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Apartheid Legislation in South Africa

I. Introduction

On 31 May 1910 the Union of South Africa was formed as a dominion in the British Empire. It was exactly eight years after the signing of the Treaty of Vereeniging, which had brought the Second Anglo-Boer War to an end and stipulated full British sovereignty over the Boer republics of Transvaal and Orange Free State. Although the South Africa Act 1909 (9 Edw. VII c. 9) was passed by the British Parliament at Westminster, it was wholly constructed by South African representatives in South Africa. Agreement had not been reached without acrimony, and there were times when it seemed that the national convention of representatives of the four colonies Cape, Natal, Transvaal and Orange River might break up among recriminations.

Das Kap wurde 1806 britische Kolonie. Davor war das Kap eine niederländische Kolonie, gegründet von der Niederländischen Ostindien-Kompanie (Vereenigde Oostindische Compagnie), die vom niederländischen Staat Hoheitsrechte erhalten hatte. Als die Niederlande 1795 im Zuge des ersten Koalitionskrieges von Frankreich besetzt wurden, nutzten die Briten eine Rebellion in der Kapkolonie, um diese unter ihre Herrschaft zu bringen und den Franzosen zuvorzukommen. 1803 zogen sich die Briten nach dem Frieden von Amiens zunächst wieder zurück und überließen das Kap der Batavischen Republik als Rechtsnachfolgerin der 1798 aufgelösten Niederländischen Ostindien-Kompanie. Bereits 1806 annektierte Großbritannien nach der Schlacht von Blauberg die Kapkolonie jedoch endgültig, nachdem die napoleonischen Kriege in Europa wieder aufgeflammt waren. 1815 wurde die Abtretung an das britische Kolonialreich auf dem Wiener Kongress von den Niederlanden bestätigt, die als Kompensation die früheren Österreichischen Niederlande erhielten.

Zwischen 1830 und 1850 wanderten viele Buren (Bauern) oder Voortrekker (Pioniere) aus der Kapkolonie nach Norden aus. Diese Emigrationswelle wird auch als der Große Treck bezeichnet. Der Grund lag darin, dass die Buren, überwiegend Nachfahren niederländischer Siedler, mit der Einführung des britischen Rechtssystems, der englischen Amtssprache, der Pressefreiheit und vor allem mit der Abschaffung der Sklaverei durch den Slavery Abolition Act 1833 (3 & 4 Will. IV c. 73) nicht einverstanden waren und um ihre kulturelle Identität fürchteten. Die Sklaverei war eine der wirtschaftlichen Grundlagen der burischen Landwirtschaft. Die Afrikaaner, wie sich die Buren selbst nannten, gründeten im Landesinneren außerhalb des britischen Herrschaftsbereichs mehrere unabhängige Burenrepubliken.

Natal wurde 1843 nach Annexion der Republik Natalia britisches Kolonialgebiet. Die Republik Natalia war eine kurzlebige Burenrepublik, die am 11. November 1839 nach der Schlacht am Blood River (gegen die Streitmacht der Zulu) von den Voortrekkern gegründet wurde. 1842 wurden die Buren von den Briten mit Gewalt zur Räumung Natalias gezwungen. 1843 annektierte Großbritannien die Region endgültig. Danach wanderten die meisten Buren nach Nordwesten in das Gebiet, das als Transorangia bezeichnet wurde, aus. Natal wurde 1844 zunächst Teil der Kapkolonie, 1856 aber eine von der Kapkolonie getrennte Kolonie.

Die Republik Transvaal wurde 1852 gegründet (Sand River Convention) und nannte sich seit 1857 offiziell Süd-Afrikanische Republik (Zuid-Afrikaansche Republiek). Die Republik sah sich von Anfang an erheblichen wirtschaftlichen Schwierigkeiten und der Bedrohung durch die Zulu ausgesetzt. 1877 wurde die Republik von den Briten annektiert, in der Annahme, dies würde von den Buren als Rettung angesehen werden. Das Gegenteil war jedoch der Fall und nachdem die Republik am 16. Dezember 1880 erneut ihre Unabhängigkeit erklärt hatte, brach der erste Burenkrieg aus. Mit dem Frieden von Pretoria erhielten die Buren 1881 zunächst Selbstverwaltung unter formeller britischer Oberherrschaft. 1884 bekam die Republik dann ihre volle Unabhängigkeit zurück. Als am Witwatersrand 1885 Gold entdeckt wurde, kam es zu einer Einwanderungswelle nicht-burischer europäischer Siedler (von den Buren Uitlanders genannt), welche zu einer Destabilisierung der Republik führte. 1895 plante der Gouverneur der Kapkolonie Cecil Rhodes einen Putsch der Uitlanders gegen die Burenregierung, der jedoch scheiterte. Aus Furcht vor einer britischen Annexion griffen die Buren daraufhin die Briten an, was 1899 zum zweiten Burenkrieg führte. Im Mai 1902 kapitulierten die letzten burischen Truppen und in der Folge wurde das Transvaal 1902 britische Kolonie.

Der Orange Freistaat (Oranje Vrystaat) wurde 1854 gegründet (Orange River Convention). In der Folge des zweiten Burenkrieges, dem sich die Republik auf Seiten der Buren angeschlossen hatte, wurde der Orange Freistaat 1902 zur britischen Kolonie Orange River. Von 1848 bis 1854 bestand bereits die Orange River Sovereignty als britische Kolonie.

Örtliche Selbstverwaltung erhielten die Cape Colony 1872, die Natal Colony 1897, die Transvaal Colony 1907 und die Orange River Colony ebenfalls 1907.

Controversy over the franchise went to the heart of disagreement. The Cape delegates argued for the extension of their own system, restricted but colour-blind; the other three colonies were adamant that voting should be for Whites only. No one seriously suggested that there should be votes for women. In the end the four unified colonies Cape (renamed Cape of Good Hope Province), Natal, Transvaal and Orange River (renamed Orange Free State Province) were allowed to keep their existing franchise qualifications and the Cape was the only one which permitted voting by (property owning) non-whites.

Section 135 of the South Africa Act 1909: „Subject to the provisions of this Act, all laws in force in the several Colonies at the establishment of the Union shall continue in force in the respective provinces until repealed or amended by Parliament, or by the provincial councils in matters in respect of which the power to make ordinances is reserved or delegated to them. All legal commissions in the several Colonies at the establishment of the Union shall continue as if the Union had not been established."

Whilst is it argued that Britain hoped that the non-racial franchise contained in the constitution courtesy of the Cape would eventually be extended to the whole of the Union, it is hardly likely that this was truly believed possible. The British government was far more interested in creating a unified country within its Empire, one which could support and defend itself. A union, rather than a federalised country, was more agreeable to the Afrikaner electorate since it would give the country a greater freedom from Britain. It was necessary to have Afrikaner and English working together, especially following the slightly acrimonious end to the war, and the satisfactory compromise had taken the last eight years to reach. Written into the new constitution, however, was a requirement that a two-thirds majority of parliament would be necessary to make any changes.

Although not truly independent, most historians, especially those in South Africa, consider 31 May 1910 to be the most appropriate date to be commemorated. South Africa's independence was not officially recognised by Britain until the Statute of Westminster in 1931 (22 & 23 Geo. V c. 4), and it was not until 1961 that South Africa became a truly independent republic.

Als Dominions wurden von 1907 bis 1948 offiziell die sich selbst regierenden Kolonien des British Empire bezeichnet. Die begriffliche Neuschöpfung sollte den weißen Siedlungskolonien signalisieren, dass sie einen höheren Status im British Empire hatten als die anderen Kolonien. Ein Dominion war mit dem britischen Mutterland nur noch durch die britische Krone als gemeinsames Staatsoberhaupt verbunden, die in den Dominions durch einen Generalgouverneur repräsentiert wurde.

Der Verbund Großbritanniens und seiner Kolonien wurde ursprünglich als British Empire bezeichnet. Um den wachsenden Unabhängigkeitsbestrebungen entgegen zu kommen, wurde 1926 ein Ausschuss zur Neubestimmung der Beziehungen innerhalb des British Empire, die sogenannte Imperial Conference, eingesetzt. Den Vorsitz hatte der ehemalige britische Premierminister und Außenminister Lord Balfour. Von ihm stammt die berühmt gewordene Definition über die Beziehungen zwischen den Dominions und Großbritannien, welche die Erkenntnisse des Balfour-Berichtes zusammenfasste: „Sie (die Dominions und Großbritannien) sind autonome Gemeinschaften innerhalb des British Empire, gleichberechtigt, in keiner Weise in irgendeiner Hinsicht der Innen- und Außenpolitik einander untergeordnet, dennoch vereinigt durch eine gemeinsame Untertanentreue zur Krone und freiwillig zusammengeschlossen als Mitglieder des British Commonwealth of Nations." Diese Formulierung war gleichbedeutend mit der Souveränität der Dominions, die formell mit dem Statute of Westminster 1931 durch das englische Parlament bestätigt wurde. Fortan bildeten die Dominions gemeinsam mit dem Mutterland Großbritannien das British Commonwealth of Nations. Daneben existierten weiterhin Kronkolonien und Protektorate. Im Jahre 1948 erfolgte die Umwandlung in das Commonwealth of Nations, welches keinen Staatenbund im Sinne des Völkerrechtes mehr darstellte. Die Dominions wurden Länder des Commonwealth of Nations und erhielten das Recht, den Commonwealth of Nations zu verlassen.

Neben dem Rassenkonflikt war der Gegensatz zwischen den rassenpolitisch gemäßigteren, probritischen englischsprachigen Weißen und den Buren ein innenpolitischer Konflikt, der das halbe Jahrhundert des Bestehens der Südafrikanischen Union prägte. Die Südafrikanische Union stand zwar in beiden Weltkriegen an der Seite Großbritanniens, geriet aber nach der Bildung einer Alleinregierung durch die Buren 1948 immer mehr in Gegensatz zum ehemaligen Mutterland. Als Folge davon löste die Südafrikanische Union ihre Bindungen zur Krone und wurde am 31. Mai 1961 durch den Republic of South Africa Constitution Act No. 32 of 1961 zur Republik Südafrika, die das Commonwealth of Nations wegen der Apartheidspolitik verließ, 1994 aber wieder eintrat.

Various segregation or apartheid laws were passed before the National Party took complete power in 1948, including the anti-indian legislation. But discriminatory legislation existed even before the Union of South Africa was formed. The South Africa Act 1909 left the anti-Indian and other discriminatory legislation against black groups intact. The most significant are described below.

Apartheid selbst ist kein genuines Wort des Afrikaans. Das Afrikaans kannte Anfang des zwanzigsten Jahrhunderts nur das Adjektiv „apart“ (getrennt) als Lehnwort des Französischen. Der früheste Beleg für die Verwendung des Begriffs als Übersetzung des englischen Wortes „segregation“ stammt aus einer 1938 gehaltenen Rede des späteren Premierministers J. G. Strijdom.

II. Racial Legislation from 1806 to 1910

The Cape Articles of Capitulation of January 10, 1806 allowed the burghers and inhabitants to retain all their rights and privileges which they have enjoyed hitherto. Roman-Dutch law was further protected from extinction by the English common law rule that the laws of a conquered country continue in force, until they are altered by the conqueror.

The Cape of Good Hope Proclamation of January 23, 1806 by the British military governor, just after the British had conquered the Cape, outlawed the slave trade, but allowed the settlers to retain and sell or buy their human property. Apparently, then, human beings were no longer allowed to be captured and sold as slaves, although it seemingly allowed the ownership and buying and selling of human property. Prohibition to own human property first became effective with the Slavery Abolition Act 1833 (3 & 4 Will. IV c. 73).

The Hottentot Proclamation of November 1, 1809 (otherwise known as the Caledon Code) was the first of a series of pass laws initiated by the British authorities, and it aimed at helping the Afrikaner farmers by way of controlling the mobility of the labour force. It decreed that every Hottentot (or Khoikhoi) was to have a fixed place of abode and that if he wished to move he had to obtain a pass from his master or from a local official. Pass laws were nothing new, though. From 1760 onward every slave going from the town to the country or from the country to town had to carry a pass signed by his master which any passers-by might ask him to show. In 1797 the Swellendam Board of Landdrost and Heemraden (abolished by Ordinance No. 33 of 1827) ordained that all Hottentots moving about the country for any purpose should carry passes. The real novelty of the Hottentot Proclamation laid in its elaborate detail, especially its detailed provisions for the protection of the Hottentot labourer, and in the fact that special steps were taken to carry it out. The Hottentot Proclamation made the registration of labour contracts compulsory if covering one month or more, and laid down conditions under which an employer could withhold wages for goods supplied by his servant. Coloureds also became subject to the ordinary Colonial taxes (in so far as they did not live with the farmers under labour contracts) and to the public services exacted from Europeans. The Hottentot Proclamation was later repealed by the Ordinance No. 50 of 1828, since the

incoming British settlers, who were not allowed to buy slaves, could not find any free-moving wage-labour due to the pass laws.

The Apprenticeship of Servants Proclamation of April 23, 1812 allowed a settler to apprentice and employ without remuneration a free Coloured child, from the age of eight to eighteen years, if it was an orphan, or destitute, or had grown up on the employer's property. The regulations might have saved the Coloured from utter destruction, as some observers claimed, but only by reducing them to the level of serfs, at the mercy of farmers and officials who were also farmers.

Under the provisions of the Ordinance No. 49 of 1828 prospective black immigrants were to be granted passes for the sole purpose of seeking work. All employment agreements for more than a month were to be registered as contracts, and no employer was allowed to coerce a worker into entering his employ. Thus a system of passes and short-term labour contracts was adopted for the so-called Native Foreigners.

The Ordinance No. 50 of 1828 repealed the Hottentot Proclamation of 1809. Basically, it freed the Coloureds from the pass system and the risk of being flogged for offences against the labour laws. However, while passes for Khoikhoi were abolished passes for other Africans remained on the books (see Ordinance No. 49 of 1828). Thus, passes were abolished for the Khoisan, their right to land ownership was at last made clear, and they were no longer to be subject to any compulsory service to which other of His Majesty's Subjects were not liable. Furthermore, their children could not be apprenticed without parental consent. Contracts of hire for more than a month had to be in writing and in no case should exceed a year. Ordinance No. 50 was thus a wide-ranging measure, whose only defect was that it applied to Hottentot and other free persons of colour, instead of being colour-blind. The British authorities hoped that this would stimulate the Cape's feeble economy by increasing productivity of both the labouring classes (now given the incentive of the profit motive) and the former master class (now deprived of indolence-inducing coerced labour). Ordinance No. 50 remained in force until it was superseded by the Masters and Servants Ordinance No. 1 of 1841.

The Slavery Abolition Act 1833 (3 & 4 Will. IV c. 73) was an Act of the Parliament of the United Kingdom abolishing slavery throughout the British Empire. The following Ordinance No. 1 of 1835 was supposed to prepare the slaves for freedom, but changed little more than their name. Thus, formerly slaves were now apprentice-labourers.

The Masters and Servants Ordinance No. 1 of 1841 re-enacted the disciplinary code prescribed for apprenticed ex-slaves and was the first labour law to include workers of all races. The word „servant“ as defined included any person employed for hire, wages, or other remuneration to perform any handicraft or bodily labour in agriculture or manufactures, or in domestic services. It also imposed a penalty of twenty shillings for each month that a child, whether destitute or not, was illegally detained by an employer. Penalties were to be payed either to the child's parent (or guardians), or, in the case of destitute children, to the Magistrate. This repealed the Ordinance No. 50 of 1828, and was itself later replaced by the Masters and Servants Act No. 15 of 1856.

The Ordinance No. 3 of 1848 modified Ordinance No. 49 of 1828 by allowing employers to indenture Xhosa - without any written agreement as to wages - before they entered the colony.

The Masters and Servants Act No. 15 of 1856, which had been passed in the Cape Colony, remained in force after Union. The act made it a criminal offence to breach the contract of employment. Desertion, insolence, drunkenness, negligence and strikes were also criminal offences. Theoretically this law applied to all races, but the courts held that the law was applicable only to unskilled work, which was performed mostly by black people. Designed to enforce discipline on ex-slaves, peasants, pastoralists and a rural proletariat, it survived a century of industrialism and became the model for similar laws in the Republic of Transvaal (Act No. 13 of 1880), the Natal Colony (Act No. 40 of 1894) and the Orange River Colony (Ordinance No. 7 of 1904). The act superseded the Masters and Servants Ordinance No. 1 of 1841. Though most of the clauses of the 1841 Ordinance were taken over verbatim by the 1856 act, there were nevertheless important differences. Whereas the 1841 Ordinance had imposed a penalty of twenty shillings for each month that a child, whether destitute or not, was illegally detained by an employer, the 1856 act decreed no penalty at all for the detention of children whose parents or guardians were still living, and altered the penalty for the detention of destitute children to not more than twenty shillings nor less than five shillings. The act was not repealed until the Second General Law Amendment Act No. 94 of 1974.

The Kaffir Pass Act No. 23 of 1857 prohibited Xhosa from entering the colony except to work.

The Kaffir Employment Act No. 27 of 1857 stipulated that Xhosa had fourteen days to find employment after the expiration of a contract.

The Natal Coolie Law No. 14 of 1859 made it possible for the colony to introduce immigration of Indians as indentured labourers with the option to return to India at the end of the five year period in which case a free passage would be provided. The system also provided for the labourers to re-indenture for a further five year period which would make them eligible to settle permanently in the colony. The indentured Indian labourers were also entitled to a gift of crown land and full citizenship rights. But this section was repealed by the Act No. 25 of 1891.

The Colonial Laws Validity Act 1865 (28 & 29 Vic. c. 63) was an Act of the Parliament of the United Kingdom. According to this, there yould be no competition between Westminster and a colonial legislature. Any colonial law repugnant to an Act of British Parliament extending to that colony was null and void.

The Natal Native Franchise Law No. 11 of 1865 laid down that no more blacks could even petition for inclusion on the electoral roll unless they had been residents of Natal for twelve years, followed by the holding of a letter of exemption from native law for another seven years.

The Natal Exemption Law No. 28 of 1865 laid down that Africans desiring to be released from native law had to produce proof of literacy and take an oath of allegiance, whereupon the Lieutenant-Governor could admit them some of the privileges of citizenship at discretion.

The Natal Coolie Consolidation Amendment Act No. 12 of 1872 made provision for a Protector of Indian immigrants, abolished flogging for breaches of the Masters and Servants Act and the improvement of medical treatment for Indian immigrants. The Immigration Trust Board was established in Natal under Law No. 208 of 1874.

The Peace Preservation Act No. 13 of 1878 prohibited the sale of weapons to non-whites in the Cape Colony.

The Cape Vagrancy Amendment Act No. 23 of 1879 contained pass laws for non-whites in the mining industry. It gave property owners or their representatives the right to apprehend idle or disorderly persons wandering over any farm or loitering near a dwelling place, shop, store, kraal or any other enclosed place or loitering upon any road crossing a farm. It supplemented the pass laws by prescribing a maximum of six months' imprisonment with hard labour, soare diet and solitary confinement for any idle and disorderly person. Since the onus of proof was placed on the Africans who were arrested it was obviously in their interest to carry passes when they travelled.

The Natal Act No. 2 of 1883 excluded from the franchise all persons subject to special laws and tribunals. This included all Africans.

The first discriminatory legislation directed at Indians was Law No. 3 of 1885 passed in the Republic of Transvaal. The law was applied to persons belonging to any of the native races of Asia, including so-called Coolies, Arabs, Malays, and Mohammedan subjects of the Turkish Empire. These persons could not obtain the burgher right of the Republic of Transvaal and could not be owners of fixed property except only in such streets, wards and locations as the government for purposes of sanitation had assigned to them to live in. They had to inscribe in a register, if they settled with the object of trading. The government had the right for purposes of sanitation, to assign to them certain streets, wards and locations to live in. This did not apply to those who lived with employers.

The Registration of Servants Act No. 2 of 1888 was passed in Natal. This law classified Indians as members of an „uncivilized race“ and they were hence liable to register. Free Indians were also forced to carry passes or suffer court arrest.

In the Orange Free State the „Law to Provide Against the Influx of Asiatics and the Removal of White Criminals Entering This State From Elsewhere“ was passed as Act No. 29 of 1890. The act prohibited an Arab, a Chinaman, a Coolie or any other asiatic or coloured person from carrying on business or farming in the Orange Free State. All indian businesses were forced to close and owners deported from the Orange Free State without compensation. At that time there were only 9 licensed Indian traders in the Orange Free State.

Through the promulgation of the Indian Immigration Law Amendment Act No. 17 of 1895 the Colony of Natal imposed a £3 „penalty“ tax on ex-indentured Indians, who failed to re-

indenture or return to India after completion of their labour contracts. The penalty was imprisonment or deportation. In 1900 the act was extended to children (boys 16 years and over, girls 12 years and over) and became operational in 1901. The act was repealed in 1913 after the Passive Resistance Campaign.

The Natal Franchise Act No. 8 of 1896 ordained the exclusion from franchise of natives, or the descendents in the male line of natives, or of countries not (then) possessing represantitive institutions. This disenfranchised Indians in the Colony of Natal. Africans were already disenfranchised in 1865 (see the Natal Native Franchise Law No. 11 of 1865).

The Natal lmmigration Restriction Act No. 1 of 1897 imposed an education, health, age and means test on prospective entrants. The act was technically non-racial, but was administered in such a manner that most Europeans were judged eligible to enter Natal while virtually all Indians were not. As the prime minister of Natal told the legislature, „it never occurred to me for a single minute that the act should ever be applied to English immigrants.“ A „dictation test“ was introduced as a device for ex-cluding unwanted immigrants. Immigration officials were given the power to exclude any person who failed to pass a 50-word dictation test in any European language. This act virtually stopped all further immigration of free Indians into the colony.

The Law No. 3 of 1897 prohibited marriages of whites with persons of other colours within the Republic of Transvaal.

The Dealers' Licenses Act No. 18 of 1897 empowered Natal licensing officers to issue or refuse licenses.

The Law No. 15 of 1898 stated that no person of colour could be a licensed holder, or in any way connected with the workings of the diggings in the Republic of Transvaal.

The Regulations for Towns of 1899 (Government Notice No. 208) in the Republic of Transvaal stated that persons of colour were prohibited from walking on the side-walks (pavements) or steps serving as a side-walk of the streets of its towns.

The Peace Preservation Ordinance and Ordinance No. 5 of 1903 for the Transvaal Colony permitted to regulate the reentry of Indians who had left the Transvaal for Natal, the Cape Colony and India when war broke out. It segregated Asiatics into locations and refused trading licenses except in Asiatic bazaars. Pre-war licenses of Asiatics became non-transferable.

The Transvaal Immorality Ordinance No. 46 of 1903 imposed severe penalties for „immorality“ between Europeans and Asiatics.

The Transvaal Corporations Ordinance No. 58 of 1903 authorized local authorities to proclaim, move, deproclaim and manage townships for non-whites. The residents could not buy land and have to rent. They did have the right to compensation if moved and were allowed to erect buildings under strict regulations.

The Transvaal Labour Importation Ordinance No. 17 of 1904 facilitated the importation of Chinese indentured labourers. However, it was designed to protect the interests of European miners and traders. It stipulated that the Chinese could be employed only in the exploitation of minerals within the Witwatersrand district. Thus it specifically prohibited the employment of Chinese in fifty-five scheduled occupations, including such non-mining trades as bricklaying, carpentry, plumbing, painting, gardening and clerical work. The right to recruit Chinese workers was withdrawn by the British government in November 1906.

The Transvaal Immigration Restriction Act No. 15 of 1905 provided the government to control the entry of Indians into Transvaal through a special permit system.

The Cape School Boards Act No. 35 of 1905 made primary education compulsory for white but not for Coloured children.

The Transvaal Ordinance No. 29 of 1906 subjected all Indians to compulsory registration and identification by means of fingerprints. Registration Certificates (Passes) were to be carried at all times and had to be produced on request to a police officer under penalty of a fine or imprisonment.

The Cape Colony Immigration Act No. 30 of 1906 made all future immigration of Indians to the Cape Colony subject to literacy requirements.

The Hawkers' Licences Act No. 35 of 1906 was passed in the Cape Colony. Similar to the Dealers' Licenses Act No. 18 of 1897 in Natal municipal licensing officers were empowered to issue or refuse trading licenses to Indians.

The Transvaal Asiatic Law Amendment Act No. 2 of 1907 (also known as the „Black Act“) contained regulations for all asians, men, women or children of eight years or upwards, entitled to reside in the Transvaal to register his or her name with the Registrar of Asiatics and to carry certificates of registration (similar to passes) with fingerprints on it at all times, to be shown to the police on demand.

The Transvaal Arms and Ammunition Act No. 10 of 1907 prohibited the issue of licences to Indians without the sanction of the Minister.

The Transvaal Immigration Restriction Act No. 15 of 1907 imposed education tests on all future immigrants to the Transvaal and established the Immigration Department to check against illegal Asiatic entries.

The Education Act No. 25 of 1907 established separate schools for coloured children in Transvaal. Coloured children were not allowed to visit European schools. The education was free and compulsory for white children, but not for coloured children. Coloured meant all people of colour, Africans, Indians and Coloureds.

The Vrededorp Stands Ordinance No. 27 of 1907 (Transvaal Colony) expelled Indians who had stands on the pretext of unsanitary conditions.

The Workmen's Compensation Act No. 36 of 1907 denied benefits to asiatics and coloured people in the Transvaal Colony. A workman was defined as a white person.

The Immorality Amendment Ordinance No. 16 of 1908 outlawed sexual relations between whites and coloured persons in Transvaal.

The Townships Amendment Act No. 34 of 1908 allowed coloured persons in the Transvaal Colony to live in townships only as domestic servants, not as independent merchants or free citizens.

The Transvaal Precious Base Metals Act (Gold Law) No. 35 of 1908 restricted occupation by coloured persons of land proclaimed as a public digging. Coloured persons were debarred from acquiring mining title and privileges and from trading in such areas.

The Transvaal Public Service and Pensions Act No. 19 of 1909 excluded Indian Civil Servants.

The Natal Education Act No. 6 of 1910 provided compulsory education for Whites only. A compulsory education for Indians was not instituted.

The Natal Act No. 31 of 1910 provided pensions for teachers in government-aided schools. Indian teachers were excluded.

III. Racial Legislation from the Union to 1947

The Mines and Work Act No. 12 of 1911 permitted the granting of certificates of competency for a number of skilled mining occupations to whites and coloureds only. The Act did not specify that blacks should be discriminated against in any way. Indeed it made no mention of race or colour. Nor did it specifically and clearly give the government Mining Engineer powers to introduce a legal colour bar. But under section 4 (n) it gave the Governor-General powers to grant, cancel and suspend certificates of competency to mine managers, mine overseers, mine surveyors, mechanical engineers, engine-drivers and miners entitled to blast. It also gave him the power to decide which other occupations should be required to possess certificates of competency. The act was repealed by the Mines and Work Amendment Act No. 27 of 1956.

Das Ergebnis war die definitive Trennung am Arbeitsplatz und die Verwehrung des Zugangs zur Facharbeit für Schwarze.

The Immigrants Regulation Act No. 22 of 1913 was provided for persons not literate in a European language and so-called undesirables, i.e. persons deemed undesirable on economic grounds or on account of standards or habits of life, to be excluded from the country. The

Minister of Interior classified all asiatic persons undesirable, so that the Indian immigration was brought to a halt indefinitely.

Under the Natives' Land Act No. 27 of 1913 (also known as the „Black Land Act“) black africans were no longer be able to purchase or lease land from whites outside of designated reserves. This restricted black occupancy to less than eight per cent of South Africa's land. The Cape was the only province excluded from the act as a result of the existing black franchise rights which were enshrined in the Constitution of the Union of South Africa Act 1910. During the apartheid era, the reserves were converted to Bantustans and later into „independent“ states within South Africa. The act was repealed by the Abolition of Racially Based Land Measures Act No. 108 of 1991.

Mit diesem Gesetz begann die Reservatspolitik bzw. die sogenannte territorial getrennte Entwicklung.

The Indian Relief Act No. 22 of 1914 was passed after a protracted period of passive resistance led by Gandhi. The act abolished the poll tax, the registration and finger-printing requirements of the „Black Act“ of 1907, recognized marriages contracted in terms of traditional Hindu and Muslim rites, and facilitated the entry of wives into the Union, but the Indians were still not allowed to own property in the two former republics of Transvaal and Orange Free State. Indians were not allowed to live in the Orange Free State. Indian children of parents living in South Africa were allowed to immigrate. But major issues such as restrictions on land ownership, trading rights, immigration and movement between provinces remained unresolved.

The Asiatics Land and Trading (Transvaal) Amendment Act No. 37 of 1919 protected the trading rights of a few Indians. They were allowed to continue trade on property outside designated Asiatic bazaars. New licences were stopped. Indians were not allowed to own immovable property. A register of existing licences and business owned by Indians was to be compiled.

The Native Affairs Act No. 23 of 1920 established a native affairs commission; provided for a system of local councils in the reserves; and authorized the administration to convene conferences of chiefs, councillors and prominent Natives with a view to the ascertainment of the sentiments of the Native population. It set up separate tribal councils for the administration of the reserves and advisory councils for Africans in urban areas, all under the aegis of the Native Affairs Department and under the ultimate authority of the Prime Minister. Together with the Native Administration Act No. 38 of 1927 it was part of a process of transferring power over the regulation of African life from Parliament to the executive.

The Housing Act No. 25 of 1920 enabled funds to be made available to local governments to build housing for the poor. The resultant estates were required to be racially segregated, separated from one another by open spaces and with separate access roads. It further created a Central Housing Board which was to overlook its implementation.

The Apprenticeship Act No. 26 of 1922 gave unionized white workers a secure position by setting educational qualifications for apprencticeship in numerous trades. That made it impossible for most Africans to be apprenticed, since they lacked the means to meet the prescribed educational level. It so adjusted the educational provisions for admission to trades that it gave white trainees real advantages over their coloured rivals.

The Native (Urban Areas) Act No. 21 of 1923 divided South Africa into „prescribed“ (urban) and „non-prescribed“ (rural) areas, and strictly controlled the movement of black males between the two. Each local authority was made responsible for the blacks in its area and Native Advisory Boards were set up to regulate the inflow of black workers and to order the removal of „surplus“ blacks (i.e. those not in employment). As a result towns became almost exclusively white. The only blacks allowed to live in town were domestic workers. The act was superseded by the Native (Urban Areas) Consolidation Act No. 25 of 1945 and repealed by the Abolition of Influx Control Act No. 68 of 1986.

Damit gab es praktisch ein städtisches Niederlassungsverbot für Schwarze.

The Industrial Conciliations Act No. 11 of 1924 was provided for job reservation. It excluded blacks from membership of registered trade unions and prohibited the registration of black trade unions. The act was repealed by the Industrial Conciliation Act No. 36 of 1937. The Industrial Conciliation Act No. 28 of 1956 replaced the Industrial Conciliation Acts 1924 and 1937. The Labour Relations Act No. 66 of 1995 repealed the Industrial Conciliation Act 1956 and all its amendments.

Das Gesetz bewirkte den Schutz der Weißen, Inder und Coloureds vor schwarzer Arbeitskonkurrenz.

The Mines and Works Amendment Act No. 25 of 1926 bracketed Coloured with whites into a position of privilege. For there was no question of segregating the coloured who spoke the Afrikaner's language, shared his outlook and stood closer to him than to Africans. Furthermore, the key section of this act stated that the minister, before announcing regulations for issuing certificates of competency (including the key blasting certificate, for nearly a century of license of the white miner), should seek the advice of the owners and of the organizations whose members hold a majority of the certificates, that is, the white unions, including the Mine Worker's Union. He was to do this through the formation of advisory committees. This act was revised in 1956, and finally abolished in 1987.

The Immorality Act No. 5 of 1927 prohibited extra-marital intercourse between whites and blacks. The act, as extended by the Immorality Amendment Act No. 21 of 1950, was repealed by the Sexual Offences Act No. 23 of 1957 and the Immorality and Prohibition of Mixed Marriages Amendment Act No. 72 of 1985.

The Asiatics in the Northern Districts of Natal Act No. 33 of 1927 prohibited Indians from remaining for more than a brief period in certain parts of Natal unless prior permission has been obtained.

The Native Administration Act No. 38 of 1927 allowed the Minister, whenever he deemed it expedient in the public interest, without prior notice to any persons concerned, to order any tribe, portion thereof, or individual black person, to move from one place to another within the Union of South Africa. Further, the act prohibited the fomenting of feelings of hostility between blacks and whites. In 1974 this was extended to all racial groups (Act No. 70 of 1974). All the reported cases concern charges of inciting hostility among blacks towards the white section of the community rather than cases of whites who cause feelings of racial hostility by racially abusive comments. The act was used extensively to carry out forced removals. The act was repealed by the Abolition of Influx Control Act No. 68 of 1986 and the Abolition of Restrictions on Free Political Activity Act No. 206 of 1993.

The Transvaal Asiatic Land Tenure Act No. 35 of 1932 sought to racially segregate various residence areas.

The Slums Act No. 53 of 1934 was applied for demolition of various inner but dilapidated suburbs. The displaced Black populations were largely rehoused in segregated mono-racial municipal housing estates on the urban periphery. Thus, by proclaiming certain non-White areas as slums, these areas could be condemned and people moved with overtly non-racial motives.

By the Representation of Natives Act No. 12 of 1936 African voters in the Cape were removed from the common roll on which they had been registered since 1854, although the Cape Constitution of 1853 provided that all males living permanently within the colony who possessed property worth £25 were permitted to vote, a vote which until 1887 did not take place under a secret ballot. Voting on a communal roll, they would elect three whites to the assembly, then consisting of 150 members elected by whites and a sprinkling of Coloured; and two whites to the provincial council. Chiefs, local councils, urban advisory boards and election committees in all provinces were to elect four whites to the senate by a system of block voting. The act also created a Native Representative Council of six white officials, four nominated and twelve elected Africans. Before, by the Cape Parliamentary Registration Act of 1887 thousands of Africans in the Cape had been disfranchised by excluding tribal forms of tenure from the property qualifications for the vote. The Cape Franchise and Ballot Act of 1892 eventually raised the franchise qualifications from £25 to £75 to the disadvantage of Africans, Coloureds and poor whites.

The Development Trust and Land Act No. 18 of 1936 expanded the reserves to a total of 13,6 per cent of the land in South Africa and authorised the Department of Bantu Administration and Development to eliminate „black spots“ (black-owned land surrounded by white-owned land). The South African Development Trust was established and could, in terms of the act, acquire land in each of the provinces for black settlement. The act was repealed by the Abolition of Racially Based Land Measures Act No. 108 of 1991.

The Aliens Act No. 1 of 1937 restricted and regulated the entry of certain aliens into the Union and regulated the right of any person to assume a surname. The act was repealed by the Births and Deaths Registration Act No. 51 of 1992.

The Native Law Amendment Act (Influx Control) No. 46 of 1937 prohibited acquisition of land in urban areas by blacks from non-blacks except with the Governor-General's consent. The act was epealed by the Abolition of Influx Control Act No. 68 of 1986 and the Abolition of Racially Based Land Measures Act No. 108 of 1991.

The Aliens Registration Act No. 26 of 1939 was provided for the registration and control of aliens. The act was repealed by the Aliens Control Act No. 96 of 1991.

The Factories, Machinery and Building Work Act No. 22 of 1941 gave way for separating workers of different races. Thus, a minister, purporting to safeguard the physical, social and moral welfare of workers, could require an employer to segregate them by race or sex on the factory floor, in rest rooms and toilets. It also limited the number of hours that skilled workers

could work overtime. This prevented white skilled workers from cashing in on the labour scarcity by working longer hours. Also, the use of emergency workers in wartime manufacturing reduced the average white wage, because most of these workers were female.

The War Measures Act No. 145 of 1942 outlawed strikes by Africans, exposed strikers to the savage maximum penalty of a £500 fine or three years' imprisonment, and imposed compulsory arbitration at his discretion. Furthermore, this measure was renewed from time to time long after the war, until the Native Labour Settlement of Disputes Act No. 48 of 1953 came into force.

The Trading and Occupation of Land (Transvaal and Natal) Restriction Act No. 35 of 1943 sought to confine Asian ownership and occupation of land to certain clearly defined areas of towns.

The Native (Urban Areas) Consolidation Act No. 25 of 1945 introduced influx control, applicable to black males only. People who were deemed to be leading idle or dissolute lives or who had committed certain specified offences could be removed from an urban area. The act was repealed by the Abolition of Influx Control Act No. 68 of 1986.

The Asiatic Land Tenure and Indian Representation Act No. 28 of 1946 (also known as the „Ghetto Act“) prescribed Indians to live and trade in restricted areas and to occupy property only inside certain limited areas. Furthermore the act granted Indians a separate representation by three white members of parliament and two senators in the Central Parliament. This chapter of the law was rejected by the Indian population and the act was repealed by the Asiatic Laws Amendment Act No. 47 of 1948, which was repealed by the Abolition of Racially Based Land Measures Act No. 108 of 1991. The chapter on land tenure was repealed by the Aliens Control Act No. 96 of 1991.

Das Gesetz, von den Indern „Ghetto Act“ genannt, schränkte die Bewegungs- und Handelsfreiheit und den Landkauf der indischen Bevölkerungsgruppe ein und bestimmte, wo Handel und Gewerbe betrieben werden durften.

IV. Apartheid Legislation from 1948 to 1990

What makes South Africa's apartheid era different to segregation and racial hatred that have occurred in other countries is the systematic way in which the National Party, which came into complete power in 1948, formalised it through the law. The main laws are described below.

The Unemployment Insurance Amendment Act No. 41 of 1949 excluded the great bulk of Africans from benefits of unemployment insurances.

The South African Citizenship Act No. 44 of 1949 renounced common citizenship arrangements existing among members of the Commonwealth and suspended the automatic granting of citizenship to immigrants from the member nations. Citizenship by registration caused the greatest controversy as it affected recent immigrants. The interior minister reserved the right to grant or withhold citizenship without recourse to the courts. A certificate of

citizenship would be granted to a person who had passed a still undefined test on the rights and responsibilities of citizenship.

The Prohibition of Mixed Marriages Act No. 55 of 1949 prohibited marriages between white people and people of other races. Between 1946 and the enactment of this law, only 75 mixed marriages had been recorded, compared with some 28.000 white marriages. The act was repealed by the Immorality and Prohibition of Mixed Marriages Amendment Act No. 72 of 1985.

The Immorality Amendment Act No. 21 of 1950 prohibited adultery, attempted adultery or related immoral acts (extra-marital sex) between white and black people. The act made it a criminal offence for a white person to have any sexual relations with a person of a different race. The act was repealed by the Sexual Offences Act No. 23 of 1957 and the Immorality and Prohibition of Mixed Marriages Amendment Act No. 72 of 1985.

Schon durch den Immorality Act No. 5 of 1927 waren geschlechtliche Beziehungen zwischen Weißen und Schwarzen unter Strafe gestellt worden. Nunmehr wurde das Gesetz erweitert und auf den sexuellen Umgang zwischen Weißen und Coloureds ausgedehnt.

The Population Registration Act No. 30 of 1950 required people to be identified and registered from birth as one of four distinct racial groups: White, Bantu (Black African), Coloured and other. The act was one of the „pillars“ of apartheid. Race was reflected in the individual's Identity Number. A Race Classification Board took the final decision on what a person's race was in disputed cases. The act was typified by humiliating tests which determined race through perceived linguistic and/or physical characteristics. The wording of the act was imprecise, but was applied with great enthusiasm: „A White person is one who is in appearance obviously white – and not generally accepted as Coloured – or who is generally accepted as White – and is not obviously Non-White, provided that a person shall not be classified as a White person if one of his natural parents has been classified as a Coloured person or a Bantu. A Bantu is a person who is, or is generally accepted as, a member of any aboriginal race or tribe of Africa. A Coloured is a person who is not a White person or a Bantu.“ It could lead to members of an extended family being classified as belonging to different races, e.g. parents White, children Coloured. Where one was allowed to live and work could rest on such absurd distinctions as the curl of one's hair or the size of one's lips. The act was repealed by the Population Registration Act Repeal Act No. 114 of 1991.

Ziel des Gesetzes war die Klassifizierung der gesamten Bevölkerung, um rassistische Diskriminierung reibungslos vollziehen zu können. Die Diskriminierung erfasste sämtliche Bereiche des öffentlichen wie des privaten Lebens. In Südafrika gab es deshalb verschiedene Rechtsordnungen für verschiedene Bevölkerungsgruppen. Es gab Weißenrecht und Schwarzenrecht. Zahllose Ergänzungsgesetze folgten und dienten der Orientierung des umfangreichen Verwaltungsapparates, der die Klassifizierung vollzog. Durch Section 1 des Population Registration Amendment Act 1967 wurden neben den sich als schwierig zu handhabenden biologischen Merkmalen wie Hautfarbe und Haardichte auch beliebige soziale Unterscheidungskriterien eingeführt: „Bei der Entscheidung, ob eine Person der Erscheinung nach offenkundig eine weisse Person ist oder nicht, sollen ihre Gewohnheiten, Bildung, Redeweise und Benehmen in Betracht gezogen werden.“

The Group Areas Act No. 41 of 1950 forced physical separation between races by creating different residential areas for different races. The act led to forced removals of people living in „wrong“ areas, for example coloureds living in District Six in Cape Town. For the first time, it at least potentially extended compulsory general segregation to Coloureds; centralised control over racial segregation, effectively undermining municipal autonomy; laid the basis for long-range, wide-scale land allocation planning; opened the way to greatly expanded (though of course strictly segregated) public housing provision especially for the poorer sections of the urban population; provided for retroactive segregation; and massively

interfered with concepts of property rights generally. The act was superseded by the Group Areas Acts No. 77 of 1957 and No. 36 of 1966 and repealed by the Abolition of Racially Based Land Measures Act No. 108 of 1991.

The Suppression of Communism Act No. 44 of 1950 outlawed communism and the Community Party in South Africa. Communism was defined so broadly that it covered any call for radical change. Communists could be banned from participating in a political organisation and restricted to a particular area. The act was repealed by the Internal Security and Intimidation Amendment Act No. 138 of 1991.

Die Mitgliedschaft in der Kommunistischen Partei wurde mit Gefängnis bis zu zehn Jahren bestraft. Das Gesetz richtete sich darüber hinaus gegen jeden, der ein kommunistisches Ziel vertrat, verteidigte oder förderte. Im Ergebnis wurden alle gegen das System gerichteten Bestrebungen als „kommunistisch“ qualifiziert. Das betraf Personen, welche die Abschaffung der Passgesetze forderten oder sich für Menschenrechte und allgemeines Wahlrecht einsetzten. Bis 1976 wurde das Gesetz achtzigmal ergänzt.

The Bantu Building Workers Act No. 27 of 1951 allowed black people to be trained as artisans in the building trade, something previously reserved for whites only, but they had to work within an area designated for blacks. The act made it a criminal offence for a black person to perform any skilled work in urban areas except in those sections designated for black occupation. The act was repealed by the Industrial Conciliation Amendment Act No. 95 of 1980.

The Separate Representation of Voters Act No. 46 of 1951 led together with the Separate Representation of Voters Amendment Act No. 30 of 1956 to the removal of coloureds and asians from the common voters' roll in the Cape and placed them on a communal roll. Africans in the Cape had already been removed from the common roll in 1936 (see the Representation of Natives Act No. 12 of 1936).

Mit dem Gesetz wurde die auf der Verfassung des Kaps von 1853 basierende Repräsentation der Coloureds im Lokalparlament von Kapstadt abgeschafft, die ihnen auch nach 1910 in der Kapprovinz noch verblieben war. Die Verabschiedung dieses Gesetzes führte zu einer mehrjährigen Auseinandersetzung mit der Justiz. Nachdem die Regierung vor dem Supreme Court in der Berufungsinstanz zunächst unterlegen war, erreichte sie durch eine Verfassungsänderung schließlich doch noch ihr Ziel (South Africa Act Amendment Act No. 9 of 1956).

The Prevention of Illegal Squatting Act No. 52 of 1951 gave the Minister of Native Affairs the power to remove blacks from public or privately owned land and to establishment resettlement camps to house these displaced people.

The Bantu Authorities Act No. 68 of 1951 was provided for the establishment of black homelands and regional authorities and, with the aim of creating greater self-government in the homelands, abolished the Native Representative Council. It was initially run by the Native Affairs Department, but with the promise of self-government in the future. The Minister of Native Affairs, Hendrik Verwoerd, explained that the „fundamental idea is Bantu control over Bantu areas as and when it becomes possible for them to exercise control efficiently and properly for the benefit of their own people.“ The act was repealed by the Black Communities Development Act No. 4 of 1984.

The Native Laws Amendment Act No. 54 of 1952 narrowed the definition of the category of Blacks who had the right of permanent residence in towns. Section 10 limited this to those who'd been born in a town and had lived there continuously for not less than 15 years, or who had been employed there continuously for at least 15 years, or who had worked continuously

for the same employer for at least 10 years. The act was repealed by the Black Communities Development Act No. 4 of 1984, the Abolition of Influx Control Act No. 68 of 1986 and the Abolition of Racially Based Land Measures Act No. 108 of 1991.

The Natives (Abolition of Passes and Coordination of Documents) Act No. 67 of 1952, commonly known as the pass laws, required all black persons over the age of 16 in all provinces to carry identification with them at all times. The pass included a photograph, carried details of place of origin, employment record, tax payments, and encounters with the police. It was a criminal offence to be unable to produce a pass when required to do so by any member of the police or by an administrative official. No black person could leave a rural area for an urban one without a permit from the local authorities. On arrival in an urban area a permit to seek work had to be obtained within 72 hours. The act repealed early laws, which differed from province to province, relating to the carrying of passes by black male workers (e.g. the Native Labour Regulation Act of 1911). A special court system was devised to enforce the pass law. People appearing at such „commissioners“ courts were considered guilty until they had proven their innocence. During the 60's, 70's and 80's around 500.000 blacks were arrested each year, their cases tried (mainly uncontested), and in the 60's fined or sentenced to a short prison term. From the early 70's the convicted were deported to Bantustans instead (under the Admission of Persons to the Republic Regulation Act No. 59 of 1972). By the mid 80's, by which time almost 20 million people had been arrested (and tried, fined, imprisoned or deported), the pass laws had become increasingly difficult to enforce and were abandoned. The act was repealed by the Identification Act No. 72 of 1986.

The Public Safety Act No. 3 of 1953, passed in response to the ANC's civil disobedience campaign, was provided for a state of emergency to be declared. The first state of emergency was declared only in 1960. Under a state of emergency the Minister of Law and Order, the Commissioner of the South African Police, a magistrate or a commissioned officer could detain any person for reasons of public safety. There was no commission to which a detainee could appeal, nor was there a body with the power to decide objectively whether a state of emergency was justified or not. This legislation also empowered a magistrate or the Commissioner of Police to ban meetings and gatherings. The act was repealed by the State of Emergency Act No. 86 of 1995.

The Criminal Law Amendment Act No. 8 of 1953 made civil disobedience punishable by a three-year jail sentence. The act was repealed by the Internal Security Act No. 74 of 1982.

The Bantu Education Act No. 47 of 1953 established a Black Education Department in the Department of Native Affairs which would compile a curriculum that suited the „nature and requirements of the black people“. The act brought all black schooling under government control, effectively ending mission-run schools. The author of the legislation, Hendrik Verwoerd (then Minister of Native Affairs, later Prime Minister), stated that its aim was to prevent africans receiving an education that would lead them to aspire to positions they wouldn't be allowed to hold in society. Instead africans were to receive an education designed to provide them with skills to serve their own people in the homelands or to work in labouring jobs under whites.

The Native Labour Settlement of Disputes Act No. 48 of 1953 introduced a formal system of racially segregated trade unions and effectively made strikes by Africans illegal in all circumstances. The act was repealed by the Labour Relations Amendment Act No. 57 of 1981 and the Labour Relations Act No. 66 of 1995.

The Reservation of Separate Amenities Act No. 49 of 1953 forced segregation in all public amenities, public buildings and public transport with the aim of eliminating contact between whites and other races. „Europeans Only“ and „Non-Europeans Only“ signs were put up. The act stated that facilities provided for different races need not be equal. The act was repealed by the Discriminatory Legislation Regarding Public Amenities Appeal Act No. 100 of 1990.

Diskriminiert wurde im gesamten Bereich der öffentlichen Einrichtungen (Krankenhäuser, Post, Eisenbahnen, Autobusse, Taxis, Parkbänke, Toiletten, Wartesäle). Apartheid gab es im Sport, in der Kirche, in Hotels und Restaurants, in Theatern und Kinos. Es gab Skurrilitäten wie die Toilettenapartheid und es gab tragische Vorgänge, wenn Menschen starben, weil sie für den Notarzt die falsche Hautfarbe hatten.

The Riotous Assemblies and Suppression of Communism Amendment Act No. 15 of 1954 empowered the Minister of Justice „to prohibit listed persons from being members of specific organisations or from attending gatherings of any description without giving them the opportunity of making representations in their defence or furnishing reasons“. He was also „authorized to prohibit any particular gathering or all gatherings, in any public place for specified periods“. The act also allowed the Minister to ban publications deemed to incite hostility between groups and thus could be used to ban publications which tried to being about social change. The act was repealed by the Internal Security Act No. 74 of 1982.

The Departure from the Union Regulation Act No. 34 of 1955 made it an offence to leave South Africa without a passport or equivalent document. A person who is refused a passport may be given an exit permit and this shall be given to such a person if he satisfies the Secretary of the Interior that he intends to leave the country permanently. He does, however, forfeit his citizenship and thus becomes a stateless person under international law. If he returns he is deemed to have left South Africa without a permit and is subject to the penalty for unlawful departure, that is imprisonment for not less than three months and not more than two years.

The Riotous Assemblies Act No. 17 of 1956 prohibited gatherings in open-air public places if the Minister of Justice considered that they could endanger the public peace. The act also included banishment as a form of punishment. The act was repealed by the Internal Security and Intimidation Amendment Act No. 138 of 1991.

The Mines and Work Amendment Act No. 27 of 1956 formalised racial discrimination in employment and reserved skilled labour for European settlers and their descendants. The act repealed the Mines and Work Act No. 12 of 1911 and was amended by the Mines and Work Amendment Act No. 51 of 1959.

The Industrial Conciliation Amendment Act No. 28 of 1956 provided that no further mixed unions would be allowed to register and sought to impose racially separate branches and all-white executive committees on existing mixed unions which refused to split. It prohibited all workers, black and white, from striking in essential industries and banned unions from political affiliations. Clause 77 gave legal backing to the reservation of skilled jobs to white workers, as the Bantu Building Workers Act No. 27 of 1951 had already done for white workers in the building trade, to ensure that they will not be exploited by the lower standard of living of any other race.

The Bantu (Prohibition of Interdicts) Act No. 64 of 1956 denied black people the option of appealing to the courts against forced removals. The act was repealed by the Abolition of Influx Control Act No. 68 of 1986.

The Immorality Act No. 23 of 1957 made it an offence for a white person to have intercourse with a black person. It was also an offence to entice, solicit, or importune another to commit any of these acts or to attempt to do so or to conspire with another to commit such acts. The maximum penalty for this offence was seven years' imprisonment.

The Nursing Act No. 69 of 1957 extended a thoroughgoing segregation through the profession, and enthranching the dominant hierarchy of whites.

The Bantu Investment Corporation Act No. 34 of 1959 was provided for the creation of financial, commercial and industrial schemes in areas designated for black people.

The Extension of University Education Act No. 45 of 1959 put an end to black students attending white universities (mainly the universities of Cape Town and Witwatersrand). The act created separate tertiary institutions for Whites, Coloured, Blacks and Asians. The act was repealed by the Tertiary Education Act No. 66 of 1988.

The Promotion of Bantu Self-Government Act No. 46 of 1959 allowed the transformation of reserves into „fully-fledged independent Bantustans“. It also resulted in the abolition of parliamentary representation for blacks. Blacks were classified into eight ethnic groups. Each group had a Commissioner-General who was entrusted with the development of a homeland for each, which would be allowed to govern itself independently without white intervention. The act was repealed by the Constitution of the Republic of South Africa Act No. 200 of 1993.

With the Reservation of Separate Amenities Amendment Act No. 10 of 1960 apartheid was extended to the sea, seashore and beaches.

The Unlawful Organisations Act No. 34 of 1960 was provided for organisations threatening public order or the safety of the public to be declared unlawful. The ANC and the PAC were immediately declared unlawful. The act was repealed by the Internal Security Act No. 74 of 1982.

The Urban Bantu Councils Act No. 79 of 1961 created black councils in urban areas that were supposed to be tied to the authorities running the related ethnic homeland. The act was superseded by the Community Councils Act No. 125 of 1977 and the Black Local Authorities Act No. 102 of 1982, and repealed by the Local Government Transition Act No. 209 of 1993.

The Sabotage Act No. 76 of 1962 increased the State Presidents power to declare organisations unlawful. Further restrictions could be imposed in banning orders, restricting movement. Persons could now even be banned from social gatherings having more than one visitor at a time. The Minister could list banned persons in the Government Gazette. This act created the offence of sabotage by providing that any person who committed any wrongful

and wilful act whereby he/she injured, obstructed, tampered with or destroyed the health or safety of the public, the maintenance of law and order, the supply of water, light, power, fuel or foodstuffs, sanitary, medical, or fire extinguishing services could be tried for sabotage. The act was repealed by the State of Emergency Act No. 86 of 1995.

The General Law Amendment Act No. 37 of 1963 allowed a police officer to detain without warrant a person suspected of a political motivated crime to be held for 90 days without access to a lawyer. When used in practice, suspects were re-detained for another 90 day period immediately after release. The act also introduced the „Sobukwe Clause“ which allowed people already convicted of political offenses to be further detained (initially for twelve months). It was named the „Sobukwe Clause“ because it was used to keep PAC leader Robert Mangaliso Sobukwe (who was originally arrested in 1960 and sentenced to three years) in Robben Island for an additional six years. The act was amended by the General Law Amendment Act No. 80 of 1964 which allowed the Minister of Justice to extend the „Sobukwe Clause“ as desired. The act also allowed further declaration of unlawful organisations. The State President could declare any organisation or group of persons which had come into existence since 7 April 1960 to be unlawful. This enabled the government to extend to Umkhonto we Sizwe and Poqo the restrictions already in force on the ANC and the PAC. The act was repealed by the Internal Security and Intimidation Amendment Act No. 138 of 1991.

The Transkei Constitution Act No. 48 of 1963 created the first of South Africa's semi-independent, self-governing territories. Bophuthatswana, Ciskei and Lebowa were proclaimed self-governing territories in 1972, Venda and Gazankulu in 1973, Qwa-Qwa in 1974 and KwaZulu in 1977. Independence was „gained“ by Transkei through the Republic of Transkei Constitution Act No. 15 of 1976. The act was repealed by the Constitution of the Republic of South Africa Act No. 200 of 1993.

The Bantu Laws Amendment Act No. 42 of 1964 empowered the government to expel any African from any of the towns or the white farming areas at any time. It was the most rigid of the apartheid legislation so far. It provided the legal framework for stripping Blacks of most of their remaining rights in White areas in return for independence in their own tribal homelands. The minister of Bantu administration was empowered to establish proscribed areas in which he could limit both total number of Black workers and the number of Blacks employed in any particular industry. He could also ban the further use of Black labour in any geographical area and send surplus Black workers to the Bantustans.

The Bantu Labour Act No. 67 of 1964 prohibited Africans from seeking work in towns or employers from taking them on unless they were channelled through the state labour bureaux.

The Criminal Procedure Amendment Act No. 96 of 1965 was provided for 180-day detention and re-detention thereafter. The Attorney-General was empowered to order the detention of persons likely to give evidence for the state in any criminal proceedings relating to certain political or common-law offences. Unlike the ninety-day provision, this did not specify interrogation as part of the detention. Detainees could be held for six months in solitary confinement and only state officials were permitted access. No court had the jurisdiction to order the release of prisoners or to rule on the validity of the regulations under the Act. The act was repealed by the Internal Security and Intimidation Amendment Act No. 138 of 1991.

The Terrorism Act No. 83 of 1967 allowed unlimited detention of anti-apartheid activists by a policeman of rank lieutenant-colonel or greater without trial. Terrorism was very broadly defined in the act and included most common criminal behaviour. People could be held indefinitely since the act allowed detention until all questions were satisfactorily answered or until no further useful purpose would be achieved by keeping the person in detention. Those held under the act were only permitted to be visited by a magistrate every two weeks. No one else was allowed access, except the police and security services, of course. Unlike the previous 90-day (General Law Amendment Act No. 37 of 1963) and 180-day (Criminal Procedure Amendment Act No. 96 of 1965) detention laws the public was not entitled to information about people held, including their identity. This meant that people could effectively „disappear“ for official legal reasons. In order to cover those arrested for the Rivonia trial and for anti-apartheid acts in both South Africa and South West Africa (now Namibia) the act was applied retroactively to 27 June 1962. The act was repealed by the Internal Security and Intimidation Amendment Act No. 138 of 1991.

In diesem polizeilichen Freiraum geschah, was noch heute die südafrikanische Öffentlichkeit erregt. Menschen verschwanden und wurden irgendwo tot aufgefunden. In der polizeilichen Sicherungshaft kam es zu Körperverletzungen, Folter und Tötungen.

The Prohibition of Mixed Marriages Amendment Act No. 21 of 1968 invalidated any marriage entered into outside South Africa between a male citizen and a woman of another racial group. The act was repealed by the Immorality and Prohibition of Mixed Marriages Amendment Act No. 72 of 1985.

The Separate Representation of Voters Amendment Act No. 50 of 1968 formed the Coloured Persons Representative Council with forty elected members and twenty nominated members. It had legislative powers to make laws affecting Coloureds on finance, local government, education, community welfare and pensions, rural settlements and agriculture. No bill could be introduced without the approval of the Minister of Coloured Relations, nor could a bill be passed without the approval of the white cabinet. The act was repealed by the Republic of South Africa Constitution Act No. 110 of 1983.

The Prohibition of Political Interference Act No. 51 of 1968 forbade political parties with a racially mixed membership.The act was repealed by the Constitutional Affairs Amendment Act No. 104 of 1986.

The Coloured Persons Representative Council Amendment Act No. 52 of 1968 removed the Coloureds from even indirect participation in the White Parliament. It transferred the representation of Coloureds to an expanded Coloured persons representative council, which would be authorized to legislate for Coloureds in such areas as social welfare, education and local government. The council, which had previously served in a purely advisory capacity, would have 40 elected and 20 appointed members to maintain a committee for liaison with Parliament.

The Public Service Amendment Act No. 86 of 1969 established BOSS, the Bureau of State Security, which was responsible for the internal security of South Africa. The act was repealed by the Public Service Act No. 111 of 1984.

The Bantu Homelands Citizenship Act (National States Citizenship Act) No. 26 of 1970 required that all South African Blacks become citizens of one of the self-governing territories

that responded to their ethnic group, regardless of whether they'd ever lived there or not, and removed their South African citizenship. The act was repealed by the Constitution of the Republic of South Africa Act No. 200 of 1993.

The Bantu Homelands Constitution Act (National States Constitutional Act) No. 21 of 1971 increased the potential governmental powers of the self-governing homelands, a further step towards the creation of independent Bantustans. The act was repealed by the Constitution of the Republic of South Africa Act No. 200 of 1993.

The Aliens Control Act No. 40 of 1973 exempted Indians from the need to obtain permits for travel between provinces. However, in terms of provincial legislation, Indians were not allowed to stay in the Orange Province and parts of northern Natal for more than a brief period unless prior permission had been obtained. The act was repealed by the Abolition of Racially Based Land Measures Act No. 108 of 1991.

The Bantu Labour Relations Regulations Amendment Act No. 70 of 1973 gave Black workers a limited legal right to strike for the first time in 30 years.

The Parliamentary Internal Security Commission Act No. 67 of 1976 established a parliamentary Internal Security Commission and set out its functions. It differed little from the USA House Committee on Un-American Activities except that the South African law had more sanctions at its disposal. The act was repealed by the Abolition of Restriction on Free Political Activity Act No. 206 of 1993.

The Internal Security Act No. 32 of 1979 empowered the government to declare an organisation unlawful and to control the distribution of publications. Meetings of more than twenty persons were declared unlawful unless authorised by the magistrate. The act was repealed by the State of Emergency Act No. 86 of 1995.

The Industrial Conciliation Amendment Act No. 94 of 1979 set up an Industrial Court which was to busy itself with the interpretation of labour laws, and to hear cases of irregular employment practices such as contentious dismissals, wage disputes and the legality of strikes. Thus the act made it possible for blacks to participate in the legal machinery set up for collective bargaining. It also allowed Africans other than contract workers to form their own trade unions; thus it, opened the way for the rapid growth of black trade unions in the course of the 1980s.

The Labour Relations Amendment Act No. 57 of 1981 abolished all racial distinctions with regard to union membership, and permitted the formation of mixed trade unions, but obliged even unregistered unions to open their premises, their accounts and their membership lists to the Registrar for inspection. Strict rules were also laid down to prevent any direct association or financial links between political parties and trade unions, whether registered or not, and to ban financial assistance to members of unregistered unions if they went out on strike.

The Identification Act No. 72 of 1986 repealed the Natives (Abolition of Passes and Coordination of Documents) Act No. 67 of 1952 and amended parts of the Population Registration Act No. 30 of 1950 such that identification numbers no longer reflected a

person's racial group. The act was amended by the Identification Amendment Act No. 47 of 1995, which created a new, supposedly non-racial, population register.

The Restoration of South African Citizenship Act No. 73 of 1986 returned South African citizenship to citizens of Transkei, Bophuthatswana, Venda and Ciskei (TBVC) who were born in South Africa prior to the granting of their homeland's independence or who had resided in South Africa permanently. It was not applicable to those TBVC citizens who were in South Africa temporarily seeking employment, studying or visiting, or indeed to those who had permanent homes in the TBVC areas. They legally remained aliens in South Africa. They were not actually subject to removal, but only due to a lack of official action. The restoration of citizenship rights was extended to around 1.750.000 people in total. Approximately eight or nine million were still technically aliens. The act was reformed by the Restoration and Extension of South Africa Citizenship Act No. 196 of 1993, which was repealed by sec. 26 of the South African Citizenship Act No. 88 of 1995.

The Indemnity Act No. 35 of 1990 granted temporary or permanent indemnity against prosecutions for exiles returning to South Africa.

V. Transition and Post-Transition

In 1990 the government began to negotiate with its opponents, a process that resulted in the interim Constitution of the Republic of South Africa Act No. 200 of 1993. Democratic elections were held in 1994 and Nelson Mandela elected as President. In 1997 the final Constitution of the Republic of South Africa Act No. 108 of 1996 came into effect. South Africa now is a constitutional state with a supreme constitution and a Bill of Rights. The constitution provides for the separation of the legislative, executive and judicial arms of government. The constitution has elements of federalism, and the nine provinces (Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo [previously called the Northern Province], Mpumalanga, Northern Cape, North West and Western Cape) may pass laws on certain matters such as education, health and housing. However, the national legislature retains its legislative power in these areas, and may override provincial legislation in the event of a conflict. Exclusive provincial legislative competence is reserved for less important matters such as abattoirs and liquor licenses. The provinces have a role in drafting national legislation through their participation in the National Council of Provinces, the second house of Parliament.

Die Übergangsverfassung beurkundete den historischen Kompromiss zwischen der letzten Regierung der alten Ordnung und der Befreiungsbewegung. Dieser Kompromiss zog einer Auseinandersetzung mit der Vergangenheit Grenzen. Die systemimmanente Legalität des Apartheid-Staates schloss trotz ihrer Menschenrechtswidrigkeit Bestrafungen aus. Und trotz ihrer revolutionären Substanz zwang die Übergangsverfassung zur äußerlichen Kontinuität in Verwaltung, Polizei, Justiz und Militär. Rechtskontinuität war das Leitmotiv der Übergangsbestimmungen des Kapitels 15 der Übergangsverfassung.