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Racism and Repression in South Africa: The Two Faces of Apartheid

INTRODUCTION

South Africa and the struggle to advance human rights are inextricably linked. The Republic of South Africa has been singled out since the United Nations' foundation as a principal violator of the human rights norms contained in the Charter of the United Nations and the Universal Declaration of Human Rights. Repeated resolutions of both the U.N. General Assembly and Security Council have called on the South African government to comply with international human rights standards. Within South Africa itself, opponents of the government have measured domestic law and policy against the human rights norms proclaimed in the international community.

The main charge leveled against the South African government is that it has chosen to continue to pursue a policy of institutionalized racial discrimination at a time when world opinion has turned against racism. However, it is important to stress that the policy of apartheid comprises two components—racism and political repression. While the modern law of apartheid retains the twin components of racism and repression, today repression dominates. The government seeks to maintain power by substituting racially discriminatory laws with general restrictions on civil rights. Consequently the measures employed by the South African government to suppress opposition to apartheid and demands for political equality, rather than the laws implementing petty segregation, have become the focus of world attention today.

In recent years the South African legislature has responded to both international and domestic criticism and embarked upon a slow process of reform in race relations.¹ The ban on interracial marriages has been repealed,² influx control abandoned³ and segregation in most universities abolished.⁴ Despite these changes, several key racist statutes remain undisturbed, notably those that deny the franchise to Africans,⁵

1. For an account of the present state of racist legislation in South Africa, see *RACE AND LAW IN SOUTH AFRICA* (A. Rycroft ed. 1987).

2. Immorality and Prohibition of Mixed Marriages Amendment Act No. 72 of 1985, STAT. S.A.—*Criminal Law & Procedure*, repealing Prohibition of Mixed Marriages Act No. 55 of 1949, STAT. S.A.—*Criminal Law & Procedure*.

3. Abolition of Influx Control Act No. 68 of 1986, STAT. S.A.—*Blacks*, repealing Blacks Consolidation (Urban Areas) Act No. 25 of 1945, STAT. S.A.—*Blacks*.

4. Universities Amendment Act No. 83 of 1983, STAT. S.A.—*Education*, amending Extension of University Education Act No. 45 of 1959, STAT. S.A.—*Education*.

5. Republic of South Africa Constitution Act No. 110 of 1983, STAT. S.A.—*Constitutional Law*.

prohibit residential integration⁶ and confine African land ownership to a meager thirteen percent of the country. Thus South Africa still remains a society in which race determines the allocation of political and social rights.

The National Party Government's willingness to abandon segregation in many areas of life has not been matched by a commitment to the sharing of political power. On the contrary, in 1983 the all-white Parliament adopted a new constitution⁷ which includes Coloureds⁸ and Indians as junior partners in a "Tricameral Parliament." However, black South Africans are precluded from voting in national elections despite the fact that they comprise almost seventy percent of the country's population.

The refusal of the South African government to share power has resulted in the intensification of opposition and a concomitant acceleration of repression. Thus since 1985, South Africa has been subjected to nearly continuous emergency rule which has vested draconian, arbitrary powers in the security forces and the executive branch.

The National Party Government has clearly decided that its policy of gradual racial reform is to be accompanied by strict political control. Consequently it has embarked upon a strategy to suppress opposition and to discredit or delegitimize those bodies that pose the greatest threat to the status quo and to the pace of reform. Popular extraparlimentary political groups, the outlawed, but ever popular, African National Congress ("ANC"), the press and black trade unions have borne the brunt of this strategy of repression and delegitimization.

The following four short studies draw attention to the manner in which the National Party Government has sought to discredit its opponents, and to the methods employed to achieve this end. In the first study, Professor Dugard proposes the use of principles of humanitarian law to halt the executions of ANC combatants. In the second study, Nicholas Haysom details the crisis of legitimacy in the South African courts and the increase in right-wing vigilante violence. In the third study, Gilbert Marcus examines the effects of the emergency media regulations through a case study of the banning of *New Nation*. In the final study, Halton Cheadle analyzes the recent labor legislation and its ramifications for the trade union movement. The authors demonstrate how lawyers have attempted to advance human rights by advocating rights-based arguments and describe their failures and successes before the courts.

6. Group Areas Act No. 36 of 1966, STAT. S.A.—*Group Areas*.

7. Enacted in Republic of South Africa Constitution Act No. 110 of 1983, STAT. S.A.—*Constitutional Law*.

8. The South African term used to describe persons of mixed descent.

Despite the permanent security laws and the annually enacted emergency regulations that authorize security forces to interfere drastically with basic rights, there remains room for judicial maneuver within the interstices of the law. Judges may still advance human rights, albeit only marginally, by invoking common law principles of fairness and justice and norms of customary international law. The advocacy of human rights in an unjust society is a daunting task. At the same time it presents a challenge which lawyers cannot ignore.

Professor John Dugard

