

THE UNITED NATIONS AND THE QUESTION OF HUMAN RIGHTS IN SOUTH AFRICA

Dissertation submitted to the Jawaharlal Nehru University
in partial fulfilment of the requirements for the
award of the Degree of
MASTER OF PHILOSOPHY

KAILASPATI JHA



**CENTRE FOR WEST ASIAN AND AFRICAN STUDIES
SCHOOL OF INTERNATIONAL STUDIES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI - 110 067
INDIA
1994**



जवाहरलाल नेहरू विश्वविद्यालय
JAWAHARLAL NEHRU UNIVERSITY
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knowledge, this is an original work.

We recommend that this dissertation be placed
before the examiners for evaluation.

Vijay Gupta

PROF. VIJAY GUPTA
SUPERVISOR

Dieta

DR. (MRS.) GULSHAN DIETL
CHAIRPERSON



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DEDICATED
TO
MY LATE MOTHER

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PREFACE

This dissertation entitled **THE UNITED NATIONS AND THE QUESTION OF HUMAN RIGHTS IN SOUTH AFRICA** analyses and examines the issue of human rights, and its promotion and protection in South Africa, based on the yardstick of the UN and its agencies from 1948 to May 1994. It also seeks to explain, how far the activities of the UN had been successful in eradicating the inhuman practice of "apartheid" in South Africa. In this context it highlights the denial of basic and inherent human rights of the non-whites in all aspects of life by the white governments.

Till recently, the history of South Africa had been wrapped with suppression, segregation and systematic abrogation of human rights. The government legal systems and legislations institutionalized the policy of "apartheid" or separate development, which deprived the majority blacks from their economic, social, political and cultural rights. The discrimination and racial segregation maintained under "apartheid" had been the subject of close international attention since 1952 when the issue of racial segregation first appeared on the agenda of the UN General Assembly. Since its beginning, with increasing commitment for the protection of human rights by legal means, the United Nations along with its

agencies had been accelerating the intensification of its struggle against "apartheid" by passing numerous resolutions, sanctions and conventions.

This dissertation has been planned as follows:

Chapter 1: Introduction

First of all, it raises various issues which have been analysed throughout this dissertation. It discusses the genesis of racism in South Africa. It defines "apartheid". Moreover, it analyses the definition of human rights, with the discussion of important approaches and conceptual debates. This chapter covers, human rights in international documents, genesis of international concern of human rights, the United Nations and human rights, and finally it discusses the United Nations and South African "apartheid" Policy.

Chapter 2: Violation of Human Rights in South Africa.

It introduces the chapter. Thereafter, it explains the violation of human rights of the non-whites under "apartheid rule" in various aspects of life, like social rights, economic rights, political rights, rights of freedom of press, judicial rights, rights of territorial movements, rights of the prisoners. Finally ends with conclusion.

Chapter 3: Role of the United Nations

It introduces the chapter. Thereafter it discusses the United Nations Actions against South Africa, the United Nations standard setting and public Awareness, An Assessment of its role, and finally ends with a concluding observation.

Chapter 4: Role of the Specialized Agencies

It introduces the chapter. And discusses the role of the ILO, the UNESCO and the WHO and finally ends with conclusion.

Chapter 5: Conclusion based on preceding chapters.

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Kailaspati Jha

KAILASPATI JHA

CHAPTER 1

INTRODUCTION

This study attempts to analyse the United Nations activities for the promotion and respect for, and observance of human rights in South Africa. South Africa had been representing a notorious example of violation of human rights against the non-whites by practising racial discrimination. In 1948, the centuries old conventional racism was institutionalised by government into "apartheid policy". In this context, this study examines the denial of human rights to the non-whites in all, social, economic, cultural, judicial and other spheres of their lives.

The issues to be raised in this dissertation are divided into three broader categories.

The first category concerns following questions. What had been the genesis of racism in South Africa? More particularly it concerns the question, what led to the institutionalization of the "apartheid policy" ? And the final concern in this category is, what was "apartheid policy" ? And what had been its impact on South African society ?

The second category concerns the questions, what is human right ? Particularly it concerns the question, what are important approaches and concepts of human rights ? And finally this category concerns with, what rights are identified as human rights in international documents ?

The third category concerns with the questions, what had been genesis of international concern for human rights ? What had been the activities of the United Nations for the promotion of human rights in South Africa? How far the UN had been successful in its mission ? And finally what had been the role of the UNs' specialized agencies for promotion of human rights in South Africa ?

Genesis of Racism in South Africa

Historically the non-whites had been victims of oppression, exploitation and racial discrimination since the beginning of the settlements of the colonialists from various European countries. The Dutch East India Company was the first settler which occupied the Cape in 1652 for establishing a refreshment station for its shipmen. Gradually some of the company's servants undertook crop production on their own account. By the passage of time their numbers started increasing. They spoke distinctive language called Afrikaans. The descendants of the former Dutch settlers were called the

Afrikaners¹ or Boers who constituted 65 percent of the total white population in 1991.

The Dutch were largely involved into inhuman slave trade practice. The importation of slaves initiated the stratification in society on racial lines, which reinforced the development of racial attitudes. The availability of cheap slave labour rapidly intensified the large scale farming which necessitated bigger hectares of lands. Ultimately the settlers started grabbing the lands from indigenous people viz. the San foragers, the khosian and the khoi-khoi.

The Dutch rule in the cape was replaced by the British, who occupied it in 1795, and retained till 1802 in order to protect its sea routes to India from the French. In this period of provisional government the British established new missionary movement which stressed on creation of western educated African elite. Due to renewal of fresh hostilities between the French and the British, the Cape was again occupied by the British forces in 1806. And till 1910, it remained under British colonial rule.

Throughout the British rule relation between the Afrikaners and the British origin immigrants, were tense.

1. J.D. Omer-Cooper, "History of South Africa" in "Africa South of the Sahara 1993, London, Europa Publication, 1993, pp. 768-772.

The Britishers were more involved in trade, while the Afrikaners were mostly agriculturist. Hence, Afrikaners needed more and more slaves. They treated the slaves even worse than the animals. They forced them to work for the day long without payment of wages. The British colonial government tried to impose some civilized code of conduct but faced Afrikaner rebellion in 1817. Though the rebellion was crushed, but the the distance between the Afrikaners and the Britishers, widened.

In 1834 Britain signed the documents declaring itself against slave trade and undertook to end the trade. This dried the sources of labour supply to South African white farmers who, mostly constituted the Afrikaners. At the insistance of the white farmers, the South African Government began recruiting indentured labours from India, China and ceylone (Sri Lanka) which were also the British² colonies. And later they were called as the Asians mostly engaged in plantation farming, especially, sugar. While Asians were hired as indentured labour, the blacks were forced to work as semi slave labour by imposing land use restrictions, taxes and pass laws.

This began an institutionalized system of discrimination. The Africans were segregated from certain

2. Vijay Gupta "India-South Africa Relations and the post-apartheid syndrome", Strategic Analysis, Vol. XV(10) January 1993, pp. 995-1018.

areas, restricted into reserves later called "Home Lands" or Bantustans. The purpose of restricting the Africans to "reserves" was to get a supply of labour as the "reserves" were insufficient to meet the economic needs of the residents. Thus pass laws were imposed to check their mobility.

Meanwhile the British control extended to Natal, and Trans-oragina. And the Dutch settlers, being disenchanted with the British rule, went into interior and established the two Boer Republics viz. the Orange Free state and the South African Republic (Trarsvaal). In the Cape, the British founded a representative government where the franchise was based on economic criteria without reference to colour. By 1860, the discovery of diamonds near Kimberley accelerated the process of importing indentured Asian labours. And this discoveries brought the white states i.e. Boers and the British Economically closer.

Germany's annexation of Namibia in 1888 aroused the British strategic concern, and since the Afrikaner's rebellions in their two republics threatened British paramountacy. Consequently the British annexed the two Boer Republics in 1899-1902.

The four British dependencies states viz. Cape of Good Hope, the Orange River Colony, Natal and Transvaal were merged to form the Union of South Africa.

Initially the blacks, the coloureds (people of mixed origin) and the Asians were allowed some political and civil rights but after 1910, when the British handed over power, under self dominian status, to the white minority settlers 'the process of depriving of the non-whites of all political and civil rights began. The political activities began on an organised basis. There emerged a number of political parties like, the African National Congress, the Boer dominated Afrikaners National Party and South African Indian Congress.

The new constitution of the self Governing Dominian declared two languages - English and Dutch as official languages. The franchise rights were given to the white males only, and to the blacks also in the Cape province only, on the basis of economic qualification not racial qualification. The 93 percent of voters were the whites. Hence it retained political power in the hands of the white men, and the non-whites were barred from sitting in Parliament. It also prevented the extension of the Cape franchise to the rest of the Africa.

With Union in 1910, the two Afrikaner parties in its ex-republics joined with the Cape's South Africa Party (SAP) to form a national party naming the South Africa Party (SAP). The first government was formed by General Louis Botha and General Jan Smuts, who had been two great former Boer Generals. General Botha was, assisted by

General Smuts. In 1912 the SAP split, on the issue of Botha's seeking conciliation from Britain, which was opposed by his senior cabinet member Mr. Hertzog. He was expelled from the government. In 1914 Mr. Hertzog formed a separate party called the National Party (NP) who got the mass support of the poor and rural Afrikaners. And from 1914 to 1924, the NP had been the official opposition party in the parliament. General Botha died in 1919, and was succeeded by General Smuts, who ruled till 1924.

During Botha and Smuts rule certain important jobs in the Mining Sector were reserved for the whites. The 'seperate areas,³ for the blacks and the whites were earmarked. The purpose of creating separate areas was to coerce African peasants into migrant labour for the mine owners and the white farmers. The Africans were denied the right to buy lands outside their reserved areas.

In 1914, with the outbreak of world war. General Botha joined war to support the British. This step of Botha was highly opposed by the Afrikaners. Although South Africa occupied South-west Africa (Namibia) and administered it to be of under the League of Nations mandatory, but this war proved heavy loss to South African people. The post war economic depression forced the poorer South African families to migrate to town. The

3. The National Land Act of 1913 established the principle of separate areas for the whites and the Africans. It denied Africans to buy Lands outside the Native Reserves.

urban population increased rapidly, poverty, diseases, malnutrition became common among the whites and more amongst the blacks. In such a miserable condition, the government announced the "segregationist approach"⁴ for serving the interests of the white workers, the poor whites and the Afrikaner farmers. According to this approach the Africans could not stay in urban areas except to serve the whites.

The African National Congress protested against the Land Act of 1913, which denied the rights to buy land outside their the so called "native reserves". The Africans seeking employment had to leave their reserves and move to urban areas living in, most inhuman conditions in slums. The result was growth of clusters of slums, around cities, of poor Africans. Consequently, in 1923, government passed the Native Act, based on the principle that the blacks had no rights in urban areas except to serve the needs of the whites. The process of segregation received a step further by National Party leader Hertzog's legislation in 1936, which deprived the Cape Africans, who had some political rights, of their voting rights. Thereafter, the blacks were totally disenchanted. Racism became the dominant philosophy of the white rulers and eventually it given an institutionalised form in 1948.

4. In 1923, the Native Acts (Urban Areas Act) was passed, which announced that the Africans had no right in urban areas except to serve the whites, needs. This act was based on report and suggestion of the Stallard Commission in 1922.

In 1924 election, Mr. Hertzog's National Party gained majority with the support of the poor whites. He announced a new labour policy called "civilized labour policy" which reserved the various skilled and unskilled works for the whites. His main motive was to give maximum employments to the whites by creating and reserving posts in armies, factories and mines. During his tenure, the value of coloured (mixed race) and African political rights in the Cape province was reduced as a consequence of extending the voting rights to all white adult males but not the coloured or African adult males. Moreover, the ministers⁵ were given power to control the free movements of Africans into towns.

In 1933 election, Hertzog and smuts joined together and formed new party called the United South African National Party (USANP) which gained large majority in elections in 1934 and later in 1938. But both again split in 1939, on the issue, of joining the British in second world war. While Smuts proposed to join South Africa with the British, and Hertzog favoured position of neutrality.

Meanwhile, in 1934 Danial F. Malan formed a "purified" National Party (NP) which was completely

5. Based on the approach of the Stallard Commission of 1922, in 1930, Native Urban Areas Act gave the ministers power to check free movements of Africans into town.

dedicated to the Afrikaner nationalism. It was highly inspired by the Nazism and its extreme racist doctrines. It aimed at securing for Afrikaners a share of South African capitalist enterprise which was owned maximum by the Britishers. On the other hand in the same year another white leader Stallard formed the Unionist Party (UP) dedicated to the British sentiment.

In 1939 Smuts gained support with a minor majority for joining the British in world war second.

During the tenure of Hertzog and Smuts alliance, the racial segregation was extended systematically. The Africans "right to vote"⁶ which was on common roll in Cape province was ended. Instead they were placed on a separate roll and allowed to elect three whites to sit in 150- members parliament. Further the Africans were reserved only 13 percent of total lands as their reserved areas for separate development. And the main political achievement was, South Africa's full freedom from the British rule in 1934.

The contradiction was that, on the one hand South African governments were extending the racial segregations one after another, while on the other hand General Smuts helped farming the draft of the United Nations Charter.

6. The Native Representative Act of 1936 placed non-whites in the Cape province from common roll of voters to a separate roll of voters.

He had also helped in drafting the convention of the League of Nations in 1919.

General Smuts participation in world war second stimulated the Afrikaners protest against the government. This war caused many Afrikaners to return to the National Party by Dr. Malan. In 1948, in the General Election, the National Party and the Afrikaners Party (founded by Hertzog after split in 1942) joined together and fought the elections. The declaration of "apartheid as ideology" or government policy was the main slogan of the election.

Further, seeing the increasing awareness for democratic rights on world arena, and setting one by one colonial countries to be free from the foreign rule, the whites in general and the Afrikaners in particular feared the insecurity of their future. Smuts government had shown in its last years, a liberal trend in some areas like, it suggested for African trade unions, and some welfare measures to Africans. This step was highly opposed by the Afrikaners. Hence, the NP which had a purified racial ideology got support on proper time, and gained majority in the parliament. The National Party transformed the conventional racial discrimination into, governments sanctioned, institutionalization of the "policy of apartheid" for pleasing its voters. Within a decade South African government introduced a series of laws and measures for restructuring South African Society to confirm to "apartheid" doctrine.

Apartheid Policy

The "ideology of apartheid" became a characteristic international image of the South African System. "Apartheid" is a Dutch word "segregasie"⁷ meant segregation or separate development. According to the doctrine of apartheid, each race and nation had a unique, divinely ordained destiny and cultural contribution to make to the world. They would be kept apart so that each could develop to its full along its own inherent lines. Inter-racial contacts above all is miscegenation, must be avoided. The doctrine claimed that the cultural attainments were racially determined and the races were inherently unequal. Each racial group would possess its own territorial area within which it could develop its own unique cultural personality.

The system of "apartheid" was primarily based on "four important pillars".⁸

The first was the restriction of the franchise and the virtual monopolisation by the Afrikaners of the centralized state power - especially its repressive and regulatory apparatuses like army, secret services, police, bureaucracy.

7. R.H. Davendorf, South Africa: A Modern History (London: Macmillan, 1977) p. 331.

8. Robin Cohen, Endgame in South Africa? (London/Paris, 1986), p. 8.

The second pillar was enforced coincidence between spatial and racial relations. Under it residential, business and social segregation was cemented by various legislations.

The third pillar was the enforced regulation of the supply of labour to the mines, factories, farmers and white domestic households.

The fourth and final pillar of "apartheid" was the white governments capacity to enforce social control by extensive interference of state in welfare, educational, health, leisure and employment opportunities. In this context we would examine, how far the claims announced in "apartheid policy" had been true ?

Although the doctrine of "apartheid" was based on racial division, but in reality it was based on the economic interest of the whites. Through this policy they exploited the poor non-whites who lived under the minority white rule. Thereby "apartheid" divided the South African Society into two extreme lines viz. the white rich and the non-white poor. South Africa's determination to be at once internationalist and isolationist, and its perpetuation of unabated abrogation of human rights drew the attention of international human rights organisations. The UN who had been committed to the promotion of human rights took the issue of South African "apartheid Policy", as a serious

challenge and finally proved herself successful in her mission of abolishing this inhuman policy.

Human Rights

Before discussing the UN's activities, it is essential to have a preliminary knowledge of human rights. Human rights are those conditions of social life or claims of an individual which are essential for one's existence, realisation and development as human being. Human rights, as concept can be interpreted in two ways. In "the first place human rights are inherent and inalienable rights because they are individual rights, because they are due to an individual simply because of his/her being a human being".⁹ Secondly, "human rights are a set of legal rights, established according to the law creating process of societies both national and international".¹⁰ Human rights suggest rights which are alike for all human beings. It is recognised that much of human nature is a product of a specific culture in which it has been brought up. Therefore the Criteria of considerations and quantification of human rights would surely be different in accordance with social, economic political and cultural

9. K.P. Saksena, Teaching About Human Rights, New Delhi: JNU/HURITIER, Y.M.), p. 13.

10. Ibid., p. 13.

diversities. Professor Hector Gros Espiell¹¹ classified human rights approaches into those of "western", "Socialist", and "Third World" countries. This division is based on different ideological backgrounds, the different historical roots, the contrasting traditions and the diversity of political, economic and social outlooks.

Approaches to Human Rights

Western Approaches:- This mainly concerns with civil and political freedoms through the establishment of multi party system and ideological pluralism. This approach has been highly influenced by following human rights theories.

i. Theories Based on Natural Rights:- According to the propounders of this theory, it has been divided into two major groups.

a) **contractualists View,** natural rights are considered to be independent of organised society, as they are the possession of man in the state of nature. Hence natural rights are not legally sanctioned privileges of human being in a politically organised society. These rights are non-juristic. They are "pre suppositions of society".

11. Professor Hector Gros Espell "The Evolving Concept of Human Rights: Western, Socialist and Third World Approaches" in B.G. Ramchandran, Ed., Human Rights: Thirty Years After Universal Declaration, (London/Hauge 1979), p. 49.

The adequate understanding of their intrinsic value and of the necessity for permanently preserving them, prompts men to build up an organised society.

b). **Teleological view** of rights argue that rights are natural in the sense that, they are inherent and innate in the moral nature of men who live in society. These rights are sanctioned not by the law of the state but by the ethical consciousness of the community.

ii. **Theories Based on Utilitarianism** The utilitarian theories seek to define notions of rights solely in terms of tendencies to promote certain specific ends, e.g. common good. Jeremy Bentham who expounded classical utilitarianism, believed that every human decision was motivated by some calculation of pleasure and pain. Effort should be made to add or to subtract pleasure and pain of different person for balancing the happiness. Under this theory every one is counted equally. Basically, utilitarianism is a maximizing and collectivising principle that requires governments to maximize the total sum of happiness to all their subjects.

iii. **Theories Based on Justice-** The main exponent of this theory is John Rawls, his book "A Theory of Justice". According to him justice is the first virtue of social institutions. And human rights are an end of justice. Principles of justice provide a way of assigning rights and duties in the basic institutions of society. Those principles define the appropriate distribution of the benefits and burdens of social cooperation. According to

the theory every person possesses "an inviolability founded on justice" that even the welfare of society as a whole cannot override. Justice denies that the loss of freedom for some is made right by a greater good shared by others. The denial of justice draws the attention of human rights advocates for its redressal.

iv. Theory Based on Equality of Respect and Concern- The exponent of this theory Prof. Ronald Dworkin expressed that government must treat all their citizens with equal concern and respect. In the absence of such a premise, there lacks a basis for any valid discourse on rights and claims. He expresses that a right to liberty in general is very vague in deriving meaning. However, certain liberties, such as freedom of speech, freedom of expression do require special protection from government control. Thereby he tried to reconcile the tension between liberty and equality by reducing the gap. And his theory inspires much for a political democracy.

v. Theory Based on Collective Rights - In recent years there have made several claims for recognition of collective rights, such as, right of peace, right of development, right of clean environment. These rights are collective, means, for all people, as well as individual rights. But the movements are on, for considering collective rights as individual rights. Because they do offer a potential for expanding the family of rights in ways beneficial to individuals.

Socialism Approach" It emphasises on the protection of economic rights of the people through bringing changes in the mode of production. Its chief goal has been establishing a classless society through communism. This approach of human rights is basically, based on the Marxian theories.

Theories Based on Marxian Viewpoint:- The Marxists have explained rights in terms of the economic system obtaining at a particular period of history. It is generally believed, the immediate source of right is the law of the state. The rights enjoyed by citizens are those conditions of social life which state recognises and protects through its law. The Marxists writers express, that the law of the state has hardly any general character. To secure rights or justice for all is not the purpose of state, rather it seeks to respond to the wishes of those who possess the necessary power to influence the centre of political authority. Thus law would protect the interests of the owners of economic power. In the feudal society it favoured the feudal lords, and in present day capitalist society it serves the interests of the capitalist class. In such situation, rights are nothing but certain privileges safeguarded by law in the interests of the particular class. The possessors of property are also possessors of rights and privileges. And the mass chunk of population who are propertyless, are deprived of having rights. Rights may have a general

character only when the capitalist state with its definite property relations is liquidated, and a socialist order based on social ownership of the factors of production is ushered in. As Karl Marx himself expressed in his book Critique of Political Economy, "legal relations as well as forms of state could neither be understood by themselves, nor explained by so called general progress of the human mind but that they are rooted in the material conditions of life".¹²

The Marxian theory of rights undoubtedly enriches the conception of rights by highlighting the need for removing the gross disparities in income and property.

The Third World Approach:- This approach concentrates on the developmental aspects of society, through periodical plannings, equal distribution of country's resources, equal opportunity in government services. The goal of a country is to become a "welfare state". It is the collection all major characteristics of different human rights theories.

Human Rights: A Conceptual Analysis

According to **Maurice Cranston** as observed in his book 'What Are Human Rights', "Human rights are a form of moral rights and they differ from other moral rights in

12. Marx, Critique of Political Economy, (Chicago: ...1904), p. 11.

being the rights of all people at all time in all situations. Human rights are universal. They are not enforceable. However, where human rights are upheld by governments legislations, they become enforceable, and known as positive rights".¹³ Thus the concept of human rights has a close relationship with the idea of moral rights.

While discussing human rights, **Macfarlane** in his book "Theory and Practice of Human Rights", delineates five major characteristics of human rights.¹⁴

Universality: The concept of human rights has been derived from the conception of natural rights, which are moral expectations regarding behaviour of each person towards another person. This moral expectation is universal. It is not limited to a particular section of society.

Individuality: This pre-supposes the acceptance of man as a free individual, a being of dignity and worth endowed with reason and conscience and capable of natural choice and free activity. But individuals live in a society and each society has its own laws. To this extent, human rights uphold the individuals against society and governments, and bound them not to infringe such rights.

13. Maurice Cranston, What are Human Rights, (London 1973), pp. 5-7.

14. Macfarlane, L.J. Theory and Practice of Human Rights, (London 1985), pp. 3-13.

Paramountacy: Where there is a conflict between individual rights and "majority will" or public interest" then rights of the individuals must be granted in spite the laws of the country. This also provides for local variations in the form of human rights. Two criterias may be used to identify basic human needs viz, (i) the need for survival and (ii) the need for moral autonomy. The minimum characteristics varies from society to society.

Practicability: What is impossible can never be made a claim to human rights. Practicability must be established in terms of probability; it must ensure that, the proposed changes will help to meet the basic economic and social needs of the poor with the minimum disturbance of existing rights and customary ways.

Enforceability: The issue of transforming social, economic political rights into positive rights is a complex process. Even international courts donot have power of enforcement. It has been seen that the states themselves are major violators of human rights. And the obligation imposed by the international legal instrument remain voluntary. And this issue needs a proper solution. All that is needed is an international courts with real power of enforcement.

In brief **Macfarlane** defines "human rights are those moral rights which are owed to each man or woman by solely of being human".¹⁵

15. Ibid., p. 3.

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Milne in his book, *Human Rights and Human Diversity*, defines human rights. "The idea of human rights are universal moral rights in the sense of being applicable to all human beings in all communities and associations. The idea is a rationally defensible one, not as an ideal but as a minimum standard which is applicable to all cultures and civilizations irrespective of differences between them."¹⁶

In brief, Milne observes, "universal morality has been the source of several rights viz, to life, to aid, to freedom from arbitrary interference, to honourable treatment, to civility, to care in the case children. These seven are the rights which may be properly called human rights".¹⁷

David Selby in his book '*Human Rights*',¹⁸ divides human rights into two major categories viz, liberty oriented rights and security oriented rights. Liberty oriented rights are concerned with giving individuals freedom of action and choice. Security oriented rights seek to protect peoples physical, material, social and

16. Milne, A.J.M., *Human Rights and Human Diversity*, (New York, 1986), p. 124.

17. Ibid., p. 139.

18. David Selby, *Human Rights*, (Cambridge, 1987), pp. 9-11.

economic well-being. These rights differ not only in what they seek to protect but also in their quality of rights and carry different implications for governments. While liberty oriented rights tend to limit the scope of government activities. The achievement of security oriented rights requires government interventions and leads greater interference in the lives of individuals.

David Selby, again observes that some human rights are more important than others. "Basic human rights provide foundation upon which enjoyment of other human rights depend, like right to life is the most basic of all human rights, right to equal protection in law and freedom from arbitrary arrest and detention depend on basic human rights."¹⁹

Since last few decades the role of state has been very significant in monitoring, defining and implementation of human rights. Hence the importance of domestic rule of law has acquired a significant position in this respect. Macfarlane highlights this aspects of human rights as legal rights.²⁰ Domestic legal system based on to rule of law is a pre-requisite for human rights as an enforceable domestic legal rights. It should give protection to individuals in the enjoyment of rights.

19. Ibid., p. 8.

20. Macfarlane, The Theory and Practice of Human Rights, (London, 1985) pp. 13-16.

There should be no punishment except for established breaches of law. However if the laws are themselves in conflict with human rights requirements, they would be unacceptable as "the rule of law is antithesis of arbitrary government". There are two major requirements of the rule of law (a) No statute should be ambiguously phrased so as to give the 'political and administrative authorities unrestricted discretionary powers (b) No one should be subject to detention except under procedures which provide for a trial before public court. Further neither imprisonment should lead to cruel in human or degrading treatment. While imprisonment does involve a serious loss of personal liberty, it doesnot permit a prisoner to be treated as rightless person.

Human Rights in International Documents-

After going through the above mentioned theoretical developments and conceptual debates, human rights can be defined as those moral, social, legal and political rights without which human beings cannot survive, cannot achieve their best in their societies. These rights are inherent with all human beings in all societies. They protect individuals for their autonomous development. These rights form together a long list. And they can be studied after dividing into civil and political rights, economic and social rights and cultural rights.

Civil and political rights include right to life, liberty, security of the person, privacy and property, the right to marry and found a family with any willing, women in any country, the right to fair treatment, fair trial, freedom from slavery, torture and arbitrary arrest, freedom of movement and to seek asylum, freedom of thought, conscience and religion, freedom of opinion and expression, freedom of assembly and association, and the right to free election, universal suffrage and participation in public affairs.

Economic and social rights include, the right to work for a just reward, right to form and join trade unions, right to rest and leisure and to periodic holidays with pay, right to a standard of living, adequate health and well being, right to social security, right to education and right to participation in cultural life of a community, right to health and clean environment and right to peace and development.

Genesis of International Concern for Human Rights.

The idea of human rights as a concept evolved as an instrument of revolt against tyrannical and authoritarian governments. "Rights of man" became a slogan in struggling the injustices and indignities committed by governments. The preliminary forms of human rights viz., life, liberty, and property began to be

incorporated in constitutional documents. And the demand for protection of these rights took place at first, in England in form of the Magna Carta (1215), in American Declaration of Independence (1776), the French Declarations of the Rights of Man (1789) and the Bolshevik Revolutions in Russia (1917).

But the major international concern for promotion of human rights found its expression in certain provisions of the covenants of the League of the Nation, in post First World War era. The states members of the League accepted the obligation to endeavour to secure and maintain fair and human conditions of labour for men, women, childrens and also to ensure the just treatment of the indigenous inhabitants of their colonies. The covenant established the mandate system which accepted certain powers as a sacred trust responsibility for the well being and development of the peoples placed under this system. In addition, a number of "minorities treaties" and declarations created a system for the protection of linguistic, racial and religious minorities under the guarantee of the League of Nations. The International Labour Organisation was established in 1919, associated with the League of Nations, in the realization of universal peace and social justice.

All the above mentioned declarations and institutional frameworks made significant contribution in shaping the concept of human rights. But they lacked

conceptual clarities and the totalities of what constituted human rights.

It was only after second world war that the universal consensus and necessity which constituted various characteristics of human rights.

The pre-second world war period had been the cynical violations of most fundamental rights by the governments in their own countries as well as against other countries. In the existing as well as post world war second phase, unleashed the horrors and bestiality of regimes. The increasing atrocities of the Nazism and the Fascism reached upto the lowest level. Innocent people were burnt alive and, melted away into gas chambers. Millions of innocent people were killed and billions of dollars and pounds were spent on war.

This horrible experience of war resulted in wide spread conviction that effective international protection of human rights was one of the essential condition of international peace progress.

On the basis of the Dumbarton Oak proposal, the United Nations conference on International Organisation met at San Francisco in 1945 and opened for ratification of the charter of the United Nations.

The UN and Human Rights

The preamble of the UN charter clears its objective in following words "...and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion".²¹ It illustrates the function of the General Assembly in following words "...and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language and religion".²² The Economic and Social Council also assigns its responsibility to make recommendations "for the purpose of promoting respect for and observance of human rights and fundamental freedoms for all".²³ At the San Francisco conference a proposal to embody in the Charter, a Declaration on the Essential Rights of Man was put forward but it could not be examined because it required more consideration than was possible at that time. The preparatory commission of the UN which met immediately after closing session of the conference and recommended that the Economic and Social Council should establish a commission for the promotion of human rights as envisaged in Article 68 of the Charter.

21. Rumki Basu, The United Nations: Structure and Functions of an International Organisation, (New Delhi: Sterling Publication, 1993) p. 23.

22. Ibid., p. 39.

23. Ibid., p. 69.

The Universal Declaration of Human Rights (UDHR) was adopted and proclaimed by General Assembly of the UN on 10 December 1948 which mentioned following characteristics in its preamble "where as recognition of inherent dignity and of the equal and inalienable rights of all members of human family is the foundation of freedom justice and peace in the world.....human beings shall enjoy freedom of speech, belief ... rebellion against tyranny and oppression...friendly relation between nations,.....equal rights of men and women...promotion of universal respect and fundamental freedoms".²⁴

Since 1948, the UDHR has been the most important and far reaching of all the UN declarations, and a fundamental source of inspiration for national and international efforts to protect human rights and fundamental freedoms. It has set a direction for all subsequent work in the field of human rights and provided the basic philosophy for many legally binding international instruments designed to protect human rights and fundamental freedoms (see Appendices).

Together with the UDHR, there are two International covenants called "the covenant on Human Rights" which contain measures for international supervision of rights which it set out, and for the settlement of the complaints by states.

24. Ibid., p. 169.

The International Covenant on Economic, Social and Cultural Rights entered into force in the General Assembly in on January 3, 1976. The International Covenant on Civil and Political Rights entered into force on 23, March 1976.

The UN and the South African "Apartheid Policy"

Despite inclusion of "Non Discrimination" principle in the provisions of the UN organs, "apartheid" as a state imposed system of institutionalised racial discrimination and segregation had been practised by the South African governments since 1948. Under "apartheid", the non-whites - the overwhelming majority of the population - had been denied fundamental rights and liberties. They had been subject to repressive laws and regulations. Both the UN General Assembly and Security Council declared "apartheid policy" as a crime against humanity. This system not only denied the rights to their countrymen, but also threatened the international peace. Seeing this grievous situation. In 1952 the UN included "apartheid" on its agenda.

This study discusses the various sanctions, declaration, conventions passed by the UN and its specialized agencies for ending "apartheid".

The UN General Assembly explicitly advocated "armed struggle" in South Africa as a means of eradicating

the evil of "apartheid". The General Assembly and the Security Council cut all political and economic ties with South Africa by mandatory sanctions. The UN globalized this issue.

In this study we propose to study and analyse the following questions. What had been various constructive measures taken by the UN and its specialized agencies for eradicating "apartheid"? And upto what degree, the South African governments had been breaching the UN human rights provisions? And what type of sanctions the UN imposed on South African governments for enforcing the UN decrees ?

The UN established a special committee against Apartheid in 1962 to keep the situation under review. The UN provided assistance to the South African national liberation movements. The UN and its specialized agencies like ILO, UNESCO, WHO developed extensive programmes to inform public opinion of the inhumanity of the "apartheid system" to galvanise support against it. Finally this intensive efforts of the UN and its specialized agencies brought a fruitful result when "apartheid policy came to an end in early 1990s.

This study, also seeks the explanation, that, why the UN took so much time in completion of its mission ? It was due to the clash of economic interests of few western countries in South Africa who breached the effective implementation of the UN resolutions.

CHAPTER 2

VIOLATION OF HUMAN RIGHTS IN SOUTH AFRICA

Introduction

The Republic of South Africa represented a classic example of the gross violation of basic and inalienable human rights. Since the very year 1910, the successive white regimes had been sought to preserve and perpetuate the policy of white domination over the Black Africans through the policy of "apartheid". Ever since the institutionalization of the system of "apartheid" in 1948, the minority South African white rule had been thoroughly engaged in indiscriminate killings and arrests of thousands of blacks who opposed the policy of "apartheid". In fact, with few exceptions, the entire black inhabitants and their institutions had been victim of this policy. The Africans suffered every conceivable type of disaster from humiliation to homicide, from expropriation of land to grinding poverty, from brutal imprisonment to relentless prosecution. The family life of the blacks were shattered careers were wrecked, jobs, education, shelter, health, sanitation, drinking water, and civil liberties were denied. These activities of South African government violated the Article "1, of the United Nations, Universal Declaration of Human Rights. According to which "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and

should act towards one another in a spirit of brotherhood.¹

In South Africa there had been more than 300 "apartheid" laws in operation, which discriminated the blacks in every walk of life.

For strict implementation of the above mentioned segregative policies, the state passed a series of repressive and discriminatory laws. The Separate Amenities Act, the Motor Transport Amendment Act, the Institutions Amendment Act, were laws under which the racist authorities made regulations to keep racial segregation in houses, parks, zoos, museums, galleries, cinemas, theatres, public laboratories, sea beaches, sports grounds, cafes. The system of discrimination prevailed in all, social, political, economic, cultural, judicial fields of life. The basic rights of women and children were also violated.

Denial of Social Rights:

The policy of "apartheid" primarily meant social segregation, diminishing the process of inter-racial mixing. In fact the policy of racial segregation denoted

1. Satish Chandra, International Documents on Human Rights (New Delhi: M. Publication, 1990), p.5.

the distance among people socially, spatially and morally. Among them, artificial walls had been raised. And relationship were basically remained confined to groups or communities. It meant to undercut the status of Africans as South Africans and weakened their claims to be equal treatment and fair shares of land resources. The "apartheid" policy expanded opportunities for manipulations of Africans, and Asians by Europeans. The South African government denied them various social rights by introducing several rules and regulations.

By the Group Areas Act No. 41 of 1950, various races were assigned different separate areas and territories which kept them in different segments. The process of racial segregation was accelerated by the Population Registration Act of 1950, which classified persons on the basis of race. The prohibition of Mixed Marriage Act of 1949, converted, marriages between persons of different races into a criminal act. And the inhumanity of apartheid touched its severest point with the Immorality Act of 1957 under which inter-racial sexual intercourse and marriages were declared as criminal acts. Thus even love and sex was being measured through the scale of "apartheid" and superiority and inferiority of races. Reservation of Separate Amenities Act of 1953 denied the non-whites, for using public buildings for marriages, celebrations and social purposes. There were separate recreational clubs for all races. The provincial and

municipal ordinance declared total segregation in respect of transportation.

The policy of "apartheid" was infused on mental level also through providing discriminatory education system. The Bantu Education Act of 1955, transferred the responsibility of education, from provincial educational authorities to the Department of Bantu Education which compelled Africans to attend African schools. Moreover, Africans were provided education in mother tongues which could deprive them for getting any highly paid salaried jobs. Promotion of Bantu Self Government Act of 1959 authorized the Minister of Bantu Administration to provide "home rule" in "homelands". Moreover, the Bantu Laws Amendment Act of 1964 - removed all rights of Africans in the areas outside homelands. The Bantu Homelands Citizenship Act of 1969 created citizenship for Africans by homelands. The Bantu Universities Act of 1959 restricted Africans in respect to the universities they might attend. Separate education was provided for Indians in Indians Education Act 1965, and for coloureds in Coloured Peoples Education Act 1963. Under the terms of these acts, the education for the whites, the coloureds, the Asians and the Africans were administered separately. Further school attendance was compulsory for the whites but optional for the blacks. The African schools buildings were few, with the shortage of teacher. For example "the students teachers ratio was 60:1 for Africans

and 20:1 for the whites".² The highest salary for an African teacher was lower than the lowest grade of white teacher with same qualification. All disparities created divisions on social level in South African society.

Denial of Economic Rights

The big prosperity gap developed over the years between the blacks and the whites in South Africa, showed that, the successive South African Government were inspired by economic rather than racial ideology. The system of apartheid was a strategy for economic exploitation of natural and human resources of the black. The policy of apartheid was basically based on the economic exploitation of the non-white masses. Thus the apartheid policy perpetuated wide economic difference between the blacks and the whites.

The South African Government used several instruments for implementing dual discriminatory regulations in economic field.

The Bantu Labour Regulations Act of 1911 compelled African workers to accept employment on pain of criminal - procedures. In order to coerce African peasants into migrant labour for white mine owners and farmers, the Land Act of 1913 denied the Blacks, the rights to buy

2. Racism and Apartheid in South Africa, (Paris: 1974), p. 64.

lands outside the Native Reserves or to lease white owned land. "It was the case, against which Indian leader Gandhi first applied the technique of satyagraha against the South African Government for discrimination".³ The Mines and Works Amendment Act of 1927 prohibited the issuance of certificates of competency to Africans and Asians. The Bantu Labour Act of 1953 prohibited the strikes by Africans. The Industrial Conciliation Act of 1956 prohibited the mixed trade unions, permitting them only in special cases and where the elected officers were white. An African if caught attempting to organise represent or negotiate a strike could be fined to £550 as fine or upto three years of imprisonment. Moreover the ministerial orders and departmental regulations reserved jobs for whites and denied available employment to Africans and coloureds except by specific order of the government.

In industrial matter, a separate committee was constituted, naming "permanent committee for the Location of Industries" which assisted industries to find out locations consistent with the development programmes, including locations near homelands which supplied cheap labour. The Physical Planning Act of 1967⁴ initiated an

3. Africa South of the Sahara, 1993, (london: 1993), p. 793.

4. T.R.H. Davenport, South Africa: A Modern History Macmillan, (London; 1977), p. 366.

attempt by the government to divert industrial development from larger centres to the border areas on the edge of Bantu Homelands for employing cheap labour although on the pretext of creation of new growth points where factories, established with the prospect of tax rebate incentives and cheaper labour, could attract workers direct from homelands to which they could return nightly or at frequent intervals.

The racial prejudices in white areas were so high that even factories had to provide separate entrances, separate arrangement for the blacks in pay offices, first aid rooms, laboratories, changing rooms, rest rooms etc.

There was great difference in payment of wages. The blacks were paid poor wages and untimely. They were not given technical and vocational trainings. There was very little prospect of promotions. All the aforesaid biased economic regulations left the majority of Africans living at below subsistence level which was otherwise known as "Poverty Datum Line".

Denial of Political Rights

South Africa since its independence in 1934 had been a white minority ruled unitary, elitist, parliamentary, republican state. It adopted the supremacy of white population. Parliament had been bicameral with all seats reserved exclusively for the whites. The blacks

had been completely denied political rights. The purpose of the denial of political rights was to destroy independent leadership among Africans, coloured and Asians, to curtail circulation of ideas and information of a political nature. To add it, the purpose was to isolate Africans from external support as well as cross community assistance, and thereby to immobilize the non-whites. By this way the blacks were thoroughly taken away from decision making bodies by curtailing their political rights. Numerous legal, administrative and police terrors supplied the "apartheidist" system with muscle to check the growing political awareness among the blacks, and to create a favourable political field where the non-whites could have no say. Some important regulations were as follows:

To strengthen its hand against radical opposition, the Government introduced the Suppression of Communism Act No. 44 of 1950. This Act unleashed the police to suppress dissent by linking opposition to apartheid with the furtherance of communist objectives. And under this Act, the South African Communist Party was banned. The Bantu Administration Act No. 38 of 1927 empowered the state President to remove and banish Africans in public interest. The Bantu Homelands Citizenship Act 1970 abolished the political and social rights of Africans outside the homelands. The Public Safety Act No. 3 of 1953 authorized the South African government to declare

emergencies whenever the situation required so. The Criminal Procedure Act No. 56 of 1955 could penalize the political protest, including exercise of speech to change public policy and law. The Criminal Procedures Act No. 56 of 1955 permitted detention without trial for 180 days. While the Riotous Assembly Act No. 17 of 1956 permitted extensive restrictions on freedom of assembly. And in 1968, even this sort of representation was abolished by passing the law of the separate representation in the Voters Act 1968. The Unlawful Organizations Act No. 34 of 1960, empowered the state president to declare organizations unlawful and dissolve them by proclamation.

Since 1968, under the prohibition of Political Interference Act, political parties had been forbidden to have members belonging to more than one race. Many political organizations, like the South African Communist Party, the African National Congress the South African Indian Congress, the coloured peoples organisations, the Pan African Congress and the Anzanian People's organizations had been declared illegal and crushed. These measures were meant to check the political process of the Blacks.

Denial of Rights of Freedom of Press:

The freedom of press represents the most powerful mechanism for protecting individual's right. It expresses their voice. The South African Government's most

powerful weapon had been the restrictions on freedom of press. The main aim of these censorship was to suppress the news of the black laws, and inhuman rules and regulations and activities of government, for going outside the country. So that the world would not know the real truth and the true face of South African government. For this, several harsh and effective laws were passed to suppress the freedom of press.

The Publications and Entertainment Act No. 26 of 1963, empowered the State Authorities to decide on books which South Africans would be allowed to read and what entertainments were fit to them. This act gave full power to state president to declare any article criminal offence of the freedom of press where a newspaper criticized the system of "apartheid" as unjust. The ministerial orders under wide variety of laws forbid, publication of information, seize papers and literature, deny and confiscate passports, prohibited re-entry into South Africa and instituted criminal proceedings. The Riotous Assemblies Act of 1950 No. 17 prohibited publications and distribution of any documentary information calculated to spread feelings of hostility among ethnic groups. Moreover, the suppression of communism Act, No. 44 of 1950, restricted any article, news, booklets, pamphlets which could promote and spread communism. The Public Safety Act No. 3 of 1953, allowed the closure of any newspaper or periodical found carrying matters of sub-

versive nature. The Official Secret Amendment Act No. 65 of 1965 and the General Law Amendment Act No. 101 of 1969 restricted the publications about government secrets like the army, the intelligence, war prisoners, secret treaties; invasions etc. The Prison Act of 1959 restricted the publication of information on prison conditions and prisoners including treatment of political and other inmates. The Defence Amendment Act No. 85 of 1967 restricted the publication of any news about movement of the armed forces. The Unlawful Organisation Act of 1960 restricted the publication of statements of the banned political parties.

Moreover, the South African regimes had been persistently, giving propoganda by distorting news of discrimination exploitation and ill treatment.

Denial of Judicial Rights

The violation of human rights were most apparent in judicial matters. It was heavily based on the policy of "apartheid". The laws were discriminatory and arbitrary. The police could raid the African urban locations even at mid-night to enforce the pass laws, and impressed on, the Africans, the insecurity of their position. The General Law Amendment Act No. 76 of 1962 broadened the range of illegal acts of sabotage. Any body could be detained without trial on mere suspicion. The General Amendment

Act (1963) accelerated the arrest on suspicion. The Act of Terrorism 1967, defined "terrorism" so loosely as to leave the government virtually a free hand to prosecute anyone. It narrowed down the right of habeas Corpus and substantially eliminated the defence of double jeopardy.

For the same crime, the white criminal was sentenced less punishment than the blacks. The blacks were not given place in judicial bodies. There was strong implementation of "apartheid" laws, especially in political crimes. The legislations of banning of political parties, detention without trial, provision of declaration of emergency, restrictions on freedom of assembly and biased judgement were gross violation of basic human rights of the blacks.

Denial Rights of Territorial Movements

The right to move and settle from one part to another part of South African territory was curtailed by the white rule. In case of the shifting territorial boundaries, the Africans could be subject of harsh punishment. Numerous laws and regulations had been passed to check the free movements of the blacks.

The Population Registration Act of 1950 classified every person in South Africa by "race" into such groups as a white, coloured, African and Asian. Once classified they were issued identity cards to that effect, which

determined where one could live, which school one could attend. Jobs were reserved on the basis of skin colour. Health services were also provided on the basis of race like the blacks, whites and coloureds.

Under the Pass Laws, of 1956, identity cards were obligatory for all races. Every man and women over age of 16 had to carry pass. "The offences on the failure of carrying the identity papers under Pass Laws accounted for 7 lakh prosecutions every year".⁵ The police used this method to harass innocent citizens. The pass laws basically enabled government officials to regulate the flow of Africans into white areas. Under this law, a African needed a permit from the Labour Bureau of South Africa to remain in an urban area for more than 72 hours, unless, he was born there or he worked there continuously for 10 years under a single employer.

The Group Areas Act⁶ of 1950 was the cornerstone of the apartheid policy. This act provided the government to reserve designated areas for white, coloured, Asian and African racial groups. This policy ultimately aimed at the physical separation of the racial groups as far as possible, and immediately at the total political separation. Moreover Government proclamation 255 (1960) excluded the blacks from white cinemas and places of refreshments.

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5. Racism and Apartheid in South Africa (Paris, 1974), p. 44.
 6. Ibid., p. 45.

The Africans were also debarred from their hereditary rights on lands. The Native Land Act of 1913, restricted the blacks, right to own land without specifying where the restrictions would apply. The Africans were not permitted land outside the scheduled Native Areas, except with the consent of Governor General. Further the Native Trust and Land Act of 1936, released additional land to Africans and founded a South African Trust which could acquire land in African areas. The policy of "apartheid" was built on this unequal distribution of land, where 86.4 percent of land remained under permanent white control and 13.6 percent passed to the non-whites Africans. Hence, the Blacks were treated as if they were foreigners.

The same deteriorating situation prevailed in the urban areas also. There too various types of discriminatory restrictions were imposed on the blacks. The residence and territorial movements were regulated by the Bantu Abolition of passes and coordination of Documents Act 1952 and its amendment No. 76 (1963) and the Bantu Laws Amendment Act 1964 and its amendment Act No. 7 (1973).⁷ In accordance with the regulations of these laws, Africans might be evicted out of specific urban districts (i) if ministers had decided that number of

7. Ibid., p. 48.

Africans in the areas concerned exceeded its reasonable requirements (ii) if the Africans came from an area for which the minister had decided, no more labour was to be recruited in the white area concerned (iii) if Africans deemed to be idle or undesirable and finally (iv) if it seemed not in the interest of employer. Moreover the wives and other dependents of African workers needed special permission to meet their husbands or father if that would be longer than 72 hours.

Besides these, there were several other laws, which prohibited the free movements of Africans within their own country. Like, the Native Act No. 67 (1952) required persons to possess reference books containing identity cards and tax receipts. The promotion of Bantu Self Government Act 1959 - authorized the minister of Bantu Administration to provide for "home rule" in the homelands. The promotion of Bantu Self Government Bill was highly opposed by the blacks. In March 1960, in Sharpeville PAC organised a demonstration against government, the police opened fire on the unarmed crowd. The police continued firing into the backs of the fleeing blacks, leaving 67 dead and many injured. The Government reacted by banning the African National Congress and the PAC. In 1961 the African National Congress formed a military wing naming "Umkhonto WG Sizwe" under the leadership of Nelson Mandela. In 1962 the PAC also formed an armed wing called "Poqo". Bantu Homelands Citizenship

Act 1969 - created citizenship for African by homelands, and several other laws. All the aforesaid regulations violated human rights. And these repressive policies of South African Government compelled the African National Congress to employ the tactics of mass civil disobediences for which its youth wing had been pressing. The African National Congress and the South African Indian Congress formed an alliance and launched a campaign of of 'Mass Defiance against Unjust Laws' which resulted in the race riots in port Elizabeth, East London and Kimberley. The government suppressed the movements by drastic police actions. In this charged atmosphere, some black activists led by Robert Sobukwe formed the PAC (Pan - Africanist Congress).

Denial to the Rights of Political Prisoners and Other Detainees

Since the beginning of "apartheid" regime in 1948, the successive governments had been thoroughly, engaged in indiscriminate killings, arrests, tortures, and brutal treatments of thousands of blacks who opposed, condemned and exposed the policy of apartheid. "In the year of 1982 over 4,400 people had been convicted under suppression of communism Act". During 1981-86, mass protests and demonstrations against apartheid led to conviction of 44,300 people of whom 8,200 were less than 18 years old. According to study of University of Cape Town, eight

million men and women had been arrested and prosecuted under pass laws. Under Terrorist Act of 1967, and 90 days detention provision of 1963, thousands of persons were arrested and detained for long without trial. In Feb. 1981, the South African Prison population stood at 104,622, about 38.4 percent more than the jails could accommodate".⁸ During 1985-86, the death toll of the anti-apartheid demonstration reached the figure of 1700.⁹ In 1987, more than 13,000 men, women and children had been detained.¹⁰ All these data showed the ratio of violation of human rights in South Africa.

The police investigations and surveillance round the clock, harassed and intimidated the victims as much as to collect evidence. The "third degree" police interrogations and harsh prison treatments punished victims without judicial process. In addition, to extract confessions of alleged criminal activities, they were suspected of having link with the banned organisations, aiding and abetting suspected saboteurs, terrorists etc.

The police was given unlimited power. Under suppression of Communism Act,¹¹ South African Government

8. A.P. Vijapur, (Eds) Essays on International Human Rights (N. Delhi: 1991), p. 92.
9. United Nations Chronocile, August, 1986, (New York: 1986), p. 28.
10. United Nations Chronocile, May, 1987, (New York: 1987), p. 28.
11. Racism And Apartheid in South Africa, (Paris:1974), p.79.

banned several anti-apartheid political parties, activists and voluntary organisations. Under the regulations of this act, a person was restricted to a particular magisterial district and he was forced to report to police at fixed times, and he was restricted from attending a gathering with common purpose, whether political, educational or social. And after violation of the rule, there could be minimum imprisonment for five years.

Under the General Laws Amendment Act 1962, there could be minimum five years imprisonment to maximum death sentence. Under the structures of this act, the definition of "sabotage" was very wide; a person could be declared guilty of sabotage if, in in contravention of any law he entered upon the South African land. Under the Terrorism Act of 1967, the senior police officers were empowered to take any person for indefinite detention in solitary confinement on the ground of mere suspicion of any information about terrorism.

According to a pirated report on South Africa by B.B.C., during 1987 more than 10000 youngsters had been arrested and detained without trial since the white led government imposed emergency in June 1986, to crush growing anti-apartheid movement. And upto 1000 of these children were below 11 years.¹² Again in 1986-87, -----
12. African Recorder, July 1-14, 1988, p. 7596.

about 30,000 people had been detained under 22 months of old emergency regulations, and forty percent of them were below 18.¹³ The rate of arrests and detention was so high that, prisoners population in succeeding years could as be followed,¹⁴ 73,030 in 1966-67, 80,534 in 1967-68 and 31,108 in 1971-72.

The policy of apartheid was strictly followed in prisons also. They provided different diets for different races. For instance, the white prisoners got more meats than the black prisoners. There were different arrangements for food, recreation, study, and privacy. The whites had an edge on working conditions and rest hours over the blacks.

The condition of political black detainees was pathetic one. The ways of torture ranged from electric shocks, crushing fingers to driving nails through penis. Several detainees lost their lives in the hands of interrogators. It had been officially admitted by the South African government that 22 persons died in detention.¹⁵ Moreover, the prisoners and detainees were debarred from getting library facilities and recreational

13. African Recorder May 20 to June 2, 1988, p. 7561.

14. Racism and Apartheid in South Africa, (Paris: UNESCO press, 1974), pp. 80-81.

15. Ibid., p. 83.

facilities. They were provided insufficient and unpalatable food and unhygienic medical attention. The aforesaid provisions clearly violated the UDHR Article No. 5,¹⁶ which says "No one shall be subjected to torture or to cruel, inhuman or degrading punishment".

Denial of Rights to Women:

The black women of South Africa had been severely discriminated and oppressed by the system of apartheid, perpetuated by the white minority in power. They had been deprived of education, health care and family life. They had been discriminated against on grounds of both sex and race. They earned not more than 8 percent of the wages of white men. Their choice of marriage was restricted completely on the basis of colour and race. The Immorality Act of 1927 rendered any sexual intimacy between the whites and non-whites as a crime. The mixed Marriages Act 1949, banned marriage between whites and non-whites.

Women's rights to freedom of movement had been highly restricted. They were not permitted even to stay in white areas unless they showed some evidence of their capacity to earn their own living through work. They were restricted of home making and family founding tendencies in urban areas. Even when a non-white woman held a valid

16. Satish Chandra, International Documents on Human Rights, UDHR Article 5, p. 5.

permit that allowed her to move freely between the homeland and white area, her permit might be cancelled at any time by a labour officer for any reason. A women's right of movement might be curtailed simply because of the official attitude, repeatedly expressed that married women, children and older people were "superfluous appendages" to be removed from urban areas as quickly as possible. A women lacked legal status in the Natal Code, according to which she could not travel without permission of husband or father.

The enforcement of apartheid laws involved massive removals of non-whites in order to expand and consolidate the geographical boundaries of the white nation. The uprooted blacks were dumped into their "homelands". The houses were poorly constructed there. There was shortage of water. The black women had to travel long distances to reach source of water supply for daily use. The majority of non-white women in towns had been living in poor housing without water, electricity and even privacy.

In the matter of employment, the policy of apartheid in South Africa had restricted employments for non-white men and women. The employment opportunity for women in urban areas were severely restricted. The Section 10 of the Bantu Consolidation Act No. 25 of 1945 specified, that no black could live in urban areas more than 72 hours unless he or she possessed a valid permit

indicating the purpose and duration. Moreover, the black women got less wages than the white males and females.

Conclusions

Over the years the minority white governments had been denying the basic rights to the blacks through the "racism" and "apartheid". The blacks had been subject to strict territorial and legal control. They had to face all sorts of atrocities. This system was based on racial superiority, but the purpose was to exploit the economic resource and manpower of the blacks. Due to perpetuation of "apartheid policy", the African Society divided into two extreme classes of people, the rich whites and the poor blacks. The black labourers supplied cheap labour to the whites and the western white investors and industrialists, hence, they did not like any change in this system. Gradually, the record violation of human rights put South Africa on national and international contradictions. It also threatened the world peace and security. The UN took this issue as a challenge in 1950s and in 1990s achieved the success by ending "apartheid". The UN's role has been discussed in next chapter.

CHAPTER 3

ROLE OF THE UNITED NATIONS

Introduction

Since the end of second world war, promoting the respect for, and observance of, human rights and fundamental freedoms has been a major concern of international community. The United Nations with its, very inception has made a tremendous contribution to the promotion and protection of human rights, in general, and in South Africa in particular. The United Nations has invested the ever longest hours of time on the discussions and debates of the policy of "apartheid", undertaken by the South African white governments. With the support of the family of nations, the United Nations had been imposing various forms of sanctions on South African governments, so that it would be compelled to abandon the policy of "apartheid". And lastly, it was the United Nations efforts mingled with some other internal and external factors brought about a fruitful result. And finally the policy of "apartheid" was buried for ever with the non-racial democratic election held on 27 to 29 April 1994. And Dr. Nelson Mandela took over on 10th May 1994, as the first black president of South Africa.

This chapter analyses the various efforts of the United Nations which promoted and protected the rights of the majority of the Blacks in South Africa from 1948 to April 1994.

United Nations Actions Against South Africa

The first question on human right concerning South Africa was brought before the United Nations in 1946 by the government of India in the form of a complaint of ill-treatment with the people of Indian origin by the South African government. Later the case entitled "Race conflict in the Union of South Africa resulting from the policy of "apartheid" was brought about to the United Nations General Assembly in 1952 by 13 Arab and Asian States. Their action was based on the arguments that the massive violation of human rights in South Africa constituted a breach of the character obligations and a threat to international peace and security under chapter VII of the United Nations charter.¹ Despite the objection of South Africa that these questions pertained to the domain of its domestic jurisdiction in accordance with Article 2(7) of the charter.² Still the General Assembly not only persistently established its competence to discuss these questions but also adopted large number of recommendations probably the largest number ever addressed to a single country on a single issue.

1. Chapter VII of the UN charter provides for action by the Security Council with respect to threat to the peace, breaches of peace and acts of aggressor. It sets out a procedure that may be used when a "situation has gone past the stage of being a dispute and has become a "threat to peace" a "breach of the peace" or an "act of aggression".
2. Article 2(7) reads "Nothing contained in the present charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require members to submit such matters to settlement under present charter."

At the outset, it can be said that no other issue has engaged the United Nations, almost from its inception, for as long a time as that of South Africa and its policy of "apartheid" did. The fact that during its five decades of functioning the United Nations General Assembly and the Security Council have adopted more than 500 resolutions concerning the racial policy of South Africa, reveals that the United Nations had been not only concerned with internationalizing the human rights issues in South Africa but also rejected the often advanced thesis that "human rights are matters of domestic jurisdiction only".

The nature of actions recommended in the Assembly resolutions adopted between 1946 to 1960 were comparatively bland and worded in a non-condemnatory tone than those adopted after 1960. Initially the General Assembly merely asked, the two concerned parties to the conflict, i.e. India and South Africa, to enter into negotiations to resolve the conflict, condemned the racial discrimination by South Africa as incompatible with the purposes and principles of the charter and of the provisions of the Universal Declaration of Human Rights. As regard to second question, the General Assembly, while referring to the United Nations purpose to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms, recalled its previous resolutions on the question of

racial discrimination, established a commission of three members to study the racial situation in South Africa and urged it to observe the "pledge" contained in Article 56 of the charter³ and asked to bring its policies into conformity with the obligations it had assumed under the charter (General Assembly Resolution 616 A and B 1952). Subsequently, the Assembly condemned South Africa for not cooperating with the commission to study situation under article 14 of the charter⁴ (G.A. Resolution 721 VIII). It criticized through resolution 820(ix) the government of South Africa for adopting new laws and regulations which in the commission's view were incompatible with the obligations of that government under the charter. Thus the UN General Assembly regretted South Africa's continued refusal to respect United Nations resolutions asking for the reversal of its policies of "apartheid" and also recommended (through resolution 917 x) that the government take note of commissions reports and argued it to observe obligations contained in Article 56 of the charter.

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3. Under Article 56 of the charter, all members have "pledged" to take joint action and separate action in cooperation with the UN to achieve broad aims of international economic and social cooperation such as i) achieving higher standard of living ii) solving international economic social, health related problems iii) promoting universal respect.
 4. Under Article 14 of the charter, G.A. recommends measures for the peaceful adjustment of any situation regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations including situations resulting from violations or UN purposes and principles.

Till 1960, the General Assembly resolutions called upon South Africa to observe Article 56 of the charter and the obligations to which it gives rise, together with the obligations under the charter to promote the observance of human rights. [in particular resolutions 1178 (xii) 1248 (xiii) and 1375 (xiv)]. It was only from 1961 onwards that the Assembly, whose concern became more intense, went further and decided that South Africa had been wilfully breaching of its obligations under Article 56 and ignored the Universal Declaration. It reminded the South African government of the requirement of Article 2(2) of the charter that "all members shall fulfil in good faith the obligations assumed by them under charter" and called upon it to bring its conduct in "conformity with its obligations". Moreover for the first time states were requested to consider taking separate and collective actions to bring about the abandonment of these policies.⁵ The resolution passed at 16th session⁶ urged states to take action to bring about the abandonment of South Africa's policies and noted that its policies were inconsistent with the pledges of members under Article 56 of the charter.

It was accepted in the United Nations that the situation in South Africa was deteriorating after the

5. General Assembly Resolution, 1958, (XV) of 13 April, 1961.

6. General Assembly Resolution, 1963, (XVI).

Sharpeville shootings of 1960.⁷ This event released a flood of reaction in the UN General Assembly. Concerning Sharpeville incidents, the security council declared that the situation was one "that has led to international friction and if continued, might endanger international peace and security."⁸

At the 17th session, the Assembly requested (through Resolution 1761) member states to break off diplomatic relations with South Africa, to forbid their own ships, to use South African ports, to boycott South African goods and to refrain from exporting goods to that country, including arms and ammunition. At the same time, the Resolution requested the Security Council to take appropriate actions including sanctions and if necessary to consider the expulsion of South Africa from the United Nations under Article 6 of the charter.⁹ In response to this resolution, the security council called upon all states "to cease forthwith sale and shipment of arms, ammunition of all types of military vehicles to South Africa."¹⁰ Later being convinced that the situation in

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7. On 21 March 1960, Several thousands Africans had assembled at sharpeville to demonstrate against the "pass laws" which restricted their movements. In govt. police firing 69 were killed 149 wounded.
 8. Security Council Resolution 134 of 1 April, 1960. (S/4300)
 9. Under Article 6, A UN member, who persistently violates UN charter may be expelled from organization by the G.A. upon the recommendation of Secutiry Council.
 10. Security Council Resolution, 181, 1963 - (S/5386).

South Africa was "seiously disturbing international peace and security", the council asked South Africa to cease repressive laws and release all those, detained for having opposed apartheid.¹¹ The Assembly at its 18th session asked the Secretary General of the United Nations to provide relief and assistance to families of all persons prosecuted by the South African government for their opposition of "apartheid".

The Assembly resolutions passed after 1965 were no longer mere requests. At its 20th session the situation in South Africa was declared to be threat to international peace and security demanding action under chapter VII of the charter, i.e. by imposing economic sanctions.¹² Gradually, the General Assembly, while broadening its recommendations to link with the right to self determination, recognized the legitimacy of the struggle of "the oppressed peoples of South Africa for exercise of their inalienable right of self determination" and urged all states and organizations to give their greater moral, material and political assistance to the "South African liberation Movement".¹³ This resolution also urged the states which were encouraging South Africa to desist from

11. Secutiry Council Resolution 182, 1963, (S/5471).

12. General Assembly Resolution, 2054 (XX).

13. General Assembly Resolution, 2396 (xxiii)

collaboration with the regime. In 1966 the General Assembly requested all states and organisations and individuals to suspend collaboration with South Africa in the fields of sports, culture and education. And in 1971, it condemned by resolution,¹⁴ the NATO powers for contributing "to the creation in South Africa of a military industrial complex aimed at suppressing the struggle of peoples for their self-determinations and at interfering in the affairs of independent African states".

By another resolution,¹⁵ the Assembly in 1971 declared the policies of apartheid of South Africa were a negation of the purposes and principles of charter and a "crime against humanity". "It reaffirmed the recognition of the legitimacy of the struggle of the people of South Africa to eliminate by all means at their disposal "apartheid" and racial discrimination and attain majority rule in the country as a whole on universal suffrage".¹⁶ Many General Assembly resolutions condemned the establishment of "Bantustan" or separate Homelands which was prejudicial to the territorial integrity of the state and unity of its people. The General Assembly urged all the states and organizations to terminate all military,

14. General Assembly Resolution, 2787 (xxvi)

15. General Assembly Resolution, 2786 (xxvi)

16. General Assembly Resolution, 3151 (xxviii).

economic and technical and other cooperation with South Africa, and requested them to suspend all cultural, educational and other exchanges with the racist regimes and with organizations in South Africa which practiced "apartheid".

The Security Council, on June 19, 1976, strongly condemned the South African government for its resort to use of force resulting in killing of more than 100 blacks mostly school children, students who had organised in Soweto (a suburb in Johannesburg) demonstrations against apartheid.¹⁷ The Security Council recognized the legitimacy of the struggle of South African people against apartheid.¹⁸ In June 1976 the school children had risen in revolt against the imposition of Afrikaans as a language of instructions in African schools. These demonstration spread to the whole country. The police tried to suppress the nation wide movement with extreme brutality. The Security Council meeting on Soweto incident generated from all sides a strong and unified condemnation of apartheid policy in South Africa.

No doubt the General Assembly had suggested as early as 1965 that Security Council would take action

17. This incident happened in a town, named Soweto, where black school children were demonstrating against apartheid, and demanding education in English. More than 2000 policemen were trying to control the crowd. The policemen opened fire in which 100 people were killed and 8000 injured.

18. S.C. Resolution, 392 (1976).

against South Africa under chapter VII of the charter. But whenever, such proposal for enforcement of action came up before the Council, it was killed by triple veto (of France, U.K. and USA). For instance an attempt to make arms embargo mandatory failed in June 1975 because of the "Veto" of three permanent members of the security council. In October 1976 another attempt made for arms embargo failed due to the triple Veto.

Since 1976 South Africa had to face continuing threat of Simmering violence in the main economic and industrial centres as well as increasing ANC and PAC armed wings violence. The South African security forces faced increased anti-apartheid activities with savage crackdown. It banned 18 democratic organizations and arrested large number of activists. The pre-democratic civil liberty activists were also against the western allies of South African Government.

The mounting international pressures on these three permanent members and a world wide condemnation of their actions compelled them to alter dramatically their positions by November 1977. They supported the passage of Resolution 418, which imposed "mandatory arms embargo" on South Africa under chapter VII of the charter. And this represented the first instance of its kinds in the history of the United Nations that action had been taken against a

member state under chapter VII of the charter. Under this resolution the security council unanimously decided that:

"All states cease forthwith any provision to South Africa of arms and related material of all types including the sale or transfer of weapons and ammunition, military vehicles and equipment, par-military police equipment, and spare parts for the aforementioned, and shall cease as well as provisions of all types of equipment and supplies and grants of licencing arrangements for the manufacturing or maintainance of the aforementioned."¹⁹

Subsequently, the security council established a committee²⁰ consisting of all council members to study the ways and means by which the arms embargo imposed by Resolution 418 could be made more effective and to make recommendations to the council.

By 1981 South African Police faced increased tempo of sabotage outbreak in various townships. There occurred an alliance of democratic and Trade Union forces. During 1981-85 pretoria increased its activities of destabilization through aimed attacks on neighbour.²¹

During the 1980s the Secutiry Council adopted many resolutions on apartheid. For instance by resolution

19. S.C. Resolution, 418 of November 1987.

20. S.C. Resolution, 421 of 9 December, 1977

21. Vijay Gupta, "Mandela's Struggle and Tasks Ahead" Foreign Affairs Report, Vol. XXXIX (3), New Delhi: 1990)

560 (1985) it noted with deep concern, the intensification of repression in South Africa, while condemning the United resistance of the people against apartheid, reaffirmed the legitimacy of their struggle for a united, non-racial and democratic South Africa. Resolution 569 of 26 July 1985 made a particular demand that the state of emergency be lifted immediately. In Resolution 591 (28 November 1986) the Security Council called for strict implementation of 1977 arms embargo and urged member states to ensure that components of items included in that embargo did not reach South African military establishment and police through third world countries.

Compared to Security Council, the General Assembly resolutions, during the last one decade intended to have profound and far reaching influence in building international public opinion, pressure against South Africa. Besides "recognizing" the legitimacy of the struggle of South African people to eliminate apartheid, the Assembly reaffirmed the legitimacy of their national liberation movement, and demanded that the "aphartheid" rule should treat captured freedom fighters as prisoners of war under the Geneva conventions of 1949 and additional protocol, there to so.²² By the resolution 37/69 B(9 December 1982), the Assembly expressed it grave concern

22. UN Action in the field of Human Rights, (New York: 1988), p. 100.

over the deprivation of the inalienable rights of African people through the establishment of so called "independent Bantustan". In 1983, the UN General Assembly rejected "constitutional proposals" endorsed by South African government and all manoeuvres to entrench white minority rule and apartheid. The General Assembly demanded the total eradication of apartheid and establishment of a nonracial democratic society based on majority rule, through the full and free exercise of adult franchise by all people can lead to a just and lasting solution. In 1984, the General Assembly rejected the South African constitution that created a racially segregated tricameral parliament including the Asians and the coloureds but excluding the Africans.

Among the nine resolutions adopted on 10 December 1985 by the General Assembly, two were of great significance i.e. resolution number 40/64 A and 40/64c. The former called on security council urgently to act under chapter VII of the United Nations charter with a view to applying comprehensive and mandatory sanctions against South Africa, while latter called for world conference on sanctions to be held in June 1986. One of the interesting features about these resolutions were that, they started manning the countries which had been opposing any action against apartheid. For example, as a result of separate recorded votes a reference in

resolution 41/35 A to U.S. policies was retained, despite U.S. opposition. Similarly the operative para 6 of 1988 resolution i.e. 43/50c, "appealed to the government of the U.K. and the U.S. "to cooperate in the imposition of comprehensive and mandatory sanctions".

"The South African political and economic system began to crash in late 1980s. In 1990 the South African white regime found itself compelled by circumstances to introduce changes due to (1) the new international scenario demanding political and economic liberalization (2) crippling impact of sanctions on economy, (3) rising internal crisis with snow falling anti-apartheid movements (4) the UN's attempts to end "apartheid".²³

To avoid this scenario the racist ruler, released political prisoners, and lifted ban on political parties and started process of negotiation & change to a non-racial democratically elected government" with Africans. "While preparing for negotiation, the rightist section of the whites, who were opposed to shared power with the blacks, started instigating violence. They extended patronage to tribalist black leaders in their parochial activities. The state machinery also became party to violence which spread amongst blacks particularly between the supporters

23. Vijay Gupta, "Nelson Mandela Voted to Power: Victory of Anti-racist Forces of the World" Peace and Solidarity, Vol. 25(4-6), May - June, 1994.

of the African National Congress and Inkatha Freedom Party based in Zululand. The Zulus, being the biggest ethnic group were asked to demand autonomy or major share in power structure. "Consequently violence helped to create wide division amongst Africans the tribalist vs democrats regionalist, vs unitarianists. Violence adversely influenced the negotiations. What had began as talks amongst the Government and the ANC was turned into talks between 26 political group, divided into two major camps the ANC supporters and whites supporters. Violence reached its climax when government abetted massacre at Biopatong took place".²⁴ A few whites and also a few blacks were hindering change.

The white rulers of South Africa were interested in negotiation to establish a system which could save as many of their privileges as possible.

To find out the attitude of the white settlers the white president F.W. de Klerk held a referendum in which whites were asked to give their consent to changes towards establishing non-racial society. In the referendum on March 17, 1992, the white voters were asked whether they supported the government's reform process which was aimed at new constitution through negotiation.

25. Vijay Gupta, "Violence and Regionalism Delay Democratisation" Africa Quarterly, Vol. 32(1-4), 1992-93., pp. 9-10

Astonishingly, 68.6% of those voted said yes".²⁵ The reasons for supporting the reform effort were many, reaching of South Africa cricket team in the world cup semifinal was a national frenzy, and the people caught up in historic frenzy did not want their beloved team to be forced out of international competition. A large number of conscious entrepreneurs feared for the renewed economic sanctions. The majority of people liked stability and equality and therefore supported continued negotiations.

Earlier a year before on 17th June 1991, apartheid stood legally abolished with the repeal of the Population Registration Act and the Group Areas Act i.e. the Acts that were two main pillars of "apartheid" rule. Seeking the progress towards ending "apartheid" the United Nations General Assembly voted on December 13, 1991, and urged all countries to restore sporting, cultural and scientific and academic exchange with South Africa.

Through the resolution 76 of July 1992, the United Nations General Assembly sent special representatives to South Africa for resumption of multi party talks. The resolution condemned violence of Biopatong massacre. And it called for the special representatives to recommend after discussions with the parties measures which could

25. Keesings Record of World Events, 1992, (London: Longman, Pub. 1992). p. 39028.

assist in bringing an effective end to violence and leading towards peaceful transition to multi racial democracy.

On August 7, the United Nations Secretary General Boutros Boutros Ghali reported to the Security Council the findings of special UN envoy Cyrus Vance on his visit to South Africa. His report, submitted to Security Council included a number of proposals²⁶ for bringing a peaceful transition to multi-racial democracy. The proposals were a) Establishment of an expanded National Peace Committee with permanent local regional offices. b) Stationing 30 UN members which would monitor the mass action complain. c) urgent release of political prisoners and d) end to the bias by the broadcasting service.

Moreover the UN Security Council passed resolution 772 authorizing the urgent deployment of UN observers. Further development led to South African parliament to pass a bill on September 23, 1993, according to which a Transitional Executive Council was established, it was a multi-racial body to work with government of the state president F.W. De klerk in the run up to democratic elections scheduled on 27th April 1994. This development led to the ANC calling for lifting all sanctions against South Africa. The Transitional Executive Council and

26. Keesings Record of World Events, (London: Longman, Pub. 1993)., p. 39037.

seven sub-councils had extensive powers to oversee the levelling of the political processes which could lead to multi-racial elections.

The day after adoption of TEC bill, ANC president Nelson Mandela declared that "the countdown to democracy" in South Africa had begun, and called for lifting all economic sanctions against South Africa.

In his 27 September 1993 speech at the UN Special Committee Against Apartheid, Mandela asked UN member nations, to "take all necessary measures to end economic sanctions you imposed and which have brought us to the point, where transitional democracy is enshrined in the law"²⁷ However, he called for the retention of Arms Embargo until the formation of new government of national unity.

On 27-29th April 1994 the multi racial election was held. The ANC gained enormous votes with majority in parliament. The ANC won 252 seats out of 400 members, i.e. 62.6 percent of total votes. On May 9, 1994, Dr. Nelson Mandela was elected as country's first black president, and this caused the end of rule of apartheid. He took oath on 10th May. And in Dr. Mandela's words

27. Keesings Record of World Events, (London: Longman, Pub. 1993), p. 39622.

"Today we are entering a new era for our country".²⁸ There by the oath ceremony which was held on 10 May 1994, marked the end of people's struggle against racism. The historic event of oath took place in the Union Building at Pretoria where the era of legalised racial discrimination has ended and a new era has begun with South Africa, as a free nation after nearly 300 years. South Africa returned to the hold of the community of civilized nations. Dr. Mandela assured his countrymen "the government of national unity would usher in democratic, non-racial and nonsexist South Africa, moreover, he would take the country out of darkness and unite all the people for national reconstruction and nation building". Mandela "assured to give his long suffering people justice, peace, work, bread water and salt"²⁹ with restoring dignity.

The UN's Standard Setting and Public Awareness

The UN role in the field of creating "norms" and setting up various bodies to deal with the question of apartheid and racial discrimination had been quite successful. The United Nations had adopted three major international conventions which had direct bearings on the problem of racial discriminations and apartheid. They

28. The Times of India, 10 April, Delhi (D), 1994.

29. The Hindustan Times, 11 April, Delhi (D), 1994.

established international "standards" for preventing racial discrimination. These were, the International Convention on the Elimination of All Forms of Racial Discrimination (1965); International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) and the International Convention against Apartheid in Sports (1985). All these conventions in force and had been ratified by 127 states, 88 states and 36 states respectively. These conventions not only provided the elaborate obligations to the states parties but also establish their own monitoring bodies to supervise their implementations.³⁰

In 1962 the General Assembly became first UN organ to establish two special bodies on Apartheid (i) It created special body known since 1977 as Special Committee Against Apartheid to keep South Africa's racial policies under review reporting to the Assembly and or the Security Council. The 18 members intergovernmental committee was later given a wider mandate to review all aspects of South Africa's apartheid policies in their international repercussions. The committee conducted hearings, sent missions of consultation, organized conferences and seminars and implemented, UN resolutions, particularly by promoting sports, cultural, activities.

30. UN Action in the field of Human Rights, 1988, (New York, 1998), pp. 105-106.

(ii) The General Assembly established the Centre Against Apartheid which alongwith the special committee, cooperated with governments, organizations, trade unions, religious leaders, youth movements and anti-apartheid groups in mobilizing international public opinion in support of UN resolutions against apartheid. Both these bodies played a significant role in fulfilling the UN objectives for promoting human rights.

The commission on Human Rights established on 6 March 1967, an Ad-Hoc working Group of Experts to study the ill-treatment of prisoners, detainees and persons in police custody in South Africa, particularly the numerous opponents of apartheid imprisoned under arbitrary laws. Since its creation the AdHoc working group submitted reports annually to the commission which forwarded its conclusions and recommendations to the Assembly and other concerned organs. In recent years the working group submitted many interesting proposals, recommendations for consideration to commission on Human Rights. For instance in the year 1984, the working group proposed that the commissions call on the General Assembly to seek an Advisory Opinion from International Court of Justice on the extent to which "apartheid" as a policy entailed criminal effects bordering on genocide.³¹ In a way the Experts Group stressed the links between apartheid and

31. UN Chronicle March 1985, (New York, 1985), p. 42.

genocide. In another report³² the working group concluded that the forced removal of the black population and the creation of "Bantustan" for them amounted to depriving it of South African citizenship. The group proposed that the International Court of Justice be asked to give an Advisory Opinion on the loss of citizenship from the standpoint of international law.³³

By resolution 2054 B(xx) of December 1965, the General Assembly established the United Trust Fund for South Africa. The Fund had been based on voluntary contributions from which grants were made to organizations for legal aid to persons prosecuted under South Africa's repressive and discriminatory laws, relief to such persons and their dependents and relief for refugees from South Africa. Two years later in (1967) in accordance with the authorization of Security Council resolution 191(1967), the Secretary General established a United Nations Educational and Training programme for South Africa. Under this programme scholarships were granted to students from these territories for their study and training abroad.

In 1973, the General Assembly established The Trust Fund for Publicity against Apartheid. The Fund

32. UN Chronicle August 1985, (New York, 1985), p. 30

33. UN Chronicle March 1985, (New York, 1985), p. 43.

became operational in 1975. It used in wider dissemination of UN publicity material on apartheid and for the production of audio-visual material on apartheid. The resolution of the General Assembly 2439(xxiii) even ventured to establish a UN Information Centre in South Africa with view to disseminating the aims and purposes of the UN, but the South African government never permitted it.

By setting universal standards commissioning various studies on racial discrimination and apartheid and holding national and international seminars conferences on policy of apartheid, the UN organs exercised immense pressures on governments to comply with the international human rights law. In other words, the whole process had exercised tremendous impact on world public opinion against apartheid and racial discrimination.

The UN's Role: An Assessment

Despite international support to the struggle for human rights in South Africa and adoption of hundreds of resolutions and recommendations on policy of racial discrimination and apartheid, the South Africa kept continuing the system of apartheid and deliberately denied the most basic rights to its black citizens till the year 1993. Its racial policies constituted not just the violation of international human rights law, but the very

international law itself. It seemed that the violation of international law became a way of life for the South African government.

Even though, the UN's role and influence of international public opinion in support of the struggle of human rights of the black majority should not be underestimated. There has been great cumulative effect on UN resolutions and condemnation of South Africa's apartheid policy. The UN's various resolutions, conferences, seminars, and economic, and cultural sanctions have conspicuously led over the years, for the isolation of South Africa from international community. The events of external pressure exerted all economic, cultural, psychological and moral pressures on the white section of African society to a large extent.

But, external pressures were one of the several factors for ending apartheid. And one of the reasons for UN's failure to make significant progress towards South African government to observe its commitment under the UN charter, to promote and respect the observance of human rights of all its citizen without any discrimination, comes from the fact that many UN members - both western and non western (africans) pursued the policy of double standards.

Though the western permanent members of Security Council helped in the unanimous imposition of arms

embargo against South Africa in 1977, they had been reluctant to agree comprehensive mandatory sanctions which alone could have significant impact on South Africa. And could compel its rulers to find ways to dismantle apartheid policy. This was mostly due to negative attitudes of France, UK and USA. They even used "Veto" on proper and necessary actions passed under the General Assembly resolutions. It was because the west had many "vital interests" in South Africa. Like, naval interest in ocean, western strategy for safeguarding the Cape route through which pass 70% of Europe's oil supplies. The western economic interests in South Africa had been growing. The western investors had been gaining heavy profit in South Africa from the exploitation of cheap labour, hence they resisted any pressure to change the system. The same factor was associated with some non-western countries also. There have been many non African states, who had been having trade relations with South Africa. And these countries never liked embargos, and sanctions passed by UN.

Conclusion

It can be inferred that due to the double-standards in the policies of member states, lack of strong political will and sincerity in approach and the lack of unanimity among great powers the violation of human rights in South Africa continued till recently. But the

concentrated drive of UN against the policy of "apartheid" the question of human rights, brought fruitful results in 1990s. Several new beginnings started to end apartheid. Finally the election on 27th to 29th April 1994 gave a final blow to the "apartheid", by making ANC president Dr. Nelson Mandela, as the first black president of South Africa. And finally on 10th May 1994 the apartheid South Africa was transferred into multi racial democratic South Africa. thereby the policy of apartheid was buried for ever.

CHAPTER 4

ROLE OF THE SPECIALIZED AGENCIES

Introduction

The specialized agencies constitute intimate parts of the United Nations organization system. They have been equally active in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex language and religion. There are mainly four major specialized agencies engaged in social and humanitarian activities, viz., The International Labour Organization (ILO) formed in 1919 with Geneva as its headquarter; The United Nations Educational, Scientific and Cultural Organisation (UNESCO) formed in 1945 with Paris as its headquarter; The World Health Organization (WHO) formed in 1946 with Geneva as its headquarter; The Food and Agriculture Organization (FAO) formed in 1945 with home as its headquarter.

The Economic and Social Council is authorised by Article 63 of the United Nations charter to coordinate the activities of the specialized agencies through consultation with, and recommendation to such agencies and, through recommendation to the General Assembly and to the members of the United Nations. The Article 70 of the charter, delineates that arrangements would be made for representatives of the specialized agencies to

participate, without note, in the deliberations of the council and its commissions, and for council representatives to participate in the deliberations of the specialized agencies. The United Nations council by its resolutions 13(iii) of 21 September 1946, established a Standing Administrative Committee on Coordination, consisting of the Secretary General of the United Nations and the Director General of the specialized agencies.

In South Africa, the specialized agencies had been very active since their imceptions, for establishing a non-discriminatory, and exploitation - free society by removing "apartheid". The ILO stressed on fighting exploitation against the black labourers, against commodification of man, and against poor wages. The UNESCO, globalised the policy of "apartheid" through organising various seminars and conferences on it. It published various books on "apartheid" which drew the world attention. It proved that the policy of "apartheid" was biologically and scientifically false. The WHO helped the down-trodden blacks to fight for better health and sanitation. It supplied medicines to the fighters of "apartheid". The FAO distributed food to the liberation movements in South Africa.

Here the active roles played by the ILO, the UNESCO and the WHO, in South Africa are to be analysed in detail.

The International Labour Organisation (ILO)

Rendering social justice to the working people of the world has been an important means for a durable world peace. Realising this principle, an International Labour Organisation was established on 11 April 1919 as an autonomous institution associated with the League of Nations. It's preamble stated that universal peace can be established only if it is based upon social justice. And the improvement of the condition of labourers was urgently required. The 26th General Conference of the ILO held at Philadelphia in 1944 affirmed that "All human beings irrespective to 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 economic security and equal opportunity".¹ The declaration also recognized the "solemn obligations of the organisation to promote programme to achieve full employment, raising the standard of living, recognition of the rights of collective bargaining, and promotion of health, education and well-being of all peoples".²

Under its constitution the "ILO is concerned with both, economic and social rights such as right to work, right to enjoyment, right to form trade unions, right to social security, right to adequate standard of -----

1. United Nations Action in Human Rights, (New York, 1988) para 210.
2. Ibid., para 211.

living along with all such civil and political rights as freedom of expression, freedom of association and the right of peaceful assembly". In South Africa, the conventions and recommendations have formed the foundations of the ILO action for the protection and promotion of human rights of the labourers by removing the government sanctioned policy of "apartheid". To safeguard the trade union freedom, hiking daily wages and to combat racial discrimination had been the main issues on the agenda of the ILO.

The policies of "apartheid", as regards to labour, had been the subject of examination by the ILO for a number of years. Thereby the UN - ILO Ad-Hoc Committee on Forced Labour published a report in 1953 that a system of forced labour existed in South Africa. In 1961, the ILO conference called on South Africa to withdraw from membership until it renounce "aparetheid" and to take specified measures to eliminate discrimination in employment and occupation. It also approved an ILO programme for the elimination of apartheid in labour matters, and asked the Director General to follow the situation in South Africa and submit it every year for consideration by the conference. A special report concerning the application of the Declaration on 11 March 1966, the South African Government withdrew its membership

3. Ibid., para 213.

from the ILO. But the ILO did not keep quiet. Almost in every session and conference, it discussed the latest developments in South Africa on the topics which came under the purview of the ILO. In 56th session of the ILO General Conference passed a resolution in June 1971, "to give particular emphasis to fight against "apartheid", to combat racism and racial discrimination".⁴ For implementation of the resolution the ILO raised the funds for giving assistance to the frontline states, to the black trade unions and to national liberation movements.

A special report on the application of the declaration concerning the policy of "apartheid" in South Africa was updated by the ILO General Conference in 1981, and was presented to the 69th session in June 1983. It reviewed developments in South Africa at an international level. The report was examined by the ILO Conference Committee on Apartheid. It was decided that the ILO would keep continue the assistance programmes to the South African blacks. The assistance also covered vocational training, rural development training, workers education, and special attentions were paid to the migrant workers and vocational rehabilitation of the war victims and other disabled person.

4. Report of Special Committee on Apartheid, in General Assembly official records 26th Session, para 194 (supplement no. 22).

On June 20, at 78th session of the ILO Conference adopted the following recommendations:

(i) It called all government employees and workers organisations as well as the ILO to make specific effort to promote the total implementation of the ILO declaration for ending apartheid in South Africa.

(ii) It called all constituent members to launch concrete campaign to put pressure on the government of South Africa to release political prisoners, and to lift restrictions on those already released.

(iii) It called South African Government to accelerate the process for the creation of an appropriate atmosphere for negotiation towards the total dismemberment of "apartheid".

(iv) It took step to check violence

(v) It requested all the governments to maintain and implement all the sanction.

(vi) It asked the South African government to restore the right which were curbed by the Labour Relations Amendment Act on May 1, 1991.

(vii) It welcomed the repeal by the South African government of the Group Areas Act and the Lands Act."⁵

In general the ILO played significant role in removing the policy of "apartheid" in South Africa. It provided several assistance programmes directly or

5. United Nations Centre Against Apartheid, JUne-July 1991, (New York, 1991), pp. 17-18.

indirectly to the blacks of South Africa. It globalised the practice of discrimination prevailed in South Africa, and exerted international pressures on South African government for abolishing "apartheid". And finally it worked for the rehabilitation of war the victims, the disableds the migrant workers and the crusaders of "apartheid policy".

United Nations Educational Scientific and Cultural Organization (UNESCO)

The United Nations Educational Scientific and Cultural Organisation came into existence on November 4, 1946. Its constitution drafted earlier by the governments of the U.K. and France, was later adopted by 43 members of the United Nations. And by virtue of an agreement on December 14, 1946, UNESCO was recognised as a specialized Agency of the United Nations.

The preamble of the UNESCO constitution recognizes that "some wars begin in the mind of men, it is in the mind of men that defences of peace must be constructed".⁶

The purpose of the UNESCO in its Article 1, of the constitution is to "contribute to peace and security by promoting collaborations among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for -----

6. United Nations Action in Human Rights, (New York, 1988) para. 224.

the human rights and fundamental freedoms which are affirmed for the peoples of the world without distinction of race, sex, language or religion by the charter of the United Nations".⁷ To achieve its objectives, the UNESCO accomplish the following tasks.

It collaborates in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image. UNESCO therefore attaches top priority to the imparting education to children as well as adults.

UNESCO helps in educational field by furnishing expert assistance on on matters like teacher training, school construction, school finance, preparation of teaching materials.

UNESCO also helps to improve the teaching basis of sciences at all levels. It encourages basic researches in sciences at all levels.

UNESCO emphasises the essential unity of all human knowledge and has devoted considerable attention to the social implications of technological changes and to the problems of racial tensions. It lays emphasis on human

7. Ibid., para, 225.

rights and the economic and social consequences of disarmament. And it contributes to peace and security by promoting collaboration among nations through education, science, culture for furthering universal respect justice.

In the year 1951, a "statement" on race was established under the aegis of the UNESCO. It clearly stated that there was no scientific justification for racial discrimination and was followed by several publications. On 5 April 1955, South Africa withdrew from UNESCO, alleging that the UNESCO publications, interfered with the country's racial problems which were country's internal problems.

In November 1970, the General Conference of UNESCO adopted resolution 111.8 adopted at 16th session that apartheid is an affront to mankind and it should not be supported by the UNESCO in any form. It declared that the policies of colonialism, neo-colonialism and racialism constitute a constant danger to the peace and security of the nations. And thereby it affirmed the decision not to accord any help to the South African government in the realms of science, education and culture. It decided not to invite South African government to participate in conference and other activities until such time as the authorities of the country desisted from their policies of racial oppression. For implementing this policy more effectively, the UNESCO broke off all relations with the

NGO's whose branches in South Africa, practiced racial discrimination or cooperate in any way with the South African government in its "apartheid" policy. In 1972, the UNESCO prepared a report on the effects of "apartheid" on education, science, culture and information. This report exposed the segregative policies and racial biasness of the South African government.

The UNESCO organised a "world conference of youth and students in 1979 at Paris in solidarity with peoples, youth and students of South Africa, and their fight against apartheid. And in connection with International year of the child, the UNESCO hosted in Paris, a seminar on children under Apartheid organised under auspices of Special Committee against apartheid".⁸

In the year of 1980, "the UNESCO organised a regional colloquim with collaboration with the Internaitonal Organisation of Journalists at Bamako in Mali which debated the "Racism in South Africa" and promised to end it through media".⁹ Within the framework of this programme, the UNESCO kept continue its programme of scientific research on the causes and mainfestations of apartheid on social and economic planks of South Africa.

8. Year Book on Human Rights, 1979 (New York, 1986), p. 325.

9. Year Book on Human Rights, 1980, (New York, 1988), p. 260.

The UNESCO also participated in International Conference of "Teacher Against Racism" in November 1980, and appealed them to condemn "Racism in South Africa". And the "21st session in Belgrade, UNESCO passed Resolution 21/C/1/03, along with convention and recommendation against discrimination in education".¹⁰

From 20-27 May 1981, the UNESCO acted as host at its paris headquarter to International Conference on sanctions against South Africa organised on the initiative of special committee against "apartheid" decision were taken to exert external pressures on South African government through imposing numerous sanctions.

At its Fourth Extra Ordinary Session in 1982, the UNESCO General Conference adopted the Second Medium Term Plan from 1984 to 1989. "Within this plan, one major programme was denoted to the elimination of prejudice, intolerance, racism and apartheid and included a special programme on struggle against apartheid"¹¹ the UNESCO broke off all relations with NGOs whose branches in South Africa practised racial discrimination or segregation or cooperated in any way with South African Government in its apartheid policy. In 1972, the UNESCO prepared a report on the effects of apartheid on education, science, culture

10. Ibid., p. 261.

11. Year Book on Human Rights, 1982, (New York: UN Pub., 1988), p. 265.

and information. This report exposed the segregative policies and racial biasness of the South African government.

Thereby the UNESCO made several efforts to highlight the issue of "Racialism in South Africa" on world arena. It assisted in various constructive activities of the blacks in South Africa. And exerted enormous pressure on South African government to renounce the policy of apartheid. The UNESCO team of expert gave evidence to prove that the racial superiority was a myth. There was nothing scientific in racism. Rather it was a colonial product, where the colonial government applied this tool for exploiting the innocent and illiterate blacks. The other major achievement of the UNESCO was the teaching of apartheid; and its negative impact to world communities through medias. And it invited several black scholars from South Africa, and educated them the organization's views, so that they could transmit it among the commoners in South Africa.

The World Health Organisation (WHO)

The world Health Organisation (WHO) came into being on April 17, 1948, when 26 United Nations members - states had ratified its constitution. The objective of the WHO in Article 1 of its constitution is "the attainment by all peoples of the highest possible

health".¹² The preamble defines health as "a state of complete physical mental and social well-being".

The WHO acts as the central authority directing international health work, it launches programmes to eradicate disease, provide help in emergencies and natural disasters. It lay particular stress on the wide spread communicable diseases of, mainly developing countries. The WHO prepares the Principles Medical Ethics relevant to the role of health personnels and doctors. According to the, "UN General Assembly Resolution 37/194 on December 1982, WHO can interfere anywhere for the protection of prisoners and detainees against torture and other cruel, inhuman and disregarding treatment or punishment".¹³

The WHO promotes national, regional and global strategies for the attainment of the main targets of the member states: 'Health for all by 2000', with the following minimum requirements decided in May 1981. WHO: "(i) Safer water in the home or within 15 minutes walking distance, and adequate sanitary facilities in the home or immediate vicinity.

(ii) Immurization against communicable diseases.

(iii) Availability of at least 20 essential drugs, within one hour's travel".¹⁴

12. United Nations Action in Human Rights, (New York, 1988), para, 233.

13. Ibid., para, 235.

14. Africa South of the Sahara, 1994, (London: Macmillan, 1994), p. 87.

In South Africa, the WHO had been thoroughly assisting the victims of the apartheid policy. It provided food, medicine to the apartheid victims. It kept continued its activities for the dissemination of information on the effects of apartheid on health and psychological well-being. In June 1979, WHO presented a paper on the health of children under apartheid organised in Paris by the Special Committee Against Apartheid with some NGOs. The WHO also prepared a report on health implications of apartheid for women. This report was presented to 1980 world conference of the UN decade for women. Here, the resolution was passed on equality and health developments schemes for women. And commitment to help South African black women was made.

In 1981, the WHO organised "an International conference on apartheid and Health with the National Liberation Movements groups where, provisions were made, for studying the ways and means of helping National Liberation Movements and to the refugees and victims of apartheid".¹⁵

Till the end of apartheid regime in May, 1994, the WHO had been continuously assisting the blacks, the anti-apartheid movements, the war disableds, war victims and the refugees. It provided medicines and food with the

15. Year Book on Human Rights, 1982, (New York: 1986), p. 27.

cooperation of the Food and Agricultural Organisation (FAO) to frontier states of South Africa. The WHO sent its physicians, health workers to rehabilitation camps in frontier states.

Conclusion

The combined efforts of specialized agencies worked a lot to the promotion and protection of human rights in South Africa. While on one side, the ILO was giving assistance to the black workers, the black trade unions, on the other side it thoroughly condemned South African governments and the policy of apartheid. The UNESCO, by its strong media communication, and publishing network exposed the South African government to such an extent that, finally it had to withdraw its membership from the organization. The UNESCO also defined the false concept of racial superiority undertaking a project of scientific study of race. By organising numerous conferences and seminars, the UNESCO kept a constant vigil and pressure on government and its authorities. The WHO efforts was significant in providing food and medicines to war victims. And the struggle could be continued for long due to the intense support of these specialized agencies.

CHAPTER 5

CONCLUSION

To recapitulate the discussion in the preceding chapters, we have reached to the conclusion that in history of South Africa, the racism had been practiced with the beginning of colonialism in 17th century. It was based on the myth of racial superiority. The white settlers considered the indigenous people i.e. Africans merely as animals. The Africans were considered as valuable commodities, and were sold as slaves in international market at very low prices. The Africans served the whites in the booming agricultural and mining sector. They also catered to the needs of the whites households. They were deprived of their lands, and their political and economic rights under racism. The Governments used all sorts of atrocities on them. And finally racism was transformed into "apartheid" in 1948.

In this study we find that the Afrikaner section of the whites were consistently aggressive in maintaining and defending the practices of racism. Being engaged in farming they needed cheap labours. Labour supply was possible only if their standard of living was low and availability of labour was excess. This was possible by keeping the non-whites legally debarred from entering into white men's area of economic operation and political dominance. While for years discriminatory rules were

practiced to have cheap labour supply. By 1948 onwards situation changed to legalization of their practices and blocking all the loop hole. In 1948 elections, Dr. Malan's National Party, (NP) which believed in purified 'racism doctrine' came to power with the support of the racist Afrikaners. This party won election on the slogan of "apartheid policy". And after forming government the NP began transforming the practice of racism into government's approved "apartheid policy".

The "apartheid Policy" was based on the doctrine that, the socio-cultural advancement of a society had been determined by its racial qualities. And each race had its own inherent qualities which was unequal to other races. On the basis of this doctrine the non-whites who were considered inferior in race were coerced within a definite territorial possession.

In theory "apartheid" was an accumulative and purposeful system of racial containment which perpetuated racial prejudice, discrimination, segregation and separation. But in practice this policy aimed at socio-economic exploitation of natural and human resources of the non-whites through strict legal administrative provisions and police terrors. The theory of racial superiority had been challenged by the scientists of life sciences. Hence "apartheid" was based on no other assumptions except mythical and to exploit the non-whites.

In terms of strict implementation of "apartheid" the South African governments violated numerous national and international regulations on human rights. By doing so the South African government did not provide minimum conditions or claims of individuals without which humans cannot achieve their best. They cannot sustain their lives and they can not realise their developments. Because Human rights are inherent and inalienable.

There exist at all places certain minimum standards of behaviour by governments towards their own citizens. It is the right to be assured of such minimum standards that we mean "essential human rights". There are certain minimal standards that are universally acknowledged by governments: as the right to not to be enslaved, security against arbitrary arrest and imprisonment without trial, the right to equal pay for equal work, right to democratic form of government, right to education and participation in cultural activities and right to peace and development. These are essential human rights because they are regarded as essential by significant section of mankind.

Before the beginning of the two world wars, human rights were considered to be entirely an internal matter of each nation individually. It was only between the two world wars, and above all after the second world war, the idea became wide spread that there would be an

international responsibility to secure respect for certain minimal standards which would be universal and independent of national boundaries. The glaring violation of human rights during world war second brought the countries sufferings much closer. It was decided that interntional community as a whole should possess the responsibility to promote and respect for human rights, which was expressed in the Charter of the United Nations. The United Nations's General Assembly, Security Council, Economic and Social Council, and Universal Declaration of Human Rights included several, civil, political, economic and cultural rights in the list of human rights.

While the war turmoiled world had been seeking for peace prosperity and development of mankind, in contrast, South Africa accelerated the process of flagrant violation of human rights of the non-whites by institutionalizing the policy of "apartheid". It represented a classic example of unabated abrogation of human rights and fundamental freedoms of largest section of its citizens. The apartheid policy victimized the inhabitants, institutions and the future of South Africa. It deprived their historical, economic and political rights. Its even authoritarian surveilliance and extreme severity in policing the lives of the non-whites checked their psychological development and emotional integration. The different races were assigned reserved areas and relationship was confined within limited areas. The

inter-racial love, sex and marriages were legally restricted. There was dual standards in education. The schools and colleges were reserved separately on the basis of races. There were sharp differences in salaries of the white and non-white workers. Economically, the non-whites were deprived to buy lands outside the reserved areas. Good jobs were reserved for the whites. The black workers could not form trade unions. They were denied the rights to have land and to settle in urban areas. Politically, they were kept away from decision making processes. The government could declare emergency whenever it liked to do so. The black supported political parties had been banned. Any body could be arrested without warning. The freedom of press was seized. The books were checked by authorities, the newspapers could be closed if found publishing subversive articles on "apartheid". There was strict control on maintaining secrecy of reports about prisoners, detainees, police and armies. The political prisoners, had to face brutal treatment. There was restriction to move and to settle from one part to another part of country's territory. The non-whites had to keep separate identity cards. Even the women and children were not spared. The women had to face discrimination on the basis both sex, and race. Inter-racial sexual mixing was considered immoral in accordance with the law. The women were paid less wages than men. They could not live with their husbands in urban areas. Their employment opportunities in South Africa were

severely restricted. These violation of human rights threatened international peace and security. And the United Nations took this issue seriously on its agenda in 1952 when 13 Arab and Asian states brought this issue on the General Assembly.

The United Nations had been very active in support of the struggle for human rights of the black majority in South Africa. There had been great cumulative effect of the United Nations resolutions, sanctions and condemnations on South Africa's "apartheid policy". The United Nations had been able to keep South Africa in isolation for years from the international community. The United Nations General Assembly requested its member states to break diplomatic relations with South Africa, to forbade their own ships to use South African ports, to boycott South African goods, to stop supply of arms and ammunitions. The United Nations gave legitimacy and assistance to the South African Liberation Movement. The United Nations opposed creation of "Bantustan" and members were asked to terminate economic, technical and military cooperation with South Africa. It imposed economic sanctions, oil impargo, sanctions were imposed on sports, and several other fields. The ILO conference in 1961, called on South Africa to withdraw from membership in the organisation until it abandoned the policy of "apartheid". The subsequent decisions of ILO to approve a programme of action for the elimination of apartheid in labour matters,

and its continuous criticisms compelled South Africa to withdraw from it in 1966. The UNESCO's programme to start study of race and race relations compelled South Africa to withdraw from the organisation in 1963. The FAO refused South Africa to participate in any of its activities. As a result South Africa withdrew from it in 1963. In 1964, it suspended voting privileges of South Africa for its "apartheid policy". The United Nations General Assembly refused to give credentials to its delegation. All the specialized agencies gave enormous supports to the South African blacks in their struggle against apartheid, by assisting with food, medicines, shelters, rehabilitation to war victims, refugees.

Despite immense external pressures, and mandatory sanctions, it took too much time to approach its mission by the United Nations and its agencies. This delay had been due to double standard policies of its members.

The western permanent members of the Security Council first time voted for the unanimous imposition of a mandatory arms embargo against South Africa in 1977. But they however, were reluctant to agree on imposing of "comprehensive mandatory sanctions" which alone could have significant impact on South Africa and could compell its rulers to dismantle "apartheid". Further the western countries like, United States of America, United Kingdom and France killed the proposal of expulsion of South

Africa from the United Nations, by using their right to "Vetos". This showed how the great powers were supporting the "apartheid" governments in South Africa. They used "Vetos" and defended South African governments on many occasions. Their support had been guided by several vital vested interests in South Africa. The strategic location of South Africa, served the strategic interest of the western countries. The west had naval interest in Indian Ocean. It also served the key western strategy for safeguarding the sea route of the Cape through which most of the oil supplies to western countries occurred. Further the western countries had also growing economic interests. Many private companies of western countries had invested enormous money in South Africa. And they did not like to breach relation with it. Including three "Vetos" powered countries, there were others like west Germany, Canada, Denmark, Sweden, Italy, and Netherland. The investors in South Africa profitted heavily from the exploitation of cheap black labour. And they resisted any pressure to change the system. The third major interest was, the anticommunism activities of African governments got the western capitalists support.

Despite these hurdles, the fall of communism in Russia, the growing domestic pressures of the blacks, and the growing consciousness among the middle class whites in South Africa and immense role of the UN and its agencies brought "apartheid policy" to an end. The new

government took oath under the presidentship of Dr. Mandela on May 10, 1994. All discriminatory regulations had been mitigated. But the ghosts of "apartheid" will hound the apartheid victims for years.

The New government is facing many challenges, like more than 50 percent of the blacks live below poverty line, the unemployment problem, the increasing the black slum areas in cities, disparity in income between the blacks and the whites, economic stagnancy, and ethnic diversities. All these problems need a careful strategy and efficient planning, for its elimination, like preventive discrimination should be maintained by reserving the jobs for poor blacks. There should be much stress on vocationalization of education. The entrepreneurship training needs special attention. The agricultural and industrial developments should get foremost priority. The trade should be liberalised. And international bodies, like the FAO the WHO the UNESCO, the ILO and other developmental agencies should come forward with intense support for making a new South Africa.

Thus from the above analysis, it has been proved that, the racial differences were directly linked with the violation of human rights in South Africa. By using the racial discrimination, the whites served its economic interests. The activities of the UN and its specialized agencies were linked with the promotion of human rights by eradicating "apartheid" in South Africa. The UN passed

various resolutions and imposed numerous sanctions on South African governments for renouncing "apartheid". The UN globalised the problems and gained world wide sympathy. It generated consciousness among the blacks. And finally it was the UN's efforts with several other factors forced South African government to dismantle apartheid.

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APPENDIX

CLAUSES CONCERNING HUMAN RIGHTS IN THE CHARTER OF THE UNITED NATIONS

The Charter of the United Nations makes reference to human rights and fundamental freedoms in a number of clauses. In the Preamble, the peoples of the United Nations express their determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". The words "promoting and encouraging respect for human rights and fundamental freedoms" or "assisting in the realization of human rights and fundamental freedoms" appear, with slight variations, in **Article 1**, on the purposes and principles of the United Nations; in **Article 13**, on the functions and powers of the General Assembly; in **Article 62**, on the functions and powers of the Economic and Social Council; and in **Article 76**, on the basic objectives of International Trusteeship System. **Article 8** provides that "The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs". In **Article 56**, all Members of the United Nations pledge to take joint and separate action in co-operation with the Organization for the achievement of purposes enumerated in **Article 55**, including the promotion of "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". In **Article 68**, the Economic and Social Council is empowered to set up commissions "in economic and social fields and for the promotion of human rights".

ECONOMIC AND SOCIAL COUNCIL AND SUBSIDIARY BODIES

Under **Article 62** of the United Nations Charter, the Economic and Social Council may "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all". It may also prepare draft conventions for submission to the General Assembly, **68**, the Council "shall set up commissions in economic and social fields and for the protection of human rights".

Article 64 empowers the Council to "make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the

steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly", and to communicate its observations on these reports to the Assembly.

The Council, which is composed of 54 members, normally holds an organizational session and two regular sessions each year. In addition, it occasionally holds special sessions. Human rights items are usually referred to the Council's Second (Social) Committee, a "sessional" committee on which the 54 members of the Council are represented, although some items are dealt with in plenary meetings without reference to a committee. The reports of the Social Committee, which contain draft resolutions and draft decisions, are submitted to the Council for consideration and final action in plenary meetings.

To assist it in dealing with items relating to human rights, the Council has established the Commission on Human Rights and the Commission on the Status of Women. The Commission on Human Rights, in turn, has established the Sub-Commission on Prevention of Discrimination and Protection of Minorities. A Sub-Commission on Freedom of Information, established by the Commission in 1947, was discontinued after a final session in 1952.

From time to time the Council has set up ad hoc committees composed of representatives of Member States, experts nominated by their Governments, or outstanding personalities serving in their personal capacity. It has also, on occasion, appointed or authorized the Secretary-General to appoint special rapporteurs or committee of experts to prepare reports on technical subjects.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Members States themselves and among the peoples of territories under their jurisdiction.

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

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

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

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

Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

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

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

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

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

Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11: 1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to protection of the law against such interference or attacks.

Article 13: 1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14: 1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15: 1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

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

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17: 1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20: 1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21: 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22: Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23: 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25: 1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26: 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27: 1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28: Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29: 1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30: Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.