strict control of the South African Government.\footnote{\textit{Ibid.}, 1964, p. 61, para. 152.}

429. Lastly, while the great majority of Africans are already largely urbanized, the "Bantustan" policy constitutes an attempt to reinforce tribalism and utilize it against the Africans' aspirations for equality.\footnote{\textit{Ibid.}, 1963, para. 153.}

430. \textbf{African political parties.} As a logical result of the situation described in the above paragraphs, African political parties are denied the right to participate in the constitutional order and are not permitted in any way to represent the Africans in the legal political life of the nation. The only exceptions are two parties recently formed in the Transkei, which are obliged to function within the framework of \textit{apartheid}. Membership in the two major African political organizations - the African National Congress and the Pan-Africanist Congress - was declared illegal in 1960 and the majority of their leaders have been gaolled or exiled.

431. \textbf{Political rights of the Coloured and Asian populations.} As indicated earlier, the Government's policy towards the Coloureds and Asians is to grant them certain minority rights within the white areas.

432. As regards the Coloureds, the Separate Representation of Voters Act, of 1951,\footnote{\textit{Report of the United Nations Commission, op. cit.}, paras. 478-480.} as amended in 1956, removed the voters of this population group from the normal electoral roll in the Cape Province to place them on a separate roll and to allow them to vote for four special white representatives to the House of Assembly and two white representatives to the Cape Provincial Council. However, the Government has taken various discriminatory steps to ensure that this special representation, which it has reluctantly granted, would not strengthen the opposition to the apartheid policy in Parliament or provide the Coloured
population with opportunities for meaningful participation in the nation's political life.\textsuperscript{48/}

433. To this end the Government enacted a number of regulations designed to impede the normal functioning of the white political parties popular among the Coloureds. Firstly, it attempted to prevent the emergence of strong political leadership among the Coloureds by prohibiting teachers from taking part in the activities of the existing political parties. The significance of this step lies in the fact that "because of bars and handicaps in other professions, teachers form a high proportion of the intelligentsia.... Barring teachers means to a great extent barring leadership".\textsuperscript{49/} Secondly, it repealed the regulations which exempted members of Parliament and the Provincial Council from the prohibition against holding public meetings without the written approval of the Secretary of Coloured Affairs. Thirdly, the Government introduced a bill on 19 September 1966 aimed at the political emasculation of the Coloured population. The Prohibition of Improper Interference Bill\textsuperscript{50/} provides that no person can be elected to the House of Assembly, the Cape Provincial Council, or nominated as senator to represent Coloured voters, if he had been connected in any way with a political party of the white population group during the three years preceding his nomination as a candidate. Also, political activities become subject to strict measures of racial segregation. No person may engage directly or indirectly in certain political activities in any population group other than his own, such as assistance in the registration of voters, or taking part in or helping in the establishment or organization of political parties. As only whites can be elected to Parliament, the representatives of the Coloured population in that body would therefore be non-partisan and politically inactive. Furthermore, the Bill prohibits any co-operation between political organizations of the different racial groups. While members of one population group may communicate their views to the others, such activity should not be in support of a specific candidate at an election. Finally, the Bill stipulates that a member of a population group other


\textsuperscript{49/} Ibid., 1966, p. 102, para. 58.

\textsuperscript{50/} Ibid., p. 102, paras. 60-64.
than the group out of which the Government is constituted who criticizes the political party to which the members of the Government belong may be fined or imprisoned.

434. In order to counteract the criticism that the policy of apartheid denies any role to the Coloureds and Asians, the Government has adopted some measures to ensure their limited participation in local government, and has established a number of segregated advisory bodies, partly or wholly nominated by itself. Such measures have been described as "a recognition of each section's right in its own circle". The general attitude of Government has been set forth as follows:

"There can be no objection to the principle of 'one man, one vote' if it applies to a population group and within its own circle. There can only be objection to that principle if it means that the 'one man, one vote' is used to decide the fate of a particular population group, in this case, the Whites.... Our policy is that there will be a Coloured Legislative Council which will care for the interests of the Coloureds.... This Council will deal with matters affecting the Coloureds only. The other matters affecting the country, as a whole, will be dealt with by this Parliament as it is constituted at present, and the representatives of the Coloureds will remain White, as they are now." 52/

435. The Coloured Persons Representative Council Act of 1964, 53/ which was strongly opposed by the leaders of the Coloured population as a means to perpetuate the second-class status of their people, established that advisory Council. Under this Act, the Council is empowered, when requested, to advise the Government in regard to all matters affecting the economic, educational and political interests of the Coloured population; it will also serve as a link and a means of contact between the Government and the Coloured population. Although the Council is entitled to legislate on such matters as local government, education, community welfare, rural areas and settlements for Coloureds, its powers are sharply limited by the strict control exercised by the Government. 54/

436. Concerning the Asians, The Asiatic Land Tenure and Indian Representation Act, 1946, provided that in the provinces of Transvaal and Natal, Indian male voters,
registered in a separate electoral roll would elect three white members in the
House of Assembly and two white Senators to represent them in Parliament. The
Indian community, insisting on being admitted on the common roll, repudiated the
segregated scheme and the Act was repealed in 1948. As a consequence, the Asian
population has never participated, even through an indirect representation, in the
work of Parliament.55/

437. In 1964, the Government set up an advisory Council of twenty-one members
for people of Indian and Pakistani origin despite the opposition of the
overwhelming majority of the Indian community who saw in this measure a step to
strengthen the policy of apartheid and mislead world opinion. As in the case of
the Coloured Legislative Council, the purpose of the Indian Council, according
to the Government, is to provide the machinery for communication between the
Government and the Indian community. Since 1964, consultative and management
committees are established for the Coloured people and the Indians in the
segregated communities set up for them under the Group Areas Act.56/

D. Other civil rights

The right to freedom and residence within the border of the State

438. Creation of group areas. The Group Areas Act consolidates and aggravates the
previous restrictive legislation on the freedom of movement and residence of the
non-white population. In implementation of this basic apartheid measure, the
Government has undertaken on a large scale the forcible mass removal of African,
Coloured and Asians from the white areas to the areas reserved for them.

439. Since the Act went into effect numerous proclamations ordering the clearing
of a number of settled communities have been published every year.57/ Most of
these orders, which affect Africans as well as Coloureds and Asians, require their
removal from areas in which they have resided for generations.58/ The

56/ Report of the Special Committee on the Policies of Apartheid, op. cit.,
p. 104, para. 294.
57/ Background paper B, by Julien R. Friedman, United Nations human rights
seminar, op. cit., p. 12.
58/ Report of the Special Committee on the Policies of Apartheid, op. cit.,
1963, para. 162.
proclamations, as a rule, reserve the central areas of the towns to the whites, while the other groups are relocated in communities on the outskirts. Buffer zones separate each community from the other. Relatively few whites are affected by the "group areas" proclamations. 59/ 

440. By 1963, about 800 separate "group areas" had been proclaimed. As a consequence, thousands of African, Coloured and Asian families have been uprooted from their homes. The forcible transfers caused considerable hardships, as illustrated by the following cases. 60/ 

441. The group areas proclamation in March 1964 for Standerton (a town in the Province of Transvaal) reserved the central area for the whites and required the Indians and Coloured people to settle about a mile from the town centre. Four hundred Indian families, some of whom settled there seventy-five years ago, were affected. The operation meant complete ruin for their trade. 

442. A ten-block area in the centre of Stellenbosch (Cape Province), the home of 2,000 Coloured people, was declared a white area in August 1964. Coloured people had lived in this area for about two centuries. 

443. In 1955 the Government decided to reserve the South African Province of Western Cape, which contained 250,000 Africans, for whites and Coloureds only. 61/ 

444. It should also be stressed that the implementation of the Group Areas Act has not only meant human hardships but has also involved large public expenditures which could be more usefully spent. 

Control of the freedom of movement of Africans within the white areas. 

445. Although the Government's avowed goal is to remove all Africans from the white areas, the fact remains that because of economic and historical reasons, the great majority of Africans live in those areas. They are, however, subjected to the most discriminatory treatment. Not only are they deprived of political rights, but they are considered as transient aliens who cannot even claim the right to a permanent residence. Through a series of humiliating measures, the movement 

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60/ Ibid., 1964, paras. 238, 239. 

of Africans in these areas is strictly controlled. Residence in these areas has become a very precarious privilege granted only to Africans whose presence is needed. Local authorities are empowered to expel from their communities any African who is unemployed.

446. The apartheid policy of the Government, as regards the freedom of movement of Africans inside the white areas, has been carried out through the "pass laws" of "influx control" measures and by the Bantu Laws Amendment Act of 1963 and 1964. Under the Native (Abolition of Passes and Co-ordination of Documents) Act, 1952, the former system of "passes" for Africans has been replaced by a reference book while only the possession of identity cards is required of the other elements of the population. Africans found in "white" areas without the reference book are subject to fine, imprisonment or corporal punishment. Moreover, these laws have been increasingly used to prevent the settlement of African workers in urban areas with their families. 

Thousands of Africans have been expelled, as unqualified, from the areas where they have lived for long periods and sent to reserves with which they have no contact. Because of these measures, the Africans in urban areas live in a state of constant insecurity; they can be "endorsed out" of the towns at any time.

447. However, the demand for African labour in urban areas has continued to increase. So has the number of Africans in these areas. The primary goal of the restrictive legislation described above was not to prevent the increase of labour but to deny security to the African population. Labourers are expelled with their families but allowed to return on limited contracts. The urban Africans have been transformed in their own country into a rotating and migratory population, unstable, and denied the opportunity of enjoying family life in the white area.

448. The Bantu Amendment Act, 1963, sought to limit the residence of African workers, including domestic servants, on the premises of their white employers. It provided that all Africans not especially exempted were to leave their homes

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63/ Ibid., 1964, p. 93, para. 252.
in "white" areas and take up residence in an African village, or "scheduled Native area". This measure has affected tens of thousands of African servants. In Johannesburg alone, 50,000 African servants are reported to live on their employers' premises. The Bantu Laws Amendment Act of 1964 aggravates significantly previous legislation in order to ensure total administrative control over the residence, movement and employment of Africans outside the reserves. In terms of this Act, all urban areas are proclaimed "prescribed areas" in which no African who is not a work seeker may remain without obtaining a permission from a labour officer. The Act thus removed the last remaining rights of Africans in white urban areas. It negates previous automatic rights of residence of those Africans who had been born in an urban area. It further restricts the entry of women. As a result, men allowed to stay in urban areas must live in single barracks and can enjoy family life only in their "homelands": the reserves.

The right to leave any country, including his own, and to return to his country

449. The right to travel. In South Africa, the issuance or refusal of a passport may depend on the applicant's race. The Government displays blatant and constant discrimination in the use of its discretionary powers and regards the freedom to travel as a privilege and not a right. On numerous occasions passports have been refused or granted only after protracted negotiations or long delays. In 1959, 161,557 white persons visited other countries while only 5,813 non-whites - mostly Coloured and Asian people - were able to obtain a passport. As regards the Africans, it has been reported that the Government's policy has been stated as follows:

64/ Ibid., 1963, para. 194.
65/ Ibid., 1964, p. 80, paras. 215-218.
67/ Sub-Commission on Prevention of Discrimination and Protection of Minorities, Report of discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country. South Africa, Conference Room Paper No. 82, 19 December 1962.
"They must not be permitted to go to countries having no colour bar and where their concept of their inferior place in the social order might be contaminated by equalitarian treatment." 68/

Citizenship's rights

450. Moreover, South African nationality does not confer on all citizens the same status and rights within the country. 69/ The different racial groups, European, Coloured, Asian and African, can be regarded as different categories of citizens, and only the Europeans enjoy fully what are normally regarded as the rights of citizens.

451. The African in particular is regarded as an alien, a "foreign" migrant worker who has no rights in "white" South Africa. When the policy of apartheid has been fully implemented, every African South African national will be a citizen of one of the planned homelands or bantustans, of which so far only the Transkei has been set up.

452. Coloured persons and Asians are similarly regarded as separate "nations" living in the same territory as the "white" South African "nation", and as such have more limited rights than the European citizens.

453. In implementation of this concept of "nationality" the South African Government has imposed serious restrictions upon its non-European citizens and in particular upon the Africans (notably in relation to freedom of movement and residence) as is described in detail in the relevant sections of this study.

454. The right to a nationality. Until 1949, the nationality laws contained no distinctions on grounds of race or colour. In 1949, Parliament passed the "South African Citizenship Act" 70/ which discriminates against non-white people. Although jus soli is one basis upon which nationality is conferred in South Africa, a person born in the country after the passage of this Act is denied South African nationality when his father belongs to the category of persons whose immigration is prohibited. Such a rule appears to be directed towards the exclusion of non-whites, especially Asians.


455. Family law. Before the creation of the Union of South Africa, mixed marriages were legally prohibited in the Transvaal only. In implementation of its strict policy of racial segregation, the South African régime felt that the defence of racial purity required concrete legislative measures. Under the Prohibition of Mixed Marriages Act 1949, interracial marriages are void unless the parties and the officer responsible for determining the parties' race acted in good faith. The Immorality (Amendments) Acts of 1950 and 1957 were the logical sequel to that law. They prohibit marriages between whites and non-whites, and further state that carnal intercourse between members of different races constitutes a penal offence. The Immorality Acts have been enforced not only against casual relationships but also in case of long-standing cohabitation, and even where a marriage had, in fact, been concluded and subsequently annulled as violating the prohibition of mixed marriages. In 1964, 750 persons were prosecuted under these laws and 382 convicted.

456. Family life. As a result of the "pass system" and the implementation of the Bantu Laws Amendment Act, the male population spends part of its time on the reserves and part working in the urban areas. There is, thus a disproportionate number of males over females in the cities, while in the reserves the contrary is true. Consequently, African families are divided and this situation produces some inevitable social ills: high rate of divorce and illegitimacy, prostitution, crime and juvenile delinquency.

457. Further difficulties are placed in the way of an African in a prescribed area who wishes to marry a woman from another area. He has to get permission for her to join him, and if she comes from another prescribed area the Bantu affairs commissioner in her area must also grant her the necessary permit. The case of Mrs. Rebecca Motaile, reported in the Star on 17 September 1965, is a

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72/ Ibid., para. 635.
further example of the hardships that can result from influx control restrictions. She lost her right to remain with her parents in Cape Town, where she had been born, when she married a man from Stellenbosch. She was refused permission to join him, and was convicted of being in Cape Town unlawfully. The judge who tried the case was reported as having said that she was now existing in "a legally created limbo".

458. The policy of providing schools for high school education of Africans mainly in the reserves (in 1964 out of sixty-three schools providing matriculation courses for Africans only thirteen were in urban areas) means that many African children have to be sent away to boarding school if they wish to continue their education. The operation of the influx control laws is such that, if all the regulations are not strictly complied with and the necessary permits obtained, these children may lose their right to remain in the urban area of their birth, being unable to prove it, and be unable to rejoin their parents.

The right to own property above as well as in association with others.

459. When the Group Areas Act has been fully implemented, Europeans, Asians and Coloured persons in South Africa will be able to own property only in their respective group areas.

460. It appears to be Government policy to proclaim the centres of all the important towns "white" group areas, with the result that non-Europeans have to sell up their homes and business in those areas and move out to group areas set aside for them.

461. Since 1913, Africans have not been able to purchase land outside the African reserves, except from another African, without the permission of the Governor-General (now the State President). A similar restriction in relation to the purchase of land by Africans in urban areas and rural townships is contained in section 6 of the Bantu (Urban Areas) Consolidation Act, 1945.

462. The small pockets of African-owned land and African-owned property in urban areas known as "black spots" are progressively being bought out by compulsory purchase procedures under the Bantu Trust and Land Act, 1936 and under the Group

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76/ Study of Apartheid and Racial Discrimination in Southern Africa, op. cit., paras. 159-162.
Areas Act and Community Development Act, 1966. According to the report of the Department of Bantu Administration and Development for 1963, in 1960 "black spots" amounted to 181,758 morgen, and by the end of 1963, 91,926 morgen had been purchased and 51,123 Africans moved. They receive compensation made up of the market value of the land and improvements carried out by them and an additional 20 per cent as an "inconvenience allowance", and may purchase alternative land in an African area.

463. Within the reserves it is possible for an African to own land - either in a rural area or in a township - but the greater part of the land is not individually owned. Certain areas are communally owned by tribes, but most of the land is owned by the Bantu Trust, established by the Bantu Trust and Land Act, 1936, which is administered by the State President through the Department of Bantu Administration and Development. By proclamation of 1 April 1966, all Trust Land in the Transkei was transferred to the Transkei Government, except land containing prescribed, restricted or strategic materials or minerals. The occupiers of Trust Land have no security of tenure for, by proclamation No. 236 of 1957, the Minister of Bantu Affairs or anyone acting under his authority may at any time cancel the right of an African to occupy any Trust Land. Even the registered owners of individually-held land are not absolute owners in the true sense, for they are subjected to a number of conditions, including forfeiture on conviction of a criminal offence, and they have to obtain official approval before disposing of their land. No persons other than Africans may acquire land in an African reserve.

The right to freedom of opinion and expression

464. A comprehensive system of censorship was introduced by the Publications and Entertainment Act, No. 26 of 1963, which does not, however, apply to newspapers published by a member of the Newspaper Union of South Africa. The Act prohibits the publication, production, importation or distribution of any "undesirable" publication or object. By Section 5 (2) a publication or objection is "undesirable" if it, inter alia:

77/ Government Gazette, 16 August 1957.
78/ Bantu Land Act, 1913; Section 1 (2).
"... (c) brings any section of the inhabitants of the Republic into ridicule or contempt;

"(d) is harmful to the relations between any sections of the Republic

"(e) is prejudicial to the safety of the State, the general welfare or the peace and good order."

465. Control over publications and entertainments is exercised by the Publications Control Board established under the Act and appointed by the Minister of the Interior, which has power to declare any publication or object "undesirable".

466. By Section 6 of the Suppression of Communism Act, 1950 as amended by Act No. 50 of 1951 and Act No. 76 of 1962:

"If the State President is satisfied that any periodical or other publication -

"(a) professes, by its name or otherwise, to be a publication for propagating the principles or promoting the spread of communism; or

"(b) is published or disseminated by or under the direction or guidance of an organization which has been declared an unlawful organization by or under Section two, or was published or disseminated by or under the direction or guidance of any such organization immediately prior to the date upon which it became an unlawful organization; or

"(c) serves inter alia as a means for expressing views propagated by any such organization, or did so serve immediately prior to the said date; or

"(d) serves inter alia as a means for expressing views or conveying information, the publication of which is calculated to further the achievement of any of the objects of communism; or

"(e) is a continuation or substitution, whether or not under another name, of any periodical or other publication the printing, publication or dissemination whereof has been prohibited under this section,

"he may without notice to any person concerned, by proclamation in the Gazette prohibit the printing, publication or dissemination of such periodical, publication or the dissemination of such publication; and the State President may in like manner withdraw any such proclamation."

467. By Section 3 of the Official Secrets Act, 1956, as amended by Act No. 65 of 1965, it is an offence for any person to publish or communicate any material or information relating to "any military or police matter" to any other person
"in any manner or for any purpose prejudicial to the safety or interests of the Republic." "Police matter" is defined as "any matter relating to the preservation of the internal security of the Republic or the maintenance of law and order by the South African police".

468. A number of provisions relate to speeches or publications which may engender feelings of hostility between the European inhabitants of South Africa and any other section of the population. Section 2 of the Riotous Assembly Act 1956 empowers the Minister of Justice to prohibit meetings at which he apprehends such feelings may be engendered and Section 3 empowers the State President to prohibit the publication or dissemination of any "documentary information" which he thinks calculated to engender such feelings. By Section 29 (1) of the Bantu Administration Act, 1927, anyone who "utters any words or does any act or thing whatever with intent to promote any feeling of hostility between Bantu and European" is guilty of an offence.

469. Provisions relating to individuals are contained in the Suppression of Communism Act, 1950, as amended. In addition to the power contained in Section 10 to prohibit a person from "performing any act", - Section 11 (g) bis makes it an offence without the consent of the Minister to reproduce, publish or disseminate in any way the words or writings of a listed "Communist" or member of an unlawful organization or of a person prohibited by banning orders from attending meetings. By section 4 of the Suppression of Communism Amendment Act, 1965, this prohibition was extended to any person who has been but no longer is resident in South Africa and as to whom the Minister of Justice is satisfied that he "advocates, advises, defends or encourages or has advocated, advised, defended or encouraged", - whether in South Africa or elsewhere - "the achievement of any of the objects of communism or any act or omission which is calculated to further the achievement of any such object or engages or has engaged in activities which are furthering or may further the achievement of any such object", and whose name has been included in a notice published in the Gazette.

470. Under the Newspapers and Imprint Act, No. 14 of 1934, all newspapers published in South Africa must be registered; the only restriction on the right to register a newspaper is that the editor must be resident in the Republic. By Section 6, bis of the Suppression of Communism Act, 1950, as inserted by
Act No. 76 of 1962, however, a deposit of an amount fixed by the Minister of the Interior, but not exceeding R.20,000, must be paid on registration unless the Minister certifies that he has no reason to believe that it will at any time be necessary to prohibit that newspaper under section 6 of the Suppression of Communism Act, 1950. If a newspaper is subsequently prohibited under Section 6, the sum deposited may be forfeited to the State in whole or in part, in the discretion of the Minister of the Interior.

471. In its Report on the Effects of Apartheid on Education, Science, Culture and Information, UNESCO states:

"A cursory glance at the numerous magazines produced for Africans shows that a particular type of publication is favoured: these that, if they do not openly favour apartheid, at least do not question it."

472. In 1963, 7,500 publications were banned under the Publications and Entertainments Act, 1963. In the first half of 1965, 466 publications were banned.

473. The UNESCO Report on Apartheid also deals with measures taken in the fields of broadcasting, the cinema, and the admission of international news and foreign journalists, to prevent the public - and in particular the African public - from receiving news and seeing material inconsistent with or opposed to the policy of apartheid.

474. In addition to prohibitions on attendance at gatherings and on communicating with any person, which clearly interferes with freedom of speech, the Minister of Justice has used his power, under Section 10 of the Suppression of Communism Act, 1950, to prohibit a person from "performing any act" specified by him to restrict the activities of journalists and to prevent other individuals from writing.

The right to freedom of thought, conscience and religion

475. Restrictions are placed upon South Africans whose conscience and religious or other belief are opposed to apartheid and the ideology underlying it. If they

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80/ See para. 489 infra.
81/ Suppression of Communism Act, 1950, Section 5 bis (4).
are too outspoken in their proclamation of their convictions, they run the risk of being subjected to banning orders, as described in those sections. Such banning orders can even prohibit them from attending religious services which are a form of "gathering", and from communicating with or receiving visits from a priest or minister.

476. Attempts to impose segregation on the churches aroused such strong opposition that the Government has not proceeded with them to any great extent. It has limited itself to taking power - under section 9 (1) bis of the Bantu (Urban Areas) Consolidation Act as introduced by section 29 of the Bantu Laws Amendment Act, 1957 - to direct, by notice in the Gazette, that Africans shall no longer attend any church or other religious service or church function on premises in an urban area outside a Bantu residential area if in the opinion of the Minister of Bantu Administration and Development:

"(i) the presence of Bantu on such premises or in any area traversed by Bantu for the purpose of attending at such premises is causing a nuisance to residents in the vicinity of those premises or in such area; or

"(ii) it is undesirable, having regard to the locality in which the premises are situated, that Bantu should be present on such premises in the numbers in which they ordinarily attend a service or function conducted thereat."

477. While no such orders have, as far as is known, been made, de facto, segregation of church congregations is inevitably taking place to an increasing extent as the Group Areas Act is implemented and as non-European group areas and African residential areas are being placed at such distances from the centre of cities and from European areas as to make mixed congregations more and more impracticable by reason of the distances involved.

478. The group areas policy has caused another problem for the churches and particularly for the non-European communities who are the ones who have most often been moved, and who are faced with the expense of providing church buildings in the new townships. In 1965 the Christian Council of South Africa estimated that at least R.6 million was required to build churches to serve communities who had been moved under the Group Areas Act.
479. The churches themselves - with the exception of the Dutch Reformed Church, which has gradually forced out of office those of its members who did not support government policy - are strongly opposed to apartheid and have not hesitated to draw attention to the injustices involved in its implementation as well as to its inconsistency with Christian doctrine. Strict enforcement of Government policy, however, places difficulties in the way of interracial activity.

The right to freedom of peaceful association

480. Government restrictions on the right of association in South Africa have taken three main forms: the banning of or interference with organizations in the political field; measures to compel organizations in other fields to divide along racial lines and thereafter to restrict their membership to one race, and restrictions on the right of individuals to join associations.

481. The first political party to be declared unlawful was the Communist Party of South Africa, by the Suppression of Communism Act, 1950. In addition, section 2 (2) of that Act empowers the State President to declare any other organizations to be unlawful if he is satisfied:

"(a) that any other organization professes or has on or after the fifth day of May, 1950, and before the commencement of this Act, professed by its name or otherwise, to be an organization for propagating the principles or promoting the spread of communism; or

"(b) that the purpose or one of the purposes of any organization is to propagate the principles or promote the spread of communism or to further the achievement of any of the objects of communism; or

"(c) that any organization engages in activities which are calculated to further the achievement of any of the objects referred to in paragraphs (a), (b), (c) or (d) of the definition of 'communism' in section one; or

"(d) that any organization is controlled, directly or indirectly, by an organization referred to in sub-section (1) or paragraph (a), (b) or (c) of this sub-section; or

"(e) that any organization carries on or has been established for the purpose of carrying on directly or indirectly any of the activities of an unlawful organization."


84/ The definition is reproduced in the next paragraph infra.
The definitions of "communism" and "communist" in section 1 of the Act are so wide that they are capable of embracing almost any form of opposition to the policy of apartheid. They are as follows:

"'Communism' means the doctrine of Marxism socialism as expounded by Lenin or Trutsky, the Third Communist International (The Comintern) or the Communist Information Bureau (The Cominform) or any related form of that doctrine expounded or advocated in the Republic for the promotion of the fundamental principles of that doctrine and includes, in particular, any doctrine or scheme -

"(a) which aims at the establishment of a despotic system of government based on the dictatorship of the proletariat under which one political organization only is recognized and all other political organizations are suppressed or eliminated; or

"(b) which aims at bringing about any political, industrial, social or economic change within the Republic by the promotion of disturbance or disorder, by unlawful acts or omissions or by means which include the promotion of disturbance or disorder, or such acts or omissions or threats; or

"(c) which aims at bringing about any political, industrial, social or economic change within the Republic in accordance with the directions or under the guidance of or in co-operation with any foreign government or any foreign or international institution whose purpose or one of whose purposes (professed or otherwise) is to promote the establishment within the Republic of any political, industrial, social or economic system identical with or similar to any system in operation in any country which has adopted a system of government such as is described in paragraph (a); or

"(d) which aims at the encouragement of feelings of hostility between the European and non-European races of the Republic, the consequences of which are calculated to further the achievement of any object referred to in paragraph (a) or (b);

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

483. Prior to 1960, African political activity was concentrated in two organizations, the African National Congress and the Pan-African Congress. Following upon the Sharpeville Massacre in South Africa, when South African police shot at a peaceful demonstration of protest against the policies of apartheid, and the subsequent unrest, the Government enacted the Unlawful Organizations Act, No. 34 of 1960, which empowered the Governor-General to declare the two above African organizations to be unlawful if he was satisfied that the safety of the public or the maintenance of public order was or was likely to be seriously threatened in consequence of their activities. He (now the State President) was also empowered to declare any new organization to be unlawful on the same ground if it was in his opinion established for the purposes of carrying on, directly or indirectly, any of the activities of any body declared unlawful.

484. It is an offence under the Act to perform any act calculated to further the aims or activities of an organization declared unlawful or to become or continue as an office-bearer or a member or to solicit subscriptions to its funds. Anyone convicted of such an offence may be banned by the Minister of Justice from membership of any other organization or public body.

485. The result is that African political activity, save in the Transkei, has come to a halt. In the Transkei, and in due course presumably in the other African "homelands" as they are established, political parties are allowed to function. There are two African parties in the Transkei: the minority party, the Transkei National Independence Party, which supports the policy of "separate development", forms the government with help of the non-elected members of the legislative assembly, while the Democratic Party, which commands majority support, seeks to integrate the Transkei into a multiracial South Africa.

486. A number of Coloured and Asian political parties have existed at various periods and some are still in existence. None of them plays an important role however, partly because many of their leaders have been banned and partly because the Coloured and Asian population reject the discrimination implied in
the existence of separate racial parties. This attitude is reflected in the support they gave to the two Progressive Party candidates for the Coloured seats in the elections to the Cape Provincial Council in 1965, both of whom were elected. The Progressive Party was the only party contesting the elections which is opposed to a policy of European supremacy.

487. The Government is gradually insisting that organizations of the most varied kind divide along racial lines either by the establishment of different branches for each racial group or by splitting up into separate racial organizations. The two types of organizations may be taken to illustrate this policy.

488. In April 1966, the Department of Social Welfare suggested to the approximately 2,100 registered welfare organizations that they should constitute themselves along separate racial lines. In August, a department circular was issued setting out government police along the following lines:

"(a) The Government is opposed to multi-racial organizations.

"(b) Non-white welfare societies should be established for the various racial groups, and be given opportunity of developing side by side with the corresponding white societies. They should be encouraged (initially under the guidance and with the advice of white societies) to unite, by affiliation, into fully independent national welfare organizations for each racial group.

"(c) National councils and executive committees, as well as local committees, of existing mixed bodies should consist of whites only; and only whites should attend annual meetings.

"(d) As interim measures, one or two members of the white executive committee could, if so requested, attend meetings of a non-white executive committee to effect liaison and to be able to acquaint the whites with the views of the non-whites. The white executive could invite a representative of a non-white organization to attend a committee meeting when a matter specifically affecting the non-whites was being dealt with.

"(e) Should it be necessary or essential for the non-white organization to be represented at an annual meeting, its representative must be a white person.

"Welfare organizations were warned that if they did not comply with Government policy, Government officials would no longer attend their meetings or give assistance. The organizations were asked to furnish the Department with details relating to their composition."

/...
489. A number of organizations - for example the National Council for the Blind, the National Council for Child Welfare, the South African National Tuberculosis Association and the National Council for the Welfare of the Aged - have obeyed this directive. None the less, it is causing particular concern because of the scarcity of non-European social workers and the consequent danger of reduction of welfare services to the most needy sections of the population.

490. Steps have also been taken to discourage multiracial students' organizations. The National Union of South African Students, a multiracial organization to which university study bodies can affiliate and which students can join as individual members, has come increasingly under attack. Student organizations of the non-European universities and colleges are not allowed by the college authorities to affiliate to NUSAS, though individual students are frequently members. NUSAS is largely confined to the English-language universities, while Afrikaans-language students are mainly affiliated to the Afrikaanse Studentebend, an all-European body.

491. In the English-language universities, to some of which non-European students are admitted to take courses not available at non-European colleges, membership of the student clubs, societies and sporting organizations has been open to all without racial distinction. Indeed, the Student Representative Council of Cape Town University's Constitution prevents it from recognizing racially restricted societies. For this reason in 1953, it refused to allow the Conservative Students' Association to amend its constitution so as to prevent non-Europeans from becoming members. The result was that the Government published in 1966 a bill, the Universities Amendment Bill, by which students and students' associations, as well as staff and staff associations, could not be prejudiced or discriminated against on the ground that they advocate, promote or maintain any form of racial separation. The Minister would be empowered to direct the Council of the university concerned to comply with the provisions of the Act and on its failure to do so would be able to withhold payment of grants-in-aid. Parallel with this, the Extension of Universities Amendment Bill, 1966, provided that non-European students permitted to attend a European university would not be entitled to join students' associations (except an association occupied exclusively with academic matters relating to the course for which they are
registered) or to attend any of their meetings on the campus, if such associations were composed of a racial group other than that to which the students belonged.

Both bills aroused so much opposition on a wide variety of grounds, in particular that they would interfere with academic freedom, that they were held over until 1967, and in February 1967 the Minister of Education announced that they would not be proceeded with.

The right to freedom of peaceful assembly

492. While there are no general provisions restricting freedom of assembly, the holding of meetings in African areas, or at which Africans are present, is regulated by a number of provisions which enable local authorities and the Minister of Bantu Administration and Development to exercise far-reaching control over them, and powers are given to the Minister of Justice to prohibit certain types of meetings.

493. By section 9 (7) (f) of the Bantu (Urban Areas) Consolidation Act No. 25 of 1945 (as inserted by Section 29, Act No. 36 of 1957) the Minister of Bantu Administration and Development may prohibit the holding of any meeting, assembly or gathering which is attended by Africans in an urban area outside an African residential area, if in his opinion "the holding of the meeting, gathering or assembly is likely to cause a nuisance to persons resident in the vicinity ... or in any area likely to be traversed by Bantu proceeding to such meeting".

494. As far as meetings in African residential areas within urban areas are concerned, section 38 of the Act empowers local authorities to make regulations relating to "the conduct, control, supervision and restriction of meetings or assemblies of Bantu within the urban area". Such meetings may only be prohibited with the approval of the magistrate for the area after reference to the local police officer or superintendent of the location in which the meeting is to be held, and then only if there are reasonable grounds for believing that it may provoke or tend to a breach of the peace. Local authorities have not been slow to use this power.

495. Section 27 of the Bantu Administration Act, 1927, empowers the Government to make regulations with reference to "the prohibition, control or regulation of gatherings or assemblies of Bantu". Government Notice No. 2017 of

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18 September 1953 (Government Gazette of the same date) provides that the approval in writing of the Secretary for Bantu Administration and Development or a Bantu Affairs Commissioner is necessary for the holding of "any meeting, gathering or assembly at which more than ten Africans are present". This provision applies to all areas except the African reserves.

496. All three sets of regulations exempt from their requirements such gatherings as religious services, funerals, weddings, sporting events, entertainments or gatherings "held for the purpose of instruction imparted under any law".

497. By regulations promulgated on 15 September 1965, meetings at which more than five persons are present may only be held in rural Coloured areas with the approval in writing of the Secretary of Coloured Affairs. As in the case of meetings in African areas, this requirement does not relate to religious services, weddings, funerals, sporting events, entertainments or gatherings "held for the purpose of instruction given under any law".

498. Under Section 2 of the Riotous Assemblies Act, No. 17 of 1956, meetings of twelve or more persons can be prohibited by a magistrate if he has reason to apprehend that the public peace would be seriously disturbed, or by the Minister of Justice if he has reason to apprehend that feelings of hostility would be engendered between the European inhabitants and any other section of the population.

499. Under section 9 (3) of the Suppression of Communism Act, 1950, the Minister of Justice may prohibit "any gathering, or any particular gathering or any gathering of a particular nature, class or kind at any place or in any area during any period... if he deems it to be necessary in order to combat the achievement of any of the objects of communism".

500. By section 4 (10) of the Suppression of Communism Act, 1950, the liquidator of the Communist Party who is designated by the Minister of Justice and acts under his directions, maintains a list of "persons who are or have at any time before or after the commencement of this Act been, office-bearers, members or active supporters of the Communist Party". Such person may by section 5 of the Act be prohibited by the Minister from being or becoming members, office-bearers or officers of any organization and from attending any gatherings or any particular class or kind of gatherings. Section 9 of the Act empowers the
Minister to prohibit from attending gatherings any person who he is satisfied "engages in activities which are furthering or are calculated to further the achievement of any of the objects of communism", and section 10 empowers him to prohibit such a person from "being within or absenting himself from any place or area or... communicating with any person or receiving any visitor or performing any act" specified by him. Such orders are generally known as "banning orders".

501. According to the report of the Special Committee on Apartheid persons subjected to banning orders include:

"not only members of organizations which have been declared unlawful, but many who have been active in the Liberal Party, the National Union of South African Students, the District Six Defence Committee, the South African Institute of Race Relations, the South African Indian Congress, the Coloured People's Congress and other lawful organizations which have, in one way or another, opposed the Government's racial policies. The functioning of these organizations has been greatly hampered or brought to a standstill because of these bans". 87/

502. By section 2 (3) of the Riotous Assemblies Act, 1956 "whenever in the opinion of the Minister (of Justice) there is reason to apprehend that feelings of hostility would be engendered between the European inhabitants of the Republic on the one hand and any other section of the inhabitants of the Republic on the other hand if a particular person were to attend such gathering" he may prohibit that person "from attending any public gathering in any public place within any area and during a period specified in the notice".

503. Restrictions have been imposed, under powers contained in section 16 of the Coloured Persons Education Act, 1963, on the political activities of Coloured teachers. By regulations promulgated under that Act, Coloured teachers are prohibited from being members of any of the existing "European" political parties, i.e., the Nations Party, the United Party, the Liberal Party and the Progressive Party.

E. Economic, social and cultural rights

The right to work under just and favourable conditions

504. The exclusion of Africans from certain areas of employment has been regarded as the most patent form of racial discrimination practised in the field of

employment. In labour relations the fundamental objective of the traditional South African racial policy is to preserve for the whites the skilled and high-paid professions while limiting African workers to unskilled and low-paid occupations. 88/

505. The Mines and Works Act of 1911 and its later amendments 89/ instituted a colour bar in the mining industry. The Act prohibited the employment of Africans in skilled positions. It also empowered the Governor-General to make regulations, under which no certificates of competence should be issued to skilled coloured mine workers in the Transvaal or the Orange Free State. The system of "job reservation" was later largely extended to other branches of industry. In the building industry, The Native Building Act, 1951 90/ prohibits an employer in the building industry from hiring an African as a skilled worker in the building industry within an urban white area. However, Europeans may not work in an African area in the building industry otherwise than in the capacity of a superior or instructor. Section 15 of the Act allows the Governor-General to prohibit the employment of any African in any capacity in a specified urban area. This Act therefore established an extensive "colour bar" against Africans. One of the economic consequences of this Act, it has been observed, has been to keep a limited supply of skilled white workers in the building industry while, at the same time, it excludes skilled Africans from an active and lucrative field. 91/

506. Despite the scarcity of manpower and mounting criticism, the policy of "job reservation" has been actively pursued during recent years. 92/ In accordance with the provisions of the Industrial Conciliation Act, 1956, 93/ which provides for the reservations of occupations for particular racial groups, "work reservations determinations" which affect not only Africans but also Coloured people are regularly made.

507. In the motor assembly industry, for example, the law requires that a minimum percentage of whites be employed and reserves all supervising and control jobs to whites. As a result, no non-white driver is employed in the Road Motor

90/ Ibid., paras. 607-609.
91/ Economic and Social Consequences of Racial Discriminatory Practices, op.cit.
Transport Service, while in the Railways Administration, all skilled jobs are held by whites. In the Cape Province, it was decided in 1963 that white and Coloured taxi drivers could carry only people of their race. This regulation resulted in the dismissal of 150 Coloured taxi drivers in Cape Town.

508. The policy of "job reservation" is sometimes indirectly applied. For example, the "Custom Tariff Act" links the application of the provisions protecting local industry from foreign competition to the African-European ratio of workers in the enterprise concerned. Another method which leads to "job reservation" is the exclusion of Africans from technical training institutes or from apprenticeship.

509. Discriminatory practices as regards wages have long been a main element of South Africa's racial policy. In 1924, the so-called "civilized labour" policy was adopted to protect the unskilled white workers. Civilized labour was defined as "labour rendered by persons whose standard of living conforms to the standards generally recognized as tolerable from the usual European standpoint" while "uncivilized labour" was described as "labour rendered by persons whose aim is restricted to the bare requirements of the necessities of life as understood among barbarians and under-developed peoples". Accordingly, white workers are to be paid higher wages than those received by Africans, even though they are performing similar work. As a result, the gap between the average African wages and the average European wages is considerably larger. In 1953, the average European wages were reported to be more than nine times as much as those of non-Europeans.

510. Forced labour. In 1953 the United Nations International Labour Organisation Ad Hoc Committee on Forced Labour found, in relation to South Africa, that:

"With regard to the economic aspect of its terms of reference, the Committee is convinced of the existence in the Union of South Africa of a legislative system applied only to the indigenous population and designed to maintain an insuperable barrier between these people and the inhabitants of European origin. The indirect effect of this agricultural and manual work is thus to create a permanent, abundant and cheap labour force."

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95/ Ibid., para. 279.
96/ Ibid., para. 302.
"Industry and agriculture in the Union depend to a large extent on the existence of this indigenous labour force whose members are obliged to live under the strict supervision and control of the State authorities.

The ultimate consequences of the system is to compel the Native population to contribute, by their labour, to the implementation of the economic policies of the country, but the compulsory and involuntary nature of this contribution results from the particular status and situation created by special legislation applicable to the indigenous inhabitants alone, rather than from direct coercive measures designed to compel them to work, although such measures, which are the inevitable consequence of this status, were also found to exist.

"It is in this indirect sense therefore that, in the Committee's view, a system of forced labour of significance to the national economy appears to exist in the Union of South Africa." 97/

511. Two aspects of government policy are imposing ever more severe restrictions on the opportunities of non-Europeans to engage in industry, 93/ trade and commerce. These are the implementation of the Group Areas Act and the progressive restriction of African traders to African residential areas and to the reserves.

512. The principle underlying the Group Areas Act is that of reserving an area for the exclusive use of a single group, as regards both residence and commercial activity. While this principle is enforced in respect of Africans, the Government has recognized that in the case of the Indian population an exception must be made, and two concessions have been made to the need to allow Indians, who have traded often for generations, to continue to do so. First, the Government has announced that, so far as possible, the present generation of Indian traders will not be deprived of their livelihood and that permits will be granted to enable them to continue to trade, although isolated shops may have to be moved. Secondly, in some of the larger cities centrally situated trading areas will be demarcated where Indians will be able to carry on business. The policy appears to be one of gradually reducing the number of Indian traders outside Indian group areas, for very few permits to establish new businesses are being granted and the Ministry of Community Development indicated in the

Assembly on 14 September 1966 that Indian traders would not be removed to Indian group areas until commercial potential had been developed there so that they could be removed without depriving them of their means of existence.\(^{99}\)

513. To provide employment for Indians forced out of trade, the Government is in process of setting up an Indian Investment Corporation to assist Indians to develop industrial enterprises. In addition, the Government announced on 22 March 1966 that the benefits available to European industrialists in the areas bordering on the African reserves would in future be made available in respect of other retarded areas of unemployment and would be open to Coloured and Indian entrepreneurs in respect of areas where there were large concentrations of their own people.

514. So far as African traders are concerned, it is government policy to encourage them to establish themselves in the reserves. African businesses are allowed in African residential areas within the European areas, but only to cater to the needs of those residing there. African enterprise on a larger scale must be confined to the reserves.

515. The only legislative provisions relating to maximum hours of work and holidays with pay that the Rapporteur has been able to find are contained in legislation relating to work in mines, factories, shops and offices. In each case it is non-discriminatory in its terms. Section 19 of the Factories Act, 1941, provides for a 46-hour week in factories; section 10 of the Mines and Works Act, 1956, provides for a 48-hour week in mines other than coal mines; and section 3 of the Shops and Offices Act, 1964, provides for a 46-hour week in shops and offices.

516. As far as holidays with pay are concerned, section 6 of the Shops and Offices Act, 1964, and section 21, of the Factories Act, 1941, as amended by Act No. 21 of 1961 provide for two-weeks' paid holiday a year for employees covered by those Acts.

\(^{99}\) 1966, Hansard 7, col. 2097. None the less large numbers of Indian traders have been removed under the Group Areas Act, as is described in the reports of the Special Committee on Apartheid, 1966, A/6486, para. 23 and A/5497, paras. 163-175.
517. For many employees, hours of work and entitlement to holidays are covered by industrial council agreements or arbitration awards arrived at under the Industrial Conciliation Act, 1956. While such measures may affect African workers they are concluded without their participation.

518. The employment sectors of agriculture and domestic service, the biggest employers of African labour, are not covered by legislation, nor do they fall within the scope of the Industrial Conciliation Act, 1956, or the Bantu Labour (Settlement of Disputes) Act, 1953. At the 1960 census, a total of 3,890,012 "economically active" Africans, 1,438,835 were employed in agriculture and 821,152 in "service", which presumably includes domestic service. There is thus no provision limiting the hours of work in these fields of compelling employers to give holidays with pay. It has not, however, been possible to obtain information relating to practices in relation to these matters in the time available to the Rapporteur.

The right to organize trade unions

519. In order to ensure the smooth implementation of the discriminatory measures described above, the Government has enacted legislation which denies to the Africans the right to organize trade unions. The first step taken in this connexion was to deprive Africans of the right to engage in collective bargaining. 100/ The Industrial Conciliation Act, which regulates the relations between employers and employees, cannot be applied to disputes involving Africans since it defines the term "employee" in a way which excludes persons subject to the Native Labour Regulations Act. The African therefore is not legally an employee, and as a result industrial agreements, unless specifically extended to him by the competent authorities, do not apply in his case. In addition, African trade unions cannot be registered. Thus, while they may exist de facto they would be non-existent in law and could not bargain collectively with either management or Government. Furthermore, under the Native Labour (Settlement of Disputes) Act, 1953, which was enacted in order to eliminate the de facto African trade union, strikes are declared illegal, and considered as a criminal

100/ Economic and Social Consequences of Racial Discriminatory Practices, op. cit., para. 294.
Labour conflicts are declared illegal, and considered as a criminal offence. Labour conflicts between African workers and employers are to be settled by government-controlled Regional Native Labour Committees. Finally, as the Act excludes farmers, domestic servants, public service employees, workers in the mining industries, the great majority of African workers cannot enjoy the benefits of this limited measure of settling labour conflict.

520. As regards the trade union rights of the Coloureds, the Industrial Conciliation Act of 1956 prohibits racially mixed unions. Those existing must be divided into separate branches representing white and Coloured members. However, all branches must be headed by a white Executive Committee.

The right to housing

521. The cumulative effect of the discriminatory policy of the South African régime is clearly apparent in the disastrous housing situation which prevails in the non-white communities. The enormous influx of Africans in the urban areas created an acute housing shortage, with consequent overcrowding and accentuation of slum conditions. Although the Government has taken steps to remedy the situation, not much progress has been accomplished. Indeed, this problem has its roots in the apartheid policy itself.

While the urban Africans are indispensable to the industrial life of the country, they are legally considered as temporary migrants and are unable to settle permanently. This official attitude combined with the policy of low wages for the Africans prevent any basic solution of the housing situation. 522. As far as the adequacy of housing is concerned, on 31 January 1967, the Minister of Community Development said in the Assembly that the shortage of housing due to overcrowding, housing of poor quality, and resettlement plans, was estimated to be:

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103/ Economic and Social Consequences of Racial Discriminatory Practices, op. cit., paras. 249-269.

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<thead>
<tr>
<th></th>
<th>Transvaal</th>
<th>Cape</th>
<th>Natal</th>
<th>Free State</th>
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<tbody>
<tr>
<td>Europeans</td>
<td>1,000</td>
<td>2,700</td>
<td>900</td>
<td>200</td>
</tr>
<tr>
<td>Coloureds</td>
<td>6,200</td>
<td>13,600</td>
<td>1,400</td>
<td>500</td>
</tr>
<tr>
<td>Asians</td>
<td>2,200</td>
<td>1,200</td>
<td>10,000</td>
<td>-105/</td>
</tr>
<tr>
<td>Africans</td>
<td>12,700</td>
<td>10,500</td>
<td>4,900</td>
<td>3,300</td>
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523. A year earlier the Minister gave the following information relating to loans and expenditure on housing during 1965: R12 million had been loaned to local authorities for expenditure on Coloured housing; R9 million for Indian housing and R4 million for African housing. Local authorities and the Department of Community Development together spent about R31 million on European housing during the same period. Anti-inflationary measures adopted during 1966 were illustrated by the fact, reported by the Chairman of Johannesburg's Non-European Affairs Committee in August 1966, that Government housing loans made available to Johannesburg thus far in 1966 were R1,361,700 for Europeans, R1 million for Coloured persons but only R260,000 for Africans.

524. Many of the problems in relation to non-European housing appear to arise from the fact that rates of pay are not sufficient for the non-Europeans to be able to pay an economic rent even for modest housing of adequate standards. According to the Survey of Race Relations for 1966 dealing with Durban,

"So far as housing funds permit, the Department of Community Development and the Durban City Council are continuing to erect housing in the Indian and Coloured group areas. The question of training and using Indian building artisans, at lower rates of pay than whites receive, has been under discussion. There is still insufficient land available for the necessary additional coloured housing schemes.

"In an attempt to overcome the grave housing shortage, the City Council has built a number of shacks in the Merebank area; this scheme has been criticised on the ground that new slums are being created. As in other centres, a considerable proportion of the dwellings in new housing estates are of the austerity type, financed from sub-economic loan funds. Official approval for extensions to a coloured housing scheme at Sparks Estate were withheld because the plans were considered to be too lavish.

105/ No Asians are allowed to live in the Free State.
The City Council has complained that its income from rates and service fees in new non-white townships is insufficient to cover the interest and redemption of housing loans. In consequence of this plans for social and recreational facilities in these townships have been delayed pending decision on which authority should assume the financial responsibility."

The right to public health, medical care, social security and social services

525. Health services. Poverty, malnutrition and disease are widespread among the non-whites. The South African National Tuberculosis Association expressed alarm at the possibility that a sharp increase in tuberculosis cases in 1962 was due to famine and hunger. While the Government argues that the situation is the result of sociological factors, it is generally agreed that the basic causes of malnutrition and diseases were created largely by the Government's policies of apartheid.

526. The expectation of life of South Africans at birth was given in the House of Assembly by the Minister of Planning on 26 May 1967 as:

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
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</thead>
<tbody>
<tr>
<td>Europeans</td>
<td>64.6</td>
<td>70.1</td>
</tr>
<tr>
<td>Coloureds</td>
<td>44.3</td>
<td>47.3</td>
</tr>
<tr>
<td>Asians</td>
<td>55.3</td>
<td>54.3</td>
</tr>
</tbody>
</table>

527. No information for Africans is available. In 1963, however, during a debate in the House of Assembly, the following information emerged: the infant mortality rate for African children in South Africa is one of the highest in the world, over 200 per thousand in the urban areas and between 300 and 400 per thousand in the rural areas, while for European children it is 27 per thousand. Diseases of malnutrition are very high among Africans, particularly children. In the age group one to four, twenty-five African children and fifteen Coloured children annually die of gastro-enteritis for every one European child; this is a disease closely related to malnutrition. In 1962, the morbidity rate of tuberculosis


among African children was 9,496; the corresponding figure for European children was 161. Kwashiorkor, another disease of malnutrition, was found in 5 per cent of African children treated in a study of nutritional deficiency.\footnote{Report of the Special Committee on Apartheid, 1963, op. cit., paras. 329-337.} Specialized hospitals provided 1,218 beds for European and 572 non-European and admitted 8,635 European and 3,494 non-European patients in 1962. Patients registered in mental hospitals on 31 December 1962 were 8,943 Europeans, 2,387 "coloured" persons, 379 Asians and 11,574 Africans.\footnote{Study of Apartheid and Racial Discrimination in Southern Africa, op. cit., paras. 414-416, 418, 419, 421-424, 427.}

529. Until 1965, while the central Government provided ten non-European and seven mixed hospitals, non-European hospitals were mainly provided by the provincial administrations and religious missions. On 1 April 1965, however, it was announced that the Department of Bantu Administration and Development would take over from the provinces and missions all financial responsibility for capital and maintenance expenditure on hospitals in the reserves (including the Transkei) and the replacement and maintenance of major items of equipment. A Hospitals Co-ordinating Committee was set up to plan the development of hospital services for Africans and plans for five new hospitals in the Reserves and eight others elsewhere were announced, two of which were opened during the year. Early in 1967, a new modern mental hospital for Africans, to hold over 2,000 patients, was completed.


530. Although the benefits provided by the Workmen's Compensation Act for Accidents,\footnote{Report of the Special Committee on Apartheid, 1963, op. cit., paras. 329-337.} and its numerous amendments in the case of accidents, diseases or death resulting from such accidents in the course of employment are on principle granted to all workers, the amount varies according to race. Payments to Africans are in general, considerably below payments to Europeans for a similar disability. Also, in the case of total and permanent disablement, pensions are
paid to Europeans, but only lump sums to Africans. Furthermore, the legislation in pensions and unemployment insurance differentiate between whites and non-whites.

531. Welfare organizations may soon have to organize themselves on a racial basis. Such a step, it is reported, is causing particular concern because of the scarcity of the non-white social workers and the consequent danger of reduction of social services to the most needy elements of the population.

532. The Old Age Pensions Act, No. 33 of 1962, as amended, makes provision for the payment of pensions to men over sixty-five and women over sixty years of age. The qualifications for entitlement to a pension are the same for each racial group, but the amounts payable vary.

533. While the allowance or bonus, as the case may be, is automatically payable in toto to a person in receipt of a pension, the amount of the pension varies according to the other means of support of the pensioner. The maximum income from other sources allowed before a reduction is made in the pension is for Europeans R192, for Coloured persons and Asians R96, for Africans at the new rate R21, and at the previous city rate R24. Thereafter, the rate of pension is reduced on a sliding scale proportionate to the amount in excess of these maximum sums.

534. There are three respects in which European pensioners are given more favourable treatment than the other groups. In the first place, since the pension for Europeans is paid almost wholly as "basic pension" it is reduced gradually according to the other income of the pensioner in excess of the maximum allowed of R192. For the non-European, however, once his income is sufficiently high to disentitle him to receive the "basic pension" he automatically loses the whole of the allowance. Secondly, in calculating the means of a European pensioner, a rebate of R24 is allowed in respect of each dependent child under eighteen years of age; this is not done for non-Europeans. Thirdly, to encourage Europeans who have reached retirement age to continue working, provision

is made in the Act for them, if they postpone applying for a pension for at least
one year, to receive a supplementary amount in addition to their pensions.

535. Under the War Veterans' Pension Act No. 40 of 1962 as amended, a pension,
assessed on the same basis as under the Old Age Pensions Act is payable to
European, Coloured and Asian war veterans as from the age of sixty. The pension
so calculated is supplemented by an amount of R132 per annum for Europeans
and R66 for Coloured persons and Indians.

536. War veterans' pensions are payable to Africans on an ex gratia basis; there is no legal provision for them. The maximum payable is R44.40 per annum.

537. The Blind Persons Act, No. 39 of 1962, as amended, provides for the
payment of a pension to registered blind persons of all races as from the age
of nineteen years. The basis for payment is similar for each race, to that
under the Old Age Pensions Act.

538. The Disability Grants Act, No. 41 of 1962, as amended, provides for the
payment of disability grants, assessed on a similar basis to old age pensions,
as from the age of sixteen, to disabled persons of all races who are unable to
maintain themselves.

539. The Unemployment Insurance Act, No. 53 of 1946 as amended, provides for
unemployment insurance. While it applies to all races, excluded from its
application are, inter alia, those employed in domestic service in private
households or in agriculture, those employed by the central Government or a
provincial administration, Africans employed in gold or coal mines, Africans
employed in a rural area other than in a factory, Africans earning less than
R546 a year including benefits and casual and seasonal workers. While the
rates of contribution and benefit are assessed on the basis of earnings
irrespective of race, the exclusion of the above-mentioned categories of
employees excludes a very large portion of the African working population from
the application of the Act.

540. The Workmen's Compensation Act, No. 30 of 1941, as amended, also excludes
from its provisions, inter alia, persons employed in domestic service in private
households or in institutions where there are not more than five domestic
servants and persons employed in agriculture (save in so far as they use vehicles
or machinery driven by mechanical power), unless the employer makes special arrangements with the Workmen's Compensation Commissioner for his employees - who would otherwise be excluded - to be covered. The Act lays down different methods of assessment of the compensation to be paid to Africans and non-Africans. While for all persons the amount payable is based upon earnings, it is calculated according to different criteria. The most important discriminatory provision is that, whereas a permanently totally disabled non-African receives a permanent pension, a permanently totally disabled African receives only a lump sum. Similarly, on death the widow of a non-African receives a pension plus an allowance for each child, while the widow and children of an African receive only a lump sum not exceeding the total the deceased would have been entitled to receive for permanent total disablement.

541. The Pneumoconiosis Compensation Act, No. 64 of 1962, makes provision for the payment of compensation in respect of pneumoconiosis or tuberculosis contracted as a result of working in a dusty atmosphere in a mine.

542. The compensation for a European miner in respect of pneumoconiosis is a pension varying from R24 to R37 per month, depending on the degree of impairment of his cardio-respiratory functions, with additional monthly payments in respect of his wife and each dependent child. The compensation for a Coloured labourer varies from R3 to R25 per month, depending on his earnings and on the degree of impairment, also with additional monthly payments for dependants. There are provisions for the payment of a pension to the widow of a European miner or Coloured labourer on his death. For African labourers, the Act provides for the payment of a lump-sum benefit of R430 irrespective of the degree of impairment and irrespective of the number of his dependants.

543. In respect of tuberculosis, a lump-sum benefit depending on the length of service is payable to all racial groups. For a European miner it is R1,500 to R2,000; for a Coloured labourer R400 to R750; for an African labourer R250 to R430.

544. As in the case of other social security benefits, payments in respect of children differ according to the racial group of the child.113/

545. Maintenance grants, under part VI of the Children's Act, No. 33 of 1960, as amended, are payable in respect of children being looked after by foster parents or a guardian, by a mother whose husband is dead, has deserted her or is unable to work or by a widower, divorced or deserted father who is unable to work. The total basic amounts payable per annum are R216 for each European child, R108 for each Coloured or Asian child and R51 for each African child in an urban area. In respect of European children an additional R24 per annum may be paid while the child is at primary school and R48 per annum while the child is at secondary school. There is no maximum grant payable in respect of a European family, the total amount depending entirely on the number of children. For non-European children there is no additional grant for children in school and the maximum grant payable to one family, irrespective of the number of children, is, for Coloured and Asian families, R180 in a city and R156 elsewhere, and for African families R72 in a city and R60 in a town. No provision is made for maintenance grants for Africans in rural areas.

546. Family allowances, under part VI of the Children's Act, No. 33 of 1960, as amended, are payable only in respect of European and Coloured children living with their families. There must be at least three dependent children in the family. The maximum amount for Europeans is R264 per annum for the first three children and thereafter R72 per annum for each further child. For Coloured families it is R24 per annum per child as from the third child with a maximum of R150 per annum per family.

The right to education and training

547. The education of South African children is segregated according to the ethnic groups of the population. As regards the administrative structure of the school system, while the white schools are administered by Provincial Councils, the non-white schools have been brought up under the control of central Governments and administered by the department responsible for the affairs of the ethnic group

concerned. No high administrative or professional posts in the Ministry of "Bantu" Education are occupied by Africans.\(^{115}\)

548. The Bantu Education Act of 1953, and its later amendments, were the major steps taken by the Government to implement its policy of total segregation in education. While the Act is primarily administrative in character, its real purpose was to set up a system of education for the African population different from that provided for the remainder of the population, to reform education in accordance with apartheid policies, and to bring African education under strict government control. Under the Act, all African schools must be registered and registration may be denied if the school is considered to be "not in the interests of the Bantu people or any section of such people, or is likely to be detrimental to the physical, mental or moral welfare of the pupils".\(^{116}\) Such a rule has adversely affected the functioning of missionary schools which, prior to the Act, were mainly responsible for African education. Furthermore the ecclesiastical authorities which had formerly controlled and administered African schools were given in 1954 the choice to transfer their control to the State, or to face a gradual decrease in, and eventual abolishment of State subsidies. In 1958, State subsidies were abolished. Ninety per cent of the missionary schools were transferred to the Government. Those in the white areas which elected to retain their private status were refused registration.\(^{117}\)

549. While some results have been achieved in the field of primary education, where enrolments increased from 970,200 in 1955 to 1,628,200 in 1962, progress has been much less spectacular at the secondary levels: there the number of pupils passed from 30,800 in 1953 to 53,500 in 1963, but the proportion of the total enrolment dropped in the same period from 3.47 to 3.02 per cent.\(^{118}\)


\(^{117}\) Ibid., para. 287.

In addition education is compulsory for white children between the ages of 7 and 16 years. For Coloureds and Asians it is compulsory between the ages of 7 and 14, "where there is demand for it and accommodation permits". There is no such provision for African children.\textsuperscript{119}

As regards the financing of African education, the percentage of expenditures for education spent on African schools has decreased over the period 1953-1954 to 1963-1964, despite an increased enrolment and although the amount of funds for education, in general, has risen. According to the Minister of Bantu Education, increased enrolment without a corresponding rise in expenditure was achieved by introducing double sessions in the first two years of schooling, by appointment of teachers at a lower salary and by converting funds allocated for school meals for the expansion of educational facilities.\textsuperscript{120} In addition, the law imposes on the African population an increasing responsibility for the financing of its educational institutions. Because of the insufficient government contribution, the Africans are obliged to pay for educational affairs through taxes and contributions by communities.\textsuperscript{121} In 1953, the per capita expenditure was R127 in schools for white pupils, while it was a little over R17 in African schools, yet this figure has progressively fallen to R12.46 in 1960-1961. Furthermore, at the secondary school level, education is free for white children, while African parents must pay compulsory fees and assume all of the costs of textbooks and writing material.\textsuperscript{122}

The policy of apartheid is also reflected in the school syllabus. In primary schools, an African pupil has to learn to read and write in three languages: his vernacular tongue, English and Afrikaans. On the other hand, the white child studies in his mother tongue for the whole of his primary schooling and only by the end of his secondary schooling is he expected to be fluent in the second official

\textsuperscript{119} The effects of apartheid on education... a summary of the report by UNESCO, \textit{op. cit.}

\textsuperscript{120} UNESCO Features, \textit{op. cit.}, p. 6.

\textsuperscript{121} Report of the Special Committee on the Policies of Apartheid..., 1963, \textit{op. cit.}, para. 298.

\textsuperscript{122} UNESCO Features, \textit{op. cit.}, p. 7.
language. Furthermore, the syllabus for Africans lays stress on manual training and on religious instruction, which, with health instruction, take up from 18 to 25 per cent of lesson time.\(^{123}\)

553. The effect of the introduction of Afrikaans side by side with English in school curricula has been summed up as follows:

"This means that children under 10 years of age will have to study three different languages (Bantu child speaks one of the seven vernacular idioms), which will certainly overtax their minds and memories to the detriment of other possibly more useful and more necessary subjects.

"Furthermore, the effect of this measure will be to weaken among the Natives the influence and spread of the English language, which because of its universality, is a cultural and closer link with their racial brethren of Africa and America whose social, economic and cultural progress they watch with pride." \(^{124}\)

554. The dropout rate between primary and secondary school is high: of the 1,764,000 African children at school in 1963, only 53,400 (3.02 per cent) were in the first four classes of secondary schools, and 1,040 in the fifth class (0.059 per cent). Government's policy is to increase the number of senior secondary classes in the African reserves rather than in urban areas, so that many children must either end their schooling at the age of 14 or return to the reserves. The small number of children who successfully pass final examinations, it was pointed out, is unlikely to provide sufficient recruits of the educational standard required to graduate into the professions, train for senior positions in the civil service and fill other available higher posts.\(^{125}\)

555. In 1963, 5,000 of the 29,590 African and Coloured teachers had neither university degrees nor professional qualifications; only thirty-nine had a university degree. The average teacher-pupil ratio was 52.5 in lower and higher primary classes. However, one in three of the 31,597 teachers in white schools had

\(^{123}\) Ibid., p. 7.


\(^{125}\) UNESCO Features, op. cit., p. 8.
a university degree. Also in 1965, the ratio of African teachers' salaries to those of their white counterparts with the same qualifications were 41.9 per cent for men and 37.9 per cent for women.\textsuperscript{126/}

556. Higher education. The Government has extended apartheid into higher education by dividing the higher institutions on a racial and tribal basis, and removing African colleges from the urban areas. In 1954, the Minister of Native Affairs summarized the Government's policy as follows:

"Increase in institutions for advanced education which are located in the urban areas is not desired... Deliberate attempts will be made... to establish the institutions for advanced education as far as possible in the native reserves... The Bantu must be guided to serve his own community in all aspects. There in no place for him in the European community above the level of certain forms of labour..." \textsuperscript{127/}

557. Until 1959, some universities known as the "open universities" accepted non-white students. The Extension of University Education Act\textsuperscript{128/} put an end to that practice and provided for the establishment of separate university-colleges for non-white students, and after a transition period, non-whites will be forbidden to attend any other universities. In addition, the competent authority may designate certain colleges which can admit students of a special ethnic or other group. Furthermore, the Act organizes the governing bodies of these institutions along discriminatory lines. For each university, there are to be a Council and a Senate composed of white members and an Advisory Council and an advisory Senate of representatives of the community served. Finally, the disciplinary regulations place the student under strict control of the Government.

558. Two new measures, published on 4 August 1966,\textsuperscript{129/} are now envisaged to prevent the traditional practice at the "open universities" of admitting all students to societies, clubs and sporting facilities regardless of race. The first, the University Education Amendment Bill, prohibits a non-white student at a "white" university from attending any associations formed by white students, and the second, the University Education Amendment Act, prohibits the admission of non-white students to any university institution.

\begin{itemize}
\item \textsuperscript{126/} The effects of apartheid on education..., United Nations Monthly Chronicle, \textit{op. cit.}
\item \textsuperscript{127/} Report of the Special Committee on the Policies of Apartheid..., 1963, \textit{op. cit.}, para. 290.
\item \textsuperscript{128/} \textit{Ibid.}, paras. 292, 293.
\item \textsuperscript{129/} \textit{Ibid.}, 1966, p. 98, paras. 48, 49.
\end{itemize}
university from becoming a member of any student association unless it is an academic association dealing exclusively with his course; it also provides for "ethnic" associations of non-whites at "white" universities and empowers the Minister to expel a non-white student at a "white" university at any time, if he considers such a decision "in the public interest". The second, the Universities Amendment Bill, allows the Minister of Education, Arts and Science to withhold grant-in-aid from any university which has "prejudiced or subjected to any form of discrimination" any student, staff member or association advocating racial separation on the campus.

559. In implementation of its policy, the Government built new "ethnic group" colleges with excellent facilities, but the financial burden and the economic waste involved in this operation were considerable. Furthermore, neither the enrolments nor the degrees awarded justify the government statement that the establishment of these colleges have provided the increased university facilities which will enable the Africans to be trained for the leading tasks in their areas.\(^{130}\)

560. The increase in university enrolment of Africans is misleading, as that increase is mainly in non-degree courses at tribal colleges.\(^{131}\) In 1962,\(^{132}\) of the 328 students who received diplomas and degrees from the "ethnic group" colleges, forty qualified in medicine, two in architecture, one in civil engineering and one in science. From 1960 to 1965 the records show that only three non-white students from South African universities graduated in engineering: an African civil engineer in 1962, a Coloured electrical engineer in 1964 and an Indian radio engineer in 1965. To the restrictions imposed on the non-white in the field of education must also be added the limited opportunities open to him. In non-white areas, where there has been an increasing demand for teachers and social workers, opportunities do exist and, in fact, most Africans who go to universities are trained to be teachers and social workers. However, those who become highly trained scientists face considerable obstacles. Indeed, apartheid in employment discourages non-whites from undergoing training for skilled or professional work in science and technology.\(^{133}\)

\(^{130}\) UNESCO Features, op. cit., p. 8.


\(^{132}\) UNESCO Features, op. cit., p. 8.

\(^{133}\) Ibid., p. 9.
The right to participate in cultural and social activities

561. Implementation of the policy of apartheid has meant that it has become progressively more difficult for members of different racial groups to come together for cultural or social purposes. Entertainment and sport are similarly affected as premises used for public functions fall more and more within group areas and are thus reserved for persons of the group for which the area is proclaimed.

562. Under the Group Areas Act, apartheid is strictly enforced in cinemas, theatres, restaurants, clubs and tearooms unless the owners are specially authorized to serve different racial groups.

563. Drastic new steps have been taken to extend apartheid to the field of sports and entertainment. As regards entertainment, an acute problem arose from the insistence of foreign artists to perform before racially mixed audiences. As there was no legislation in force providing for separation in the field of entertainment, the Government indirectly enforced the policy of apartheid by refusing to grant visas to foreign artists and by the use of the immigration laws. Multiracial audiences are now tolerated on a strictly segregated basis only in cases where a presentation does not lend itself to a repetition, or in areas where the non-white groups are present in small numbers only.

564. On 12 February 1965, the Government issued a proclamation which broadens the definition of the term "occupation" in a group area in such a way that it includes the mere presence of a customer in a place of public entertainment. Permits must be granted by the authorities who use their discriminatory powers not only to limit multiracial audiences, but to prevent also sport competitions between whites and non-whites, and all non-white events in white areas and vice versa. Since most of South Africa outside the reserves constitutes either a group area or a controlled area, the proclamation in effect requires permits for mixed audiences at any public place of entertainment. Moreover, as in most cases separate performances cannot be arranged, the proclamation deprived the Coloured people of the few places of entertainment still available to them.


135/ Ibid., para. 58.
The results of this policy are well illustrated by a number of cases cited by the United Nations Special Committee on the Policies of Apartheid of the Republic of South Africa in its report of 16 August 1965.

"The wide discretion assumed by the Government under the proclamation has been utilized to prevent as much inter-racial contact as possible. No reasons for refusal of permits are given, but the decisions indicate that the proclamation was not intended only to limit multi-racial audiences. It has been invoked to prevent sport competitions between Whites and non-Whites (such as occasional cricket matches in Western Cape), and multi-racial dances, as well as non-White events in White group areas and vice versa.

"A few decisions under the proclamation are illustrative. The Department of Planning laid down on 18 February 1965 that separate entrances and seating accommodations must be provided for non-Whites at the concerts of the Cape Town municipal orchestra which had traditionally been played to multi-racial audiences. It also ordered that separate toilet facilities and booking offices should be built within three months. After making representations in vain that it be allowed to continue to hold its concerts without compulsory segregation, the City Council decided on 26 April to defy the order and fight a test case. The next day, however, the Minister of Planning, Mr. Haak, warned that the Government would not deviate from its policy and that it would introduce legislation, if necessary, to prohibit mixed audiences.

"As the City Council defied the conditions of the permit, the Government countered with a proclamation on 11 June 1965 designating the whole of central Cape Town a White area. The Council subsequently decided by seventeen votes to comply with the conditions of the permit in view of the new legal situation.

"In April 1965, the Government gave a permit to the Rhodes University at Grahamstown to allow Coloureds and Indians to attend sports functions at the University, but refused permission to allow Africans. Also in April, the Department of Community Development granted the Western Province Rugby Football Union a permit for the Newlands rugby ground with two conditions attached: a six-foot high division, preferably of netting wire, must be constructed to divide the White and non-White enclosures, and an effective division must be rigged upon the playing field between White and non-White children.

"The Government imposed conditions on the annual performance of Handel's 'Messiah' by the Bantu Music Society in the Johannesburg City Hall in May. The organizers had arranged a matinée for a non-White audience and an evening performance for Whites. The Government refused a permit for the matinée and for a White orchestra in the evening. The choir had to sing with the accompaniment of only an organist who was given special permission to appear.

"A fund-raising bazaar held on 1 May 1965 for the St. Frances Primary School for Coloured Children in Simonstown was also subjected to official restrictions. White and Coloured members of the St. Frances Church had...
traditionally co-operated in organizing the bazaar. When the principal applied for permits for Whites to attend, it was refused. The Government excluded even the rector and the two assistant priests of St. Frances Church, but reversed this decision on 28 April. The only other Whites permitted to attend were the member of Parliament for Simonstown and four judges of shows.

"Also in May, the Government refused permission for Africans to attend sports fixtures at the Rand Stadium, Johannesburg, organized by the Southern Suburbs Club, although the promoters had provided separate enclosures. It indicated that when provincial and national sport was played each application for African spectators would be treated on merit.

"The Minister of Bantu Administration and Development said in the House of Assembly on 14 May 1965, in answer to a question, that he had not received any complaints in writing in regard to the presence or the behaviour of non-White groups at soccer matches at the Rand Stadium. Permission had been refused for attendance of Africans because -

'... recreation facilities for Bantu are provided in urban Bantu residential areas, and there is no need to encourage their attendance at ordinary and club matches outside such areas'.

"The Government refused a permit to the Cape regional committee of the South African Red Cross to hold a multi-racial pageant of the Junior Red Cross at Maynardville, Cape Town, in May, to celebrate the anniversary of the founder of the movement, Mr. Henri Dunant. After repeated appeals, the Minister agreed to separate shows by Coloured and White school children at different times, if the audience was separate by race and used separate toilet facilities. The pageant was postponed to September.

"The effect of the new proclamation was to end the 'Cape liberal tradition' and deprive the middle-class Coloured people of Cape Town of the few places of entertainment they enjoyed. African sport fans were even more seriously affected. The non-Whites were deprived of the possibility of watching overseas artists and groups as they can ill afford the high prices to arrange separate performances even if permission were obtained. They had already been confined to separate cinemas, where films are usually exhibited long after the first-runs in White areas.

"Moreover, the proclamation led to grave concern that it would jeopardize the continuation of cultural and sports activities which have depended partly on non-White patronage. Mr. Vivian Granger, General Manager of the National Football League, said in Johannesburg on 14 March 1965 that the ban on non-White spectators at major grounds of soccer would mean that professional football in South Africa was 'finished', as non-Whites accounted for a large percentage of the gate-money. Mr. Victor Justin, writing in the Cape Times of 1 May 1965, said that 'the remarkable progress modern jazz has made in South Africa would suffer a setback' as 'jazz in the Republic, like jazz in the United States, depends for its life blood on its multi-racial character'."
566. Films and public entertainments are subject to censorship under the Publications and Entertainments Act, No. 26 of 1963, and must be approved by the Publications Control Board, which may, by section 9 (4) approve a film subject to the condition that it "shall be exhibited only to a particular group of persons or only to persons belonging to a particular race or class". Thus films are from time to time approved on condition that they are not shown to African audiences. 137/ By section 10 films may not be approved which, inter alia, 

"May have the effect of 

"(v) bringing any section of the inhabitants of the Republic onto contempt; 

"(vi) harming relations between any sections of the inhabitants of the Republic; 

"(vii) propagating or promoting communism as defined in the Suppression of Communism Act, 1950." 

or which depict "in an offensive manner" "intermingling of White and non-White persons".

F. Reaction of the international community to the policy of apartheid

567. The racial situation in the Republic of South Africa has caused indignation and concern among the States. The international community, indeed, considers that the policy of apartheid constitutes a flagrant violation of the principles of the Charter which, if left unchecked, would internally lead to a bloody racial conflict, and externally, to an armed confrontation between States. 138/ 

1. Action taken by the United Nations 

568. The racial policy of the Government of South Africa has been under discussion in the United Nations since the first session of the General Assembly in 1946. From 1946 to 1952, the discussion was limited to the violations of the rights of people of Indo-Pakistani origin. In 1952, the larger question of apartheid was 

also placed on the agenda, as a separate item. The two related questions were combined in 1962 under the title: "The policies of apartheid of the Government of the Republic of South Africa".

569. While the Government of South Africa has consistently held the view that its racial policies were outside of the jurisdiction of the United Nations, the General Assembly and the Security Council maintained that the policy of apartheid constituted a violation of the Charter and was therefore within the sphere of their competence.

(a) Resolutions adopted by the General Assembly

570. From 1952 to 1959, the General Assembly adopted a number of resolutions which condemned the racial policies of South Africa, but did not recommend any specific measures by Member States.139/

571. By resolution 616 B (VII), the General Assembly declared that in a multiracial society harmony and respect for human rights and freedoms and the peaceful development of a unified community were best assured when patterns of legislation and practice were directed towards ensuring equality before the law of all persons regardless of race, creed or colour, and when economic, social, cultural and political participation of all racial groups was on a basis of equality. It affirmed that governmental policies of a Member State which were not directed towards this goal but were designed to perpetuate or increase discrimination, were inconsistent with the pledges of the Members under Article 56 of the Charter. It solemnly called upon all Member States to bring their policies into conformity with their obligations under the Charter to promote the observance of human rights and fundamental freedoms.

572. By resolutions 721 (VIII), 820 (IX) and 917 (X), the General Assembly expressed concern that the South African Government had continued to give effect to the policies of apartheid and reminded it of the faith it had reaffirmed, in signing the Charter, in fundamental human rights and the dignity and worth of the human person.

573. By resolutions 1016 (XI), 1178 (XII) and 1248 (XIII), the General Assembly deplored that the Government of the Union of South Africa had not yet observed its obligations under the Charter and appealed to that Government to revise its policies in the light of its Charter obligations.

574. In view of the failure of the South African Government to comply with the resolutions referred to, the General Assembly went a step further at its fifteenth and sixteenth sessions. By its resolutions 1598 (XV) and 1663 (XVI), the Assembly noted with concern that the policy of apartheid has led to international friction and endangers international peace and security. It requested all States to consider taking such separate and collective action as was open to them, in conformity with the Charter of the United Nations, to bring about the abandonment of that policy.

575. Since 1962, the General Assembly significantly hardened its position and has repeatedly recommended that Member States of the United Nations take specific action against the Government of South Africa. By resolution 1761 (XVII), the Assembly, inter alia, requested Member States to: (a) break off diplomatic relations; (b) close their ports to all vessels flying the South African flag; (c) enact legislation prohibiting their ships from entering South African ports; (d) boycott all South African goods and refrain from exporting goods, including all arms to South Africa; (e) refuse landing and passage facilities to all aircraft belonging to the company or companies registered under the laws of the Republic of South Africa. Furthermore, the Assembly requested the Security Council to take appropriate measures, including sanctions, to secure South Africa's compliance with the resolutions adopted.

576. On 11 October 1963, the General Assembly adopted resolution 1881 (XVIII) in view of the trial of several leaders of the African National Congress and other opponents of apartheid on charges of sabotage and other charges. The Assembly, inter alia, requested South Africa to abandon the arbitrary trials then in progress and to grant unconditional release to all political prisoners and to all persons imprisoned, interned or subjected to other restrictions for having opposed the policy of apartheid. They also requested all Member States to make all necessary efforts to induce the Government of South Africa to ensure that paragraph 2 of the resolution be put into effect immediately.
577. As South Africa persisted in its refusal to comply with the resolutions of the General Assembly, the Assembly felt that it should recommend still stronger measures. In several resolutions - 2054 A (XX), 2201 (XXI) and 2307 (XXII) - it directed its appeals not only to the Member States, in general, but specifically to a certain group of States: the major trading partners of the Republic of South Africa. The Assembly (a) urgently appealed to the major trading partners of South Africa which encouraged the Government of that country to defy world opinion and to accelerate the implementation of the policies of apartheid; (b) condemned the action of the States which through political, economic and military collaboration with the South African Government were encouraging it to persist in its racial policies; (c) requested the specialized agencies to deny technical and economic assistance to South Africa. In these resolutions, the Assembly drew the attention of the Security Council to the fact that the situation in South Africa constituted a threat to international peace and security. Therefore, action under Chapter VII of the Charter was essential in order to solve the problem of apartheid. Universally applied economic sanctions were the only means of achieving a peaceful solution. In resolutions 2202 (XXI) and 2307 (XXII), the Assembly condemned the policies of apartheid as a crime against humanity.

578. During recent years the General Assembly and its subsidiary organs have been concerned with the question of (a) moral, political and material assistance to the opponents of apartheid; (b) humanitarian assistance to the victims of apartheid; and (c) dissemination on the widest scale of information on the policies and practices of apartheid; and (d) greater co-ordination among the various organs dealing with the problem of apartheid.

(b) Resolutions adopted by the Security Council

579. The Security Council considered the policy of apartheid for the first time in 1960, after the Sharpeville incident, at the request of thirty-two African States. By resolution 134 (1960) the Security Council: (a) recognized that the situation in the Union was one that had led to international friction and if continued might endanger international peace and security; (b) deplored the policies and actions of the Union Government which had given rise to the current situation;
(c) called upon the Government of the Union to initiate measures aimed at bringing about racial harmony based on equality in order to ensure that the situation would not continue or recur and to abandon its policies of apartheid and racial discrimination.

580. In July 1963, acting once again at the request of thirty-two African States, the Security Council went further. It decided to: (a) call upon the Government of South Africa to liberate all persons imprisoned, interned or subjected to other restrictions for having opposed the policy of apartheid; (b) call upon all States to cease forthwith the sale and shipment of arms, ammunition of all types and military vehicles to South Africa.

581. In 1964, the Security Council adopted resolution 190 (1964) in which it urged the South African Government (a) to renounce the execution of the persons sentenced to death for acts resulting from their opposition to the policies of apartheid; (b) to end forthwith the trial in progress instituted within the framework of the arbitrary laws of apartheid; and (c) to grant an amnesty to all persons already imprisoned, interned or subjected to other restrictions for having opposed the policies of apartheid.

582. Despite the repeated requests by the General Assembly, the Economic and Social Council and the Commission on Human Rights, the Security Council has not considered the question since 1964.

(c) Resolutions adopted by the Economic and Social Council and the Commission on Human Rights

583. The Economic and Social Council and the Commission on Human Rights have during recent years, adopted resolutions calling for economic and diplomatic sanctions against South Africa, along the lines of the decisions of the General Assembly.

584. In resolution 2 (XXII), the Commission on Human Rights suggested that the Economic and Social Council recommend to the General Assembly that it "urge all States which have not yet done so, to comply with the relevant General Assembly and Security Council resolutions recommending the application of economic and diplomatic sanctions against the Republic of South Africa". This resolution was endorsed by the Economic and Social Council in its resolution 1164 (XLI).
585. In resolution 5 (XXIII) of March 1967, the Commission on Human Rights condemned the action of States which maintain economic, commercial and political relations with South Africa and called for immediate cessation of such action and the implementation of the decisions of the United Nations recommending sanctions.

586. In resolution 3 (XXIV) of 16 February 1968, the Commission expressed dissatisfaction at the fact that several Governments, in violation of United Nations resolutions, are continuing to maintain diplomatic, commercial, military, cultural and other relations with the Republic of South Africa and the illegal régime in Southern Rhodesia. It again called upon all those Governments which have diplomatic, commercial, military, cultural and other relations with South Africa to desist from such relations in accordance with the resolutions of the General Assembly and of the Security Council.

587. The Economic and Social Council and the Commission on Human Rights have lent their support to humanitarian activities to assist victims of apartheid.

588. In resolution 2 (XXII), the Commission requested the Economic and Social Council to recommend to the General Assembly that it appeal to public opinion and, in particular, to juridical associations to render assistance to the victims of the policies of racial discrimination, segregation and apartheid. This resolution was endorsed by the Economic and Social Council in its resolution 1164 (XLI).

589. In resolution 2 (XXIII) March 1967, the Commission drew the attention of humanitarian organizations to take urgently appropriate action to help alleviate the inhuman action in South Africa and called upon Member States to support the United Nations Trust Fund for South Africa.

(d) Resolution adopted by the International Conference on Human Rights held at Teheran (22 April-13 May 1968)

590. The International Conference on Human Rights adopted a resolution in which it declared that the policy of apartheid is a threat to international peace and security. It also declared its emphatic recognition and vigorous support of the legitimacy of the struggles of the people and patriotic liberation movements in southern Africa toward the achievement of their inalienable rights to equality, freedom and independence in accordance with the purposes and principles of the Charter of the United Nations. It recommended to the Security Council of the

140/ A/CONF.32/4.

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United Nations to resume consideration of the question of apartheid and to take appropriate action against the Republic of South Africa under Chapter VII and in particular under Article 41 of the Charter of the United Nations, including strong economic sanctions. It further appealed to all States and organizations to give appropriate moral, political and material assistance to the non-white people of southern Africa in their legitimate struggle to achieve the rights recognized in the Charter of the United Nations.

(e) Other actions taken by the General Assembly, the Security Council, the Economic and Social Council and the Commission on Human Rights

591. Besides adopting the various resolutions, the General Assembly and the Security Council acted also on another level. They established a number of Committees or study groups to examine the racial situation in South Africa and its effects and to suggest appropriate remedies.

592. By its resolution 616 A (VII) the General Assembly established a Commission composed of three members to study the racial situation in South Africa in the light of the principles of the Charter. The Commission submitted three reports in 1953, 1954 and 1955 in which it stated that the continuance of the policy of apartheid could endanger international peace and suggested a number of measures to alleviate the situation. 141/

593. In 1962, by resolution 1761 (XVII) the General Assembly established a Special Committee consisting of eleven members to keep the racial policies of the South African Government under constant review. By resolution 2054 (XX) the Assembly decided to add some new members to the Committee. They were to be chosen on the basis of the following criteria: (a) primary responsibility with regard to world trade; (b) primary responsibility under the Charter for the maintenance of international peace and security; (c) equitable geographical distribution. However, membership of the Committee was not increased. The Special Committee submitted several reports to the General Assembly and the Security Council in 1963, 1964, 1965, 1966 and 1967. It repeatedly recommended that the Security

Council declare that the situation in South Africa constituted a threat to international peace and security and decide to apply enforcement measures in accordance with Chapter VII of the Charter. 142/

594. By resolution 1978 B (XVIII) the Assembly requested the Secretary-General to seek ways and means of providing relief and assistance, through appropriate international agencies, to families of all persons persecuted in South Africa for their opposition to the policies of apartheid. In 1965, the Secretary-General advised that several members had pledged their contributions to relief organizations. 143/

595. By resolution 2054 B (XX) the General Assembly requested the Secretary-General to establish a United Trust Fund for South Africa, made up of voluntary contributions from States, organizations and individuals to help the victims of apartheid.

596. In implementation of General Assembly resolutions 2054 (XX) and 2202 A (XXI), two international seminars on apartheid were held during recent years. 144/

These seminars adopted a number of conclusions and recommendations urging, inter alia, that enforcement measures be applied against South Africa.

597. By resolution 2202 A (XXI), the General Assembly, inter alia, requested the Secretary-General and the specialized agencies to consider appropriate assistance for the employment in their secretariats and programmes of qualified South Africans who are victims of apartheid.

598. In 1960, the Security Council, in resolution 134 (1960) requested the Secretary-General of the United Nations to make, in consultation with the South African Government, such arrangements which would adequately help in upholding the purposes and principles of the Charter. Accordingly the Secretary-General held

142/ Background Paper C, op. cit., paras. 49, 70, 82, 111.
143/ Background Paper C, op. cit., para. 88.

Report of the seminar on apartheid, racial discrimination and colonialism in southern Africa, A/6815.
talks with the officials of the South African Government. Although useful and constructive, these talks were nevertheless inconclusive.\(^{145/}\) In implementation of the Security Council resolution 182 (1963), the Secretary-General of the United Nations set up a Group of Experts of four members to examine methods of resolving peacefully the present situation in South Africa through an orderly application of human rights to all inhabitants. In its report,\(^{146/}\) the Group of Experts emphasized the need for a free and democratic consultation and warned that continuation of the present situation would lead to violent conflict and tragedy for all. It further urged the Security Council to endorse its recommendations and apply sanctions if the South African Government failed to fix a definite date for the convening of a national convention. By resolution 191 (1964) the Security Council subscribed to the idea of a general consultation of all the South African people.

The Security Council established by its resolution 191 (1964) an Expert Committee composed of representatives of the 1964 members of the Council to undertake a technical and practical study as to the feasibility, effectiveness and implications of measures which could be taken by the Council under the Charter of the United Nations. This Committee was divided.\(^{147/}\) While a minority of members felt that economic and political sanctions against South Africa were feasible and would bear fruits, the majority adopted a more flexible attitude on the effectiveness and practicability of economic sanctions.\(^{148/}\)

### Economic and Social Council and Commission on Human Rights

The Commission on Human Rights by resolution 7 (XXIII) decided to appoint a Special Rapporteur to survey United Nations past action in its efforts to eliminate the policies and practices of apartheid and to study, \textit{inter alia}, the legislation and practices in South Africa instituted to establish and maintain apartheid.


\(^{147/}\) Background Paper C, \textit{op. cit.}, para. 91.

\(^{148/}\) \textit{Ibid.}, paras. 92-95.
602. The Commission on Human Rights, by resolution 2 (XXIII) of March 1967, established an Ad Hoc Working Group of Experts to investigate the charges of torture and ill-treatment of prisoners, detainees or persons in police custody in South Africa. The Group was requested to recommend action to be taken in concrete cases and report to the Commission. In the same resolution, the Commission appealed to humanitarian organizations to take urgently appropriate action to help alleviate the inhuman action in South Africa.

603. The Economic and Social Council, in resolution 1216 (XLII), requested the Working Group to consider the question of the infringement of trade union rights and the unlawful prosecution of trade union workers in South Africa.


**Seminars organized by the Secretary-General**

605. As requested by the General Assembly in resolution 2060 (XX) of 16 December 1965, the Secretary-General, in consultation with the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa and the Commission on Human Rights, organized an international seminar on apartheid. The seminar was held at Brasilia, Brazil from 23 August to 4 September 1966. The conclusions and recommendations of the seminar are reproduced and attached to this report as annex V.

606. As requested by the General Assembly in resolution 2202 (XXI) of 16 December 1966, the Secretary-General, in consultation with the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa and the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, organized an international seminar on apartheid, racial discrimination and colonialism in southern Africa. The seminar, the report of which appears in document A/6818, was held at Kitwe, Zambia, from 25 July to 4 August 1967.
2. Action taken by States

607. The overwhelming majority of States have condemned apartheid and consider that it violates flagrantly the principles of the United Nations Charter. However, in view of the South African Government's failure to comply with the resolutions of the General Assembly and the Security Council, and to even co-operate with the various bodies set up to study the situation, the international community has been recently under strong pressure to go beyond the stage of appeals and moral condemnation and envisage compulsory measures against the apartheid régime. On this point, no unanimity seems to exist among Member States. While the great majority of States favour a decisive action by the Security Council, a small but powerful minority, composed largely of the major trading partners of South Africa, has so far shown an extreme reluctance to follow such a course. This division of the international community has been reflected on many occasions.

608. At the seminar on apartheid held in Brasilia, the view was expressed that South Africa continues to persist in its policy of apartheid because of the assistance forthcoming from its major trading partners. The General Assembly's appeals in its resolutions for Member States to discontinue commercial and diplomatic relations with South Africa have been openly disregarded by such Governments as the Federal Republic of Germany, France, Italy, Japan, the United Kingdom and the United States, which still allow their nationals to continue to increase their trade with South Africa and to increase the volume of their investments in that country. Without such economic support, the system of apartheid would already have crumbled. It was also recalled that the Member States which declined to serve on the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa included the principal trading partners of South Africa. It was, however, pointed out that some countries would commit economic suicide if they stopped trading with South Africa.

153/ Ibid., para. 45.
154/ Ibid., para. 44.
Besides, the principle of free trade between nations without regard to their political systems was still considered a fundamental principle in many countries. Curbing of trade activities would involve the passage of unpopular emergency legislation which many States might find impossible to enact.

609. Secondly, in its reports, the Special Committee has referred repeatedly to the split in the international community on the question of enforcement measures against South Africa. It noted with regret that the major trading partners have been unwilling to support the principle of mandatory sanctions and have thereby frustrated timely and effective action by the United Nations.

610. These States would limit international action to appeals and would rely on a change of heart of the South African white minority, a course which proved totally ineffective and unrealistic. They have failed to implement the provisions of General Assembly resolution 1761 (XVII) and some have not even complied with the unanimous request of the Security Council to put an end to all forms of military co-operation with the South African Government. The Special Committee warned that by refusing their co-operation, the main trading partners of South Africa which include three permanent members of the Security Council (France, United Kingdom, United States) bear the responsibility for the deterioration of the situation. It further considered it essential to secure the disengagement of these Powers from South Africa.

611. Thirdly, the divergent views among States, as regards the question of sanctions, were reflected in the reservations raised by a minority of participants to many of the relevant recommendations of the seminars on apartheid held in Brasilia, and at Kitwe.

612. Finally, the split in the international community over the question of sanctions is illustrated by the different scope of the resolutions adopted by the General Assembly and the Security Council. While the General Assembly and its

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158/ Ibid., p. 57, para. 154.
subsidiary organs had adopted resolutions which stated that the situation in South Africa constituted a threat to international peace and security, the Security Council has so far refrained from using such terms, and describes rather the apartheid policy as a situation that might eventually endanger international peace. The significance of these differences in terminology lies in the fact that the Assembly's decisions are not mandatory under the Charter. Only the Security Council can determine the existence of a threat to the peace and decide measures which will be binding on the States. 159/

3. Action taken by the specialized agencies

613. In accordance with General Assembly resolutions 1978 A (XVIII), 2054 A (XX) and the recommendations of the Special Committee on the Policies of Apartheid, a number of specialized agencies have taken action with regard to the policies of apartheid of the South African Government.

(a) Food and Agriculture Organization of the United Nations

614. On 5 December 1963, the Conference of the Food and Agriculture Organization of the United Nations adopted a resolution which stated that the Government of South Africa would no longer be invited to participate in any of the activities of the organization until the Conference decided otherwise. South Africa withdrew from membership in the FAO on 18 December 1963. 160/

(b) International Labour Organization 161/

615. The policies of apartheid, as regards labour, have been the subject of examination by various bodies in the ILO for a number of years. Thus the United Nations-ILO Ad Hoc Committee on Forced Labour concluded in a report published in 1953 that a system of forced labour of significance to the national economy

159/ Report of the seminar on apartheid, op. cit., para. 72.
appeared to exist in South Africa. In 1961, the International Labour Conference called on South Africa to withdraw from membership in the organization until it abandons the policy of apartheid. In 1964, the Conference unanimously adopted a declaration in which it called upon the Government of South Africa to renounce apartheid and to take specified measures to eliminate discrimination in employment and occupation. It also approved an ILO programme for the elimination of apartheid in labour matters, and requested the Director-General to follow the situation in South Africa and submit every year for consideration by the Conference a special report concerning the application of the Declaration. On 11 March 1966, the Government of South Africa withdrew from the organization.

(c) Universal Postal Union

616. The Congress of the Universal Postal Union in Vienna, 29 May to 10 July 1964, approved a declaration demanding the expulsion of South Africa from the Universal Postal Union. However, a proposal that South Africa should not be allowed to adhere to the new constitution and conventions of the Union was rejected.

(d) United Nations Educational, Scientific and Cultural Organization

617. In 1951, a statement on race was published under the organization's aegis. It clearly stated that there were no scientific justifications for racial discrimination, and was followed by several publications. On 5 April 1955, South Africa withdrew from the organization, alleging that the UNESCO publications, which were advertised and distributed in the Republic, constituted an interference in the country's racial problems.

618. At the request of the Special Committee UNESCO has prepared a report on the effects of apartheid on education, science, culture and information.

\[162\] Reports by the Director-General have been prepared in 1965, 1966, 1967 and 1968.


(e) World Health Organization

619. The World Health Assembly adopted on 19 March 1964 a resolution suspending the voting privileges of South Africa. In 1965 it adopted another resolution amending article 7 of the Constitution of the World Health Organization. Article 7 as amended reads in part:

"(b) If a Member ignores the humanitarian principles and the objectives laid down in the Constitution by deliberately practising a policy of racial discrimination, the Health Assembly may suspend it or exclude it from the World Health Organization.

"Nevertheless, its rights and privileges, as well as its membership, may be restored by the Health Assembly on the proposal of the Executive Board following a detailed report proving that the State in question has renounced the policy of discrimination which gave rise to its suspension or exclusion."

The amendment will come into force when it has been ratified by two thirds of the members of WHO.

(f) Special cases of the International Bank for Reconstruction and Development

620. The International Bank for Reconstruction and Development has approved recently a loan of $20 million to a South African enterprise, despite the recommendation of the Special Committee that such assistance be denied to South Africa, and General Assembly resolution 2054 A (XX) inviting the specialized agencies to take the necessary steps to deny technical assistance to the South African Government. By resolution 2202 (XXI), the General Assembly requested the Secretary-General to consult with the International Bank for Reconstruction and Development in order to obtain its compliance with the provisions of the resolution above mentioned. In resolution 2307 (XXII), the General Assembly reiterated its request to the International Bank for Reconstruction and Development to deny financial, economic

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and technical assistance to the Government of South Africa and, in this connexion, expresses the hope that the Bank will stand by its assurance that it will avoid any action that might run counter to the fulfilment of the great purposes of the United Nations.

III. Developments since the draft report (E/CN.4/Sub.2/288) was issued 168/621. Since July 1968, the Government of South Africa continued to implement the policies of apartheid, racial discrimination and segregation with relentless vigour and determination in defiance of the resolutions of the Security Council and of the General Assembly. It still stresses in its legislation racial differentiation, the need to maintain and intensify racial discrimination and to preserve at any cost the privileges and the domination of the white minority. A number of legislative measures to consolidate apartheid in the political, economic, social and cultural fields have been adopted by the South African Government since the last report was issued. They are briefly reviewed in the paragraphs below.

A. The implementation of the policy of apartheid as regards certain human rights

Civil rights

622. African magistrates appointed in the Transkei have jurisdiction over Africans only and cannot hear charges against Europeans. Thus the right of equality in the administration of justice has been further restricted.

623. The right to security and protection against violence and bodily harm by government officials has been adversely affected by discriminatory measures adopted during the period under review. For instance, the General Law Amendment Act of 1968 empowers the Attorney General to order that an accused person may not

168/ This section is based on the following documents:
(3) Reports of the Ad Hoc Working Group of Experts established under resolutions 2 (XXIII) and 2 (XXIV) of the Commission on Human Rights: E/CN.4/984 and Add.1-17; E/4646.
be released on bail. The Act also extends for another year the provisions of the Suppression of Communism Act which authorizes the Minister of Justice to detain a person serving a sentence of imprisonment after completion of his sentence.

624. The Minister of Justice has continued to use his arbitrary powers widely to issue banning and house arrest orders in an attempt to silence and harass opponents of apartheid.

625. In its report to the Economic and Social Council, the Ad Hoc Working Group of Experts, appointed under resolutions 2 (XXIII) and 2 (XXIV) of the Commission on Human Rights, stated:

"No testimony indicates that the situation as it was in 1967 has changed. However, unconfirmed sources indicate that Mr. Robert Sobukwe has recently been permitted to receive his relatives in prison. While some of the evidence adduced is by refugees who have recently fled from that country, it is a variation of the old theme that the South African prisons remain places in which the opponents of apartheid languish in an existence of despair and brutality. The reply of a doctor to a prisoner who was pleading for medical attention is typical of the attitude of several South African jail wardens to non-white political prisoners:

"'We don't know why the State does not do to you what Hitler did to the Jews in Germany, just put them up against the wall and exterminate them.'" (E/CN.4/AC.22/RT.8, p. 36).

"With this may also be juxtaposed the statement of a prison official as indicating definitely officially orientated attitude: 'In this world there are three things held in reverence: it is Dr. Verwoerd, Hitler and the Nationalist Party' (witness RT 11, p. 2). The evidence suggests that the attitude of prison officials towards their prisoners is clearly in keeping with official policy (RT 8, pp. 37 to 40)."

626. New limitations in the right to freedom of movement and residence have been imposed by Proclamation R. 192. Under the new regulations, no African may reside or occupy any land, even in an African area, without the permission of the Bantu Affairs Commissioner. Furthermore, the Government has been implementing with increasing vigour its policy of removing from urban areas all Africans who, in its view, are not economically active.
627. As regards the right to a nationality, the South African Government has been
given power, by Section 4 of the Suppression of Communism Amendment Act 1967, to
depорт certain categories of citizens, who are thus deprived of the substance of
citizenship. New restrictions on the right to marry and choice of spouse have
been imposed by the Prohibition of Mixed Marriages Amendment Act, 1968. The Act
now prevents South African citizens, or persons domiciled in South Africa, from
marrying a person of a different race abroad.

628. Violations of the right to leave one's country and return continued to occur,
as several persons were refused a passport in 1967 and 1968 because of their
opposition to the policy of apartheid.

Political rights

629. The South African Parliament has enacted, during the period under review,
new laws aimed at the consolidation of apartheid in the political field which
further restrict the right of all citizens to take part in the Government of their
country.

630. The Prohibition of Political Interference Act of 1968 prohibits, inter alia,
political parties with mixed membership and thus imposes new limitations on the
right to freedom of peaceful assembly and association. As a result of the Act,
all forms of organized collaboration in the political fields between members of
different racial groups would be held illegal. The right to freedom of expression
has also been further threatened by the proposal of the Minister of Interior in
November 1968 to extend the Publications and Entertainment Act, 1963, to newspapers.

631. The Separate Representation of Voters Amendment Act, 1968, extends the terms
of office of the whites representing the Cape Coloureds in the House of Assembly
until the dissolution of the present House in 1971 and provides that no such
representatives would be elected thereafter. The House of Assembly will thus
become a purely European body.

632. The Coloured Persons Representative Council Amendment Act of 1968 increases
the membership of the Coloured Persons Representative Council and amends provisions
regarding elections of members of the Council and the functions of the Council. It
also provides for the replacement of the present Department of Coloured Affairs by
an Administration of Coloured Affairs.

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633. The South African Indian Council Act, 1968, provides for the establishment of a South African Indian Council, which is to consist of members appointed by the Minister of Indian Affairs. Each member is required to take an oath of loyalty to the Republic.

**Economic, social and cultural rights**

634. Economic, social and cultural rights in South Africa have been violated on a large scale during the period under review. For example:

(a) The policy of fixing salaries on a different scale according to the racial group of the person concerned now extends to all fields of activity.

(b) The provisions of the Training Centres for Coloured Cadets Act, 1968, which *inter alia* requires all Coloured young men between the ages of eighteen and twenty-four to register, as well as the obligation imposed by the new regulations of the Labour Bureaux on Africans to register for employment, contain the seeds of a system of forced labour. In its report to the Economic and Social Council, the Ad Hoc Working Group of Experts appointed under resolutions 2 (XXIII) and 2 (XXIV) of the Commission on Human Rights to investigate *inter alia* allegations regarding infringements of trade union rights in South Africa, stated:

"By far the preponderant body of evidence heard by the Group related to conditions in prison and the witnesses generally stated the evidence relating to trade unions at the end of their testimony. The evidence on trade union rights tends in many cases to be substantiated by the evidence on the treatment of prisoners... The evidence shows a pattern which stands out distinctly: apartheid embraces all aspects of life and the regulation of trade unions is only part of the whole fabric. As one witness put it: 'To us as members of the non-white oppressed, South Africa is one big gaol or concentration camp with its gas and torture chambers. Little is known in the outside world about the conditions of the peasants and the sufferings that they have to endure not only at the hands of the police but also at the hands of a very vicious and oppressive system.'... The evidence... corroborates that the situation is deteriorating and that all standards of human rights with respect to trade unionists are being deliberately flouted by South Africa." 170/

(c) As a result of the enactment of the Promotion of Economic Development in the Bantu Homelands Act, 1968, it appears that any development undertaken in the African reserves will remain firmly under European management and control.

170/ E/4646, paras. 57, 58 and 59.
(d) As regards the right to social security, the War Veteran's Pension Act, 1968, does not apply to African war veterans.

(e) In respect of the right to education, it is feared that the Central Government would use the wide powers granted to it by the National Educational Policy Act, 1967, to impose a narrow-sectional system of education inspired by the rigid ideas of the National Party. Furthermore, the concept of compulsory education for non-European children was rejected on the ground that if compulsory education for all were introduced, the number of Bantu pupils produced would be out of all proportion to the numbers that the Bantu economy could absorb.

(f) As a result of the rigorous enforcement of the Group Areas Act, a number of night schools for adult Africans were closed down.

B. United Nations efforts to combat the policies of apartheid and of racial discrimination in South Africa

635. During the period under review, the policies of apartheid remained a subject of active concern to the Organization and were considered by the General Assembly at its twenty-third session. Furthermore, special attention has been given to the human rights aspects of the problem during the debates at the twenty-fifth session of the Commission on Human Rights. Discussions in these organs revealed the deepest concern over the fact that South Africa not only persists in, but is intensifying the enforcement of, its repugnant policies despite the overwhelming condemnation of these policies and actions by the international community as a crime against humanity. It was also noted that apartheid now extends beyond South Africa's frontiers and is becoming a greater threat to the international community. The majority of Member States observed that the United Nations has not been able, so far, to take sufficiently effective action because a number of States, despite numerous resolutions of the General Assembly, were still maintaining economic, commercial, diplomatic,
cultural, and other ties with the apartheid régime and that some States were continuing various forms of military co-operation. It was generally agreed, however, that the United Nations should relentlessly and with a greater sense of urgency pursue its efforts to eliminate apartheid, racial discrimination and segregation in that country, and that universal implementation of measures adopted by the United Nations organs should continue to stress the importance of disseminating information on the dangers of apartheid and on the United Nations efforts to eliminate apartheid in order to counteract South African propaganda and encourage world public opinion to support more effective international action.

636. At its twenty-third session, in resolution 2396 (XXIII), the General Assembly, inter alia, reaffirmed the urgent necessity of eliminating the policies of apartheid so that the people of South Africa as a whole can exercise their right to self-determination and attain majority rule based on universal suffrage. It reaffirmed its recognition of the legitimacy of the struggle of the people of South Africa for all human rights, and in particular political rights and fundamental freedoms for all the people of South Africa irrespective of race or colour; condemned the actions of those States, particularly the main trading partners of South Africa, and the activities of those foreign financial and other interests, all of which, through their political, economic and military

171/ In accordance with operative paragraph 14 of General Assembly resolution 2307 (XXII) requesting the Secretary-General to "publish periodically information on economic and financial relations between South Africa and other States, "the Secretariat of the United Nations prepared a study on foreign investment in the Republic of South Africa. The study indicated that "the total value of foreign investments in South Africa amounted to $5,313 million at the end of 1966, the most recent year for which data are available. This figure represents an increase of $468 million or 10 per cent over $4,845 million recorded in 1965... The United Kingdom held almost three-fifths of all foreign investments in South Africa at the end of 1966. United States investors, with 13 per cent had the second largest holdings. The investments of French, German (Federal Republic of), Swiss investors and international organizations, represented between 3 and 6 per cent respectively of the total, while investments of Belguiux-Luxembourg accounted for 1 per cent of the total" (ST/PSCA/SER.A/1, p. 2).

172/ An analysis of the strength of the military and police forces in the Republic of South Africa appears in document ST/PSCA/SER.A/3.
collaboration with the Government of South Africa and contrary to the relevant General Assembly and Security Council resolutions, are encouraging that Government to persist in its racial policies; expressed its grave concern over the ruthless persecution of opponents of apartheid under arbitrary laws and the treatment of freedom fighters who were taken prisoner during the legitimate struggle for liberation. The General Assembly condemned the Government of South Africa for its cruel, inhuman and degrading treatment of political prisoners and called once again for the release of all persons imprisoned or restricted for their opposition to apartheid and appeals to all Governments, organizations and individuals to intensify their efforts in order to induce the Government of South Africa to release all such persons and to stop the persecution and ill-treatment of opponents of apartheid. It declared that such freedom fighters should be treated as prisoners of war under international law, particularly the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 and requested the Secretary-General to establish and publicize as widely as possible:

(a) a register of persons who have been executed, imprisoned, placed under house arrest or banning orders or deported for their opposition to apartheid; 
(b) a register of all available information on acts of brutality committed by the Government of South Africa and its officials against opponents of apartheid in prisons. 

The General Assembly further urged the Governments of all States to discourage in their territories, by legislative or other acts, all activities and organizations which support the policies of apartheid as well as any propaganda in favour of the policies of apartheid and racial discrimination and requested all States and organizations to suspend cultural, educational, sporting and other exchanges with the racist régime and with organizations or institutions in South Africa which practise apartheid.

637. At its twenty-fifth session, the Commission on Human Rights examined the report of the Special Rapporteur appointed under resolutions 7 (XXIII) and 3 E (XXIV) of the Commission and adopted three resolutions on the policies of apartheid, racial discrimination and segregation in the area of southern Africa.

173/ Resolutions 3 (XXV), 4 (XXV) and 5 (XXV).
In section I of resolution 5 (XXV), the Commission, inter alia, reaffirmed that the practice of apartheid was a crime against humanity, denounced the laws and practices instituted and imposed to oppress and humiliate the non-white population in southern Africa and condemned the Government of that country for its perpetuation and further intensification of the inhuman policy of apartheid. 633. In section II of resolution 5 (XXV), the Commission, inter alia, appealed to those States which do not maintain relations with the racist Government of the Republic of South Africa and with the racist and illegal minority régime in Southern Rhodesia to desist from entering into such relations, since such action would only aid the apartheid and racial discrimination policies of the racist Government of the Republic of South Africa and the racist and illegal minority régime in Southern Rhodesia; it invited the non-governmental organizations, trade unions, religious organizations, student and other organizations to intensify their valuable efforts in mobilizing public opinion against the repressive legislation, arbitrary imprisonment and other inhuman acts of the racist Government of South Africa, the illegal racist régime established in Namibia and the racist and illegal minority régime in Southern Rhodesia against the opponents of apartheid and racial discrimination; it requested the Secretary-General further to intensify, through all United Nations information media, efforts to inform the peoples of southern Africa of the activities of the United Nations organs to eliminate the policy of apartheid and racial discrimination, laying particular stress on the positive alternative of a multiracial society based on the principles of racial equality.
639. In recent years concern has been expressed in many quarters regarding the danger of the revival of nazism and racial intolerance. Public opinion has been shocked by the activities of groups and organizations propagating nazism, racism, and similar ideologies - activities similar to those of the Nazi party in Germany which led, only a few decades ago, to barbarous acts outraging the conscience of mankind, to heinous violations of human rights, and eventually to a war accompanied by indescribable suffering.

640. In resolution 11 (XXIII) of 17 March 1967, the Commission on Human Rights recommended to the General Assembly that it invite the General Assembly to consider a draft resolution on the subject, "Measures to be taken against nazism and racial intolerance". Even before the Assembly could act upon the draft resolution which the Council proposed in resolution 1211 (XLII) of 29 May 1967, the Sub-Commission on Prevention of Discrimination and Protection of Minorities invited the Special Rapporteur, in resolution 1 (XX), "to give due consideration in his report to the problem of measures which should be taken to halt nazi activities wherever they occur...".

641. In resolution 2331 (XXII) of 18 December 1967, the General Assembly noted the concern which had been expressed regarding recent manifestations of racial intolerance, including the revival of certain groups and organizations professing totalitarian ideologies such as nazism which may embitter relations between peoples and groups, and confirmed that nazism is incompatible with the objectives of the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the United Nations Declaration on the Elimination of all Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, and other international instruments. The Assembly, recognizing that measures should be taken to halt nazi activities wherever they occur, resolutely condemned any ideology, including nazism, which is based on racial intolerance and terror, as
a gross violation of human rights and fundamental freedoms and of the purposes and principles of the Charter of the United Nations; and called upon all States to take immediate and effective measures against such manifestations of nazism and racial intolerance.

642. The International Conference on Human Rights, held at Teheran, Iran, from 22 April to 13 May 1963, likewise expressed, in resolution II, its strong condemnation of nazism, neo-nazism, racism and all similar ideologies and practices based on terrorism and racial intolerance as a blatant violation of the basic human rights and freedoms and of the principles of the United Nations Charter, the development of which might jeopardize the peace and security of peoples. The Conference urged all States, with due regard to the principles contained in the Universal Declaration of Human Rights, to declare illegal and prohibit nazi and racist organizations and groups and any organized or other activity based on nazi ideology and any similar ideology that is based on terrorism and racial intolerance, and to declare participation in such organizations and activities to be a criminal act punishable by law. The Conference called upon all States and peoples, and national and international organizations, to take all necessary measures for the immediate and final eradication of nazi and any other similar ideology and practice based on terrorism and racial intolerance, and suggested that the General Assembly and other competent organs of the United Nations keep the question of measures to be taken against nazism and racial intolerance under continuing review so that appropriate measures can be taken as promptly as required.

643. The Commission on Human Rights, in resolution 15 (XXIV) of 8 March 1968, requested the Sub-Commission, after examining the present study, to submit recommendations to it on measures which could be taken to halt nazi activities wherever they occur.

644. On the proposal of the Commission, approved by the Economic and Social Council, the General Assembly, by resolution 2438 (XXIII) of 19 December 1968, took note in particular of resolution II of the International Conference on Human Rights (see para. 4 above), called upon all States to take without delay, with due regard to the principles contained in the Universal Declaration of Human Rights, legislation and other positive measures to outlaw groups which were
disseminating propaganda for nazism, the policy of apartheid and other forms of racial intolerance, and requested the Secretary-General to submit to it a survey of information available on international instruments, legislation, and other measures taken or envisaged, at the national and international levels, with a view to halting nazi and similar activities, such as apartheid.

645. In resolution 10 (XXV) of 7 March 1969, the Commission on Human Rights noted with satisfaction that the Sub-Commission on Prevention of Discrimination and Protection of Minorities had decided to deal with the question of the revival of nazism and to submit recommendations on measures which should be taken to halt nazi activities wherever they occur, requested the Sub-Commission, taking into account the debate on this matter which had taken place at the Commission's twenty-fifth session, to deal with the danger of the revival of nazism and with the way in which it may affect the existence and safeguarding of fundamental human rights and freedoms. The Commission invited the Governments of Member States and organizations possessing information on the subject to send such information to the Special Rapporteur, and requested the Secretary-General to submit to the Commission information, prepared in accordance with General Assembly resolution 2438 (XXIII), on international instruments, legislation and other measures taken or envisaged, both at the national and international levels, with a view to halting racism, nazism and similar activities, such as apartheid. The Commission also proposed that the Economic and Social Council should recommend to the General Assembly the adoption of a draft resolution relating to "Measures to be taken against nazism and racial intolerance" (E/4621, chapter XIX, draft resolution IV).

646. In resolution 1417 (XLVI) the Economic and Social Council recommended to the General Assembly the adoption of the draft resolution which had been formulated by the Commission on Human Rights. In the draft resolution it is proposed that the General Assembly should renew its strong condemnation of racism, nazism, apartheid and all other totalitarian ideologies and practices, and urgently call upon those States concerned which have not yet done so to take immediate and effective measures including legislative measures, with due regard to the principles contained in the Universal Declaration of Human Rights, for the
complete prohibition of nazi, neo-nazi and racist organizations and groups and for their prosecution in the courts. The General Assembly would call upon all States to take effective measures to inculcate the Principles and Purposes of the United Nations Charter and the Universal Declaration of Human Rights in young people, and in that way to protect them against any influence of nazism and similar ideologies and practices; and would call upon all States and national and international organizations to set aside a day, to be observed each year on an appropriate date to be determined by each State and organization, in memory of the victims of the struggle against nazism and similar ideologies and practices based on terror and racial intolerance. It would recommend the Governments of all States to promote the publication and dissemination of material connected with United Nations efforts to combat nazism in the past and material publicizing the danger of the present revival of nazism in a number of countries; and would request the Governments of all States Members of the United Nations and members of the specialized agencies to submit to the Secretary-General, for consideration at the twenty-fifth session of the General Assembly, information on the measures they have adopted and are adopting under the resolution.

647. The Special Rapporteur, in preparing the present chapter, carefully examined all the resolutions referred to above. He took note in particular of the concern expressed by the Commission on Human Rights, in resolution 10 (XXV), "at the fact that the revival of groups and organizations professing totalitarian and racist ideologies promotes the criminal policy of apartheid, colonialism and racial intolerance", and of the request made by the Commission to the Sub-Commission on Prevention of Discrimination and Protection of Minorities to deal "with the danger of the revival of this ideology and with the way in which it may affect the existence and safeguarding of fundamental human rights and freedoms".

648. The Special Rapporteur learned that the Secretary-General had sent a circular note verbale to Member States on 20 March 1969, requesting them to supply him with the information referred to in General Assembly resolution 2438 (XXIII) by 30 June 1969; and that he had sent another note verbale to Member States on 18 April 1969, requesting them to supply him with the information referred to in resolution 10 (XXV) of the Commission on Human Rights, also by
30 June 1969. In addition, on 7 May 1969, he had sent letters to the heads of the competent specialized agencies, requesting them to supply the information referred to in Commission resolution 10 (XXV) by 30 June 1969.

649. None of the requested information had been received at the time of the preparation of the present report; indeed, the Special Rapporteur had practically no information on the revival of nazism at his disposal for the preparation of the present report which he did not have at the time he prepared his draft report in 1968. The Special Rapporteur hopes however that a great deal of new information will be available before the twenty-second session of the Sub-Commission, either from Governments or from the specialized agencies and organizations concerned, and he has requested the Secretary-General to consider the possibility of circulating such information to the Sub-Commission, upon receipt, in the form of addenda to the present report.

650. In these circumstances it was not possible for the Special Rapporteur to prepare a definitive chapter of his study regarding the danger of the revival of nazism and racial intolerance. He hopes to include such a chapter in the final report which he will prepare in 1970.

651. Nevertheless, in order to assist the Sub-Commission as much as possible in carrying out its mandate with regard to the revival of nazism and racial intolerance, the Special Rapporteur has endeavoured to deal with the problem on the basis of information available to him. Bearing in mind the discussion relating to chapter X of his draft report which took place at the twenty-first session of the Sub-Commission, the Special Rapporteur has adopted an approach to the problem in the present chapter which is somewhat different from that adopted in the draft report.

652. In effect, the present chapter begins with a brief history of the origin and goals of the Nazi party of Hitler, and goes on to analyse the theory and practices of nazism in the light of the principles and provisions enshrined in the Universal Declaration of Human Rights, such as the principle of equal treatment, the right to life, liberty and security of person; the right to physical integrity, freedom of movement; freedom of thought, conscience and religion; the right to form and join trade unions, and the right to education, in order to reach the inevitable conclusion that nazi ideology is incompatible with those principles and provisions.
653. Regarding the danger of the revival of nazism and racial intolerance, reference is made to situations existing in various countries as is reported by authoritative sources and to the measures which have been taken or are being taken, to correct those situations.

654. With regard to the Federal Republic of Germany, the present chapter includes a summary of the charges which have been made by some countries and the replies to such charges made by the Government of the Federal Republic and other Governments.

655. The present chapter has been included in the study at this stage for the purpose of stimulating further discussion in the Sub-Commission which will provide guidance for the Special Rapporteur in preparing the part of his final report dealing with the danger of the revival of nazism and racial intolerance. However, it is essentially of a provisional character, and its definitive form will take shape only after the information requested of Governments and organizations by the Secretary-General has been made available.

656. With regard to conclusions in this matter, those presented in the 1968 draft report have been maintained for the time being. It must be stressed that at this stage they are also provisional in character.

**The origin and aims of nazism**

657. In order to understand what nazism is, and why nazism and similar ideologies based on terrorism and racial intolerance are incompatible with the purposes and principles of the United Nations Charter, the Universal Declaration of Human Rights, the Genocide Convention, and the Declaration and Convention on the Elimination of All Forms of Racial Discrimination, it is necessary to recall how these ideologies developed in the past, how they gave rise to serious violations of human rights, and how the failure to eradicate them promptly and with finality led ultimately to war and barbarous acts, including genocide.

658. Fascist movements emerged with varying success in various parts of Europe between the two World Wars. They were notably successful where certain conditions were present: economic distress, spiritual confusion, national resentments and weak government. Their success stemmed in part from their appeal to extreme and exclusive nationalism and chauvinist expansionism, and in part from their "revolutionary" call to the masses.
659. Nazism was the German variant of fascism. Like Benito Mussolini's totalitarian rule in Italy, nazism was anti-democratic, totalitarian and imperialistic. Both proclaimed themselves the implacable enemies of liberalism and democracy, of individual rights and of international co-operation; both stressed the subordination of the individual to the State, the inequality of men and races, the right of the strong to rule the weak, and blind obedience to the leader. Nazism, while exemplifying the general characteristics of fascism, had three distinctive features by which it will be most particularly remembered. One was its constitutional origin and popular support: it was the first modern totalitarian régime to be set up under the existing Constitution, as then interpreted and subsequently approved by the parliamentary body of the nation, although the circumstances of that approval were open to serious question later on. The second was its unbridled and unprincipled use of racial intolerance and discrimination as a political tool, as an instrument of attack, intimidation, and blackmail, and as a poisonous weapon enabling the followers of Hitler to extend their own psychological abnormality and morbidity - their deep-rooted pervasion of sadism - to its ultimate limit. The third was its use of terrorism without scruple to sway opinion, to get rid of unwanted national leaders and institutions, and to carry out acts of aggression.

660. The origin and aims of the Nazi party in Germany are summarized authoritatively in the Judgement of the International Military Tribunal, established on 8 August 1945 by the Government of the United Kingdom and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics for the trial of war criminals whose offenses had no particular geographical location, as follows:

"On 5 January 1919, not 2 months after the conclusion of the Armistice which ended the First World War, and 6 months before the signing of the peace treaties at Versailles, there came into being in Germany a small political party called the German Labor Party. On the 12th September 1919, Adolf Hitler became a member of this party, and at the first public meeting held in Munich, on 24 February 1920, he announced the party's program. That program, which remained unaltered until the party was dissolved in 1945, consisted of 25 points, of which the following 5 are of particular interest on points, of which the following 5 are of particular interest on account of the light they throw on the matters with which the Tribunal is concerned:

/...
'Point 1. We demand the unification of all Germans in the Greater Germany, on the basis of the right of self-determination of peoples.

'Point 2. We demand equality of rights for the German people in respect to the other nations; abrogation of the peace treaties of Versailles and St. Germain.

'Point 3. We demand land and territory for the sustenance of our people, and the colonization of our surplus population.

'Point 4. Only a member of the race can be a citizen. A member of the race can only be one who is of German blood, without consideration of creed. Consequently no Jew can be a member of the race...

'Point 22. We demand abolition of the mercenary troops and formation of a national army.'

"Of these aims, the one which seems to have been regarded as the most important, and which figured in almost every public speech, was the removal of the 'disgrace' of the Armistice, and the restrictions of the peace treaties of Versailles and St. Germain. In a typical speech at Munich on the 13th April 1923, for example, Hitler said with regard to the Treaty of Versailles:

"The treaty was made in order to bring twenty millions Germans to their deaths, and to ruin the German nation... At its foundation our movement formulated three demands.

'1. Setting aside of the Peace Treaty.
'2. Unification of all Germans.
'3. Land and soil to feed our nation..."

"The demand for the unification of all Germans in the Greater Germany was to play a large part in the events preceding the seizure of Austria and Czechoslovakia; the abrogation of the Treaty of Versailles was to become a decisive motive in attempting to justify the policy of the German Government; the demand for land was to be the justification for the acquisition of 'living space' at the expense of other nations; the expulsion of the Jews from membership of the race of German blood was to lead to the atrocities against the Jewish people; and the demand for a national army was to result in measures of rearmament on the largest possible scale, and ultimately to war.

"On the 29th July 1921, the party which had changed its name to National Sozialistische Deutsche Arbeiter Partei (NSDAP) was reorganized, Hitler becoming the first 'Chairman'. It was in this year that the Sturmabteilung or SA was founded, with Hitler at its head, as a private..."
paramilitary force, which allegedly was to be used for the purpose of protecting NSDAP leaders from attack by rival political parties, and preserving order at NSDAP meetings, but in reality was used for fighting political opponents on the streets. In March 1923, the defendant Goering was appointed head of the SA.

"The procedure within the party was governed in the most absolute way by the 'leadership principle' (Fuehrerprinzip).

"According to the principle, each Fuehrer has the right to govern, administer, or decree, subject to no control of any kind and at his complete discretion, subject only to the orders he received from above.

"This principle applied in the first instance to Hitler himself as the leader of the party, and in a lesser degree to all other party officials. All members of the party swore an oath of 'eternal allegiance' to the leader.

"There were only two ways in which Germany could achieve the three main aims above-mentioned - by negotiation or by force. The 25 points of the NSDAP program do not specifically mention the methods on which the leaders of the party proposed to rely, but the history of the Nazi regime shows that Hitler and his followers were only prepared to negotiate on the terms that their demands were conceded, and that force would be used if they were not.

"On the night of the 8th November 1923, an abortive putsch took place in Munich. Hitler and some of his followers burst into a meeting in the Euergerbrau Cellar, which was being addressed by the Bavarian Prime Minister Kahr, with the intention of obtaining from him a decision to march forthwith on Berlin. On the morning of the 9th November, however, no Bavarian support was forthcoming, and Hitler's demonstration was met by the armed forces of the Reichswehr and the police. Only a few volleys were fired; and after a dozen of his followers had been killed, Hitler fled for his life, and the demonstration was over. The defendants Streicher, Frick, and Hess all took part in the attempted rising. Hitler was later tried for high treason, and was convicted and sentenced to imprisonment. The SA was outlawed. Hitler was released from prison in 1924 and in 1925 the Schutzstaffel, or SS, was created, nominally to act as his personal bodyguard, but in reality to terrorize political opponents. This was also the year of the publication of 'Mein Kampf', containing the political views and aims of Hitler, which came to be regarded as the authentic source of Nazi doctrine.

"In the 8 years that followed the publication of 'Mein Kampf', the NSDAP greatly extended its activities throughout Germany, paying particular attention to the training of youth in the ideas of National Socialism. The first Nazi youth organization had come into existence in 1922, but it was in 1925 that the Hitler Jugend was officially recognized by the NSDAP. In 1931 Baldur von Schirach, who had joined the NSDAP in 1925, became Reich youth leader of the NSDAP.
"The party exerted every effort to win political support from the German people. Elections were contested both for the Reichstag and the Landtage. The NSDAP leaders did not make any serious attempt to hide the fact that their only purpose in entering German political life was in order to destroy the democratic structure of the Weimar Republic, and to substitute for it a National Socialist totalitarian régime which would enable them to carry out their avowed policies without opposition. In preparation for the day when he would obtain power in Germany, Hitler in January 1929 appointed Heinrich Himmler as Reichsfuehrer SS with the special task of building the SS into a strong but elite group which would be dependable in all circumstances.

"On the 30th January 1933, Hitler succeeded in being appointed Chancellor of the Reich by President von Hindenburg. The defendants Goering, Schacht, and von Papen were active in enlisting support to bring this about. Von Papen had been appointed Reich Chancellor on the 1st June 1932. On the 14th June he rescinded the decree of the Bruening Cabinet of the 13th April 1932, which had dissolved the Nazi paramilitary organizations, including the SA and SS. This was done by agreement between Hitler and von Papen, although von Papen denies that it was agreed as early as the 28th May, as Dr. Hans Volz asserts in 'Dates from the History of the NSDAP'; but that it was the result of an agreement was admitted in evidence by von Papen.

"The Reichstag elections of the 31st July 1932 resulted in a great accession of strength to the NSDAP, and von Papen offered Hitler the post of Vice Chancellor, which he refused, insisting upon the Chancellorship itself. In November 1932 a petition signed by leading industrialists and financiers was presented to President Hindenburg, calling upon him to entrust the Chancellorship to Hitler; and in the collection of signatures to the petition Schacht took a prominent part.

"The election of the 6th November, which followed the defeat of the Government, reduced the number of NSDAP members, but von Papen made further efforts to gain Hitler's participation, without success. On the 12th November Schacht wrote to Hitler:

'I have no doubt that the present development of things can only lead to your becoming Chancellor. It seems as if our attempt to collect a number of signatures from business circles for this purpose was not altogether in vain...'

"After Hitler's refusal of the 16th November, von Papen resigned, and was succeeded by General von Schleicher; but von Papen still continued his activities. He met Hitler at the house of the Cologne banker von Schroeder on the 4th January 1933, and attended a meeting at the defendant Ribbentrop's house on the 22nd January, with the defendant Goering and others. He also had an interview with President Hindenburg on the 9th January, and from the 22nd January onward he discussed officially with Hindenburg the formation of a Hitler Cabinet.
"Hitler held his first Cabinet meeting on the day of his appointment as Chancellor, at which the defendants Goering, Frick, Funk, von Neurath, and von Papen were present in their official capacities. On the 28th February 1933, the Reichstag building in Berlin was set on fire. This fire was used by Hitler and his Cabinet as a pretext for passing on the same day a decree suspending the constitutional guarantees of freedom. The decree was signed by President Hindenburg and countersigned by Hitler and the defendant Frick, who then occupied the post of Reich Minister of the Interior. On the 5th March, elections were held, in which the NSDAP obtained 288 seats of the total of 647. The Hitler Cabinet was anxious to pass an "Enabling Act" that would give them full legislative powers, including the power to deviate from the constitution. They were without the necessary majority in the Reichstag to be able to do this constitutionally. They therefore made use of the decree suspending the guarantees of freedom and took into so-called protective custody a large number of Communist deputies and party officials. Having done this, Hitler introduced the 'Enabling Act' into the Reichstag, and after he had made it clear that if it was not passed, further forceful measures would be taken, the act was passed on the 24th March 1933."

The use of terrorism as a weapon to remove opposition

661. Deliberate terrorism was the weapon used by the nazis to paralyse potential opposition and thereby to consolidate their power. Ruthless campaigns were directed against other political parties, against the trade unions, and against the churches. Persecution of the Jews became official State policy, and by grouping together as "Jews", or persons influenced by Jews or Marxists, everyone who opposed their wishes or aroused their wrath, they reduced a wide variety of adversaries to a state of impotence. On 26 April 1933, the Gestapo was founded as a secret police, the main task of which was to eliminate political opponents of the nazis. From that time onwards "spontaneous" riots and demonstrations were planned and organized by the nazis with the approval and active participation of the German police, with a view to terrorizing any opposition.

662. Typical of the methods used by the nazis was the massacre of 30 June 1934, which has become known as the "Roehm Purge" or the "blood bath". On that day Roehm, the Chief of Staff of the SA (an organization of about 4.5 million men who acted as the "strong arm of the Nazi party"), was murdered by Hitler's orders, and the "Old Guard" of the SA was massacred without trial and without warning.

The opportunity was taken to murder at the same time a large number of people who at one time or another had opposed Hitler. The ostensible ground for the murder of Roehm was that he was plotting to overthrow Hitler. Whether or not this was so, the Cabinet approved Hitler's action and described it as "legitimate self-defense by the State". Shortly thereafter when Hindenburg died, Hitler became both Reich President and Chancellor, and with 38 million Germans expressing their approval in elections held in a country completely in the power of the Nazis and their totalitarian régime, Germany accepted nazism with all its methods of terror and its cynical and open denial of the rule of law.

Nazi practices negating human rights and fundamental freedoms

663. Apart from the policy of crushing potential opponents by terrorism, the nazis took active steps to increase their power over the German population. As described in the judgement of the International Military Tribunal:

"The greatest emphasis was laid on the supreme mission of the German people to lead and dominate by virtue of their Nordic blood and racial purity; and the ground was thus being prepared for the acceptance of the idea of German world supremacy.

"Through the effective control of the radio and the Press, the German people, during the years which followed 1933, were subjected to the most intensive propaganda in furtherance of the régime. Hostile criticism, indeed criticism of any kind, was forbidden, and the severest penalties were imposed on those who indulged in it.

"Independent judgement, based on freedom of thought, was rendered quite impossible." 2/

664. To achieve their goals, the nazis committed numerous inhumane acts such as the murder, extermination, enslavement, and deportation of civilians, and persecution on political, racial and religious grounds. Moreover, after the outbreak of war in 1939 they violated most of the laws and customs of war recognized by civilized nations and covered by the Hague Convention of 1907 and the Geneva Conventions of 1929, including murder, ill-treatment and deportation of slave labour of civilian populations of an occupied territory, murder and ill-treatment of prisoners of war, killing of hostages, plunder of private and public property,

2/ Ibid., p. 12.
wanton destruction of cities, and other devastation not justified by military necessity.

665. The procedures under which the Nazis operated were diametrically opposed to the principles of democracy, and Nazi leaders were contemptuous of democratic institutions. The aim of the Nazis was to establish a totalitarian State exercising complete control over every phase of individual activity, rejecting the doctrine of individual political equality and any guarantee of individual liberty. Propaganda Minister Goebbels frankly stated, in a lecture on "The Nature and Form of National Socialism" delivered in 1934, that the Nazis had used the privileges of democracy in order to crush the democratic system and to establish a régime based on principles directly opposed to democracy: 3/

"If democracy permitted us to use democratic methods in the time of our opposition, it was because this was necessary under a democratic system. We National Socialists have never maintained that we were representative of a democratic viewpoint, but we have openly declared that we only make use of democratic means in order to gain power, and that after the seizure of power we would ruthlessly deny to our opponents all those means which they had granted to us during the time of our opposition..." 3/

666. After the defeat of the Nazis, it was necessary to eradicate irretrievably the authoritarian, anti-democratic and militaristic tradition which they had established, since it was clear that that tradition had the potential to destroy the very foundations of society. The Potsdam Agreement of 2 August 1945 called for the extirpation of German militarism and nazism with a view to ensuring that Germany never again would threaten her neighbours or the peace of the world. According to the Agreement, the occupation of Germany was to be guided by the purpose "to destroy the National Socialist Party and its affiliated and supervised organizations, to dissolve all nazi institutions, to ensure that they are not revived in any form, and to prevent all nazi and militarist activity or propaganda." 4/


667. Shortly thereafter the Charter of the United Nations was adopted, reaffirming "faith in fundamental human rights, in the dignity and worth of the human person", and seeking to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law could be maintained. On 11 December 1946 the General Assembly of the United Nations proclaimed that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world, and on 9 December 1948 the Convention on the Prevention and Punishment of the Crime of Genocide was approved by the General Assembly and proposed for signature and ratification or accession.

668. On 10 December 1948 the Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly, recognizing the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world and setting out principles "as a common standard of achievement for all peoples and all nations". On 20 November 1963 the General Assembly solemnly affirmed the necessity of speedily eliminating racial discrimination throughout the world, in all its forms and manifestations, and of securing understanding of and respect for the dignity of the human person, and proclaimed the United Nations Declaration on the Elimination of All Forms of Racial Discrimination. On 21 December 1965 the General Assembly, desiring to implement the principles embodied in the Declaration, adopted and opened for signature and ratification the International Convention on the Elimination of All Forms of Racial Discrimination. And on 26 November 1968 the General Assembly, noting that the application to war crimes and crimes against humanity of the rules of municipal law relating to the period of limitation for ordinary crimes is a matter of serious concern to world public opinion since it prevents the prosecution and punishment of persons responsible for those crimes, affirmed through the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity the principle that there is no period of limitation for war crimes and crimes against humanity.

669. Measured by the principles and provisions set out in these instruments, nazism is revealed to have been the antithesis of everything the United Nations stands for in respect of human rights and fundamental freedoms. For this reason
any rebirth of nazism, anywhere in the world - and even today gross violations of human rights occur which are reminiscent of nazism - would give serious cause for alarm.

670. A review of the main principles and practices of nazism, in the light of the standards proclaimed in the Universal Declaration of Human Rights, will provide some indication of the danger which a rebirth of nazism could present. Such a review may also help to make possible the identification of similar movements in the present and future, from the first moment of their appearance.

HUMAN DIGNITY

671. The preamble of the Universal Declaration of Human Rights refers to recognition of the inherent dignity of all members of the human family as one of the foundations of freedom, justice and peace in the world.

672. The nazis categorically rejected any concept of man's dignity as a human personality. In their concentration camps in particular, man was reduced to a mere number, tattooed on his body. His dignity and self-respect were killed by systematic degradation, even before his body met its death. Humans were effectively transformed into non-humans, not because of any personal guilt but solely to please the private whims of their nazi masters.

673. One of the primary objectives of the concentration camps was the elimination of human lives by the arbitrary and capricious methods employed in handling the prisoners. Inmates of the camps were murdered at random, often in large groups and without warning. Epidemics were permitted to run rampant. Starvation rations, inadequate clothing, medical neglect, beatings and forced suicides all took their toll.

674. Even after death, respect for human dignity did not exist. The skin of men and women was tanned and used for various purposes. Soap was produced from human fat. And human bones were used to produce cheap fertilizer.

THE PRINCIPLE OF EQUAL TREATMENT

675. Articles 2 and 7 of the Universal Declaration of Human Rights provide for recognition and protection of the principle of equal treatment; article 2 forbids "distinction of any kind, such as race, colour, sex, language, religion, political
or other opinion, national or social origin, property, birth or other status", while article 7 provides for equality before the law and equal protection of the law. In particular, article 7 states that "all are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination".

676. As an ideology, nazism was directly opposed to the principle of equal treatment. Under Hitler, the nazis proclaimed and lived by their own illogical and unscientific principle of racial inequality, and perfected the use of racism as an instrument of attack, intimidation, blackmail and terror. It did not matter to them that their racist philosophy was based upon a series of irrational presumptions; by discouraging any dispassionate analysis of these presumptions, by appealing to their followers to accept them in blind faith and to act out of compulsion anchored not in thought but in emotion, by systematically infusing their poisonous doctrine into every medium of communication, they stirred up racial hatred reaching to the point of mass hysteria.

677. In nazi doctrine each race was said to have characteristics that could be scientifically determined: on this basis, people were classified into superior and inferior races. The highest racial type was said to be the Nordic or Germanic "Aryan"; Jews and black persons were consigned to the bottom rung of the ladder. Intermarriage of a superior with an inferior racial type was said to contribute to the deterioration of the superior race. Jews, according to the doctrine, were the greatest threat to Aryan racial purity. Their influence was represented as a consistently malignant and destructive force. Marxism, international finance and Freemasonry were grouped together as Jewish devices to gain world domination. The "international Jewry" was said to be responsible for the humiliation of Germany, and German Jews were blamed for the defeat of their country in 1918. Germans, on the other hand, were said to form "the highest human species given by the grace of the Almighty to this earth". As members of the "master race", they were destined to govern the inferior races and to live on their labour. However, even the Germans were to be ruled by a hierarchy of leaders

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5/ The "master race" theory, i.e., the doctrine of Aryan superiority over all other races, and the right of the Germans by virtue of this superiority to dominate and use other people for their own ends, is set out by Hitler in the second chapter of book 1 of Mein Kampf.
who possessed the desirable racial characteristics to the highest degree; and these leaders were to be headed by a single infallible supreme Führer.

678. By making "purity of blood" the ultimate source of authority in every sphere of German life, the nazis provided new assurance, gratification and security to threatened status-conscious groups in German society and laid the groundwork for a bid for power by "little men" who did not have material possessions, station, or title. By grouping together as Jews or marxists a wide variety of adversaries - everyone who opposed their wishes or aroused their wrath - they reduced that opposition to a state of impotence. By preaching the solidarity of the German nation as a "racial community" and by declaring all Jews - whatever their background or environment - to be fundamentally different from the Germans by virtue of their "race", they were able to aspire to perpetual unchallenged rule of Germany.

679. The anti-Jewish policy of the nazis was formulated in point 4 of the party programme which declared:§/ "Only a member of the race can be a citizen. A member of the race can be only one who is of German blood, without consideration of creed. Consequently, no Jew can be a member of the race". Other points of the programme declared that Jews should be treated as foreigners, that they should not be permitted to hold public office, that they should be expelled from the Reich if it were impossible to nourish the entire population of the State, that they should be denied any further immigration into Germany, and that they should be prohibited from publishing newspapers in Germany. The nazis preached these doctrines constantly, their publications disseminated hatred of the Jews, and their leaders held the Jews up to public ridicule and contempt.

680. When the nazis came into power in 1933, their persecution of the Jews was intensified and indeed became official State policy. On 1 April 1933 a boycott of Jewish enterprises was approved by the nazi cabinet, and during the following years a series of anti-Semitic laws was passed, restricting the activities of Jews in the civil service, the legal profession, in journalism and in the armed forces. In September 1935 the so-called Nurnberg laws were adopted, depriving Jews of German citizenship. By the autumn of 1938, the nazi policy had reached

§/ See paragraph 646 above.
the stage where it was directed towards the complete exclusion of Jews from German life. Pogroms were organized which included the burning and demolishing of synagogues, the looting of Jewish businesses and the arrest of prominent Jewish businessmen. A collective fine of 1 billion marks was imposed on the Jews, the seizure of Jewish assets was authorized, and the movement of Jews was restricted by regulations to specified districts and hours. The creation of ghettos was carried out on an extensive scale, and Jews were compelled to wear a yellow star on the breast and back.

681. The racial theories of nazism were applied not only to Jews but also to many who obviously were not Jews. These included Christians who did not accept the concept of "positive Christianity" - i.e., Christianity having a positive attitude towards the nazis and prepared to affirm nazi ideals and principles without qualification. They also included Gypsies, Jehovah's Witnesses, and other small groups. The fact that "the Jews" could be "discovered" by the nazis behind almost every adversary - whether in Germany itself, in Czechoslovakia, in Poland, in the United Kingdom, in the United States, or in the Soviet Union - enabled them to direct the poison of racial discrimination and intolerance against any who opposed them, and to use their "discovery" as a pretext for wanton persecution, aggression and destruction.

682. At the same time, the "master race" theory enabled the nazis to belittle the essential significance of foreign citizenship and to claim as "Germans" everyone of German "blood" who lived in a non-German land. These "racial brethren" and "national comrades" were encouraged to return to Germany, the "true homeland". If this could not be arranged, every effort was exerted to enlist their loyalty to, and activity on behalf of, the German homeland. Expressions of solidarity with the whole body of racial comrades living outside the borders of Germany were among the common-places of nazi thought and propaganda. To this solidarity, the nazis also added protection as a right and duty of the Reich. In return for such solidarity and protection, the nazis demanded complete loyalty and allegiance.

683. There is no doubt whatsoever that political opponents of the nazis were murdered in Germany before the war, and that many of them were kept in
concentration camps in circumstances of great horror and cruelty. According to the International Military Tribunal:

"The policy of terror was certainly carried out on a vast scale, and in many cases was organized and systematic. The policy of persecution, repression and murder of civilians in Germany before the war of 1939, who were likely to be hostile to the Government, was most ruthlessly carried out." 7/

684. The murder and ill-treatment of civilian populations reached its height in the treatment of citizens of the Soviet Union and of Poland by the nazis during the war period. The International Military Tribunal reported that

"... Some 4 weeks before the invasion of Russia began, special task forces of the SIPO and SD, called Einsatz groups, were formed on the orders of Himmler for the purpose of following the German armies into Russia, combating partisans and members of resistance groups, and exterminating the Jews and Communist leaders and other sections of the population. In the beginning, four such Einsatz groups were formed - one operating in the Baltic States, one toward Moscow, one toward Kiev and one operating in the south of Russia... The evidence shows that at any rate in the east, the mass murders and cruelties were not committed solely for the purpose of stamping out opposition or resistance to the German occupying forces. In Poland and the Soviet Union these crimes were part of a plan to get rid of whole native populations by expulsion and annihilation, in order that the territory could be used for colonization by Germans ... In Poland the intelligensia had been marked down for extermination as early as September 1939, and in May 1940 the defendant Frank wrote in his diary of 'taking advantage of the focusing of world interest on the western front, by wholesale liquidation of thousands of Poles, first leading representatives of the Polish intelligentsia...'. So successfully did the Germans carry out this policy in Poland that by the end of the war one third of the population had been killed, and the whole of the country devastated... It was the same story in the occupied area of the Soviet Union...." 8/

Hitler's plan for the exploitation of the Soviet population and territory included among other things the evacuation of the inhabitants of the Crimea and its settlement by the Germans. A somewhat similar fate was planned for Czechoslovakia; the intelligentsia were to be "expelled", but the rest of the population was to be Germanized rather than expelled or exterminated, since there was a shortage

7/ Nazi Conspiracy and Aggression, op. cit., p. 84.
8/ Ibid., p. 65.
of Germans to replace them. In the west, the population of the French province of Alsace were the victims of a German "expulsion action". Between July and December 1940, 105,000 Alsatians were either deported from their homes or prevented from returning to them.

PROTECTION AGAINST ARBITRARY DEPRIVATION OF LIBERTY

685. Article 3 of the Universal Declaration of Human Rights proclaims the right of everyone to life, liberty and security of person; article 4 prohibits slavery and the slave trade in all their forms; and article 9 provides that no one shall be subjected to arbitrary arrest, detention or exile.

686. The nazis denied all these rights to the civilian populations of territories which they occupied, as well as to prisoners of war, and often even to German citizens. Persons suspected of opposing their policies were subjected to arrest and interrogation by the Gestapo, the State security police, and also by the SD, the nazi's own security agency. "Third degree" methods of questioning were authorized, when preliminary investigation had indicated that a person could supply information on important matters, in the case of "Communists, Marxists, Jehovah's Witnesses, saboteurs, terrorists, members of resistance movements, parachute agents, anti-social elements, and Polish and Russian loafers and tramps". Hostages were taken in order to prevent and punish civil disorder. Mass murders were carried out in various ghetto areas, and mass executions in a number of cities and towns. Soldiers who surrendered often were shot immediately, prisoners who attempted to escape were summarily executed, and Allied airmen forced down on German soil were lynched by the civilian population with the connivance of the police.

687. More than 5 million foreigners were sent to Germany from their homelands to serve as slave-labour in industry and agriculture under terrible conditions of cruelty and suffering. Conscription of labour was accomplished in many cases by violent methods, including man-hunts in the streets, in motion picture houses,
in churches and in private homes. In some cases villages were burned down and the entire population captured for use as slave labour. According to the Opinion and Judgement of the International Military Tribunal:

"... workers destined for the Reich were sent under guard to Germany, often packed in trains without adequate heat, food, clothing, or sanitary facilities...... the treatment of the laborers in Germany in many cases was brutal and degrading....... punishments of the most cruel kind were inflicted on the workers. Theoretically at least the workers were paid, housed, and fed by the DAF, and even permitted to transfer their savings and to send mail and parcels back to their native country; but restrictive regulations took a proportion of the pay; the camps in which they were housed were unsanitary; and the food was very often less than the minimum necessary to give the workers strength to do their jobs. In the case of Poles employed on farms in Germany, the employers were given authority to inflict corporal punishment and were ordered, if possible, to house them in stables, not in their own homes. They were subject to constant supervision by the Gestapo and the SS, and if they attempted to leave their jobs they were sent to correction camps or concentration camps. The concentration camps were also used to increase the supply of labour. Concentration camp commanders were ordered to work their prisoners to the limits of their physical power. During the latter stages of the war the concentration camps were so productive in certain types of work that the Gestapo was actually instructed to arrest certain classes of laborers so that they could be used in this way. Allied prisoners of war were also regarded as a possible source of labor. Pressure was exercised on noncommissioned officers to force them to consent to work, by transferring to disciplinary camps those who did not consent. Many of the prisoners of war were assigned to work directly related to military operations, in violation of Article 31 of the Geneva Convention. They were put to work in munition factories and even made to load bombers, to carry ammunition and to dig trenches, often under the most hazardous conditions. This condition applied particularly to the Soviet prisoners of war.....

"Reference should also be made to the policy which was in existence in Germany by the summer of 1940, under which all aged, insane, and incurable people, 'useless eaters', were transferred to special institutions where they were killed, and their relatives informed that they had died from natural causes. The victims were not confined to German citizens, but included foreign laborers, who were no longer able to work, and were therefore useless to the German war machine. It has been estimated that at least some 275,000 people were killed in this manner in nursing homes, hospitals, and asylums, which were under the jurisdiction of the defendant Frick, in his capacity as Minister of the Interior. How many foreign workers were included in this total it has been quite impossible to determine." 9/

9/ Ibid., pp. 75-77.
688. Article 3 of the Universal Declaration of Human Rights proclaims that everyone has the right to life, liberty and security of person, while article 5 provides that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

689. In attempting to carry out their plans for what they termed the "final solution" of the Jewish question in Europe, the Nazis went even beyond the planned and systematic persecution which had gradually increased in intensity between 1933 and 1941. This "final solution" meant the extermination of the Jews, which Hitler began to threaten as early as 1939. By the summer of 1941 it had become official policy, executed by a special section of the Gestapo. The methods employed included massacres of entire communities, and systematic extermination in concentration camps. According to the International Military Tribunal:

"... Part of the 'final solution' was the gathering of Jews from all German occupied Europe in concentration camps. Their physical condition was the test of life or death. All who were fit to work were used as slave labor in the concentration camps; all who were not fit to work were destroyed in gas chambers and their bodies burnt. Certain concentration camps such as Treblinka and Auschwitz were set aside for this main purpose. With regard to Auschwitz, the Tribunal heard the evidence of Hoess, the commandant of the camp from 1 May 1940 to 1 December 1943. He estimated that in the camp of Auschwitz alone in that time 2,500,000 persons were exterminated, and that a further 500,000 died from disease and starvation. Hoess described the screening for extermination by stating in evidence -

'We had two SS doctors on duty at Auschwitz to examine the incoming transports of prisoners. The prisoners would be marched by one of the doctors who would make spot decisions as they walked by. Those who were fit for work were sent into the camp. Others were sent immediately to the extermination plants. Children of tender years were invariably exterminated since by reason of their youth they were unable to work. Still another improvement we made over Treblinka was that at Treblinka the victims almost always knew that they were to be exterminated and at Auschwitz we endeavored to fool the victims into thinking that they were to go through a delousing process. Of course, frequently they realized our true intentions and we sometimes had riots and difficulties due to that fact. Very frequently women would hide their children under their clothes, but of course when we found them we would send the children in to be exterminated.'
"He described the actual killing by stating:

'It took from 3 to 15 minutes to kill the people in the death chamber, depending upon climatic conditions. We knew when the people were dead because their screaming stopped. We usually waited about one-half hour before we opened the doors and removed the bodies. After the bodies were removed our special commandos took off the rings and extracted the gold from the teeth of the corpses.'

"Beating, starvation, torture, and killing were general. The inmates were subjected to cruel experiments at Dachau in August 1942; victims were immersed in cold water until their body temperature was reduced to 28° C., when they died immediately. Other experiments included high altitude experiments in pressure chambers, experiments to determine how long human beings could survive in freezing water, experiments with poison bullets, experiments with contagious diseases, and experiments dealing with sterilization of men and women by X-rays and other methods.

"Evidence was given of the treatment of the inmates before and after their extermination. There was testimony that the hair of women victims was cut off before they were killed, and shipped to Germany, there to be used in the manufacture of mattresses. The clothes, money, and valuables of the inmates were also salvaged and sent to the appropriate agencies for disposition. After the extermination the gold teeth and fillings were taken from the heads of the corpses and sent to the Reichsbank. After cremation the ashes were used for fertilizer, and in some instances attempts were made to utilize the fat from the bodies of the victims in the commercial manufacture of soap. Special groups traveled through Europe to find Jews and subject them to the 'final solution'. German missions were sent to such satellite countries as Hungary and Bulgaria, to arrange for the shipment of Jews to extermination camps and it is known that by the end of 1944, 400,000 Jews from Hungary had been murdered at Auschwitz. Evidence has also been given of the evacuation of 110,000 Jews from part of Rumania for 'liquidation'. Adolf Eichmann, who had been put in charge of this program by Hitler, has estimated that the policy pursued resulted in the killing of 6,000,000 Jews, of which 4,000,000 were killed in the extermination institutions." 10/

690. Article 6 of the Universal Declaration of Human Rights proclaims the right of everyone to recognition everywhere as a person before the law, while article 12 provides that everyone has the right to the protection of the law against arbitrary interference with his privacy, family, home or correspondence, and against attacks upon his honour and reputation.

10/ Ibid., pp. 81-82.
691. Beginning in the very first days of their parliamentary activity, the Nazis pursued the purpose of eliminating the Jew and other "non-Aryan" elements from the German national body. In order to accomplish this purpose, they placed all "non-Aryans" under special laws, compelled them to identify themselves by wearing specified insignia, and provided punishment for concealing their identification.

692. For example, under the "Law for the Protection of the German Blood and of the German Honor" of 15 September 1935, the following regulation was decreed by the Reichstag:

"(1) Jews are forbidden to hoist the Reich and national flag and to display the colors of the Reich.

"(2) On the other hand, the display of the Jewish colors is permissible. The practice of this authorization is under State protection." 11/

A penalty of imprisonment for up to one year was provided for those acting contrary to the regulation.

693. A few years later, under a decree of 17 August 1938, all Jews were obliged to assume by 1 January 1939 "a second, additional given-name as follows: for males, the given-name Israel and for females the given-name Sara". 12/

Disobedience of the directive could be punished by imprisonment of up to six months. Subsequently a decree was issued by the Reich Minister of the Interior, dated 1 September 1941, according to which Jews, effective 19 September 1941, were allowed to appear in public only if they wore a yellow Jewish star, visibly displayed on the left breast side of the upper garment. 13/

694. In late years, in each of the territories occupied by the nazis, measures were initiated under which Jews and other "non-Aryan" elements were compelled to register themselves and their businesses. In order to prevent deception, Jews were compelled in most cases to report any change of name or change of religious faith, and to wear "the recognition sign consisting of a yellow Jewish star". Steps were taken in each territory to prevent the "camouflage" of Jewish businesses.

11/ Ibid., pp. III-473-474. The law was published originally in Reichgesetzblatt, part I, p. 1146.
12/ Ibid., pp. III-264-265. The decree was published originally in Reichgesetzblatt, page 1044, 17 August 1938.
13/ Ibid., pp. III-401. The decree was published originally in Das Archiv No. 30, 30 October 1941, p. 495.
JUDICIAL AND ADMINISTRATIVE GUARANTEES OF DUE PROCESS

695. Article 8 of the Universal Declaration of Human Rights proclaims the right of everyone to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law, while articles 10 and 11 provide that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him, and that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has all the guarantees necessary for his defence.

696. Under the nazis, objective justice was completely subordinated to the needs of "the people" - i.e., those who agreed with nazi theories and practices. Not only was the formulation of German law controlled at the source by the nazis, but all persons connected with the law were kept directly under the thumb of the party. The tentacles of the party's legal machinery reached into every field of national life, exerting pressure to bring the ideas and activities of the entire people into line with the goals of the movement.

697. According to the nazi ideology,

"all authority within the nation was derived ultimately from the people, but it was the party through which the people expressed themselves:

'The will of the German people finds its expression in the party as the political organization of the people. It represents the political conception, the political conscience, and the political will. It is the expression and the organ of the people's creative will to life. It comprises a select part of the German people for "only the best Germans should be party members"...
The inner organization of the party must therefore bring the national life which is concentrated within itself to manifestation and development in all the fields of national endeavour in which the party is represented.'

"Thus the supreme leadership of the party in all phases of national life is justified, and the state becomes merely an administrative machine which the party has set up in accordance with and for the accomplishment of its aims:

/...
'As the responsible bearer and shaper of the destiny of the whole German nation the party has created an entirely new state, for that which sought to foist itself upon her as a state was simply the product of a deep human confusion. The state of the past and its political ideal had never satisfied the longing of the German people. The National Socialist movement already carried its state within itself at the time of its early struggles. It was able to place the completely formed body of its own state at the disposal of the state which it had taken over.'

"Thus the party organization runs parallel to the state organization, and the various state agencies are guided and controlled by the corresponding party offices. The study of the legal organization of the NSDAP is largely the study of this system of controls. The higher state offices are usually filled with the corresponding party officers, and the supreme legal authority of the Reich is, of course, the Führer of the NSDAP, who is 'Chief of State and head of the Government in one person'.

"For practical purposes the party has been given the legal status of a 'corporate public body' (Körperschaft des öffentlichen Rechtes). As such it is clothed with 'special rights which are bestowed upon it by the state and performs public duties for the fulfilment of which it is responsible to the state'. But this does not define the true nature of the party or its relation to the state:

'The party stands above and beside the state as the wielder of an authority derived from the people with its own sovereign powers and its own sphere of sovereignty.... The legal position of the party is therefore that of a completely sovereign authority whose legal supremacy and self-sufficiency rest upon the original independent political authority which the Führer and the movement have attained as a result of their historical achievements.'

698. In accordance with this ideology "non-Aryans" were systematically deprived of every guarantee of due process of law. Under the Reich Citizenship Law of 14 November 1935, Jews were not only stripped of citizenship, the right to vote, and the right to hold public office, but also the incumbent Jewish officials - civil servants, administrative personnel, and members of the judiciary - were

Under the Fifth Decree relating to the Reich Citizenship Law, Jews were eliminated from the Bar, and excluded from the legal profession, in Germany and Austria. As a result of these measures it became practically impossible for a Jew to obtain a fair hearing before a tribunal that could be described as independent or impartial, or to obtain any remedy at all for acts violating his human rights and fundamental freedoms.

The thirteenth Regulation promulgated under the Reich Citizenship Law carried the systematic deprivation one step further by providing that "Criminal Acts committed by Jews shall be punished by the police". In practice it was the Gestapo, under an Ordinance of 3 July 1943, that administered the Regulation.

Similarly in civil matters the normal legal protections were removed. For example, the Law concerning Jewish Tenants of 30 April 1939 provided that a Jew could not invoke the protection of the tenancy laws and that a lease could be dissolved where only one party to it was a Jew, by the other party.

In provinces which they annexed to Germany, the nazis enacted their own rules of criminal procedure, making it possible to impose heavier sentences upon "non-Aryans" than on "Aryans" and at the same time making it impossible for the victims to obtain a fair hearing or any remedy for acts violating their fundamental rights and freedoms.

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15/ Nazi Germany's War Against the Jews, the American Jewish Conference, New York, N.Y., 1947, p. III-255. The Law was published originally in 1935 Reichgesetzblatt, art I, p. 1146.

16/ Ibid., p. III-425. The Decree was published originally in 1938 Reichgesetzblatt, Part I, p. 1580.


18/ Ibid., p. III-473. The ordinance was published originally in the Ministerial Gazette of the Reich and Prussian Ministry for the Interior, No. 27, p. 1085.

19/ Ibid., pp. III-258-259. The law was published originally in 1939 Reichgesetzblatt, Part I, p. 864.
702. The following Rules, set out in the Decree Concerning the Organization of Criminal Jurisdiction Against Poles and Jews in the Incorporated Eastern Territories, may serve as an example:

"2. CRIMINAL PROCEDURE

IV

"The State prosecutor shall prosecute a Pole or a Jew if he considers that punishment is in the public interest.

V

"(1) Poles and Jews shall be tried by a special court or by the district judge.

"(2) The State prosecutor may institute proceedings before a special court in all cases. Proceedings may be instituted by him before a district judge if the punishment to be imposed is not likely to be heavier than five years in a penal camp, or three years in a more rigorous penal camp.

"(3) The jurisdiction of the people's court remains unaffected.

VI

"(1) Every sentence will be enforced without delay. The State prosecutor may, however, appeal from the sentence of a district judge to the court of appeal. The appeal has to be lodged within two weeks.

"(2) The right to lodge complaints which are to be heard by the court of appeals is reserved exclusively to the State prosecutor. The appeal is decided by the Oberlandesgericht.

VII

"Poles and Jews cannot challenge a German judge on account of alleged partiality.

VIII

"(1) Arrest and temporary detention are allowed whenever there are good grounds to suspect that an offence has been committed.

"(2) During the preliminary inquiry, the State prosecutor may order the arrest and any other coercive measures permissible.

/...
IX

"Poles and Jews are not sworn in as witnesses in criminal proceedings. If the unsworn deposition made by them before the court is found false, the provisions as prescribed for perjury and false depositions on oath shall be applied accordingly.

X

"(1) Only the State prosecutor may apply for the reopening of a case. In a case tried before a special court, the decision concerning an application for the reopening of the proceedings rests with this court.

"(2) The right to lodge a plea of nullity rests with the State prosecutor general. The decision on the plea rests with the court of appeal.

XI

"Poles and Jews are not entitled to act as prosecutors either in a principal or a subsidiary capacity.

XII

"The court and the State prosecutor shall conduct proceedings within their discretion and according to the principles of the German law of procedure. They may, however, dispense with the provisions of the German law on the organization of courts and on criminal procedure, whenever this may appear to them advisable for the rapid and more efficient conduct of proceedings." 20/

THE RIGHT TO FREEDOM OF MOVEMENT

703. Article 13 of the Universal Declaration of Human Rights proclaims the right of everyone to freedom of movement and residence within the borders of each State, and provides that "Everyone has the right to leave any country, including his own, and to return to his country".

704. The attitude of the nazis towards the right to freedom of movement was set out clearly in a law of 5 October 1938 invalidating all German passports of Jews residing in the Reich area. Article 1 of the Law provided that:

"(1) All German passports of Jews who reside in the Reich area become invalid.

20/ Ibid., p. III-413-414. The decree was published originally in 1941 Reichgesetzbblatt, Part I, pp. 759-761.
"(2) The holders of the passports, mentioned in Section (1), are obliged to hand in these passports to the passport authority within Germany, in whose district the holder of the passport has his permanent residence or in lieu of such sojourns temporarily, within two weeks after this law becomes effective...

"(3) The passports, made out to be valid abroad, will become valid again if they are marked with a sign designated by the Reich Minister of the Interior, which will mark the holder as a Jew." 21/

705. In December 1938 the nazis announced a series of restrictions against Jews in Berlin; these restrictions provided that certain streets, squares, parks and buildings were not to be entered or driven through in vehicles by Jews. 22/ At the same time a police ordinance was issued repealing all drivers' licences and registration papers of mechanized vehicles which had been issued to Jews, and prohibiting them from owning cars or motorcycles. As the nazi terror intensified in Germany the Minister of the Interior, in an order dated 24 March 1942, restricted the use of public transportation facilities by Jews by requiring them to carry a police permit issued for use in public transportation. 23/ Permits were issued only by local police authorities, and were normally restricted to one specifically-defined means of transportation (for instance the street car). Permits were issued only to Jews who had been drafted for work, to schoolchildren, and to "Jewish legal counsel, medical technicians, and midwives who present their official authorization or concession".

706. Repression of the right to freedom of movement reached its zenith under the nazis in the establishment in November 1940 of the Warsaw ghetto, and in similar ghettos established in Lodz and Cracow in Poland and Rowno and Dubno in the Ukraine. Severe measures, including the death penalty, were adopted against Jews found outside the ghetto, and the inhabitants of the ghettos were systematically murdered either by execution on the spot or by removal to concentration camps

21/ Ibid., pp. III-337-338. The Law was published originally in 1938 Reichgesetzblatt, Part I, p. 1342.

22/ Ibid., p. III-403. The restrictions were published originally in the newspaper Voelkischer Beobachter dated 5 December 1938, No. 339, p. 5.

23/ Ibid., pp. III-51-54. This order was issued by the Reich Minister of the Interior in Berlin on 24 March 1942.
where they were killed. The Warsaw ghetto was destroyed by dynamite and fire in April and May of 1943, and those of its inhabitants who remained alive were sent to Treblinka where they were put to death.

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

707. Article 18 of the Universal Declaration of Human Rights proclaims the right of everyone to freedom of thought, conscience and religion.

708. Apart from what has been stated above concerning the place which anti-Semitism occupied in nazi thought and propaganda, reference should also be made to the efforts of the nazis to combat the influence of the Christian churches.

709. Nazi policy, in short, was to eliminate the influence of the church upon the German people. It accomplished this aim, to some extent, by persecution and even murder of members of the clergy and monastic orders, by the suppression of political parties formed by church groups, by the closing of theological institutions and by the confiscation of church property.

710. Christian churches were attacked by the nazis if they dared to resist anti-Semitism and policies of racial intolerance. Indeed, the nazis sometimes maintained that Christianity was a Jewish contrivance designed to weaken the spirit of the Germans. From time to time attempts were made to substitute pre-Christian paganism. The nazis, however, never took the extreme step of banning the practice of the Christian religion, and from time to time - as during the Olympic Games of 1938 - the drive against Christianity was temporarily relaxed.

TRADE UNION RIGHTS

711. Article 23 of the Universal Declaration of Human Rights proclaims the right of everyone to work and to form and join trade unions for the protection of his interests.

712. Under the nazis, all trade unionism was vigorously suppressed. According to the International Military Tribunal, Hitler in 1933 ordered the staff director of the Nazi party "to take over the trade unions". The Tribunal, in its Opinion and Judgement, states:

/.../
... Most of the trade unions of Germany were joined together in two large federations, of the 'Free Trade Unions' and the 'Christian Trade Unions'. Unions outside these two large federations contained only 15 per cent of the total union membership. On the 21st April 1933, Ley issued an NSDAP directive announcing a 'coordination action' to be carried out on the 2nd May against the Free Trade Unions. The directive ordered that SA and SS men were to be employed in the planned 'occupation of trade union properties and for the taking into protective custody of personalities who come into question'. At the conclusion of the action the official NSDAP press service reported that the National Socialist Factory Cells Organization had 'eliminated the old leadership of Free Trade Unions' and taken over the leadership themselves. Similarly, on the 3rd May 1933, the NSDAP press service announced that the Christian trade unions 'have unconditionally subordinated themselves to the leadership of Adolf Hitler'. In place of the trade unions the nazi Government set up a Deutsche Arbeits Front (DAF), controlled by the NSDAP, and which, in practice, all workers in Germany were compelled to join. The chairmen of the unions were taken into custody and were subjected to ill-treatment ranging from assault and battery to murder."

THE RIGHT TO EDUCATION

713. Article 26 of the Universal Declaration of Human Rights proclaims the right of everyone to education.

714. In Nazi Germany, in the field of education, everything was done to ensure that the youth was brought up in the atmosphere of National Socialism and accepted its teaching. As early as 7 April 1933 the nazi Government was able, under the law reorganizing the civil service, to remove all 'subversive and unreliable' teachers. This action was followed by numerous other measures to ensure that the schools would be staffed by teachers who could be trusted to teach their pupils the full meaning of the nazi creed. The Hitler Youth Organization also helped in obtaining fanatical support for the nazis from the younger generation.

715. At the same time, the nazis gradually reduced the number of "non-Aryan" students in German universities, first by a law ostensibly directed against the overcrowding of German schools and higher institutions, then by a general decree establishing separate Jewish schools. As from 15 November 1938, Jews were barred

24/ Nazi Conspiracy and Aggression, op. cit., p. 9.
from German universities under a decree issued by the Reich Minister for Education. 25/

CONCLUSION

716. One could continue indefinitely, in the same vein, to demonstrate how the nazis systematically and ruthlessly negated every human right and fundamental freedom of their victims. It is hardly necessary to do so, however, as the record is clear and fully documented.

717. This brief review, nevertheless, may provide an indication of the facts concerning nazism which compelled the General Assembly to reaffirm that this ideology is "incompatible with the objectives of the Charter of the United Nations and the Universal Declaration of Human Rights", and to express its deep concern that such an ideology, based on terrorism and racial intolerance, continues to be propagated by various groups and organizations.

Dangers of a revival of nazism and racial intolerance

718. The primary danger of any revival of nazism, whether in territories of the former Third Reich or elsewhere, is that undemocratic groups, using racial intolerance and brutal violence as a political tool, may again be able to infringe dramatically on human rights, to commit terrible crimes against humanity, such as genocide, or even to begin a new war.

719. The serious danger arising from the alleged influence of neo-nazi elements in the Federal Republic of Germany was stressed by the Government of the Union of Soviet Socialist Republics in an identical note which it presented to the Governments of France, the United Kingdom and the United States of America on 8 December 1967, as follows:

"The Soviet Government knows that the extent of the neo-nazi movement in West Germany and the degree of the danger attendant upon its further growth are not evaluated in the same way in all the capitals of the States that were participants in the anti-Hitler coalition. But it is impossible

to deny the indisputable fact that the neo-nazi forces are gaining weight in
the life of the Federal Republic of Germany. This poses two alternative
choices for the Powers that worked out the principles for the post-war
world: Either, in accordance with the obligations they have assumed,
they will prevent these principles from being undermined and will take
appropriate measures for promptly forestalling the revanchist and neo-nazi
danger in West Germany, or peace in Europe will face grave trials in the
foreseeable future....

"The Soviet Union and its friends and allies have sufficient
possibilities and means to curb the Federal Republic of Germany's
embarkation on a path of military adventure, should this become necessary.
This statement on some dangerous aspects of developments in the Federal
Republic of Germany is dictated by the Soviet Union's loyalty to the
ideals that inspired the peoples in their battle to the death against
German fascism and by concern for the preservation of peace in Europe
and throughout the world..." 26/

720. Speaking in the 163rd plenary meeting of the General Assembly on Monday,
18 December 1967, the representative of Poland, referring to the resolution on
measures to be taken against nazism and racial intolerance which the Assembly
had adopted at that meeting (resolution 2332 (XXII)), said:27/

"... For years those who would try to warn of the danger of revival
of nazism in the Western part of Germany were treated either as trouble-
makers or as propaganda-makers, and sometimes as persons by mistrust and
even hatred towards Germany. However, it was those who warned of the
nazi danger who unfortunately - and I wish to underline the word
"unfortunately" - were right. Neo-Nazism in Western Germany today is
active in the open. It has its own political party, the NPD, and its
representatives in state legislature. It is now reaching for national
recognition. It has its ideology, nazism, complemented by revanchism.
It has its own paramilitary arm - this time it is called SG. It has its
ideological underground within the army, as revealed by the New York Post
quoting the West German Paper Der Spiegel of 4 December: nazi books are
to be found in over a thousand libraries in all military barracks of the
West German army. Some of these books are indeed revealing. One, written
by Hans Grimm, the theoretician of Lebensraum, published by the NSDAP
in 1943, reprinted by the Central Publishing House of National und Soldaten
Zeitung in 1953, has a quotation which does not require any comment
whatsoever. That quotation is: 'Hitler was the greatest statesman Europe

26/ The text of the statement was published in Pravda, 10 December 1967,
pp. 1-2. The English translation of a condensed version may be found in
the Current Digest of the Soviet Press, New York, vol. XIX, No. 49,
pp. 2324.

27/ A/PV.1638, p. 27.
ever produced'. I am quoting these facts once again during this session not to demonstrate that we Poles have been right in denouncing the danger of a nazi revival in Western Germany. Today we are confronted with a situation which must be viewed by all peoples as dangerous to the cause to which we are dedicated - the cause for which the Allies fought side by side and defeated Hitler's army, the cause which gave birth to the United Nations.... We do not forget for a single moment that naziism is very much alive in its apartheid form. How could it be otherwise when the Prime Minister of the Republic of South Africa openly admits being a member of the nazi party, imprisoned as such in 1943? Can we not see in apartheid all the characteristics of the contempt of a chosen race, of contempt for all other races and nationalities, of merciless economic exploitation and of cultural and intellectual discrimination? And above all, the same characteristic of contempt for man and the rights of men? ...." 28/

Allegations concerning the revival of naziism and racial intolerance

721. The nazi party of Hitler came to an end with Germany's defeat in 1945, and Germany itself was divided and occupied. The Federal Republic of Germany was established in Western Germany in 1949, while the lands east of the Elbe, Saxony and Thuringia Rivers formed the German Democratic Republic.

722. Because the experience of naziism had demonstrated clearly that the very foundations of civilization could be destroyed once critical rationalism, moral restraints and constitutional government had been substantially weakened by such an ideology, it seems difficult to conceive that major revival of naziism could occur. Nevertheless, allegations have been made from time to time concerning the revival of naziism and racial intolerance, even in German areas. Moreover, from time to time, groups professing naziism and promoting racial intolerance have been active in other parts of the world, giving rise to deep concern as that expressed by the General Assembly in resolution 2438 (XXIII).

723. The allegations relate to a particular party in the Federal Republic of Germany which is termed "neo-nazi". Groups existing in Australia, Austria, the United Kingdom, the United States of America, South Africa, Southern Rhodesia, and Sweden have also been termed "neo-nazi", either by themselves or by others.

28/ In the exercise of his right of reply (A/FV.1638, p. 63), the representative of South Africa rejected the suggestion that the policies followed by his Government had similarities with naziism, pointed out that his country's forces had been committed against nazi Germany during the Second World War, and reminded the representative of Poland of the record of the South African Air Force in the liberation of Warsaw.
A brief summary of the information available concerning these groups is set out below.

FEDERAL REPUBLIC OF GERMANY

724. The Potsdam Agreement, approved on 2 August 1945 by J.V. Stalin, Harry S. Truman and C.R. Atlee, and designed to carry out the Crimea Declaration on Germany under which German militarism and nazism were to by which the Control inter alia that:

"3. The purposes of the occupation of Germany which the Control Council shall be guided are:

"... To destroy the National Socialist Party and its affiliated and supervised organizations, to dissolve all Nazi institutions, to ensure that they are not revived in any form, and to prevent all Nazi and militarist activity or propaganda...."

"4. All Nazi laws which provided the basis of the Hitler régime or established discrimination on grounds of race, creed, or political opinion shall be abolished. No such discriminations, whether legal, administrative or otherwise, shall be tolerated.

"5. War criminals and those who have participated in planning or carrying out Nazi enterprises involving or resulting in atrocities or war crimes shall be arrested and brought to judgement. Nazi leaders, influential Nazi supporters and high officials of Nazi organizations and institutions and any other persons dangerous to the occupation or its objectives shall be arrested and interned.

"6. All members of the Nazi party who have been more than nominal participants in its activities and all other persons hostile to allied purposes shall be removed from public and semi-public office, and from positions of responsibility in important private undertakings. Such persons shall be replaced by persons who, by their political and moral qualities, are deemed capable of assisting in developing genuine democratic institutions in Germany.

"7. German education shall be so controlled as completely to eliminate Nazi and militarist doctrines and to make possible the successful development of democratic ideas.

"8. The judicial system will be reorganized in accordance with the principles of democracy, of justice under law, and of equal rights for all citizens without distinction of race, nationality or religion...
10. Subject to the necessity for maintaining military security, freedom of speech, press and religion shall be permitted, and religious institutions shall be respected. Subject likewise to the maintenance of military security, the formation of trade unions shall be permitted."

725. The Basic Law for the Federal Republic of Germany of 23 May 1949, passed by the Parliamentary Council on 8 May and promulgated on 23 May 1949, contains the following provisions:

"Art. 18. Whoever abuses freedom of opinion, in particular freedom of the Press, freedom of teaching, freedom of assembly, freedom of association, the secrecy of the mail, of the postal services and of telecommunications, the right of property, or the rights of asylum, in order to attack the libertarian democratic basic order, forfeits these basic rights. The forfeiture and its extent shall be pronounced by the Federal Constitutional Court.

"Art. 21. (1) The parties in the forming of the political will of the people. They can be freely formed. Their internal organization must conform to democratic principles. They must publicly account for the sources of their funds.

"(2) Parties which, according to their aims and the conduct of their members, seek to impair or abolish the libertarian democratic basic order or to jeopardize the existence of the Federal Republic of Germany are unconstitutional."

726. On 23 October 1952, the Federal Constitutional Court for the first time gave a decision concerning the unconstitutionality of a political party.30/ The party in question was the Sozialistische Reichpartei, a right-wing radical group. In the decision, the court established a number of important principles governing the prohibition of political parties in the Federal Republic. It ruled inter alia that a party may be prohibited if the organization of its internal structure departs so far from democratic principles as to the explicable only as an expression of a fundamentally undemocratic attitude, especially if this attitude of the party is also confirmed by other circumstances; and that the parliamentary mandates of the party's representatives lapse when the party is found to be unconstitutional.

29/ Yearbook on Human Rights for 1949, p. 81.
30/ Yearbook on Human Rights for 1952, p. 91.
727. While on 17 August 1956, the Federal Constitutional Court prohibited the German Communist Party, no other political parties have since been declared unconstitutional, although allegations have been made that certain groups follow the undemocratic principles of the nazis.

728. It may be noted that the Penal Code of the Federal Republic of Germany contains the following provision:

"130. Attacks Upon Human Dignity

"Anybody who, in a manner tending to breach the peace, attacks the human dignity of others by

"1. incitement to hatred against parts of the population,

"2. provocations to acts of violence and despotism,

"3. insulting, ridiculing or defaming them,

shall be punished by a term of imprisonment of not less than three months. Fines may be imposed in addition." 32/

729. On 8 January 1967, and again on 8 December 1967, the Government of the Union of Soviet Socialist Republics presented statements to the Government of the Federal Republic of Germany with respect to what was said to be "the drastic increase in the activeness of neo-Nazi and militarist forces in the Federal Republic", and insisted that their activity be resolutely suppressed. In the latter note the Soviet Union Government stated in part:

"... The peoples of Europe were recently witnesses of an impertinent demonstration mounted by the successors of German fascism under the flag of the party congress of the so-called National Democratic Party in Hanover. Neo-Nazis of all hues had assembled in this city from all parts of the country with the intention of seeking to rehabilitate the crimes of Hitlerism and to acknowledge anew his predatory aims and desires. Like Munich in the past, Hanover can become a symbol of the creeping to power of neo-Nazism. As amazing as it may seem, the convention took place perfectly legally. Further still, it was encouraged by official authorities in the Federal Republic of Germany.

31/ Yearbook on Human Rights for 1956, p. 84.
"The question arises: How has the NPD acquired such favour with the West German authorities? What methods is the National Democratic Party using to gain the sympathies of the population, and which course is it preaching?

"Demands are being loudly raised, above all, for a revision of the European frontiers, for the annexation of territories of other States. As the West German press has reported in large headlines, the ringleaders of the NPD declared at the party congress in Hanover that they did not want to bind themselves to certain reservations in the case of a revision of the frontiers. They stated further that the existence of the Austrian nation was not agreeable; they also lay claims to Northern Italy (South Tyrol), to territories in the neighbouring countries situated east and west, north and south of the Federal Republic of Germany. The adventurous desires of the neo-Nazis not only resemble Hitler's mad plans, they even exceed these in many respects.

"However the 'ideologists' of the new nazi party may try to present themselves as democrats and persuade the population that they have adopted only nationalist colouring from the Hitler party, the NPD will not succeed in concealing its nazi garb.

"In the programme of the Hitler party, it is well known that the slogan was raised of a unification of all Germans in a greater Germany on the basis of the rights of self-determination of the peoples. In Europe, one has not forgotten what the slogan has brought with it in fact. One has not forgotten how the most elementary rights of the peoples were calumniated under this hypocritical pretext. The destruction of Minsk and Stalingrad, of Rotterdam and Coventry, the annihilation of Lidice and Oradour, the bloody reckoning with the population of Kiev and Ivov, of Warsaw and Kraguyevy, the concentration camps of Buchenwald and Auschwitz, the gas-chambers and gallows and other innumerable crimes mark the way taken by Hitler's hordes.

"The mad commands to raze Moscow and Leningrad to the ground, to burn Paris and to transform the territories of the Soviet Union, Poland, Yugoslavia into waste land - Hitler's criminal plans, clothed in the mantle on 'self-determination', were revealed thus to the peoples. Hitlerian speculation on German bourgeois nationalism have cost the German people nearly a whole generation of young Germans, whose corpses are strewn across the fields of Europe.

"Only those people who have deliberately set themselves the criminal aim of poisoning the populations of the Federal Republic of Germany with chauvinism and militarism can disregard such lessons of the past.

"The neo-Nazis are demonstratively trying to work against the Potsdam Agreement. This is supported plainly by the military and political aspects of the NPD programme, in the preparation of which, as was made known, officers of the Bundeswehr played an active part.
The Potsdam Agreement, as is known, foresees the complete disarmament and demilitarization of Germany, the ban on the production of all kinds of weapons and tools of war. Not even the present uninhibited preparations for war in West Germany suit the authors of the NPD programme. They demand that the "German general staff" be reinstated openly, that the economy of the Federal Republic of Germany be adapted even more energetically along war lines, and that a mighty armaments-industry machine be created.

The bellicose militarism of the NPD was also hardened by the fact that at the Hanover party congress demands to restore the honour of the Hitlerian fascist criminals and assassins were cynically raised, to train a 'new detachment' in their predatory traditions, and to secure a supreme place in the State for the Bundeswehr.

The NPD leaders themselves are not attempting to conceal their pride about the fact that their party has grown nearly twice the size in a little more than a year. The NPD has gained 48 seats in the parliaments of six federal states and has won more than a million votes among the West German electorate. For that reason the neo-Nazis have high ambitions; they are already exulting about the fact that at the next elections the doors of the Bundestag, the highest legislative organ in the country, will be open to them.

How then do the Federal Government and other state bodies in the Federal Republic of Germany explain such activity among the neo-Nazi elements banned by the Potsdam Agreement? On the one hand the idea is being suggested that the neo-Nazi party is only a small group of 'incorrigible demagogues', who play no significant part in the life of the country, the neo-Nazi movement is only the harmless expression of a certain radicalism which can be found in other Western countries.

On the other hand there are other prominent political leaders who would not be disinclined to use the growth of the neo-Nazi forces to support the policy of the Federal Government, which likewise pursues revanchist aims, and therefore to blackmail other States. It is clear to persons who are not even versed in the whole casuistry of such a policy that the good-will towards Nazism conceals direct support for it.

The National Democratic Party is an important element in today's social and political system in the Federal Republic of Germany. Its statesmen make no bones about the fact that the demands of the NPD accord with the aims of the CDU/CSU party itself, that they are in many respects drawn from remarks of the leaders of this party, especially the right wing.

The NPD works closely with all kinds of organizations, associations and regional political (exile) groups of an unmistakably military nature, which have experience in the organization of revanchist provocation. It works closely with arch-reactionary parties and groups that are variations
of nazism. The number of such organizations in the Federal Republic of Germany goes into the hundreds...” 33/

730. On 22 December 1967, the Government of the Federal Republic of Germany transmitted to the Soviet Foreign Ministry in Moscow the following statement in the form of a note verbale:

"... The Government of the USSR apparently thinks it right to criticize the domestic and foreign policy of the Federal Republic of Germany from time to time. Thus, in a lengthy statement on 26 January 1967, it saw militarism and neo-nazism in the Federal Republic of Germany.

"This was followed on 19 July 1967 by a statement from leading Soviet circles about the dangers they say are inherent in the proposed emergency legislation in the Federal Republic of Germany, in spite of the fact that such legislation is customary in other countries. On 8 December 1967 militarism and neo-nazism were once more the subject of a government statement.

"The Federal Government felt that it would not be fitting to reply to these statements, each of which is an interference in the internal affairs of the Federal Republic of Germany. It considers that mutual polemics will not help the efforts to achieve understanding and detente.

"The Federal Government has preferred to propose talks to the Soviet Government on all questions of mutual interest. They included, incidentally, the Federal Government's request for assistance by the Soviet Government in the persecution of nazi crimes.

"The Federal Government had hoped that the Soviet Government would respond to this initiative by showing willingness to hold constructive talks. The Federal Government therefore regrets the latest Soviet Government statement, the threatening tone of which is not customary in international exchanges.

"In particular, that statement draws a completely distorted picture of German domestic policy, as well as of the Federal Government's policy, which is known throughout the world, of pursuing its objective with peaceful means only. This attitude is proved by the declared willingness of the Federal Governments to exchange declarations on the renunciation of force with the Soviet Union and its Allies.

"The Government of the Federal Republic of Germany categorically rejects the statement of the Soviet Government as interference in its internal affairs and as a distortion of its foreign policy.

"The points made in the Soviet statement are all the more incomprehensible as that statement rightly says that the views and feeling of the majority of Germans living in the Federal Republic of Germany are by no means to be identified with 'inveterate revanchists and neo-nazism'. It is this overwhelming majority that is represented by the parties in the German Bundestag. And it is this majority whose will supports the peace policy pursued by the Federal Government.

"The German people and its constitutional organs will know how to defend their free and democratic basic order. The Federal Government hopes that the Soviet Union will play its part in helping the German people to re-establish its unity by peaceful means and to make its contribution to a European peace order..." 34/

731. On 8 December 1967 the Government of the Soviet Union also presented statements along similar lines to the Governments of France, the United Kingdom and the United States of America. The United States Government, in its reply dated 29 December 1967, rejected the accusations against the Government of the Federal Republic of Germany as completely unfounded, and stated:

"... There is no evidence whatsoever that the Government of the Federal Republic of Germany has supported or now supports totalitarian ideas in any way. Indeed, the present Government, which represents the free choice of the great majority of the German people, is a coalition of parties which, both in philosophy and practice, are dedicated to democratic principles. This is true as well of the opposition party in the Bundestag..." 35/

732. On 29 January 1968 the Ambassador of the USSR in the Federal Republic of Germany handed the State Secretary in the Foreign Office of the Federal Republic of Germany an aide-memoire which included the following statement:

"4. The aide-mémoire of the Foreign Ministry arouses the impression that unfortunately the Federal Government does not give due weight to the danger of the increasing activity of militaristic and neo-Nazi forces in the country which with good reason were referred to in the document of 21 November 1967 as well as particularly in the declarations of the Soviet Government of the 28 January 1968 and the 8 December 1967.

34/ English text furnished by the Press and Information Office of the Federal Government.

"Neo-nazism holds in itself a danger not only for the population of the Federal Republic of Germany but also for the peoples of other European countries. It is therefore entirely comprehensible that every Government which is striving for the consolidation of peace and security in Europe cannot but lift its warning voice in the face of such a danger." 

36/ On 9 April 1968 the Government of the Federal Republic of Germany, in a note verbale replying to two earlier Soviet memoranda, made the following statement: 37/

"...

"(6) On 22 December 1967, the Federal Government replied to the Soviet Government's statement of 8 December 1967, in which the Soviet Government again drew attention to the alleged strengthening of military and neo-Nazi forces in the Federal Republic of Germany. The Federal Government will know how to protect the free and democratic basic order in the Federal Republic. Its policy, as the Soviet Government is aware, is based entirely on preserving and strengthening peace.

"(7) As regards the re-iterated Soviet views on the significance of the Potsdam Agreements of 1945, the Federal Government believes that it is not for it to express a view on the validity, interpretation or purview of agreements in which it did not participate.

...

73/ On 5 July 1968 the Government of the Soviet Union, in an aide mémoire to the Government of the Federal Republic of Germany made the following statement:

"4. The policy which has been adopted by the Federal Government i.e., to reverse the results of World War II and which is contrary to the Potsdam Agreement is closely linked with those political trends in the Federal Republic which jeopardise peace. These trends may above all be seen in the steady increase in the activities of Neo-Nazi and revanchist forces, in the stepping up of the militarisation of the country and in the limitation of the democratic rights and liberties of the West German population.


37/ Ibid., p. 31.
In its answer, the Federal Government again tries to defend the Neo-Nazis and refuse, as it has done in the past, to take any measures to end the machinations of the so-called National Democratic Party. The Nazis and neo-Nazis, whose activities are prohibited under the Potsdam Agreement, have meanwhile been extending their influence, thanks to the protection given to them by the authorities, throughout the political and public life of the Federal Republic of Germany, and the NPD are now trying to get the better of the other political parties. Recently, the NPD candidates won seats in the Parliament of yet another federal state, the seventh, i.e., in Baden-Württemberg. It has been said that during the electoral campaign the NPD disseminated as much electoral propaganda as all the other parties in the Federal Republic together. They succeeded in getting as many votes as the Nazis did in this federal state (the territory corresponding to the Baden-Württemberg of today) in 1930 during the preparations for Hitler's seizure of power.

The elections in Baden-Württemberg, which were accompanied by uninhibited nationalistic and chauvinistic propaganda in the press, clearly revealed that the policy of the 'Grand Coalition' Government has in practice, created good opportunities for a growth of neo-Nazism and revanchism. To all appearances, the society - and class-conscious circles in the Federal Republic of Germany, who also bear the responsibility for Hitler's aggression, are doing this deliberately in the hope that they can use the neo-Nazis as a means of pressure and blackmail in their relations with other countries in the implementation of their revanchist policies. However, this is a dangerous game and it might turn out to be to the disadvantage of the Federal Republic.

Nor can one ignore the fact that certain statesmen in the Federal Republic of Germany are cultivating more and more actively nationalistic and patently chauvinistic feelings amongst the people and are thus pursuing a parallel course of action to that of the NPD. Whilst the leaders of the neo-Nazis are making big speeches about the 'rebirth of Great Germany', the official representatives of the Federal Republic talk about the 'lack of Lebensraum' etc. The words may be different, but the meaning is the same - militant and revanchism...

735. A letter dated 11 November 1968, addressed to the President of the General Assembly by the Permanent Representative of Bulgaria to the United Nations (I/C.3/610) included a "Declaration of the Government of the German Democratic Republic to the twenty-third session of the United Nations General Assembly concerning the agenda item, 'Measures to be taken against nazism and racial intolerance'." This Declaration read in part as follows:

38/ Ibid., pp. 39-40.
"... The people and the Government of the German Democratic Republic, like public opinion in and the Governments of many other States, are following with great concern the activities of nazi and militarist forces in the West German Federal Republic, which are assuming a particularly dangerous character.

"Recent developments in the West German Federal Republic and the considerable gain in votes by the neo-nazis in various elections to the Laender parliaments in 1967 and 1968 have clearly demonstrated to international opinion that, in West Germany, an openly nazi party - the National Democratic Party of Germany (NPD) - is allowed complete freedom of action and is rapidly gaining influence. By reason of its leaders' record the objectives of its programme and its ideology, this party is the successor to Hitler's fascist party.

"The Government of the West German Federal Republic itself was obliged to recognize in a report drawn up by its Ministry of the Interior entitled 'Right-wing Extremism in the Federal Republic in 1967' that 'the NPD has become a manifestation of German right-wing extremism which must be taken seriously'. It goes on to say that 'the official statements of the Party reveal active sympathy for the nazi ideology and an attempt to justify National Socialism. To judge from its history, its ideology, its purposes and its leadership, this party is clearly a party of the extreme right. Its objective is the rebirth of the Reich with the whole of its "integrated settlement area" which, according to the party, includes "at the least" the following areas beyond the 1937 frontiers: the Sudetenland, Danzig, West Prussia and the Memel area'.

"This patently revanchist programme openly advances territorial claims against the Polish People's Republic, the Soviet Union and Czechoslovak Socialist Republic. It is indicative of the evil character of the neo-fascist NPD that this party regards the inhuman racist laws of Hitler as 'negative aspects of the positive goal of biological self-determination and the survival of the German people'.

"Despite the West German Government's own evaluation of the NPD and despite the fact that this party has succeeded during the past two years in having sixty of its candidates elected to the office of deputy in the parliaments of the seven West German Laender and has many representatives in the communal assemblies, the Federal Government minimizes the growing influence of neo-nazism in West Germany. According to provisional estimates, the neo-nazi party now claims about 3 million voters, which represents nearly four times as many votes as Hitler won in the whole of Germany five years before his accession to power. Although the West German Government is well aware of these facts, it categorically refuses to take action against this neo-nazi party, which has been assigned a very special role. It aims at uniting all the malcontents supporting the policy of the West German Government which, in defiance of history, seeks to bring about a political change solely by means of nationalism and race hatred.
"At the same time, the West German Government is trying to make it appear that its goals, in comparison with the programme of the NPD, constitute a democratic alternative which deserves to be supported. It would be disastrous to put faith in that claim, for the NPD is completely integrated into the social, political and military life of the Federal Republic today. Thirty per cent of the NPD's registered members are employees or officials of the State and 20 per cent are officers and soldiers on active duty or members of the reserve. The NPD's gain in votes is particularly marked among the garrisons of the Bundeswehr.

"Especially alarming is the fact that more than one third of the members of the NPD are young people who were not educated under the Hitler régime and whose nazi convictions therefore do not date from that period. Of the new members who have joined the party since the second quarter of the current year, more than 60 per cent are under forty years of age and more than 30 per cent are under twenty-eight. The political attitude of these young people is the result of nazi ideology which continues to have great influence in teaching, national education and the shaping of public opinion.

"The NPD receives financial grants from the same circles which financed Hitler, i.e., the great West German industrial concerns. In this connexion, the international Press keeps drawing attention to the companies which are the successors to the famous I.G. Farben trust, the supplier of poison gas to the concentration camps - particularly the Badische Anilin und Sodafabriken and the Flick-Quandot group, which share responsibility for the crimes of the fascists and which play a leading role in the West German armaments industry. To these should be added a number of other major West German businessmen such as Diehl, the Bavarian tractor manufacturer who is a friend of West German Finance Minister Strauss, the leaders of the Oetker concern, and Schickedanz, head of the Quelle mail order firm. What is more, the Federal Government, in promulgating the 'Law on Political Parties' of 24 July 1967, created all the conditions required to enable the NPD to be financed directly from the West German budget.

"It would be a mistake to think that neo-nazism is reflected only in the NPD. The subversive activities of the revanchist associations which are openly putting forward territorial claims against many European States and the activities of the 'veterans' organizations' have been and are laying the groundwork for the spread of neo-nazism. The principal neo-nazi forces include, in particular, the former members of the NSDAP - the Nazi Party - who are working today in government and administrative offices, the judiciary, the police, the so-called 'Office for the Protection of the Constitution', the Bundeswehr officer corps, and the revanchist associations, or who hold key posts in the economy, culture and education. Many members of the West German Government were themselves active members of the Nazi Party and spread ideas of race hatred with all their terrible consequences. In many government offices there are even former active Nazis who, as members of the criminal SS and other organizations, committed frightful crimes.

/.../
"Re-nazification in West Germany is also reflected in the monopolization of the Press by right-wing extremists and in the extensive propagation of militarist and fascist literature issue by more than 100 publishing houses.

"Political leaders of the CDU/CSU government parties such as CDU Secretary-General Heck and the President of the West German Bundestag, Gerstenmaier, have intimated that they do not rule out the possibility of a coalition between the NPD and the parties represented in the West German Parliament has now advanced so far that at the time of the communal elections in Lower Saxony on 29 September 1968 and NPD and the CDU, as also the NPD and the German Liberal Party (FDP), submitted joint lists of candidates. The NPD is thus being groomed not only to enter the West German Parliament at an early date but also to enter into a coalition at the level of the Länder and the Federation. The concerted action to organize provocative demonstrations against the German Democratic Republic and other socialist countries, as exemplified by the meeting of revanchists held illegally at West Berlin at the beginning of September 1968 with the participation of ministers of the Federal Government and deputies of all parties, is characteristic of this joint action of the government parties and the neo-nazi NPD. These examples show the frightening extent to which neo-nazism has already established itself and has become an integral part of the political life of the West German Federal Republic and West Berlin.

"It would be a careless fallacy to liken the NPD to extremist right-wing groups in other States. The great danger to peace and security arising from the existence and activities of the neo-nazi NPD is mainly due to the fact that it is developing in a State which is the only one in Europe that is putting forward territorial claims and in which the same imperialist forces that helped nazism seize power hold key positions of command in the State and the economy and are again pursuing expansionist aims.

"The NPD is only one, although the most overt, of the various manifestations of what is in reality a trend in the West German State, a development the cause of which is clearly the fact that, in breach of the Potsdam Agreement, nazism and militarism were not extirpated in West Germany after the Second World War.

"Encouraged by a revanchist and expansionist policy, neo-nazism in West Germany is flourishing and is on the increase. In this situation, former fascists and neo-nazis find support in the political programme of the coalition in power in the West German Federal Republic, which has officially included in that programme the reversal of the results of the Second World War. The West German Government in fact denies the existence of the German Democratic Republic and arrogates to itself the right to speak for all Germans. It refuses to recognize the post-war frontiers of Europe; it refuses, moreover, to recognize the nullity, ab initio of the...
Munich diktat, which was a flagrant violation of international law; and, finally, it refuses to sign the Treaty on the Non-Proliferation of Nuclear Weapons. It is, in addition, attempting to incorporate West Berlin, which is an independent political entity, into the West German Federal Republic.

"The West German Government's virulent attacks on the Potsdam Agreement, which provided for the eradication of nazism from German soil, are also part of this aggressive programme. The attempts of the West German leaders to ignore or reject this obligation, which is a valid one under international law and which stemmed from the defeat of Hitlerite fascism, are designed to legalize the movement towards militarism and neo-nazism in West Germany.

"The territorial claims of the NPD and its bid for power find support and official justification in the broad political concepts of the ruling circles of the West German Federal Republic, of which, to cite one example, the present Minister of Finance and Chairman of the CSU, Franz Josef Strauss, has given a very detailed picture in his book Entwurf für Europa (Plan for Europe). Strauss justified his concept of a 'Europe extending from the Atlantic to the River Bug and to the Black Sea' by arguing that 'German policy needs a European setting'. This is a continuation of the striving for hegemony and the desire for Lebensraum. This is German imperialism, which has failed twice already and which has inflicted untold suffering on the German and other peoples.

"In the pursuit of their objectives, the neo-nazi elements also profit by the fact that, in line with its expansionist foreign policy, the West German Government is pursuing a reactionary domestic policy aimed at repressing its democratically minded and peace-loving citizens. While the neo-nazi NPD is tolerated and encouraged by the West German ruling circles, the Communist Party and other democratic and anti-nazi organizations are banned. While former fascists and neo-nazis enjoy every kind of support, those who stand up against nazism and war preparations and plead the cause of peace and democracy are subjected to persecution. The approval by the Bundestag last May, against the wishes of the majority of the people, of emergency legislation and an 'emergency constitution' designed to deprive the people of their democratic rights has further accentuated the reactionary nature of the West German Government's policy.

"It is apparent, therefore, that against a background of changed circumstances and conditions a dangerous development which was characteristic of the first years of the Weimar Republic is repeating itself in West Germany. Just as the 'Law for the Protection of the Republic' of 13 July 1922 was applied by the reactionary policy and judicial authorities of the Weimar Republic chiefly against anti-fascist..."
and democratic forces, and just as the notorious policy of emergency presidential decrees paved the way for Hitler's nazi dictatorship, today the suppression of anti-nazi and democratic forces and the emergency laws - which present alarming parallels with Hitler's nazi dictatorship, today the suppression of anti-nazi and democratic forces and the emergency laws - which present alarming parallels with Hitler's 'Enabling Law' of 24 March 1933 - are preparing the ground for the renazification of the West German Federal Republic.

"The Government and people of the German Democratic Republic consider that there is an urgent need to take effective measures to put an end to this development which bodes ill for the peace and security of the peoples. In accordance with Economic and Social Council resolution 1335 (XLIV), the Government of the German Democratic Republic demands that West Germany should take without delay measures to outlaw groups and organizations which are disseminating propaganda for naziism, the policy of apartheid and other forms of racial intolerance, and to prosecute them in the courts, and to strive for the eradication, as soon as possible and once and for all, of nazi and similar ideologies and practices, including apartheid, which are based on racial intolerance and terror.

"If these lofty purposes are to be fully achieved, the agreements of the anti-Hitler coalition on the elimination of naziism and militarism must finally be fulfilled in West Germany too, as they were long ago in the German Democratic Republic. The peace and security of the peoples urgently require that the West German Federal Republic should remove nazi and war criminals from their posts and bring them to justice, that it should outlaw all nazi, militarist and revanchist organizations and that it should make all propaganda favouring nazi and militarist ideologies, war or racial intolerance punishable under the law. ..."

736. In November 1968 the German Information Center in New York City issued the following statement entitled: "Neo-nazism and the Federal Republic of Germany":

"In recent years, the extreme Rightist NPD ('National Democratic Party') has been given international attention far out of scale to its current strength among the electorate of the Federal Republic of Germany. This is partly due, as the 'Christian Science Monitor' on Oct. 22, 1968 commented, 'to the understandable fears of those within and without Germany who are still not fully persuaded that German society as a whole has turned its back on Nazism'. The same paper also reasoned that the NPD has been thrust into the spotlight 'because the Russians, among others, have seen it in their interest deliberately to over-emphasize the party's importance'.

"The phenomenon of an ultra-radical minority has always been a part of the political scene in most democratic countries, particularly in times of economic recession or foreign policy controversies. Indeed, during 1967 and part of 1968, there was a recession in the Federal Republic at the same time that no evidence was forthcoming of a reasonable response from the USSR to Germany's attempt to improve relations with the East."
"Today, extremist groups left of the democratic parties are continuing their efforts to create civil disturbance as a means of provoking counter-reaction. The resulting unrest - combined with concern over the crime rate in urban areas (although it is really not very high) - fosters a climate of attraction for a political party appealing to 'law and order'.

"Extremist factions are not novel in postwar politics, and there are instances of former Nazis who exploit discontent among the population to foster their own aims. It is too much to hope that all the Nazis vanished with the end of the war; part of this problem, however, has been rendered somewhat irrelevant through the sheer passage of time. The hard cores of ultra-Right and ultra-Left are more or less permanent parts of the opinion strata in a free society, and a small percentage of voters inevitably tends to rally to the support of radicalism of either Leftist or Rightist leanings. According to studies made by political scientists and sociologists, the hard core on the Left amounts to about 2 per cent of the voters, and on the Right to about 2 to 4 per cent. The rest of the fluctuation in voting figures is a 'floating vote', relative to issues and personalities specific to time and place.

"It is characteristic of an industrial society for the young to be especially noticeable in all types of political confrontation. This is also true for the current extremist groups in Germany. The new generation of Germans, who have neither witnessed Hitler's crimes nor experienced the aftermath of the Third Reich, may find it hard to automatically condemn their fathers or assume their guilt. Some of the young turn to the extreme Left or Right, or drop out altogether, in the search for a new identity. The vast majority of young Germans has shown, however, that it is committed to democratic ideals and government: this is demonstrated by voting statistics and through constant research by social scientists.

"Extreme nationalist and Leftist dissent among a part of the young generation should be counteracted by discussion and persuasion rather than coercion. The free and democratic order built up successfully over the last two decades must be preserved through constitutional means. Certain foreign governments distort political facts concerning the Federal Republic and magnify the scope of radicalism. Xenophobia, often at the root of nationalistic attitudes, can be stimulated by this tactic. Research has provided evidence that indiscriminate attacks on the Federal Republic are the best support that Radicals can hope for.

"Over 90 per cent of the German electorate vote for political parties that have dedicated themselves to the strengthening of German democracy. This stable vote for the democratic parties has occurred despite the economic recession and widespread discontent over national matters. It continued in all state parliamentary elections that have taken place over the last two years. In Bavaria, the radical-Right NPD received 7.4 per cent, in Hesse 7.9 per cent, in Rhineland-Palatinate 6.9 per cent, in Schleswig-Holstein 5.8 per cent, in Lower Saxony 7.0 per cent, in the city-state of Bremen 8.8 per cent and in Baden-Wuerttemberg 9.8 per cent."
"These percentages, incidentally, were undercut late in 1968 when local elections in three states (Lower Saxony, Hesse and Saarland) resulted in 5.2 per cent for the extreme Right and when the NPD vote dropped to 3.7 per cent in Baden-Württemberg.

"The Ministry of the Interior keeps a close watch on the development of the NPD in particular and on all activities of right-wing radicals in general. This policy differs greatly from that of the Weimar Republic in the 1920's; the potential danger of extreme nationalism is recognized, and while it is permitted to be aired publicly through discussion and information, drastic measures are being simultaneously proposed and considered from all sides. These range from electoral reform (which would effectively bar the NPD from representation in the Bundestag) to an outright constitutional ban.

"The latter action has been urged by responsible individuals and groups in Germany and abroad. If the Government so far has not taken the case to the Constitutional Court - as was done with the Rightist SRP and the Communist Party (KPD) in 1956 - this is partly due to the NPD tactic of not openly revealing the 'anti-democratic' spirit of its organization. The party programme adopted in Hanover, in November 1967, for example, does not disclose enough overt evidence to enable the Court to declare the NPD unconstitutional. NPD leaders have made it a point to emphasize publicly their compliance with the Basic Law; they even claim to be its true defenders. Some observers feel the NPD could legally be banned by resorting to secret information - a possibility that arouses concern among political observers as establishing a questionable precedent.

"Regarding electoral reform designed to exclude the NPD from acquiring seats in the Bundestag, this proposal was practically scrapped because it was felt it is far better at this time for the radical fringe group to work in the open, even in Parliament, rather than to drive it underground or encourage its supporters to make an effort at disrupting the two big parties.

"This decision also reflects, as the New York Times stated in its editorial of January 15, 1968, German democracy's self-assurance today. 'To permit the extremes of Left and Right to function openly', commented the paper, 'would be a sign of strength, not weakness'. This new attitude of controlled permissiveness also includes the extreme Left - as evidenced in Foreign Minister Willy Brandt's advocacy of lifting the ban on the Communist Party, provided it pledges observance of constitutional laws.

"The extremists, however, are not underrated. Some observers have made an analogy between the insignificant number of NPD votes today with 1930, the year when a similar Nazi percentage suddenly escalated to alarming proportions under the impact of the depression. There are many reasons why this analogy is not valid today. Bonn is not Weimar, as many historians have pointed out. The Nazi victory was possible only in ...
the context of historical factors that have changed fundamentally. The Weimar Republic was never accepted by more than a slim majority of the German people, while the Federal Republic has consistently been accepted by over 90 per cent of the voters for twenty years.

"Other basic changes have occurred in the formerly authoritarian character of the schools, church, family and military. The country's judiciary and civil service, too, have shown independence of judgement. Not the least important, there seems no likelihood of an 'unholy alliance' between anti-democratic forces of the Left and Right conspiring in concert to put the Federal Republic on a crash course. Ideology in general, whether of political parties or individuals and groups, is of minor importance today, whereas under Weimar it was the rampant mood and style of the day. Finally, the Federal Republic of Germany, like other Western democracies, has learned to contain economic cycles. There are simply no millions of unemployed exposed now, as there were in 1930-32, to demagogues promising easy solutions through violence and radicalism. A strong democratic press and independent radio and television outlets today focus the public's attention on the nature of extremism and violations of human rights.

"Given these facts and assumptions, the Bonn Government devotes inordinate attention and concern to ultra-Rightist eruptions on the body politic. Periodic and annual expertises are made public by the Interior Ministry, analysing the membership, election trends and methods of the NPD. According to the best social scientific evidence available, an extremist vote on the right of up to 15 per cent is possible only under very unusual conditions. So far, some state elections have resulted in half this number and local elections even less. In surveys, 83 per cent of the voters express dismay that the NPD exists at all. It is the avowed intention of the German Government to use every democratic means to limit Rightist influence and power.

"The Government feels that it can count on the millions of democratic-minded citizens in the trade unions, church-organizations, and among students to deepen the nation's invulnerability vis-à-vis extremism. And the Government hopes that its friends and allies abroad will withhold condemnation of the entire German people for the noisy actions of a small minority.

"The NPD may be a cause for concern to the Germans, but not a cause for panic abroad. As Foreign Minister Willy Brandt recently said: 'Without minimizing the problem, one should know that those who are responsible for German democracy understand the problem and feel able to handle it'."

737. The International Conference on Questions Relating to the Prosecution of War Criminals, held in Moscow from 25 to 29 March 1969, adopted an Appeal and resolution (E/L.1254) containing the following statements:
... In West Germany the activities of the revanchist and neo-nazi forces, openly seeking to undo the outcome of the Second World War and alter the political and territorial status quo in Europe, are growing apace. Extreme expansionist circles in the Federal Republic of Germany are campaigning for the complete militarization of the country and are demanding access to nuclear weapons. The rehabilitation of the Nazi criminals and their reintroduction into the apparatus of the State at all levels constitute an integral part of that policy. Attempting to undermine the foundations of the peaceful postwar order in Europe, those forces pose a grave threat to the security of the European States.

"The old and new Nazis, enjoying full freedom of action in the country, are trying to absolve fascist Germany of responsibility for the unleashing of the Second World War and to vindicate the Hitlerite war criminals, on whose consciences lies the destruction of millions of human lives. The chauvinistic propaganda of the revanchists and neo-nazis not only is meeting with no rebuff from the official authorities of the Federal Republic of Germany but is actually being supported by them. It is no accident that the authorities in the Federal Republic of Germany, in disregard of well-known international standards, are resorting to all kinds of subterfuges in order to make applicable to the Nazi war criminals the statutory limitations provided for by criminal law in general and thus to save them from the punishment they deserve for the evil deeds committed by them during the Second World War. In its programme the National Democratic Party, whose affairs are managed by the neo-nazi ringleaders, openly calls for the discontinuance of the prosecution of persons accused of participating in the crimes of the Nazi régime and the proclamation of a 'general amnesty' covering all Nazi criminals ..."

"... Making the criminal nature of Hitlerite aggression more widely understood and demonstrating the unalterability of the principles of the punishment of the Nazi criminals should be an important contribution to the struggle of the peoples against the revanchist and neo-nazi danger in the heart of Europe ...".

AUSTRALIA

738. According to The Age, Melbourne, of 6 December 1967, the National Socialist Party of Australia established a national headquarters in Canberra on 4 December 1967. Its main spokesman was identified by The Age as Edward Cawthron, a 26-year-old research graduate at the Australian National University, the editor of its official journal.

739. In his first editorial published in the Journal, Cawthron wrote:

"The National Socialist Party of Australia seeks to instill in the Australian people a sense of national pride. We in Australia are
fortunate as our population is still largely Aryan, despite the progressive subversion of our White Australia policy." 39/

740. Cawthron told the Sydney Morning Herald, 5 December 1967: "The first stage is to organize a hard core of party officers in all States. We will then aim for mass membership". While taking as their symbol the Swastika which had been "an Aryan symbol used by National Socialist parties all over the world - not just Germany", Cawthron denied being a Nazi: "The word Nazi has become a smear term. We don't consider ourselves to be Nazis, although the American Nazi Party doesn't seem to object to the word". They are against the Jews because "Jews are at the root of international Communism and international finance". They "believe in separate development", because "as you know, every race has its own gifts. We would prevent inter-marriage and allow these special attributes to flower". According to them, a new renaissance is needed to save the world and it will come, they are convinced, with the advent of a powerful international Nazi movement. Cawthron volunteered a few details of this renaissance. Southern European immigrant groups, especially those which Cawthron believes are "not trying to be Australians but could not be deported" would be encouraged to drop their national characteristics and be Australian. Aborigines would be allowed to "go their own way and preserve their character". Asked whether he was a follower of Hitler, Cawthron replied: "Hitler was a German in Germany in the 1930s and 1940s. This is Australia in 1967, but the basic philosophy of National Socialism can be applied to any country at any time". He also explained that his interest in National Socialism had been aroused by his study of genetics and biology.

AUSTRIA

741. The foundation of the Austrian National Democratic Party (NPD) was formally announced on 11 February 1967 at Linz. 40/ The party bears many resemblances to the National Democratic Party of the Federal Republic of Germany. Its programme emphasizes the "German character" of Austria, and militant action in South Tyrol.

UNITED KINGDOM

742. The racialist feeling in the United Kingdom aroused by the controversy on the immigration of coloured people has not so far responded to any significant degree to any appeal by neo-nazi groups. During the municipal elections in April 1968 all the avowedly racialist candidates, twenty-six for the "National Front" and eleven for the "Union Movement", failed, polling between 19.2 and 1.9 per cent of the vote.41/

743. Both the National Front, which is an alliance of the League of Empire Loyalists, the British National Party, the Greater Britain Movement and the Racial Preservation Society, and the Union Movement, founded by Sir Oswald Mosley, are alleged by their opponents to be "neo-Nazi" groups.

UNITED STATES OF AMERICA

744. The American Nazi Party expressed its sympathy for nazi ideology in a "news magazine", The Stormtrooper, and in the quarterly publication National Socialist World. The group was founded by the late G.L. Rockwell and, since his assassination in 1967, has been led by a man who has frequently expressed sympathy for Hitler and the nazi ideology.

745. Various other American groups are alleged to be neo-nazi in their outlook, among them the Ku Klux Klan and the American National States Rights Party.

SOUTH AFRICA

746. An organization said by its opponents to be neo-nazi in outlook, the Association of German Societies Loyal to their Race, has been active in South Africa.42/ Among the constituent societies of the Association are the Friends of the German National Democratic Party, the German Socialist Party, and the Society for a German Religion. The Association is supported by the German Cultural Foundation of European Spirit, which is directed by a former stormtrooper.

747. The German Working Group of Racially Loyal Associations in South Africa, founded in 1967 by two Germans, supports the National Democratic Party of the Federal Republic of Germany. Leaders of the organization however state that they are anti-nazi, and that the organization is not neo-nazi in its philosophy. 43/

SWEDEN

748. The Nordiska Rikspartiet ("Nordic National Party") of Sweden is alleged by its opponents to be neo-nazi in outlook. The party's 1968 general meeting, held in Stockholm, was attended by about fifty persons. 44/

Measures to be taken, on the national level against the revival of nazism and racial intolerance

749. Manifestations of racial intolerance, including the revival of certain groups and organizations professing totalitarian ideologies such as nazism, which may embitter relations between peoples and groups, can be controlled by Governments in various ways.

750. In the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, proclaimed by the General Assembly on 20 November 1963, the following recommendations are made to all States:

"Article 9.

1. All propaganda and organizations based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin with a view to justifying or promoting racial discrimination in any form shall be severely condemned.

2. All incitement to or acts of violence, whether by individuals or organizations against any race or group of persons of another colour or ethnic origin shall be considered an offence against society and punishable under law.

3. In order to put into effect the purposes and principles of the present Declaration, all States shall take immediate and positive measures, including legislative and other measures, to prosecute and/or outlaw organizations which promote or incite to racial discrimination, or incite to or use violence for purposes of discrimination based on race, colour or ethnic origin."

751. The International Convention on the Elimination of all Forms of Racial Discrimination, adopted and opened for signature and ratification by the General Assembly on 21 December 1965, provides that States Parties undertake certain obligations to control manifestations of racial intolerance. The relevant provisions of the Convention read as follows:

"Article 2."

"1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms, and promoting understanding among all races, and to this end:

"(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

"(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organization;

"(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

"(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

"(e) Each State Party undertakes to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division...."

"Article 3."

"States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate, in territories under their jurisdiction, all practices of this nature."

"Article 4."

"States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and
positive measures designed to eradicate all incitement to, or acts of, such discrimination, and to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia,

"(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

"(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

"(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination....

"Article 6.

"States Parties shall assure to everyone within their jurisdiction effective protection and remedies through the competent national tribunals and other State institutions against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

"Article 7.

"States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention...."

752. In addition to the measures set out in the Declaration and the International Convention on the Elimination of All Forms of Racial Discrimination, the General Assembly, in resolution 2438 (XXIII) of 19 December 1968, has urgently called upon all States to take without delay, with due regard to the principles contained in the Universal Declaration of Human Rights, legislative and other positive measures to outlaw groups and organizations which are disseminating propaganda...
for racism, nazism, the policy of apartheid and other forms of racial intolerance, and to prosecute them in the courts; and has called upon all States and all peoples, as well as national and international organizations, to strive for the eradication, as soon as possible and once and for all, of racism, nazism and similar ideologies and practices, including apartheid, which are based on racial intolerance and terror.

753. Some further measures may be required, on the national level, in order to halt racist, nazi and similar activities, such as apartheid. However, it is difficult if not impossible to envisage the form which such measures could take without first surveying the legislative and other measures already taken or envisaged by Governments for this purpose. The General Assembly has requested the Secretary-General to prepare such a survey. The Special Rapporteur feels that the formulation of further recommendations to Governments could not be usefully undertaken until the results of the survey are available. He has, however, included in his recommendations (see Chapter XI of this report) a few suggestions as to further measures which may be envisaged by the international community on a world-wide level.
754. In this part of the report, separate conclusions will be drawn on the general problem of racial discrimination, on the special case of the racial policy of the South African Government, and on nazism and racial intolerance.

**Conclusions on the general problem of racial discrimination**

755. Racial discrimination in its varied forms and manifestations, exists in many parts of the world, sometimes in law more often in fact. Such discrimination may assume the form of an open and systematic policy of racial segregation adversely affecting the great majority of the population, as is the case of the policy of apartheid pursued by the Government of the Republic of South Africa. It may also assume a more subtle form which may amount to class distinction. An example may be drawn from the position of the indigenous populations of some Latin American countries who were originally discriminated against on the ground of race but who today, in fact though not in law, are relegated to an inferior status in standard of living and opportunity as regards the other sectors of the population. This latter form of manifestation of racial discrimination should no more be tolerated than an open and systematic policy of racial segregation and discrimination.

**National action to eliminate all forms of racial discrimination**

756. The principal responsibility in the struggle against racial discrimination and its eradication rests, within their respective territories, on the Governments of the States countries themselves. International action is only complementary to that of the countries concerned and cannot be substituted for such national action unless, as in the case of South Africa, intervention by the international community may be justified in terms of the provisions of the Charter.

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1/ The draft conclusions and proposals will be revised in the light of the discussion at the twenty-second session of the Sub-Commission and of the additional material that will be available when the collection of information is completed.
757. The principle of equality is clearly set out in the Universal Declaration of Human Rights. Article 2 of the Declaration proclaims that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Article 7 provides: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

758. In article 2 of the International Convention on the Elimination of all Forms of Racial Discrimination, which elaborates upon the principle of equality as set out in the Declaration provides the measures necessary for its realization, States Parties assume a fundamental obligation "to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms, and promoting understanding among all races...". Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation. Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations. Each State Party agrees to take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists. Each State Party agrees to prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization. Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division. And finally, each State Party agrees that it shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them for the purpose of guaranteeing them the full and
equal enjoyment of human rights and fundamental freedoms, so long as these
dreams do not entail as a consequence the maintenance of unequal or separate
rights for different racial groups after the objectives for which they were taken
have been achieved.

759. The Declaration establishes precise guidelines which should be followed by
all States, including those which have not yet ratified the Convention and even
those which are not eligible to ratify it. While all States should be
recommended and encouraged to ratify the Convention, those which are unable to
do so at present should be recommended, as an interim measure to comply strictly
with the principles set out in the Declaration and to inform the Secretary-
General of the measures taken for this purpose.

760. On another level, steps should be taken to ensure that each nation maintains
a vigilant attitude toward any form of racial discrimination which may persist
within territories under its control. No State should be allowed to close its
eyes to such discrimination, to maintain that it does not exist, or to refuse
to conform to international standards as formulated by the United Nations
family. In particular, problems of racial discrimination should never be
allowed to remain the exclusive concern of the group affected by the
discriminatory practices. All groups in a community, or in a country, should be
brought into partnership in setting up campaigns to eliminate the ill-effects
of racial prejudice and discrimination. Such community support is absolutely
necessary for the effective enforcement of any legislative measures which the
State may adopt.

761. Some Governments have found the so-called Fair Practices Acts to be an
effective means of combatting racial discrimination in the political, economic,
social and cultural spheres, and there can be no doubt that such acts, which
normally establish a body with the power to investigate complaints of racial
discrimination, to negotiate settlements of such complaints, to enforce such
settlements through the courts or otherwise, and to carry on educational
activities designed to end racial prejudice and discrimination, can be very
effective. Even when such Acts do not contain enforcement measures but only
put the Government on record as accepting and encouraging the principle of an
enforcement of equality of opportunity, they may bear far-reaching results and
may lead to the attainment of more effective legislation at a later date.
762. Efforts should be made to abrogate any laws which discriminate on racial
grounds. National and local activities designed to change or remove such laws
are important not only because it is vital that the legal framework behind which
discrimination hides should be broken, but also because such action serves to rally
and organize the forces opposed to racial discrimination, to educate the community
and to arouse the conscience of the nation.

Community action to remove racial prejudice and discrimination

763. It is in the field of community action that efforts to eradicate racial
prejudice and discrimination must now be essentially concentrated.
764. There are conflicting views as to where to start. Some experts feel that
prejudice must be destroyed first, since all legislation ending racial
discrimination would be nugatory without a corresponding change in the heart of
man. They contend that since legislation can always be repealed or amended - or
misinterpreted by the courts - even the soundest provisions can be set aside if
not supported by the power structure of the community. Other experts however
maintain that it is easier to control and change behaviour than attitudes, and
that for this reason the first step is to end discrimination, which can be done
immediately by law, whereas ending prejudice might require long-term education.
765. In any event, the conclusion may be reached that the problem of racial
prejudice and discrimination is a complex one and that the techniques which may
prove successful in dealing with it are by no means fixed or permanent. One
fact seems clear: legislation against racial discrimination is necessary to
deal with those whose minds and hearts are prejudiced, and it can be effective
in suppressing acts of discrimination even if it has no effect whatever upon the
prevailing mental attitudes.
766. Community action against racial discrimination can take the form of public
protest and denunciation of manifestations of such discrimination on the part of
public officials, civic organizations, labour unions or business firms. The
identification and exposure of individuals, groups and organizations promoting
racial prejudice and discrimination may be extremely important, and it is also
essential that the appropriate law-enforcement agencies be kept informed and
brought into situations where violations of human rights are taking place or are
being threatened.
767. Community action can also take the form of education to combat any existing or latent racial prejudice. Such education can be offered in the public schools, institutions of higher education, in trade unions, and in many other organizations active in the social field.

768. The first condition for such education, of course, is that there should be no racial discrimination in the schools themselves, in the universities, religious groups, trade unions or wherever the educational measures are undertaken. The second condition is that all of the participants in such measures should be brought together without distinction as to race, colour, descent, or national or ethnic origin, in order that they may establish, through first-hand personal contact, the basis of mutual understanding from which a spirit of brotherhood and a concern for the eradication of racial prejudice and discrimination can develop. Trade unions and industrial organizations can arrange to enlighten their members by arranging study groups, seminars, and lectures, by discussing the problem in their publications, and by other means. With regard to youth, the General Assembly itself has recommended, in principle III of its Declaration on the Promotion Among Youth of the Ideals of Peace, Mutual Respect and Understanding Between Peoples, that "Young people shall be brought up in the knowledge of the dignity and equality of all men, without distinction as to race, colour, ethnic origins or beliefs, and in respect for fundamental human rights and for the right of peoples to self-determination".

769. Education to combat racial prejudice and discrimination can also be disseminated through the various media of communication, including the Press, radio, television, motion pictures, recordings, magazines and popular pamphlets. Experience has shown that such activity should not be limited to preaching tolerance and goodwill. It will prove most effective only when it supplies factual information to help correct misconceptions, and when it provides information and know-how for successful social action.

770. The provision of accurate information concerning the non-dominant groups would help to destroy stereotypes and satisfy natural curiosity regarding the causes of differences between dominant and non-dominant groups. Facts of this kind are learned not only through books, newspapers, radio and television but also through personal contact on a friendly and equal basis. Some people's
prejudices are based on misinformation and, where that is the case, correct information will tend to correct them. Correct information about non-dominant groups and about discrimination is very important for children, since it will help to block the continuation of a pattern of prejudiced traditions.  

771. An understanding by prejudiced people that prejudice harms them both financially and psychologically would undoubtedly contribute to a reduction of prejudice. They must recognize that part of the gains that seem to accrue from discrimination are temporary and illusory. These gains, which have been described as economic, political and personal, tend to divert the prejudiced person from more satisfactory, permanent and rewarding gains. Prejudiced people need to be shown that they are themselves the losers for being prejudiced.  

772. Community action through the medium of religious organizations may also be effective in eliminating prejudice and discrimination based upon race, colour, descent, or national or ethnic origin. However, a prerequisite for successful action in this sphere is the removal from religious teaching materials of any racial bias or misinformation they may contain, and the substitution of accurate information concerning race.  

773. It is a peculiarity of modern life that in a few countries religious organizations founded upon the principle of brotherhood are among the more persistent of organizations in retaining racial segregation, separation, and other forms of discrimination. They should take a firm and vigorous stand against such practices both within and outside their own framework, in co-operation with other religious organizations in their community, their country, and throughout the world, if they are to survive as viable social institutions.  

774. Trade unions should also engage in community action against racial discrimination. Strikes which have occurred against responsible authorities have brought such discrimination to the attention of the public. A better method is to strive to develop among their membership a social sense based on respect for the inherent dignity of all human beings without distinction as to race, colour, descent, or national or ethnic origin.  

775. Social service and self-help organizations may also be effective in helping members of disadvantaged groups to overcome deficiencies, real or imagined, whether
physical, mental or moral. They can also be effective in eliminating class differences, such as in mode of dress, diet and housing, which are often the basis of racial prejudice and discrimination. In addition, they can promote the passage of helpful legislation.

776. Community action can also take the form of cultural organizations where people of varying backgrounds can meet and get to know each other without discrimination. Such organizations, where individuals may meet without constraint and on an equal footing, often serve to generate a truly humanistic spirit in a neighbourhood or a community. They can be based in an existing institution, such as a public library, a museum, or an information centre.

777. Community opinion against racial prejudice and discrimination can often be mobilized by self-surveys, in which groups of citizens participate in the gathering of statistics on the extent of prejudice or discrimination in their own area. The involvement of many individuals and groups in the collection of such statistics may achieve changes among members of the groups as well as being effective in arousing public opinion against these evils.

778. The members of the non-dominant group can in some cases also contribute to the eradication of the prejudice and discrimination of which they are the victims. Where there is group control over individual members, the non-dominant group can itself help to reduce hostility and conflict by such methods as undertaking a careful study of the behaviour of its own members which are regarded as objectionable by the dominant group, and participating as individuals in wider community activities which are widely regarded as necessary in the common interest.

International action to eliminate all forms of racial discrimination

779. It cannot be said that international organizations have shirked their responsibilities for dealing with the problem of racial discrimination. On the contrary, they have done a remarkable job within a brief span of time, and the results of their efforts already have become apparent in many areas.

780. The Charter of the United Nations has as its main theme the human person, his dignity and well-being. For this reason, in its key passages such as the Preamble, Chapter I in which the purposes and principles are set out and in Chapter IX on International Economic and Social Co-operation, the Charter
reaffirms faith in the dignity and worth of the human person and in the equal
righs of men and women. According to the Charter, one of the purposes of the
United Nations is to achieve international co-operation in promoting and
couraging respect for human rights and fundamental freedoms for all without
distinction as to race, sex, language or religion.

731. Moreover, the Universal Declaration of Human Rights adopted and proclaimed by
the General Assembly on 10 December 1948 defines the rights mentioned in the
Charter. Article 2 of the Declaration states:

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

782. The establishment of the Commission on Human Rights, provided for by
Article 68 of the Charter, and later of the Sub-Commission on Prevention of
Discrimination and the Protection of Minorities was conceived as a means of
helping the General Assembly and the Economic and Social Council to cope with their
responsibilities in these matters.

733. The United Nations has adopted and proclaimed the United Nations Declaration
on the Elimination of All Forms of Racial Discrimination, reaffirming the principles
contained in the Charter and in the Universal Declaration of Human Rights that
all human beings are equal in dignity and rights. The Declaration, as has been
seen, affirms the necessity of speedily eliminating racial discrimination
throughout the world, in all its forms and manifestations, and of securing
understanding of and respect for the dignity of the human person. It contains a
series of provisions for eradicating racial discrimination which apply to all
States, specialized agencies, and governmental and non-governmental organizations.
Furthermore, it urges them, inter alia, to "do all in their power to promote
energetic action which by combining legal and other practical measures, will make
possible the abolition of all forms of racial discrimination".

734. The United Nations has also adopted, and opened for signature and
ratification, the International Convention on the Elimination of All Forms of
Racial Discrimination. The Convention, as indicated above, defines "racial
discrimination" and prescribes definite steps to be undertaken by States Parties...
with a view to eliminating racial discrimination and promoting understanding among all races. Moreover, it provides for the establishment of a Committee on the Elimination of Racial Discrimination to supervise the operation of the Convention and in particular to deal with complaints that any State Party is not giving effect to the provisions of the Convention. As of 26 May 1969, thirty-six States have ratified or acceded to the Convention. It entered into force on 4 January 1969, in accordance with paragraph 1 of article 19, that is to say, on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

735. On 4 April 1969, the Secretary-General drew the attention of States Parties to the provisions of the Convention relating to the establishment of a Committee on the Elimination of Racial Discrimination as provided in article 8 of the Convention. In accordance with paragraph 3 of article 3, the initial election of the members of the Committee is to be held six months after the date of the entry into force of the Convention. It is expected that the election will be held during the week of 7 July 1969.

736. In addition, the Discrimination (Employment and Occupation) Convention (No. 111), adopted by the International Labour Conference in 1958, and the Convention against Discrimination in Education, adopted by the General Conference of UNESCO in 1960, are already in force, the former having been ratified by sixty-four States and the latter by forty-two States. A protocol to the latter Convention, providing for the establishment of a conciliation of good offices commission to seek settlement of disputes arising between States Parties, has been ratified by eight States. These two Conventions, while relating to discrimination on any ground lay particular stress upon discrimination based upon race, colour, descent or national or ethnic origin.

733. Thus the need at this stage is not for further international legislation to control racial discrimination, but for full and faithful implementation of the international agreements which already exist. The goal is quite clear: ratification by all eligible States of the instruments referred to above, and the effective operation of the international supervisory machinery envisaged in those instruments.

739. However, some time will no doubt elapse before this goal is achieved. Also, on the basis of past experience, the States which have experienced difficulty in controlling and eradicating racial discrimination will likely be among the last to ratify these instruments. For these reasons it may be necessary to take interim measures, on the international level, to promote observance of the principles laid down in this series of international instruments by States which have not yet become parties to them.

790. Some measures could be taken within the framework of resolution 3 (XXIII) of the Commission on Human Rights, and resolution 1235 (XLII) of the Economic and Social Council. In resolution 3 (XXIII), entitled "Study and investigation of situations which reveal a consistent pattern of violations of human rights", the Commission requested the Sub-Commission to prepare for its use "a report containing information on violations of human rights and fundamental freedoms from all available sources". The Sub-Commission was also invited "to bring to the attention of the Commission any situation which it has reasonable cause to believe, reveals a consistent pattern of violations of human rights and fundamental freedoms, in any country, including policies of racial discrimination, segregation and apartheid with particular reference to colonial and other dependent territories". In resolution 1235 (XLII) the Council authorized the Commission and the Sub-Commission to examine information relevant to gross violations of human rights and fundamental freedoms. It decided that the Commission on Human Rights may, in appropriate cases, make a thorough study of situations which reveal a consistent pattern of violations of human rights.

791. New ideas for future international action for the eradication of racial discrimination, as well as for the elimination of situations which reveal a consistent pattern of violations of human rights on racial grounds, will certainly evolve from the studies prepared under the auspices of the Sub-Commission.
Examination of these studies, and action upon the recommendations they contain, is accordingly a serious matter. The Special Rapporteur warmly welcomes the adoption by the Commission on Human Rights of resolution 19 (XXV), in which the Commission decided (i) to continue and conclude its discussion and consideration of the study of discrimination in the matter of political rights and the draft principles on freedom and non-discrimination in the matter of political rights at its twenty-sixth session and (ii) to consider and give priority at its twenty-seventh session to the study of discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country, and at its twenty-eighth session to the study of discrimination against persons born out of wedlock.

Proposals

792. In summary form, the Special Rapporteur's proposals are as follows:

1. Education should aim at inculcating in children from a very early age ideas of the dignity and worth of every human person and at counteracting attitudes of prejudice. Education should be concerned not so much to show the contributions and qualities of particular groups but rather to impart a sense of the greater common heritage, the transcending common interest.

2. In all States, the education authorities as well as various non-governmental organizations should provide accurate information about the non-dominant groups against which there is prejudice. This should include facts which help to break stereotypes, and explanations of the causes that give rise to the differences between the dominant and non-dominant groups.

3. Non-governmental organizations may be instrumental in initiating means of effecting closer relationships between people with a view to enhancing their sense of being able to overcome common problems. This security, will, in turn, contribute toward the solution of frustrating problems and reduce the desire to look for "scapegoats" for social problems of our time.

4. The mass media of communication should be used more extensively in every country for the purpose of eliminating prejudice and racial discrimination. Exercise of the great power of the media of communication carries with it immense potentialities for good or evil. The endeavour of all must be to ensure that the
mass media are utilized to the extent possible to increase public awareness that discrimination on the grounds of race, colour or ethnic origin is an affront to human dignity.

5. Non-governmental organizations whose rules exclude from membership persons of a particular race, colour, or national or ethnic origin should take immediate steps to repeal such rules. Such organizations should play an active role in exposing racial discrimination and in promoting tolerance and friendship among different ethnic groups.

6. States where such machinery is not yet established may wish to consider the adoption of legislation setting up bodies with the power to investigate complaints of racial discrimination, to negotiate settlements of such complaints and to enforce such settlements through the Courts or otherwise.

7. All eligible States which have not yet done so should be urged to ratify the International Convention on the Elimination of All Forms of Racial Discrimination as soon as possible and to recognize the right of communication provided for in article 14 thereof.

8. All Member States should bring the United Nations Declaration on the Elimination of All Forms of Racial Discrimination before the authorities competent to enact legislation enforcing the principle of the Declaration or to take other similar action for this purpose at the earliest practicable moment. They should also be requested to inform the Secretary-General of the measures taken.

9. All eligible States which have not yet done so should be urged to ratify or accede to other international conventions having a bearing upon the elimination of racial discrimination, including the Convention on the Prevention and Punishment of the Crime of Genocide, the International Slavery Convention of 1926 as amended, the Supplementary Convention of 1956, the UNESCO Convention Against Discrimination in Education, the ILO Discrimination (Employment and Occupation) Convention of 1958, the International Covenants on Human Rights, and the Optional Protocol to the Convention on Civil and Political Rights.

10. The regional economic commissions of the United Nations, which have not yet done so, should be requested to study, within their regions, the economic and social consequences of racial discriminatory practices.
11. The International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization should be requested to intensify further their activities for the eradication of racial prejudice and discrimination.

12. UNESCO should be requested to draw the attention of universities and research institutes throughout the world to the necessity to improve the facilities available for research concerning the causes of prejudice and discrimination and the techniques for their eradication.

13. The Commission for Social Development should be requested to study the effect of the social structure of society on racial discrimination as may be practised therein.

14. The Secretary-General of the United Nations should be requested to advise Governments of the availability of United Nations technical assistance in drafting legislation to prohibit racial discrimination in such fields as employment, education and housing, and advise on practical steps which may prove effective in this respect.

15. The Sub-Commission should decide to undertake studies of racial discrimination in respect of: (a) housing, (b) choice of a spouse, and (c) immigration policies, with a view to exposing situations which reveal discrimination on the ground of race, colour, national or ethnic origin or a consistent pattern of violations of human rights.

16. The Secretary-General should be requested to develop plans and programmes for making the International Day for the Elimination of Racial Prejudice (21 March) an important world-wide observance sponsored by the United Nations, to use all the media available to the United Nations and the specialized agencies to inform world public opinion so that maximum publicity may be given to the evils of racial discrimination and the policies of apartheid in particular and to the means of combatting them.

Conclusions with regard to the policies of apartheid and racial segregation

793. The review of the South African policy of apartheid in chapter IX of the draft report submitted to the twenty-first session of the Sub-Commission (E/CN.4/Sub.2/293) shows clearly the depth of the problem. The present Special
Rapporteur was Chairman and Rapporteur of the United Nations Commission for the Study of Racial Situation in the Union of South Africa, established by General Assembly resolution 616 A (VII), whose mandate was renewed by resolutions 721 (VIII) and 320 (IX). He has found that many of the conclusions reached by the Commission in its first report are still valid.\(^2\) The main elements of the problems may be summarized as follows:

(a) The racial problem in the Republic of South Africa is not a recent phenomenon and did not begin when the Nationalist Government conceived the so-called apartheid doctrine. From the beginning of European colonization in the seventeenth century, segregation between Europeans and non-white groups had been established, either spontaneously or by sporadic and empirical legislation originating in vestiges of the social concept associated with the colonial and semi-colonial periods of the nation's life. The Nationalist Party which initiated and developed the doctrine of apartheid has systematized racial segregation and applied it to its full extent.

(b) South Africa, contrary to the general trend observed in the world, rejects the notion that the Government of a country should strive to attain justice, equality and protection of human rights for all citizens. Its official policy stresses racial differentiation, the need to maintain and intensify racial discrimination and to preserve at any cost the privileges and the domination of a minority group. This policy is based on the theory that the white race, as the heir to Western Christian civilization, is in duty-bound to maintain inviolate and perpetuate its position. The doctrine also encourages ethnic groups to develop a "sense of colour" and to safeguard the purity of their racial characteristics.

(c) The policy of apartheid is carried out with such relentless vigour and determination that it was rightly said to "amount to the organization of a society on the principles of slavery".\(^3\) The legislative and administrative measures affect nearly all aspects of the domestic, familial, social, political

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and economic life of the non-whites who constitute four fifths of the whole population of the country. Fundamental freedoms such as: political rights, freedom of movement and residence, freedom to work and freedom to marry, are systematically denied to the overwhelming majority of the population on the grounds of race and colour alone. Disfranchised, the non-white people are politically and economically oppressed, and they are deprived of the opportunities to enjoy a normal and decent social and family life. Since 1948, the imposition of apartheid measures is constantly expanded by such grossly discriminatory legislation as the "Group Areas Acts", the "Bantu Laws Amendment Act", the "Bantu Laws Education Act". Because of all kinds of restrictions, Africans living in urban areas are obliged to live in communities where the proportion of men is nearly double that of women; in the gold-mining areas, the proportion is even greater. These facts and situations constitute obvious racial discrimination. Four fifths of the population are thereby reduced to a humiliating level of inferiority which is injurious to human dignity.

(a) Such a policy has given rise to a serious internal conflict, and maintains the country in a state of permanent tension. The African population has become the victim of the most repressive legislation. Moreover, the policy of apartheid has stirred up the conscience of the entire world and is viewed with concern and alarm in many countries. The independent African nations are particularly outraged and have identified themselves with the cause of the non-white South African. India and Pakistan are watching with increasing anxiety the application of the doctrine against the people of Indian and Pakistani origin living in South Africa.

(e) For more than twenty years the United Nations has been dealing with the problem. Both the General Assembly and the Security Council have repeatedly strongly condemned the racial policies of South Africa as incompatible with the principles of the Charter and as violating the obligations of that country as a Member State. Year after year, since 1952, the General Assembly has adopted resolutions calling on South Africa to abandon its apartheid policy. Since 1960, the Security Council has made similar appeals.

(f) South Africa has consistently refused to comply with the requests and demands of United Nations organs, arguing that its racial policies are a domestic
matter which is outside the jurisdiction of the United Nations. Furthermore it has also consistently spurned numerous invitations to co-operate with study groups created by United Nations organs and entrusted with the task of seeking peaceful means to resolve the situation.

(g) Since 1962, there has been a growing demand for the adoption of enforcement measures by the Security Council. On several occasions the General Assembly has recommended in resolutions adopted by more than a two-thirds majority the imposition of economic and diplomatic sanctions against South Africa. The Security Council has so far refrained from doing so.

(h) The negative and intransigent attitude of the South African Government, on one side, the unwillingness of the masses subjected to the policy of apartheid to passively accept their fate, and the strong determination of an important number of States to take action, on the other side, create an international situation which may eventually lead to an armed conflict.

794. In the light of the above analysis, it seems obvious that the real problem lies in the fact that South Africa has established racial discrimination as a State policy. The Special Rapporteur believes that the United Nations, and the international community as a whole, have therefore an imperative duty to meet such a challenge, and despite some frustration and setbacks, must resolutely continue to search for a solution to the problem in conformity with the principles of the Charter and the Universal Declaration of Human Rights.

795. The Special Rapporteur fully agrees with the conclusions reached in the studies of "Race" made under the auspices of UNESCO in 1950, which point out the fallacy of the concept of racial superiority and of the existence of pure races.

796. The Sub-Commission should strongly condemn the discriminatory policies of the South African Government and recognize that the doctrine of apartheid is scientifically false, constitutes a crime against humanity and threatens international peace and security.

797. In the light of the brief review of developments within South Africa since the draft report was issued, the Special Rapporteur stresses, once again,

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4/ For the text see Annex II.
5/ See paragraph , supra.
that there is an urgent need for Member States, in particular the major trading partners of South Africa, to fully apply the resolutions adopted by the General Assembly, the Security Council and other organs of the United Nations. It must be emphasized that without the active and unreserved cooperation of those Powers, the efforts of the United Nations to find a peaceful solution to the problems of apartheid, racial discrimination and segregation in southern Africa could not lead to satisfactory results. The Special Rapporteur is convinced, that special action should be taken in order to arouse public opinion in those countries to promote a greater awareness of the evils of apartheid. This, in turn, would stimulate the Governments concerned and lead them to adopt forceful and effective measures to compel the South African Government to abandon its nefarious policies. At this juncture, one of the main objectives of the United Nations in dealing with the problem of apartheid, may be to achieve the total isolation of South Africa, especially in the military, diplomatic, economic and cultural spheres.

793. The Special Rapporteur believes that the establishment of a unit of the United Nations Radio to broadcast to the people of southern Africa, as recommended in a draft resolution submitted by the Commission on Human Rights at its twenty-fifth session to the General Assembly for adoption, would be most useful, since it would demonstrate positively to the people of the area the feelings and the solidarity of the international community.

799. Another urgent task facing the United Nations is the strengthening of the humanitarian action intended to assist the victims of the policy of apartheid and alleviate their plight. In that connexion, the Special Rapporteur welcomes the decision of the General Assembly in resolution 2397 (XXIII) to revise the purpose of the United Nations Trust Fund for South Africa to include: (a) legal assistance to persons persecuted under the repressive and discriminatory legislation of South Africa; (b) relief to such persons and their dependants; (c) education of such persons and their dependants; (d) relief for refugees from South Africa.
300. The Special Rapporteur also welcomes the decision of the General Assembly in resolution 2396 (XXIII) to establish and publicize as widely as possible:
(a) a register of persons who have been executed, imprisoned, placed under house arrest or banning orders or deported for their opposition to apartheid;
(b) a register of all available information on acts of brutally committed by the Government of South Africa and its officials against opponents of apartheid in prisons. Such a decision, by exposing the inhumanity of apartheid, should exert a strong moral pressure on the South African Government and help arouse public opinion in the world.

301. The Special Rapporteur further endorses the conclusions and recommendations contained in the report on the policies of apartheid, racial discrimination and segregation in southern Africa prepared by Mr. Manouchehr Ganji, the Special Rapporteur appointed under resolutions 7 (XXIII) and 3 E (XXIV) of the Commission on Human Rights.6/

Proposals

302. In summary form, the Special Rapporteur's proposals are as follows:
1. The United Nations should continue to exert a strong and relentless moral pressure on the Government of South Africa until it agrees to abandon its policy of apartheid.
2. The General Assembly should reiterate its request that Member States comply with its resolutions providing for the imposition of sanctions against the South African régime.
3. The Security Council resolution which requested all Member States not to furnish arms to South Africa should be scrupulously applied.
4. The Security Council should endeavour to seek the appropriate ways and means by which the various resolutions of the General Assembly could be efficiently implemented. Once sanctions are imposed, steps should be taken to determine under what conditions the States adversely affected may be entitled to financial compensation by application of Article 50 of the Charter.

5. The programme of assistance to the victims of apartheid should be strengthened and expanded. In particular, the General Assembly should urgently appeal to all Member States to make a substantial contribution to United Nations Trust Fund.

6. In the light of General Assembly resolution 2396 (XXIII) the Special Rapporteur recommends to the Sub-Commission that it invite the Commission on Human Rights to address a special appeal to existing humanitarian organizations, and the International Red Cross in particular, to take a more active role in assisting the victims of the policies of apartheid, especially those who are detained and imprisoned.

7. The specialized agencies, and especially the financial institutions, should follow towards South Africa a policy in conformity with the resolutions adopted by the General Assembly of the United Nations.

8. Within the States an educational programme designed to acquaint the public of each country with the evil consequences of the policy of apartheid should be undertaken by the States, when appropriate, non-governmental organizations, the churches and universities or other civic groups. Such a programme could help persuade reticent national governments to comply voluntarily with the resolutions of the General Assembly.

9. The United Nations should be urged to provide funds on the scale required to combat effectively the propaganda undertaken by the Government of the Republic of South Africa in its effort to extol the virtues of its policy of apartheid.

10. Special efforts should be made to persuade the major trading partners of South Africa to modify their policy in accordance with the resolutions adopted by the General Assembly.