Declaration concerning the Policy of "Apartheid" of the Republic of South Africa

and

I.L.O. Programme for the Elimination of "Apartheid" in Labour Matters in the Republic of South Africa

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International Labour Office
ILO INFORM BIT
On 8 July 1964 the International Labour Conference adopted unanimously by acclamation a Declaration concerning the Policy of Apartheid of the Republic of South Africa.

On the same day it noted the I.L.O. Programme for the Elimination of Apartheid in Labour Matters in the Republic of South Africa, submitted to it by the Governing Body of the International Labour Office, and unanimously approved the practical recommendations recapitulated in paragraphs 144-150 of the Programme.

The Declaration is reproduced opposite, followed by the Programme (pp. 5 to end).
DECLARATION CONCERNING THE POLICY OF "APARTHEID"
OF THE REPUBLIC OF SOUTH AFRICA

Whereas all Members of the International Labour Organisation have, by the
Declaration of Philadelphia embodied in the Constitution as a statement of the aims
and purposes of the Organisation, solemnly affirmed that "all human beings,
irrespective of race, creed or sex, have the right to pursue both their material well-
being and their spiritual development in conditions of freedom and dignity, of eco-
nomic security and equal opportunity ",

Whereas, by an instrument of ratification of the Constitution as amended in
1946, signed by the Prime Minister of the Union of South Africa at Pretoria on
12 June 1947, the Government of South Africa has undertaken "faithfully to perform
and carry out " all the stipulations of the Constitution,

Whereas the Constitution provides that the International Labour Organisation
exists for the promotion of the objects set forth in the Preamble thereto and in the
Declaration of Philadelphia,

Whereas the Government of the Republic of South Africa has not merely failed
to co-operate in promoting the objects set forth in the Preamble to the Constitution
and in the Declaration of Philadelphia, but has promulgated and is practising the
inhuman policy of apartheid, which is wholly incompatible with the aims and prin-
ciples of the Constitution and the Declaration of Philadelphia, thus creating an
alarming situation,

Whereas the Declaration of Philadelphia affirms that the principles set forth
therein are fully applicable to all peoples everywhere and recognises that their
implementation is a matter of concern to the whole civilised world,

Whereas the application of the principle of equal opportunity for all human
beings, irrespective of race, has therefore ceased to be solely the domestic concern
of the Republic of South Africa, and whereas the Security Council of the United
Nations, by Resolution S/5471, adopted unanimously on 4 December 1963, has
affirmed the conviction that the situation in South Africa is seriously disturbing
international peace and security,

Whereas the Republic of South Africa persistently and flagrantly violates this
principle by means of legislative, administrative and other measures incompatible
with the fundamental rights of man, including freedom from forced labour, freedom
of association, and freedom of choice of employment and occupation,

Whereas such persistent and flagrant violation of the principle has been estab-
lished by the International Labour Organisation by inquiries relating to forced labour,
freedom of association and freedom from discrimination in respect of employment
and occupation,

Whereas, for instance, the United Nations-International Labour Organisation
Ad Hoc Committee on Forced Labour has found that there exists in South Africa
"a legislative system applied only to the indigenous population and designed to
maintain an insuperable barrier between these people and the inhabitants of Euro-
pean origin ", that "the indirect effect of this legislation is to channel the bulk of
the indigenous inhabitants into agricultural and manual work and thus to create a
permanent, abundant and cheap labour force” and that in this sense “a system of forced labour of significance to the national economy appears to exist in the Union of South Africa”,

Whereas, moreover, the Governing Body Committee on Freedom of Association has found that the provisions of the Industrial Conciliation Acts and Native Labour (Settlement of Disputes) Act involve discrimination against workers on grounds of race which is incompatible with the principle that workers without distinction should have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation and that all workers should enjoy the right of collective bargaining,

Whereas the Committee of Experts on the Application of Conventions and Recommendations has likewise found, on the basis of information furnished by the Government of South Africa and the relevant legislation, that the legislation and practice of South Africa establish extensive discrimination in employment and occupation on grounds of race,

Whereas the International Labour Conference, by a resolution adopted on 29 June 1961, condemned the racial policies of the Government of the Republic of South Africa and called upon the Republic of South Africa to withdraw from the International Labour Organisation until such time as the Government of the said Republic abandons apartheid,

Whereas South Africa, having declined the invitation of the International Labour Conference to withdraw from membership of the Organisation, has nevertheless, as the result of discussions and developments at the 1963 Session of the Conference and the decisions taken by the Governing Body in June 1963, November 1963 and February 1964, stated in a communication dated 11 March 1964 its decision to withdraw from the Organisation,

Whereas paragraph 5 of article 1 of the Constitution of the International Labour Organisation provides as follows:

“No Member of the International Labour Organisation may withdraw from the Organisation without giving notice of its intention so to do to the Director-General of the International Labour Office. Such notice shall take effect two years after the date of its reception by the Director-General, subject to the Member having at that time fulfilled all financial obligations arising out of its membership. When a Member has ratified any international labour Convention, such withdrawal shall not affect the continued validity for the period provided for in the Convention of all obligations arising thereunder or relating thereto.”

Whereas South Africa continues to violate her undertaking to respect the right of “all human beings irrespective of race, creed or sex” to “pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”,

Whereas the United Nations Declaration on the Elimination of All Forms of Racial Discrimination has called for an end to “be put without delay to governmental and other public policies of racial segregation and especially policies of apartheid, as well as all forms of racial discrimination and separation resulting from such policies”,

Whereas the Security Council of the United Nations by Resolution S/5471 adopted unanimously on 4 December 1963 expressed “the firm conviction that the policies of apartheid and racial discrimination as practised by the Government of the Republic of South Africa are abhorrent to the conscience of mankind and that therefore a positive alternative to these policies must be found through peaceful means” and condemned “the non-compliance by the Government of the Republic
of South Africa with the appeals contained in" the resolutions addressed to it by
the General Assembly and the Security Council,

Whereas some member States have already taken practical measures in pursu­
ance of certain other decisions adopted by the United Nations to compel South
Africa to renounce its odious policy of apartheid,

The General Conference of the International Labour Organisation,

Determined to fulfil its responsibility to promote and take its part in securing
the freedom and dignity of the people of South Africa, and to oppose the policy of
apartheid practised by the Government of South Africa,

Acting as spokesman of the social conscience of mankind,

Reiterating that a government which deliberately practises apartheid is unworthy
of the community of nations but nevertheless making another appeal to the Govern­
ment of South Africa to abandon its disastrous policy and to co-operate with
employers' and workers' organisations in placing the relations between the various
elements of the population of South Africa, and the relations between the people of
South Africa and the rest of the world, on the basis of the equality of man, justice
for all, good neighbourliness and mutual respect—

1. Solemnly reaffirms its fidelity to the fundamental principle of the Declaration
of Philadelphia, according to which " all human beings, irrespective of race, creed or
sex, have the right to pursue both their material well-being and their spiritual de­
development in conditions of freedom and dignity, of economic security and equal
opportunity ".

2. Emphatically reaffirms its condemnation of the degrading, criminal and
inhuman racial policies of the Government of the Republic of South Africa, which
policies are a violation of fundamental human rights and thus incompatible with
the aims and purposes of the I.L.O.

3. Calls upon the Government of South Africa to recognise and fulfil its under­
taking to respect the freedom and dignity of all human beings, irrespective of race,
and to this end,

   to renounce without any further delay its policy of apartheid and, in like manner,
to repeal all legislative, administrative and other measures which are a violation of
the principle of the equality and dignity of man and a direct negation of the inherent
rights and freedoms of the peoples of South Africa,

   to establish and consistently to pursue the policy of equal opportunity and treat­
ment for all, in employment and occupation, irrespective of race,

   to repeal, without delay, the statutory provisions which provide for compulsory
job reservation or institute discrimination on the basis of race as regards access to
vocational training and employment,

   to repeal, without delay, all legislation providing for penal sanctions for contracts
of employment, for the hiring of prison labour for work in agriculture or industry,
and for any other form of direct or indirect compulsion to labour, including discrimi­
nation on grounds of race in respect of travel and residence, which involves racial
discrimination or operates in practice as the basis for such discrimination,

   to repeal, without delay, the statutory discrimination on grounds of race in
respect of the right to organise and to bargain collectively, and the statutory pro­
hibitions and restrictions upon mixed trade unions including persons of more than
one race, and so to amend the Industrial Conciliation Acts that all workers, without
discrimination of race, enjoy the right to organise and may participate in collective
bargaining.

4. Invites the Governing Body to exercise its constitutional power under
article 19 (5) (e) and (6) (d) of the Constitution by requesting the Government of

5. Decides to consider each year a special summary of such reports to be submitted to the Conference by the Director-General in pursuance of article 23 of the Constitution.

6. Invites the Governing Body to request the Director-General to follow the situation in South Africa in respect of labour matters and to submit every year for consideration by the Conference a special report concerning the application of the present Declaration including any necessary recommendations concerning any measures which should be adopted with a view to bringing to an end the policy of apartheid in the Republic of South Africa.

7. Makes a pressing appeal to the governments, employers and workers of all States Members of the International Labour Organisation to combine their efforts and put into application all appropriate measures to lead the Republic of South Africa to heed the call of humanity and renounce its shameful policy of apartheid.

8. Reaffirms its resolve to co-operate with the United Nations in seeking and guaranteeing freedom and dignity, economic security and equal opportunity for all the people of South Africa.
I.L.O. PROGRAMME
FOR THE ELIMINATION OF "APARTHEID"
IN LABOUR MATTERS IN THE REPUBLIC OF SOUTH AFRICA

On 15 November 1963 the Governing Body of the International Labour Office unanimously requested the Director-General to submit as a matter of urgency to the Committee on Questions concerning South Africa appointed by the Governing Body suggestions concerning the contribution which the I.L.O. could make to the complete elimination of apartheid and to suggest what action should be taken to secure the observance of the principles in the Constitution and to protect human dignity.

The present I.L.O. programme for the elimination of apartheid in labour matters in the Republic of South Africa has been prepared in response to this request.

It has been based on the fullest and latest information available to the International Labour Office. The information used consists essentially of the laws and regulations of the Republic of South Africa, official statements and reports of the South African Government, and the reports of authoritative I.L.O. bodies which have from time to time inquired into various aspects of the position in South Africa, and all of which have been endorsed or accepted by the Governing Body. No information from other sources or reports the objectivity of which might be open to question have been used.

The programme concentrates on three broad areas, namely—

- equality of opportunity in respect of admission to employment and training;
- freedom from forced labour (including practices which involve or may involve an element of coercion to labour);
- freedom of association and the right to organise.

The programme concentrates on these matters in the first instance for four reasons:

- they are the fundamentals of freedom and dignity;
- well-established standards approved by the International Labour Conference with near unanimity exist in respect of all of them; these standards give expression to principles proclaimed in the Declaration of Philadelphia as being among the aims and purposes of the International Labour Organisation;
- the widespread acceptance of these standards in Africa generally, and in substantial measure by South Africa’s immediate neighbours in southern Africa, refutes the suggestion that “the present stage of social and economic development” of South Africa, which is generally conceded to be technically the most advanced of all African countries, precludes their immediate application there;
- they have all been the subject of an exhaustive inquiry by authoritative I.L.O. bodies which affords an objective basis for the formulation of recommendations relating to them.

In respect of each of these matters the programme sets out, primarily in the form of an analysis of the applicable laws and regulations, the present situation,
summarises the findings concerning this situation which have been made by authoritative I.L.O. bodies, contains a proposed recommendation for the amendment of the law of South Africa to eliminate apartheid, and indicates specifically the changes in the law of South Africa necessary to make the recommendation effective.

A. RACIAL DISCRIMINATION IN RESPECT OF ADMISSION TO EMPLOYMENT AND ACCESS TO VOCATIONAL TRAINING

1. General Situation

1. The Government of the Republic of South Africa has itself defined its policy in respect of employment and occupation as an element of its general policy of "separate development" and has expressly stated that "the law and practice in South Africa, based as it is on the endeavours of the Government to ensure that each population group develops to the maximum of its economic potential with minimum impingement on the rights and aspirations of others, inevitably necessitates limitations on the rights of all". ¹

2. On examination, the legislation in force appears in fact to have established discriminatory treatment to the detriment of the "non-white" sections of the population by preventing or restricting the access of such persons to certain categories of employment and to certain conditions of employment which are enjoyed by the white population.

3. This is the result principally of the inequality of opportunities for vocational training established by the legislation, which organises all education on a separate and unequal basis for persons of different races. This organisation, as the Government has itself stated, is based on consideration of the position which these persons are to occupy in society. In particular, this has the effect of denying to persons of African race, and "coloured" persons equality of opportunity with the "whites" as regards access to the training necessary for higher levels of employment. "Coloured persons" includes persons of mixed blood and all persons who are neither "white" nor "native", e.g. Indians.

4. In the selection by workers of branches of employment in which they may wish to seek employment, a general discrimination based on race results from the legislation, imposing restrictions on freedom of placement, movement, and residence in urban areas for "natives" as distinct from other sections of the population. ² This legislation has the effect of restricting the possibilities of employment for "natives" in industry and commerce and of directing them towards the least attractive branches of employment.

5. Moreover, the legislation has expressly imposed a colour bar for access to certain classes of employment, in particular skilled work. In certain industries it has long laid down prohibitions or restrictions on the performance of such work by "non-whites". In recent years it has finally authorised in a completely general way the establishment of job reservations of all kinds on the basis of race. The avowed


² This will be indicated in greater detail in section B.
purpose of these measures has been to protect white workers from the competition of workers of other races, particularly in skilled work, and the powers granted by the law have been effectively used to this end.

6. Further, the legislation of the Republic of South Africa concerning the right to organise, collective bargaining and the settlement of trade disputes establishes discrimination based on race. This discrimination has the effect, inter alia, of depriving persons of African race of the protection resulting as regards employment and conditions of employment from the exercise of the trade union rights granted to persons of other races.

7. Finally, in addition to the above-mentioned obstacles which the legislation places in the way of access by "non-whites" to the better paid jobs, discrimination between persons of different races is established or permitted by the legislation in the application of collective agreements and of the other wage-fixing machinery.

II. Particulars of the Legislation

8. The Government of the Republic of South Africa itself supplied the following information in a report sent to the I.L.O. in 1962:

The population of the Republic of South Africa comprises four very distinct population groups of whom eleven million are Bantu, three million of European origin, 500,000 of Asian origin and one-and-a-half million of mixed origin. The problem of ensuring the economic advancement and peaceful co-existence of this heterogeneous society in different stages of social and industrial evolution, in a manner which will ensure justice and the furtherance of the welfare of all, has necessitated the pursuance in this country of a policy of separate development with a view to securing for all groups the realisation of their highest ideals within their own communities. Socio-economic conditions in the sphere of employment and occupation have necessitated the enactment of legislative measures peculiar to the needs of the different population groups so that they may progress in the direction of self-determination. The introduction of an integrated labour system would inevitably lead to economic and social injustices, bearing in mind that there are distinct communities, which differ culturally, ethnically and socially. These differences can be minimised only by affording such legislative protection as circumstances warrant in order to ensure that no group is deprived of the benefits to which its energies, labours and initiatives entitle it.

In certain fields where the considerations outlined above do not apply, there is a prohibition against discrimination on the grounds of race or colour. Section 24 (2) of the Industrial Conciliation Act, 1956, and section 8 (4) of the Wage Act, 1957, for instance, provide specifically that wage-regulating measures under those enactments shall not differentiate or discriminate on the grounds of race or colour. These two measures cover practically the whole field of statutory wage regulation in industry and commerce. Similarly the Apprenticeship Act, 1944, which regulates the admission of persons to apprenticeship training does not permit of any discrimination of the nature referred to in the Convention. Generally speaking, however, the law and practice in South Africa, based as it is on the endeavours of the Government to ensure that each population group develops to the maximum of its economic potential with minimum impingement on the rights and aspirations of others, inevitably necessitates limitations on the rights of all.

9. It appears that with regard to the distinctions made by law, the main elements in South African legislation which establish racial discrimination in respect of access to employment and of conditions of employment are as follows:

(a) Training for Employment.

10. A general discrimination based on race with regard to opportunities of access to vocational training is the result mainly of the organisation of the whole
educational system, which is based on racial segregation and on inequality of conditions for persons of different races.

11. The system of separate education for persons of African race was established by law in 1953, so as to put it under strict control by the central Government with the declared purpose of ensuring that the education of "natives" should be in conformity with the policy of apartheid. The Minister of Native Affairs on submitting the Bill stated, inter alia: "Education must train and teach people in accordance with their opportunities in life, according to the sphere in which they live.... Native education should be controlled in such a way that it should be in accord with the policy of the State." Similar measures, based on the same considerations, were taken in 1963 in respect of the education of "coloured" persons.

12. Whereas provincial legislation makes education compulsory throughout the Republic for "whites", it has nowhere been made compulsory for persons of African race. For "coloured" persons it is compulsory only in certain limited areas. Further, the educational facilities available to non-whites do not permit their full enrolment in schools, whereas practically 100 per cent. of "white" children go to school.

13. The general effect of the legislation is to establish inequality of opportunity for people of different races to attain the level of general education necessary for access to all technical or higher training. According to ministerial statements in the Parliament of the Republic in 1962, there were altogether about 295,600 Africans who had passed "Standard VI" (i.e. satisfactorily completed their primary education)—a figure representing about 4 per cent. of the African population over school age.

14. With regard to university education, legislation was adopted in 1959 to prohibit absolutely in the future the admission of "non-whites" to universities open to "whites", and to reserve to the "non-whites" "university colleges", which are themselves distinct on the basis of the "race" or of the "ethnic group" of the persons concerned. At the same time, strict government control was placed on the university education of non-whites.

15. Official statistics for 1960 show that in the field of higher education the number of "non-whites" was about one-tenth of that of "whites".

(b) Access to Particular Employments.

16. Legislation imposing discriminatory restrictions on persons of African race in respect of freedom of employment, placement, movement and residence

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1 Bantu Education Act, 1953 (No. 47).
2 Hansard, No. 10, 11th Parliament, col. 3585.
3 Coloured Persons Education Act, 1963 (No. 47).
5 Ibid.
6 The Financing of Bantu Education, by the Secretary of Bantu Education, 1961 (RR 64/61).
7 State of the Union Yearbook, 1962, p. 84.
8 Although, for example, as pointed out by the Government in its above-mentioned report, the Apprenticeship Act does not itself lay down conditions based on race, persons of different races do not have equality of opportunity for attainment of the level of general education necessary for apprenticeship under this Act (Apprenticeship Act, No. 37, 1944).
9 Hansard, No. 6, col. 1875; ibid., No. 13, col. 4529.
10 Except for one university which provides only correspondence courses.
11 Extension of University Education Act, 1959 (No. 45), as amended, inter alia, by Act No. 67 of 1963.
(particularly in urban areas) and consequently creating for them a general status of inequality as regards opportunity of access to the employments and occupations of their choice, is described in section B.

17. The most general statutory provisions for the reservation of particular jobs in terms of race were adopted in 1956 and strengthened in 1959.  

18. Under the provisions in question, which are entitled "Safeguard against Inter-Racial Competition", the Government may, _inter alia_, make determinations prohibiting the replacement of employees of one race by those of another race, wholly or partly reserving work or classes of work in an undertaking, industry, trade or occupation to persons of a specified race, fixing the number or minimum, maximum or average percentage of persons of a specified race to be employed in particular work or in particular industries, etc.

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1 In particular: Native Labour Regulation Act, No. 11 of 1911, as amended, and regulations issued thereunder; Natives (Abolition of Passes and Co-ordination of Documents) Act, No. 67 of 1952; Natives (Urban Areas) Consolidation Act, No. 25 of 1945, as amended; Bantu Laws Amendment Act, No. 76 of 1963.

2 Section 77 of the Industrial Conciliation Act, 1956, as amended in 1959.

3 The relevant provisions of the above-mentioned section 77 are as follows:

"The determination . . . may include provisions relating to all or any of the following matters, namely:

(i) the prohibition of the replacement by an employer of employees of a specified race by employees of another race;

(ii) the prohibition of the employment by an employer of a smaller percentage of employees of a specified race in proportion to the total number of his employees of a specified class than any percentage which existed or may exist at any specified date;

(iii) the reservation either wholly or to the extent set out in the recommendation—

(a) of work or any specified class of work or work other than a specified class of work in the undertaking, industry, trade or occupation specified in the terms of reference or any portion thereof; or

(b) of work of the class specified in the terms of reference or any portion thereof, for persons of a specified race or for persons belonging to a specified class of such persons or for such persons other than a specified class of persons, and the prohibition of the performance of such work by other persons;

(iv) the minimum, maximum or average number or percentage of persons of a specified race who shall be employed by an employer either generally or during a specified period in proportion to the total number of persons or to the number of persons belonging to a specified class or race or to the number of persons other than persons belonging to a specified class or race, employed by him on—

(a) work or any specified class of work or work other than a specified class of work in the undertaking, industry, trade or occupation specified in the terms of reference or any portion thereof; or

(b) work of the class specified in the terms of reference or any portion thereof, and the circumstances under which and the conditions subject to which any such minimum, maximum or average number or percentage shall not apply;

(v) the regulation, on such other basis as the tribunal may deem advisable, of the number of employees of any specified race who may be employed by an employer in the class of work specified in the terms of reference or any portion thereof, or in work or in any specified class of work or in work other than a specified class of work in the undertaking, industry, trade or occupation specified in the terms of reference or any portion thereof, the generality of this provision not being limited by the other provisions of this subsection;

(vi) any matter necessary for or incidental to the carrying out of the provisions of the determination."
19. When introducing this legislation, the Government indicated that it intended to protect the "white" labour force against the infiltration which was taking place of "non-whites" into skilled employment.¹

20. An examination of the determinations made under this Act shows that they have in fact been used for this purpose; most of them are designed to reserve skilled employment in various industries (transport, engineering, building, public services, etc.), exclusively to "white" workers in specified towns, regions, provinces or even the entire country ², whereas two specify minimum percentages of "whites".³

21. Apart from the measures taken under these statutory powers, which are applicable to employment generally, there also exist laws applying to particular industries which make access to or performance of certain jobs subject to conditions based on race.

22. Thus, under the legislation on mines ⁴ the Government has long been able to make regulations reserving to "Europeans" and to certain classes of "coloured" persons the delivery of certificates of competency required for the performance of certain work in the mines and related undertakings, and dividing various classes of work between persons of different races.⁵

23. In the building industry legislation of 1955 totally prohibited the employment of "natives" on skilled work in all urban areas (elsewhere than a "native" area).⁶ The Act contains a very long list of skilled jobs in the building industry from which "natives" are excluded.⁷

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¹ Assembly, 7 June 1955: Hansard, No. 18, col. 7156.
² Determinations Nos. 2 and 3 of 1957; No. 4 of 1958; Nos. 5, 6 and 7 of 1959; Nos. 9, 11 and 12 of 1962.
³ Determinations No. 8 of 1960 and No. 10 of 1962.
⁴ Mines and Works Act, No. 12 of 1911, as amended by Act No. 25 of 1926 and Act No. 27 of 1956.
⁵ Section 12 (2), read with section 12 (1) (n). Section 12 (1) (n) relates to "certificates of competency required for employment in any particular occupation in, at or about mines, works or machinery, the grant, cancellation and suspension of such certificates, and the prohibition of employment of persons not in possession of the required certificates of competency; ".
   Section 12 (2) provides:
   "(a) Any regulation under paragraph (n) of subsection (1) may provide that in any Province, area or place specified therein, certificates of competency in any occupation likewise specified, shall be granted only to persons of the following classes:
   "(i) Europeans;
   "(ii) persons born in the Union and ordinarily resident therein, who are members of the class or race known as Cape Coloureds, or of the class or race known as Cape Malays; and
   "(iii) the people known as Mauritius Creoles or St. Helena persons or their descendants born in the Union.
   "(b) The regulations may also restrict particular work to, and in connection therewith, impose duties and responsibilities upon, persons of the classes mentioned in subparagraphs (i), (ii) and (iii) of paragraph (a) of this subsection, may apportion particular work as between them and other persons, and may require such proof of competency as may be prescribed."
⁶ Native Building Workers Act, No. 27 of 1951, as amended by Act No. 60 of 1955, sections 14, 15 and 16. Section 15, as amended in 1955, provides in particular:
   "(1) (a) No person shall in an urban area, elsewhere than in a native area, employ any native on skilled work.
   "(3) Any person who contravenes any provision of subsection (1) shall be guilty of an offence."
24. In the transport industry discrimination in employment followed racial segregation in the means of transport; by amending legislation adopted in 1959 the authorities were empowered to require the employment in public transport of persons belonging to specified racial classes.\(^1\)

25. As regards nursing and midwifery—two professions lending themselves particularly to the promotion of racial equality in the field of employment—legislation was adopted in 1957 to provide generally for their segregation in terms of race;\(^2\) in particular, only "whites" may be appointed or elected to the "Nursing Council"\(^3\) responsible for regulating the profession; this Council is authorised to prescribe different conditions and qualifications for entry into the profession for different classes of persons (\textit{inter alia}, on account of their race).\(^4\) Moreover, the Act forbids the employment of "non-whites" in posts involving the control or supervision of "white" persons.\(^5\)

(c) \textit{Determination of Conditions of Employment.}

26. Fundamental racial discrimination affecting employment and the conditions of employment generally is established by the legislation concerning trade union rights, collective bargaining and the settlement of disputes,\(^6\) as described in section C of this annex.

27. The conditions of employment established by collective agreements or arbitration proceedings under the Industrial Conciliation Act are not applicable to "native" workers, who are generally excluded from the scope of the Act.\(^7\) Nevertheless the Minister has the power to make such conditions binding in respect of "natives" in cases where he considers "that any object of an agreement . . . is being or may be defeated in any area by the employment of natives in the undertaking, industry, trade or occupation concerned at rates of remuneration or under terms or conditions of employment other than those specified in the agreement . . .".\(^8\) Thus, it is only for the purpose of protecting the employment of persons of other races that these conditions can be made applicable to "natives". The Minister may decide that the agreement or award shall not have effect in a "native area".\(^9\)

28. The provisions of the Act that collective agreements (and awards) must not make distinctions based upon race or colour\(^10\) are therefore of very limited effect in view of the discrimination on the basis of race resulting from the Act as regards the application of agreements and awards.

\(^1\) Motor Carrier Transportation Amendment Act, No. 42 of 1959; section 4 (1) (a) inserted a new section \textit{7bis} in the Act of 1930 providing that the competent authority may establish "the requirement that only a specified class or specified classes of persons may be employed for the operation of that vehicle".
\(^2\) Nursing Act, No. 69 of 1957.
\(^3\) Section 4.
\(^4\) Sections 11 (1) (e) and (f), 12, 14, 15.
\(^5\) Section 49, which provides:

"Any person who, except in cases of emergency, causes or permits any white person [registered in the profession] . . . to be employed under the control or supervision of any person [registered in the profession] . . . who is not a white person, in any hospital or similar institution or in any training school, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred pounds."
\(^6\) Industrial Conciliation Act, 1956, as amended; Native Labour (Settlement of Disputes) Act, 1953, as amended.
\(^7\) Section 1 (1) (xi) of the Industrial Conciliation Act.
\(^8\) Section 48 (3); the same rules are applicable to awards (section 49 (12)).
\(^9\) Section 51 (12) of the Act.
\(^10\) The Government of the Republic of South Africa referred to these provisions in its report, previously mentioned (sections 24 (2) and 45 (13) of the Act).
29. For workers who are not covered by collective agreements or awards under the said Act the provisions concerning statutory machinery for the fixing of wages and related conditions are applicable.¹

30. Although in the application of the legislation on wages the classes of employees are not defined in terms of race or colour ², the law allows the application of any other method of differentiation ³ and provides that investigations shall determine "the class or classes of employees to whom it would be equitable . . . that remuneration should be paid at such rates as will enable them to support themselves in accordance with civilised standards of life." ⁴

31. The general effect of the legislation is, consequently, to allow the fixing of different wages and other conditions for classes of jobs which are alike in nature but which are held or destined to be held by employees of different races. In addition, a comparison of wage rates of unskilled workers with those of skilled workers in industry shows that in South Africa the former represent about 20 per cent. of the latter, whereas in other economically less developed countries they attain a percentage which, even if falling short of that in industrialised countries, is markedly greater than in the Republic of South Africa.⁵

III. Findings of the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations

32. The Committee of Experts on the Application of Conventions and Recommendations observed in 1963 with regard to the Republic of South Africa ⁶:

It appears . . . from the information supplied by [one] country [the Republic of South Africa] that amendments of the existing legislation, which the report states is based on a general policy of "separate development" of the different racial or ethnic groups which make up the country's population, is not contemplated; in these circumstances, the legislation and practice of the country establish extensive discrimination in employment and occupation on grounds of race.

33. The Committee of Experts further stressed that: "if the elimination of all discrimination in law or administrative practice is an essential requirement of the application of the 1958 instruments, . . . this is only a limited aspect of their implementation, which also presupposes positive measures in favour of equality of

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¹ Wage Act, No. 5 of 1957, section 2 (3).
² Section 8 (4) of the Act, to which the Government of the Republic of South Africa referred in its report previously mentioned.
³ Sections 4 (3) and 8 (4) of the Wage Act.
⁴ Section 5 (b).
⁵ This can be seen from the statistical information supplied by governments in response to an I.L.O. inquiry in October 1962, published in the Statistical Supplement to the International Labour Review, Vol. LXXXVIII, No. 1, July 1963. For South Africa, see p. 8. The percentage is generally at least 50 per cent. in such countries as Ghana (p. 5), the Ivory Coast (p. 5), Madagascar (p. 6), Nigeria (p. 8) and Pakistan (p. 21). It is roughly of 75 to 80 per cent. in such countries as Canada (p. 11), United States (pp. 12 to 13), Netherlands (p. 28), United Kingdom (p. 32) and Australia (p. 33).
opportunity and treatment in all fields of employment, whether or not they are covered by legislation or administrative practice."

34. The Conference Committee on the Application of Conventions and Recommendations also made the following observations in 1963 in the course of its discussions concerning the Republic of South Africa:

The Workers' members described [racial discrimination] as a particularly serious offence to the dignity of mankind in general. They pointed to one country (Republic of South Africa) which, contrary to the Convention and the basic principles of the I.L.O., overtly continued to base its policy upon the segregation of the races, whereas other countries had taken positive steps to combat racial discrimination.

IV. Recommendations for Action

35. In the light of the situation described above and the findings of the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations, it would now seem appropriate for the Conference to recommend the Government of the Republic of South Africa—

- to promote equality of opportunity and treatment in employment and occupation irrespective of race;
- to repeal the statutory provisions which provide for compulsory job reservation or institute discrimination on the basis of race as regards access to vocational training and employment.

To make these recommendations effective, the Government of the Republic of South Africa should—

- repeal or amend all legislative provisions the effect of which is to create inequality of opportunity and treatment between persons of different races as regards access to vocational training, particularly the Bantu Education Act, 1953, the Coloured Persons Education Act, 1963, and the Extension of University Education Act, 1959, and reorganise the educational system so as to ensure to persons of all races equality of access to vocational training at all levels;
- repeal all provisions establishing discrimination between persons of different races as regards choice of employment and access to particular employments, particularly section 77 of the Industrial Conciliation Act, 1956, and the determinations made thereunder, section 12 (2) of the Mines and Works Act, 1956, and the regulations made thereunder, sections 14, 15 and 16 of the Native Building Workers Act, 1951, section 4 (1) (a) of the Motor Carrier Transportation Amendment Act, 1959, the proviso to section 11 (1) (e) and section 49 of the Nursing Act, 1957, and all other provisions of this Act which establish discrimination on the basis of race in the organisation of the nursing profession;
- take all possible positive measures to promote equality of access of members of all races to all forms of employment in practice;
- amend all provisions which establish discrimination in the determination of wages and other conditions of employment as between persons of different races,


and particularly amend sections 1 (1) (xi), 48 (3), 49 (12) and 51 (12) of the Industrial Conciliation Act, 1956, as to permit all workers, without any distinction based on race, to enjoy the protection of collective agreements and awards, and section 5 (b) of the Wage Act, 1957, so as to ensure the application of the same criteria in fixing the remuneration of workers of all races.

B. MEASURES HAVING THE EFFECT OF COMPULSION TO LABOUR WHICH INVOLVE RACIAL DISCRIMINATION

I. General Position

36. The United Nations-I.L.O. Ad Hoc Committee on Forced Labour found in 1953 that there exists in South Africa "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", that "the indirect effect of this legislation is to channel the bulk of the indigenous inhabitants into agricultural and manual work and thus to create a permanent, abundant and cheap labour force", and that in this sense "a system of forced labour of significance to the national economy appears to exist in the Union of South Africa". ¹

37. The legislation on which the above findings were based has been further developed and strengthened in the intervening years.² Its salient features are as follows.

38. The entry of "natives" into urban areas and "proclaimed areas" (covering the country's principal urban, mining and industrial areas) and their stay in such areas is subject to strict control designed to maintain in each area the number of "natives" necessary to meet its labour requirements.³

39. A national network of native labour bureaux has been established, which discharge three functions: they apply influx control regulations in urban, mining and industrial areas; they provide a placement service for "natives"; and they see to the enforcement of vagrancy laws. All unemployed male "natives" over 15 years must report to a labour bureau. The powers vested in the labour bureaux (which have been developed only since the examination made by the Ad Hoc Committee on Forced Labour) provide the authorities with extensive means for the direction of "native" labour.⁴

40. In urban areas and "proclaimed" areas (covering the main mining and industrial areas in addition to urban areas), under extensively defined vagrancy provisions, "natives" may be arrested without a warrant, tried by an administrative official, and sent to various penal institutions. Both in these areas and rural areas, the native labour bureaux may cause "natives" reporting to them to be dealt with under the vagrancy laws.⁵

² A further Bantu Laws Amendment Bill, to tighten control of persons of African race in urban areas, was introduced in the South African Parliament on 18 Feb. 1964. Details of this Bill have not yet become available.
³ Natives (Urban Areas) Consolidation Act, 1945, as amended, and the Registration Regulations for proclaimed areas issued under that Act (Government Notice No. 1032 of 1 May 1949, as amended).
⁴ Native Labour Regulations (Government Notice No. 63 of 9 Jan. 1959), issued under the Native Labour Regulation Act, 1911.
⁵ Natives (Urban Areas) Consolidation Act, 1945, section 29 (as amended); Work Colonies Act, 1949; Native Labour Regulations, 1959.
41. All "natives" over 16 years must have a reference book, which they must produce on demand, and which serves, inter alia, as an employment record. Contracts of employment must be registered with the authorities or particulars thereof notified. A Native Affairs Central Reference Bureau in the Department of Bantu Administration and Development maintains centralised records of the particulars in the reference books.¹

42. "Natives" employed in mines or works and in the urban, mining and industrial areas which are "proclaimed" areas are subject to penal sanctions for breaches of contracts.² In other areas, provisions for penal sanctions for breaches of contracts of employment, although not limited to "native" workers, are in practice applied overwhelmingly to such workers.³ The South African Government has stated that it considers these penal sanctions to be still necessary.

43. "Natives" convicted under vagrancy provisions in urban and proclaimed areas may, as an alternative to being committed to a penal establishment, enter approved employment.⁴ Persons sentenced to imprisonment may be hired out to private employers, and arrangements exist whereby associations of farmers may construct prisons with a view to the employment of prisoners who are confined therein. By reason of the manifold special legislative provisions which regulate in a complex and detailed manner their everyday existence, persons of African race are particularly liable to conviction for offences peculiar to them, and frequently they do not enjoy the protection and guarantees provided under the general criminal law.⁵

II. Particulars of the Legislation

44. The Republic of South Africa possesses a complex system of legislation to control the employment, movement and residence of "natives". This legislation, as it affects workers' free choice of employment, will be reviewed under the following headings: (a) entry of "natives" into urban and industrial centres; (b) the registration and placement of "native" workers; (c) vagrancy laws; (d) pass laws; (e) penal sanctions for breaches of contracts of employment; (f) prison labour.

(a) Entry of "Natives" into Urban and Industrial Centres.

45. Definitions. The Natives (Urban Areas) Consolidation Act, 1945⁶, is stated to be an "Act to consolidate the laws in force in the Union which provide for improved conditions of residence for natives in or near urban areas and the better administration of native affairs in such areas; for the registration and better control of contracts of service with natives in certain areas and the regulation of the ingress of natives into, and their residence in, such areas; for the exemption of coloured persons from the operation of pass laws; and for other incidental matters". The Act defines "native" as "any person who is a member of an aboriginal race or tribe of Africa. When there is any reasonable doubt as to whether any person falls within this definition the burden of proof shall be upon such person".⁷ An

² Native Labour Regulations Act, 1911, as amended; Registration Regulations issued under the Natives (Urban Areas) Consolidation Act, 1945.
³ Cape Masters and Servants Act, 1856, as amended, and corresponding legislation in the other provinces.
⁴ Natives (Urban Areas) Consolidation Act, 1945, section 29 (as amended).
⁵ For particulars, see part II of this section.
⁶ Hereafter referred to as the Urban Areas Act.
⁷ Section 1.
"urban area" is "an area under the jurisdiction of an urban local authority".¹ The Act also provides for a special system of registration and control of "natives" in "proclaimed areas" ² which according to an official publication "has been applied to the principal urban, mining and industrial areas" in South Africa.³

46. Entry into and employment in urban areas and proclaimed areas. No "native" may remain for more than 72 hours in an urban area or a proclaimed area unless he qualifies to be in the area by reason of long continuous periods of residence or employment or has been granted permission to remain in the area or to take up employment there.⁴ A permit granted to a "native" to remain in the area to seek work may indicate the class of work for which he may accept employment.⁵ It is an offence to employ a "native" who does not comply with the above-mentioned conditions, or to introduce a "native" into any area in contravention of them.⁶ No "native" not born in South Africa may enter or be employed in an urban area or a proclaimed area without the permission of the Secretary for Bantu Administration and Development.⁷ The above-mentioned provisions do not apply to certain classes of employment or of "natives" subject to other arrangements.⁸

47. Additional measures for the control of "natives" in proclaimed areas. Proclamations and regulations issued under the Urban Areas Act ⁹ have vested further powers in the state president or local authorities relating to the control of entry and employment of "natives" in proclaimed areas (which, as indicated earlier, cover the principal urban, mining and industrial areas in the country). Subject to the exemption of certain categories of persons ¹⁰, every male "native" entering the

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¹ Defined as "any municipal council, borough council, town council or village council, or any town board, village management board, local board, health board or health committee".

² The state president may by proclamation declare any urban area or any area in which there is a large number of "natives" to be a proclaimed area—section 23.

³ Union of South Africa, Bureau of Census and Statistics: Official Year Book of the Union and of Basutoland, Bechuanaland Protectorate and Swaziland, No. 29, 1956-57, p. 357.

⁴ Urban Areas Act, section 10—text substituted by Act No. 54 of 1952, section 27, as amended by Act No. 16 of 1955, section 5 and Act No. 36 of 1957, section 30. To be exempt from the requirement of obtaining permission to be in the area, a "native" must have resided there continuously since birth, or have worked there continuously for one employer for at least ten years or have lawfully resided there for at least 15 years, or be the wife, unmarried daughter or son under tax-paying age of a "native" satisfying those conditions.

⁵ A permit to seek work is to be granted for not less than seven nor more than 14 days, but, if the "native" finds employment, remains valid for the period of service with the employer concerned. A permit to take up employment is similarly limited to the period of service. A permit is not to be refused to any "native" who re-enters an area after an absence of not more than 12 months to take up employment with the same employer and in the same class of work.

⁶ Urban Areas Act, sections 10bis and 11.

⁷ Ibid., section 12.

⁸ Ibid., section 13—text substituted by Act No. 76 of 1963, section 7. The exceptions relate to "natives" recruited and employed under written contracts of employment in the mining industry or in any industry or class of employment prescribed by the Minister and to foreign "natives" authorised to be in the area concerned for the period and the purpose indicated in their passport. As regards "natives" working in the mining industry, it should be noted that they are subject to the Native Labour Regulation Act, 1911, and the regulations made under that Act, including the regulations for native labour bureaux examined below.

⁹ The powers are set out in section 23 of the Act (as amended by Act No. 54 of 1952, section 35, Act No. 67 of 1952, section 17, and Act No. 36 of 1957, section 39) and have been defined in greater detail in Registration Regulations published in Government Notice No. 1032 of 1 May 1949 (as amended by Government Notices No. 3023 of 30 Nov. 1951 and No. 2860 of 12 Dec. 1952). These regulations originally applied to the proclaimed area of Pretoria, but have been made applicable to the proclaimed areas generally by a series of subsequent Government Notices.

¹⁰ For example, chiefs and headmen, ministers of religion, members of a number of liberal professions, policemen and holders of letters of exemption granted under certain provincial laws—Urban Areas Act, section 23 (2); Registration Regulations, regulation 2 (1).
proclaimed area must apply for a permit to remain in the area.\textsuperscript{3} Such a permit may be refused, \textit{inter alia}, whenever there is a surplus of "native" labour available within the proclaimed area as disclosed by the periodical returns which urban local authorities are required to make.\textsuperscript{2} Provision is made for the licensing, on a monthly basis at the discretion of the registering officer, of male "natives" who wish to work as a \textit{togi}, casual labourer or independent contractor\textsuperscript{3}, as well as of other "natives" who wish to remain in a proclaimed area without being under a contract of service.\textsuperscript{4} All contracts of service must be registered, and terminations of employment notified.\textsuperscript{6} Upon termination of a contract of employment or discharge from prison, every male "native" not born and permanently residing in the proclaimed area must apply for a permit in the same way as a "native" newly entering the area.\textsuperscript{6} These provisions have been supplemented by and to a large extent integrated in the more detailed system of registration and placement of "native" workers through a national network of labour bureaux, to be mentioned below.

48. \textit{Removal of redundant "natives" from urban areas.} Every urban local authority must render to the Minister of Bantu Administration and Development in every alternate year a return giving particulars of the "natives" in the area, their occupations, the "natives" considered necessary to meet the area's labour requirements, and those considered not necessary for this purpose and whom the authority desires to have removed.\textsuperscript{7} The Minister, on being satisfied that the number of "natives" within an area is in excess of the reasonable labour requirements, may require the urban authority to remove redundant "natives".\textsuperscript{8}

(b) \textit{The Registration and Placement of "Native" Workers.}

49. \textit{Labour bureaux.} Provision has been made for a network of labour bureaux for the registration and placement of "native" workers.\textsuperscript{9} All male "natives" over 15 years of age who are unemployed or not lawfully employed must report to the appropriate labour bureau.\textsuperscript{10} Employers must report all vacancies for

\begin{enumerate}
\item Registration Regulations, regulation 3 (1).
\item Ibid., regulation 4 (1) \textit{(a)}.
\item Ibid., regulation 12.
\item Ibid., regulation 5. This requirement does not apply to "natives" born and permanently residing in the proclaimed area.
\item Ibid., regulation 6.
\item Ibid., regulation 13.
\item Urban Areas Act, section 26. Provision for further periodical returns by authorities of urban areas with a population of over 10,000 is made in section 27.
\item Ibid., section 28. The areas in which such powers may be exercised are to be declared by the state president by proclamation.
\item Chapter V, Regulation 1, of the Native Labour Regulations (Government Notice No. 63 of 9 Jan. 1959), issued under the Native Labour Regulations Act, 1911. There are four classes of labour bureaux. At the primary level a distinction is made between "prescribed" and "non-prescribed" areas. A "prescribed area" is a proclaimed area under the Urban Areas Act or any other area declared by the Minister to be a prescribed area; accordingly, it would appear that the prescribed areas are essentially urban, mining and industrial areas, whereas the non-prescribed areas are rural areas. In every prescribed area there is a local labour bureau, under the direction of a local employment officer; outside the prescribed areas district labour bureaux have been established in the offices and placed under the direction of native commissioners or certain judicial officers. There is a regional labour bureau in the office of each chief native commissioner, and a central labour bureau in the office of the Director of Native Labour.
\item Native Labour Regulations, Chapter V, regulations 5 (1) and 9 (1). An exception is made for full-time pupils or students at an educational institution.
\end{enumerate}
50. Procedure for dealing with unemployed "natives" in rural areas. In rural areas, if a "native" is not placed in employment, the officer in charge of the labour bureau has discretion whether merely to require him to report back on a stated date, or to direct him to a depot, or to cause him to be dealt with under the Work Colonies Act, 1949 (under which persons having no sufficient honest means of livelihood or leading an idle life may be committed to a work colony for a period of three years).

51. Procedures for dealing with unemployed "natives" in urban, mining and industrial areas. Although all unemployed male "natives" over 15 years must report to the labour bureau, only certain of them have a right to be registered (that is, "natives" entitled to remain in the area on account of long periods of residence or employment, persons authorised to take up employment in the area by a regional labour bureau, and persons returning to the same job after less than a year's absence). Others may be registered only if they were legally employed in the area up to becoming unemployed and there are appropriate vacancies, and subject to their employment in the same class of work as before or some other class of work approved by the regional labour office. If registration is refused, the "native" concerned may not take up or seek employment in the area. If a "native" who has been registered, but who does not qualify by reason of length of residence or employment to remain in the area, does not accept employment in any of the vacancies offered, his registration is cancelled; his right to remain in the area thereupon lapses, and he is referred to his home district labour bureau. If a "native" who is entitled to remain in the area fails or refuses, within a certain time, to accept vacancies offered to him, the local employment officer inquires into the reasons for such failure or refusal; if this is considered to be without reasonable cause, the "native" is to be dealt with under provisions relating to idle and undesirable persons; if there is considered to exist a reasonable cause for failure to accept employment, he is dealt with in accordance with instructions from the regional labour bureau. The employment officer may exempt physically or mentally incapacitated persons from these provisions.

52. Depots. The employment officers in charge of labour bureaux may, with the approval of the Director of Native Labour, establish depots for the residence of unemployed "natives", and may direct any "native" registered at their labour bureau to such a depot. Such a "native" must reside in the depot until he has accepted employment or has otherwise ceased to be registered with the labour bureau.

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1 Regulations 4 and 7. The form of notification prescribed by the Regulations (Annexure M) consists of an application for "native" labourers. The nature and number of labourers required, the period for which they are required, and the wages offered are to be indicated. The form also prescribes certain conditions of employment regarding free quarters, medical care, rations, etc. It authorises the distributing labour bureau to conclude a written contract of service with the labourers on the applicant's behalf. Finally, clause 7 reads: "I undertake to deliver all labourers to the nearest Native Commissioner/Magistrate at the termination of their contract."

2 Regulations 3 and 6. In "non-prescribed areas" (i.e. essentially rural areas) this requirement applies only to the engagement of "natives" for employment in mines or works (i.e. places other than mines where there is machinery).

3 Work Colonies Act, 1949, sections 14, 15 and 18, and Native Labour Regulation 5 (2).

4 Native Labour Regulations, 9 (2), 10 (1) and 12 (1).

5 Ibid., 10 (2).

6 Ibid., 13.

7 Ibid., 9 (2) (f).

8 See section (c) below, Vagrancy Laws.

9 Native Labour Regulations, 9 (2) (e), (3), and (4).

10 Ibid., 17 (2).
concerned. The regulations impose no limitation on the duration of direction to a depot.

53. **Power of arrest.** A “native” who fails to produce to an authorised officer on demand a valid and current document issued to him by the labour bureau, or who has failed to report or register at the labour bureau, or remains in an area in contravention of the relevant regulations, or fails to take up residence in a depot to which he has been directed or absents himself from such a depot without permission, is guilty of an offence and may be arrested without a warrant by an authorised officer.

54. **Comparison between labour bureaux and the employment service for other races.** From the foregoing summary of the main provisions governing the native labour bureaux, it will be seen that they discharge three functions: they apply influx control regulations in urban, mining and industrial areas, they provide a placement service for “natives”, and they see to the enforcement of provisions concerning “idle” and “undesirable” persons. The discretion vested in the labour bureaux as regards the registration of unemployed “natives” in urban and industrial areas, the conditions imposed as to the kind of employment they may accept, the threat of expulsion hanging over those not entitled by long continuous residence or employment to remain in urban and industrial areas, the power to direct “natives” to a depot, the threat of prosecution under vagrancy provisions—all these would appear to provide the authorities with extensive means for the direction of “native” labour. In contrast, the system of employment offices established for persons of other races, while making the registration of workseekers compulsory in specified areas, defines the functions of employment offices as being to maintain a register of workseekers, to conduct and carry on an employment office for workseekers, and to make due provision for affording guidance to workseekers in regard to the choice of employment, by means of the collection and communication of information and the furnishing of advice.

(c) **Vagrancy Laws.**

55. **Provisions applicable only to “natives”.** The Urban Areas Act contains provisions for dealing with idle and undesirable persons in urban areas and proclaimed areas (i.e. the main mining and industrial areas in addition to urban areas). An “idle person” is defined to include a person who “is habitually unemployed and has no sufficient honest means of livelihood”, and an “undesirable person”

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1 Native Labour Regulations, 5 (2) and (3), 9 (2) and (3) and 15.
2 “Authorised officer”, as defined in section 2 of the Native Labour Regulation Act (as amended by Act No. 36 of 1957, section 1) refers to a long list of officials including, for example, a native commissioner, a European member of the South African police, any European inspector of “native” labourers, and persons authorised under various Acts to demand the production of documents.
3 It may be noted that, in the previously mentioned Official Year Book of South Africa for 1956-57, it was stated with respect to the operation of the labour bureaux system, *inter alia*, “Approximately 6,000 surplus Bantu workers are diverted from the towns to the country districts each month. These unemployed people are usually committing some offence by remaining in the towns, but through the bureaux they are placed in work instead of being prosecuted. . . . To increase the value of the system, it is necessary to combat idleness and vagrancy” (p. 373).
4 Registration for Employment Act, 1945, sections 4 and 12. The previously mentioned Official Year Book of South Africa for 1956-57, stated that “the employment service deals with white, coloured and Asiatic workseekers”, and that it had been steadily extended “so that a nation-wide free employment service exists for the use of workseekers and employers” (p. 175).
5 Section 29—text substituted by Act No. 54 of 1952, section 36, as amended by Act No. 16 of 1955, section 9, and Act No. 36 of 1957, section 41.
is defined to include any person who remains or re-enters a proclaimed area in contravention of a decision refusing him permission to be there. If an authorised officer \(^1\) has reason to believe any "native" to be an idle or undesirable person, he may without warrant arrest such person. The "native" may be brought before a native commissioner or magistrate and, if he fails to give a good and satisfactory account of himself, is to be declared an idle or undesirable person. He may then be sent to his home or to another place indicated by the native commissioner or magistrate, to various penal institutions \(^2\) or, subject to his agreement, be ordered to take up employment with an employer and for a period approved by the native commissioner or magistrate.

56. **Provisions of general application.** The Government of South Africa, in comments submitted in 1952 to the United Nations-I.L.O. *Ad Hoc* Committee on Forced Labour, stated that provisions for all races similar to those mentioned above were contained in the Work Colonies Act, 1949.\(^3\) While this Act, which is of general application, provides for the committal to a work colony, *inter alia*, of persons who have no sufficient honest means of livelihood or lead an idle, dissolute or disorderly life \(^4\), there are nevertheless certain important differences between the legislation applicable only to "natives" and that of general scope. In the first place, the category of "undesirable" persons exists only for "natives" (and, for example, in so far as it covers "natives" remaining in proclaimed areas contrary to influx control measures, could not apply to persons who are not "natives", since they are not subject to such control). Secondly, whereas the Work Colonies Act specifically provides for the application of all the provisions of the Criminal Procedure and Evidence Act relating to arrest, service of summonses, etc., and requires proceedings to be brought before a magistrate, the provisions applicable to "natives" permit arrest without a warrant by a wide range of persons and empower not only magistrates, but also administrative officials (i.e. native commissioners) to try "natives" accused of being idle or undesirable persons. Finally, in the application of the Work Colonies Act itself there are certain differences of treatment between "natives" and other persons, since the labour bureaux in rural areas (where the more stringent vagrancy provisions of the Urban Areas Act do not apply) may cause workseekers to be dealt with under the Work Colonies Act \(^5\), whereas the employment offices for other races have no similar functions or powers.

(d) **Pass Laws.**

57. **Reference books.** Under the Natives (Abolition of Passes and Co-ordination of Documents) Act, 1952 \(^6\), all "natives" who have attained the age of 16 years have been required to have reference books. Particulars of contracts of service entered into by "natives" and of termination of such contracts have to be recorded

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\(^1\) "Authorised officer" is defined in section 1 of the Act (as amended by Act No. 36 of 1957, section 23) in terms corresponding to the definition in the Native Labour Regulation Act—see the footnote to para. 53 above.

\(^2\) An idle or undesirable person may be sent to a work colony under the Work Colonies Act, 1949, for a period of three years; if he is between 15 and 19 years, he may be sent to an institution established under any law to be detained for a period prescribed in such law. A "native" declared an idle person, may be ordered to be detained for a period not exceeding two years in a farm colony, work colony, etc., established under the Prisons Act.

\(^3\) Report of the *Ad Hoc* Committee on Forced Labour, op. cit., p. 411.

\(^4\) Sections 14 and 15.

\(^5\) See para. 50 above.

\(^6\) Section 3, as amended by Act No. 79/1957, section 11, Government Notice No. 1747 of \(\text{Nov. 1957}\) and Government Notice No. 1722 of \(\text{26 Oct. 1962}\).
in the reference book by the employer.  

Where a contract of service is not required to be registered under the Native Labour Regulations or the Urban Areas Act, particulars of the contract have to be lodged with the native commissioner of the area within 14 days of its conclusion, and similar notification has to be given of its termination.  

No person may employ a “native” who is not in possession of a reference book or from whose reference book it appears that he has entered into a contract of service the termination of which is not recorded in the reference book.  

A Native Affairs Central Reference Bureau exists in the Department of Bantu Administration and Development for recording particulars contained in reference books.  

Any authorised officer may at any time call upon a “native” to produce his reference book, and failure to produce the reference book on demand of such an officer is punishable with a fine of up to £10 or imprisonment for up to one month.  

(e) Penal Sanctions for Breaches of Contracts of Employment.

58. Provisions applicable only to “natives”. Under the Native Labour Regulation Act, 1911, a “native” worker employed in mines or works (i.e. any place other than a mine where there is machinery) is liable to a fine of £10, or two months’ imprisonment in default of payment, in respect of certain breaches of contract, for example, if without lawful cause he deserts or absents himself from his place of employment or fails to enter upon or carry out the terms of his contract, refuses to obey any lawful command, uses insulting or abusive language to the employer, etc.  

In the urban, mining and industrial areas which are “proclaimed areas” under the Urban Areas Act, similar penalties may be imposed on “natives” who wilfully render themselves unfit or unavailable for the performance of their contract of employment.

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1 Natives (Abolition of Passes, etc.) Act, section 8, as amended by Act No. 79 of 1957, section 16, and Act No. 76 of 1963, section 18; Native Labour Regulations (Government Notice No. 63 of 1959), Chapter V, Regulation 6 and Chapter VI, Regulation 2; Registration Regulation issued under the Urban Areas Act, Regulation 17bis (inserted by Government Notice No. 2860 of 1952).

2 Natives (Abolition of Passes, etc.) Act, section 8.

3 Ibid., sections 8bis and 8ter (inserted by Act No. 79 of 1957, section 17, as amended by Act No. 76 of 1963, section 19). Furthermore, under the Native Service Contract Act, 1932, in the Transvaal and Natal a male “native” may not be employed if it appears from his reference book that he is domiciled in one of these provinces on land outside a native location, unless he produces a labour tenant contract between himself and the owner of the land or a statement signed by the owner that he is not obliged to render the owner service during the relevant period; if such a “native” is under 18 years, he must also have the consent of the owner of the land on which his guardian resides to enter into a contract of service.


5 “Authorised officer” means an authorised officer as defined in section 1 of the Urban Areas Act (see the footnotes to paras. 53 and 55 above) and any non-European policeman—Natives (Abolition of Passes, etc.) Act, section 1.

6 Natives (Abolition of Passes, etc.) Act, section 13 (as amended by Act No. 79 of 1957, section 22, and Act No. 76 of 1963, section 23) and section 15 (text substituted by Act No. 79 of 1957, section 24).

7 Section 14, as amended by Act No. 56 of 1949, section 10, and Act No. 54 of 1952, section 7. Similar penalties are laid down in respect of a worker who has been recruited by a labour agent to enter the service of a member of a group of employers and subsequently refuses to enter the service of the employer to whom he is allotted—section 12; text substituted by Act No. 56 of 1949, section 8, as amended by Act No. 54 of 1952, section 6, and Act No. 36 of 1957, section 9. In certain cases (e.g. neglecting to perform any work which it was the worker’s duty to perform, refusal to obey a lawful command, using insulting or abusive language, absence for not more than a day), the inspector of native labourers appointed under the Act may try a worker and impose a fine not exceeding £2, to be deducted from the worker’s wage—section 19 (text substituted by Act No. 54 of 1952, section 13).
or disobey any lawful command. Penal sanctions may also be imposed under the Native Building Workers Act, 1951, on “natives” in connection with their training as building workers.

59. **Provisions of general application.** Masters and Servants legislation of the provinces of South Africa, the application of which is not limited to workers of a particular race, contains provisions for penal sanctions for breach of contracts of employment. For example, the Cape Masters and Servants Act, 1856, on which the corresponding legislation in the other provinces was based, provides varying penalties for a number of offences by servants, including failure to commence service without lawful cause, absence without leave, desertion, neglect of duty, refusal to obey lawful orders, and abusive language. If, on discharge from prison, a worker refuses to return to resume his service, he may be imprisoned for further monthly periods up to a maximum of six months. The South African Government informed the International Labour Office in 1953 in connection with this subject that “the possible revision of the various Masters and Servants laws has not been examined. In practice the penal sanctions provided for in these laws are still found necessary especially in cases of desertion”. The laws in question are of particular importance in rural areas to which legislation concerning “native” workers in mines and works and proclaimed areas (and therefore the penal sanctions for breach of contract provided for in them) does not apply. Although the Masters and Servants Acts are of general application, official statistics indicate that their penal provisions in practice affect persons of different races very differently: in 1955, 17,235 “natives” were convicted under the Acts, as against 90 “whites”. Finally, it may be noted that the Mines and Works Act, 1956, prescribes penal sanctions for breach of rules made, *inter alia*, “for the maintenance of order and discipline” in a mine or works; these provisions, applicable to workers generally, are in addition to the penal sanctions affecting only “native” workers in mines and works which were mentioned in the preceding paragraph.

(f) **Prison Labour.**

60. “**Idle**” and “**undesirable**” persons. As previously noted, when a “native” is declared an idle or undesirable person under the Urban Areas Act, he may, instead of being committed to a penal establishment, if he agrees to enter into a contract of employment with an employer and for a period approved by the native commissioner or magistrate trying him, be ordered to enter into such a contract.

61. **Hiring of convicts to private employers.** Under the Prisons Act, 1959, subject to the employment of prisoners upon public works as far as possible, the Commissioner of Prisons may contract with any authority or public body or with

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1 Registration Regulations of 1 May 1949, Regulations 6, 10 and 33.
2 Sections 10 (7) and 33.
3 As amended by Acts No. 18 of 1873, No. 28 of 1874, No. 7 of 1875 and No. 30 of 1889.
4 Act No. 18 of 1873, section 2.
5 Cape Masters and Servants Act of 1856, Chapter V, section 10.
8 Section 13.
9 Urban Areas Act, section 29 (3) (d)—text substituted by Act No. 54 of 1952, section 36.
any person or body of persons for the employment of prisoners who are under sentence of imprisonment upon such terms and conditions as may be agreed between such parties.\(^1\) In a report submitted to the International Labour Office in 1961 \(^2\), the South African Government stated that “a limited number of prisoners who are surplus to the demands of State Departments is made available to private persons and organisations”, and that “prison labour for private use is confined mainly to agriculture where prisoners are employed under congenial conditions and under the sole and strict supervision of the Department of Prisons”.

62. **Farm prisons.** According to a statement by the South African Department of Prisons submitted in 1952 to the United Nations-I.L.O. *Ad Hoc* Committee on Forced Labour, in certain areas associations of farmers, formed at the Government’s request, had been authorised to construct prisons in accordance with specifications laid down by this Department; a contract between the associations and the Department determined, *inter alia*, the basis on which prisoners would be made available to the association, the prisoners themselves remaining under the supervision of the staff of the Department; only prisoners with sentences from six months upwards for serious offences were transferred to these stations; the districts where they were situated included the country’s highest food-producing centres, where labour was extremely short.\(^3\)

63. **The special position of “natives” in relation to criminal offences.** In considering the question of prison labour, it needs to be borne in mind that “natives”, being subject to a large number of special legislative provisions, are liable to conviction for a multitude of offences peculiar to them. This is the case, for example, as regards the influx control regulations, the provisions for the registration and placement of “native” workers, the special vagrancy provisions, and the pass laws which have been reviewed above.\(^4\) The complexity of this legislation and the detail with which it regulates the every-day existence of “natives” makes it particularly susceptible of contravention. This situation is illustrated, for example, by the fact that in 1958, of a total of a little over 1.1 million convictions affecting persons of African race, almost 400,000 related to “Bantu control” offences.\(^5\) Finally, “natives” frequently do not enjoy the protection and guarantees provided under the general criminal law, whether because of liability to summary arrest without warrant \(^6\), the fact that they may be tried by administrative officials (i.e. native commissioners) as well as magistrates \(^7\), or the exclusion of court orders to restrain executive action taken against them.\(^8\)

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\(^1\) Section 75 (1).


\(^3\) Report of the *Ad Hoc* Committee on Forced Labour, op. cit., p. 404.

\(^4\) Among laws which expose “natives” to particular liability to commit offences, mention may be made of other legislation for the enforcement of apartheid, such as the Group Areas Act, 1957, the Natives Resettlement Act, 1954, the Reservation of Separate Amenities Act, 1953.


\(^6\) For example, “natives” believed to be idle or undesirable persons (Urban Areas Act, section 29 (1)—text substituted by Act No. 54 of 1952, section 36), or “natives” ordered to remove from one place to another (Native Administration Act, 1927, section 5 (3)—text substituted by Act No. 54 of 1952, section 20).

\(^7\) Native Administration Act, 1927, section 9—text substituted by Act No. 79 of 1957, section 2.

\(^8\) Natives (Prohibition of Interdicts) Act, 1956.
III. Findings of Independent Committees


64. The Committee reached specific conclusions on allegations concerning the effect of pass laws, the nature of labour contracts for "non-whites", and the use of penal laws to obtain a supply of Africans for work in industry and agriculture.¹

65. Pass laws. After examining a number of pass laws which had existed prior to 1952 and the Natives (Abolition of Passes and Co-ordination of Documents) Act, 1952, the Committee concluded:

349. In view of the evidence briefly examined above, the Committee has found that the pass legislation in the Union of South Africa constitutes a serious handicap to the freedom of movement of the Native population and that it has, or may have, important economic consequences.

350. The Committee is of the opinion that this legislative device may be used for the control and regulation of the flow of Native labour from one part of the territory to the other. There can be no doubt that such control may serve the purpose of directing a supply of ample, and consequently cheap, labour towards regions where it is required for economic reasons.

351. The former pass laws and the Natives (Abolition of Passes and Co-ordination of Documents) Act, 1952, which replaces them, may therefore be considered as an indirect means of implementing economic plans and policies, whether emanating from the Government or from private interests powerful enough to command Government support. The State, through the operation of this legislation, is in a position to exert pressure upon the Native population which might create conditions of indirect compulsion similar in its effects to a system of forced labour for economic purposes.

66. Labour contracts for "non-whites". The Committee examined various legislative provisions imposing penal sanctions on "native" workers for breaches of contracts of employment, and concluded:

359. The Committee notes, in the first place, that at least the recruitment of Natives for work in mines or works is not compulsory. The Native enters voluntarily into the agreement. Penal sanctions are applied only in the event of a breach of contract or some violation of the law.

360. There can, however, be no doubt, in the Committee's view, that the fact that it is impossible for the worker to terminate his contract unilaterally before the expiration of its term, without running the risk of heavy penalties, constitutes a serious restriction of his personal liberty. Since the total number of Africans working under such contracts of employment is very large, legislation of this kind, if abused or vigorously implemented, might lead to a system of forced labour for economic purposes.

67. Use of penal laws to obtain a supply of Africans for work in industry and agriculture. The Committee, after examining legislative provisions relating to the committal of "natives" to farm colonies, work colonies or similar institutions, and evidence relating to the hiring out of prison labour and to the farm prison system, concluded:

369. In reviewing the evidence examined above the Committee has found that the allegations made with regard to the use of penal labour for work in industry and agriculture are substantiated by the legislation in force in the Union of South Africa and by the comments and observations of the Government of the Union. It also seems certain that the use of such labour is of some economic importance. The Committee has noted in this connection that, in its comments and observations, the Government states that farm prison outstations are situated in regions where labour is scarce. Since, moreover, a very considerable number of Natives are committed for short terms for minor offences, the Committee found that labour of the kind described above is of importance for the economy of the country and that the laws might be applied in such a way as to increase the Native labour force at the disposal of the national economy and thereby lead to a system of forced labour for economic purposes.

68. **The Committee's general conclusions concerning the Union of South Africa.** Having reached the above-mentioned conclusions on individual allegations, the Committee stated its general conclusions in the following terms:

372. 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 legislation is to channel the bulk of the indigenous inhabitants into agricultural and manual work and thus to create a permanent, abundant and cheap labour force.

373. 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.

374. 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.

375. 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.

(b) **I.L.O. Committee on Forced Labour, 1957.**

69. In its report of 1957, the I.L.O. Committee on Forced Labour indicated that it had examined observations by the South African Government on the report of the United Nations-I.L.O. Ad Hoc Committee. In all cases the I.L.O. Committee concluded that it had no reason to believe that the conclusions of the Ad Hoc Committee were no longer valid.\(^1\)

(c) **Committee of Experts on the Application of Conventions and Recommendations, 1962.**

70. On the occasion of the supply of reports on the I.L.O. Conventions dealing with forced labour, under article 19 of the I.L.O. Constitution, the Committee of Experts on the Application of Conventions and Recommendations made a general survey of the position with regard to these instruments both in countries bound thereby and in countries not so bound.\(^2\) The Committee's study, which because of the incomplete information at its disposal, was stated to be of a preliminary character, dealt, *inter alia*, with forced labour for economic purposes and forced labour for social purposes.

71. **Forced labour for economic purposes.** The Committee of Experts noted that, in accordance with the international standards, forced labour for the benefit of private individuals had to be abolished immediately, but that in some cases, including the Republic of South Africa, this possibility existed "in the case of persons convicted by a court or detained in prison".\(^3\) Referring to the fact that certain very broad definitions of vagrancy "would appear to permit the establishment of systems of forced labour as a means of mobilising or using labour for purposes of economic development", the Committee added, citing the Republic of South Africa as an example, that "this seems also to be the case when prisoners—particularly persons convicted of vagrancy—are placed at the disposal of private persons".\(^4\) Finally,


\(^{3}\) Ibid., para. 97.

\(^{4}\) Ibid., para. 105.
referring to the question of passes and workbooks, the Committee observed that in the Republic of South Africa "all 'natives' must be supplied with a 'document' which appears to contain, inter alia, the information required both in a 'pass' and in a 'workbook'. The existence of such provisions would appear to facilitate the use of forced labour for purposes of economic development.... This seems to be the case when such compulsory administrative formalities are supplemented by other indirect forms of compulsion such as, for example, extension of the meaning of vagrancy." 1 It may be noted that, in the Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35), the International Labour Conference had recommended the avoidance of such means of indirect compulsion as "extending abusively the generally accepted meaning of vagrancy" (Section II (c)), "adopting such pass laws as would have the effect of placing workers in the service of others in a position of advantage as compared with that of other workers" (Section II (d)), and "restrictions on the voluntary flow of labour from one form of employment to another or from one district to another which might have the indirect effect of compelling workers to take employment in particular industries or districts, except where such restrictions are considered necessary in the interest of the population or of the workers concerned" (Section III).

72. Forced labour for social purposes. The Committee of Experts referred to various provisions in the Republic of South Africa as involving forced labour as a means of discrimination. The Committee observed that in certain countries "there are certain restrictions on the freedom of movement of 'natives', whose violation may be punished with forced labour, or the law establishes vagrancy offences which affect only certain ethnic or social groups"; among the examples cited in this connection was the South African Natives (Abolition of Passes and Co-ordination of Documents) Act, 1952. 2 It noted further that in certain countries "certain ethnic or social groups do not enjoy 'privileges' granted to other sections of the population and may thus be liable to certain penal sanctions which may involve forced labour but which cannot be imposed on members of other sections of the population"; one of the examples cited in this connection was the South African Industrial Conciliation Act of 1956. 3 Finally, the Committee noted: "Only in a fairly limited number of countries do there seem to be statutory provisions for the use of forced labour as a penalty to ensure the application of discriminatory measures. The 'offences' for which forced labour is most often imposed as a penalty are marriage, cohabitation, etc., among persons who are not of the same race. Forced labour may also be imposed as a penalty on persons who infringe provisions relating to racial segregation on means of transport or with regard to residence." In this connection, four South African statutes were cited as examples: the Immorality Act, 1957, the Separate Accommodation Act, 1953, the Group Areas Amendment Act, 1957, and the Natives (Urban Areas) Act, 1945. 4

IV. Recommendations for Action

73. In the light of the situation described above and of the findings reached by the independent Committees which have examined the situation in the Republic of South Africa as regards forced or compulsory labour, it would now seem appropriate for the Conference to recommend the Government of the Republic of South

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2 Ibid., para. 149.
3 Ibid., para. 151.
4 Ibid., paras. 152-155.
Africa to repeal all legislation which involves racial discrimination or operates in practice as the basis for such discrimination, which provides for penal sanctions for breaches of contracts of employment, for the hiring of prison labour for work in agriculture or industry, and for any other form of direct or indirect compulsion to labour, including discrimination on grounds of race in respect of travel and residence.

74. To make this recommendation effective, the Government of the Republic of South Africa should—

repeal the provisions relating to labour bureaux contained in the Native Labour Regulation Act, 1911, and the regulations issued thereunder on 6 January 1959 which grant the authorities extensive powers for the direction of "native" labour, and bring persons of African race within the scope of the employment service established under the Registration for Employment Act, 1945, on a footing of equality with workers of other races;

repeal the provisions regulating the entry of "natives" into urban areas and "proclaimed" areas and their stay in such areas contained in the Natives (Urban Areas) Consolidation Act, 1945, and the regulations issued under that Act;


repeal the provisions for penal sanctions for breaches of contracts of employment contained in the Native Labour Regulation Act, 1911, the regulations issued under the Natives (Urban Areas) Consolidation Act, 1945, the provincial Masters and Servants Acts, and section 10(7) of the Native Building Workers Act, 1951;

amend section 75 of the Prisons Act, 1959, so as to prohibit the hiring of prisoners to or their placing at the disposal of private individuals, companies or associations, and discontinue all existing arrangements and practices for such hiring out of prisoners;

grant persons of African race the same protection and guarantees as are accorded to persons of other races under general criminal law, and to this end in particular repeal section 9 of the Native Administration Act, 1927, under which native commissioners are granted criminal jurisdiction over "natives", and the Natives (Prohibition of Interdicts) Act, 1956.

C. RACIAL DISCRIMINATION IN RESPECT OF FREEDOM OF ASSOCIATION AND THE RIGHT TO ORGANISE

I. General Position

75. The Government of the Republic of South Africa has given effect in its legislation to its own expressed view that "it has not been found possible to fit the 'native' population living under tribal conditions and with a comparatively primitive stage of culture into the legislative pattern of trade unionism and collective bargaining".1

76. The factual effects of that legislation—the Industrial Conciliation Act ¹ and the Native Labour (Settlement of Disputes) Act ²—are as follows.

77. "Natives", being prohibited from membership of a registered trade union, are totally excluded from participation in the general system of industrial relations provided for in the Industrial Conciliation Act, which governs the legal rights and privileges of trade unions, prescribes the national system of collective bargaining, gives binding force to collective agreements, provides for the settlement of disputes, defines the rules governing the exercise of the right to strike, and affords protection of the right to organise. Any organisation of their own which "native" workers might form is likewise excluded. Nor may a union registered under the Act appoint a "native" as one of its officers or as a person representing its interests.

78. By contrast with other employees who are within the scope of the Industrial Conciliation Act, the conditions of work of the "native" workers are prescribed either by direct regulations or by the application to them of collective agreements, in the making of which they have had no part, and in connection with which, where their interests may thus be involved, those interests are "represented" by persons of another race in regard to whose appointment as representatives the Africans have never been consulted.

79. Trade unions formed by "native" workers are de facto organisations whose existence is not legally recognised. They have no legal right to take part in collective bargaining or in the settlement of disputes or to represent their members in any official capacity whatsoever. There is no protection whatsoever for the right to organise of such workers.

80. Any strike by "native" workers in any circumstances, even in situations in which it would be perfectly lawful in the case of "white" or "coloured" workers covered by the Industrial Conciliation Act, is a statutory crime, punishable by up to three years' imprisonment or a fine not exceeding £500 or both. It would even seem possible that, since the enactment of the General Law (Amendment) Act in 1962, a strike by "native" workers could be regarded as sabotage, punishable by death by hanging.

81. Other effects of the legislation are the consecration of segregation within recognised trade unions by the placing of restrictions on mixed unions of "white" and "coloured" persons, as compared either with unions consisting solely of "white" persons or with unions consisting solely of "coloured" persons. "Coloured persons" includes not only persons of mixed blood but all persons who are neither "white" nor "native"; the term, therefore, includes Indians.

82. Thus, from 1956 onwards, the registration of new mixed unions has been prohibited, except with the permission of the authorities in special cases.

83. In the case of a mixed union already registered, the law makes provision in certain cases for the subsequent exclusion from the union of either of the races of which it consists if there exists another segregated union catering for that race, and then what remains of the original union can be de-registered. Again, in prescribed cases, the assets of a mixed union can be split up, part being paid over to a segregated union operating in the same field. There is a statutory power to vary the scope of registration of a union so as to increase the area or widen the interests which it represents, but this can never operate in favour of a mixed union.

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¹ Act No. 28 of 1956, amended by Act No. 41 of 1959.
² Act No. 48 of 1953, amended by Act No. 59 of 1955.
84. Segregation even within the registered mixed union is effected by provi­sions which require the “white” and “coloured” members to establish separate branches and to hold separate meetings, and entrust the management of the union to an executive consisting solely of “white” persons, to the meetings of which no “coloured” member may have access except with its consent and for particular purposes.

85. The inevitable long-term cumulative effect of these provisions will be the virtual extinction of the mixed union as a recognised workers’ organisation.

II. Particulars of the Legislation

(a) General Exclusion of “Native” Workers from the Industrial Relations System.

86. As explained above, the general system of industrial relations in the Republic of South Africa is that established by the Industrial Conciliation Act. The trade union which cannot register under that Act is a de facto, legally unrecognised organisation which can play no effective part in industrial relations. By the same token, the person who cannot join a registered trade union is likewise excluded.

87. The only trade unions which can be registered are trade unions of “employees” in a particular undertaking, industry, trade or occupation associated together primarily for the purpose of regulating relations between employees and employers. The statutory definition of “employee” is a person other than a “native” i.e. “a person who is or is generally accepted to be a member of any aboriginal race or tribe of Africa”.

(b) Registration of Trade Unions.

88. Certain provisions of the Industrial Conciliation Act relating to the registration or maintenance of registration of a trade union draw distinctions between “white persons” and “coloured persons” and impose disadvantages on “mixed unions”, catering for both “white” and “coloured” persons, as compared with unions whose membership is limited solely to “white” persons or solely to “coloured” persons.

89. As from the date of the coming into force of the Act, the future registration of any trade union having both “white” and “coloured” members, or whose membership is open to both “white” persons and “coloured” persons, is prohibited. The only exception to this rule can arise where the Minister of Labour grants an exemption because he is satisfied that the number of “white” or “coloured” persons eligible for membership of the union whose membership is open to both races is too small to enable them to form an effective separate union.

90. When a trade union applies for registration an objection may be lodged by another union which is already registered or which applies for registration before the Registrar has reached a decision on the first application. In this connection,

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1 Industrial Conciliation Act, 1956, as amended in 1959, section 1 (1) (xi), (xx) and (xxxviii).
2 A “white person”, according to section 1 (1) (xlv) of the Industrial Conciliation Act, “means a person who in appearance obviously is, or who is generally accepted as a white person, but does not include a person who, although in appearance obviously a white person, is generally accepted as a coloured person”. A “coloured person” is “a person who is not a white person or a native” (section 1 (1) (vii)).
3 Industrial Conciliation Act, section 4 (6).
the mixed union is treated less favourably than the union which caters solely for "white" persons or "coloured" persons, as the case may be.

91. When neither of the unions concerned is a mixed union and the objecting union satisfies the Registrar that it is sufficiently representative in all or part of the area of all or part of the interests in respect of which the applicant union seeks registration, he may refuse the application for registration; alternatively he may grant the registration but limit its effect to that part of the area and interests concerned for which he considers the objecting union not to be sufficiently representative. In such a case the Registrar appears to have considerable discretion. Especially, the fact that the union applying for registration, and against which an objection is lodged, has a greater or lesser number of members than an objecting union is not necessarily the deciding factor, because it is provided that the Registrar may regard an existing registered union as sufficiently representative in respect of the undertaking, industry, etc., and area concerned irrespective of the number of its members in that area. In other words, the union in possession does not necessarily lose its registered status because a new applicant has more members.

92. But if the registered union "in possession" is a mixed union, its objection cannot prevail if its membership in the undertaking, industry, etc., and area concerned is less than that of a segregated union which applies for registration.

(c) Variation of Scope of Registration.

93. The provisions relating to variation of the scope of registration of an organisation already registered also place the mixed union at a disadvantage compared with the segregated "all-white" or "all-coloured" union.

94. In general, the Registrar is empowered to vary the scope of registration of a trade union (or employers' organisation) if at any time he is satisfied that the area or interests in respect of which it is registered do not coincide with the area or interests which it serves.

95. But there are special additional provisions which apply where there is found to be an overlapping of scope of registration as between a mixed union and a union catering solely for "white" persons or solely for "coloured" persons. If the segregated union has as members more than 50 per cent. of the "white" (or "coloured", as the case may be) persons employed in the undertaking, industry, etc., and area concerned, the Registrar shall vary the scope of the registered mixed union so as to exclude from it the race catered for by the registered segregated union;

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1 Industrial Conciliation Act, section 4 (3) (b).
2 Ibid., section 4 (4) (c).
3 Ibid., section 4 (3) (c) and (d), reading as follows:
   "(c) If an objection to the registration of a trade union, the membership of which in terms of its constitution limited to white persons, is lodged by a trade union, the membership of which is open to both white persons and coloured persons, and the first-mentioned union satisfies the registrar that at the date on which its application for registration was lodged the number of its members in good standing employed in the undertaking, industry, trade or occupation and in the area in respect of which such objecting union is registered exceeded one-half of the number of white persons who at that date were employed in the whole of the undertaking, industry, trade or occupation and area in respect of which the objecting union is registered, such objection shall not be taken into consideration by the registrar.
   
   "(d) The provisions of paragraph (c) shall mutatis mutandis apply to the application for registration by any trade union the constitution of which limits its membership to coloured persons."
4 Ibid., section 7 (1).
5 Ibid., section 7 (2).
the Registrar may take this action of his own motion, after consultation with the mixed union, or at the request of either union.

96. The mixed union whose registration has thus been varied to exclude part of its membership becomes liable to de-registration, unless it can show cause (undefined) to the contrary.¹

97. In certain cases the effect of a variation of the scope of a registration may be "to increase the area or widen the interests of the trade union or employers' organisation" concerned.² While a variation of this kind can operate to the advantage of a segregated union, it is prevented from operating to the advantage of a mixed union, unless the Minister authorises this in exceptional circumstances.³

(d) Splitting of the Assets of Mixed Unions.

98. Where a mixed union has been registered before the coming into force of the Industrial Conciliation Act, 1956, and a new union is registered after that time whose constitution limits its membership solely to "white" or to "coloured" persons, the new union may, in certain prescribed circumstances, take over a share of the assets of the original mixed union.⁴ To enjoy this privilege the new union must, at the time when it applied for registration: (a) have had among its members persons employed in an undertaking, industry, etc., who, while so employed at any time in the five years preceding the Act, were members of an original mixed union whose members were bound by a closed-shop clause in an agreement or an award; (b) have had as members, in the undertaking, etc., and area in respect of which the original union was registered, more than 50 per cent. of the total number of "white" (or "coloured", as the case may be) persons at that time employed in such undertaking, etc., and area. A new union which satisfies these conditions has the right to conclude an agreement with the original (mixed) union as to the division between them of the assets of the original union; if no agreement is reached within 12 months, the new union may, within a further six months, apply to the Registrar for an order as to the division of the said assets.

(e) Segregation within Mixed Unions.

99. Where the membership of a registered trade union is open to both "white" persons and "coloured" persons, its constitution must provide for the establishment

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¹ Industrial Conciliation Act, 1956, section 14 (1).
² Ibid., section 7 (5).
³ Section 7 (6), added to the Industrial Conciliation Act, 1956, by the amending Act of 1959, and reading as follows:

"(6) No variation such as is referred to in subsection (5) shall be made in respect of any trade union unless membership of such union in respect of interests and areas not covered by its certificate of registration at the date of commencement of this subsection is in terms of its constitution limited—

(a) in the case of a union which at the said date is registered in respect of both white persons and coloured persons, to either white persons or coloured persons;

(b) in the case of a union which at the said date is registered in respect of white persons only, to white persons; and

(c) in the case of a union which at the said date is registered in respect of coloured persons only, to coloured persons:

Provided that the Minister may, on the application of any trade union and if he is satisfied that the number of white persons or coloured persons eligible for membership thereof is too small to enable them to form an effective separate union, authorise the registrar to make such a variation as is referred to in subsection (5), subject to the other provisions of this section."

⁴ Ibid., section 6.
of separate branches for "white" persons and "coloured" persons, for the holding of separate meetings by "white" persons and "coloured" persons, and for the union's executive body to consist only of "white" persons.\(^1\) No member other than an official or office-bearer of the union may attend or take part in any union meeting which is not a meeting for the particular race to which he belongs.\(^2\) No member of the union who is a "coloured" person may attend or take part in a meeting of the executive body of the union, except to be interrogated by it, or, with its consent, to furnish explanations or make representations with regard to an allegation against him which is being investigated by the executive body.\(^3\) The Minister may, in his discretion, grant exemption from all or any of these provisions, for such period and on such conditions as he thinks fit, and may withdraw such exemptions at any time.\(^4\)

(f) De-registration of Trade Unions.

100. As noted in paragraph 96 above, the mixed union the scope of whose registration has been varied so as to exclude from it either "white" persons or "coloured" persons becomes liable to de-registration. In addition, if the Registrar has reason to believe that a mixed union has not complied with the provisions noted in paragraph 99 above with regard to the establishment of separate branches and the holding of separate meetings for "white" and "coloured" members and the appointment only of "white" persons to its executive body, the Registrar shall publish in the *Gazette* and send to the union concerned notice of his intention to cancel the registration of the union after a period of 30 days, unless cause be shown to the contrary.\(^5\)

(g) Prohibition of "Natives" from Holding Trade Union Office.

101. No registered trade union shall appoint or elect as an official or office-bearer thereof any person who is a "native".\(^6\) No such person shall be appointed as a representative of employees on an industrial council or as an alternate to such a representative.\(^7\) [Industrial councils are statutory bodies established jointly by registered trade unions and employers' organisations for the purpose, *inter alia*, of negotiating collective agreements and preventing and settling disputes.] No such person shall be appointed to a conciliation board dealing with a dispute to represent employees who are parties to the dispute.\(^8\)

(h) Exclusion of Native Workers and Native Workers' Organisations from the Negotiation of Agreements Which May Be Declared Applicable to Them and from the Nomination of Arbitrators Making Awards Which May Be Declared Applicable to Them.

102. The Minister is empowered, in prescribed circumstances to declare all or any of the provisions of an agreement—the negotiation of which is a function of the industrial council, from which "native" workers and their *de facto* unions are excluded—binding upon "natives" employed in the undertaking, industry, trade or occupation, or in any section or portion thereof specified in his notice, by the employers upon whom any such provisions are binding in respect of employees, and

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\(^1\) Industrial Conciliation Act, 1956, section 8 (3) (a) (i), as amended by the Act of 1959.

\(^2\) Ibid., section 8 (3) (a) (ii), as amended.

\(^3\) Ibid., section 8 (3) (a) (iii), as amended.

\(^4\) Ibid., section 8 (3) (b), as amended.

\(^5\) Ibid., section 14 (1).

\(^6\) Ibid., section 8 (6) (e), as amended.

\(^7\) Ibid., section 21 (5), as amended.

\(^8\) Ibid., section 37 (4) (e), as amended.
upon those employers in respect of "natives" in their employ. Further, awards may be declared binding similarly in respect of "natives", but "natives" have no say in the nomination of arbitrators by the members of the industrial council concerned.

(i) **Job Reservation.**

103. The Industrial Conciliation Act empowers the Minister to make determinations reserving wholly or partially work or a specified class of work or work other than that of a specified class to persons of a specified race or class. This aspect of the matter is dealt with in greater detail in section A, paragraphs 17 to 20, of the present document. The provision is mentioned in the present context for the purpose of identification because, as noted below, the Committee on Freedom of Association has formulated conclusions thereon from the point of view of the right to bargain collectively.

(j) **Protection of the Right to Organise.**

104. The legislation prohibits the dismissal or prejudicing of an employee because he belongs or has belonged to any trade union or any other similar association of employees or takes or has taken part outside working hours, or, with the consent of the employer, within working hours, in the formation or in the lawful activities of any such trade union or association. Further, no employer shall require of any employee whether by a term or condition of employment or otherwise that that employee shall not be or become a member of a trade union, or other similar association of employees and any such term or condition in any contract of employment entered into before or after the commencement of the Act shall be void. The employer who contravenes this provision shall be guilty of an offence.

105. No such protection is enjoyed by "natives". The only comparable protective provisions in their case are those in the Native Labour (Settlement of Disputes) Act, 1953, which prohibit victimisation of an employee because he has participated in the election or operation of a works committee, or has functioned as a liaison member of a regional committee in terms of that Act.

(k) **Enjoyment of Trade Union Immunities.**

106. A further consequence of their exclusion from the Industrial Conciliation Act of 1956 is that "native" employees and their *de facto* trade unions do not enjoy the protection afforded thereunder to members, office-bearers or officials of registered trade unions and employers' organisations, and to such unions and organisations, in respect of wrongful acts in furtherance of a lawful strike or lockout.

(l) **Discrimination with Regard to Strikes.**

107. Strikes and lockouts are prohibited in the case of registered trade unions and employers' organisations if the employees or employers concerned are local authority employees or local authorities or are engaged in certain essential public

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1 Industrial Conciliation Act, 1956, section 48 (3).
2 Ibid., section 51 (12).
3 Ibid., sections 45 and 46.
4 Ibid., section 77, as amended in 1959.
5 Ibid., section 66.
6 Ibid., section 78 (1).
7 Native Labour (Settlement of Disputes) Act, 1953, section 24.
8 Industrial Conciliation Act, 1956, section 79.
services or utilities.\(^1\) In other cases, restrictions were placed on strikes and lockouts in certain circumstances (during the currency of an agreement or determination and pending compliance with the provisions relating to conciliation and arbitration).\(^2\)

108. But strikes by native workers are prohibited entirely; the penalty for contravention is a fine not exceeding £500, or imprisonment for not more than three years, or both.\(^3\)

(m) *Distinctions Made by the Suppression of Communism Act, 1950, as Amended in 1951, and by the General Law (Amendment) Act, 1962.*

109. The Suppression of Communism Act empowers \(^4\) the Governor-General to declare an organisation to be an “unlawful organisation” if he is satisfied, *inter alia,* that: (1) its purpose or one of its purposes is to propagate the principles or promote the spread of communism or to further the achievement of any of the objects of communism; or (2) it engages in activities which are calculated to further the achievement of any of certain prescribed \(^6\) objects; or (3) it is controlled, directly or indirectly, by the Communist Party, by any other organisation professing or having professed to be an organisation for propagating the principles or promoting the spread of communism, or by an organisation falling within the terms of (1) or (2) above.

110. The above provisions do not apply to a trade union or employers’ organisation which is registered under the Industrial Conciliation Act.\(^5\)

111. Because a “native” workers’ organisation at any time and, after the commencement of the Industrial Conciliation Act, 1956, a mixed union having “white” and “coloured” members, cannot register under the Industrial Conciliation Act, such organisations are not, on the other hand, exempt from the application of the provisions referred to in paragraph 109 above.

112. Leaving aside the more definitely political aspects of the question, the union which is not thus exempted may thus become liable under the Suppression of Communism Act in respect of social or industrial activities normally falling in the trade union field, according to what interpretation is placed by the courts on the activities in question, on the ground that such activities fall within the definition of “communism” in the Act.\(^7\)

113. It would therefore appear, at least as regards “native” workers or a “native” workers’ organisation, strikes by whom are unlawful, that any strike or threat of a strike or promotion of such strike or threat, for the purpose of bringing about an improvement in wages or conditions of employment, would be liable to prosecution on the ground that its aim was to bring about an industrial, social or economic change.

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\(^1\) Industrial Conciliation Act, 1956, section 65 (1) (c).

\(^2\) Ibid., section 65 (1) (a) and (d) and section 65 (2).

\(^3\) Native Labour (Settlement of Disputes) Act, 1953, section 18, as amended in 1955.

\(^4\) Suppression of Communism Act, 1950, section 2 (2).

\(^5\) Prescribed in paragraph (a), (b), (c) or (d) of the definition of “communism” in section 1 of the Act.

\(^6\) Suppression of Communism Act, 1950, section 2 (3).

\(^7\) Under section 1 (1) (ii) of the Act, “communism” includes any doctrine or scheme “which aims at bringing about any political, industrial, social or economic change within the Union by the promotion of disturbance or disorder, by unlawful acts or omissions or by the threat of such acts or omissions or by means which include the promotion of disturbance or disorder, or such acts or omissions or threat.”
114. A "native" workers' organisation would appear, therefore, liable to be declared on this ground an "unlawful organisation". Its office-bearers, officers, members or active supporters would in such case be liable to the restrictions which the Minister can impose under the Suppression of Communism Act, 1950, as amended in 1951, and by the General Law (Amendment) Act, 1962, and under other sections of the last enactment.

115. Finally, consideration has to be given to the possible relatively disadvantageous position of a union which is not registered under the Industrial Conciliation Act, 1956, as amended, i.e. a "native" workers' organisation at any time or a mixed union not registered prior to the commencement of the Act of 1956, or any other union not registered or registrable under the Act, in respect of the provisions of the General Law (Amendment) Act, 1962, relating to the offence of sabotage.

116. The offence of sabotage, as defined, includes any wrongful and wilful act which, inter alia, injures, puts out of action, obstructs, tampers with, etc., any of the following, among other things: supply or distribution of light, power, fuel, foodstuffs or water; postal, telephone or telegraph services; free movement of traffic; any property, movable or immovable, of any person or of the State. It includes also any attempt, instigation or encouragement to commit such an act. The death penalty may be imposed in respect of any such act; if it is not, the minimum penalty is five years' imprisonment.

117. From the point of view of discrimination a question arises as to whether a strike of "native" workers—always illegal—called in circumstances which would make it lawful if the strikers were members of a trade union registered under the Industrial Conciliation Act would be construed as such a "wrongful and wilful" act, if it produced any of the results referred to in paragraph 116 above. Prima facie, there appears to be nothing to prevent a strike by "native" workers being so construed and, therefore, rendering the strikers liable to a minimum penalty of five years' imprisonment or to a maximum penalty of death by hanging.

118. It is, for example, difficult to imagine a strike in the public services or public utility sector which did not injure, put out of action or obstruct either the

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1 Especially under sections 5 and 10.
2 Section 21 (1) of the General Law (Amendment) Act, 1962, reads as follows:
"21. (1) Subject to the provisions of subsection (2), any person who commits any wrongful and wilful act whereby he injures, damages, destroys, renders useless or unserviceable, puts out of action, obstructs, tampers with, pollutes, contaminates or endangers—
(a) the health or safety of the public;
(b) the maintenance of law and order;
(c) any water supply;
(d) the supply or distribution at any place of light, power, fuel, foodstuffs or water, or of sanitary, medical or fire-extinguishing services;
(e) any postal, telephone or telegraph services or installations, or radio transmitting, broadcasting or receiving services or installations;
(f) the free movement of any traffic on land, at sea or in the air;
(g) any property, whether movable or immovable, of any other person or of the State, or who attempts to commit, or conspires with any other person to aid or procure the commission of or to commit, or incites, instigates, commands, aids, advises, encourages or procures any other person to commit, any such act, or who in contravention of any law possesses any explosives, firearm or weapon or enters or is upon any land or building or part of a building, shall be guilty of the offence of sabotage and liable on conviction to the penalties provided for by law for the offence of treason: provided that, except where the death penalty is imposed, the imposition of a sentence of imprisonment for a period of not less than five years shall be compulsory, whether or not any other penalty is also imposed."
supply or distribution of light, power, water, fuel or foodstuffs, or postal, telephone or telegraph services or the free movement of any traffic. It is even more difficult to imagine a strike in any sector which did not injure, put out of action or obstruct the property of any person or of the State.

119. It is a defence to the charge of sabotage to prove that the alleged offence in question, objectively regarded, was not calculated to and was not intended to produce any one of a number of effects. These effects include: to cause or promote general dislocation; to cripple or seriously prejudice any industry or undertaking; to seriously interrupt the supply or distribution at any place of light, power, fuel or water; to cause substantial financial loss to any person or to the State; to embarrass the administration of the affairs of the State.

120. Clearly, in the event of a strike by "native" workers being construed as a "wrongful and wilful act", it would be certainly impossible to prove that the alleged offence was not calculated or intended to produce any of the effects referred to in paragraph 119 above. Obviously, any serious strike of state-employed persons, to be successful, must seek to cause "dislocation" or "to embarrass the administration of the affairs of the State"; almost no strike of employees in the private sector can visualise success unless it "cripples or seriously prejudices" the "undertaking" or "causes substantial financial loss" to the employer.

121. These aspects of the matter, as will be seen below, have been considered by the Governing Body Committee on Freedom of Association.

III. Findings of the Governing Body Committee on Freedom of Association

122. The question of the failure to recognise native workers’ organisations for the purpose of the Industrial Conciliation Act (see paragraphs 86 and 87 above) has been examined by the Committee on Freedom of Association.

123. The Committee noted a statement by the South African Government that the legislation did not bar the formation of trade unions by "native" workers

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1 The defences to a charge of sabotage are listed in section 21 (2) of the Act, which reads as follows:

"21 (2) No person shall be convicted of an offence under subsection (1) if he proves that the commission of the alleged offence, objectively regarded, was not calculated and that such offence was not committed with intent to produce any of the following effects, namely—

(a) to cause or promote general dislocation, disturbance or disorder;
(b) to cripple or seriously prejudice any industry or undertaking or industries or undertakings generally or the production or distribution of commodities or foodstuffs at any place;
(c) to seriously hamper or to deter any person from assisting in the maintenance of law and order;
(d) to cause, encourage or further an insurrection or forcible resistance to the Government;
(e) to further or encourage the achievement of any political aim, including the bringing about of any social or economic change in the Republic;
(f) to cause serious bodily injury to or seriously endanger the safety of any person;
(g) to cause substantial financial loss to any person or to the State;
(h) to cause, encourage or further feelings of hostility between different sections of the population of the Republic;
(i) to seriously interrupt the supply or distribution at any place of light, power, fuel or water, or of sanitary, medical or fire-extinguishing services;
(j) to embarrass the administration of the affairs of the State."

and "native" workers were not barred from negotiating private agreements with their employers. The Government declared that experience had shown, however, that "native" trade unions did not operate satisfactorily, so that other means had to be devised to ensure fair wages and conditions of employment to "native" workers, and this led to the passing of the Native Labour (Settlement of Disputes) Act, 1953.

124. The Governing Body concluded that—
the provisions of the Industrial Conciliation Act involve discrimination against African workers which is inconsistent with the principles that workers without distinction whatsoever should have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation and that all workers' organisations should enjoy the right of collective bargaining.  
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125. The Governing Body noted further that the Native Labour (Settlement of Disputes) Act "makes no provision for the recognition of African trade unions" or for the negotiation of wages and conditions "by any African trade unions which may exist".  
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126. At the same time the Committee examined the relative situations of members of unions registered under the Industrial Conciliation Act, who can strike subject to the limitations prescribed in that Act, and of "natives", who, by virtue of the Native Labour (Settlement of Disputes) Act, 1953, are prohibited, on pain of heavy penalties, from striking under any circumstances (see paragraphs 107 and 108 above).

127. In this connection, the Governing Body concluded—
that the existence of racial discrimination in respect of trade union rights is further confirmed by the fact that the nature and extent of the limitations placed on the right to strike differ widely as between employees covered by the Industrial Conciliation Act and African workers.  
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128. The Committee has also examined the provisions of section 4 (6) of the Industrial Conciliation Act relating to the prohibition of the future registration of mixed unions catering for both "white" and "coloured" persons (see paragraph 89 above), the provisions of section 7 (2) relating to variation of scope of registration of mixed unions with consequential de-registration under section 14 (1) (see paragraphs 95 and 96 above) and the provisions of section 6 relating to the splitting up of existing mixed unions (see paragraph 98 above).

129. In this connection the Committee took note 4 of statements by the Government that, in its view, the provisions relating to the splitting up and division of the assets of a mixed union are especially democratic and that, without these provisions, a majority of persons of a particular race might be compelled, for financial reasons, to remain members of a union which no longer satisfies their aspirations and ideals. The Government also indicated that where a separate union is desired by the requisite number of a particular race and such a union is duly registered, it does not compel the remaining number of that race to join the new union.

130. The Governing Body concluded—
that the prohibition of future registration of mixed trade unions effected by s. 4 (6) of the Industrial Conciliation Act, 1956, and the provision in s. 14 (1) of the Act with respect to cancellation of

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1 See 15th Report of the Committee on Freedom of Association, Case No. 102, idem, para. 185 (2).
2 Ibid., para. 185 (3).
3 Ibid., para. 185 (4).
4 See 24th Report of the Committee on Freedom of Association, Case No. 145, para. 193. (Official Bulletin, Vol. XXXIX, 1956, No. 4.) This report was approved by the Governing Body at its 133rd Session (November 1956).
registration of a trade union some of whose members have formed a new union pursuant to s. 7 (2) of the Act, are not compatible with the generally accepted principle that workers, without distinction whatsoever, should have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation or with the principle that all workers' organisations should enjoy the right of collective bargaining.

131. At the same time, the Committee considered the provisions of section 8 (3) (a) of the Industrial Conciliation Act relating to segregation within mixed trade unions.

132. The Governing Body concluded—

that the provisions contained in s. 8 (3) (a) (i) (aa) and (bb) and (ii) of the Industrial Conciliation Act, 1956, with respect to the organisation, in registered mixed trade unions, of separate branches for white persons and coloured persons respectively and the holding of separate meetings by the separate branches, are not compatible with the generally accepted principle that workers' organisations should have the right to draw up their constitutions and rules and to organise their administration and activities, and that the provisions in s. 8 (3) (a) (i) (cc) and (iii) reserving to Europeans the right to be members of the executive committees of such trade unions are not compatible with the principle stated above or with the principle that workers' organisations should have the right to elect their representatives in full freedom.4

133. With regard to the "job reservation" provisions of section 77 of the Industrial Conciliation Act (see paragraph 103 above), the Committee took note of a statement by the Government that a determination as to job reservation cannot override an agreement negotiated by an industrial council without the consent of the council, but observed that no such safeguard existed in respect of workers whose organisations could not register or remain registered under the Act—i.e. "native" workers and "coloured" workers in an organisation not registered before the commencement of the Act or in an organisation de-registered under section 14 of the Act.

134. With respect to these latter categories the Governing Body concluded that section 77 of the Act would tend to prevent the negotiation by collective agreement of better terms and conditions, including terms and conditions governing access to particular employments, and thereby to infringe the rights of the workers concerned to bargain collectively and to promote and improve their living and working conditions, which are generally regarded as essential elements of freedom of association.3

135. Finally, the Committee on Freedom of Association has examined allegations relating to the application of section 21 of the General Law (Amendment) Act, 1962—the section which defines the offence of "sabotage" and subsections (1) and (2) of which were cited in the footnotes to paragraphs 116 and 119 above.

136. The Committee observed that it would seem clear—

that any act by a registered union or any member or members thereof which is not lawful under the 1956 Act would be a "wrongful" act in terms of section 21 of the 1962 Act if it otherwise satisfied the definition of sabotage set forth therein. Any strike whatsoever by African workers is a "wrongful" act because it is specifically unlawful in all cases according to the Native Labour (Settlement of Disputes) Act, 1953".4

137. The Committee then had to consider whether, as alleged, section 21 of the General Law (Amendment) Act, 1962, could be applied to strike action constituting a "wrongful" act, so as to render those committing the act liable to prosecution for sabotage in terms of section 21 (1), and liable to be convicted unless

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1 See 24th Report of the Committee on Freedom of Association, Case No. 145, idem, para. 209 (5).
2 Ibid., para. 209 (4).
3 Ibid., para. 209 (3).
they, in their defence, proved that their act had had none of the effects set forth in section 21 (2) (see paragraph 119 above and footnote thereto).

138. In reply to the allegations that section 21 of the 1962 Act could be applied integrally in the case of any strike that was not lawful, the Committee had before it a statement by the Government that "the activities of bona fide trade unions are not affected by section 21 of the 1962 Act".

139. In this connection, the Governing Body decided—

140. The Committee observed that a further point in connection with section 21 of the Act was not quite clear. The complainants alleged that if any act were committed which accorded with the definition of acts of sabotage set forth in section 21 (1), the onus was upon the accused to prove the validity of one of the defences set forth in section 21 (2). The Government denied this, stating that by virtue of section 21 (1) the State must make out a *prima facie* case, proving that the act took place and that it was committed wrongfully and wilfully, and that section 21 (2) merely enumerated the possible defences. Section 21 (2), however, appeared to place a very serious burden of proof on the accused. It appeared that, if the State had made out a *prima facie* case—not a proven case—the accused should not be convicted if he proved that the commission of the offence, objectively regarded, was not calculated and that such offence was not committed with intent to produce "any" of the effects enumerated in subparagraphs (a) to (j) of section 21 (2). They were not expressed in those subparagraphs as an enumeration of alternative defences but as a series of possible effects of the action taken, any one of which appeared on the basis of the language used to defeat the defence. The effects which the defendant appeared to require to show that he did not intend to produce included "the bringing about of any social or economic change in the Republic" or "to embarrass the administration of the affairs of the State". This language was so broad as to appear to exclude any action which could be regarded as suggesting any change in existing social or economic conditions or any kind of public inconvenience.

141. In these circumstances, the Governing Body decided—

142. In the light of the situation described above and of the findings reached by the Governing Body Committee on Freedom of Association on the allegations relating to infringements of trade union rights in the Republic of South Africa which it has examined, it would now seem appropriate for the Conference to recom-

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1 See 68th Report of the Committee on Freedom of Association, Case No. 300, idem, para. 234 (a).
2 Ibid., para. 234 (b). The 68th Report of the Committee was approved by the Governing Body at its 154th Session (March 1963). The questions set forth in paragraph 234 (a) thereof cited above were brought to the notice of the Government of the Republic of South Africa by a letter dated 14 March 1963. The Government has not furnished any reply to these questions.
mend the Government of the Republic of South Africa to repeal the statutory
discrimination on grounds of race in respect of the right to organise and to bargain
collectively, and the statutory prohibitions and restrictions upon mixed trade unions
including persons of more than one race, and so to amend the Industrial Conciliation
Act that all workers, without discrimination of race, enjoy the right to organise
and may participate in collective bargaining.

143. To make this recommendation effective, the Government of the Republic
of South Africa should—

repeal the statutory provisions which exclude workers of African race and their
trade unions from the operation of the Industrial Conciliation Act and involve
discrimination against such workers which is inconsistent with the principles that
workers without distinction whatsoever should have the right to establish and,
subject only to the rules of the organisation concerned, to join organisations of their
own choosing without previous authorisation and that all workers' organisations
should enjoy the right of collective bargaining;

the discrimination at present made against workers of African race,
by section 18 of the Native Labour (Settlement of Disputes) Act, in respect of the
exercise of the right to strike;

repeal the provisions of sections 8 (6) (e), 21 (5) and 37 (4) (c) of the Industrial
Conciliation Act, which prohibit registered trade unions from appointing or electing
persons of African race as officials, office-bearers or representatives and which are
incompatible with the principle that workers' organisations should have the right to
elect their representatives in full freedom;

repeal section 4 (6) of the Industrial Conciliation Act, which prohibits the future
registration of mixed unions, section 4 (3) (c) and (d), which discriminates against
mixed unions in respect of the lodging of objections against the registration of a
rival union, section 7 (2) and (6), which discriminate against mixed unions in respect
of variations of the scope of a union’s registration, and that part of section 14 (1)
which, as a consequence, provides for the de-registration of mixed unions, and
section 6, which provides for the splitting up and division of the assets of mixed
unions, all of which provisions are not compatible with the generally accepted
principle that workers, without distinction whatsoever, should have the right to
establish and, subject only to the rules of the organisation concerned, to join orga­
nisations of their own choosing without previous authorisation, with the principle
that workers' organisations should have the right to organise their
administration and activities and that the law of the land should not be such as to
impair, nor should it be so applied as to impair, the exercise of this right;

repeal the provisions of section 8 (3) (a) (i) (aa) and (bb) and (ii) of the Industrial
Conciliation Act, with respect to the organisation, in registered trade unions, of
separate branches for “white persons” and “coloured persons” respectively and
the holding of separate meetings by the separate branches, which are not compatible
with the generally accepted principle that workers' organisations should have the
right to draw up their constitutions and rules and to organise their administration
and activities, and the provisions of section 8 (3) (a) (i) (cc) and (iii) reserving to
“white persons” the right to be members of the executive committees of such trade
unions, which are not compatible with the principle stated above or with the principle
that workers' organisations should have the right to elect their representatives in full
freedom;
enact legislative measures to extend to workers of African race and to other workers who, by virtue of other provisions of the Act, cannot become members of or may cease to be entitled to be members of trade unions registered or registrable under the Act, the application of the provisions of sections 66 and 78 (1) of the Industrial Conciliation Act concerning the protection of the right to organise which at present safeguard only the members of organisations registered under the Act;

repeal the provisions of section 77 of the Industrial Conciliation Act respecting the reservation of particular employments to members of particular races, which, so far as African and other workers who, by virtue of other provisions of the Act, cannot become members of or may cease to be entitled to be members of trade unions registered or registrable under the Act are concerned, tend to prevent the negotiation by collective agreement of better terms and conditions, including terms and conditions governing access to particular employments, and thereby to infringe the rights of the workers concerned to bargain collectively and to promote and improve their living and working conditions, which are generally regarded as essential elements of freedom of association;

extend the application of the provisions of section 2 (3) of the Suppression of Communism Act, which exclude from the liability to be declared an “unlawful organisation” under section 2 (2) of the Act trade unions which are registered under the Industrial Conciliation Act, to trade unions of workers of African race and to other trade unions which are not registered or registrable under the Industrial Conciliation Act;

enact measures, having regard to the assurance given by the Government of South Africa to the Governing Body Committee on Freedom of Association that “the activities of bona fide trade unions are not affected by section 21” of the General Law (Amendment) Act, 1962, relating to the offence of sabotage, to make it clear that the expression “bona fide trade unions” in this connection includes trade unions of workers of African race and other trade unions which are not at present registered or registrable under the Industrial Conciliation Act.

D. Recapitulation

144. It remains to recapitulate the I.L.O. programme for the elimination of apartheid in labour matters in the Republic of South Africa outlined in this document.

145. The programme concentrates in the first instance on three broad areas, namely—
equality of opportunity in respect of admission to employment and training;
freedom from forced labour (including practices which involve or may involve an element of coercion to labour);
freedom of association and the right to organise.

146. The programme concentrates on these matters in the first instance for four reasons:
they are the fundamentals of freedom and dignity;
well-established standards approved by the International Labour Conference with near unanimity exist in respect of all of them; these standards give expression to principles proclaimed in the Declaration of Philadelphia as being among the aims and purposes of the International Labour Organisation;
the widespread acceptance of these standards in Africa generally, and in substantial measure by South Africa's immediate neighbours in southern Africa, refutes the suggestion that the "present stage of social and economic development" of South Africa, which is generally conceded to be technically the most advanced of all African countries, precludes their immediate application there; they have all been the subject of an exhaustive inquiry by authoritative I.L.O. bodies which affords an objective basis for the formulation of recommendations relating to them.

147. The programme is concerned at this stage with the elimination of apartheid; it cannot encompass the whole future of social policy in South Africa which is essentially the responsibility of all the people of South Africa. It is therefore essentially a statement of the changes in the law of South Africa required to eliminate the practices which the Security Council of the United Nations has unanimously found to be "abhorrent to the conscience of mankind". As the Security Council has also unanimously recognised the objective of such changes should be "full peaceful and orderly application of human rights and fundamental freedom to all inhabitants of the territory as a whole, regardless of race, colour or creed", this will require new policies for the future to replace the policies and legislation which it is proposed to eliminate; the detailed formulation of such policies would represent an essential further stage in the programme. This second stage should be undertaken in the closest co-operation with the United Nations.

148. The principles on which the first stage of such a programme should be based may be summarised as follows:

South Africa should recognise and fulfil its undertaking to respect the freedom and dignity of all human beings, irrespective of race, and as a first step in this direction should:

- promote equality of opportunity and treatment in employment and occupation irrespective of race;
- repeal the statutory provisions which provide for compulsory job reservation or institute discrimination on the basis of race as regards access to vocational training and employment;
- repeal all legislation providing for penal sanctions for contracts of employment, for the hiring of prison labour for work in agriculture or industry, and for any other form of direct or indirect compulsion to labour, including discrimination on grounds of race in respect of travel and residence, which involves racial discrimination or operates in practice as the basis for such discrimination;
- repeal the statutory discrimination on grounds of race in respect of the right to organise and to bargain collectively, and the statutory prohibition and restrictions upon mixed trade unions including persons of more than one race, and so to amend the Industrial Conciliation Acts that all workers, without discrimination of race, enjoy the right to organise and may participate in collective bargaining.

149. If these principles were to be accepted as the basis of a programme for the elimination of apartheid, the Government of the Republic of South Africa should take the following action to make them effective:

As Regards Admission to Employment and Access to Vocational Training:

The Government of the Republic of South Africa should—

- repeal or amend all legislative provisions whose effect is to create inequality of opportunity and treatment between persons of different races as regards access to
vocational training, particularly the Bantu Education Act, 1953, the Coloured Persons Education Act, 1963, and the Extension of University Education Act, 1959, and reorganise the educational system so as to ensure to persons of all races equality of access to vocational training at all levels;

repeal all provisions establishing discrimination between persons of different races as regards choice of employment and access to particular employments, particularly section 77 of the Industrial Conciliation Act, 1956, and the determinations made thereunder, section 12 (2) of the Mines and Works Act, 1956, and the regulations made thereunder, sections 14, 15 and 16 of the Native Building Workers Act, 1951, section 4 (1) (a) of the Motor Carrier Transportation Amendment Act, 1959, the proviso to section 11 (1) (e) and section 49 of the Nursing Act, 1957, and all other provisions of this Act which establish discrimination on the basis of race in the organisation of the nursing profession;

take all possible positive measures to promote equality of access of members of all races to all forms of employment in practice;

amend all provisions which establish discrimination in the determination of wages and other conditions of employment as between persons of different races, and particularly amend sections 1 (1) (xi), 48 (3), 49 (12) and 51 (12) of the Industrial Conciliation Act, 1956, so as to permit all workers, without any distinction based on race, to enjoy the protection of collective agreements and awards, and section 5 (b) of the Wage Act, 1957, so as to ensure the application of the same criteria in fixing the remuneration of workers of all races.

As Regards Measures Having the Effect of Compulsion to Labour:

The Government of the Republic of South Africa should—

repeal the provisions relating to labour bureaux contained in the Native Labour Regulation Act, 1911, and the regulations issued thereunder on 6 January 1959, which grant the authorities extensive powers for the direction of "native" labour, and bring persons of African race within the scope of the employment service established under the Registration for Employment Act, 1945, on a footing of equality with workers of other races;

repeal the provisions regulating the entry of "natives" into urban areas and "proclaimed" areas and their stay in such areas contained in the Natives (Urban Areas) Consolidation Act, 1945, and the regulations issued under that Act;


repeal the vagrancy provisions contained in the Natives (Urban Areas) Consolidation Act, 1945, and amend the vagrancy provisions of general application contained in the Work Colonies Act, 1949, so as to bring the definition of the offences created by these provisions into conformity with the generally accepted meaning of vagrancy;

repeal the provisions for penal sanctions for breaches of contracts of employment contained in the Native Labour Regulation Act, 1911, the regulations issued under the Natives (Urban Areas) Consolidation Act, 1945, the provincial Masters and Servants Acts; and section 10 (7) of the Native Building Workers Act, 1951;

amend section 75 of the Prisons Act, 1959, so as to prohibit the hiring of prisoners to or their placing at the disposal of private individuals, companies or associations, and to discontinue all existing arrangements and practices for such hiring out of prisoners;
grant persons of African race the same protection and guarantees as are accorded to persons of other races under general criminal law, and to this end in particular repeal section 9 of the Native Administration Act, 1927, under which native commissioners are granted criminal jurisdiction over “natives”, and the Natives (Prohibition of Interdicts) Act, 1956.

As Regards Freedom of Association and the Right to Organise:

The Government of the Republic of South Africa should—

repeal the statutory provisions which exclude workers of African race and their trade unions from the operation of the Industrial Conciliation Act and involve discrimination against such workers which is inconsistent with the principles that workers without distinction whatsoever should have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation and that all workers’ organisations should enjoy the right of collective bargaining;

remove the discrimination at present made against workers of African race, by section 18 of the Native Labour (Settlement of Disputes) Act, 1953, in respect of the exercise of the right to strike;

repeal the provisions of sections 8 (6) (e), 21 (5) and 37 (4) (c) of the Industrial Conciliation Act, which prohibit registered trade unions from appointing or electing persons of African race as officials, office-bearers or representatives and which are incompatible with the principle that workers’ organisations should have the right to elect their representatives in full freedom;

repeal section 4 (6) of the Industrial Conciliation Act, which prohibits the future registration of mixed unions, section 4 (3) (c) and (d), which discriminates against mixed unions in respect of the lodging of objections against the registration of a rival union, section 7 (2) and (6), which discriminate against mixed unions in respect of variations of the scope of a union’s registration, and that part of section 14 (1) which, as a consequence, provides for the de-registration of mixed unions, and section 6, which provides for the splitting up and division of the assets of mixed unions, all of which provisions are not compatible with the generally accepted principle that workers, without distinction whatsoever, should have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation, with the principle that workers’ organisations should have the right to organise their administration and activities and that the law of the land should not be such as to impair, nor should it be so applied as to impair, the exercise of this right;

repeal the provisions of section 8 (3) (a) (i) (aa) and (bb) and (ii) of the Industrial Conciliation Act, with respect to the organisation, in registered trade unions, of separate branches for “white persons” and “coloured persons” respectively and the holding of separate meetings by the separate branches, which are not compatible with the generally accepted principle that workers’ organisations should have the right to draw up their constitutions and rules and to organise their administration and activities, and the provisions of section 8 (3) (a) (i) (cc) and (iii) reserving to “white persons” the right to be members of the executive committees of such trade unions, which are not compatible with the principle stated above or with the principle that workers’ organisations should have the right to elect their representatives in full freedom;

enact legislative measures to extend to workers of African race and to other workers who, by virtue of other provisions of the Act, cannot become members of
or may cease to be entitled to be members of trade unions registered or registrable under the Act, the application of the provisions of sections 66 and 78 (1) of the Industrial Conciliation Act concerning the protection of the right to organise which at present safeguard only the members of organisations registered under the Act;

repeal the provisions of section 77 of the Industrial Conciliation Act respecting the reservation of particular employments to members of particular races, which, so far as African and other workers who, by virtue of other provisions of the Act, cannot become members of or may cease to be entitled to be members of trade unions registered or registrable under the Act are concerned, tend to prevent the negotiation by collective agreement of better terms and conditions, including terms and conditions governing access to particular employments, and thereby to infringe the rights of the workers concerned to bargain collectively and to promote and improve their living and working conditions, which are generally regarded essential elements of freedom of association;

extend the application of the provisions of section 2 (3) of the Suppression of Communism Act, 1950, which exclude from the liability to be declared an "unlawful organisation" under section 2 (2) of the Act trade unions which are registered under the Industrial Conciliation Act, to trade unions of workers of African race and to other trade unions which are not registered or registrable under the Industrial Conciliation Act;

enact measures, having regard to the assurance given by the Government of South Africa to the Governing Body Committee on Freedom of Association that "the activities of bona fide trade unions are not affected by section 21" of the General Law (Amendment) Act, 1962, relating to the offence of sabotage, to make it clear that the expression "bona fide trade unions" in this connection includes trade unions of workers of African race and other trade unions which are not at present registered or registrable under the Industrial Conciliation Act.

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150. Changes so far-reaching would inevitably involve a complete recasting of labour legislation, social services and industrial relations in the Republic of South Africa. In the formulation of further plans for this purpose, designed to achieve the objective indicated by the resolution unanimously adopted by the Security Council of resolving the present situation in South Africa, with the co-operation of the Government of South Africa, "through full, peaceful and orderly application of human rights and fundamental freedom to all inhabitants of the territory as a whole, regardless of race, colour or creed", the International Labour Organisation should be prepared to play an appropriate part, in co-operation with the United Nations.