

INTERNATIONAL COURT OF JUSTICE

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PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

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SOUTH WEST AFRICA CASES

(ETHIOPIA *v.* SOUTH AFRICA;  
LIBERIA *v.* SOUTH AFRICA)

VOLUME III

1966

COUR INTERNATIONALE DE JUSTICE

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MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

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AFFAIRES DU SUD-OUEST AFRICAIN

(ÉTHIOPIE *c.* AFRIQUE DU SUD;  
LIBÉRIA *c.* AFRIQUE DU SUD)

VOLUME III



## Counter-Memorial filed by the Government of the Republic of South Africa

### LIST OF ABBREVIATIONS

A.D.	Appellate Division of the Supreme Court of South Africa
A.F.P.	Agence France Presse
A.J.I.L.	The American Journal of International Law
A.M.I.C.E.	Associate Member of the Institute of Civil Engineers
A.P.S.R.	The American Political Science Review
Bib. Un.	Bibliothèque universelle et Revue de Genève
B.Y.B.I.L.	The British Year Book of International Law
C.	Blue Books: United Kingdom
C.L.J.	The Cambridge Law Journal
C.L.R.	Commonwealth (Australia) Law Reports
cub.	cubic
°C.	Degrees Centigrade
ft.	feet
G.A.	General Assembly
G.N.	Government Notice
Grotius Soc.	Transactions of the Grotius Society
Ha.	Hectare(s)
H.M.S.O.	Her/His Majesty's Stationery Office
I.L.A., Rep.	International Law Association, Reports
I.L.O.	International Labour Organisation
in.	inches
K.B.	King's Bench Division (England)
km.	kilometre(s)
L. of N., Assembly, Rec.	League of Nations, Assembly, Records
L. of N., Council, Min.	League of Nations, Council, Minutes
L. of N. Doc.	League of Nations Document
L. of N., O.J.	League of Nations, Official Journal
L. of N., O.J., Spec. Sup.	League of Nations, Official Journal, Special Supplement
m.	metre(s)
Mk.	Mark (unit of currency)
mm.	millimetres
N.A.	Archive of the Secretary of Native Affairs, Cape Colony
N.L.R.	Natal Law Reports
O.R.	Official Records
Ord.	Ordinance
P.M.C., Min.	Permanent Mandates Commission, Minutes
Proc.	Proclamation
Quellen	Quellen zur Geschichte von Südwestafrika
R.	Rand (unit of currency)

R.D.I.	Revue de droit international et de législation comparée
R. of S.A., Parl. Deb., House of Assembly	Republic of South Africa, Parliamentary Debates, House of Assembly
S.A.	South Africa
S.A.L.J.	The South African Law Journal
S.A.L.R.	South African Law Reports
S.C.	Security Council
sq.	square
S.R. & O.	Statutory Rules and Orders and Statutory Instruments
S.W.A.	South West Africa
S.W.A.	High Court of South West Africa (only in Table of Cases Cited)
S.W.A.N.L.A.	South West Africa Native Labour Association
T.C.	Trusteeship Council
T.P.D.	Transvaal Provincial Division of the Supreme Court of South Africa
U.N.	United Nations
U.N.C.I.O.	United Nations Conference on International Organization
U.N. Doc.	United Nations Document
U.N.P.C.	United Nations Preparatory Commission
U. of S.A., Parl. Deb., House of Assembly	Union of South Africa, Parliamentary Debates, House of Assembly
U. of S.A., Parl. Deb., House of Assembly/Senate	Union of South Africa, Parliamentary Debates, House of Assembly/Senate
U. of S.A., Parl. Deb., Senate	Union of South Africa, Parliamentary Debates, Senate

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VOLUME III



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The present volume contains Books V to VII of the Counter-Memorial relating to the *South West Africa* cases. The proceedings in these cases, which were entered on the Court's General List on 4 November 1960 under numbers 46 and 47, were joined by an Order of the Court of 20 May 1961 (*South West Africa, Order of 20 May 1961, I.C.J. Reports 1961*, p. 13). Two Judgments have been rendered, the first on 21 December 1962 (*South West Africa, Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 319), and the second on 18 July 1966 (*South West Africa, Second Phase, Judgment, I.C.J. Reports 1966*, p. 6).

The page references originally appearing in the pleadings have been altered to correspond with the pagination of the present edition. Where the reference is to another volume of the present edition, the volume is indicated by a roman numeral in bold type.

The Hague, 1966.

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Le présent volume reproduit les livres V-VII du contre-mémoire déposé dans les affaires du *Sud-Ouest africain*. Ces affaires ont été inscrites au rôle général de la Cour sous les nos 46 et 47 le 4 novembre 1960 et les deux instances ont été jointes par ordonnance de la Cour le 20 mai 1961 (*Sud-Ouest africain, ordonnance du 20 mai 1961, C.I.J. Recueil 1961*, p. 13). Elles ont fait l'objet de deux arrêts rendus le 21 décembre 1962 (*Sud-Ouest africain, exceptions préliminaires, arrêt, C.I.J. Recueil 1962*, p. 319) et le 18 juillet 1966 (*Sud-Ouest africain, deuxième phase, arrêt, C.I.J. Recueil 1966*, p. 6).

Les renvois d'un mémoire à l'autre ont été modifiés pour tenir compte de la pagination de la présente édition. Lorsqu'il s'agit d'un renvoi à un autre volume de la présente édition, un chiffre romain gras indique le numéro de ce volume.

La Haye, 1966.

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**5. COUNTER-MEMORIAL FILED BY THE  
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA (cont.)**

**BOOK V**

**SECTION A**

**INTRODUCTORY**

1. In Book IV of this Counter-Memoriam, the broad lines of Respondent's policy regarding the administration of South West Africa were considered. The present Book deals in more detail with the aspects of well-being, social progress and development relating to the economic position of the inhabitants of the Territory<sup>1</sup>, and to government and citizenship<sup>2</sup>.

The subject-matter of this Book is divided as follows:

- Section A: Introductory (which is the present section).
- Section B: Well-being, social progress and development in agriculture (being a reply to Chapter V, paras. 16-33 of the Memoriam).
- Section C: Well-being, social progress and development in industry (being a reply to Chapter V, paras. 34-77 of the Memoriam).
- Section D: Brief account of the Native in commerce.
- Section E: Well-being, social progress and development: government and citizenship (being a reply to Chapter V, paras. 78-128 of the Memoriam).

As will have been noted, Respondent does not propose dealing specifically with paragraphs 11 to 15 of Chapter V of the Memoriam<sup>3</sup>, which paragraphs contain certain background information regarding the economy of South West Africa. This information is basically correct and no purpose would be served by devoting specific attention thereto since the same field is in substance covered in sections B and C of this Book.

2. In regard to the main aspects dealt with in this Book, Applicants have formulated certain specific duties which they allege are included within the ambit of Article 2 of the Mandate<sup>4</sup>. These duties have been considered in an earlier part of this Counter-Memoriam<sup>5</sup>, to which attention is invited. No further reference to this topic is therefore necessary at the present stage.

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<sup>1</sup> I, pp. 110-131.

<sup>2</sup> *Ibid.*, pp. 131-143.

<sup>3</sup> *Ibid.*, pp. 111-112.

<sup>4</sup> *Ibid.*, pp. 107-108, 110-111 and 131.

<sup>5</sup> *Vide* Book IV, Chap. II, paras. 24 to 28, of this Counter-Memoriam.

## SECTION B

### WELL-BEING, SOCIAL PROGRESS AND DEVELOPMENT IN AGRICULTURE

#### CHAPTER I

#### INTRODUCTORY

1. Applicants sum up their allegations contained in paragraphs 16 to 32 of Chapter V of the Memorials, as follows:

“By a deliberate, systematic and consistent course of conduct, the Mandatory has discriminated against the ‘Native’ population of South West Africa in agriculture. In so doing, it has not only failed to promote to the utmost the well-being of the ‘Native’ population engaged in agriculture, but in major respects it has reduced the degree of their well-being. It has not only failed to promote to the utmost the social progress of the ‘Native’ population engaged in agriculture, but has reversed possibilities of social progress into a steady regression. It has not only failed to promote to the utmost the development of agriculture for the ‘Native’ population of the Territory, but it has reversed that development into a process of deterioration and increasing insecurity, more particularly:

- (i) The Mandatory has progressively reduced the proportion of farm land available for cultivation or pastoral use by the ‘Native’ population, while it has progressively increased the proportion of such farm land available to ‘Europeans’. This has been carried to the point where less than 12 per cent. of the population, being ‘White’, enjoys the use of some 45 per cent. of the total land area; while over 88 per cent. of the population, being ‘Native’ or ‘Coloured’, is confined to 27 per cent. Much of the remaining land area is desert.
- (ii) The Mandatory has denied the possibilities of individual ownership of land to the ‘Native’ population, and has confined these rights to the ‘White’ population.
- (iii) The Mandatory has limited the role of the ‘Native’ population in agriculture to (a) subsistence farming within ‘Native’ reserves and (b) employment as common laborers or domestics on ‘European’ commercial farms. In consequence, the ‘Native’ population has enjoyed almost insignificant participation in the expanding possibilities of commercial agriculture in the Territory.
- (iv) The Mandatory has offered little hope to the ‘Native’ population, and little promise or possibility of future development.
- (v) Even in connection with emergency relief made available in time of drought, the Mandatory has used overwhelmingly the larger part of relief funds for the assistance of the small ‘European’

proportion of the population, while the relief funds used to help the large 'Native' population have been confined to a comparative pittance<sup>1</sup>."

For convenience, Respondent will deal separately with agricultural conditions in the areas outside the Police Zone, and those inside.

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<sup>1</sup> I, pp. 117-118.

## CHAPTER II

### AGRICULTURE IN THE AREAS OUTSIDE THE POLICE ZONE

1. On the assumption of the Mandate, the traditional tribal economies in the northern areas were virtually unaffected by contact with the modern exchange economy. In common with subsistence economies throughout the continent of Africa, specialization (except within the family) was to all intents and purposes unknown, and each kraal was a self-sufficient economic unit, producing enough for all the requirements of its inhabitants. Contacts which had existed with the exchange economy had been of limited extent and duration, such as the employment of Ovambo migrant labourers in the Tsumeb mines and the Luderitzbucht diamond fields<sup>1</sup>, and had consequently not affected the traditional tribal institutions to any appreciable degree.

2. At the inception of the Mandate, Respondent's policy in regard to economic, and, in particular, agricultural, activity in the areas outside the Police Zone could conceivably have taken the form of opening up these areas to the forces of the modern exchange economy. This would have entailed free access to the area by European businessmen, farmers, etc., and would in all probability have led to a much more rapid economic development of the area than has in fact taken place.

On the other hand, the disadvantages attendant on such a course are apparent. The subsistence economies of the tribes in the areas outside the Police Zone did not constitute merely incidental features of the lives of the people which could be destroyed without any danger to the fabric of society. On the contrary, economic activity formed one aspect of an indivisible total way of life which included social, political and religious attitudes, beliefs, and customs. Thus, for instance, the concept of individual ownership of land was unknown amongst the Ovambo—all land vested in the Chiefs (or headmen) who were permitted to allot agricultural land to individuals for their lifetimes<sup>2</sup>. Agriculture was considered the province of the women in the family, while the men and boys cared for the stock, which were highly prized, and seldom parted with<sup>3</sup>. It is clear that this system, involving, as it did, *inter alia*, the position of the chief, the role of women in a polygamous society, and the status derived from possession of cattle, could not easily be converted to an economy which was based on individual initiative and the desire for gain. In addition, each family being self-sufficient, no demand for any surplus production existed in the areas in which traditional agriculture was practised. And, if such a surplus were to be produced, the nature and quality of the products and the wasteful and uneconomic methods employed in their production precluded successful competition in distant markets with European farmers employing modern scientific methods.

Since the known resources of the area did not then (and, indeed, do not at present) permit of any primary economic activity other than

<sup>1</sup> *Vide* Book III, Chap. II, para. 38.

<sup>2</sup> *Ibid.*, para. 48.

<sup>3</sup> *Ibid.*, paras. 47 and 49.

agriculture, the only method by which Respondent could, in the absence of any desire on the part of the local tribes to change their tribal system, have rapidly introduced the exchange system into the northern areas, would have been by a process of settlement of European farmers, either by purchasing the necessary land from the tribes concerned, or dispossessing them in some other way. Whereas this course would no doubt have led to an improvement in the quantity and quality of agricultural production in the area, it would at the same time have caused an erosion of the traditional political and social systems of its inhabitants. The only benefit to the Native peoples would have been the availability of employment. And, if no restriction were placed on the acquisition of land or the granting of credit by Europeans, the Natives would soon have been reduced to a landless people, entirely dependent for a living on wage-earning, with a resultant destruction of their customary social, political and religious institutions and restraints. To a considerable extent this was the position in the Police Zone at the inception of the Mandate, and the undesirable consequences thereof were obvious.

3. Rather than adopt a policy of European settlement as set out in the previous paragraph, it was, in Respondent's opinion, from every point of view, desirable to maintain the traditional tribal institutions in the areas where they were still functioning, and to promote further development on that basis. Although this policy necessarily entailed that economic development (in the sense of an increased total agricultural production) would be slow<sup>1</sup>, it was considered that such an approach would be most conducive to the happiness and security of the population. As landless labourers, the inhabitants of the northern areas might conceivably have earned total annual wages which were higher than the value of their agricultural production as subsistence farmers. There can be no question, however, that the adoption of a policy resulting in such a situation would have been to their moral and social detriment. And opportunities for wage-earning were created for the inhabitants of the northern areas as a result of the vigorous expansion of the exchange economy in the Police Zone.

4. Reference had been made<sup>2</sup> to the attitude of the Permanent Mandates Commission that tribal institutions should, where possible, be preserved. Further examples of this attitude will be given below<sup>3</sup>. It is submitted that Respondent's policy of preserving the traditional institutions of the inhabitants of the northern areas, of which possession of land by the various tribes formed an essential element, was a wise one, and it was recognized as such by the Permanent Mandates Commission.

The merits of the general system of administration in the northern areas were also considered in 1946 by Lord Hailey. He said (in so far as his evaluation is relevant to the economic and social situation):

"That the present system is acceptable to the people there can be no question. They have not failed to give open expression of their contentment with it, and there can be no reason to doubt that this is the spontaneous expression of a genuine feeling. If questioned, they attribute their satisfaction to the fact that they are ruled by their own

<sup>1</sup> *Vide* Book IV, Chap. IV, paras. 32-34.

<sup>2</sup> *Ibid.*, Chap. IV, para. 40.

<sup>3</sup> *Vide* Book VI, Chap. III, paras. 71-81.

tribal authorities, and that if disputes arise between them, they are decided according to the laws and the procedure to which they have been accustomed. *But it is easy to see that they have other sources of satisfaction. Unlike the people of the Police Zone, they have retained their lands intact. Their tribal communities have not been broken up*<sup>1</sup>.” (Italics added.)

5. A policy designed to protect the inhabitants of the northern areas in their possession of their lands, could only be beneficial to them.

As far as land resources are concerned, the areas beyond the Police Zone (and, in particular, Ovamboland, the Okavango territory and the Eastern Caprivi) are situated in the most favoured part of the Territory. It will be recalled that the most favoured climatic region, from the point of view of dry-land cropping, stock farming and timber exploitation, as well as potential for irrigation, falls entirely within parts of Ovamboland and the Okavango territory, and covers the whole of the Eastern Caprivi<sup>2</sup>. The rest of Ovamboland (with the exception of a portion to the extreme west) and the Okavango territory fall within an area which is also a favourable one as compared with the rest of the Territory<sup>2</sup>. The main concentrations of population are found in the former region, the area bordering on the Police Zone being uninhabited, except possibly at times by isolated groups of Bushmen.

6. Respondent's policy in regard to the agricultural development of the northern areas has been to guide the population in the direction of greater productivity by means of a gradual adaptation of their traditional economic and social institutions, rather than by means of revolutionary changes. Attention has been given in various ways to the improvement in the quality of livestock. At first well-bred bulls were donated to the tribes by the Administration, while others were purchased out of tribal funds. This scheme did not prove a success, and selective breeding was therefore substituted. The latter scheme has produced better results.

Various systems of crop rotation are experimented with in an attempt to increase yields. Suitable crop varieties are tested, and selected seeds are made available to the inhabitants. At Runtu a demonstration plot produced a "muhango" (millet) variety which yielded considerably more than the most prolific varieties known in the Territory. More demonstration plots are being developed in order to supply sufficient seed, as the improved variety is proving popular with the Native farmers.

7. The prevalence of lung-sickness (bovine pleuro-pneumonia) has in the past militated against the export of livestock from the northern territories. Measures have been taken by the agricultural division of the South West African Administration in collaboration with the South African Department of Technical Services (Veterinary Services) to combat this, as well as other animal diseases in these areas. Thus, for example, all the cattle in the Kaokoveld have been inoculated annually against lung-sickness since 1955 and in Ovamboland since 1957<sup>3</sup>. Other sporadic outbreaks of diseases, such as anthrax and quarter evil, have

<sup>1</sup> Lord Hailey, *A Survey of Native Affairs in South West Africa* (1946) [unpublished], p. 119.

<sup>2</sup> *Vide* Book IV, Chap. III, para. 2 (e), of this Counter-Memorial.

<sup>3</sup> Save for the years 1961 and 1962, when a serious foot-and-mouth epidemic elsewhere prevented the taking of such measures.

been checked by inoculation whenever they have occurred. In 1956 the South African veterinary division successfully combated an outbreak of foot-and-mouth disease in the Eastern Caprivi. Foot-and-mouth disease broke out in 1958 in Ovamboland: all animals were inoculated, and the spread of the disease was checked. In the same year trypanosomiasis and anthrax caused cattle deaths in the Caprivi, and veterinary services were provided with good results. In 1960 and 1961, foot-and-mouth disease again broke out in the Territory, and veterinary treatment was again provided.

For the purposes of combating stock diseases in three of the northern areas (viz., Ovamboland, the Okavango territory and the Kaokoveld), Bantu assistant stock inspectors have been appointed with the intention of training them so that they will eventually be able to take over full responsibility for this work. In the meantime they are under the supervision of a European stock inspector and veterinary officer.

8. The opening-up in the northern areas of water, and the provision of storage facilities, have also received the attention of the authorities. Up to 1959 a total of 257 watering points (dams, boreholes, wells, etc.) were constructed, and during the years 1955 to 1960, 62 boreholes were sunk and ten dams built at a total cost of over R600,000 (£300,000).

During the years 1960 to 1963 approximately R94,000 (£47,000) was spent on the following projects to increase water supplies in the northern areas:

<i>Okavango</i>	15 boreholes and a water scheme for the administrative headquarters at Runtu . . . . .	R44,000 (£22,000)
<i>Kaokoveld</i>	Boreholes, pumps, reservoirs, etc. . . . .	R10,000 (£5,000)
<i>Ovamboland</i>	Dam construction . . . . .	R40,000 (£20,000)

In Ovamboland, one of the biggest projects for providing water is at present under construction at an estimated cost of R238,000 (£119,000). A canal, which will eventually be 80 miles long, is being constructed from Okatana in the direction of the Kunene River, together with the necessary storage dams, filters, etc. This scheme will supply water to a tuberculosis hospital, serve irrigation purposes and supply drinking water for humans and livestock. A second canal known as the Itaka canal is also under construction.

Watering points have, where possible, been sited so as to enable the population in the said areas to be more evenly distributed.

9. Livestock figures in the northern areas show a general increase, although there are marked fluctuations owing to droughts and epidemics. The table on page 8 reflects the position.

10. It appears that Ovamboland has always (or, at any rate, as far back as population figures are available) been the most densely populated area in the Territory, and, in view of its climatic superiority and the settled nature of its people, this is hardly surprising.

In 1876 Palgrave estimated its population at 98,000 <sup>1</sup>, whereas in the much larger areas, referred to by him as Damaraland and Great Namaqualand (which together constitute roughly the present Police Zone), there were, according to him, only 137,850 non-White people <sup>2</sup>.

<sup>1</sup> *Vide* Book III, Chap. II, para. 33, of this Counter-Memorial.

<sup>2</sup> *Vide* Book IV, Chap. IV, para. 18, of this Counter-Memorial.

NUMBER OF LARGE STOCK UNITS IN NORTHERN AREAS<sup>1</sup>

	1925	1946	1956	1959
Ovamboland . .	73,500 <sup>2</sup>	112,724 <sup>4</sup>	414,343 <sup>6</sup>	363,325 <sup>6</sup>
Okavango . . .	18,000 <sup>3</sup>	31,307 <sup>4</sup>	5,626 <sup>6</sup>	43,420 <sup>6</sup>
Kaokoveld . . .	not available	49,153 <sup>4</sup>	138,236 <sup>6</sup>	110,629 <sup>6</sup>
Eastern Caprivi	not available	26,275 <sup>5</sup>	not available	10,551 <sup>6</sup>

In 1921 the corresponding estimates were 90,000 (Ovamboland)<sup>7</sup> and under 84,000 (Police Zone)<sup>8</sup>. At that stage, therefore, the population of Ovamboland was larger than that of the whole Police Zone—a reflection of the loss of life occasioned by the wars in the latter area.

It is probable that the 1921 figure for Ovamboland was an underestimate, since a census held towards the end of the 1920s, showed a total population of 147,600<sup>7</sup>.

By 1951, it had increased to 197,804 and by 1960 to 231,437<sup>6</sup> (excluding Ovambos permanently resident outside Ovamboland but including members of other groups, e.g., Bushmen, in Ovamboland)<sup>9</sup>.

This rapid increase of population, particularly during the period of Respondent's administration of the Territory, points to the favourable conditions under which the Ovambo have been living.

11. A similar picture appears from population statistics regarding the inhabitants of the Okavango territory. In 1921 its population was estimated at 20,000<sup>10</sup>. This was probably an overestimate. In 1936 the estimate was 19,150<sup>11</sup>. The census in 1951 showed a population of 21,873, which increased to 29,102 by 1960<sup>12</sup>.

12. The Kaokoveld has also witnessed a marked increase in population in recent years. In 1945 its Native inhabitants numbered 5,994. By 1955 they had increased to 9,178, and by 1960 to 10,099<sup>6</sup>.

<sup>1</sup> Calculated on the basis that 6 head of small stock equal 1 large stock unit.

<sup>2</sup> Rounded off, the actual figure being 73,410 calculated on the basis of the estimated figures given in *U.G.* 26—'26, para. 57.

<sup>3</sup> An estimate based on *U.G.* 26—'26, para. 62.

<sup>4</sup> *U.G.* 49—'47, para. 217.

<sup>5</sup> *Ibid.* (Figure is for the year 1945.)

<sup>6</sup> Departmental information.

<sup>7</sup> *Vide* Book III, Chap. II, para. 33, of this Counter-Memorial.

<sup>8</sup> *Vide* Book IV, Chap. IV, para. 18, of this Counter-Memorial.

<sup>9</sup> As in the cases of the Okavango, Kaokoveld and Caprivi, to be dealt with later, the population figures do not include the small number of non-Natives resident in this area.

<sup>10</sup> *Vide* Book III, Chap. II, para. 22, of this Counter-Memorial.

<sup>11</sup> *U.G.* 31—'37, p. 96.

<sup>12</sup> Including non-Okavango Natives living in the area as well as 850 Okavango temporary migrant workers in the Police Zone.

In the Caprivi, the population figures fluctuate a great deal, owing largely to the tendency of the inhabitants to move to and fro across the border. In 1909, the Native population was estimated at 9,000, and in 1921 at 4,249<sup>1</sup>. In 1951, the census figure was 15,488, and in 1960, 15,840<sup>1</sup>.

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<sup>1</sup> *Vide* Book III, Chap. II, para. 9, of this Counter-Memorial.

## CHAPTER III

### AGRICULTURE IN THE POLICE ZONE

1. Reference has been made to the circumstances which necessitated development of the Police Zone by encouraging European settlement on the land<sup>1</sup>. At the same time, Respondent embarked on a policy of providing land for the Natives, who had been dispossessed and dispersed during the German period. At the end of the German regime, only a few Native communities were permitted by the authorities to occupy specific areas of land<sup>2</sup>. It will be recalled that in 1913 approximately 80 per cent. of the total non-White adult male population in the Police Zone were employed as wage-earners<sup>3</sup>. During the period of military occupation, temporary reserves were created for some Natives<sup>4</sup>.

2. On assumption of the Mandate, Respondent decided to extend the reserve system. In contrast to the settlement scheme for Europeans, the reasons for which were economic (i.e., to develop the agricultural resources of the area in order to increase and stabilize income, exports, and revenue), the reserve policy was to a large extent based on social considerations. It was deemed necessary to restore, as far as was possible, the tribal life and social organizations of the shattered tribes as a prerequisite to the establishment of a settled and contented Native population. It was not expected that Native agriculture would, at any rate for years to come, play any significant role in the exchange economy of the area. It was, indeed, the appreciation of this factor which was one of the reasons for stimulating White immigration. On the other hand, the provision of land and stock was essential for the restoration of the social organizations of the tribes, and could form the basis for the future development of Native agriculture.

3. The basic considerations of Respondent's reserve policy will be dealt with in more detail below<sup>5</sup>. At this stage, two points require emphasis, viz.,

- (a) The restoration of tribal life could proceed only on the traditional basis of common utilization of land since the concept of individual title to land was repugnant to the very basis of tribal society in South West Africa. In addition, such concept was not understood by the Native population, who consequently did not appreciate the necessity for capital improvements or the danger of overgrazing. Their traditional attitudes towards stock placed importance on quantity rather than quality. Individual tenure of land would therefore not only have frustrated the whole social object of creating reserves, but would have resulted in wasteful use of land<sup>6</sup>.
- (b) A reserve could only serve its purpose if the inhabitants thereof

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<sup>1</sup> *Vide* Book IV, Chap. IV, paras. 23-29, of this Counter-Memorial.

<sup>2</sup> *Vide* Book VI, Chap. III, para. 30, of this Counter-Memorial.

<sup>3</sup> *Vide* Book IV, Chap. IV, para. 14, of this Counter-Memorial.

<sup>4</sup> *Vide* Book VI, Chap. III, para. 55, of this Counter-Memorial.

<sup>5</sup> *Vide* Book VI, Chap. III, of this Counter-Memorial.

<sup>6</sup> Book VI, Chap. III, paras. 44-50 of this Counter-Memorial.

were prevented from alienating land falling within it<sup>1</sup>. Those in control of tribal lands had in the past succumbed to the temptation of selling such lands for their own benefit. Examples are given below of this practice<sup>1</sup> the deleterious effects of which on the social and economic life of the tribes need hardly be mentioned.

The manner in which Respondent set about providing the landless Native population with reserves for their exclusive occupation, and the problems encountered in this regard, will be dealt with elsewhere in this Counter-Memorial<sup>2</sup>.

4. Although the reserves were specially set aside for Natives to enable them to resume their traditional agricultural activities, no limitation was placed on their right to acquire land in the unreserved parts of the Police Zone, and it has always been open to any Native to purchase land in the so-called European farming areas. Their failure to do so, or even to show any interest in this possibility, confirms Respondent's view, to which reference will be made later, that the Native population is on the whole not yet ripe for individual ownership of land.

5. The policy of European land settlement soon paid handsome dividends for the benefit of all the inhabitants of South West Africa.

The Territory shared in the world's short-lived prosperity between 1925 and 1929, and also suffered with the rest of the world during the early thirties in the severest and longest depression ever experienced. South West Africa prolonged its phase of prosperity to some extent, however, by its high level of internal capital formation when the first signs of the great depression were already evident in other countries. Subsequently, however, it experienced a more severe and protracted depression than was the case in most other countries, due to its exceptional vulnerability to changes in world trade conditions; the fact that South Africa went off the gold standard a year after Great Britain did, thereby turning the terms of trade heavily against South West Africa during 1931-1932; the occurrence of a very severe drought in the Police Zone, which lasted until the end of 1933; and the limited nature of the steps which could be taken to counter the effects of the depression. Thus the total income of South West Africa dropped from R14 (£7) million in 1929 to R4.2 (£2.1) million in 1933, i.e., a decline of 70 per cent.<sup>3</sup> This figure is to be compared with a contraction of less than 40 per cent. in the national income of the United States of America between the years 1929 and 1932 (the latter being the worst year for the American economy)<sup>4</sup>. In the Union of South Africa, which also experienced drought conditions, the corresponding contraction was only 20 per cent., thanks to the stabilizing influence of gold mining. Even in real terms the domestic income of South West Africa declined by 60 per cent. between 1929 and 1933 to a level equal to that obtained in 1921-1922. Compared with other African Territories also largely dependent on the export of primary products, South West Africa appears to have suffered most. Thus, the decline in value of South West African exports between 1929 and the

<sup>1</sup> Book VI, Chap. III, paras. 51-54, of this Counter-Memorial.

<sup>2</sup> *Ibid.*, paras. 55-65.

<sup>3</sup> Krogh, D. C., "The National Income and Expenditure of South West Africa (1920-1956)", in *The South African Journal of Economics*, Mar. 1960, table p. 8.

<sup>4</sup> Lewis, W. A., *Economic Survey 1919-1939* (1949), p. 52.

worst of the subsequent five years was 68 per cent. ; that of Tanganyika, 56 per cent. ; Sierra Leone, 53 per cent. ; Nigeria, 52 per cent. ; and Kenya, Uganda and the Gold Coast, 39 per cent. The total recorded value of world exports declined by 66 per cent., and that of Africa by 48 per cent., in the period 1929-1934<sup>1</sup>.

COMPARATIVE STATEMENT OF LIVESTOCK OWNED BY WHITES AND NON-WHITES IN THE POLICE ZONE DURING THE PERIOD 1929-1939

Year	Whites		Non-Whites		Total	
	Small stock (000s)	Large stock (000s)	Small stock (000s)	Large stock (000s)	Small stock (000s)	Large stock (000s)
1929	1,980	630	667	161	2,647	791
1930	1,919	610	541	135	2,460	745
1931	2,159	617	501	124	2,660	741
1932	2,402	688	509	136	2,911	824
1933	1,798	591	413	127	2,211	718
1934	2,032	599	410	119	2,442	718
1935	2,536	630	530	144	3,066	774
1936	2,933	668	611	158	3,544	826
1937	3,439	762	700	159	4,139	921
1938	3,699	869	805	168	4,504	1,037
1939	4,040	1,007	897	183	4,937	1,190

6. The severity and protraction of the depression could largely be ascribed to conditions in the mining industry which was practically closed down. In spite of great difficulties, livestock farming proved to be compensatory to the complete failure of mining during the first half of the 1930s. The severe drought conditions which lasted until the end of 1933, the outbreak of foot-and mouth disease during 1934-1935, and the poor prices in the South African livestock market during the first half of the 1930s, contributed to the depressed conditions in South West Africa, but despite it all, the level of income originating in agriculture recovered by 1934-1935 to its high level of R3.1 (£1.55) million in 1929.

7. While the contribution of mining to the total income of South West Africa had been reduced to nil in 1933 and 1934, agriculture still contributed 18 per cent. of the total income of the Territory in the worst year of the depression and drought, namely 1933, and became the main contributor to the income of the Territory during the latter part of the

<sup>1</sup> Hailey, *An African Survey* (1957), p. 1268.

decade. This rise in the importance of the contribution of agriculture to the total domestic product of the Territory, was due partly to the slow recovery in mining, but also to a significant improvement in annual agricultural production, which included the rapid growth of the karakul industry during the latter half of the 1930s. Thus the value of the income originating in agricultural production increased from Ro.7 (£0.35) million in 1933 to R7 (£3.5) million by 1939, being more than double the highest figure reached previously, viz., in 1928. Livestock farming progressed annually, except during the severest drought years, as appears from the table on page 12 reflecting the growth of livestock herds during the period 1929 to 1939<sup>1</sup>.

8. As appears from the table on the previous page, despite the severe drought conditions in the Police Zone and low livestock prices on the South African markets, small stock holdings increased by 34 per cent. and large stock holdings by 47 per cent. during the 1930s. The relatively large growth in small stock holdings, especially in the case of those owned by Whites, is to be ascribed to the phenomenal increase in the number of karakul sheep, which proved to be much more remunerative than the previous breeds of woollen sheep, since the price of Persian lamb pelts remained relatively stable throughout the 1930s while that of wool was among those most affected. The karakul sheep

DEVELOPMENT OF KARAKUL FARMING DURING THE 1930S<sup>2</sup>

Year	Number of Karakul sheep (000s)	Percentage annual increase	Percentage of total small stock
1930	290	+ 25.6	11.7
1931	406	+ 40.1	14.9
1932	531	+ 30.1	18.2
1933	567	+ 6.7	25.6
1934	801	+ 41.1	32.8
1935	1,126	+ 53.1	38.7
1936	1,511	+ 23.2	42.1
1937	1,906	+ 26.1	48.6
1938	2,146	+ 12.6	47.7
1939	2,616	+ 21.8	53.1

<sup>1</sup> Sources as follows: 1929: *U.G. No. 23—1930*, p. 33. 1930: *U.G. No. 21—1931*, p. 35. 1931: *U.G. No. 16—1933*, p. 34. 1932: *U.G. No. 16—1933*, p. 35. 1933: *U.G. No. 27—1934*, p. 17. 1934: *U.G. No. 26—1935*, p. 24. 1935: *U.G. No. 31—1937*, p. 20. 1936: *U.G. No. 31—1937*, p. 21. 1937: *U.G. No. 25—1938*, pp. 22-23. 1938: *U.G. No. 20—1939*, pp. 21-22. 1939: *U.G. No. 30—1940*, pp. 66-67.

<sup>2</sup> *Report of the Long-term Agricultural Policy Commission (1949)*, table VI.

is, moreover, a much hardier breed and can resist almost all but the worst drought conditions, and its introduction into the southern portion of the Territory meant a major revolution in the productivity of this otherwise semi-arid and poor region. The table on page 13 indicates how karakul sheep came to replace other breeds of small stock and, thereby, added another stabilizing force to livestock farming in the Territory. It should, however, be appreciated that karakul farming requires the vigilant and continuous application of highly scientific breeding methods, and that it took several years of experimental work before it could be established on any large scale. This largely explains why, during the 1930s karakul farming was developed and almost exclusively undertaken by Europeans.

9. The following table indicates how the export of cattle contracted relatively to the total cattle population during the greater part of the 1930s, despite the increase in herds during the period as a whole. The relatively low percentage exported during the first half of the thirties was due to severe drought conditions and poor export prices, and in the case of 1934, by the embargo placed on exports as a result of an outbreak of foot-and-mouth disease, while the high ratios for 1935 and 1936 are mainly to be ascribed to the lifting of the export embargo. While these figures largely reflect the difficulties experienced during the 1930s to dispose of the cattle of European farmers, they also suggest why the development of commercialized farming among the non-Whites was greatly retarded during this period.

PERCENTAGE OF CATTLE POPULATION EXPORTED ANNUALLY 1927, 1930-1939<sup>1</sup>

Year	Cattle population (000s)	Percentage exported
1927	546	10.0
1930	655	5.5
1931	645	7.4
1932	725	4.7
1933	629	6.7
1934	622	4.7
1935	666	19.3
1936	707	15.4
1937	807	5.4
1938	908	7.4
1939	1,053	6.7

<sup>1</sup> Report of the Long-term Agricultural Policy Commission (1949), table VIII.

10. The growth of agriculture in the late 1930s was, on the whole, despite periodic set-backs, continued and extended in the succeeding decades. The table on page 16 gives the quantities and value of the main agricultural products of the Territory in 1936, 1946, 1956, 1960 and 1962 respectively. As will be seen, karakul pelts and cattle together account for the predominant part of agricultural production. The fluctuation in the production of these and other products was caused mainly by epidemics, and the worst enemy of the farmer in South West Africa, viz., drought.

11. Referring to stock losses caused by drought, the Long-term Agricultural Policy Commission said:

"These will fluctuate from time to time in accordance with variation in the prevalence of disease or in that of climatic conditions or in depredations by carnivora or thieves or in that of other minor agencies. In order to ascertain what significance such losses have on the economy of the country as a whole and especially on that of the agricultural industry, a calculation was made on the basis of returns submitted for the Census Year ended August 31st, 1946, and average market values during that year. The Census Year 1946 fell in the then drought cycle but the crisis was not reached until the 1946-1947 Summer, when many farmers had already sold what stock they could to avoid loss or had moved their stock to parts in South West Africa where the drought was then less severe or to the Union (actually 229,669 head of small stock were moved to northern Karoo districts), and 10,853 head of cattle were slaughtered in that year at Walvis Bay as a special relief measure. It can therefore not be held that the Census Year 1946 fully reflected the average yearly loss from drought during the drought period<sup>1</sup>."

The results of the calculation referred to by the Commission were as shown in the table on page 17<sup>2</sup>.

During the last Agricultural Census Year (1961-1962) large stock numbering 192,252 (representing 8 per cent. of the total cattle population) and small stock numbering 420,172 (representing 8 per cent. of the population) died as a result of drought, disease, etc.

12. Reference has been made above to the contribution made by agriculture to the total domestic product during the 1930s<sup>3</sup>. Until 1950 agriculture and fishing combined still contributed more than mining, but as from 1951 the position was reversed with the contribution of mining increasing steadily until in 1960 (which was, however, a bad year for agriculture), the contribution of mining amounted to no less than 40 per cent. of the domestic product, whereas agriculture and fishing together contributed only 10.8 per cent.

However, the history of the 1930s and 1940s has not been forgotten, and it is realized that the economy of the Territory is still to a large extent dependent on agriculture.

13. The specialized nature of the main forms of commercial agricultural activity (viz., the production of karakul pelts and cattle for export), the adverse climatic conditions in the Territory, and the backgrounds of the

<sup>1</sup> *Report of the Long-term Agricultural Policy Commission* (1949), para. 268, p. 31.

<sup>2</sup> *Ibid.*, table II, p. 33.

<sup>3</sup> *Vide* para. 7, *supra*.

VALUE OF THE MAIN AGRICULTURAL PRODUCTS PRODUCED IN SOUTH WEST AFRICA<sup>1</sup>

Products	Year 1936		Year 1946		Year 1956		Year 1960		Year 1962	
	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value
Karakul pelts	814,561	R1,588,394 (£794,197)	2,223,524	R8,234,160 (£4,117,080)	2,802,927	R11,210,708 (£5,605,354)	1,975,683	R8,660,076 (£4,330,038)	2,345,563	R12,666,040 (£6,333,020)
<i>Cattle</i> :										
Exported	108,990	R886,000 (£443,000)	147,538	R2,392,206 (£1,196,103)	206,380	R12,382,800 (£6,191,400)	299,568	R16,316,240 (£8,158,120)	170,121	R8,500,000 (£4,250,000)
Locally consumed	—	—	24,531	R392,496 (£196,248)	38,221	R1,146,630 (£573,315)	60,215	R1,806,450 (£903,225)	91,924	R3,200,000 (£1,600,000)
<i>Small stock</i> :										
Exported	112,887	R135,464 (£67,732)	3,771	R11,212 (£5,606)	141,235	R847,410 (£423,705)	57,895	R347,370 (£173,685)	68,358	R410,000 (£205,000)
Locally consumed	—	—	218,799	R656,396 (£328,198)	48,183	R289,098 (£144,549)	52,000	R312,000 (£156,000)	73,481	R441,000 (£220,500)
Butter—lb.	7,062,205	R918,000 (£459,000)	643,677	R246,732 (£123,366)	9,388,868	R2,948,000 (£1,474,000)	4,539,906	R1,460,000 (£730,000)	5,059,370	R1,226,000 (£613,000)
Milk—gallons	—	—	184,203	R30,700 (£15,350)	1,250,000*	R500,000 (£250,000)	1,070,000	R450,000 (£225,000)	1,274,000	R535,000 (£267,500)
Cheese—lb.	227,953	R45,580 (£22,790)	18,550	R37,100 (£18,550)	538,946	R136,000 (£68,000)	81,397	R24,000 (£12,000)	108,625	R34,000 (£17,000)
Maize—200 lb. bags	65,856	R120,712 (£60,356)	17,339	R34,678 (£17,339)	185,985	R557,954 (£278,977)	42,114	R126,820 (£63,410)	58,386	R237,631 (£118,815)

\* Production for 1958.

<sup>1</sup> Departmental information.

## STOCK LOSSES DURING CENSUS YEAR 1946

<i>Kind of stock</i>	<i>Cause of loss</i>	<i>Number</i>	<i>Percentage of population</i>	<i>Percentage of total loss</i>	<i>Value</i>
Large	Disease	69,336	5.14	39.96	R1,109,376 (£554,688)
	Drought	90,010	6.71	51.89	R1,440,160 (£720,080)
	Other	14,138	1.05	8.15	R226,208 (£113,104)
<i>Total</i>		173,484	12.90	100.00	R2,775,744 (£1,387,872)
Small	Disease	113,191	3.37	14.22	R452,764 (£226,382)
	Drought	585,103	17.42	73.49	R2,340,412 (£1,170,206)
	Other	97,927	2.92	12.29	R391,708 (£195,854)
<i>Total</i>		796,221	23.71	100.00	R3,184,884 (£1,592,442)

Native inhabitants, have resulted in commercial farming being largely limited to Europeans. Attempts have been made to encourage Natives also to produce for the market, and some success has been achieved as will be shown in the succeeding paragraphs.

PROVISION OF WATER IN POLICE ZONE RESERVES AT END OF 1962 <sup>1</sup>

<i>Name of reserve</i>	<i>Number of boreholes</i>	<i>Number of dams</i>	<i>Number of wells</i>
Aminuis . . . . .	37	—	23
Berseba . . . . .	23	6	13
Bondels . . . . .	16	—	36
Eastern Res. . . . .	14	1	1
Epukiro . . . . .	58	10	12
Fransfontein . . . . .	9	3	11
Gibeon . . . . .	5	4	4
Neuhof . . . . .	6	—	2
Okombahe . . . . .	45	6	13
Otjohorong . . . . .	31	13	16
Otjituo . . . . .	37	—	65
Otjimbingwe . . . . .	14	7	63
Ovitoto . . . . .	12	18	19
Soromas . . . . .	5	—	9
Tses . . . . .	30	11	15
Warmbad . . . . .	—	—	3
Waterberg East . . . . .	65	5	17
<i>Total</i>	407	84	322

<sup>1</sup> Departmental information: successful as well as unsuccessful boreholes are included in the numbers given.

14. Considerable attention has been devoted to the provision of water in the reserves. The previous table shows the number of boreholes, dams and wells in reserves in the Police Zone.

By developing the water supplies a better distribution of the livestock in the reserves was obtained, and consequently the relatively poor grazing (*Aristida* types of grasses) could be better utilized, with the result that animals are at present not so adversely affected by drought.

In addition, stock diseases have been combated, the Native farmer in the Police Zone reserves receiving the same veterinary services as the European farmer.

These various factors have combined to produce a substantial increase in the number of stock (with the normal fluctuations caused by drought, etc.) in the reserves, as will appear from the table on page 20.

The quality of the stock has also been improved by selective breeding and by the introduction of well-bred bulls and rams.

15. In the result, the livestock industry has grown substantially in the reserves. To assist the residents to obtain the highest prices for their livestock, organized sales are held in the reserves. These sales yield a substantial (if variable) income, as will appear from the following table <sup>1</sup>.

<i>Year</i>	<i>Cattle sold</i>	<i>Small stock sold</i>	<i>Income</i>
1954	7,763	630	R192,566 (£96,283)
1955	12,651	10,020	R313,190 (£156,595)
1956	17,195	3,627	R454,866 (£227,433)
1957	19,930	6,083	R500,036 (£250,018)
1958	21,224	6,945	R424,310 (£212,155)
1959	14,830	10,706	R325,340 (£162,670)
1960	16,023	5,196	R334,059 (£167,029)
1961	8,270	5,467	R203,465 (£101,732)
1962	2,993	6,073	R97,011 (£48,505)

<sup>1</sup> Departmental information.

A large number of animals are still sold out of hand, but prices so obtained are low in comparison with those obtained at auction sales. During 1958, for example, 3,435 animals were sold out of hand for R56,762 (£28,381), i.e., an average of R16.52 (£8 5s. 3d.), whereas the average price for cattle sold at auction sales amounted to R22.62 (£11 6s. 3d.).

16. Creameries were established in various parts of the country to enable the Natives to dispose of surplus cream and milk. Although substantial amounts have been earned in this way, production is very uneven, as will appear from the following table <sup>1</sup>.

CREAM SOLD TO CREAMERIES BY NATIVES IN RESERVES IN THE POLICE ZONE  
1956-1959

Name of reserve	Value of cream sold				
	1956-1957	1957-1958	1958-1959	1960	1961
Aminuis . . . . .	R36,514 (£18,257)	R26,518 (£13,259)	R13,864 (£6,932)	R1,200 (£600)	R4,500 (£2,250)
Epukiro . . . . .	R28,246 (£14,123)	R17,100 (£8,555)	R296 (£148)	R1,374 (£687)	R145 (£72)
Fransfontein . . .	R5,320 (£2,660)	R3,780 (£1,890)	—	—	R1,860 (£930)
Okombahe . . . . .	R4,572 (£2,286)	R1,860 (£930)	—	—	—
Otjohorong . . . .	R1,820 (£910)	R3,034 (£1,517)	—	—	—
Otjituo . . . . .	R11,512 (£5,756)	R6,462 (£3,231)	R850 (£425)	R706 (£353)	R751 (£375)
Otjimbingwe . . .	R1,000 (£500)	R24 (£12)	—	—	—
Total . . . . .	R88,984 (£44,492)	R58,788 (£29,394)	R15,010 (£7,505)	R3,280 (£1,640)	R7,256 (£3,628)

(The decline in production as from 1957-1958 was caused by a severe drought, which was later followed by a foot-and-mouth epidemic.)

17. Karakul-pelt farming is a highly specialized undertaking, and the Natives initially did not attempt it. In time, however, they became more conversant with this type of farming, particularly in the southern regions. In 1959, for example, Natives sold pelts for more than R61,000 (£30,500).

### Conclusion

18. The above survey shows the success achieved by the policy of developing the agricultural potential of the Police Zone by means of

<sup>1</sup> Departmental information.

STOCK NUMBERS IN THE RESERVES INSIDE THE POLICE ZONE <sup>1</sup>

Name of reserve	1937 <sup>2</sup>		1956		1959		1962	
	Large stock	Small stock	Large stock	Small stock	Large stock	Small stock	Large stock	Small stock
Aminuis . . . . .	11,907	17,876	30,618	1,678	37,430	10,490	49,719	25,367
Berseba . . . . .	2,398	47,320	3,999	100,455	4,252	101,265	2,487	58,639
Bondels . . . . .	544	8,420	1,775	28,972	1,884	28,240	1,361	30,421
Epukiro . . . . .	8,368	5,924	26,705	3,814	19,597	4,200	32,987	11,913
Fransfontein . . . . .	357	3,531	3,646	7,892	602	4,557	886	4,634
Gibeon . . . . .	873	8,111	1,012	13,331	784	6,353	300	3,980
Neuhof . . . . .	150	1,248	240	3,907	264	1,629	278	1,092
Okombahe . . . . .	2,339	25,113	12,239	28,102	1,019	9,285	773	8,010
Otjohorongongo . . . . .	8,094	45,283	31,432	50,698	1,861	24,748	2,561	29,894
Otjituo . . . . .	8,334	6,805	16,439	3,598	23,752	3,603	31,846	5,330
Otimbingwe . . . . .	4,033	22,796	9,209	14,821	1,480	4,171	1,379	6,306
Ovitoto . . . . .	9,774	22,531	12,377	13,120	7,365	5,385	7,478	5,142
Eastern Reserve . . . . .	not created then	not created then	691	108	2,972	628	5,225	3,177
Soromas . . . . .	264	4,894	240	5,066	209	2,455	150	2,382
Warmbad . . . . .	not created then	not created then	227	4,970	219	3,078	280	2,653
Waterberg East . . . . .	24,090	11,519	38,186	9,645	35,900	8,125	37,072	18,000
Tses . . . . .	1,845	33,621	3,408	52,030	2,435	29,614	1,400	20,743
Total . . . . .	83,370	264,992	192,443	342,207	142,025	247,826	176,182	237,683

<sup>1</sup> Departmental information: except for data relating to 1937

<sup>2</sup> U.G. 25—1938, para. 311.

European farmers, while at the same time setting aside and developing Native reserves.

The agriculture of the European farmer has at all times made a substantial, and, during some periods, an indispensable contribution towards the economy and revenue of the Territory. The development of agriculture in the reserves was a slow process, as was to be expected, but there has been considerable progress.

The Long-term Agricultural Policy Commission found shortly after the Second World War that European-owned cattle and sheep were of exceptionally high quality, and this quality is continuously being improved as a result of the stimulus of competition in external markets. Although the same high quality has not in general been attained by the Natives, there has been considerable improvement in the standard, and continuing progress is being made as more and more of them are being won over to using sires of a better quality.

As far as numbers of stock are concerned, South West Africa compares very favourably with other countries in Africa. It ranks first as far as the number of sheep *per capita* is concerned, and is surpassed only by its neighbour Bechuanaland in the number of cattle *per capita*. The following table shows the comparative position in this regard between South West Africa and some other territories in Africa:

LIVESTOCK PER CAPITA IN SELECTED AFRICAN COUNTRIES:  
AVERAGE 1954-1955-1956-1957<sup>1</sup>

	<i>Cattle</i>	<i>Sheep</i>	<i>Goats</i>
South West Africa . . . . .	3.49	6.28	1.01
Bechuanaland . . . . .	3.52	0.47	0.93
Swaziland . . . . .	1.84	0.13	0.61
Southern Rhodesia . . . . .	1.28	0.10	0.16
Kenya . . . . .	1.10	0.44	0.63
South Africa . . . . .	0.84	2.68	0.37
Tanganyika . . . . .	0.82	0.34	0.48
Basutoland . . . . .	0.64	2.11	1.03

<sup>1</sup> U.N. Doc. E CN. 14 28, tables I-IX, p. 27—Livestock *per capita*.

CHAPTER IV  
RESPONDENT'S REPLY TO APPLICANTS' ALLEGATIONS  
(MEMORIALS)

Paragraph 16 of Chapter V <sup>1</sup>

1. It is admitted that the bulk of the Native population of the Territory is to be found in the northern areas outside the Police Zone. According to the 1960 census figures, the total Native population numbered 438,575 (including 4,528 foreign migrant workers, mostly from Angola) of whom 257,855 lived in the northern sector, amounting therefore to approximately 63 per cent. of the total. The reasons for the greater density of population in the northern areas are to be found in more favourable climatic conditions, and in social, economic and historical circumstances, including, in particular, the fact that the inhabitants of these areas have always been agriculturists, and not pastoral nomads like the Native inhabitants of the Police Zone, and that they were largely spared the exterminating wars of the past.

2. It is admitted that the inhabitants of the northern territories are far removed from the principal areas of modern economic development and activity. This was the position when Respondent assumed the Mandate, and this situation could have been altered in one of two ways, viz., either by encouraging or forcing the people to leave their lands and flock to the Police Zone, or, alternatively, by a process of rapid development of the northern territories with the aid of European initiative and capital. The latter alternative has been considered above, where it was pointed out that the moral and social detriment which would have flowed from such a course would, in Respondent's opinion, have outweighed by far any conjectural material benefit which might have accrued to the inhabitants <sup>2</sup>.

The former alternative would have been even more impractical. Even on economic grounds, i.e., apart from social factors, there can be no reason for encouraging the inhabitants of the northern areas to leave their lands in order to attempt to practise their traditional subsistence agriculture in less favoured regions (where agriculture, as distinct from pastoralism, is by and large impossible) for the purpose of selling agricultural products in the unlikely event of there being any surplus over and above their own requirements.

3. It is to be noted that the complaint levelled by Applicants against Respondent in respect of the northern areas (being, in effect, that "modern economic development and activity" should have been stimulated in the area) amounts to the exact converse of their complaint relating to the Police Zone. Such development and activity would necessarily have required exploitation by Europeans of the only available natural resources of these areas (i.e., the agricultural potential), with a resultant loss of land by the Natives. On the other hand, with respect to the Police Zone, where the Natives are near "the principal areas of

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<sup>1</sup> I, p. 112.

<sup>2</sup> *Vide* Chap. II, paras. 2-5, *supra*.

modern economic development and activity", Applicants apparently complain that the claims of the Natives to the land in the Police Zone were not met<sup>1</sup>, a course which, if followed, would have prevented the maintenance or creation of such "areas of development and activity".

4. The nature of the agricultural activities in the northern areas has been described<sup>2</sup>. The subsistence type of agriculture is not, as Applicants would seem to suggest, forced on the population by the inaccessibility of markets or by a "deliberate, systematic and consistent course of conduct" by which Respondent has "discriminated against the 'Native' population of South West Africa in agriculture"<sup>3</sup>. On the contrary, it represents an aspect of the traditional lives of these people, which they lead out of preference, not necessity.

5. Furthermore, it is incorrect to suggest, as Applicants appear to do, that the inhabitants of the northern territories merely "survive", or that their agricultural activities only "keep [them] alive under normal conditions". The favourable living conditions in the northern areas are reflected in the increases in population referred to above<sup>4</sup>. In addition, there has been a steady rise in the general standard of living in these areas, due in part to increased agricultural production, and in part to wages earned by Ovambo workers in the Police Zone. In the latter regard, it is true that the inhabitants of the northern areas take part in the modern monetary economy mainly by serving as labourers in the mines, industries and on farms within the Police Zone. Labour is the normal way in which underdeveloped peoples enter the money economy. The labour coming from the northern territories is regulated in association with the Native tribal authorities in those areas, in order to prevent the social disruption of their tribes<sup>5</sup>.

#### Paragraph 17 of Chapter V<sup>6</sup>

6. The land in Native reserves was never, as alleged by Applicants, "the property of the Administration of South West Africa". On assumption of the Mandate, all land which had previously vested in the German Government passed to Respondent in its capacity as Mandatory, or Trustee, with powers of management and administration<sup>7</sup>. This included (with the sole exception of the Berseba reserve) the land which had been, or was still to be, set aside as reserves. The reserves consequently at all times vested in Respondent, and not in the Administration of South West Africa, which, in any event, is not a legal *persona*<sup>8</sup>.

Save for the aforesaid, paragraph 17 is admitted. The nature and functions of the South African Native Trust, and the reasons for vesting the South West African reserves in such Trust, are dealt with fully below<sup>9</sup>.

<sup>1</sup> Memorials, Chap. V, paras. 23 and 24, I, pp. 114-115.

<sup>2</sup> *Vide* Chap. II, *supra*.

<sup>3</sup> I, p. 117.

<sup>4</sup> *Vide* Chap. II, paras. 10-12, *supra*.

<sup>5</sup> *Vide* sec. C, Chap. V, para. 14, *infra*.

<sup>6</sup> I, p. 112.

<sup>7</sup> *Vide* Book VIII, sec. C, Chap. VII, paras. 11-17, of this Counter-Memorial.

<sup>8</sup> *Ibid.*, para. 27.

<sup>9</sup> *Ibid.*, paras. 18-25.

As will be seen, such vesting operated, and operates, for the benefit of the inhabitants of the reserves.

#### Paragraph 18 of Chapter V <sup>1</sup>

7. It is incorrect to suggest, as Applicants appear to do, that all commercial farms in the Territory are owned by Europeans. The Rehoboth *Gebiet* is largely owned by the Rehoboth *Burghers* in individual title, and Native labour is employed on farms in the area. In addition, there are at least 14 farms in the Territory which are owned by Coloured persons. Furthermore commercial farming is practised to some extent in the reserves <sup>2</sup>.

The work done by Natives employed on farms varies from completely unskilled work to relatively responsible and skilled work, such as that of farm foremen. Recruitment of labour is dealt with elsewhere <sup>3</sup>.

Save as aforesaid, paragraph 18 is admitted.

#### Paragraphs 19 and 28 of Chapter V <sup>4</sup>

8. The basic situation in the Territory on the assumption of the Mandate, and the consequences flowing therefrom, have been dealt with above <sup>5</sup>. It will be recalled that on assumption of the Mandate, the Police Zone was largely underpopulated, and its development required an increase in the immigration of European farmers. In addition, it was necessary for the regeneration of the social and political institutions of the scattered remnants of the Native tribes that their members wishing to practise agriculture should be concentrated in units in which the traditional order could, as far as possible, be restored.

It follows from the foregoing that Respondent could not reasonably have pursued a policy permitting individual Natives, or small groups of Natives, to live on, or to roam over large tracts of potentially useful land. As a result of the events of the past, many of these individuals or groups were dependent for their livelihood on the hunt or on robbery and it need hardly be stated that they, living in the main on the fringes of, or outside, the law, constituted a real threat to peace and security. In the interests of the Territory, it was therefore necessary to settle them, either in reserves where they could practise and develop their traditional agricultural systems in the company of their own kith and kin and under control of Respondent and the nascent Native authorities, or else on farms or in towns where they could earn their living, acquire knowledge of modern farming, commercial and industrial methods, and depasture such stock as they possessed on the farms of their employers, the town commonages or nearby reserves.

Consequently it would, in Respondent's view, have been detrimental to the interests of the Territory if the authorities were to have desisted from allocating pieces of land as farms, or proclaiming them as reserves,

<sup>1</sup> I, pp. 112-113.

<sup>2</sup> *Vide* Chap. III, paras. 13 to 17, above.

<sup>3</sup> *Vide* sec. C, Chap. V, *infra*.

<sup>4</sup> I, pp. 113 and 116.

<sup>5</sup> *Vide* Book IV, Chap. IV, of this Counter-Memorial.

merely because individual Natives or small groups of Natives were making use thereof in the manner aforesaid.

9. In the result, Respondent did not so desist, and consequently any Natives found in areas allotted as farms, or proclaimed as reserves, either had to fall in with the new status of such areas, or to leave them. This consequence flowed inevitably from such allotment or proclamation. The terms of the standard lease referred to by Applicants<sup>1</sup> merely served to explain the rights of the lessee in this respect.

In reserves, the specific choice of any Natives living on the land prior to its proclamation, was either to be assimilated in the reserve communities, accepting their authority, or to depart. On farms, such Natives could negotiate acceptable agreements<sup>2</sup> with the farmers, or seek more congenial employment elsewhere, or move to the reserves. In addition, there was no legal bar to prevent them acquiring land for themselves.

10. In Respondent's submission, the whole emphasis of Applicants' complaint is misplaced. There can be no objection to granting a right to a farmer to have persons removed from his land if they are not prepared to work for him. The only possible objection relates to the fact that land was granted to farmers despite the presence thereon of Natives. When regard is had to the considerations set out in the previous paragraphs, it will be apparent that such objection possesses no validity.

#### Paragraph 20 of Chapter V<sup>3</sup>

11. The facts stated in this paragraph are admitted. The reasons for organizing reserves on the basis of common use of land, have been mentioned above<sup>4</sup> with reference to a more detailed exposition in Respondent's reply to Applicants' complaints regarding "Rights of Residence"<sup>5</sup>.

#### Paragraph 21 of Chapter V<sup>3</sup>

12. Before dealing with the detailed allegations in this paragraph, it is necessary to point out that it forms part of a section under the heading "*Well-being, Social Progress and Development in Agriculture*"<sup>6</sup>. (Italics added.) Rights of ownership in respect of non-agricultural land are therefore not at present relevant<sup>7</sup>.

Nevertheless, the whole emphasis of Applicants' complaint contained in this paragraph is placed on restrictions on the owning of land in urban areas<sup>8</sup>. Thus they commence by quoting part of a statement (presumably

<sup>1</sup> I, p. 116.

<sup>2</sup> Regarding wages, conditions of employment, the provision of an area for cultivation or depasturing of stock, etc.

<sup>3</sup> I, p. 113.

<sup>4</sup> *Vide* Chap. III, para. 3, *supra*.

<sup>5</sup> *Vide* Book VI, Chap. III, paras. 44-50, of this Counter-Memorial.

<sup>6</sup> I, p. 112.

<sup>7</sup> The nature of rights exercisable by Natives in towns is dealt with elsewhere in this Counter-Memorial—*vide* Book V, sec. E, Chap. III.

<sup>8</sup> It is hardly necessary to state that agricultural activities are not normally carried on inside urban areas.

with the intention of attempting to refute it) in which Respondent rendered it quite clear that Natives were entitled to acquire and occupy land outside urban areas. However, in their next subparagraph they refer again to provisions relating to rights in respect of land "*within an urban area or a rural township*"<sup>1</sup>. (Italics added.)

13. Finally, in an attempt to prove that Natives are not entitled to own agricultural land in the Territory, Applicants refer to a statement by Respondent that "the Natives generally have not yet reached the stage of development where they would benefit from individual land ownership, particularly of farms"<sup>2</sup>.

Whereas Respondent believes this statement to be true, it hardly serves as evidence that Natives are by law precluded from acquiring agricultural land. In its context<sup>3</sup>, this passage served as an explanation why assistance under the land settlement laws had not been requested by, or granted to, Natives. In addition, it affords an explanation why no steps have been taken to subdivide the reserves into separate allotments. By no process of reasoning, however, can this statement, in conjunction with provisions regarding ownership of land in urban areas, give rise to the inference "that no individual 'Natives' own land or can own land anywhere within the Territory of South West Africa"<sup>4</sup>.

#### Paragraph 22 of Chapter V<sup>4</sup>

14. The Union of South Africa never "declared all unallocated land within the Territory to be government land" as alleged by Applicants. On assumption of the Mandate, all land which had previously vested in the German authorities, passed to Respondent<sup>5</sup>. Provision was made for the manner of dealing with such land in two proclamations, viz., the Land Settlement Proclamation, 1920<sup>6</sup>, and the Crown Land Disposal Proclamation, 1920<sup>7</sup>. The Land Settlement Proclamation, which is the relevant provision for present purposes, defined "Crown Land" as follows:

"... all unalienated land within the said Territory however acquired, which was lately the property of the German Government, and such further land as may be acquired by Government under the provisions of the Land Settlement Act as amended"<sup>8</sup>.

The definition of Crown land in the Crown Land Disposal Proclamation is, up to the words "of the German Government", identical to the one quoted above, but in the last part there are some verbal differences which do not, however, materially affect the meaning<sup>9</sup>.

<sup>1</sup> Sec. 7 of the Natives (Urban Areas) Proclamation, 1951, referred to in I, p. 113.  
<sup>2</sup> I, p. 113.

<sup>3</sup> *Ibid.*, pp. 115-116.

<sup>4</sup> *Ibid.*, p. 114.

<sup>5</sup> *Vide* para. 6, *supra* and Book VIII, sec. C, Chap. VII, paras. 11-17, of this Counter-Memorial.

<sup>6</sup> Proc. No. 14 of 1920 in *The Laws of South West Africa 1915-1922*, pp. 219-223.

<sup>7</sup> Proc. No. 13 of 1920 in *The Laws of South West Africa 1915-1922*, pp. 216-219.

<sup>8</sup> Proc. No. 14 of 1920, Sched. I, sec. 2, in *The Laws of South West Africa 1915-1922*, p. 220.

<sup>9</sup> Proc. No. 13 of 1920, Sched. I, sec. 1, in *The Laws of South West Africa 1915-1922*, p. 217.

The true position therefore is that, at the inception of the Mandate, former German Government land passed to Respondent, and that legislative provision was made for disposal and allotment of such land.

15. Applicants' allegations regarding authority over government land are also either wrong or misleading. Legislative powers over the Territory were initially exercised by the Governor-General of South Africa with powers of delegation <sup>1</sup>. In 1925 a South West African Legislative Assembly was created by Act No. 42 of 1925 <sup>2</sup>. This Assembly was given certain limited legislative powers. However, any enactment (called an Ordinance) passed by the Assembly required the assent of Respondent's representative, the Administrator, acting subject to Respondent's instructions. The Administrator was also entitled to reserve any draft Ordinance "for the signification of the pleasure of the Governor-General" <sup>3</sup> (i.e., Respondent's government). In addition, the Governor-General retained his own powers of legislating for the Territory on all subjects, an exercise of which was expressly stated to override anything to the contrary contained in any Ordinance <sup>4</sup>.

16. Not only were these limitations placed on the legislative powers of the Assembly, but it was also at no stage, prior to 1949, given authority in respect of the allotment of Crown land. Section 27 of the 1925 Act <sup>5</sup> provided that legislative competence regarding "the allotment, sale, lease or disposal of Government lands in the Territory" could in certain circumstances be granted to the Assembly by the Governor-General. In fact this was not done, and only in 1949 <sup>6</sup> did the Assembly obtain such competence but even then still subject to the possibility of disallowance by the Administrator or the Governor-General, and to the overriding legislative competence of the South African Parliament.

17. Not only was the power of legislation in regard to the allocation of Crown land retained by the Governor-General (or his representative, the Administrator) until 1949, but he (or his officers) retained control over the actual processes of allotment. In terms of the 1920 Land Settlement Proclamation, the allocation of Crown land was the function of the South African Minister of Lands, and this function was exercised on the advice of the Land Board, a statutory body appointed by the Governor-General (i.e., the South African Government) <sup>7</sup>. By Administrator's Proclamation No. 53 of 1920 <sup>8</sup>, the powers of the Minister and of the Governor-General passed to the Administrator.

In 1927 the Governor-General by Proclamation amended and consolidated the provisions regarding Land Settlement <sup>9</sup>. This Proclamation provided that the appointment of the Land Board, and the allotment of

<sup>1</sup> Act No. 49 of 1919, sec. 2, in *The Laws of South West Africa 1915-1922*, pp. 10-12.

<sup>2</sup> Act No. 42 of 1925 in *The Laws of South West Africa 1925*, pp. 60-92.

<sup>3</sup> Act No. 42 of 1925, sec. 32, in *The Laws of South West Africa 1925*, p. 69.

<sup>4</sup> *Ibid.*, sec. 44, p. 72.

<sup>5</sup> *Ibid.*, sec. 27, p. 68.

<sup>6</sup> Pursuant to Act No. 23 of 1949 in *The Laws of South West Africa 1949*, pp. 170-186.

<sup>7</sup> *Vide* Chaps. III and IV of Act No. 12 of 1912, which was with amendments applied to the Territory by Proc. No. 14 of 1920 in *The Laws of South West Africa 1915-1922*, pp. 219-223.

<sup>8</sup> Proc. No. 53 of 1920 in *The Laws of South West Africa 1915-1922*, pp. 428-429.

<sup>9</sup> Proc. No. 310 of 1927 (S.A.) in *The Laws of South West Africa 1927*, pp. 22-82.

Government land, would remain in the hands of the Administrator. The Proclamation is still in force <sup>1</sup>.

18. It is apparent from the foregoing that, up to 1949, all power of legislation regarding allotment of Crown or Government land vested in Respondent, and that the actual allocation of land was always performed by an official appointed by Respondent and under its control. It is therefore incorrect to say that "thereafter (meaning in the context shortly after the assumption of the Mandate) the Union transferred authority over Government or Crown land to the 'European' Legislative Assembly of the Territory" <sup>2</sup>.

### Paragraphs 23 and 24 of Chapter V <sup>3</sup>

19. In 1913 Europeans owned farms comprising a total area of 133,936 sq. km. <sup>4</sup> This area did not include large estates in the possession of companies such as the Liebig Company and the South African Territories Company <sup>5</sup>. Since the assumption of the Mandate and up to May 1961, Respondent has given out 171,624 sq. km., consisting of land which had previously belonged to the German Government, as well as land purchased from the said companies and others. In addition, as at the said date, farms amounting to 8,976 sq. km. had been purchased by the Administrator on behalf of White farmers while an additional 6,790 sq. km. were leased also to White farmers <sup>6</sup>, and 75,114 sq. km. of Government land were leased to White farmers for emergency grazing for the duration of the drought <sup>7</sup>. The total area of the Territory (excluding Walvis Bay) is 823,145 sq. km. <sup>8</sup> It is consequently true that Respondent has transferred a substantial portion of the land area of the Territory, which had previously been government land, or land owned but not used productively for permanent settlement by Europeans. It is also admitted that in this regard Respondent continued a process which had been begun by the German Colonial regime. As will be noted at a later stage, Respondent reserved, during the same period, lands totalling 206,437 sq. km. for the Natives as well as recognizing the Rehoboth *Gebiet* (13,122 sq. km.) as the property of the Baster community <sup>9</sup>.

20. It is admitted that on assumption of the Mandate, Respondent did not confiscate farms held in private ownership and did not accede to the land claims of the Native inhabitants of the Police Zone. The reasons which induced Respondent to follow an active policy of European land settlement have been set out above <sup>10</sup>. These reasons argued against

<sup>1</sup> Although amended in immaterial respects by *Proc. No. 205 of 1932 (S.A.) in The Laws of South West Africa 1932*, pp. 22-32, and *Proc. No. 77 of 1936 (S.A.) in The Laws of South West Africa 1936*, pp. 4-10, and by *Ord. No. 6 of 1951 in The Laws of South West Africa 1951*, p. 196.

<sup>2</sup> I, p. 114.

<sup>3</sup> *Ibid.*, pp. 114-115.

<sup>4</sup> U.G. No. 25-'38, para. 576, pp. 89-90, and Lord Hailey, *A Survey of Native Affairs in South West Africa (1946)* (unpublished), p. 50.

<sup>5</sup> *P.M.C., Min.*, IV, p. 113.

<sup>6</sup> *Proc. 310 of 1927*, sec. 11, in *The Laws of South West Africa 1927*, pp. 28-30.

<sup>7</sup> Since the drought has terminated, these farmers have evacuated the land.

<sup>8</sup> *Vide* Book III, Chap. I, para. 4, of this Counter-Memorial.

<sup>9</sup> *Vide* Book VI, Chap. III, para. 62, of this Counter-Memorial.

<sup>10</sup> *Vide* Book IV, Chap. IV, paras. 23-29, of this Counter-Memorial.

the confiscation of farms owned by Europeans, who were, on the whole, experienced and progressive farmers. In addition, such confiscation could hardly have taken place without compensating the owners, who had lawfully obtained the land and effected expensive capital improvements. Applicants have not stated from which source the money for such compensation was to be derived, unless the suggestion is that, because the German Government had initially "seized" certain lands, such lands should in 1920 also have been "seized" without compensation from the then owners, and "returned" to the Natives. Apart from the inequity of this suggestion, some intricate practical problems would have arisen in determining which Natives were entitled to specific lands. This is apparent particularly if regard is had to the nomadic habits of the various tribes, their conflicting claims to land and the wars resulting therefrom during the nineteenth century; and also to their defeat and dispersal during the German regime <sup>1</sup>.

21. Respondent admits allocating approximately 4,885,000 ha. of land to Europeans during the first three years of the administration of the Mandate. The policy of European settlement was vigorously applied up to 1930. In 1931 it came to a complete standstill, and was resumed in 1935. During the war it was again virtually suspended, but was resumed after the war, mainly in favour of ex-servicemen.

The following figures indicate the number of farms allocated <sup>2</sup>:

<i>Period</i>	<i>Number of farms allocated</i>
1920-1930 . . . . .	1,261
1931-1935 . . . . .	Nil
1936-1940 . . . . .	385
1941-1950 . . . . .	563
1951-1960 . . . . .	793
1961 . . . . .	11
1962 . . . . .	6

22. Respondent is not aware of the source of Applicants' statement that "by 1929, most of the available government land . . . within the Police Zone had been distributed" <sup>3</sup>. In a United Nations document <sup>4</sup>, a similar statement was made, also without reference to a source, but the year given was 1939, not 1929. It is admitted, however, that land was purchased from companies which had large holdings, for subdivision and distribution among European farmers.

<sup>1</sup> *Vide* Book III, Chaps. II and III, of this Counter-Memorial.

<sup>2</sup> Departmental information.

<sup>3</sup> I, p. 114.

<sup>4</sup> *U.N. Doc. A/AC. 73/L. 10 of 19/8/57, para. 231.*

Paragraph 25 of Chapter V <sup>1</sup>

23. As noted above, after the end of the Second World War, further land was allotted. It is admitted that the Police Zone boundary was extended in 1953, 1954 and 1956. It is incorrect to assume, as Applicants apparently do, that the whole of the area beyond the Police Zone has been reserved for occupation by Natives, or that the whole of it is so occupied. In fact, there has always been a substantial uninhabited area adjoining the Zone. As has been noted, the Police Zone resulted from an historic administrative division of the Territory <sup>2</sup> continued by Respondent, and it constitutes the area in which the Police normally operate. The reasons for extending the boundaries of the Zone are therefore to be sought in administrative considerations. In some cases this arose from the necessity of providing police protection for new farms allotted in the previously uninhabited areas in the northern part of the Territory. There were, however, other reasons, such as to bring newly declared Native areas within the limits of the Zone, and thus to enable the Police, *inter alia*, to inspect sheep therein for scab.

24. The total area of the Territory is 823,145 sq. km. (excluding the Port and Settlement of Walvis Bay) <sup>3</sup>. As at May 1961, land reserved for or belonging to non-Whites amounted to 219,559 sq. km. and land owned by or leased to Europeans amounted to 389,650 sq. km. <sup>4</sup> In fact, therefore, as at 1961, European farm land represented more than 45 per cent. of the Territory whereas reserves amounted to approximately 27 per cent.

It is admitted that a large part of the area such as the Namib desert, falling outside the reserves and the areas farmed by Europeans, is unsuitable for agriculture.

Applicants state that "some of these lands [i.e., European farms] bordered upon the northern 'Native' areas outside the Police Zone" <sup>1</sup>. In fact this statement is incorrect, since there is an uninhabited strip of land of varying width running along the whole length between the northern Native areas and the Police Zone. But in any event, Respondent does not appreciate why Applicants should object to the mere fact of European farms bordering on the northern Native areas.

25. The occupation of such a large proportion of the Territory's land by European farmers, arises from historical and economic circumstances. The position of the northern areas has been considered above <sup>5</sup>. In those areas the concentration of a relatively large number of people in relatively small areas arises from superior possibilities for agriculture, as well as from historical and social circumstances. In respect of those areas, Applicants' complaint is apparently not that too little land has been left for the Native inhabitants—indeed, no encroachment on the tribal areas in the north is, or can be, alleged—but rather that Respondent failed to create "areas of modern economic development and activity"

<sup>1</sup> I, p. 115.

<sup>2</sup> *Vide* Book IV, Chap. III, para. 2, of this Counter-Memorial.

<sup>3</sup> *Vide* Book III, Chap. I, para. 4, of this Counter-Memorial.

<sup>4</sup> Excluding an area of 6,790 sq. km. which had been leased to Europeans for emergency grazing, but was subsequently vacated.

<sup>5</sup> *Vide* Chap. II, *supra*.

in these areas, or to make them "part of the modern monetary economy"<sup>1</sup>. As has been demonstrated above, this in effect amounts to a complaint that Respondent failed to introduce European farmers into these areas.

26. In the Police Zone, the Natives were at the inception of the Mandate to a considerable extent landless, and the country was generally underpopulated. Respondent embarked on a policy of encouraging White immigration, while at the same time creating Native reserves. The reasons for both policies are dealt with elsewhere in this Counter-Memorial<sup>2</sup>. Two points, however, require emphasis at this stage:

- (a) The only way in which Respondent could have ensured the possession of land by Natives, was by creating reserves. The necessity for preventing the alienation of land by Natives is dealt with in more detail elsewhere<sup>3</sup>. It is notable that outside the reserves in the Police Zone, no Native has ever purchased land, despite the absence of any legal impediment in that regard. Consequently, if Respondent wished to ensure that a greater percentage of land area should be in the possession of the Natives, it would have been necessary to create more or larger reserves.
- (b) The economic development of the Territory required the encouragement of European farming. Proper administration of the Territory, not to mention its development, would have been impossible for Respondent in the absence of progressive commercial farmers. The Natives were not in a position to supply such men.

27. The objectives of Respondent's policies were therefore of a conflicting nature. On the one hand, it was deemed necessary to provide inalienable reserves for the Natives, where they would be protected from White competition and from inducements to sell their land. No commercial production or revenue could be expected from these lands for many years.

On the other hand there existed, and still exists, a need, both from the commercial and the fiscal point of view, for the use of land for modern productive farming. It was Respondent's duty to strike a balance between these conflicting considerations, and, bearing in mind that Natives are entitled to purchase agricultural land in any part of the Police Zone, it is submitted that the provisions that have been made, are not unreasonable. In addition, it must be emphasized that the present extent of the reserves need not remain unaltered. In the past, when the need arose for more land for Natives, the reserves were extended or new ones created, often by the purchase or expropriation of European-held farms<sup>4</sup>.

#### Paragraph 26 of Chapter V<sup>5</sup>

28. Save as indicated below, this paragraph correctly reflects the main conditions relating to allotment of land. There have, however, been variations in the past. So, for instance, when allotment of land was resumed in 1935, Respondent pursued—

<sup>1</sup> I, p. 112.

<sup>2</sup> *Vide* Book IV, Chap. IV, paras. 23-29, and Book VI, Chap. III, paras. 34-54, of this Counter-Memorial.

<sup>3</sup> *Vide* Book VI, Chap. III, paras. 51-54, of this Counter-Memorial.

<sup>4</sup> *Ibid.*, para. 62, of this Counter-Memorial.

<sup>5</sup> I, p. 115.

"a policy of allotting farms for a probationary period of one year . . . the settler receiving the bare farm only, on which he has to work out his own salvation. No financial assistance is extended in any shape or form . . .<sup>1</sup>".

It is not correct to state that the settler can "obtain title to the land only if he was a national of the Union"<sup>1</sup>. The relevant requirement is that in cases of allotments since 1947, grants are made only to "British subjects"<sup>2</sup>. The expression "British subject" means "a South African citizen, a citizen of a Commonwealth country or a citizen of the Republic of Ireland"<sup>3</sup>.

The term "South African citizen" includes persons born in South West Africa since 1926<sup>4</sup>.

It is to be noted further that the necessity of being a "British subject" obtains only at the stage when the full purchase price has been paid, and the allottee desires to obtain a grant of the holding. Normally 30 years or more would, at this stage, have elapsed since the initial allotment of a lease in respect of the holding, so that any allottee would have had ample time to become naturalized. In fact, special provision is made for allotments to overseas applicants<sup>5</sup>.

It is admitted, however, that most allotments were made to South African citizens.

As was stated in 1935 by a Commission of enquiry:

"The Union Nationals did not come into the Territory devoid of means or farming experience. We have been informed by the Secretary for South West Africa that between 1920 and 1925 the average amount brought by each settler was £754 and between 1926 and 1931, £1,287. As regards experience the farmer from South Africa is from his environment and training much better qualified to undertake farming operations in South West Africa than those who have received their training in densely populated countries where agriculture is practised and ranching is practically unknown<sup>6</sup>."

#### Paragraph 27 of Chapter V<sup>7</sup>

29. The facts contained in this paragraph are admitted. The reasons why Respondent formed the view that "the Natives generally have not yet reached the stage of development where they would benefit from individual land ownership, particularly of farms" appear from the limited nature of their agricultural activities as described above<sup>8</sup>. Indeed, Respondent's attitude seems to have been shared by the United Nations Committee on South West Africa with reference to a more advanced

<sup>1</sup> U.G. 30—1940, para. 339, pp. 74-75.

<sup>2</sup> Proc. No. 310 of 1927 (S.A.) in *The Laws of South West Africa 1927*, pp. 22-84; sec. 43 (1) (d) inserted by Proc. No. 39 of 1947 (S.A.) in *The Laws of South West Africa 1947*, p. 134.

<sup>3</sup> Act No. 44 of 1949, sec. 38, in *The Laws of South West Africa 1949*, p. 234.

<sup>4</sup> *Ibid.*, sec. 2, in *The Laws of South West Africa 1949*, p. 206.

<sup>5</sup> Proc. No. 310 of 1927 (S.A.), sec. 17, in *The Laws of South West Africa 1927*.

P. 34.

<sup>6</sup> U.G. 16—1935, para. 253, p. 46.

<sup>7</sup> I, pp. 115-116.

<sup>8</sup> *Vide* Chaps. II and III, *supra*.

group than the Natives, viz., the Rehoboth Basters. Thus the Committee said, in relation to the Rehoboth *Gebiet*:

"The application of *apartheid* to the *Gebiet* and the consequent forced removal of 'European' [*sic*] leasing farms from Rehoboth landowners automatically deprives the Rehoboth landowners of a major source of income <sup>1</sup>."

And the Committee continued to argue that this loss of income could lead to the insolvency of Rehoboth landowners, and the consequent alienation of their lands <sup>2</sup>.

Thus the Committee appears to have accepted that the Rehoboth Basters could best utilize their land by letting it to Europeans, rather than by practising agriculture themselves, and that European farmers would be able to make a profit over and above the amount of the rent, whereas Baster farmers would not even be able to raise a sum equivalent to such rent.

30. Respondent's view, referred to in the previous paragraph, explains why the Land Settlement scheme has up to the present been applied only with respect to White farmers. The difficulty of developing land in the Territory, the necessity for applying modern scientific methods of farming, soil conservation and water utilization, and generally the complexity of agriculture and marketing in the adverse conditions existing in South West Africa, have caused the Administration to look to the White farmer to develop the country. A necessary corollary to the fact that Natives and Coloured persons are regarded as on the whole not sufficiently advanced to meet the rigorous requirements of commercial farming in the Territory, is that White farmers should not, at any rate while ownership in the farms remains vested in the Administration, be entitled to cede or assign their leases to non-Whites. However, once the farmer becomes owner of the land, no restraint is placed on his right of alienation.

The condition regarding miscegenation <sup>3</sup> in the probationary lease <sup>4</sup> cannot by itself be relevant to "well-being, social progress and development in agriculture", except to the extent that it indicates a contemplation that such leases would, while the relevant regulations remain unamended, be granted to Europeans only. That this has indeed been the contemplation, is admitted. When Respondent deems the Native population ripe for individual land settlement, provision can be made therefor.

#### Paragraphs 29 to 32 of Chapter V <sup>5</sup>

31. In these paragraphs, Applicants make certain factual allegations relating to drought relief from which they draw the inference that Respondent "used overwhelmingly the larger part of relief funds for the assistance of the small 'European' proportion of the population, while the

<sup>1</sup> *G.A., O.R., Twelfth Sess., Sup. No. 12 (A/3626)*, para. 85, p. 17.

<sup>2</sup> *Ibid.*, paras. 85 and 86, p. 17.

<sup>3</sup> *I*, p. 116.

<sup>4</sup> Promulgated under *G.N. No. 323 of 1948 (S.W.A.)* as part of the Land Settlement Regulations in *The Laws of South West Africa 1948*, pp. 254-266.

<sup>5</sup> *I*, pp. 116-117.

relief funds used to help the large 'Native' population have been confined to a comparative pittance"<sup>1</sup>.

As will be shown, the picture drawn by Applicants is misleading, largely because they fail to distinguish between the types of "assistance" given to the European population and the Native population respectively.

Applicants refer<sup>2</sup> to a sum of £2,600,000 made available for drought relief. They then proceed:

"This aggregate included £1 million made available through the commercial banks, £1,200,000 to the Land Board and Land Bank of the Administration, £250,000 to two farmer's co-operative societies and the remaining £150,000 for unforeseen emergency relief<sup>3</sup>."

Save for the lastmentioned sum of £150,000, the whole amount mentioned above was applied solely towards providing *loans* for farmers, and not, as Applicants would seem to suggest, free grants. This appears clearly from a resolution of the Executive Committee which preceded the relevant vote of the Legislative Assembly. This resolution read as follows:

1. That £400,000 be made available to the Land Board for aid for settlers and landless farmers;
2. That £400,000 be made available to the Land Bank for aid to landowners;
3. That £1,000,000 be made available to commercial banks on investment to enable them to grant greater credit facilities;
4. That £200,000 be made available to the Land Bank for advances of £100,000 each to the two co-operative societies for five years at 4% interest and against promissory notes. Another £50,000 to be made available for a loan to F.C.U. for ten years at 4% with fixed property as security;
5. That a further £400,000 be made available to the Land Bank for ordinary loans;

The aid mentioned in 1 and 2 to take the form of short-term loans, that is for 5 years at 4% and only to be granted to active farmers embarrassed as a result of drought."

These extra credit facilities were necessary to enable farmers to pay pressing debts, mortgage instalments, etc. Respondent submits that, regard being had to the financial position of the South West African Administration, and the economic contribution of the agricultural industry to the national product of the Territory as well as to the income of the Administration, the sum of R4.9m (£2.45m) was neither an excessive nor even an exceptional contribution on the part of the Administration to the available pool of credit which became necessary to tide the agricultural industry over a very severe crisis.

In addition to the above provisions for credit, subsidized transport of drought-stricken stock was provided, and a subsidy on maize was given, amounting at first to 30 c. (3s.) per bag, and thereafter to R1 (10s.) per bag.

Finally, the crisis was met by the provision of emergency grazing on vacant government land wherever practicable and by co-operation with the authorities of the Republic of South Africa to ensure the marketing of the largest possible number of stock before their condition deteriorated,

<sup>1</sup> I, p. 118.

<sup>2</sup> *Ibid.*, para. 29, p. 116.

<sup>3</sup> *Ibid.*, p. 116.

subject to the limitations which were also imposed on the movement of stock as a result of an outbreak of foot-and-mouth disease.

32. As has been seen, the relief funds made available to Europeans were utilized mainly by the provision of loans at a minimum rate of interest of 4 per cent. per annum.

The pattern of assistance to Native farmers, who were in communal occupation of land, and who in many cases did not yet fully participate in the money economy of the Territory, naturally had to follow a different course. In their case there was no question of their being forced off the land by reason of failure to pay interest or capital instalments on mortgages, or inability to meet other obligations. Serious attempts were made to influence the residents of the reserves in the Police Zone to sell some of their stock in the early stages of the drought to forestall heavy losses, and the Department of Bantu Administration and Development organized stock sales for this purpose. When it was found that the Natives were not taking timely advantage of the means offered to reduce the large number of stock held by them, other steps were taken to assist them to save their stock. In 1959 the grazing in the Eastern Native Reserve was still good and an offer was extended to the inhabitants of the Ovitoto, Otjohorongo, Okombahe and Otjimbingwe Reserves to take some of their cattle and small stock to that Reserve. Unfortunately, very few responded to this offer. In all reserves large amounts were spent directly on augmenting water supplies, thus enabling the inhabitants to move their stock to other available grazing, which being communally used, did not involve the inhabitants in any financial outlay.

33. In addition to the aforesaid, drought relief took the form mainly of direct personal assistance to those Natives who were in jeopardy of losing their sustenance in the subsistence economy. The steps taken in this regard are set out in the succeeding paragraphs.

34. The following direct drought relief was granted:

- (a) During the period October 1959 to March 1961 148,395 bags of mealies and mealie-meal were distributed on a resale basis among the inhabitants of Ovamboland. In those cases where inhabitants of the drought-stricken area were not in a position to pay by reason of old age or incapacity, they were supplied with free issues.
- (b) The Administration of South West Africa paid a subsidy of 30 cents (3s.) per bag on the first 89,155 bags and thereafter R1 (10s.) per bag on the balance of 59,420 bags, the total expenditure being R85,986 (£42,993).
- (c) In addition to (b) above the Administration also supplied food to schools and hospitals in Ovamboland at a cost of R20,328 (£10,164).
- (d) On an average 400 labourers per month for a period of approximately six months (October to March) in each year were employed on relief works, such as repairing roads, making dams, etc., and the expenditure so incurred amounted to R22,000 (£11,000).
- (e) In the Kaokoveld 1,700 bags of mealies were distributed among the inhabitants, and, as in the case of Ovamboland, the Administration paid a subsidy of R1 (10s.) per bag.
- (f) Seven additional 3-5 ton trucks with their drivers were made available by the government garage for use in distributing the food in Ovamboland. The total number of miles done by these additional trucks came to 86,000.

- (g) Financial assistance by way of a subsidy on rail and road motor transport was granted by the South African Government. The subsidy amounted to R9,906 (£4,953).
- (h) Special efforts were made by the South African Railways and Harbours to transport the mealies and mealie-meal from the rail-heads at Tsumeb and Grootfontein to Ovamboland by means of railway buses, and at times no less than ten 10-ton buses were in operation. The officials of the Department of Bantu Administration and Development and of the South African Railways and Harbours worked day and night to ensure that an adequate supply of mealies was available for distribution.

35. The distribution of maize was restricted to the northern Native territories of Ovamboland and the Kaokoveld. The residents of the reserves in the Police Zone also suffered heavy stock losses as a result of the drought. In those cases where they were unable to work on account of old age, disability or infirmity, they were entitled to apply for free issues of pauper rations. Many applications were received and rations to the value of just on R30,080 (£15,040) were issued.

36. The following is a summary of the expenditure referred to in paragraphs 34 and 35:

(i) Subsidy on mealies and mealie-meal distributed in Ovamboland . . . . .	R85,986.00 (£42,993)
(ii) Food supplied to schools and hospitals in Ovamboland . . . . .	20,328.00 (£10,164)
(iii) Subsidy on mealies and mealie-meal distributed in Kaokoveld . . . . .	1,700.00 (£850)
(iv) Wages to labourers on relief works . . . . .	22,000.00 (£11,000)
(v) Subsidy on rail and road motor transport . . . . .	9,906.00 (£4,953)
(vi) Pauper relief . . . . .	30,080.00 (£15,040)
Total . . . . .	<u>R170,000.00 (£85,000)</u>

37. Loan facilities have also now been created for Natives who suffered stock losses as a result of the drought and the foot-and-mouth epidemic.

Loans totalling R120,500 (£60,250) were granted by the Administration of South West Africa to tribal funds to be used to enable Native owners who had lost stock in consequence of the drought and foot-and-mouth disease to replace such stock. This amount, made available in 1962, was interest free for a period of two years and thereafter bore interest at the rate of 2 per cent. per annum<sup>1</sup>.

38. The general attitude adopted by the South West African Administration in connection with drought assistance was summarized by the Administrator in his reply to the 1961 Budget debate in the following terms:

“Regarding the Native farmers in the Reserves, I have previously indicated that assistance with a view to their economic rehabilitation will be considered after the drought has been broken and the extent of assistance that is required, can be determined with reasonable accuracy.

Honourable Members will realise that the assistance given in

<sup>1</sup> Departmental information.

connection with the drought, mainly worked to the advantage of white farmers for the simple reason that the obligations in connection with which the important forms of relief were granted, do not rest upon the Native farmers. So, for instance, would the suspension of payments of interest and capital not be applicable to the Bantu because they have no loan debts: In respect of loans for the payment of pressing debts, the same argument applies because the Bantu could not be summonsed for such paltry debts as they may have. The measures for saving the livestock were available to the Native farmers just as much as to the white farmers. The subsidy of maize at R1.00 per bag assisted the Bantu, not only to save his cattle, but also to the extent that it supplied them with a cheaper staple food.

Regarding measures with a view to economic recovery, it stands to reason that a distinction will have to be drawn between the white and native farmer on account of the different systems of land tenure.

In respect of the white farmer, steps will be taken in every individual case to ensure the repayment of the loan. In the case of the Native farmer, a system of loans is impossible on account of their traditional and customary farming system and consequently a system will have to be applied by way of careful consultation, which will ensure assistance where it is necessary, but which will exclude the mis-use of public funds as far as possible.

The first task will be to determine the extent of the need. As Honourable Members know, the rains came late and it is necessary to see to what extent the grazing is restored. Reports have reached me that nearly all the Reserves had reasonable rains and that the grazing has recovered well, and we can now proceed with a view to assistance.

The extent of the assistance that is necessary and the manner in which it can be furnished are matters now enjoying consideration and to the extent that co-operation of the tribal authorities is obtained, measures will be designed and applied in this connection."

The provision of loans of R120,500 (£60,250), referred to above, was one of the outcomes of this policy.

39. During 1962 the further need for emergency grazing for stock belonging to non-Europeans arose and the Administration was able to consider favourably all applications made by Native farmers for such grazing. Ample provision was immediately made in the Grootfontein district for drought-stricken animals. The Administration opened up water there at its own expense.

Applications for emergency grazing, mainly for small stock and to a lesser extent for cattle, were also received from Coloured farmers in the districts of Keetmanshoop, Gobabis and Otjiwarongo. The Administration was in a position to meet these applications by setting aside grazing in the Gibeon, Gobabis and Grootfontein districts.

In these cases, i.e., of Coloured and Native farmers, emergency grazing was granted under conditions similar to those applicable to Europeans<sup>1</sup>.

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<sup>1</sup> Departmental information.

Paragraph 33 of Chapter V <sup>1</sup>

40. Respondent's reply to Applicants' contentions in this paragraph appears from the preceding paragraphs. In respect of the specific allegations contained in subparagraphs (i) to (v), Respondent states as follows:

(a) *Subparagraph (i)*

All agricultural land in the Territory, save for the Native reserves and government land, may be acquired by any person, European or Native. In addition, Respondent has set aside substantial reserves for the Natives who, in the Police Zone, were to a considerable extent landless at the inception of the Mandate. To protect the position of the Natives, these reserves cannot be alienated by them.

It is consequently entirely incorrect to say that Respondent has "progressively reduced the proportion of farm land available for cultivation or pastoral use by the 'Native' population, while it has progressively increased the proportion of such farm land available to 'Europeans' "<sup>2</sup>.

(b) *Subparagraph (ii)*

Natives are, as has been said repeatedly, entitled to acquire individual ownership of agricultural land in any part of the Police Zone, excluding the reserves. The reasons why the reserves are farmed on a communal basis, are set out elsewhere in this Counter-Memorial<sup>3</sup>, and it is not necessary to repeat them here.

(c) *Subparagraph (iii)*

Whereas the role of the Native population in agriculture is, to a large extent, still limited to subsistence farming within the reserves, and employment as labourers (although not necessarily "common" labourers) on European commercial farms, it is, for the reasons set out above, completely false to say that Respondent has caused this situation. On the contrary, Respondent's efforts have been directed towards improving the possibilities of Native agriculture, as appears from the foregoing.

(d) *Subparagraph (iv)*

No factual allegations are made to support this contention, and Respondent therefore cannot deal with it. In fact, the developments which have taken place, and others which are at present under consideration, open up ever-increasing opportunities of progress for the Natives in agriculture.

(e) *Subparagraph (v)*

In connection with emergency relief made available in times of drought, Respondent has used the larger part of relief funds directly expended as irrecoverable state aid, for the Native population, and has confined the use of relief funds for the assistance of the White population mainly to arrangements for, or granting of, loans repayable with interest.

<sup>1</sup> I, pp. 117-118.

<sup>2</sup> *Ibid.*, p. 118.

<sup>3</sup> *Vide* Book VI, Chap. III, paras. 44-50, of this Counter-Memorial.

## CHAPTER V

### CONCLUSION

1. In paragraph 190 of Chapter V of the Memorials, under the heading "Legal Conclusions"<sup>1</sup>, Applicants allege that Respondent "has violated, and continues to violate its obligations as stated in the second paragraph of Article 2 of the Mandate and Article 22 of the Covenant" in a number of respects. As regards agriculture, Applicants repeat<sup>2</sup>, almost *verbatim* the charges contained in paragraph 33 of Chapter V of the Memorials<sup>3</sup>.

2. Respondent has dealt with these charges in the preceding paragraphs, and it is consequently unnecessary to deal again with the relevant "Legal Conclusions". It is sufficient to reiterate that the said charges, and therefore also the said conclusions, are unfounded and without substance.

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<sup>1</sup> I, pp. 162 ff.

<sup>2</sup> *Ibid.*, para. 190 (i) (a) (b) (c) (d) and (e), pp. 162-163.

<sup>3</sup> *Ibid.*, pp. 117-118.

**SECTION C**  
**WELL-BEING, SOCIAL PROGRESS AND**  
**DEVELOPMENT IN INDUSTRY**

**CHAPTER I**

**INTRODUCTION**

1. Applicants' charges relative to "the well-being, social progress and development in industry" are summarized as follows in paragraph 77 of Chapter V of the Memorials:

"In the industrial phases of the economic life of the Territory, as in the agricultural aspects of the economic life of the Territory, the Mandatory has failed to promote to the utmost the well-being, the social progress and the development of the larger part of the population. It has not even made any substantial effort to do so. To the contrary, by law and by practice, the Mandatory has engaged in a consistent course of positive action which inhibits the well-being and prevents the social progress and the development of the larger part of the population. As the data exhibited in the foregoing paragraphs make clear, the record of the Mandatory's behavior toward the 'Native' population of the Territory has been a bleak and consistent record of negation, frustration, constraint and unfair discrimination. More particularly, as demonstrated in detail in the preceding paragraphs:

- (1) The Mandatory has denied and continues to deny to the 'Natives' of the Territory opportunity to take part in mining and other industries as a prospector, entrepreneur, operator, or owner.
- (2) The Mandatory has denied and continues to deny to the 'Native' population opportunity to take part in executive, managerial, professional or technical posts in mining and other industries.
- (3) The Mandatory has unfairly prohibited and continues to prohibit 'Natives' from taking part in the processes of collective bargaining and conciliation and arbitration of disputes.
- (4) The Mandatory has confined the participation of the 'Native' population in the industrial economy, for all practical purposes, to the role of unskilled laborer.
- (5) The Mandatory has shaped the circumstances and conditions of labor for the 'Native' population into a pattern of constraint and compulsion that consistently subordinates the interests of the 'Native' laborers to the interests of their 'European' employers.
- (6) The Mandatory has so drastically curtailed and circumscribed the possibilities of choice for 'Native' laborers as to leave them, for all practical purposes, very little freedom of choice with respect to place of employment, type of employment, identity or character of employer, or conditions of employment.

(7) The Mandatory has denied to 'Native' laborers equal legislative protection in the form of provisions for holidays, sick pay, and compensation in the event of illness or injury caused by employment which are made available to 'White' employees<sup>1</sup>."

2. The so-called "data" on which the foregoing complaints are based, are contained in paragraphs 34 to 76 of Chapter V of the Memorials<sup>2</sup> which said paragraphs are devoted to a treatment of the following subjects:

- (a) The fishing industry.
- (b) Mining and minerals.
- (c) Railways and harbours.
- (d) Labour recruitment.
- (e) Labour conditions within the Police Zone.

3. The said subjects are dealt with separately in Chapters II to VI below.

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<sup>1</sup> I, pp. 130-131.

<sup>2</sup> *Ibid.*, pp. 117-130.

CHAPTER II  
THE FISHING INDUSTRY

General

1. After stating very briefly certain facts relative to the fishing industry in South West Africa<sup>1</sup>, the Applicants allege as follows:

“The enterprises in the industry are essentially ‘European’ owned and operated. While more than 3,500 ‘non-Europeans’ are employed in the fishing industry, the role of the ‘Natives’ is substantially confined to unskilled labor<sup>2</sup>.”

2. In paragraph 77 of Chapter V of the Memorials the following charges are, *inter alia*, made relative to industries in general:

“(1) The Mandatory has denied and continues to deny to the ‘Natives of the Territory opportunity to take part in mining and other industries as a prospector, entrepreneur, operator, or owner.

(2) The Mandatory has denied and continues to deny to the ‘Native’ population opportunity to take part in executive, managerial, professional or technical posts in mining and other industries.

.....  
(4) The Mandatory has confined the participation of the ‘Native’ population in the industrial economy, for all practical purposes, to the role of unskilled laborer<sup>3</sup>.”

3. Before dealing with the Applicants’ charges, it will be convenient to give a brief account of the fishing industry in the Territory and its development.

**The Fishing Industry in South West Africa**

4. The fishing industry in South West Africa is virtually limited to off-shore sea fishing along the Atlantic Coast<sup>4</sup>.

The coastline is fringed by the barren and inhospitable Namib desert<sup>5</sup>, with the result that there is exceedingly limited human habitation along the coast. The only coastal towns are Walvis Bay<sup>6</sup>, Luderitz, Swakopmund and Oranjemund, and only the first-mentioned two have harbours.

These topographical features, and the rough seas along the coast, militated against any form of sea fishing by the indigenous peoples of the Territory.

Fishing as an industry was not exploited to any notable extent until

<sup>1</sup> I, paras. 34 and 35, p. 118.

<sup>2</sup> *Ibid.*, pp. 118-119.

<sup>3</sup> *Ibid.*, pp. 130-131.

<sup>4</sup> In some of the rivers bordering the territory, such as the Okavango and the Zambesi, fish are caught by the Natives, and form part of their normal diet, but are otherwise of little economic importance.

<sup>5</sup> *Vide* Book III, Chap. I, para. 6.

<sup>6</sup> Which is not part of the Territory of South West Africa, *ibid.*, para. 4.

after the Second World War, when South African companies commenced fishing operations from Walvis Bay.

5. As the Territory itself offered no substantial markets for fish, the industry was dependent on foreign markets, which necessitated the establishment of factories for the canning and processing of fish and fish products for export to world markets.

These enterprises called not only for considerable capital investments, but also for technical knowledge and experience. It is therefore only natural that the fishing industry in South West Africa should have been established and developed primarily by companies operating as subsidiaries or associates of companies already established in the industry in South Africa.

6. The industry in the Territory is centred around the harbour towns of Walvis Bay and Luderitz, and is based mainly on the catching and processing of pilchards and rock lobsters.

At present there are nine factories at Walvis Bay, all concerned with the processing of fish and fish products. Six factories at Luderitz process and pack frozen rock lobsters.

7. The South West African Administration exercises control over the industry in the Territory, and, to conserve the fishing assets off the coast, it limits the tonnage of fish which may annually be processed by each factory, and also the tonnage of every fishing vessel serving the said factories.

The Administration has employed marine biological research teams to explore the off-shore marine resources in order to control the industry properly and to apply effective conservation methods. Such research has also promoted the economical development of the industry.

In 1953 the South African Bureau of Standards took over the technical guidance of the industry in all aspects of processing and packaging, and it has since been the main source of technical advice to the South West African Administration and the industry.

8. Since the Second World War the quantities of fish caught off the coast of South West Africa have increased considerably over the years.

The total catch increased from 9,130 tons in 1948 to 260,056 tons in 1958, and to 325,000 tons in 1961<sup>1</sup>.

For the year 1961 the total value of the products of the industry in the Territory exceeded R22 million (£11 million), the total, in round figures, being made up as follows<sup>2</sup>:

Canned fish . . . . .	R14,520,000	(£7,260,000)
Frozen and canned rock lobster . . . . .	2,300,000	(£1,150,000)
Fish oil . . . . .	1,590,000	(£795,000)
Fish meal . . . . .	4,200,000	(£2,100,000)
Cured fish . . . . .	140,000	(£70,000)
	<u>R22,750,000</u>	<u>(£11,375,000)<sup>3</sup></u>

<sup>1</sup> *State of South Africa—Year Book* (1963), p. 429.

<sup>2</sup> *Ibid.*, p. 509.

<sup>3</sup> *White Paper on the Activities of the Different Branches of the Administration of South West Africa for the Book Year 1961-1962*, at p. 13.

9. The "United Nations Economic Survey of Africa since 1950", published in 1959, points to the great potentialities for the development of fishing and fish products in Africa, and states that—

"In Africa south of the Sahara, the greatest expansion took place in Angola, the Union of South Africa and South West Africa, which are the three largest producers in Africa since 1948-1952<sup>1</sup>."

According to the said Survey the total average quantity of fish landings for South West Africa during the years 1955-1957 was 240,500 tons. Comparative figures in the same years were: South Africa, 322,600 tons, and Angola, 368,800 tons<sup>2</sup>.

10. The success of the industry in South West Africa, and its development, required technical knowledge and research, wise conservation and control measures, experience in catching the fish, in processing the catch and in marketing the products of the industry, and entailed considerable capital investments.

The indigenous peoples of the Territory had no knowledge of, or experience in, the activities aforesaid, and were therefore unable to contribute to the establishment and development of the industry otherwise than in an unskilled capacity. Through European enterprise, the industry has offered a new field of employment to the non-White peoples of the Territory, which contributes not only to their economic well-being, but also to their experience in a new sphere of economic endeavour. The 1960 census revealed that 1,317 non-Europeans were employed in the fishing industry. In the food manufacturing industry, which is closely allied, no less than 3,655 non-Europeans were employed in that year<sup>3</sup>.

The industry furthermore contributes substantially to the revenue of the Territory, which is employed in the advancement of the well-being and progress of all its inhabitants.

### Respondent's Reply to Applicants' Allegations (Memorials)

#### PARAGRAPHS 34 AND 35 OF CHAPTER V<sup>4</sup>

11. The allegations in these paragraphs are admitted.

As to the annual value of fish and fish products produced in South West Africa, Respondent refers to what has been stated in paragraph 8 above. The financial support contributed by the South West African Administration with regard to research and development for improvement of the industry, as dealt with in paragraph 7 above, has been not only for the benefit of the industry as such, but also for the benefit of the Territory and all its inhabitants. Not only does the industry contribute substantially to the revenue of the Territory, but, particularly in so far as the non-White population is concerned, it has offered a new field of remunerative employment to a substantial number of the inhabitants of the Territory.

<sup>1</sup> Economic Survey of Africa since 1950, U.N. Doc. E/CN—14/28, p. 105.

<sup>2</sup> *Ibid.*, p. 30.

<sup>3</sup> Departmental information.

<sup>4</sup> I, p. 118.

PARAGRAPH 36 OF CHAPTER V<sup>1</sup>

12. It is correct, as the Applicants allege, that the enterprises in the industry are essentially European owned and operated. It is also correct that the role of the Natives employed in the industry is substantially that of unskilled workers.

It is only natural that Europeans, who possessed the initiative and the necessary knowledge and technical experience, should have established and developed the enterprises in the industry. It is likewise only natural that the Native inhabitants of the Territory, who had no knowledge or experience of, or training in, such enterprises, should, at least in the early years of the industry, have been unable to contribute to its establishment or development otherwise than as employees in an unskilled capacity. With the passage of time, however, many of them have been trained to do a variety of skilled or semi-skilled work, such as the operation of cutting, separating, vacuum, seamer and labelling machines; operating water purifying plant, driving tow motors, etc.

There is nothing in law which prevents Natives from being employed in any capacity in the industry, and the fact that their role therein is at present substantially that of unskilled labourers, is due to their general lack of educational qualifications, technical skill and experience. It is expected that in the course of time more Native employees will qualify themselves for appointment to skilled and more responsible positions in the industry.

PARAGRAPH 77 OF CHAPTER V<sup>2</sup>

13. Whereas in paragraph 36 of Chapter V of the Memorials it is alleged that the role of the Natives in the fishing industry is "substantially confined to unskilled labor"<sup>3</sup>, the Applicants in paragraph 77 charge Respondent, *inter alia*, with having denied, and denying, the Natives of the Territory the opportunity to take part in "mining and other industries as a prospector, entrepreneur, operator or owner" or in "executive, managerial, professional or technical posts in mining and other industries"<sup>4</sup>.

The fishing industry is not mentioned in paragraph 77, and indeed there are no factual allegations in the Memorials which could in the least support a charge that Respondent has in any way denied the Natives the opportunity to take part in the aforementioned capacities and posts in the fishing industry.

The same position obtains with regard to the allegation that "The Mandatory has confined the participation of the 'Native' population in the industrial economy, for all practical purposes, to the role of unskilled laborer"<sup>5</sup>.

As has been stated<sup>6</sup>, there is nothing in law which prevents Natives from being employed in any capacity in the fishing industry. And nothing

<sup>1</sup> I, pp. 118-119.

<sup>2</sup> *Ibid.*, pp. 130-131.

<sup>3</sup> *Ibid.*, p. 119.

<sup>4</sup> *Ibid.*, p. 130.

<sup>5</sup> *Ibid.*, p. 131.

<sup>6</sup> *Vide* para. 12, *supra*

prevents them from taking part in the industry as entrepreneurs, operators or owners.

On analysis, therefore, there is no factual basis upon which the charges made in paragraph 77 of Chapter V of the Memorials can be regarded as applicable to the fishing industry.

Should Applicants nevertheless have intended that such charges should be read as being applicable to the fishing industry, then each and every one thereof is denied, and it is generally denied that Respondent has in respect of the said industry failed to observe its duties under the Mandate or has, as alleged by Applicants, "engaged in a consistent course of positive action which inhibits the well-being and prevents the social progress and the development of the [Native] population"<sup>1</sup>.

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<sup>1</sup> I, p. 130.

## CHAPTER III

### MINING AND MINERALS

#### Introductory

1. The Applicants' charges in Chapter V of the Memorials relative to the mining industry in South West Africa<sup>1</sup> are basically twofold, and concern the opportunities permitted to Natives to take part in mining as prospectors, entrepreneurs, operators and owners, and the opportunities allowed to them as employees in the industry.

2. In respect of opportunities of the first-mentioned kind Applicants allege that there is a "pattern of systematic discrimination against 'Natives' . . . in the mining industry"<sup>2</sup>, and they say that—

"While under the applicable law there is a technical possibility that prospecting by 'Natives' may take place within the 'Native' reserves, the technical possibility can hardly be realized. The numerous conditions prescribed, including particularly the financial conditions and requirements, taken together with the unfettered discretion of the Administrator and the several special Boards, permit and indeed require an inference that for all practical purposes 'Natives' are barred from any such activity<sup>2</sup>."

In paragraph 77 of Chapter V of the Memorials<sup>3</sup> the charges in this respect are formulated more specifically as follows:

"The Mandatory has denied and continues to deny to the 'Natives' of the Territory opportunity to take part in mining . . . as a prospector, entrepreneur, operator, or owner."

3. With regard to opportunities permitted to Natives as employees in the industry, Applicants say that "it is plain that the role of the 'Native' is confined to that of unskilled laborer"<sup>4</sup>.

This charge is formulated more specifically in paragraph 77 of Chapter V of the Memorials as follows:

"The Mandatory has denied and continues to deny to the 'Native' population opportunity to take part in executive, managerial, professional or technical posts in Mining and other industries"

and

"The Mandatory has confined the participation of the 'Native' population in the industrial economy, for all practical purposes, to the role of unskilled laborer<sup>5</sup>."

4. For a proper appreciation of Respondent's policies and administrative measures with regard to mining in South West Africa, an account is given in the next succeeding paragraphs of the mining operations

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<sup>1</sup> I, pp. 119-122.

<sup>2</sup> *Ibid.*, para. 45, p. 121.

<sup>3</sup> *Ibid.*, para. 77, p. 130.

<sup>4</sup> *Ibid.*, para. 46, p. 121.

<sup>5</sup> *Ibid.*, para. 77, pp. 130-131.

carried on in the Territory, the place of the mining industry in the economy of the Territory, and the particular circumstances and conditions which bear upon the application of measures designed for the control of the industry and of persons engaged therein.

### Mining in General

5. In South West Africa mining is the only sector of economic activity entirely within the money economy. It is also the most highly organized and capitalized sector of the Territory's economy, established primarily with a view to large-scale production for export, and, as is the case in practically every country in Africa, it is to a large extent controlled by foreign financial interests.

With regard to foreign financial interests in mining enterprises in Africa, the United Nations *Economic Survey of Africa since 1950* stated as follows:

"More so than any other sector of the money economy in Africa, mining has been organized chiefly with foreign capital, entrepreneurship, and skill: only in the Union of South Africa is a significant proportion of mining capital owned by residents <sup>1</sup>."

6. Although South West Africa has a great variety of mineral deposits, only a few thereof have proved of real economic importance. Apart from concentrated occurrences of diamonds, lead/zinc, copper and salt deposits, the Territory's mineral resources are characterized by rich samples from small quantities widely dispersed over the country <sup>2</sup>. Diamond mining is largely concentrated in the Southern Namib area in the vicinity of Oranjemund <sup>3</sup>; at present dredging for diamonds is taking place in the coastal waters of the Territory <sup>3</sup>. Large-scale mining also takes place at Tsumeb, where lead, copper and zinc are mined <sup>3</sup>. There are no known coal or natural oil resources worth exploiting <sup>4</sup>, with the result that practically all fuel requirements have to be imported. This fact, together with the peculiar geological structures in the Territory, have made mining a highly organized and capitalized activity, demanding skilled managerial and technical organization.

7. With the exception of salt, all minerals and precious stones mined in the Territory are destined for export. An analysis of the post-war figures reveals that diamonds and lead/zinc alone account for more than 90 per cent. of mineral exports. During 1961 the value of mineral sales from the Territory totalled £26,550,000 (R53,100,000), of which diamond sales amounted to £17,468,000 (R34,936,000), and sales of lead/zinc to £7,453,000 (R14,906,000). The value of other minerals produced in the said year was: manganese £591,000 (R1,182,000); copper £235,500 (R471,000); tin £196,000 (R392,000) and salt £108,500 (R217,000) <sup>5</sup>.

8. Although the value of mineral exports has since the Second World War constituted well over 50 per cent. of the Territory's total exports, it

<sup>1</sup> *U.N. Doc. E/CN.14/28*, p. 61.

<sup>2</sup> *Vide* Book III, Chap. I, para. 34, of this Counter-Memorial.

<sup>3</sup> *Ibid.*, para. 35.

<sup>4</sup> *Ibid.*, para. 37.

<sup>5</sup> *State of South Africa: Economic, Financial and Statistical Year Book for the Republic of South Africa, 1963*, pp. 509-510.

amounted to less than 15 per cent. in the years immediately preceding the war. This instability in the relative share of mining products in the exports of the economy of the Territory must be attributed to the narrow base of mineral exploitation in the Territory and the sensitivity of the industry to overseas price changes. Diamonds figure prominently in the total export value of mining products, accounting for more than 50 per cent. of the latter during the post-war period.

9. As much as 96 per cent. of the mining output in South West Africa is controlled by two companies. This state of affairs is ascribable to the nature of local mineral deposits and the high cost of exploitation resulting from poor, or a lack of, water supplies, lack of fuel and transport difficulties. These factors necessitate large-scale operations requiring the employment of qualified and experienced technical personnel, and substantial capital funds.

10. Despite its importance as a foreign exchange earner, the mining industry as a whole employs only about 10 per cent. of all males employed in the Territory. During 1960 the industry employed 1,789 White persons, the majority of whom came from outside the Territory, and 9,534 non-White employees, of whom the majority were temporary workers from areas outside the Police Zone

### Mining Legislation in South West Africa

11. For the proper operation and development of the mining industry within the economy of the Territory, measures of regulation and control were an absolute necessity.

By reason of its own experience in regulating a diverse and complex mining industry in South Africa, which had grown over the years to assume vast proportions, Respondent was able to direct and guide the legislation in South West Africa on lines best suited to encourage mining enterprise and to allow it to develop in a manner calculated to bring about the maximum economic advantage to the Territory.

12. When Respondent assumed the Mandate, mining in South West Africa was governed by the German Imperial Mining Ordinance of 1905<sup>1</sup>. In terms of the Ordinance the right to prospect and mine for minerals in the Territory was vested in the Government, and any person wishing to prospect or mine was required to obtain a licence from the Government.

13. Not only had vested mining rights accrued under the system in operation during the German regime, but the system itself, under which mineral rights were vested in the Government, appeared from an administrative point of view to be sound and to afford the best method of regulating and controlling the exploitation of the mineral resources of the Territory.

Ownership and control of mineral rights by the Government, instead of private ownership and control, could ensure not only better regulation of mining operations in general, but also that the mineral resources would

<sup>1</sup> *Die deutsche Kolonial-Gesetzgebung*, Sammlung der auf die deutschen Schutzgebiete bezüglichen Gesetze, Verordnungen, Erlasse und internationalen Vereinbarungen mit Anmerkungen, Sachregister, Neunter Band (Jahrgang 1905), pp. 221-241.

primarily be exploited in the interests of the Territory as a whole rather than in the interests of certain individuals only.

The system in operation at the inception of the Mandate was therefore retained, and the legislation at present governing the industry, viz., the Mines, Works and Minerals Ordinance of 1954<sup>1</sup>, provides that:

"The right of mining for and disposing of precious and base minerals in the Territory, including the Territorial waters is vested in the Administration and no precious or base minerals shall be searched for or won save in accordance with the provisions of this Ordinance<sup>2</sup>."

14. In terms of the said Ordinance the supervision and control of the mining industry in the Territory, and the exercise of all rights and powers vested in the Administration in regard to mines and minerals, are entrusted to the Mines Division<sup>3</sup>, which is subject to the direction and authority of the Administrator<sup>4</sup>.

The staff of the Mines Division consists of six officials. The three senior posts, i.e., Inspector of Mines, Assistant Inspector of Mines, and Mining Commissioner, are filled by technically qualified and experienced officers on secondment from the Mines Department of South Africa.

### Permission to Prospect

#### WITHIN THE POLICE ZONE

15. Within the Police Zone no person may prospect for minerals except under the authority of a prospecting licence<sup>5</sup>, and in terms of the Ordinance a prospecting licence may not be issued to any person other than:

- "(a) a European of the age of 18 years or more,
- (b) a company registered under the provisions of the Companies Ordinance, 1928 (Ordinance No. 19 of 1928), as amended,
- (c) a foreign company which has complied with the requirements of the Companies Ordinance, 1928 (as amended)<sup>6</sup>".

With regard to the Rehoboth *Gebiet* and the Native reserves in the Police Zone, however, the following provision is made:

"In the Rehoboth *Gebiet*, Burgers of the Rehoboth Baster Community, and in the Native reserves, Natives lawfully resident therein, shall possess the same rights to hold prospecting licences and be subject to the same obligations as Europeans<sup>7</sup>."

It is also provided that:

"No person may prospect or mine in . . . any Native reserve other than a Native lawfully resident therein . . . unless he is the holder of a special permit issued on the instructions of the Administrator

<sup>1</sup> Ord. No. 26 of 1954 (S.W.A.), sec. 1, in *The Laws of South West Africa* (1954), pp. 753-853.

<sup>2</sup> *Ibid.*, sec. 1, p. 753.

<sup>3</sup> *Ibid.*, sec. 5 (2), p. 765.

<sup>4</sup> *Ibid.*, sec. 5 (1), p. 765.

<sup>5</sup> Ord. No. 26 of 1954 (S.W.A.), *op. cit.*, sec. 17 (1), p. 777.

<sup>6</sup> *Ibid.*, sec. 22 (1), p. 781.

<sup>7</sup> *Ibid.*, sec. 22 (1) (c) (iii), p. 783.

under such conditions or circumstances as the Administrator may direct<sup>1</sup>."

16. The effect of the above provisions may be summarized as follows:
- (a) in respect of the area within the Police Zone, excluding the Native reserves and the Rehoboth *Gebiet*, a prospecting licence may be issued only to a European or to a company;
  - (b) in a Native reserve in the Police Zone no person, other than a Native lawfully resident therein, may prospect or mine unless he is the holder of a special permit issued on the instructions of the Administrator.

17. The above distinction as to the areas in which members of the different population groups may carry on prospecting operations, is in conformity with Respondent's policy that, as far as is practicable, rights of priority should be reserved to particular groups in separate parts of the Territory. Thus, prospecting outside the reserves is permitted only to Europeans, while a similar position obtains for the different Native groups in their own reserves. Although the Administrator is allowed the discretionary power to grant special permission for a European to prospect within a Native reserve or for a Native to prospect in a reserve in which he is not resident, such permission is, as a matter of policy, not granted. The right to grant such permission was intended to be exercised only in exceptional circumstances, for example, where the inhabitants of a reserve are unable or unwilling to prospect for and mine minerals in the reserve, the exploitation of which would be to the advantage of such reserve and of the Territory as a whole.

When in an exceptional case such permission is granted, conditions can be imposed in protection of the rights of the inhabitants of the reserve concerned.

#### OUTSIDE THE POLICE ZONE

18. In terms of section 61 of the Ordinance, no person may prospect in the area beyond the Police Zone—

"... unless he is the holder of a special permit issued on the instructions of the Administrator under such conditions or circumstances as the Administrator may direct<sup>1</sup>".

Although in terms of the said section a European may obtain special permission to prospect in the area beyond the Police Zone, such permission will only be granted under very special circumstances, such as those mentioned in paragraph 17 above.

#### Provisions governing Prospecting

19. Apart from the distinction made in the Ordinance with regard to the area in respect of which a prospecting licence or special permit may be issued to a member of a particular group, there is no difference between the rights of the White inhabitants and the non-White inhabitants of the Territory in respect of prospecting, the pegging of claims or the conducting of mining operations.

20. Licences for prospecting within the Police Zone are issued by the Inspector of Mines<sup>2</sup>, and remain valid for a period not exceeding 12

<sup>1</sup> *Ord.* No. 26 of 1954 (S.W.A.), *op. cit.*, sec. 61 (1), p. 817.

<sup>2</sup> *Ibid.*, sec. 21 (1), p. 781.

months<sup>1</sup>. The fee payable for such a licence is an amount of five shillings for each month for which the licence is granted<sup>2</sup>.

21. In order to safeguard the rights of the owners or occupiers of land on which prospecting is carried on, the Ordinance provides that no prospecting licence shall be issued until the applicant has made a cash deposit or given a bank guarantee to the Inspector of Mines for an amount of not less than £50 (R100) "as a guarantee for the restoration to a safe condition of the surface of any property which may be rendered unsafe by prospecting or development operations carried out by the prospector or in his name"<sup>3</sup>.

In exceptional circumstances the Inspector may, in his discretion, require a higher amount to be deposited or guaranteed, but in practice this rarely happens in the case of individual prospectors. In the case of companies which intend to prospect on an extensive scale, however, a deposit or guarantee in a higher amount is often required.

22. It is the duty of every holder of a prospecting licence to maintain his workings in a safe condition, and to repair or make safe, to the satisfaction of the Inspector, any land which has been rendered unsafe by prospecting or development operations<sup>4</sup>. If the licence holder complies with this obligation to the satisfaction of the Inspector, he is entitled to a refund of the amount deposited by him<sup>5</sup>. If, however, he fails so to comply, the Inspector of Mines may utilize the amount deposited or guaranteed in order to repair any surface damage resulting from the prospecting operations<sup>6</sup>.

23. The Ordinance also provides that no prospector shall remove from the site of his prospecting operations any minerals recovered by him in the course of such operations, or dispose of such minerals, without the written permission of the Inspector<sup>7</sup>. A mine owner may not dispose of any minerals recovered by him during his mining operations except with the written permission of the Inspector<sup>8</sup>.

These provisions serve to keep the Mines Division informed of minerals recovered in prospecting and mining operations, and are necessary to regulate the disposal of minerals recovered in such operations.

24. For the proper administration of activities in the mining industry, section 105 of the Ordinance empowers the Administrator to make regulations in respect of the following matters:

- "(a) the pegging of claims;
- (b) the survey of mining areas and any matter appertaining to the surveying, charting and registration of mining areas;
- (c) prospecting and mining in native reserves, after consultation with the Minister<sup>9</sup>;

<sup>1</sup> *Ord. No. 26 of 1954 (S.W.A.), op. cit.*, sec. 21 (3), p. 781.

<sup>2</sup> *Ibid.*, sec. 21 (4), p. 781.

<sup>3</sup> *Ibid.*, sec. 21 (5), p. 781.

<sup>4</sup> *Ibid.*, sec. 32 (1), p. 791.

<sup>5</sup> *Ibid.*, sec. 36, p. 793.

<sup>6</sup> *Ibid.*, sec. 32 (2), p. 791.

<sup>7</sup> *Ibid.*, sec. 37 (1), p. 793.

<sup>8</sup> *Ibid.*, sec. 41 (2), p. 797.

<sup>9</sup> As amended by *Ord. No. 4 of 1955*. In terms of sec. 1 thereof, "Minister" means Minister of Native Affairs—now designated the Minister of Bantu Administration and Development.

- (d) the protection and preservation of the surface of mines or works and of buildings, roads, railways, and other structures and enclosures on or above the surface of the ground, and the conditions under which any such buildings, roads, railways, structures and enclosures may be undermined;
- (e) the making and keeping of mine plans and the depositing of copies with the Mines Division;
- (f) the making of statistical and other reports relating to mines, works and machinery;
- (g) the duties and responsibilities of owners, managers, overseers, and other persons engaged in or about mines, works and machinery;
- (h) the storage, receipt, distribution, transport and use of explosives in mines;
- (i) the manner of holding inquiries at or in connection with any mine or works, the procedure to be followed at any such inquiry and the mode of securing the attendance of witnesses thereat;
- (j) the provision of ambulances and medical aid in case of accident;
- (k) the conditions upon which machinery may be erected or used;
- (l) the fees which shall be payable for any inspection under this Ordinance;
- (m) prohibition or restrictions in relation to the making or use of roads or railways or other travelling ways over, or the erection or use of buildings or other objects on areas which have been undermined;
- (n) the safety and health of persons employed in or about mines and works, and generally of persons, property and public traffic;
- (o) the procedure to be followed in connection with trials by an inspector under this Ordinance;
- (p) the grant, cancellation and suspension of certificates of competency to—
  - (1) mine managers,
  - (2) mine overseers,
  - (3) mine surveyors,
  - (4) mechanical engineers,
  - (5) engine drivers,
  - (6) miners entitled to blast,
  - (7) such other classes of persons employed in, at or about mines, works and machinery as the Administrator may from time to time deem it expedient to require to be in possession of certificates of competency;
- (q) the fees to be payable by persons applying for any of the certificates mentioned in paragraph (p) or on their admission to an examination for any such certificate;
- (r) the limiting of the days and hours of work upon any mine or works;
- (s) the conditions governing the grant of paid leave of absence by owners of mines or works to their employees or to various categories of their employees;
- (t) and generally for ensuring the proper working and management

of all mines, works and machinery, and for better carrying out the objects and purposes of this Ordinance<sup>1</sup>."

### Special Provisions regarding Prospecting for and Mining of Certain Minerals

#### DIAMONDS

25. By reason of the paramount importance of diamond mining as a source of public revenue, and of special conditions surrounding the mining and marketing of diamonds, it was considered expedient to make special legislative provision for this section of the mining industry in South West Africa.

26. The regulation and control of the mining and marketing of diamonds present extremely complex problems. In the course of its experience in South Africa Respondent has evolved a system of control which is generally recognized throughout the world as being both wise and effective, designed to promote the short and long-term economic interests of the country and its people.

The Diamond Industry Protection Proclamation, 1939<sup>2</sup>, as amended, which regulates and controls the development and protection of the diamond industry in South West Africa, is based on the knowledge and experience gained by Respondent in this sphere in South Africa.

27. The establishment in terms of this proclamation of a Diamond Board for South West Africa contributes towards the orderly marketing of diamonds.

The Board is a body corporate and represents the Administrator and the producers in the industry<sup>3</sup>.

In addition to advising the Administrator on all questions relating to the diamond industry, the Board, *inter alia*, supervises the carrying out of interproducers' and sales agreements and all sales of diamonds; arranges the allocation of quotas of diamonds for sale; attends to the receipt, valuation, transport, insurance and assortment of diamonds, and delivery to purchasers of diamonds sold; collects and receives from purchasers the records of sales and the moneys due thereunder, and arranges the distribution thereof<sup>4</sup>.

#### MINERALS USED IN THE PRODUCTION OF ATOMIC ENERGY

28. Respondent has also deemed it expedient, in the public interest, to enact special measures for the control of prospecting for, and mining of, certain minerals employed in the production and use of atomic energy and radio-active isotopes.

The Atomic Energy Act, No. 35 of 1948, has therefore been made applicable also to South West Africa. In terms of the said Act, the right to prospect for, or to mine, certain minerals, such as uranium and thorium,

<sup>1</sup> Ord. No. 4 of 1955, sec. 105 (1), pp. 849-853.

<sup>2</sup> Proc. No. 17 of 1939 (S.W.A.), in *The Laws of South West Africa* (1939), pp. 168-198.

<sup>3</sup> *Ibid.*, sec. 3 (1), p. 170.

<sup>4</sup> *Ibid.*, sec. 4, pp. 172-174.

is vested in the State <sup>1</sup>. Prospecting for, and mining of, such minerals are prohibited except upon authority of the Minister of Mines <sup>2</sup>.

The Act also provides for the establishment of an Atomic Energy Board. The Board is empowered to undertake prospecting for, and mining of, the minerals aforesaid, to process the same, and generally to dispose thereof or to deal therewith, and to advise the Minister on any matter which he may refer to the Board.

### Employment within Mining Enterprises

29. The Mining Regulations, promulgated in Government Notice No. 33 of 1956, provide that in the case of a mine or works owned by a European, persons employed in the following posts shall be Europeans:

- (a) the manager <sup>3</sup>;
- (b) every assistant, sectional or underground manager <sup>4</sup>;
- (c) the mine overseer <sup>5</sup>;
- (d) the shift boss <sup>6</sup>;
- (e) the ganger <sup>7</sup>;
- (f) the engineer <sup>8</sup>;
- (g) the person in charge of boilers, engines and other machinery <sup>9</sup>;
- (h) the surveyor <sup>10</sup>.

30. The reasons underlying the above provisions flow from the traditional relationship between the European and Native population groups of the Territory. In the history of the Territory there has at all times been social separation between these groups, and experience has shown that members of each group prefer to associate with members of their own group, and that certain kinds of contact between members of these groups tend to create friction. These factors are accentuated by the fact that the members of the European group have traditionally occupied a position of guardianship in respect of the indigenous groups, and that in the economic field the relationship between Europeans and Natives has generally been limited to that of employers and employees. In this factual situation, most Europeans would refuse to serve in positions where Natives might be placed in authority over them. Although very few, if any, Natives in the Territory would at present be able to hold any of the posts mentioned in the foregoing paragraph, Respondent was nevertheless obliged to take cognizance of the factual situation, and, for the considerations aforesaid, to adopt measures which would prevent Natives employed in European-owned mining enterprises from being appointed to technical and responsible posts in which they would exercise authority over European co-employees.

<sup>1</sup> Act No. 35 of 1948, sec. 2, in *The Laws of South West Africa* (1948), p. 20.

<sup>2</sup> *Ibid.*, sec. 3 (1), p. 20.

<sup>3</sup> G.N. No. 33 of 1956, Reg. 55 (1) (a), in *The Laws of South West Africa* (1956), p. 541.

<sup>4</sup> *Ibid.*, Reg. 56 (4), p. 543.

<sup>5</sup> *Ibid.*, Reg. 58 (3), p. 549.

<sup>6</sup> *Ibid.*, Reg. 59 (3), p. 551.

<sup>7</sup> *Ibid.*, Reg. 61 (2), p. 553.

<sup>8</sup> *Ibid.*, Reg. 64 (3), p. 557.

<sup>9</sup> *Ibid.*, Reg. 64 (4) and (5), pp. 557-558.

<sup>10</sup> *Ibid.*, Reg. 65 (2), p. 561.

The provisions constitute one of the "unpopular control methods" <sup>1</sup> which are considered desirable in the phase of transition from guardianship to separate self-realization, and which are destined to fall away when developments in the latter respect remove the reason for them. A major and harmful degree of tension and friction could result from situations in which European employees in the mining industry could be placed by their employers before the choice of either serving under the authority of a Native or relinquishing their employment. The provisions are therefore designed to contribute to good group relations and to the smooth evolution towards separate self-realization for Natives in homelands of their own.

31. The contrary position, viz., Europeans being employed in positions of authority over Native co-employees in Native mining enterprises, has not called for similar legislative provisions. As stated below, the Natives in the Territory have not developed to the stage where they conduct their own mining enterprises; and, in any event, Respondent believes that even when such enterprises have been established, Native entrepreneurs will, by reason of a lack of the necessary qualifications and experience on the part of Natives in the mining industry, have to rely on European technical and higher qualified staff for some time to come.

When Native enterprises are established and protection is required for Native employees in such enterprises, proper legislative measures can and will be taken.

32. The present role of the Native in the mining industry is, however, not confined to that of unskilled labourers. Many of them are trained to perform, and do perform, skilled work in the mines. Such workers include:

- operators of boiler plants, locomotive engines and stationary engines;
- excavator and earthmoving machine operators;
- power station artisans;
- lorry drivers;
- hostel supervisors;
- hospital assistants;
- dressers, supervisors and men cooks;
- artisans on the screen and recovery plants in the diamond industry;
- blasters.

33. The mining regulations contain no restrictions with regard to the posts which may be held by Natives in Native mining enterprises.

However, despite the fact that prospecting and mining in the Native reserves have to all intents and purposes been reserved to them, the Native population of the Territory have thus far generally shown a lack of interest in mining activities. This is probably only natural when regard is had to their background and traditional subsistence economy. It is for this reason that the Mines, Works and Minerals Ordinance has left a discretion to the Administrator in certain exceptional circumstances to allow Europeans to prospect in Native reserves <sup>2</sup>. As has been pointed out, however, this discretion will be exercised only in circumstances where the general welfare of the Territory so demands <sup>2</sup>. With regard to the promotion of the interests of the Native groups in, *inter alia*, the mining

<sup>1</sup> *Vide* Book IV, Chap. VII, para. 17, *supra*.

<sup>2</sup> *Vide* para. 17, *supra*.

industry, Respondent refers to what has already been stated generally <sup>1</sup> relative to the preference, encouragement and protection consistently given to members of the said groups in their own areas. In this respect attention is drawn to the fact that the Commission appointed to investigate the condition of the inhabitants of South West Africa, and particularly the non-White inhabitants, and to make recommendations in respect of their further advancement <sup>2</sup>, has been specially directed, *inter alia*, to consider how further provision should be made for the development of mining in the Native areas.

It is hoped that the Natives will in time show increased interest in the mining industry, and establish mining enterprises which will accommodate such Natives as aspire to the technical and higher posts in the industry.

34. The present position of the Natives in the mining industry in South West Africa, it may be pointed out, is very much the same as that found elsewhere in Africa.

Thus it has been stated:

"The African population is involved in mining mainly as a reservoir of semi-skilled and unskilled labour, complementing predominantly Non-African managerial, supervising and technical manpower. Mining provides full-time employment throughout Africa for about one million persons, of whom 90 per cent. or more are Africans <sup>3</sup>."

#### Respondent's Reply to Applicants' Allegations (Memorials)

##### PARAGRAPH 37 OF CHAPTER V <sup>4</sup>

35. It is admitted that the mining industry plays an important role in the economy of South West Africa. Not only does the Administration derive considerable revenue from the industry, but the industry also offers employment opportunities to a number of people in the Territory <sup>5</sup>.

Although a variety of minerals have been discovered in the Territory, at present 96 per cent. of the value of the total mining output is in diamonds, lead, copper and zinc <sup>6</sup>.

##### PARAGRAPH 38 OF CHAPTER V <sup>4</sup>

36. The allegations in this paragraph are admitted. The fact that so few companies control a relatively large share of the mining production is ascribable to the nature of the mineral deposits in the Territory and to the high cost of exploitation, which necessitate large-scale operations and substantial capital investments <sup>7</sup>.

<sup>1</sup> *Vide* Book IV, Chap. VII, paras. 33-34, *supra*.

<sup>2</sup> *Ibid.*, para. 35.

<sup>3</sup> *U.N. Doc. E/CN.14/28*, p. 61.

<sup>4</sup> I, p. 119.

<sup>5</sup> *Vide* para. 10, *supra*.

<sup>6</sup> *Vide* Book III, Chap. I, para. 34.

<sup>7</sup> *Vide* para. 9, *supra*.

PARAGRAPH 39 OF CHAPTER V <sup>1</sup>

37. Respondent admits that the right of mining for, and disposing of, precious and base minerals in South West Africa is, in terms of Ordinance No. 26 of 1954, vested in the Administration <sup>2</sup>. Prospecting for minerals is regulated and controlled by the Administration <sup>3</sup>.

38. A similar system was in operation in the Territory before the assumption of the Mandate <sup>4</sup> and, not only had vested mining rights accrued under the said system prior to the assumption of the Mandate, but the system as such appeared from an administrative point of view to be sound and to afford the best method of regulating and controlling the exploitation of the mineral resources of the Territory <sup>4</sup>. The system was accordingly retained and still operates under Ordinance No. 26 of 1954.

The Administrator, acting as Respondent's representative, controls the mining industry through the Mines Division, which has on its staff technically qualified and experienced officials <sup>4</sup>.

39. The principle of vesting mineral rights in the government of a country, so as to allow it to control all aspects of the exploitation of the country's mineral wealth for the benefit of all the inhabitants, is not peculiar to South West Africa, but is also applied in many other countries.

In this respect Hailey says the following with regard to the position in certain African Territories:

(a) *The Belgian Congo.*

"... concessions for prospecting or the extraction of minerals [in the Belgian Congo] can be obtained only from the State, and its practice has been to retain a substantial holding in the share capital of the companies to which it has granted concessions <sup>5</sup>".

(b) *The Former Mandated Territory Ruanda-Urundi.*

"In Ruanda Urundi mineral rights are also reserved to the State <sup>6</sup>."

(c) *Portuguese Territories in Africa.*

"In the Portuguese territories rights to minerals are reserved to the State." The State in its discretion, grants prospecting concessions to individuals or companies <sup>6</sup>.

(d) *Liberia.*

"In Liberia the government reserves to itself the sole right to grant prospecting and other concessions <sup>6</sup>."

(e) *Certain Other African Territories.*

In Basutoland, Kenya, Uganda, Tanganyika and Nigeria the mineral rights vest in the governments of the territories concerned, and they control all prospecting for and exploitation of these minerals <sup>7</sup>.

<sup>1</sup> *Vide* para. 9, *supra*.

<sup>2</sup> *Vide* para. 13, *supra*.

<sup>3</sup> *Vide* para. 14, *supra*.

<sup>4</sup> *Vide* para. 12, *supra*.

<sup>5</sup> Lord Hailey, *An African Survey*: Revised 1956, p. 1514.

<sup>6</sup> *Ibid.*, p. 1523.

<sup>7</sup> *Ibid.*, pp. 1520-1522.

PARAGRAPH 40 OF CHAPTER V <sup>1</sup>

40. As will appear from paragraphs 15 to 18 above, the Applicants' allegations in this paragraph are not quite correct.

Within the area of the Police Zone, excluding the Native reserves and the Rehoboth *Gebiet*, licences to prospect for minerals may be issued only to Europeans and companies.

In a Native reserve in the Police Zone no person, other than a Native lawfully resident therein, may prospect or mine unless he is the holder of a special permit issued on the instructions of the Administrator.

41. Although the possibility exists that a special permit may be granted to a European to prospect in a Native reserve, the policy is not to grant such a permit save under very special circumstances <sup>2</sup>.

In the area outside the Police Zone, no person—White or non-White—may prospect or mine, unless he is the holder of a special permit issued on the instructions of the Administrator under such conditions or circumstances as he may direct <sup>3</sup>.

42. The effect of the provisions of Ordinance No. 26 of 1954 is that, in so far as is practicable, priority rights in the mining industry are created for the different population groups in separate areas in the Territory.

The system can, however, not be a rigid one, in that due regard must be had to the fact that the Native population has as yet not acquired the experience, and generally does not as yet have the initiative or the means, to undertake prospecting and mining operations, which, for reasons already stated <sup>4</sup>, must usually be on a large scale to render them profitable.

To meet the eventuality of there being mineral deposits in a reserve which can be exploited for the benefit of the Territory, but which would otherwise remain unexploited, by reason of lack of enterprise or funds on the part of the inhabitants of such reserve, the Ordinance makes provision for prospecting and mining in the Native reserves also by Europeans acting under special permission <sup>5</sup>.

PARAGRAPH 41 OF CHAPTER V <sup>5</sup>

43. Respondent has dealt with the provisions of Ordinance No. 26 of 1954 referred to in this paragraph <sup>6</sup>.

The said provisions are necessary, *inter alia*, to safeguard the rights of owners and occupiers of land against surface damage to such land, or against the creation thereon of unsafe conditions as a result of prospecting operations.

In the interests of the community, prospecting and mining cannot be permitted without such protective measures.

44. The provisions of the Ordinance which prohibit the removal by a

<sup>1</sup> I, pp. 119-120.

<sup>2</sup> *Vide* para. 17, *supra*.

<sup>3</sup> *Vide* para. 18, *supra*.

<sup>4</sup> *Vide* para. 9, *supra*.

<sup>5</sup> I, p. 120.

<sup>6</sup> *Vide* paras. 19-23, *supra*.

prospector of minerals recovered in prospecting operations without the permission of the Inspector of Mines, and similar provisions pertaining to minerals recovered in mining operations, exist for the proper regulation of the disposal of such minerals in the interests of the industry and the State <sup>1</sup>.

#### PARAGRAPH 42 OF CHAPTER V <sup>2</sup>

45. It is correct, as Applicants state, that the Ordinance empowers the Administrator to make regulations "in respect of or in connection with an extensive variety of matters enumerated in Section 105 . . . <sup>2</sup>".

As will appear from paragraph 24 above, the matters enumerated in the section are all concerned with the proper regulation of the mining industry. The section authorizes regulations to be made for the control of methods of prospecting and mining; for the protection of the safety and health of persons employed in the industry; for their conditions of employment; for the protection and preservation of the surface of mines, works, buildings, roads, railways, etc., and generally for ensuring the proper working and management of all mines.

46. Such regulations are necessary to ensure order, good management and control, in the interests not only of the industry as such and of the persons engaged therein, but also of those members of the community who may be affected thereby, and of the State.

47. Ordinance No. 4 of 1955 amended section 105 of Ordinance No. 26 of 1954 so as to provide that the Administrator may make regulations in connection with prospecting and mining in Native reserves only after consultation with the Minister of Bantu Administration and Development. This provision was a necessary corollary to the change brought about by the South West Africa Native Affairs Administration Act (No. 56 of 1954), in terms of which the administration of Native Affairs in South West Africa was transferred to the Minister of Bantu administration and Development <sup>3</sup>.

#### PARAGRAPHS 43 AND 44 OF CHAPTER V <sup>4</sup>

48. The legislation referred to by Applicants in these paragraphs has been dealt with above <sup>5</sup>. It has been shown that good reasons exist for the specific measures, which are intended to control the prospecting for, and the mining and disposal of, diamonds and minerals or materials employed in the production and use of atomic energy.

49. The provisions of the Diamond Industry Protection Proclamation of 1939, and of the Atomic Energy Act of 1948, and the Boards established in terms of the said Acts, operate and function not only in the interests of the sections of the mining industry affected thereby, but also in the interests of the whole community and of the State.

<sup>1</sup> *Vide* para. 23, *supra*.

<sup>2</sup> I, p. 120

<sup>3</sup> *Vide* Book VIII, sec. C, Chap. VII, *infra*.

<sup>4</sup> I, pp. 120-121.

<sup>5</sup> *Vide* paras. 25-28.

PARAGRAPH 45 OF CHAPTER V <sup>1</sup>

50. In this paragraph Applicants allege, with reference to what they state in paragraphs 37 to 44 of Chapter V of the Memorials, that there is a "pattern of systematic discrimination against 'Natives' . . . in the mining industry".

Respondent denies that the laws and regulations applicable to the mining industry justify the conclusion that there is a "pattern of systematic discrimination against 'Natives' ".

In all the laws and regulations mentioned by Applicants there is, except in the respects to be mentioned hereinafter, no distinction whatsoever between Natives and Europeans.

51. The measures of control and regulation to which the Applicants refer, apply to all sections of the community and make no distinction between persons on the ground of race or colour.

Ordinance No. 26 of 1954 does draw a distinction between Natives and Europeans with regard to the areas in which they may respectively prospect and mine. As has been explained, however, good reasons exist for such distinction <sup>2</sup>, and the provisions in question are not intended to, and do not, discriminate against Natives in the sense in which that expression is used in the Memorials.

52. Applicants say further:

"While under the applicable law there is a technical possibility that prospecting by Natives may take place within the Native reserves, the technical possibility can hardly be realized. The numerous conditions prescribed, including particularly the financial conditions and requirements, taken together with the unfettered discretion of the Administrator and the several special Boards, permit and indeed require an inference that for all practical purposes, 'Natives' are barred from any such activity <sup>1</sup>."

Respondent says that the charge in this respect is without foundation. As has already been explained <sup>3</sup>, the conditions prescribed in Ordinance No. 26 of 1954 and other relevant legislation, exist for the proper regulation and control of the mining industry, and it would be impossible to have such control without the provisions in question.

53. Applicants' suggestion that the said provisions must be seen as part of a "pattern of systematic discrimination against 'Natives' " is entirely unfounded.

It is of course true that, in terms of the said measures, persons who wish to engage in prospecting and mining operations must comply with certain requirements, and are rendered subject to certain obligations, but that is so for everybody engaged in the industry, irrespective of the group to which he belongs.

54. Prospecting licences have been issued to Natives for prospecting in their reserves, and in the Rehoboth *Gebiet* five residents have held prospecting licences for some considerable time and hold claims within the area. That there are at present few Natives engaged in mining opera-

<sup>1</sup> I, p. 121.

<sup>2</sup> *Vide* paras. 15-18, *supra*.

<sup>3</sup> *Vide* paras. 19-28, *supra*.

tions, is to be ascribed to the fact that as yet few Natives have the necessary knowledge, experience or the substantial means required for such operations.

55. In Respondent's submission it is ludicrous to suggest, as Applicants seem to do, that more Natives would be drawn into the industry as entrepreneurs merely by doing away with, or relaxing, the legislative measures designed for protection and control of the industry.

#### PARAGRAPH 46 OF CHAPTER V <sup>1</sup>

56. Applicants refer to the mining regulations promulgated in Government Notice No. 33 of 1956, and state: "It is plain that the role of the Native is confined to that of unskilled laborer <sup>1</sup>." Again Respondent denies the Applicants' charge.

57. In the case of a mine or works owned by a Native, as is permitted in the reserves, there is no limitation whatsoever as to the position which a Native employee may occupy.

Moreover, in mines and works owned by Europeans the role of the Native is not confined to that of "unskilled laborer". Many Natives employed on mines perform skilled and semi-skilled work <sup>2</sup>.

58. It is true that in terms of the mining regulations certain posts in mines and works owned by Europeans may only be filled by European employees. The reasons for the existence of such provisions have already been explained <sup>3</sup>.

It has also been shown that even if there were no such regulations, very few, if any, Natives could at present be considered for appointment to the higher posts in question, the reason being that as yet the Natives generally lack the necessary educational qualifications and experience <sup>4</sup>.

#### PARAGRAPH 47 OF CHAPTER V <sup>5</sup>

59. Applicants' allegation in this paragraph is that the Pneumoconiosis Act, No. 57 of 1956, which is alleged to be applicable to South West Africa, defines a miner as a male person of European descent, whereas Natives and Coloured persons working in mines are classified by the statute as labourers.

The said Act has been repealed by the Pneumoconiosis Compensation Act, No. 64 of 1962, and was, in any event, not applicable to mines in South West Africa. It was a South African Act, designed to regulate certain matters concerning the mining industry in South Africa. Certain sections of the Act referred to South West Africa, but only in so far as they affected, *inter alia*, medical or *post-mortem* examinations of persons in South West Africa who had contracted pneumoconiosis in mines in South Africa. There was no provision for applying the Act to mines in South West Africa, and the definitions referred to by Applicants were therefore in no way relevant to mine workers within the Territory. The

<sup>1</sup> I, p. 121.

<sup>2</sup> *Vide* para. 32, *supra*.

<sup>3</sup> *Vide* paras. 30-31.

<sup>4</sup> *Vide* para. 31, *supra*.

<sup>5</sup> I, pp. 121-122.

same position obtains under the new Act. It is consequently unnecessary for Respondent to deal with the 1956 Act or with the new Act of 1962.

PARAGRAPH 77 OF CHAPTER V <sup>1</sup>

60. Applicants' charges in this paragraph constitute a mere repetition of the allegations made in paragraphs 37 to 47 of Chapter V of the Memorials <sup>2</sup>, which have been dealt with above.

It is accordingly unnecessary to deal with the charges made in paragraph 77, save to say that they are denied.

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<sup>1</sup> I, pp. 130-131.

<sup>2</sup> *Vide* paras. 1 and 3, *supra*.

## CHAPTER IV

### RAILWAYS AND HARBOURS

#### Introductory

1. In paragraph 77 of Chapter V of the Memorials the Applicants charge Respondent with having "... confined the participation of the 'Native' population in the industrial economy, for all practical purposes, to the role of unskilled laborer" <sup>1</sup>.

In support of this charge the Applicants refer, *inter alia*, to conditions of employment in the Railways and Harbours Administration, with regard whereto they state as follows:

"All graded posts in the Railways and Harbors Administration are reserved to 'Europeans', subject to temporary exceptions which are made when a shortage of 'European' employees is so acute as to make it necessary to relax the bar <sup>2</sup>."

2. Before dealing with the said charges, Respondent will give a brief account of the control of the railways and harbours in South West Africa, and of certain policies which are applied with regard to the employment of personnel in the Railways and Harbours Administration.

#### Control of Railways and Harbours

3. The railways and harbours of South West Africa are operated by the South African Railways and Harbours Administration, which is a department of the Government of South Africa.

Control of the railways and harbours is exercised through the Minister of Transport who is advised by a board, known as the Railways and Harbours Board. The board is composed of three Commissioners, with the Minister as chairman.

4. Although it is a department of State, the Railways and Harbours Administration has a separate financial budget, and seeks to operate as far as possible on ordinary business principles, due regard being had to the agricultural and industrial development of the country.

#### Policies Applied in the Employment of Railway Personnel

5. The policies applied in the employment of members of the various population groups in South Africa in the Railways and Harbours Administration must be viewed against the background of the history of social and economic conditions in South Africa.

Elsewhere in this Counter-Memorial reference is made to the social and economic considerations which have led to the adoption of basically similar policies in regard to the employment of members of the different

<sup>1</sup> I, para. 77 (4), p. 131.

<sup>2</sup> *Ibid.*, para. 48, p. 122.

population groups in particular industrial enterprises<sup>1</sup> and in other economic spheres<sup>2</sup>.

As similar considerations arise with regard to the employment of members of the different population groups in the Railways and Harbours Administration, it is not necessary to deal fully with the topic here, and Respondent will for convenience merely restate the basic considerations underlying such policies.

6. Throughout South Africa's history there has been social separation between the members of the White group and the members of the non-White groups; the members of each group preferring to associate with members of their own group, and avoiding contact in spheres where friction could be created.

By reason of the difference in their stages of general development, the relationship in the economic field between members of the White group and the members of the non-White groups has in the past generally been that of employers and employees. In this factual situation many Europeans, in all probability the vast majority, are not prepared to accept a relationship in which non-Whites could be in positions of authority over them.

7. In the adoption of policies regarding the employment of members of the different population groups in the same enterprises, and also in the various government departments, Respondent was obliged to take cognizance of the factual situation described above. This was particularly necessary in view of the ever higher level of development being attained by members of the non-White population groups, and of their aspirations to avenues of employment not formerly sought by them.

The problem that arose was one of finding the best means whereby members of the non-White groups could enjoy proper opportunities for advancement in higher spheres of employment, and thus a proper outlet for their abilities and qualifications. A *laissez faire* policy, leaving the non-Whites to fend for themselves in competition with White persons, in an effort at bringing about a complete integration between White and non-White in the economic sphere, would in Respondent's experience and considered opinion have led to the most deleterious consequences for all concerned. On the one hand there was the danger of estrangement of members of the White group from fields of employment which required their services. On the other hand there was the prospect that in many avenues non-Europeans would find progress almost completely barred—through superior qualifications, ability or experience on the part of White competitors, or through prejudicial reaction on the part of employers, or through a combination of these—whereby they would increasingly experience disillusionment and frustration. Goodwill and good relations across group and racial borders, would suffer immeasurably.

8. In the circumstances the only solution was to create, and to encourage members of the non-White groups to seek, opportunities of employment where they could serve their own people and where separation of employment opportunities for the members of the different groups would avoid possible friction and fear of competition.

This policy has therefore been applied also in the Railways and

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<sup>1</sup> Vide Chap. III, paras. 29-34, *supra*.

<sup>2</sup> Vide Book VII, Chap. VIII, paras. 20 ff., *infra*.

Harbours Administration, where ever increasing opportunities in employment have been, and are being, created for the members of the non-White groups.

With the development of separate homelands in South Africa for the Bantu people, employment possibilities for them will accordingly be accelerated.

In the meantime, however, while in the transitional stage, it is necessary to regulate employment, with due consideration of the aspirations and desire for security of all the population groups, and to avoid disruption of essential services.

Such a policy, as will be appreciated, involves regulation of a delicate, intricate and sometimes unpopular nature, and the actual measures and practices adopted in this regard require review and revision from time to time in the light of experience and developments.

9. Inasmuch as the social and economic relationship between the different population groups in South West Africa is basically the same as that which pertains in South Africa, the application of a similar policy in the Territory, with adaptation where necessary, is only natural.

For reasons stated elsewhere in this Counter-Memorial<sup>1</sup>, it is expected, however, that progress in the separate development of the Native groups in South West Africa will be slower than in South Africa.

10. It is against the above background that Respondent's policies with regard to the employment of members of the different population groups in the Railways and Harbours Administration must be viewed.

### Respondent's Reply to Applicants' Allegations (Memorials)

#### PARAGRAPH 48 OF CHAPTER V<sup>2</sup>

##### II. Applicants' allegation that

"All graded posts in the Railways and Harbours Administration are reserved to 'Europeans', subject to temporary exceptions which are made when a shortage of 'European' employees is so acute as to make it necessary to relax the bar."

is made in the light of a statement by the Minister of Transport in the South African House of Assembly in March 1956<sup>3</sup>.

The Minister, in the part of his speech here in issue, was replying to a member who had "advocated the promotion of non-Europeans to all graded posts" on the railways<sup>4</sup>, and he said that that was not government policy.

He pointed out that certain posts, termed "graded posts", were "traditionally European posts", that they were reserved to Europeans, and that the non-Europeans then occupying such posts were doing so on a temporary basis.

12. While it is true that all "graded posts" on the railways are reserved to Europeans, it is not correct, as Applicants say, that Respondent has "confined the participation of the 'Native' population . . . [in employment

<sup>1</sup> *Vide* Book IV, Chap. VII, paras. 34 ff., *supra*.

<sup>2</sup> I, p. 122.

<sup>3</sup> *U. of S.A., Parl. Deb., House of Assembly*, Vol. 90 (1956), Cols. 2133-2138.

<sup>4</sup> *Ibid.*, Col. 2135.

on the railways], for all practical purposes, to the role of unskilled laborer"<sup>1</sup>. The term "graded post" is one which is used in the Railway Administration to denote any post held by a European, other than that of ordinary railworker (labourer), for which provision is made in the pay schedules published in conjunction with railway staff regulations. The term has no significance outside this context.

The Minister did not say that non-Europeans were, or would be, limited only to unskilled work. He stated that where they occupied posts of a rank higher than that of an ordinary railworker (labourer), they were doing so in circumstances where they served their own people, and he referred to instances where they in fact held such positions. Such positions, it should be pointed out, are not called "graded posts", even where they involve the same duties as those performed by Europeans in "graded posts". In the case of non-European employees the corresponding name usually employed is "better class work positions". In 1951, it may be pointed out, there were 116 such "better class work positions", and in 1961, 134 (with 6,706 incumbents).

13. In the course of the debate in Parliament an opposition member, referring to the stated policy of the Administration "to allow non-Europeans to serve their own people in graded positions as far as possible"<sup>2</sup>, said that it must be the logical policy also to employ Natives on trains for Natives<sup>3</sup>.

It was in reply to this suggestion that the Minister made the statement quoted by Applicants<sup>4</sup>, and which is repeated here for convenience, viz.,

"We only employ Natives to serve their own people where it is practicable, and where it is acceptable to the rest of the staff. But it will certainly not be acceptable to the staff or the public that Natives should be employed, even on Native trains, as firemen, conductors, or guards. That is not my policy, and it will not happen."

14. From the above statement it is clear that the Minister confirmed that the policy was to employ Natives to serve their own people, but that he emphasized that it would be applied only where it was "practicable", and where it was "acceptable to the rest of the staff".

The Minister explained that the employment of Natives on Native trains, as firemen, conductors and guards, would not be "acceptable to the staff or the public".

The Minister's explanation must be viewed in the light of the considerations mentioned in paragraphs 5 to 10 above. Displacement of European employees in graded posts by Native employees, on Native trains, would, as the Minister saw it, and as matters then stood, have caused grave dissatisfaction amongst European employees and the public. This was the more so inasmuch as even trains carrying only Natives did not operate separately from the rest of the service in the sense of being located in a different area.

Since the Minister spoke in 1956, separate development of the Native population groups has advanced at an increased tempo, and ever in-

<sup>1</sup> I, para. 77 (4), p. 131.

<sup>2</sup> U. of S.A., *Parl. Deb., House of Assembly*, Vol. 90 (1956), Col. 2161.

<sup>3</sup> *Ibid.*, Col. 2182.

<sup>4</sup> I, para. 48, p. 122.

creasing opportunities of performing "better class work" on the railways are being offered to Native employees. So, for example, they are now employed in clerical positions (in ticket offices) and in operative positions on a much larger scale than before.

As the Natives become better qualified, educationally and technically, they will be able to perform more and more services for themselves, and it is hoped that they will eventually be able to occupy the highest posts in their own areas.

15. In South West Africa the position is generally that the Native population has not yet reached the same level of development as the Bantu population in South Africa. The work performed by them on the railways and in the harbours is largely of an unskilled kind, owing to the fact that their general state of advancement does not, at the present stage, generally qualify them for posts of a skilled, or semi-skilled, kind. Progress has nevertheless been made, and the following positions, involving the performance of what is known as "better class work", are open to them: boiler attendant, boss boy (overseer), cook, campman, messenger, station porter, berthing and shore hand, engine attendant (locomotive under steam), stoker (harbour craft), pumper, police and commissioner (at stations, or as assistants to European guards or examiners on trains).

The practice is to add to such positions from time to time when prescribed standards can be met by a sufficient number of candidates.

#### PARAGRAPH 49 OF CHAPTER V <sup>1</sup>

16. The extract from the report of the Permanent Mandates Commission on South West Africa to which Applicants refer, does not present a full and accurate account.

The only discussion of the matter before the Commission is recorded at page 106 of the Minutes <sup>2</sup> as follows:

"Mr. Grimshaw, turning to the question of white workers, asked whether the Colour-bar Act was applied in South West Africa.

Mr. Werth replied that the Administration applied the Act to its own workers who were employed on responsible jobs, such as motor-driving and, he thought, on the railways."

This brief discussion followed shortly after the Chairman of the Commission had "requested all members, in view of the lateness of the hour, to make their questions and observations as brief as possible" <sup>3</sup>.

17. After the report of the Commission had been drafted, the Commission having adjourned on 13 November 1928, Mr. Werth, the accredited representative for South Africa, wrote a letter dated 19 November 1928 to the Commission in the following terms:

"I should like to thank you for kindly submitting to me, for any comments I may wish to make, an advance copy of the observations of the Permanent Mandates Commission. Availing myself of the privilege thus graciously accorded me, I wish to draw attention to

<sup>1</sup> I, p. 122.

<sup>2</sup> *P.M.C., Min.*, XIV, p. 106.

<sup>3</sup> *Ibid.*, p. 105.

the Commission's observations on the Colour Bar Act (page 8) and to make the following comments:

When the question about the application of a colour bar in South-West Africa was put to me by a member of the Commission, the Chairman indicated to me in no mistakable way that the Commission was sorely pressed for time and that a full statement was not wanted. I concluded from this that no important principle was involved and therefore briefly replied that a colour bar was being observed, but only with regard to work done by the Administration and the Railway Department. I now find that this brevity has led to a misunderstanding which I feel it my duty to correct.

The true position is as follows:

The Colour Bar Act of the Union is not in force in South-West Africa. There is therefore no statutory colour bar. Owing, however, to the present low state of civilisation among the natives, no native is at present employed either by the Administration or by the Railway Department on work involving the risk of human life, such as driving a motor-car or working an engine. A certain colour bar is therefore being observed in practice, but it is certainly not a statutory enactment and is purely temporary, that is, until such time as the native is sufficiently advanced to be able to undertake this responsible work.

I hope that this explanation will satisfy the Commission and remove all ground for the observation which it has made on page 8<sup>1</sup>."

The matter was not referred to again by the Permanent Mandates Commission.

18. The Act referred to as the "Colour Bar Act" in the extracts above was the Mines and Works Act 1911, Amendment Act (Act No. 25 of 1926). It did not apply to Railways—Mr. Werth was wrong in thinking that it did—and it did not apply to South West Africa.

#### PARAGRAPH 77 OF CHAPTER V<sup>2</sup>

19. For the reasons aforestated Respondent denies the Applicants' allegations in paragraph 77 of the Memorials relative to conditions of employment in the Railways and Harbours Administration.

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<sup>1</sup> *P.M.C., Min.*, XIV, p. 278.

<sup>2</sup> I, pp. 130-131.

## CHAPTER V

### LABOUR RECRUITMENT

#### Introductory

1. In paragraphs 50 to 57 of Chapter V of the Memorials<sup>1</sup> the Applicants deal with the subject of labour recruitment in Ovambo land and in the Okavango territory. Apparently the Applicants do not object to the recruitment of labour as such. They say that the "process by which labor is recruited is of particular interest"<sup>2</sup>, and, although it is not specifically so stated, it would appear that their complaints in this regard are those summarized in paragraph 77 (6) of Chapter V of the Memorials, which reads as follows:

"The Mandatory has so drastically curtailed and circumscribed the possibilities of choice for 'Native' laborers as to leave them, for all practical purposes, very little freedom of choice with respect to place of employment, type of employment, identity or character of employer, or conditions of employment<sup>3</sup>."

2. Before dealing with the Applicants' specific allegations in the paragraphs referred to above, Respondent proposes to give a brief survey of the history of the recruitment system, of its operation in practice, and of its advantages for Natives who seek employment.

#### History of the Recruiting System

3. Even before Respondent assumed the Mandate, a large part of the Native labourers employed within the Police Zone came from the northern areas beyond the borders of the Zone. In 1912, e.g., there were about 6,600 adult male Natives from these areas included in the total of approximately 25,000 adult male Natives employed within the Police Zone<sup>4</sup>. By 1919 there were 10,537 migrant Ovambo workers in the Police Zone<sup>5</sup>.

4. Development in the Police Zone after the inception of the Mandate created an ever bigger demand for labour, and, at the same time, provided ever-increasing opportunities of wage employment for the Native inhabitants of the Territory. Such employment has at all times been keenly sought by large numbers of the inhabitants of Ovambo land and the Okavango territory and also by Natives beyond the border of the Territory.

5. At the inception of the Mandate it was decided to restrict the entry of Europeans into the northern Native areas, and private recruitment of Native labourers by European employers was accordingly not allowed.

<sup>1</sup> I, pp. 122-124.

<sup>2</sup> *Ibid.*, Chap. V, para. 51, p. 123.

<sup>3</sup> *Ibid.*, para. 77 (6), p. 131.

<sup>4</sup> *Die deutschen Schutzgebiete in Afrika und der Südsee—1912/1913*.—Amtliche Jahresberichte, Statistischer Teil, p. 57.

<sup>5</sup> *Official Yearbook of the Union of South Africa*, No. 3, p. 883.

Since transportation difficulties and the long distances involved would have made it impossible for all but a few Natives, if left to their own resources, to obtain work in the Police Zone, the South West African Administration itself initially undertook the task of recruiting labour in the northern areas, and by Proclamation No. 11 of 1922<sup>1</sup> no person or organization was permitted to recruit labour in those areas save upon appointment by the Administrator.

6. The labourers recruited by the Administration were largely employed in the diamond mines in the southern, and the copper mines in the northern parts of the Police Zone, but large numbers of workers also found employment on European farms and in the urban areas of that Zone.

7. In 1925 the Administration considered it advisable to allow representatives of the employers of workers recruited in the northern territories to take over the recruitment of such labour from the Administration, and in December 1925 a conference was called by the Administration of representatives of the two biggest groups of mining companies, viz., the diamond mines in the south, and the copper mines in the north, to discuss the question of recruitment of Native labour. This conference decided that two recruiting organizations be formed, viz., the Southern Recruiting Organization, designed primarily to serve the interests of the diamond mines in the south, and the Northern Recruiting Organization, designed primarily to serve the interests of the copper mines in the north. Provision was also made for other large employers of Native labour to become members of these two organizations<sup>2</sup>.

8. These organizations did all recruitment of labour in the northern areas until 1943, when the South West Africa Native Labour Association (Proprietary) Limited (usually referred to as S.W.A.N.L.A.) was formed to take over their functions.

S.W.A.N.L.A. was registered with a share capital of £19,500 (R39,000), the principal shareholders being the Consolidated Diamond Mines of S.W.A. Limited and the Northern Labour Organization Ltd.

S.W.A.N.L.A. is run on public utility lines. Article 11 (a) of its Articles of Association provides that the profits of the Company—

“... shall not be distributed by way of dividend, but a Reserve Fund shall be established and the Company shall in each year take from its profits an amount equal to at least ten per cent of the nett profits in that year for the purpose of forming therewith the aforesaid Reserve Fund”,

and Article 14 thereof provides that on dissolution of the Company—

“... the share capital ... shall be re-paid to the shareholders ... any balance of funds remaining thereafter shall be disposed of by the Company in the interests of the Territory, due regard being had to the interests of the Natives in the recruiting areas operated by the Company<sup>3</sup>”.

9. In 1952 an organization, called the Society of South West African

<sup>1</sup> *Vide* sec. 19 of Proc. No. 11 of 1922 (S.W.A.), in *The Laws of South West Africa 1915-1922*, p. 753.

<sup>2</sup> U.G. 22—1927, para. 52, p. 36.

<sup>3</sup> *Articles of Association of New South West Africa Native Labour Association (Proprietary) Limited*, pp. 6-7.

Farmer-Employers of Contracted Natives, was formed, and this society was given representation on the board of management of S.W.A.N.L.A. The Company's name was then changed to New South West Africa Native Labour Association (Proprietary) Limited—*Nuwe* S.W.A.N.L.A. (usually referred to simply as New or *Nuwe* S.W.A.N.L.A.), and the management board was increased from its original two to five members. Two of these members represent the original shareholders, and two the aforementioned Society of Farmer-Employers, whilst the fifth represents the interests of the employers of contracted extra-territorial or northern Natives other than those engaged in farming or mining<sup>1</sup>. Pending the formation of a society of such last-mentioned employers, the fifth member of the board is appointed by the other four members thereof or, failing agreement between them, by the Administrator<sup>2</sup>.

### Operation of the Recruiting System

10. New S.W.A.N.L.A.'s recruiting offices in the northern areas are at Ondangua, in Ovamboland, and at Runtu, in the Okavango territory. Although recruiting tours are undertaken, most Natives are aware of the existence of the recruiting centres and generally present themselves there of their own accord. On occasion also, when particularly large numbers of recruits are required, messages to that effect are sent to chiefs and headmen, who thereupon inform their people. Volunteers are then picked up by the recruiting agents or make their own way to the recruiting centres to seek inclusion in the group to be employed.

11. Prospective employees who present themselves at the recruiting centres are first cursorily examined by company officials and their Native assistants with a view to eliminating those men who are obviously medically unfit and thereafter recruits are medically examined to determine their physical fitness for the kinds of employment offered.

12. Having passed their medical examination, recruits who have offered themselves, and have been accepted, for employment with large mining concerns, such as the Consolidated Diamond Mines or the Tsumeb Corporation, forthwith enter into contracts with their prospective employers, such employers being represented by the recruiting agency. The terms of their contracts, which are in writing and of standard form, are carefully explained to the recruits, and, after they have expressed their satisfaction therewith to the Bantu Affairs Commissioner, or his assistant, the official concerned attests the agreement.

In the case of other types of work, e.g., in industry, on farms, or as domestic workers in urban areas, it is practically impossible to specify the particular employer at the time when the prospective employee is recruited in the northern areas. In such cases a recruit enters into a preliminary agreement with the recruiting agency to take up work of an agreed type, at not less than a specified wage, with an employer to be named at Grootfontein, where the agency's main office is situated. The preliminary agreement is fully explained to the recruit by the Bantu Affairs Commissioner, or his assistant, and if the recruit is dissatisfied

<sup>1</sup> Ord. No. 48 of 1952, in *The Laws of South West Africa 1952*, pp. 794-804.

<sup>2</sup> *Ibid.*, sec. 8, pp. 800-802.

with the type of work or with the wage offered, he has every opportunity of refusing to take such work. At Grootfontein the recruit is informed of the identity and address of his prospective employer, and the terms of the proposed contract of service are fully explained to him by the Bantu Affairs Commissioner, or his assistant, who attests the agreement if the recruit is satisfied therewith.

All contracts entered into by recruits are in writing, and, to protect the interests of recruits, the conditions of service specified in such contracts are prescribed by the Administration.

Every effort is made to place recruits in the service of employers of their choice, it also being in the interests of the recruiting agency to do so.

13. Recruits travel from the recruiting centres to Grootfontein, within the Police Zone, by road motor transport, provided by the South African Railways from Ovamboland and by New S.W.A.N.L.A. itself from Runtu over routes equipped with the necessary rest camps. At Grootfontein they are housed by New S.W.A.N.L.A., and issued with food and clothing.

From Grootfontein the recruits proceed to their respective places of employment. Those going to the diamond mines in the south are generally conveyed by air, whereas the others proceed by rail to the station or railway halt nearest their place of employment, where they are met by New S.W.A.N.L.A.'s agents or their employers.

Copies of contracts of service<sup>1</sup> serve as sufficient identification passes for employees in urban areas within the Police Zone<sup>2</sup>.

14. The tribal authorities in the northern territories have insisted that service contracts entered into with their people should be for a limited period only, and that on expiration of that period the employee should return to his tribal area and stay there for at least three months before seeking re-employment. Employers in the Police Zone have often requested that an employee's family should be allowed to accompany him to his place of employment, but the tribal authorities have always sternly opposed such suggestions. By limiting the period of employment outside the tribal areas, the tribal authorities seek to maintain traditional ties and tribal relationships and to ensure that the workers do not fail in their obligation to support their families.

15. Prior to 1949 the maximum period of service to which the tribal authorities would agree was one year, but this was subsequently extended to 18 months with the consent of the chiefs and headmen in Ovamboland and the Okavango territory. At their request, however, the period was again reduced to one year as from 1 July 1961. Farm labourers, however, are allowed to contract for a period of 18 months if a higher wage than the minimum is agreed to, and all contracts, whether for 12 or 18 months, may be extended up to a maximum of two years in the case of married men, and to two and a half years in the case of unmarried men.

The government authorities have provided a central registry at Grootfontein to keep a record of all recruited workers, and to ensure that they return to their homes at the end of their contract periods.

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<sup>1</sup> *Vide* para. 12, *supra*.

<sup>2</sup> *Proc. No. 133 of 1961 (S.A.)*, in *The Laws of South West Africa 1961*, pp. 546-552.

### Advantages of the Recruiting System

16. The recruiting system, as described above, has decided advantages for those Natives of the northern areas who seek to take up employment in the Police Zone. Briefly put, it provides them, free of charge, with an avenue through which they can find employment which, if left to their own resources, comparatively few would be able to obtain. South West Africa with its low population density and vast distances presents an intricate problem in regard to the efficient distribution of labour. The few industrial and mining centres, viz., Tsumeb, Walvis Bay, Oranjemund and Luderitz, are far removed from the northern territories, varying from about 250 miles in the case of Tsumeb to about 1,000 miles in the case of Oranjemund. Many farms again are situated miles from the nearest urban centres. A large proportion of the men who present themselves at the recruiting centres are illiterate and unacquainted with conditions outside their own areas, and for them the recruiting agency, by making all the necessary arrangements for obtaining employment, eliminates difficulties which might otherwise prove insuperable. Few of these work-seekers have the necessary means to travel over long distances to, and within, the Police Zone to search for work. Under the existing system all are assured of employment, and made fully acquainted with their conditions of service, before they leave their homes, and transport to their place of employment, and back again after their period of service, is arranged for them.

#### Respondent's Reply to Applicants' Allegations (Memorials)

##### PARAGRAPH 50 OF CHAPTER V<sup>1</sup>

17. In regard to Applicants' allegation as to the "chief employers of labor in the Territory"<sup>2</sup>, employment figures for the year 1960 may be taken to illustrate the true position. Of the 65,998 adult male Natives employed within the Police Zone in that year, 7,471 (i.e., about 11 per cent.) were employed in mines and factories; 3,582 (i.e., about 5.5 per cent.) by the Railways and the Administration; and 25,087 (i.e., about 38 per cent.) by farmers. The remaining 29,858—the largest group, viz., about 45 per cent.—were employed by a variety of employers within the urban areas in the Police Zone.

It is correct to say, as Applicants do, that the "bulk of the labor force is made up of 'Native' labor"<sup>1</sup>, but this is no more than natural when regard is had to the fact that the Natives also constitute the "bulk" of the population of the Territory, and to the fact that, at their stage of general development, their contribution to the economy of the Territory is mainly in the form of unskilled labour. It is incorrect, however, to say that such Native labour "comes in the main from the Ovamboland Native Reserve and the Okavango Reserve"<sup>3</sup>. For instance, of the 65,998 adult male Natives employed in the Police Zone in 1960, 27,771 came from Ovamboland, and 850 from the Okavango territory—i.e., approximately 41 per cent. of the total labour force in the Police Zone<sup>4</sup>.

<sup>1</sup> I, pp. 122-123.

<sup>2</sup> *Ibid.*, p. 122.

<sup>3</sup> *Ibid.*, p. 123.

<sup>4</sup> In that year a further 4,528 Natives came from beyond the borders of South

18. The Applicants' general allegation, stated to have been previously "explained"<sup>1</sup>, that "the 'Native' labor force is overwhelmingly an unskilled labor force", and that "it is deliberately kept in that status by the law, policy and practice of the Territorial Administration and the Union Government", is dealt with in Respondent's replies to the specific allegations made by Applicants in this regard<sup>2</sup>. While the Native workers are, on the whole, not sufficiently qualified or experienced for employment in skilled occupations, there are, in the case of the northern Natives, additional reasons why they do not acquire greater skill than they actually do. These reasons lie mainly in the shortness of their period of contract service, in the difficulties which they experience in adapting themselves to forms of work which are strange to them, and in the tendency on the part of many of them, when they return to the Police Zone for a second or further period of service, to explore new avenues of employment rather than to return to their former field of work. These factors naturally militate against acquiring any considerable degree of skill in any particular occupation.

#### PARAGRAPH 51 OF CHAPTER V<sup>1</sup>

19. Particulars have been given of the number of northern Natives employed in the Police Zone<sup>3</sup>.

The recruiting system in the northern areas has already been described<sup>4</sup>. Although Applicants' further allegations in this paragraph are substantially correct, it is pointed out that recruited labour is employed on the mines, in industry, on farms, in urban areas, and by the Territorial Administration<sup>5</sup>.

20. As to the Applicants' allegation that "recruiting agents keep in regular contact with the chiefs, headmen and sub-headmen within the 'Native' reserves", Respondent does not know whether it is intended to convey a suggestion that such "contact" is in any way improper. If so, the suggestion is denied. It has already been shown<sup>6</sup> that due regard is had to the wishes of the tribal authorities as to the period of absence of their people from their territories, and that the authorities co-operate with the recruiting agents<sup>6</sup>. It is obviously in the interests of all concerned that recruiting relationships should be maintained between the recruiting agency and the tribal authorities.

21. That recruiting systems elsewhere in Africa also operate with the co-operation of tribal authorities, is illustrated by the case of Liberia. Regarding the position in Liberia, W. C. Taylor says:

"... Firestone soon discovered that, though Liberians might be attracted to work on the plantations, they often could not leave

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West Africa, giving a total of 33,149 northern and extra-territorial Natives—i.e., approximately 50 per cent. of the total labour force in the Police Zone.

<sup>1</sup> I, p. 123.

<sup>2</sup> Vide Chaps. II, III and IV, *supra*.

<sup>3</sup> Vide para. 17, *supra*.

<sup>4</sup> Vide paras. 10-15, *supra*.

<sup>5</sup> Vide paras. 14-15, *supra*.

<sup>6</sup> Vide para. 10, *supra*.

their native villages without the prior permission of their town, clan, or tribal chiefs. The chiefs were reluctant to consent because they did not wish to lose the unpaid labor and other services which each able-bodied male owed by immemorial tribal custom. Thus, Firestone was forced to develop a system of compensating the chiefs for lost labor and services.

At present, each paramount chief receives 15c per man per month during the rice-growing season from January through June, and 10c per man per month from July through December, or a total of \$1.50 per man per year. In 1955, the total of such payments to the chiefs was over \$90,000. In addition, a regular scale of nonmonetary gifts from Firestone to the paramount, clan, and occasionally town chiefs has also evolved. This 'Paramount Chiefs Assistance Plan', as it is called, was developed with the full knowledge and consent of the Liberian government, and has also been adopted by other foreign companies operating in the country . . .

A Firestone recruiting agent makes regular trips through the tribal areas negotiating quotas with and making payments to the chiefs <sup>1</sup>."

#### PARAGRAPH 52 OF CHAPTER V <sup>2</sup>

22. Reference has already been made to the initial selection of recruits by officials of the recruiting agency, and of the subsequent medical examination of recruits <sup>3</sup>.

It is correct that recruits are "classified according to physical fitness for various occupations", as is alleged by Applicants. It is in the interests of both employers and employees, that the latter should not take up employment for which they are not physically suitable, and the classification is intended to serve that purpose.

Applicants' allegation regarding the issue of identification passes is correct, save that, as stated above <sup>4</sup>, copies of service contracts serve as identification passes in urban areas within the Police Zone.

#### PARAGRAPH 53 OF CHAPTER V <sup>2</sup>

23. The allegations in this paragraph are correct, save that recruits who have entered into employment with the diamond mines in the south are generally conveyed by air <sup>4</sup>.

#### PARAGRAPH 54 OF CHAPTER V <sup>2</sup>

24. The allegation that labourers "are provided to the respective employers in accordance with the terms of contracts entered into between the employers and Nuwe SWANLA" is not correct. As has already been shown <sup>5</sup>, recruits enter into contracts with their employers at the recruiting

<sup>1</sup> Taylor, W. C., *The Firestone Operations in Liberia* [Fifth Case Study in an NPA Series on United States Business Performance Abroad] (1959), p. 67.

<sup>2</sup> I, p. 123.

<sup>3</sup> *Vide* para. 11, *supra*.

<sup>4</sup> *Vide* para. 13, *supra*.

<sup>5</sup> *Vide* para. 12, *supra*.

centres in the northern areas or at Grootfontein in the Police Zone. New (*Nuwe*) S.W.A.N.L.A. acts as the representative of employers in the case of contracts concluded in the northern areas, and is itself party to contracts only in the case of preliminary agreements<sup>1</sup>.

The other allegations in this paragraph are correct. Regarding the allegation that certain bus fares were paid by recruits prior to 1948, it is pointed out that it was agreed in advance by a recruit, it being a term of his contract, that such payment would be made by him through deduction from his first and last months' wages. As from 1948 the position is as stated by Applicants.

#### PARAGRAPH 55 OF CHAPTER V<sup>2</sup>

25. The allegations in this paragraph are correct. As already pointed out<sup>3</sup>, contract periods have been limited at the request of the tribal authorities in the northern territories who wish to preserve traditional ties and tribal relationships. The return of the Native worker also ensures that he observes his obligations towards his family.

#### PARAGRAPH 56 OF CHAPTER V<sup>2</sup>

26. This paragraph is admitted. The constitution of the Board of Management of New S.W.A.N.L.A. is dealt with in paragraph 9, *supra*.

#### PARAGRAPH 57 OF CHAPTER V<sup>2</sup>

27. As pointed out<sup>4</sup>, representation on the Board of Management of New (*Nuwe*) S.W.A.N.L.A. is regulated by the provisions of the Societies of Employers of Contracted Natives Ordinance, 1952<sup>5</sup>.

As New (*Nuwe*) S.W.A.N.L.A. is a limited liability company, the Society of Farmer-Employers<sup>4</sup> was required to purchase 19,500 shares in the company for £19,500 before obtaining representation of two members on the Board<sup>6</sup>. The Territorial Administration also purchased 9,750 shares for £9,750 to obtain representation of one member on the Board of the Company<sup>7</sup>, but it was further provided that the Administrator would delegate his right to nominate the fifth member of the Board to the other four members, and that he would nominate such member only in the event of the other members failing to do so<sup>4</sup>. Such member would represent the interests of "employers of contracted extra-territorial or northern Natives other than those engaged in farming or mining"<sup>4</sup>.

28. It was contemplated that such last-mentioned employers would eventually be united in a society of their own, and that in the meantime, the Administrator would buy and hold the 9,750 shares for and on behalf of the proposed society. All employers of contracted labour, other than

<sup>1</sup> *Vide* para. 12, *supra*.

<sup>2</sup> I, p. 124.

<sup>3</sup> *Vide* paras. 14 and 15, *supra*.

<sup>4</sup> *Vide* para. 9, *supra*.

<sup>5</sup> Ord. No. 48 of 1952 (S.W.A.), in *The Laws of South West Africa 1952*, p. 794.

<sup>6</sup> *Ibid.*, sec. 6, p. 800.

<sup>7</sup> *Ibid.*, sec. 8, pp. 800-802.

*bona fide* farmers, mining companies, and the various departments of the Territorial Administration or the South African Government, including the Railways and Harbours Administration, were required to pay a sum of £2 to the Receiver of Revenue before or when making an initial application to the company for contracted labour<sup>1</sup>. The amounts so paid would be held in trust by the Administration for the society to be formed<sup>2</sup>, and would conceivably go towards payment of the 9,750 shares which the Administration would sell to the new society<sup>3</sup>. Once this society is established, it will nominate the fifth representative on the Board to represent the interests of employers other than farmers and mining companies. The fifth representative is, in practice, nominated by the other four members of the Board, with the result that the Administration does not actually participate in the management of the Company.

The Applicants' allegation that "such other employers are required to pay two pounds per annum to the Administration" is not correct. An amount of two pounds is paid by the employer when making an initial application for contracted labour, and there is no recurrent obligation. The said amount is not paid to the Administration in recognition of any representation, nor, in fact, is the Administration represented on the Board at all. The reason for requiring such payment is as stated above.

#### PARAGRAPH 77 (B) OF CHAPTER V<sup>4</sup>

29. Respondent denies the allegation that the system of recruitment of labour so curtails "the possibilities of choice for 'Native' laborers as to leave them, for all practical purposes, very little freedom of choice with respect to place of employment, type of employment, identity or character of employer, or conditions of employment"<sup>4</sup>.

It is emphasized, in the first place, that the terms of all contracts are explained to prospective employees, and that no recruit need enter into any agreement if he does not wish to do so<sup>5</sup>.

Secondly, a recruit who enters into a final contract at the recruiting centres in the northern areas is informed, before doing so, of the identity of his employer, his place of employment, the type of work he will be required to do, and of all the conditions of service. A recruit who enters into a preliminary contract at these centres and then proceeds to Grootfontein, is there fully informed of these particulars before he concludes his final contract<sup>5</sup>.

It is true that a recruit is not, at the time when he enters into a contract, aware of the "character" of his employer, but it is submitted that this fact has little, if any, practical significance in the case where the employer is a company conducting mining or industrial operations. In other cases, i.e., where a recruit is employed by a private person, he is in much the same position as a work-seeker who enters into the service of a person whom he sees for the first time. Employees, it may be noted, are at all times protected against misconduct on the part of their employers by the

<sup>1</sup> Ord. No. 48 of 1952 (S.W.A.), *op. cit.*, sec. 13 (1) and (3), p. 802.

<sup>2</sup> *Ibid.*, sec. 13 (2), p. 802.

<sup>3</sup> *Ibid.*, sec. 12, p. 802.

<sup>4</sup> I, p. 131.

<sup>5</sup> *Vide* para. 12, *supra*.

provisions of the Master and Servants Proclamation<sup>1</sup>, and also by the common law relating to contracts of service. It is submitted, furthermore, that such minor disadvantages as there may be in individual cases, are far outweighed by the advantages of the recruiting system generally for the Native inhabitants of the northern areas<sup>2</sup>.

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<sup>1</sup> *Proc. No. 34 of 1920 (S.W.A.), in The Laws of South West Africa 1915-1922, pp. 336-366.*

<sup>2</sup> *Vide para. 16, supra.*

## CHAPTER VI

### LABOUR CONDITIONS WITHIN THE POLICE ZONE

#### A. Introductory

1. In paragraphs 58 to 76 of Chapter V of the Memorials<sup>1</sup> the Applicants refer to a number of statutory provisions which allegedly control "The entire 'Native' labor force within the Police Zone"<sup>2</sup>. The Applicants classify these provisions into two categories, viz., provisions relating to "'Native' labor as such", and provisions relating to "'Natives generally'", but affecting "the conditions of 'Native' labor"<sup>3</sup>. As regards the latter category, most of the provisions in question are also referred to by Applicants in other parts of the Memorials, and are dealt with by Respondent in its replies to such other parts. Respondent will, therefore, in the present context merely refer, where necessary, to other sections of the Counter-Memorial where the said provisions are dealt with.

2. The provisions falling within the first category are those relating to:

- (a) the relationship between masters and servants<sup>3</sup>;
- (b) leave of absence<sup>4</sup>;
- (c) pneumoconiosis compensation<sup>5</sup>;
- (d) collective bargaining and conciliation<sup>6</sup>.

3. In their summary of the charges relating to these provisions, the Applicants state:

- (a) that Respondent "has unfairly prohibited and continues to prohibit 'Natives' from taking part in the processes of collective bargaining and conciliation and arbitration of disputes"<sup>7</sup>;
- (b) that Respondent "has shaped the circumstances and conditions of labor for the 'Native' population into a pattern of constraint and compulsion that consistently subordinates the interests of the 'Native' laborers to the interests of their 'European' employers"<sup>8</sup>;
- (c) that Respondent "has denied to 'Native' laborers equal legislative protection in the form of provisions for holidays, sick pay, and compensation in the event of illness or injury caused by employment which are made available to 'White' employees"<sup>9</sup>.

4. In the paragraphs below, Respondent will first deal with those provisions referred to by Applicants which directly relate to labour conditions. They will be dealt with in the order of the matters specified in paragraph 2 above. Thereafter Respondent will deal—in some cases,

<sup>1</sup> I, pp. 124-130.

<sup>2</sup> *Ibid.*, para. 58, p. 124.

<sup>3</sup> *Ibid.*, paras. 60-64, pp. 124-126.

<sup>4</sup> *Ibid.*, paras. 72 and 73, p. 128.

<sup>5</sup> *Ibid.*, para. 74, pp. 128-129.

<sup>6</sup> *Ibid.*, paras. 75 and 76, pp. 129-130.

<sup>7</sup> *Ibid.*, para. 77 (3), p. 130.

<sup>8</sup> *Ibid.*, para. 77 (5), p. 131.

<sup>9</sup> *Ibid.*, para. 77 (7), p. 131.

merely by reference <sup>1</sup>—with those provisions which allegedly affect labour conditions indirectly.

## B. The Relationship between Masters and Servants

### I. THE SCOPE OF THE MASTER AND SERVANTS PROCLAMATION

5. In paragraphs 60 to 63 of Chapter V of the Memorials <sup>2</sup> reference is made by the Applicants to some of the provisions of the Master and Servants Proclamation of 1920 <sup>3</sup>. By enumerating the circumstances under which "a 'Native' is made guilty of a criminal offense" in terms of the Proclamation <sup>4</sup>; by stating that—

"If any 'Native' employee or apprentice 'is charged with having without lawful cause deserted from his master's service it shall be lawful for any Magistrate to issue his warrant for the apprehension of such servant or apprentice without any previous warning or summons' <sup>5</sup>",

and by alleging that—

"Any 'Native' laborer who has been sentenced to imprisonment for any of the foregoing offenses must, upon the completion of his term of imprisonment 'return to his master immediately . . . ' <sup>6</sup>",

the Applicants create the impression that the relevant provisions of the Proclamation apply only to Natives. As will be shown, this is not the case, since these provisions are also applicable to White and Coloured persons.

6. Section 2 of the Proclamation, as originally enacted, defined "Servant" as—

"every person employed for hire, wages or other remuneration to perform handicraft or other bodily labour in agriculture, manufactures, industries or in domestic service or as a boatman, porter or other occupation of a like nature . . .".

For reasons that will be set out hereinafter <sup>7</sup>, the definition of "Servant" was amended in 1923. The only material alteration in the present context was the addition of the following category of employees:

"any native employed for hire, wages, or other remuneration on any description of work by or on behalf of—

- (1) the Administration of South West Africa;
- (2) the Railways and Harbours Administration of the Union of South Africa;
- (3) any Local Authority;
- (4) any person engaged under contract in constructing any line of railway or harbour works <sup>8</sup>".

<sup>1</sup> *Vide* para. 1, *supra*.

<sup>2</sup> I, pp. 124-126.

<sup>3</sup> *Proc. No. 34 of 1920 (S.W.A.)*, in *The Laws of South West Africa 1915-1922*, pp. 336-366.

<sup>4</sup> I, para. 61, p. 125.

<sup>5</sup> *Ibid.*, para. 62, p. 125.

<sup>6</sup> *Ibid.*, para. 63, p. 125.

<sup>7</sup> *Vide* para. 11, *infra*.

<sup>8</sup> *Proc. No. 19 of 1923 (S.W.A.)*, sec. 2 (b), in *The Laws of South West Africa 1923*, p. 40.

7. It will be seen that basically the Proclamation is applicable to all persons. It is only in certain spheres of employment that the Proclamation applies to Natives only.

8. In paragraph 60 of Chapter V of the Memorials<sup>1</sup> the Applicants allege that the effects of the Proclamation must be appraised in conjunction with those of Proclamation No. 3 of 1917. The latter Proclamation, which makes provision for the control and treatment of Natives employed on mines and works in the Territory, is apparently referred to only as regards the circumstances under which "a 'Native' is made guilty of a criminal offense"<sup>2</sup>. Since, however, the definition of "Servant" in the Master and Servants Proclamation includes *all* labourers on mines and works, and since the penal provisions of this Proclamation cover all conduct which constitutes offences under Proclamation No. 3 of 1917, it follows that White and Coloured labourers on mines and works are in fact in the same position as Native labourers on mines and works. Proclamation No. 3 of 1917 therefore has no practical significance in the present context.

## II. BACKGROUND TO THE MASTER AND SERVANTS PROCLAMATION

9. In order to appreciate the necessity for the penal provisions of this Proclamation, regard must be had to the conditions which existed in South West Africa at the inception of the Mandate and which, to a large extent, still exist today.

On the whole the labour classes were poorly educated and had very little, if any, knowledge of legal principles governing contractual relationships. This was especially true of the indigenous labour class which had had very little experience of employment in a modern economy.

In this regard reference may be made to a statement by Mr. Smit, the South African representative, during the Ninth Session of the Permanent Mandates Commission in 1926, in which he described the attitude of the Native to regular work in the following terms:

"He entered into a contract with an employer, but such a contract rarely conveyed anything to him, and he was liable at any moment to break it and either not present himself for work or move off and find a new employer<sup>3</sup>."

10. In such circumstances economic growth and orderly development demanded that workers should be impressed with the necessity of observing their contractual obligations towards their employers. This could not be attained by merely leaving an aggrieved employer to a claim for damages against a defaulting employee. More often than not the labour classes had very little means, with the result that an ordinary civil action for damages was generally an illusory remedy. The enforcement of conditions of employment in favour of employees could likewise not be left solely to civil processes, since comparatively few employees had the knowledge or funds to institute legal proceedings against employers.

It was consequently considered to be in the interests of masters and servants and of the general economy of the Territory that penal sanctions

<sup>1</sup> I, pp. 124-125.

<sup>2</sup> *Ibid.*, para. 61, p. 125.

<sup>3</sup> *P.M.C., Min.*, IX, p. 36.

should be provided for certain categories of breach of contract. Such sanctions, it was believed, would also foster better labour relations by discouraging both masters and servants from taking the law into their own hands in the event of misconduct, breaches of contract, etc.

11. Reference has already been made<sup>1</sup> to the 1923 amendment of the Master and Servants Proclamation, by which the term "Servant" was given an extended meaning. This amendment was at the time motivated by the Secretary for South West Africa in the following terms:

"Since the starting of the construction works on the Windhoek-Gobabis railway considerable difficulty has been experienced with contractors employed by the Railway Administration who fail to pay the wages due to their natives and there is no means of dealing with such cases except by Civil process which the native labourer is unable or unwilling to initiate. Discontent follows and the labour supply is affected. On the other hand no criminal penalty exists for desertion as a native working on a railway does not fall within the meaning of the Masters and Servants Proclamation.

This also has a bad effect on recruiting as natives soon learn that they can break their contracts with impunity<sup>2</sup>."

It is consequently clear that the amendment was not motivated by any intention of discriminating against Native employees. While the amendment operated for the benefit of employers, it also served the interests of Native employees in the categories mentioned in the amending section referred to in paragraph 6, *supra*, in that their employers were made subject to the penal provisions of the Proclamation applicable to employers.

### III. THE PENAL PROVISIONS OF THE PROCLAMATION

12. In paragraph 6I of Chapter V of the Memorials the Applicants set out the circumstances under which "a 'Native' is made guilty of a criminal offense"<sup>3</sup>. As has been shown<sup>4</sup>, these circumstances, which are instances of breach of contract, apply to all persons falling within the definition of "servant", and not only to Natives.

13. The Applicants fail to refer to any of the circumstances under which an employer commits an offence under the Proclamation. These are:

- (a) Withholding the wages of any servant without his consent and without reasonable and probable cause for believing that such wages are not due.<sup>5</sup>
- (b) Failure to pay a servant damages suffered by reason of unlawful dismissal<sup>5</sup>.
- (c) Failure to supply, on demand of a servant, the food, clothing, bedding, lodging or other articles stipulated for in a written contract of service<sup>6</sup>.

<sup>1</sup> Para. 6, *supra*.

<sup>2</sup> Part I of File No. A.50/35 in the Archives of South West Africa.

<sup>3</sup> I, p. 125.

<sup>4</sup> *Supra*, paras. 5-7.

<sup>5</sup> *Proc.* No. 34 of 1920 (S.W.A.), sec. 65, in *The Laws of South West Africa 1915-1922*, p. 359.

<sup>6</sup> *Ibid.*, sec. 68, p. 360.

- (d) Withholding a servant's cattle, or other animals, without reasonable and probable cause for believing that the same are lawfully detained <sup>1</sup>.
- (e) Making a deposition against a servant maliciously, and without reasonable or probable cause for believing the same to be true <sup>2</sup>.

14. There are other provisions of the Proclamation which also enure for the benefit of servants, *inter alia*, the following:

- (a) No oral contract of service is binding for a longer period than one year, and no such contract is valid unless it is stipulated that the servant must commence his service within one month from the date of the contract <sup>3</sup>.
- (b) No written contract is valid unless it is executed before a magistrate or other officer, who has to satisfy himself that the contract was entered into by the servant voluntarily, and with a clear understanding of its meaning and effect <sup>4</sup>.
- (c) In all contracts in which it is stipulated that the servant shall reside on the premises of his master, the latter shall be deemed—in the absence of an express stipulation to the contrary—to have engaged to provide the servant with lodging and sufficient food of good and wholesome quality <sup>5</sup>.
- (d) In the absence of any express provision to the contrary, a servant who is incapacitated by any sickness or accident, not occasioned by his own fault, is entitled to his full wages during the first month of such incapacity <sup>6</sup>.
- (e) A contract of service may be cancelled by the court, at the instance of a servant, if any charge brought against him by his master fails to result in a conviction; or if his master is convicted of assaulting him, or if such contract is not faithfully or fairly performed by the master <sup>7</sup>.
- (f) A servant is entitled to leave his place of service at any time for the purpose of lodging a complaint against his master, if leave for that purpose is unreasonably refused <sup>8</sup>.
- (g) If a master is charged with withholding wages from, or failing to pay damages to, a servant, and the court finds that such wages or damages are due, it must give judgment for the sum due and for costs in favour of the servant, whether or not the charge results in a conviction <sup>9</sup>.
- (h) If a master is convicted of withholding his servant's animals, the court must give judgment in favour of the servant for the delivery of such animals and for costs <sup>10</sup>.
- (i) If a master appeals against a judgment in favour of his servant, the

<sup>1</sup> *Proc. No. 34 of 1920 (S.W.A.), sec. 67, in The Laws of South West Africa 1915-1920, pp. 359-360.*

<sup>2</sup> *Ibid.*, sec. 73, pp. 361-362.

<sup>3</sup> *Ibid.*, sec. 5, p. 338.

<sup>4</sup> *Ibid.*, sec. 6, p. 338.

<sup>5</sup> *Ibid.*, sec. 18, p. 341.

<sup>6</sup> *Ibid.*, sec. 19, pp. 341-342.

<sup>7</sup> *Ibid.*, secs. 57, 58 and 69, pp. 356-357 and 360.

<sup>8</sup> *Ibid.*, sec. 63, p. 358.

<sup>9</sup> *Ibid.*, sec. 66, p. 359.

<sup>10</sup> *Ibid.*, sec. 67, pp. 359-360.

public prosecutor is enjoined to appear for, and to conduct the case of such servant free of charge <sup>1</sup>.

15. In paragraph 62 of Chapter V of the Memorials <sup>2</sup> the Applicants refer to section 74 of the Proclamation, in terms of which a magistrate is empowered to issue a warrant for the apprehension of a servant charged with having deserted from his master's service.

This provision was designed for cases in which a servant, who has deserted his master's service, has no fixed place of abode and is consequently difficult to trace, and also likely to disappear after service on him of a summons to appear in court at a future date. It was therefore necessary to provide for the issue of a warrant of apprehension in order to obviate delay and expense.

16. A magistrate will obviously issue such a warrant only if he is convinced that such a course is really necessary. As has already been stated <sup>3</sup>, a master commits an offence if, in lodging a complaint against a servant, he makes a deposition without reasonable and probable ground for believing the same to be true. It may also be pointed out that in terms of section 70 of the Proclamation <sup>4</sup> a master is guilty of an offence if he charges his servant with desertion of service and it is found at the trial that such desertion was occasioned by the master's ill-treatment of the servant. There are consequently ample safeguards to prevent a warrant for the apprehension of a servant being issued on false information supplied to a magistrate.

17. In paragraph 63 of Chapter V of the Memorials <sup>5</sup> the Applicants refer to section 53 of the Proclamation, in terms of which a servant, who has been sentenced to imprisonment for an offence under the Proclamation, must return to his master on completion of his term of imprisonment, unless the contract of service has been cancelled. Should he neglect to do so, he may be sentenced to successive periods of further imprisonment, provided that no servant may be imprisoned continuously for longer than six months in all.

The underlying reasons for these provisions are the same as in the case of the provisions in favour of servants, relating to the entering of judgment for wages, damages, etc. <sup>6</sup>

All these provisions were designed to ensure that masters and servants fulfil their respective contractual obligations, since, as has been shown <sup>7</sup>, ordinary civil remedies are largely ineffective for this purpose.

18. As regards the number of convictions mentioned in paragraph 64 of Chapter V of the Memorials <sup>8</sup>, it may be pointed out that sentences for offences under the Proclamation are usually extremely light—very often no more than a reprimand.

<sup>1</sup> *Proc. No. 34 of 1920 (S.W.A.), sec. 72, op. cit.*, p. 361.

<sup>2</sup> I, p. 125.

<sup>3</sup> Para. 13 (*e*), *supra*.

<sup>4</sup> As amended by *Proc. No. 22 of 1938 (S.W.A.)*, in *The Laws of South West Africa 1938*, p. 140.

<sup>5</sup> I, pp. 125-126.

<sup>6</sup> *Vide* para. 14, *supra*.

<sup>7</sup> Para. 10, *supra*.

<sup>8</sup> I, p. 126.

## IV. SIMILAR LEGISLATION IN OTHER COUNTRIES

19. In other countries of the world conditions basically similar to those in South West Africa gave rise to legislation providing for penal sanctions in cases of breaches of service contracts. The following examples may be mentioned:

*Western Australia*

20. Section 4 of Act No. 28 of 1892 provides<sup>1</sup>:

"4. Whenever the employer or employed shall neglect or refuse to fulfil any contract of service, or the employed shall neglect or refuse to enter upon or commence his service according to the contract, or shall absent himself from his service, or whenever any dispute, question, or difference shall arise as to the rights or liabilities of either of the parties, or touching any misusage, misconduct, ill-treatment or injury to the person or property of either of the parties under any contract of service, or touching the loss or destruction of such property, the party feeling aggrieved may lay an information or complaint in writing before a Justice of the Peace . . ."

In terms of section 7 of the Act, the Justice of the Peace may upon the hearing of a complaint as aforesaid, *inter alia*, impose a fine not exceeding £20.

*Southern Rhodesia*

21. The Masters and Servants Ordinance of 1899, as amended, closely resembles the Master and Servants Proclamation of South West Africa. Sections 47 (1), 49 and 60 of this Act provide<sup>2</sup>:

- "47. (1) If any servant or apprentice—
- (a) after having entered into a contract or written undertaking, fails or refuses, without lawful cause, to commence his service at the time stipulated therein;
  - (b) without leave or other lawful cause, absents himself from his master's house or premises or other place proper and appointed for the performance of his work;
  - (c) during working hours, or at any time if resident on his master's premises, becomes or is intoxicated;
  - (d) neglects to perform any work which it was his duty to have performed, or carelessly or improperly performs any work which from its nature it was his duty, under the contract, to have performed carefully and properly;
  - (e) without leave and for his own purposes, makes use of any horse, vehicle, or other property belonging to or in the lawful possession of his master;
  - (f) refuses to obey any command of his master, or of any other person lawfully placed by his master in authority over him, which command it was his duty to obey;

<sup>1</sup> Act No. 28 of 1892 in *The Statutes of Western Australia, 1883-1892, Vol. II, 55<sup>o</sup> Victoriae*, p. 617.

<sup>2</sup> Chapter 231 in the *Statute Law of Southern Rhodesia 1939, Vol. V, pp. 12-13 and 16-17.*

- (g) makes any brawl or disturbance in or at his master's dwelling house or other premises, or on his master's farm, and after being by his master, or other person placed by his master in authority over him, desired to desist, continues to make such brawl or disturbance;
- (h) is abusive or insulting, either by language or conduct, to his master or his master's wife or children, or to any person lawfully placed by his master in authority over him;
- (i) by wilful breach of duty or by neglect of duty, or through drunkenness, does any act tending to the immediate loss, damage, or serious risk of any property placed by his master in his charge, or placed by any other person in his charge for delivery to or on account of his master;
- (j) by wilful breach of duty or by neglect of duty, or through drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for forwarding in safety any property placed by his master in his charge for delivery to or on account of his master;
- (k) being employed as a herdsman, fails to report to his master the death or loss of any animals placed in his charge, which he alleges to have died, or been lost, on the earliest opportunity for so doing after he has discovered, or in the course of his duty was bound to have discovered, such death or loss, or fails to preserve for his master's use or inspection any part or parts of any such animal as he alleges to have died, which part or parts he has by his master been directed to preserve, unless he proves to the satisfaction of the court the death of such animals; or if it is made by his master to appear that any such animal or animals alleged by him to have strayed away or otherwise become irrecoverably lost, could not, under the circumstances of the case, have become irrecoverably lost without his act or default; or
- (l) without lawful cause, departs from his master's service with intent not to return thereto; he shall be guilty of an offence . . ."

"49. No fine paid, or period of imprisonment undergone, under this Act, by a servant or apprentice, shall have the effect of cancelling the contract of service or apprenticeship, and the servant or apprentice shall be bound to return to his master immediately after having complied with the terms of his punishment, in order to serve the unexpired period of his service."

"60. A master, or person placed by him in lawful authority as aforesaid, lodging any complaint against any servant or apprentice for any offence under this Act may make a deposition on oath before a magistrate or justice of the peace to the effect that he believes (stating the grounds of his belief) that the apprehension of such servant or apprentice is necessary in order to secure his appearance before the magistrate having jurisdiction in the matter, whereupon it shall be lawful for the magistrate to issue his warrant for the apprehension of such servant or apprentice without any previous warning or summons . . ."

*Northern Rhodesia*

22. Sections 74 and 80 of the Employment of Natives Ordinance of 1929 provide<sup>1</sup>:

Sec. 74: "Any servant may be punished with a fine not exceeding half the amount of the monthly wages payable to such servant and in default of payment of such fine with imprisonment with or without hard labour for a term not exceeding one month in case he should be convicted of any of the following acts:

- (1) If he shall, after having entered into a contract, fail or refuse without lawful cause to commence the service at the stipulated time.
- (2) If he shall during working hours unfit himself for the proper performance of his work by becoming or being intoxicated.
- (3) If he shall without leave, and for his own purposes, make use of any horse, vehicle or other property belonging to his employer.
- (4) If on entering into or for the purpose of obtaining a contract of service he shall give a false name and address.
- (5) If he shall make any brawl or disturbance in or at his employer's dwelling-house, location or other premises or on his employer's farm and after being by his employer desired to desist shall notwithstanding continue making such brawl or disturbance."

. . . . .

"80. Any servant who receives from his employer any wages in advance and who without good reason quits the service of such employer before such advance is fully repaid or worked off, shall be guilty of an offence and shall be liable to imprisonment with or without hard labour for a term not exceeding three months."

*Swaziland*

23. Section 42 (1) of the African Labour Proclamation of 1954 provided<sup>2</sup>:

"Any African—

- (a) who having entered into a contract for employment and signed such contract as provided in section twenty-eight without lawful cause deserts from his place of employment or fails to enter upon or carry out the terms of his contract of employment; or
- (b) who after having in Swaziland entered into a contract of service whether oral or in writing with a labour agent or other person and after having received an advance in respect thereof accepts another advance from another labour agent or other person in consideration of entering upon any other contract or service before he has completed his term or service under the first-mentioned contract;

<sup>1</sup> *Laws of Northern Rhodesia*, 1960 Edition, Vol. V, Chap. 171, pp. 27, 29.

<sup>2</sup> *Proc. No. 45 of 1954*. Section 42 (1) of the Proclamation has been replaced by the African Labour (Amendment) Proclamation of 1960 (*Proc. No. 58 of 1960*, in *Official Gazette of the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland*, Vol. CCXXIII, No. 3200 (11 Nov. 1960), p. 800).

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten pounds, or in default to imprisonment with or without hard labour for a period not exceeding two months."

### *Basutoland*

24. Cape Act No. 15 of 1856, as amended by Act No. 18 of 1873, applies in Basutoland<sup>1</sup>. The provisions of this Act do not materially differ from the Master and Servants Proclamation of South West Africa.

### *The Former Belgian Congo*

25. Reference may also be made to the following description of the masters and servants legislation that existed in the former Belgian Congo until 1958:

"The protection and control of native labor in the Congo is based upon a number of legislative provisions, the principal one of which is the decree of March 16, 1922 . . . From the employer's standpoint, there are great advantages in having a laborer sign a contract for a definite time. Before its expiration, it is illegal for the native to terminate his employment. The penalty for violating the contract or desertion is a fine of fifty francs or two months' imprisonment, or both. The imprisonment may be increased to three months if the laborer has received advances from the employer, or if he is a porter. This penalty is much less severe than in British East Africa where desertion is liable to be punished by six months' imprisonment. The Congo law is also more liberal than the Tanganyika and Uganda law in that desertion is not an offence cognizable to the police. Article 48 of the Decree of March 16, 1922, provides that prosecutions for infractions under these articles may take place only on the complaint of the employer'<sup>2</sup>."

## V. CONCLUSION

26. From what has been stated above it is clear that the provisions of the Master and Servants Proclamation of South West Africa do not support the Applicants' charge that Respondent—

"has shaped the circumstances and conditions of labor for the 'Native' population into a pattern of constraint and compulsion that consistently subordinates the interests of the 'Native' laborers to the interests of their 'European' employers'<sup>3</sup>."

These provisions apply to all employees falling within the definition of servant, and also to all employers, irrespective of race or colour, and serve the interests of both employers and employees.

<sup>1</sup> Act. No. 15 of 1856 (Cape of Good Hope) in *Cape of Good Hope Statutes 1652-1895*, Vol. I, pp. 570-590, as amended by Act. No. 18 of 1873 (Cape of Good Hope) in *Cape of Good Hope Statutes 1652-1895*, Vol. II, pp. 1293-1301, made applicable to Basutoland by *Proc. No. 2B of 1884*, as amended by *Proc. No. 50 of 1919*, in *Laws of Basutoland*, Vol. I, Title III, Chap. 26, pp. 408-411.

<sup>2</sup> Buell, R. L., *The Native Problem in Africa* (1928), Vol. II, p. 553.

<sup>3</sup> I, para. 77 (5), p. 131.

### C. Leave of Absence

27. In paragraph 72 of Chapter V of the Memorials<sup>1</sup> the Applicants refer to Regulation 282 of the Regulations issued under Ordinance No. 26 of 1954 (S.W.A.)<sup>2</sup>, in terms of which an employer is required to grant 24 days leave of absence on full pay to every European employee "in respect of each period of 310 ordinary working shifts of employment with him".

Such 310 ordinary working shifts normally comprise a full year's employment, so that a European mine employee becomes entitled to statutory leave only after a year's employment.

There is no similar provision for leave in the case of Native mine employees. The distinction in this regard between European and Native employees arises from the fact that the vast majority of Natives employed in the mining industry are migrant workers ordinarily resident in the northern territories or beyond the borders of South West Africa. These Natives are recruited for initial contract periods not exceeding 12 months, which may, with mutual consent, be extended for two further periods of six months each<sup>3</sup>. Inasmuch as the Native employees from the northern areas enter into initial contracts for one year only, and return home after this period, unless they elect to have their contracts extended, no statutory provision has been made for annual leave for them.

As pointed out, the number of Natives of the Police Zone employed in the mining industry is insignificant. When their number increases, consideration will be given to the extension of statutory annual leave provisions also to them.

That there has been no intention to discriminate against Natives as such as far as the requirements relating to leave of absence are concerned, is illustrated by the statutory provisions which are dealt with in the next succeeding paragraph.

28. In paragraph 73 of Chapter V of the Memorials<sup>4</sup> the Applicants refer to section 21 of the Factories, Machinery and Building Work Ordinance of 1952 (S.W.A.)<sup>5</sup> in terms of which every employer must grant to every factory employee leave of absence on full pay for not less than two consecutive weeks in respect of each period of 12 months' employment. Applicants draw attention to the fact that, in computing the period of employment for the purpose of determining the amount of leave to which the employee is entitled, a period of absence owing to illness shall be deemed to be employment. They then state that the said provisions for leave are specifically made inapplicable<sup>6</sup> to employers "in respect of extra-territorial and northern 'Natives' . . . who are employed in or in connection with their factories under valid contracts of service".

Applicants' allegations in this regard are correct. The reason why no statutory provision is made for annual leave in the case of northern

<sup>1</sup> I, para. 77 (5), p. 128.

<sup>2</sup> By virtue of G.N. No. 33 of 1956 (S.W.A.), in *The Laws of South West Africa 1956*, Part II, pp. 499-723.

<sup>3</sup> *Vide* Chap. V, para. 15, *supra*.

<sup>4</sup> I, p. 128.

<sup>5</sup> Ord. No. 34 of 1952 (S.W.A.), in *The Laws of South West Africa 1952*, pp. 405-465.

<sup>6</sup> By G.N. 257 of 1953 (S.W.A.), in *The Laws of South West Africa 1953*, p. 599.

and extra-territorial Natives has been set out in paragraph 27 above. Inasmuch as there is no such statutory provision for leave for such Natives, the method of calculating the period of employment for the purpose of determining the amount of leave does not apply in their case.

Under the Factories, Machinery and Building Work Ordinance the provisions relative to annual leave apply in the case of Natives of the Police Zone, of whom there are a considerable number permanently employed in factories.

29. In the premises Respondent submits that good reasons exist for the present distinction in regard to leave as between European and Native employees in mines, and as between extra-territorial and northern Natives employed in factories, on the one hand, and Europeans and Police Zone Natives employed in factories, on the other. Respondent accordingly denies the Applicants' allegation of "unfair discrimination" <sup>1</sup> against Natives in, *inter alia*, legislative provisions for holidays <sup>2</sup>.

#### D. Pneumoconiosis Compensation

30. In paragraph 74 of Chapter V of the Memorials <sup>3</sup> reference is made by Applicants to a number of provisions of the Pneumoconiosis Act of 1956 (S.A.) <sup>4</sup>, which Act, according to the Applicants, has been made applicable to South West Africa by Proclamation No. 156 of 1956.

As has been pointed out <sup>5</sup>, the said Act, which has been repealed, did not apply to mines in South West Africa. While it is true that certain sections of the Act, relating to medical and *post-mortem* examinations, referred to the Territory, none of the provisions mentioned by the Applicants in the paragraph under consideration applied to South West Africa. The position is the same under the Pneumoconiosis Compensation Act of 1962 <sup>6</sup>, which repealed the 1956 Act. It is accordingly unnecessary to deal with Applicants' allegations regarding the provisions of the Pneumoconiosis Act of 1956.

31. In the premises Respondent says that the Applicants' allegations in paragraph 77 of the Memorials <sup>7</sup>, in so far as they are based on the provisions of the Pneumoconiosis Act, and particularly those allegations relating to sick pay and compensation in the event of illness or injury caused by employment <sup>8</sup>, are unfounded.

#### E. Collective Bargaining and Conciliation

32. In paragraphs 75 and 76 of Chapter V of the Memorials <sup>8</sup> reference is made by Applicants to some of the provisions of the Wage and Industrial Conciliation Ordinance of 1952 (S.W.A.) <sup>9</sup> concerning

<sup>1</sup> I, para. 77, p. 130.

<sup>2</sup> *Ibid.*, para. 77 (7), p. 131.

<sup>3</sup> *Ibid.*, pp. 128-129.

<sup>4</sup> Act No. 57 of 1956 (S.A.), in *Statutes of the Union of South Africa, 1956*, Part II, pp. 1369-1509.

<sup>5</sup> *Vide* Chap. III, para. 59, *supra*.

<sup>6</sup> Act No. 64 of 1962 (S.A.), in *Statutes of the Republic of South Africa 1962*, Part II, pp. 1023-1183.

<sup>7</sup> I, pp. 130-131.

<sup>8</sup> *Ibid.*, pp. 129-130.

<sup>9</sup> Ord. No. 35 of 1952 (S.W.A.), in *The Laws of South West Africa 1952*, pp. 465-574.

the registration of trade unions, and conciliation of industrial disputes. Applicants draw attention to the fact that the definition of "employee" does not, for the purpose of Chapter II of the Ordinance, include a Native, the effect whereof is that there is no provision for the registration of Native trade unions and no provision for conciliation of disputes in terms of the said Chapter in so far as Native employees are concerned. These allegations are correct.

33. Prior to 1 August 1953, when the Ordinance came into force, there were, as far as Respondent is aware, no trade unions in South West Africa. At present there are only four such unions in the Territory, all of which are registered under the Ordinance, and the members of which are Europeans, viz.,

- (a) the South African Typographical Union (72 members);
- (b) the Artisan Staff Association (327 members);
- (c) the South West African Mine Workers Union (420 members);
- (d) the Association of Municipal Employees (426 members) <sup>1</sup>.

34. The Native employees of the Territory have not as yet displayed any real interest in trade unionism. This is in keeping with conditions elsewhere in Africa, as appears from the following statement in the *International Labour Review* of September, 1957:

"The progress of Native trade union organization has been slow also in territories where no legal obstacles stand in its way and even where policies have favoured their development. This is due in part to the negative attitude of Africans towards impersonal social groups. While co-operation and social responsibility are highly developed within the tribal society, there is no tradition among Africans that would lead them to identify their interests with those of a wider secondary group created for exclusively economic motives <sup>2</sup>."

35. There are no statutory provisions which prevent the formation of Native trade unions in South West Africa. There are, however, no such trade unions.

The reasons why Native trade unions are not recognized by the Ordinance for the purposes of Chapter II thereof, which Chapter deals with the registration of trade unions and with the settlement of industrial disputes, may briefly be summarized as follows:

- (a) In Respondent's view it would not be in the best interests of the Native employees of the Territory to participate in trade unions at their present stage of development. A high percentage of Native employees are migrant workers from a traditional subsistence society who have no experience of an industrial economy, and a large proportion of all Native employees are illiterate or semi-literate with no understanding of the economic functions of trade unionism. In present circumstances there would be a very real danger that the interests of Native workers, if left to the protection of trade unions, could be neglected and that such workers could be exploited by unscrupulous individuals.

<sup>1</sup> Departmental information.

<sup>2</sup> "Inter-Territorial Migrations of Africans South of the Sahara", in *International Labour Review*, Sep. 1957, p. 308.

- (b) The Native employees of the Territory have generally not yet reached a stage where they can partake in collective bargaining on an equal footing with their employers. It is consequently in their own interests that they should, where necessary, be represented by government officials at meetings of Conciliation Boards, to which reference is made hereinafter <sup>1</sup>.

36. It appears to have been the experience elsewhere in Africa that lack of educational standards and of understanding of economic principles has obstructed the proper working of trade unions. In this connection it is stated in the 1960 report of the International Labour Organisation:

"Indeed, one of the most serious obstacles to effective collective bargaining in Africa lies in the limitations which are often discernible among trade union leaders. As already indicated this arises partly from the inability of many unions to employ persons of the highest calibre. *Other factors are deficiencies in general education and lack of understanding of economic principles and practice, as well as inexperience in the art of collective bargaining.* The result is that, as managements often claim, a large number of union officials tend to be unrealistic in their demands, and this makes collective bargaining unduly trying of tempers and precipitates extravagance of language and unhelpful attitudes on both sides <sup>2</sup>." (Italics added.)

37. Although Native trade unions are not recognized in South West Africa, section 37 (12) of the Wage and Industrial Conciliation Ordinance provides that an inspector (who is a government official) may attend any meeting of a Conciliation Board and may take part in the proceedings whenever the interests of persons engaged or employed in the trade concerned, who are not employees represented on the Board, are under discussion.

38. With regard to wages, the Ordinance makes provision for the establishment of a Wage Board for the purpose of investigating matters relating to wages <sup>3</sup>. The Administrator has a wide discretion in regard to the matters which he may refer to the board for investigation and report. He may direct, *inter alia*, that the investigation shall be in respect of employees, or of any one or more classes of employees, in any trade in any area, but "shall not differentiate or discriminate on the basis of race or colour" <sup>4</sup>.

39. In practice, disputes involving Native employees, which have arisen since the passing of the Ordinance, have been satisfactorily settled by administrative action. The following are examples:

- (a) In 1954 a dispute occurred at the Lorelei Copper Mine in the district of Luderitz, where Ovambo labourers went on strike. An inspector of Labour investigated the matter, found that both employers and employees had been at fault in certain respects, and settled the dispute.
- (b) Another dispute arose in 1954 at Tsumeb as a result of Police investigations regarding possession by Ovambo workers of illicit liquor. The Ovambo labourers went on strike, whereupon officials of

<sup>1</sup> *Vide* para. 37, *infra*.

<sup>2</sup> Report III of the I.L.O., African Regional Conference, Geneva 1960, p. 60.

<sup>3</sup> Ord. No. 35 of 1952 (S.W.A.), sec. 3, in *The Laws of South West Africa 1952*, p. 468.

<sup>4</sup> *Ibid.*, sec. 5, p. 468.

the Administration negotiated with them and settled the dispute after one day.

- (c) Smaller disputes involving strikes occurred at Walvis Bay as a result of the fact that various employers applied different wage rates and that extra-territorial and northern Natives gained the impression that they were regarded as less important and less valuable labourers than local workers from the Police Zone. Officials of the Department of Native Affairs investigated the complaints and approached employers, with the result that an employers' association was formed and uniform wage scales recommended.
- (d) In 1956 there was one case of a serious labour disturbance amongst Native labourers at the Brandberg West Mine. An inspector of Native Labour enquired and ascertained that there had been some dissatisfaction amongst the labourers as a result of wages and conditions in the compound. Recommendations to overcome the causes of dissatisfaction were made, accepted and implemented, with satisfactory results.
- (e) A dispute involving contracted extra-territorial and northern Native labourers at the Otjisondu Mine in the Okahandja district towards the end of 1956 over the re-introduction of a six-day working week, was also speedily terminated to everybody's satisfaction by an inspector of Native Labour.

40. In the premises it is submitted that the Applicants' charge that—

“The Mandatory has unfairly prohibited and continues to prohibit ‘Natives’ from taking part in the processes of collective bargaining and conciliation and arbitration of disputes”<sup>1</sup>,

is unwarranted.

And it is denied that there is “unfair discrimination”<sup>2</sup> on Respondent's part as against Native labourers in the Territory relative to processes of collective bargaining and arbitration of disputes.

## F. Respondent's Reply to Applicants' Allegations (Memorials)

### I. PARAGRAPHS 65 TO 71 OF CHAPTER V

#### (a) *General*

41. In the above paragraphs of the Memorials<sup>3</sup> the Applicants refer to a number of statutory provisions which allegedly “powerfully affect the conditions of ‘Native’ labor”<sup>4</sup>.

In the summary of their charges relating to, *inter alia*, labour conditions, the Applicants allege:

“The Mandatory has so drastically curtailed and circumscribed the possibilities of choice for ‘Native’ laborers as to leave them, for all practical purposes, very little freedom of choice with respect to place of employment, type of employment, identity or character of employer, or conditions of employment”<sup>5</sup>.

<sup>1</sup> I, para. 77 (3), p. 130.

<sup>2</sup> *Ibid.*, para. 77, p. 130.

<sup>3</sup> *Ibid.*, pp. 126-128.

<sup>4</sup> *Ibid.*, para. 58, p. 124.

<sup>5</sup> *Ibid.*, para. 77 (6), p. 131.

This charge was apparently formulated on the strength also of the allegations contained in the paragraphs of the Memorials here under consideration, although in the case of some of the provisions in question it is difficult to see how they bear on labour conditions and relations.

42. As has been pointed out, most of these provisions are also referred to by the Applicants in other parts of the Memorials, and have been, or will be, dealt with in Respondent's replies thereto. Here only brief replies are given with reference to more detailed answers given elsewhere in this Counter-Memorial.

(b) *Paragraph 65*<sup>1</sup>

43. As will be shown<sup>2</sup> in the replies to paragraphs 140 and 149 of Chapter V of the Memorials<sup>3</sup>, the provisions of Proclamation No. 29 of 1935 (S.W.A.), which require northern Natives to be in possession of identification passes when in the Police Zone, and which restrict the period of employment of such Natives in that Zone, were designed—

- (a) to protect the Natives in the Police Zone—who are more dependent upon wage employment than northern Natives—against unfair competition from the latter; and
- (b) to protect and preserve the social life and tribal organization of the northern Natives, whose tribal authorities requested that the period of employment of such Natives in the Police Zone be limited.

(c) *Paragraph 66*<sup>1</sup>

44. In the first sentence of this paragraph the Applicants, without quoting any authority, allege that in rural areas "all male 'Natives' over the age of 18 years who reside on a farm belonging to a 'European' must be in the employ of the farmer".

This allegation is presumably based on section 13 of Proclamation No. 11 of 1922 (S.W.A.), which makes it an offence for the person having the control of any farm to allow, without the permission of the magistrate of the district, any male Native over 18 years of age who is not in his employ, to reside on such farm.

The said allegation is not correct since—

- (a) the section applies to all persons in control of farms, and not only to Europeans;
- (b) the persons concerned can obtain permission to allow such Natives to reside on the farm; and
- (c) the section is primarily concerned with persons in control of farms—it does not make it an offence for a Native who is unemployed to reside on a farm.

45. The purpose of the said section was explained as follows in Respondent's 1937 annual report to the League of Nations:

"It has been found that a certain class of farmer is anxious to encourage native families to squat on his property with their families and stock on a rental basis or subject to grazing fees. When the periodical droughts occur as they do in a country like South West

<sup>1</sup> I, para. 77 (6), p. 126.

<sup>2</sup> *Vide* Book VI, Chap. III, paras. 148-156, and Chap. IV, paras. 85-90 of this Counter-Memorial.

<sup>3</sup> I, pp. 147 and 149.

Africa and the owner finds his grazing reduced the natives are given notice to quit and are thrown on the hands of the Government. It is then practically impossible for them to move their stock and heavy losses follow. Cases have occurred where the natives have even lost their entire flocks. The residence of natives on farms is therefore strictly curtailed <sup>1</sup>."

46. In this respect, reference may also be made to the following extract from the minutes of the Ninth Session of the Permanent Mandates Commission in 1926 <sup>2</sup>:

"Sir F. Lugard asked:

.....  
 (2) Whether the policy of the Administration was opposed to native squatters on European estates.

Mr. Smit replied:

.....  
 (2) Native squatters on white estates were generally discouraged. The Administration desired above all things to avoid overcrowding on estates, for this would mean trouble in the future. At present there was enough grazing for both the white man and the native squatter, but in five or six years this might not prove to be the case, which would mean that the native would suffer."

It is clear, therefore, that section 13 of the Proclamation was designed primarily to promote the interests of Natives.

47. In the second sentence of paragraph 66 of Chapter V of the Memorials <sup>3</sup>, the Applicants repeat <sup>4</sup> the allegation that a European farmer may, under certain circumstances, require a Native who resides on his farm either to become his employee or to be removed from his property.

As has been pointed out <sup>5</sup> in the reply to paragraphs 19 and 28 of Chapter V of the Memorials <sup>6</sup>, there can be no objection to granting a right to a farmer to require persons to whom he owes no contractual obligation, to remove from his land. The provision in question merely confirms a right which any owner has under the common law.

48. Although the provisions referred to by the Applicants in the paragraph under consideration can have a bearing on the choice of residence of Natives, it is submitted that they do not affect conditions of labour.

(d) *Paragraph 67* <sup>1</sup>

49. The reference in this paragraph is presumably to the powers conferred on the Administrator (now the State President) <sup>7</sup> by section 22 (1) (e) of Proclamation No. 56 of 1951 (S.W.A.). In terms of this subsection the Administrator may make regulations requiring any unem-

<sup>1</sup> *U.G.* 25—1938, para. 288, p. 46.

<sup>2</sup> *P.M.C., Min.*, IX, p. 45.

<sup>3</sup> *I.*, p. 126.

<sup>4</sup> *Ibid.*, paras. 19 and 28, pp. 113 and 116.

<sup>5</sup> *Vide* sec. B, Chap. IV, paras. 8-10, *supra*.

<sup>6</sup> *I.*, pp. 113 and 116.

<sup>7</sup> *Vide* Act. No. 56 of 1954 (S.A.), in *Statutes of the Union of South Africa 1954*, pp. 559-565.

ployed Native in a proclaimed area to report to a prescribed officer and to reside at a place to be indicated by that officer until he has found employment, and, if he fails to find employment within a period of 14 days, to depart from such area.

In terms of the proviso to the subsection, Natives born and permanently residing in a proclaimed area may not be required to comply with the provisions of the subsection unless the approval of the Administrator (now the State President) has been obtained. It is not the Minister of Native Affairs whose approval is necessary, as is alleged by the Applicants.

50. Pursuant to the powers conferred by section 22 (1) (e) the following regulation was made:

*Regulation 12:*

"Every male native in the proclaimed area other than a native born and permanently residing therein or . . . (an exempted Native) . . . shall, if he remains therein without entering into employment after the termination of a contract of employment or after discharge from imprisonment within one day after such termination of a contract of service or after such discharge . . . report to the registering officer and shall thereupon become subject to the provisions of regulation 2 in the same manner as a native who enters the proclaimed area 1."

Reference to Regulation 2, mentioned in the regulation quoted above, is made in paragraphs 71 and 144 of Chapter V of the Memorials<sup>2</sup>, and will be dealt with in Respondent's reply to the latter paragraph<sup>3</sup>. In brief, the Regulation provides that unexempted male Natives who enter a proclaimed area for the purpose of finding employment, and who do not succeed in obtaining employment within a period of 14 days, must leave such area.

In the reply to paragraph 144 of Chapter V of the Memorials<sup>4</sup> Respondent will show that Regulation 2 is one of a number of provisions designed to implement its influx control policy—a policy intended to prevent urban and proclaimed areas from becoming overcrowded with unemployed Natives.

Regulation 12, which is applicable only to unexempted male Natives not born and permanently residing in a proclaimed area, is complementary to Regulation 2, and serves the same purpose. The whole policy of influx control could be rendered nugatory if a Native, who had obtained permission to remain in a proclaimed area after he had found employment, could at any time thereafter terminate his employment and continue to reside in the area without being employed.

(e) *Paragraph 68*<sup>5</sup>

51. Although the allegations in this paragraph are substantially correct, it is to be observed that an authorized officer may arrest an idle Native

<sup>1</sup> Regulation 12 of the Regulations for Proclaimed Areas, contained in G.N. No. 65 of 1955 (S.W.A.), in *The Laws of South West Africa 1955*, sec. 12, pp. 768-770.

<sup>2</sup> I, pp. 128 and 148.

<sup>3</sup> *Vide* Book VI, Chap. III, paras. 157 ff., and especially paras. 190-192, of this Counter-Memorial.

<sup>4</sup> I, p. 148.

<sup>5</sup> *Ibid.*, pp. 126-127.

only if he has reason to believe that such a Native is habitually unemployed *and* (not *or*, as is alleged by the Applicants) that he has no sufficient means of livelihood <sup>1</sup>.

As will be pointed out in Respondent's reply to paragraph 134 of Chapter V of the Memorials <sup>2</sup>, the provisions of section 26 of the Natives (Urban Areas) Proclamation are complementary to those of the Vagrancy Proclamation, and were designed to combat a similar evil. These provisions, which apply only to towns in the Police Zone, were also designed to promote the interests of the Native residents of proclaimed areas by preventing such areas from becoming overcrowded by unemployed Natives. For this reason an idle Native, who is not prepared to work and so mend his ways, may be removed from such an area <sup>3</sup>.

(f) *Paragraph 69* <sup>4</sup>

52. In its reply to paragraph 130 of Chapter V of the Memorials <sup>5</sup> Respondent will show that the impression created by the Applicants, viz., that the Vagrancy Proclamation applies only to Natives, is not correct <sup>6</sup>.

Respondent is again at a loss to understand how it can be said that the provisions of the Proclamation affect labour conditions <sup>7</sup>.

(g) *Paragraph 70* <sup>8</sup>

53. As will be shown in Respondent's reply to paragraph 131 of Chapter V of the Memorials <sup>9</sup>, there can be no valid objection to compelling an habitually idle and unemployed resident of a Native reserve within the Police Zone to take up employment rather than to be sentenced as a criminal offender to imprisonment under the provisions of the Vagrancy Proclamation <sup>9</sup>. Idle White and Coloured persons are, in a sense, in a worse position than idle Natives in such reserves, since they can only be dealt with as criminal offenders under the said Proclamation.

Although the regulation in question can be said to affect "freedom" to lead an idle existence, it has no bearing on labour conditions <sup>7</sup>.

(h) *Paragraph 71* <sup>10</sup>

54. As has already been mentioned <sup>11</sup>, Regulation 2 of the Regulations for Proclaimed Areas, which requires unexempted male Natives entering such areas to register, is one of a number of provisions designed to implement Respondent's influx control policy.

The Applicants' allegations concerning the payment of fees and retention in reception depots are not entirely correct, as will be shown in Respondent's reply <sup>12</sup> to paragraph 144 of Chapter V of the Memorials <sup>13</sup>.

<sup>1</sup> *Vide* Book VI, Chap. II, para. 66, of this Counter-Memorial.

<sup>2</sup> I, p. 145.

<sup>3</sup> *Vide* Book VI, Chap. II, para. 71, of this Counter-Memorial.

<sup>4</sup> I, p. 127.

<sup>5</sup> *Ibid.*, p. 144.

<sup>6</sup> *Vide* Book VI, Chap. II, para. 10, of this Counter-Memorial.

<sup>7</sup> I, para. 77 (6), p. 131.

<sup>8</sup> *Ibid.*, pp. 127-128.

<sup>9</sup> *Vide* Book VI, Chap. II, para. 91, of this Counter-Memorial.

<sup>10</sup> I, p. 128.

<sup>11</sup> Para. 50, *supra*.

<sup>12</sup> *Vide* Book VI, Chap. III, para. 192, of this Counter-Memorial.

<sup>13</sup> I, p. 148.

II. PARAGRAPH 77 OF CHAPTER V <sup>1</sup>

55. Respondent has dealt with the specific charges in paragraph 77 of the Memorials in so far as such charges can be identified with the particular labour conditions referred to by the Applicants. In conclusion Respondent denies the general allegations by the Applicants that it has, with regard to labour conditions, "engaged in a consistent course of positive action which inhibits the well-being and prevents the social progress and the development of the larger part of the population", and further denies the allegation that "the record of the Mandatory's behavior toward the 'Native' population of the Territory has been a bleak and consistent record of negation, frustration, constraint and unfair discrimination" <sup>2</sup>.

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<sup>1</sup> I, pp. 130-131.

<sup>2</sup> *Ibid.*, p. 130.

## CHAPTER VII

### CONCLUSION

1. In paragraph 190 of Chapter V of the Memorials, under the heading "Legal Conclusions"<sup>1</sup>, Applicants allege that Respondent "has violated, and continues to violate its obligations as stated in the second paragraph of Article 2 of the Mandate and Article 22 of the Covenant" in a number of respects. As regards industry, industrial employment and labour relations, Applicants repeat<sup>2</sup> the charges contained in paragraph 77 of Chapter V of the Memorials<sup>3</sup>.

2. Respondent has dealt with these charges in the preceding Chapters and it is consequently unnecessary to deal with the relevant "Legal Conclusions". It is sufficient to reiterate that the said charges, and therefore also the said conclusions, are unfounded and without substance.

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<sup>1</sup> I, pp. 162 ff.

<sup>2</sup> *Ibid.*, para. 190 (i) (f), (g), (h), (i), (j), (k) and (l).

<sup>3</sup> *Ibid.*, p. 163.

## SECTION D

### BRIEF ACCOUNT OF THE NATIVE IN COMMERCE

#### Introduction

1. In section C above, in dealing with Applicants' allegations in regard to the role of the Natives in certain industries, Respondent pointed out, *inter alia*, that, when regard is had to the background and traditional economy of the Native groups, it is only natural that the Natives' role in industry should at present still be largely limited to that of unskilled workers in enterprises established by European initiative.

The same socio-economic factors which have served to retard the advancement of the Natives in the industrial field, have also operated to retard their development in the field of commerce and, more particularly, as independent traders or businessmen.

2. While advancement on the part of the Natives in the field of commerce has accordingly been slow, good progress has nevertheless been made in recent years, particularly as a result of Respondent's policy of encouraging Natives to serve their own people and of affording them protection against competition by Europeans in areas inhabited by or reserved to Natives<sup>1</sup>.

In the paragraphs below a brief account is given of progress made in this regard in Native reserves and in Native townships in urban areas.

#### Northern Areas

3. To stimulate Native trading enterprises in the northern areas, the Administration decided in 1952 to permit Ovambo to open small businesses without payment of the prescribed licence fee, and without complying with specifications laid down for shop buildings. It was not until 1954, however, that the first Ovambo started trading. Since then the position has improved rapidly: in 1956 there were 28 Native general dealers in Ovamboland; in 1957 there were 49, and in 1960, 60. In 1960 there were also 20 Ovambo traders in patent medicines, 14 restaurant-keepers and two hawkers.

In 1960 the aforementioned concession in regard to licences was withdrawn, and Ovambo traders have since that date, like all others, paid licence fees. These fees go into the trust fund of the tribal area in which the particular business is conducted.

To assist Native traders, the method of obtaining licences in reserves is simpler and less expensive than in the rest of the Territory<sup>2</sup>.

<sup>1</sup> *Vide* Book IV, Chap. VII, para. 33.

<sup>2</sup> *Ord.* No. 13 of 1935 (S.W.A.), sec. 14 in *The Laws of South West Africa 1935*, p. 700 and the regulations framed thereunder.

4. The number of trading licences approved for 1961, 1962 and 1963 for Native businesses in the northern areas were as follows:

	1961	1962	1963
General dealers . . . . .	103	161	162
Restaurant keepers and tobacco dealers . . . . .	14	23	20
Hawkers and others . . . . .	8	34	37
	<u>125</u>	<u>218</u>	<u>219</u>

#### Reserves in the Police Zone

5. To encourage trading by Natives, and to protect Native traders against competition by Europeans, it is the Administration's policy to refuse all applications by European traders to trade in the Police Zone reserves, unless no Native is prepared to open a business in an area where there is a need for such business, or unless the residents of a reserve request (as happened years ago in the Waterberg East Reserve) that a particular European be allowed to open a business.

6. Respondent's policy in this regard has brought about a steady increase in the number of Native-held businesses in the Police Zone reserves.

At the end of 1945 there were five Native general dealers in the reserves; in 1950, 11; and in 1960, 36. In 1960 there were also 25 licensed hawkers operating in the reserves, five restaurant-keepers, one butcher and one baker.

The figures for 1962 and 1963 are as follows:

	1962	1963
General dealers . . . . .	29	29
Baker . . . . .	1	1
Patent medicines . . . . .	8	8
Tobacco/restaurant . . . . .	5	5
Butcher . . . . .	1	1
Hawkers . . . . .	25	23
Others . . . . .	3	4
	<u>72</u>	<u>71</u>

The slight reduction in the number of General Dealers' licences between 1960 and 1963 is attributable to the generally depressed state of economic activity during the severe drought and the foot-and-mouth epidemic in those years.

#### Native Townships in Urban Areas

7. Business and trading rights in Native townships in urban areas have, since 1951, been reserved by law exclusively for Natives. In terms of the Native (Urban Areas) Proclamation of 1951<sup>1</sup>, an urban local authority "may let sites within the location or native village for trading or business purposes"<sup>2</sup>, and such sites may be let only to Natives<sup>3</sup>.

To promote trade in the townships, Native dealers in several urban areas are exempted from observing the ordinary shop hours.

8. Traders operating in the townships in 1960 (with figures for 1950

<sup>1</sup> Proc. No. 56 of 1951 (S.W.A.), in *The Laws of South West Africa 1951*, pp. 90-170.

<sup>2</sup> *Ibid.*, sec. 31 (a), p. 152.

<sup>3</sup> *Ibid.*, sec. 31 (c) (i), p. 154.

in brackets) were: general dealers, 62 (18); restaurant-keepers, 64 (31); tobacconists, 60 (16); hawkers, 13 (5); greengrocers, 13 (3); butchers, 9 (1); firewood dealers, 10 (0); bakers, 2 (1); patent medicine dealers, 8 (0); mineral water dealers, 2 (0), and service station proprietors, 2 (0).

In respect of 1962 and 1963, the following trading licences were issued to Natives in urban areas:

<i>Type of business</i>	<i>1962</i>	<i>1963</i>
General dealers . . . . .	60	61
Restaurant . . . . .	58	57
Tobacco . . . . .	36	47
Patent medicine . . . . .	12	18
Fresh produce . . . . .	10	10
Mineral water . . . . .	2	2
Wood . . . . .	14	7
Hawkers . . . . .	7	6
Speculators . . . . .	1	2
Butchers . . . . .	8	8
Cobblers . . . . .	13	—
Barbers . . . . .	3	—
Baker . . . . .	1	1
Carpenter . . . . .	1	—
Ballroom . . . . .	1	—
Dry cleaner . . . . .	1	—
Garages . . . . .	3	1
	<u>231</u>	<u>220</u>

In the urban areas, as in the case of the reserves, some businesses were apparently unable to survive the unfavourable trade conditions in the past few years, but, with conditions improving again, there is no doubt that the number and size of businesses held by Natives will continue to increase.

**SECTION E**  
**GOVERNMENT AND CITIZENSHIP**

**CHAPTER I**

**SUFFRAGE, PARTICIPATION IN TERRITORIAL GOVERNMENT,  
GOVERNMENT WITHIN THE NATIVE TRIBES AND NATIVE  
RESERVES**

**A. Introductory**

1. In paragraphs 78 to 127 of Chapter V of the Memorials<sup>1</sup>, under the general heading "Government and Citizenship", the Applicants refer to certain aspects of the political and administrative institutions of South West Africa. They subdivide the subject under the headings "Background Information", "Suffrage", "Participation in the Territorial Government", "General Administration (Civil Service)", "Local Government", and "Government Within the Native Tribes and Native Reserves".

For reasons that will become apparent, it is more convenient to deal in separate succeeding chapters with the allegations contained in the sections "General Administration (Civil Service)" and "Local Government", and to consider collectively, in the present chapter, the data supplied and allegations made under the other headings mentioned above.

2. Applicants charge Respondent with—

- (a) completely denying the right of suffrage to the Native population<sup>2</sup>;
- (b) denying the Native population participation at the political level of the Government of the Territory, including the Administrator, the Legislative Assembly, and the Executive Committee, "although [the Native population] constitutes overwhelmingly the larger part of the total population of the Territory"<sup>3</sup>;
- (c) applying, in the administration of the Native reserves, a policy which involves discrimination, negation and frustration for the Natives concerned, in that—

"The only semblance of participation by the 'Native' population is to be found in the rudimentary functions of the 'Native' headmen and the 'Native' members of the Native Reserve Boards in regard to the Native Reserves within the Police Zone, and in the elements of traditional tribal administration under tribal laws and customs still permitted to the 'Natives' in the Native Reserves outside the Police Zone",

and that "... this shadowy participation is kept subject to complete, comprehensive and pervasive control by 'Europeans' "<sup>4</sup>.

<sup>1</sup> I, pp. 131-142.

<sup>2</sup> *Ibid.*, para. 128 (1), p. 142.

<sup>3</sup> *Ibid.*, para. 128 (2), p. 142.

<sup>4</sup> *Ibid.*, para. 128 (5), p. 143.

3. The gravamen of Applicants' charge is contained in paragraph 128 (6) of Chapter V of the Memorials, where they allege that—

"In sum, by law and by deliberate and consistent practice, the Mandatory has failed to promote to the utmost the development of the preponderant part of the population of the Territory in regard to suffrage or participation in any aspect of government. It has not only failed to promote such development to the utmost, it has made no notable effort to do so. To the contrary, the Mandatory has pursued a systematic and active program which prevents the possibility of progress by the 'Native' population towards self-respect, responsibility or skill in any aspect of citizenship or government . . ."<sup>1</sup>

4. In paragraph 190 of Chapter V of the Memorials<sup>2</sup> this charge is carried further by the allegations that Respondent has ". . . deliberately, systematically and consistently . . . discriminated against the 'Native' population of South West Africa . . ."; that Respondent ". . . has thwarted the well-being, the social progress and the development of the people of South West Africa throughout varied aspects of their lives . . ."; and that "The grim past and present reality in the condition of the 'Natives' is unrelieved by promise of future amelioration". It is finally alleged in the said paragraph that Respondent ". . . offers no horizon of hope to the 'Native' population".

5. Respondent's policies, as has been indicated before, indeed involve differentiation between the various population groups of the Territory in relation, *inter alia*, to participation in political institutions and the measure and manner of self-government applying to them. To say, however, that these policies are "arbitrary" or "discriminatory" within the meaning apparently assigned to these terms in the Memorials, is unfounded. Respondent denies that it has subjected the interests of the Native inhabitants of the Territory to those of the European inhabitants; that it has failed to promote the political advancement of the indigenous population groups, or the development of self-government and advancement towards free political institutions on their part; that it has in relation to political rights of the Native inhabitants "followed a systematic course of positive action" which "thwarts (their) well-being, inhibits (their) social progress and frustrates (their) development"; and that with reference to the future its policies in this regard ". . . offer no horizon of hope to the 'Native' population".

### B. General Policy

6. Before dealing with Applicants' allegations, some reference is necessary to the unexpressed premise from which they appear to emanate. The premise seems to be that in the political sphere, as well as in other respects, there ought to be no distinction or differentiation between various inhabitants of the Territory, and that the whole population is to be treated as an integrated unit, with identical rights and facilities for all.

Applicants, apart from vague generalities, do not attempt to substantiate the premise, or to relate it to the basic circumstances or attributes of the indigenous peoples of South West Africa, which the founders of the

<sup>1</sup> I, para. 128 (6), p. 143.

<sup>2</sup> *Ibid.*, para. 190, p. 162.

mandate system saw fit to classify as a C Mandated Territory. Nor do Applicants deal with the effect which such a premise, if adopted by the Mandatory, could potentially have upon the future well-being and progress of the inhabitants.

7. Respondent has already demonstrated, particularly in Book IV of this Counter-Memorial, that this premise on Applicants' part is wholly unfounded, in fact and in law.

At no time prior to, at or since the assumption of the Mandate by Respondent, has the population of the Territory in fact formed an integrated, homogeneous society. On the contrary there has at all times existed a wide diversity of population groups, several of which have always been confined in their habitation to defined and, in some instances, relatively isolated regions or areas within the Territory. There have at all times been wide differences between the groups—in levels of development, modes of living, outlook and aspirations—and in the not too distant past conflicts of interests resulted in almost incessant warfare between some of them.

This factual background, which has been fully dealt with, formed part of the foundation of the provisions of the mandate system which, expressly and by the clearest implication, prescribed and envisaged differential treatment of various peoples and communities, according to their stage of development and other relevant circumstances. The legal provisions in question have also been fully dealt with.

8. The factual and legal background aforestated formed the basis also of Respondent's policies in South West Africa after assumption of the Mandate. Differentiation between groups, *inter alia*, in regard to participation in political institutions and processes of government, was regarded as not only natural but as the only appropriate method of advancing towards achievement of the ideals of the mandate system in the particular circumstances. Respondent's approach and practices in this regard were in keeping with the conceptions of the times, and accorded with the views of the Powers who conferred the Mandate<sup>1</sup>, the Permanent Mandates Commission<sup>2</sup>, and policies applied elsewhere in Africa<sup>3</sup>.

Applicants have not endeavoured to show at what stage and for what reason, juridical or factual, there has occurred a reversal of the approach to be considered appropriate and best for achievement of the objectives of the Mandate.

9. Respondent has already indicated the broad lines of the policies which, in keeping with the aforestated considerations, it regarded as best with reference to the government of the various population groups in the Territory and their participation in political activity. Its approach involved recognition of the White population group as one that could appropriately enjoy a measure of self-government and participation in processes of central government, subject, *inter alia*, to control of Native affairs being the responsibility of the Mandatory itself. The approach further involved recognition of the separate identity, politically as in other respects, of each of the non-White groups, and according to each

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<sup>1</sup> *Vide* Book IV, Chap. IV, paras. 36-39, of this Counter-Memorial.

<sup>2</sup> *Ibid.*, para. 40.

<sup>3</sup> *Ibid.*, Chap. VI, paras. 2-20.

an opportunity of developing on the basis of its own institutions and culture. In regard to the indigenous groups, the process of adaptation to modern conditions was foreseen as one that would necessarily have to be slow, and which could not be divorced from other facets of advancement and progress.

Respondent has also indicated why, and in what manner, the principles and practices which have thus been tried and tested, should in its view serve as the basis for an accelerated programme, adapted to present day circumstances, and designed to bring the various groups nearer to self-realization also in the political sphere—according to the particular circumstances of the different groups and their varying stages of advancement, and with a view to achieving justice and equity for all of them.

10. Bearing in mind the above basic principles, the development of political institutions and participation in political activity for the different population groups will hereunder be examined in more detail.

### C. Constitutional Arrangements Prior to 1925

11. During the German regime only Europeans participated in the Territorial Government, and after the 1904-1907 was the administration of the Police Zone, save for the Berseba reserve and the Rehoboth *Gebiet*, was entirely in the hands of German district officers<sup>1</sup>.

The German authorities did not exercise any real control over the northern territories, and the inhabitants of these areas maintained their systems of tribal government.

12. From 1915 to 1920 South West Africa was governed as a protectorate under martial law. From 9 July 1915 to 30 October 1915, the government of the Territory was entrusted to a military governor and a chief civil secretary. On 30 October 1915 both these offices were abolished and the office of Administrator was constituted. The Administrator was to be under the control of, and directly responsible to, the South African Government<sup>2</sup>.

13. In September 1919 the South African Parliament enacted the Treaty of Peace and South West Africa Mandate Act<sup>3</sup>, which vested in the Governor-General the necessary powers for giving effect to the Mandate in respect of the Territory, when granted.

Section 2 of the Act authorized the Governor-General to legislate in respect of the Territory by proclamation and also empowered him to delegate his authority to "such officer in the said territory as he may designate to act under his instructions". All proclamations made under the Act were to be laid before the South African Parliament<sup>4</sup>.

14. By Proclamation No. 1 of 1921, the Governor-General delegated his powers under the Act to the Administrator of the Territory, as the agent of the Union Government, and subject to "such instructions as may from time to time be issued for his guidance by proper authority"<sup>5</sup>.

<sup>1</sup> Evans, J. E., *Native Policy in Southern Africa* (1934), p. 138.

<sup>2</sup> *Proc.* of 28 Oct. 1915 and gazetted on 15 Nov. 1915, at pp. 30-31 of *The Laws of South West Africa 1915-1922*.

<sup>3</sup> Act No. 49 of 1919 (S.A.), in *The Laws of South West Africa 1915-1922*, pp. 10-12.

<sup>4</sup> *Ibid.*, sec. 2, p. 11.

<sup>5</sup> *Proc.* No. 1 of 1921 (S.A.), in *The Laws of South West Africa 1915-1922*, pp. 44-46.

15. By Proclamation No. 1 of 1921, as amended by Proclamation No. 51 of 1921, the Administrator appointed an Advisory Council, which consisted of nine appointed members, whose functions were to advise the Administrator in regard to:

- (a) the raising of revenue within the Territory;
- (b) the appropriation of monies for the public services of the Territory and the allocation of expenditure;
- (c) matters of general policy in relation to the legislation and administration of the Territory, apart from routine matters of administration;
- (d) any other matter upon which its advice might be requested by the Administrator <sup>1</sup>.

One of the members of the Advisory Council was to be a person specially qualified to advise on all matters concerning the Native races of South West Africa <sup>2</sup>.

16. During the period 1921-1925 the administrative and legislative powers in respect of the Territory remained vested in the Administrator as Respondent's representative. During this period, therefore, apart from the Advisory Council, the European inhabitants had no representative political institutions of the nature to which they had been accustomed.

#### D. Political Institutions of the White Population Group

17. In March 1921 a commission, which had been appointed in the previous year to enquire as to the future government of the Territory, recommended in respect of the European population the adoption of a—  
 “form of government . . . at present prevailing in the four Provinces of the Union, giving the population full representation in a Provincial Council and in the Union Parliament, . . . but subject always to the conditions of the Mandate <sup>3</sup>”.

18. General Smuts, in a speech at Windhoek in September 1920 had already predicted developments along the lines envisaged by the commission when he stated:

“South-West Africa would always be a separate unit as a large country, but it was impossible to run it as a province at the present time, though later, no doubt, it would become one, with a Provincial Council and members in the House of Assembly, but first other stages would have to be passed through. The first would probably be an Advisory Council to be appointed to advise the Administrator. Not long after that, the Council would become an elected Council, and in due course there would be a full Parliamentary system <sup>4</sup>.”

19. In December 1922 the Advisory Council <sup>5</sup> unanimously adopted a resolution urging that the European inhabitants should be given a share in the government of the Territory, and also recommended that steps be taken to enact legislation for the automatic naturalization of the German

<sup>1</sup> Proc. No. 1 of 1921 (S.W.A.), in *The Laws of South West Africa 1915-1922*, pp. 493-495, as amended by Proc. No. 51 of 1921 (S.W.A.), *ibid.*, p. 626.

<sup>2</sup> U.G. 26—1921, p. 4.

<sup>3</sup> U.G. 24—1921, para. 7, p. 4.

<sup>4</sup> P.M.C., *Min.* II, p. 92.

<sup>5</sup> *Vide* para. 15, *supra*.

inhabitants. A similar recommendation had been made by the aforesaid Commission of Enquiry<sup>1</sup>, because it was of opinion that there was no way in which aliens permanently residing in South West Africa could acquire the right to take part in the administration of their country of adoption other than by becoming citizens of the State which, under the Mandate, was charged with the administration of the Territory.

20. After negotiation with the German Government, the Council of the League of Nations was approached in order to seek its endorsement of the proposed naturalization of the German inhabitants. The League Council, in a resolution of 23 April 1923, resolved that it had no objection to such naturalization<sup>2</sup>.

21. In 1924 there was enacted the South West Africa Naturalization of Aliens Act<sup>3</sup>, which provided that nationals of ex-enemy countries resident in the Territory on 1 January 1924, and also those who took up residence in the Territory before 15 September 1924, would be deemed to be British subjects. The persons concerned could, however, renounce British nationality.

22. The way had now been cleared, with full knowledge and endorsement of the League of Nations, for the creation of political institutions in which the White population group could participate and exercise a measure of self-government.

23. With the enactment of the South West Africa Constitution Act, 1925<sup>4</sup>, a form of government, basically similar to the South African Parliamentary system, was introduced for the White group in the Territory. The Act, which came into force in 1926, made provision for the establishment of a Legislative Assembly, an Executive Committee and an Advisory Council.

24. The Legislative Assembly consisted of 18 members, one-third of whom were nominated by the Administrator from voters resident in the Territory; subject to the approval of the Union Government. The other members were elected by direct vote of those adult male European inhabitants of the Territory who were British subjects<sup>5</sup>.

The Legislative Assembly was empowered to enact ordinances in regard to all matters save the following, in respect of which it could legislate only with the prior consent of the Governor-General<sup>6</sup>:

- (a) Native affairs or any matters specially affecting Natives, including the imposition of taxation upon the persons, land, habitations or earnings of Natives;
- (b) mines and minerals;
- (c) railways and harbours;
- (d) the public service;
- (e) constitution, jurisdiction and procedure of courts of justice;

<sup>1</sup> *Vide U.G.* 24—1921.

<sup>2</sup> *L. of N., O.J.* 1923 (No. 6), pp. 603 and 659; *vide* also Gen. Smuts' letter to the Council, portion of which is cited in Book IV, Chap. V, para. 6, of this Counter-Memorial.

<sup>3</sup> Act No. 30 of 1924 in *The Laws of South West Africa 1924*, pp. 82-85.

<sup>4</sup> Act No. 42 of 1925 in *The Laws of South West Africa 1925*, pp. 60-92.

<sup>5</sup> *Ibid.*, sec. 13 and Part I, sec. 1, of the Schedule to the Act.

<sup>6</sup> *Ibid.*, sec. 26.

- (f) the administration, management and working of the postal, telegraph and telephone services;
- (g) military organization;
- (h) movement and operation of the Defence Force of the Union of South Africa;
- (i) immigration;
- (j) customs and excise;
- (k) currency and banking.

The Assembly was also precluded from legislating in regard to police, civil aviation, education, land or agricultural banks, and the allotment, sale or disposal of government lands, except with the Governor-General's prior consent; but after the expiration of a period of three years from the date of its first sitting, it could be given a general power to make ordinances in respect of any of the above subjects <sup>1</sup>.

25. Full powers of administration and legislation were, however, reserved to the Governor-General, and the provisions of the Treaty of Peace and South West Africa Mandate Act <sup>2</sup> remained of full force and effect <sup>3</sup>.

Furthermore, Respondent retained direct control over the legislation of the Assembly by reserving to the Governor-General full powers of disallowance <sup>4</sup>.

26. The Executive Committee consisted of the Administrator, as chairman, and four members chosen by the Assembly on the basis of proportional representation.

The Administrator in Executive Committee was empowered to carry on the administration of those matters in respect of which the Assembly was competent to make ordinances <sup>5</sup>.

27. The Advisory Council, constituted by section 7 of the Act, consisted of the Administrator, as chairman, the four members of the Executive Committee, and three members nominated by the Administrator, subject to the approval of the Governor-General.

The duties and functions of the Council were to advise the Administrator in regard to, *inter alia*—

- (a) those matters in respect of which the Assembly was not competent to make Ordinances, including matters of general policy and administration; and
- (b) his assent to an Ordinance passed by the Assembly, or its reservation for the signification of the pleasure of the Governor-General <sup>6</sup>.

One of the appointed members of the Council was required to be an official selected mainly on the ground of his thorough acquaintance with, and experience of, the reasonable wants and wishes of the non-European races of the Territory <sup>7</sup>.

28. To sum up, the position was that the Administrator was assisted by an Executive Committee, consisting of four members elected by the

<sup>1</sup> Act No. 42 of 1925 in *The Laws of South West Africa 1925*, sec. 27.

<sup>2</sup> *Vide* para. 13, *supra*.

<sup>3</sup> Act No. 42 of 1925 in *The Laws of South West Africa 1925*, sec. 44, pp. 60-92.

<sup>4</sup> *Ibid.*, secs. 32 and 33.

<sup>5</sup> *Ibid.*, sec. 3.

<sup>6</sup> *Ibid.*, sec. 9.

<sup>7</sup> *Ibid.*, sec. 7.

Legislative Assembly, in dealing with matters on which the Assembly was competent to enact ordinances, while matters outside the province of the Assembly, e.g., Native affairs, fell to be dealt with by the Administrator, as agent of the Union Government, to which alone he was responsible.

29. In 1949 the 1925 Act was amended by the South West Africa Affairs Amendment Act <sup>1</sup>, in, *inter alia*, the following material respects:

- (a) The Legislative Assembly became fully elective <sup>2</sup>.
- (b) The Territory was granted representation in the Union House of Assembly by six members to be elected by the duly registered voters of the Territory <sup>3</sup>, and in the Union Senate by four senators—two elected and two nominated by the Governor-General <sup>4</sup>. One of the latter was to be selected mainly on the ground of his thorough acquaintance, by reason of his official experience or otherwise, with the reasonable wants and wishes of the Coloured races of the Territory <sup>5</sup>.
- (c) In terms of section 26 of the South West Africa Constitution Act, 1925, the Legislative Assembly had been permanently, and in terms of section 27 temporarily, precluded from enacting Ordinances on certain matters <sup>6</sup>. The effect of the amendments contained in sections 16 and 17 of the new Act was—
  - (i) to remove the legislative restrictions imposed on the Assembly by the said sections in respect of: mines, minerals, mineral oils, precious stones, etc.; primary or secondary education in schools supported or aided from the revenues of the Territory; the establishment, management or control of any land or agricultural bank in the Territory; and the allotment, sale or disposal of government lands in the Territory;

and

- (ii) to include the police force and civil aviation amongst the matters permanently reserved from the legislative competence of the Assembly.
- (d) The Advisory Council was abolished and its functions transferred to the Executive Committee <sup>7</sup>.
- (e) Provision was made <sup>8</sup> for the abrogation, from a date to be proclaimed, of the powers of legislation granted to the Governor-General under the provisions of the Treaty of Peace and South West Africa Mandate Act, 1919, with the consequent lapsing of the delegation of those powers to the Administrator <sup>9</sup>. The date for the changes was later proclaimed as 17 October 1951 <sup>10</sup>.

Provision was made that from the said date only Parliament should

<sup>1</sup> Act No. 23 of 1949 in *The Laws of South West Africa 1949*, pp. 170-187.

<sup>2</sup> *Ibid.*, sec. 8.

<sup>3</sup> *Ibid.*, secs. 27 and 28.

<sup>4</sup> *Ibid.*, sec. 30 (1).

<sup>5</sup> *Ibid.*, sec. 30 (2).

<sup>6</sup> *Vide* para. 24, *supra*.

<sup>7</sup> Act No. 23 of 1949, sec. 5, in *The Laws of South West Africa 1949*, pp. 170-187.

<sup>8</sup> *Ibid.*, sec. 22.

<sup>9</sup> *Vide* para. 14, *supra*.

<sup>10</sup> Proc. No. 235 of 1951 (S.A.), in *The Laws of South West Africa 1951*, p. 10.

have the power to legislate for the Territory in regard to those matters on which the Legislative Assembly was not competent to legislate. The only exception to this would be the right of the Legislative Assembly to make an ordinance on a permanently reserved matter, with the prior consent of the Governor-General<sup>1</sup>.

Despite the changes brought about by the aforesaid amendments, full powers of legislation and administration remained vested in Respondent<sup>2</sup>. Furthermore, Respondent retained its direct control over the legislation of the Assembly by reserving full powers of disallowance in respect of all Ordinances<sup>3</sup>.

30. It is clear, therefore, that though the White population group has been endowed with a measure of self-government and participation in central government, powers of legislation relating to Native affairs have never been conferred on the South West African Legislative Assembly, such powers having been retained by Respondent.

### E. General Constitutional Arrangements concerning the Indigenous Groups

31. During the period 1921 to 1925 the powers of administration and legislation in respect of Native affairs vested in the Administrator, as Respondent's representative, to whom the Governor-General had delegated such powers<sup>4</sup>. The Advisory Council, as has been pointed out<sup>5</sup>, advised the Administrator, *inter alia*, in regard to matters of general policy, including Native affairs, and one of the members of the Council was required to be a person specially qualified to advise on all matters concerning the Native races of South West Africa.

32. Under the South West Africa Constitution Act of 1925, the powers of legislation and administration in respect of Native affairs remained vested in the Administrator. The new Advisory Council had as one of its members an official selected mainly for his knowledge of the reasonable wants and wishes of the Native population of the Territory<sup>6</sup>.

33. In 1949 the Advisory Council was abolished and its functions transferred to the Executive Committee, which advised the Administrator in carrying out his administrative duties<sup>7</sup>. For the proper furtherance of the interests of the indigenous population, the Secretary for South West Africa, in his capacity as Chief Native Commissioner, attended meetings of the Executive Committee whenever matters of policy or administration concerning non-Whites were considered by the Executive Committee.

34. As has been pointed out<sup>7</sup>, the South West Africa Affairs Amendment Act of 1949 made provision for the abrogation of the powers of

<sup>1</sup> See now, however, para. 34, *infra*.

<sup>2</sup> As regards legislative and administrative powers pertaining to the Eastern Caprivi Zipfel, *vide* Book VIII, sec. C, Chap. VI, paras. 16, 17, 20 and 21, of this Counter-Memorial.

<sup>3</sup> Act No. 23 of 1949, sec. 22, in *The Laws of South West Africa 1949*, pp. 170-187.

<sup>4</sup> *Vide* para. 14, *supra*.

<sup>5</sup> Para. 15, *supra*.

<sup>6</sup> Para. 27, *supra*.

<sup>7</sup> Para. 29, *supra*.

legislation granted to the Governor-General in 1919, and delegated by him to the Administrator in 1921.

After the adoption of the 1949 Act it was felt, however, that the power of the Governor-General to legislate by way of proclamation for the Territory should be retained. Accordingly, the South West Africa Affairs Amendment Act, 1951, provided that the Governor-General could legislate by proclamation in relation to any matter in regard to which the Assembly was not competent to make ordinances. This power was conferred on the Governor-General as from 17 October 1951, which was the date that had been fixed for the lapse of his previous powers in this regard<sup>1</sup>.

35. As from 1 April 1955 the administration of Native affairs was transferred to Respondent's Minister of Native Affairs (now designated the Minister of Bantu Administration and Development)<sup>2</sup>, who functions under the control and direction of the Governor-General in Council. The effect of this Act was, therefore, to transfer the administration of Native affairs in the Territory from one organ of the South African Government (the Administrator) to another (the Minister of Native Affairs).

From the same date the Administrator became a member of the Native Affairs Commission. The Minister of Native Affairs possesses authority to delegate any of his powers and duties to the Administrator in his capacity as a member of this Commission, and he has in fact exercised the authority in respect of certain functions and duties.

The aims and effect of this transfer of administration of Native affairs are dealt with elsewhere in this Counter-Memorial<sup>3</sup>.

36. It is clear, therefore, that Respondent has at all times retained full and direct control over legislation on and administration of Native affairs in the Territory, and that the indigenous inhabitants of the Territory have not been subjected to the control of the European inhabitants.

37. To enable Respondent to be at all times fully acquainted with the desires of each group and to enable such population groups to be acquainted with Respondent's views, Respondent has built up certain channels of communication. The office of Chief Bantu Affairs Commissioner and his staff<sup>4</sup> constitutes the main link with the indigenous population groups. In each of the tribal areas beyond the Police Zone, and in each district and in each of the larger Native reserves within the Police Zone, the Chief Bantu Affairs Commissioner has a representative; either a Bantu Affairs Commissioner, a Superintendent or an Administrative officer, who is in close contact with the members of the indigenous group within his area.

The function of these officials is largely confined to one of assistance and guidance, through which they have been able to play their part in the development of the indigenous political institutions of the various population groups, which are described below.

<sup>1</sup> Act No. 55 of 1951 (S.A.), sec. 2, in *Statutes of the Union of South Africa 1951*, p. 404.

<sup>2</sup> *Vide* Act No. 56 of 1954 (S.A.), in *Statutes of the Union of South Africa 1954*, pp. 559-565.

<sup>3</sup> *Vide* Book VIII, sec. C, Chap. VII, paras. 5-8, of this Counter-Memorial.

<sup>4</sup> The Head Office of which is at Windhoek.

### F. Indigenous Political Institutions outside the Police Zone

38. As has already been pointed out <sup>1</sup>, a policy of employing traditional institutions for purposes of government of the groups concerned, admitted of fairly easy application in those territories outside the Police Zone—viz., Ovamboland, the Okavango Native Territory and the Caprivi Zipfel—where tribal organizations had remained intact and were in operation when the Mandate was assumed. For reasons that will become apparent, however, the application of a system of indirect rule to the Kaokoveld presented more difficulties, while the habits of the Bushmen have thus far made it well-nigh impossible to create for them some form of political organization or representation.

39. Respondent has already dealt with the social and political organizations of the various indigenous groups which were in existence prior to the assumption of the Mandate <sup>2</sup>. In what follows, a brief account will be given of the development of indigenous political institutions in the northern areas subsequent to 1920, and of the problems encountered by Respondent in endeavouring to assist such development <sup>3</sup>.

#### OVAMBOLAND

40. As stated previously <sup>4</sup>, the various Ovambo tribes have for a very long time functioned as separate political entities, each with its own system of rule. The German Government in South West Africa never exercised any authority over these tribes, and had no resident officials in Ovamboland.

41. After the Police Zone had been occupied by the Union forces in 1915, and pursuant to messages and invitations received from the tribal rulers of Ovamboland, Respondent considered it advisable to station representatives in this territory under its control.

When officials sent by Respondent to investigate conditions in Ovamboland arrived there, they found the otherwise relatively peaceful territory in a state bordering on chaos. Firstly, a very severe famine was raging and was taking a heavy toll of life amongst the Natives. Secondly, raiding and plundering on the part of certain armed sections had become the order of the day. Thirdly, the Portuguese Government had sent a strong punitive expeditionary force—for alleged raiding—against Chief Mandume of the Kuanyama tribe, whose tribal area was cut in two by the border line between Angola and South West Africa.

42. Under these circumstances there was initially no clearly defined policy with regard to Ovamboland. With the very limited staff of administrative officials available for the whole territory and without any police force, it would have been quite impossible to apply to the Ovambo a completely new political and legal system. The action taken by Respondent consequently amounted to controlling the Natives more and more

<sup>1</sup> *Vide* Book IV, Chap. V, para. 8, of this Counter-Memorial.

<sup>2</sup> *Vide* Book III, Chap. II, of this Counter-Memorial.

<sup>3</sup> It will be observed that hardly any reference is made to published sources in respect of information supplied. The information has been obtained from Respondent's officials and ethnologists and can be supported by oral evidence if necessary.

<sup>4</sup> *Vide* Book III, Chap. II, para. 40, of this Counter-Memorial.

through their own tribal leaders. This system was commenced in the Kuanyama area.

43. After the death of Chief Mandume at the beginning of 1917, all the senior headmen who had served under him were encouraged to come together as a council and to hold regular meetings to deal with the affairs of the tribe. Attention was given to tribal laws and every effort was made by the officials to gain the complete confidence of all the traditional headmen-councillors. Gradually the first foundation of a type of indirect rule was laid in this strongest and most important of all the Ovambo tribes.

For a time the Kuanyama area was the only one of the tribal areas to which the above procedure applied. The principal headmen as well as scores of sub-headmen were gradually educated to follow the advice and methods of government recommended by the administrative officials in charge. The utmost care was taken to allow them to apply their own laws which were studied, recognized and maintained. Such laws and usages as were contrary to natural justice or public policy were gradually eliminated, but reforms were introduced only after careful discussions with tribal elders and with the approval of each of the authorities concerned.

The Kuanyama had in the past been ruled by a strong and autocratic chief and when suddenly they were deprived of his rule and leadership, one of the greatest difficulties the officials had to contend with was to get headmen to step into the shoes of their former chief, i.e., to exercise full authority and to take the lead and show initiative in their respective areas. Patience and care were required to make them realize their responsibilities, but in time one after the other fell into line.

44. The system inaugurated amongst the Kuanyama was gradually introduced into three of the other tribal areas—those of the Mbalantu, Nkolonkati and Eunda tribes—where there were no chiefs, but where headmen were found to control separate districts within their tribes.

These headmen had never before come together to sit as a body, but under proper guidance they began to appreciate the advantage of sharing the responsibility and control of the tribe as a whole, and were persuaded to adopt the example set by the Kuanyama.

45. The remaining four tribes were ruled by traditional tribal chiefs. Like Mandume, the chiefs were very autocratic, and although each had advisers, being a few elders, they rarely, if ever, consulted them. It was one of the most difficult tasks of officials to persuade these chiefs to adopt a more just and democratic form of government, including the use of these elders or headmen as counsellors. With the passing of time, however, Natives from tribes ruled by chiefs were able to appreciate the advantages of the good order and justice prevailing in other tribal areas, controlled by headmen, particularly in Kuanyama. The chiefs, too, began to realize that they could obtain sound advice from older headmen and that unless they paid more attention to the rights of the individual they might lose their positions.

46. Serious difficulties of the kind mentioned were indeed experienced in the case of Chief Ipumbu of the Kuambi tribe. Some of his senior headmen and tribesmen developed very decided feelings against his despotic rule and appealed to officials for assistance. To counter these feelings Ipumbu applied his harsh methods more strictly than ever,

paying little regard to human life. This eventually compelled the Administration to take action against him, and in 1932 he was deposed<sup>1</sup>. From the date of his deposal the Kuambi tribe has been controlled by a council of four headmen and order and discipline are satisfactorily maintained.

47. As a result of the aforesaid developments there are at present two systems of government in operation in Ovamboland, viz.:

- (a) In the tribal areas of Kuanyama, Kuambi, Mbalantu, Eunda, and Nkolonkati, where there are no chiefs, councils of headmen have been set up to deal with all matters affecting their tribes. These councils consist of tribal leaders, known as headmen, each of whom is in control of a *portion of the tribal area*. They meet regularly to discuss administrative and political matters amongst themselves and, if necessary, with the White officials, and also to sit as a court of appeal to hear cases (under Native law and custom), which sub-headmen and individual headmen have been unable to settle to the satisfaction of the parties concerned.
- (b) In the other tribal areas in Ovamboland, i.e., Ndonga, Ngandjera and Kualuthi, where chiefs are in control, such chiefs are in the government of their tribes aided by councils of their leading men whom they have placed in charge of particular portions of their domains. The councils act as advisers to their chiefs and assist them in carrying out their executive, administrative and judicial functions.

48. The chiefs and headmen in Ovamboland, as also in the other tribal areas outside the Police Zone, are not chosen by the Government. Whenever a vacancy occurs on account of death or incapacity of an incumbent or for any other reason, the tribe concerned decides for itself who is to be its nominee. After arriving at a decision they inform the authorities of *their choice and request approval thereof*. It must be emphasized that such approval is a formality and that, as far as is known, no such tribal request has ever been refused.

49. The chiefs and the council of headmen have full civil and criminal jurisdiction over members of their own tribes, except in respect of the crimes of murder, rape, high treason, and severe cases of assault with intent to do serious bodily harm, which are dealt with by the South West Africa Division of the Supreme Court of South Africa.

50. Each tribe in Ovamboland has its own tribal office with a secretary, and in some cases assistant-secretaries, appointed by the tribe and paid out of tribal funds. The Kuanyama tribe, for instance, has three assistant-secretaries, two of whom are in charge of outlying sub-offices.

The secretary, who is a member of the tribe concerned, is responsible for all records, correspondence, the collection of tribal levies imposed by the tribe on its members, and for seeing that the tribal administration and the development of the tribal area are carried out as directed by the chief or council of headmen. The secretary is also the contact between the tribe, *the tribal office and the Bantu Affairs Commissioner*.

51. The Kuanyama tribe, although further advanced than the other tribes, may be taken as an example to illustrate the system at present in operation in the tribal areas without chiefs in Ovamboland.

For the purpose of political, judicial and administrative organization the tribal area of Kuanyama is divided into eight districts, each of which

<sup>1</sup> *Vide U.G.* 16—1933, paras. 319-320, pp. 52-57.

is under the charge of a headman-councillor, chosen by the people and appointed by Respondent. The tribal council consists of these eight headmen—the *omalenga*—under the guidance of a Bantu Affairs Commissioner in charge of this tribe. This council is also the central authority of the tribe. It directs the affairs of the tribe through the tribal secretaries.

Each of these districts is divided into sub-districts (*omikunda*) which have fixed boundaries and are in turn each administered by a sub-headman, who is responsible to the headman-councillor of his district.

There are three types of courts functioning in Kuanyama. These are the district courts, the tribal court and the court of appeal. The Bantu Affairs Commissioner, who is also additional magistrate of Ovamboland, attends the court of appeal in an advisory capacity.

A district court has only civil jurisdiction. It functions within one district, and there are therefore eight of these courts. All civil cases are initially heard by these courts, in each instance in the court of the district where the defendant resides. The district court is composed of all the sub-headmen in that district. A unique characteristic is that the headman of the district does not participate in the proceedings. In fact, he may not even be seen near the precincts of the court. The court appoints its own "chairman" and meets in a section of the kraal of the headman. The jurisdiction of the court is not final. If either party is dissatisfied with the decision, the case must go before the headmen of the district, whence an appeal lies to the tribal court.

The tribal courts consist of the eight headmen constituting the council of headmen. Apart from functioning on appeal in civil cases emanating from the district courts, it is a criminal court of first instance. Sub-headmen may attend meetings of the court and even participate in the proceedings with a view to gaining experience, but they have no say in the ultimate judgment or the sentence passed. Three of the eight headmen absent themselves by rotation in order to be able to sit on the court of appeal, when necessary.

The tribal court meets once every month at the tribal offices at Ohanguena. The procedure here, although much more formal, follows the general lines of the district courts, with the exception that the tribal secretary may act as prosecutor in criminal cases.

Appeal from the tribal court lies to the court of appeal. The court of appeal consists of three members. They are headmen who serve in rotation on appeal, not having sat in the tribal court when the case was heard there. The court of appeal is also attended by the Bantu Affairs Commissioner for the purpose of giving advice, if necessary. The court has its sessions at the administrative headquarters at Oshikango.

52. In the tribal areas under the control of chiefs, civil and criminal jurisdiction is vested in the tribal headmen and sub-headmen in charge of *omikunda*. Appeals lie to the chief, assisted by some of his counsellors and, if necessary, by the Bantu Affairs Commissioner.

53. In 1929 the Ovamboland Affairs Proclamation<sup>1</sup> was passed with the approval of the tribal leaders concerned. The Proclamation provided, *inter alia*, for the setting aside of Ovamboland as a Native reserve for the sole use and occupation of the Ovambo<sup>2</sup>; for the creation of trust funds

<sup>1</sup> Proc. No. 27 of 1929 (S.W.A.), in *The Laws of South West Africa 1929*, pp. 258-262.

<sup>2</sup> *Ibid.*, sec. 1, p. 258.

for each of the tribes in Ovamboland; for the payment of levies by members of the tribes to those funds; and for the moneys in the funds to be expended as directed by the Administrator (now the Minister of Bantu Administration and Development) <sup>1</sup>, after consultation with the chiefs or headmen, "upon objects which in the opinion of the Administrator are in the interest and calculated to promote the welfare of" the tribes <sup>2</sup>.

54. The tribal leaders have been regularly consulted as regards the manner in which the money in their funds should be spent, and this has led to members of the tribes being encouraged to participate under their leaders in the management of their own affairs. They have consequently developed a habit of discussing possible items of expenditure amongst themselves, and of then submitting those which they support for inclusion in the draft estimates presented to the Minister for his formal approval.

55. The tribal institutions, as described above, have a very definite democratic character, the headmen being chosen by the tribe, and it is Respondent's policy to see not only that this character remains unimpaired, but also that these institutions be developed and extended to enable more members of the tribes to take part in them.

56. It will be seen that in Ovamboland, as in the other tribal areas beyond the Police Zone, the Native inhabitants to all intents and purposes govern themselves through their chiefs and headmen according to their own laws and customs. Although, in theory, many of the laws enacted for South West Africa apply also to Ovamboland and the other Native areas beyond the Police Zone (other than the Caprivi), few, if any, of the provisions thereof are enforced in those areas. So, also, in the judicial sphere the courts of South West Africa concern themselves only with *serious crimes in respect of which capital punishment or a long term of imprisonment may be justified*, and for the rest justice is administered by tribal tribunals according to Native law and custom. Even in financial matters, although any expenditure from their trust funds requires to be authorized by the Minister, such items of expenditure as are recommended by the Native Authorities are always authorized if funds permit.

57. Taking the position as a whole it can be said that the Ovambo, because of the satisfactory methods of government evolved by themselves with the assistance and guidance of White officials, have become a well-ordered, happy and exceedingly loyal community of Natives, and no more than a few White officials are needed there to guide them and to exercise a good influence over them.

The South West Africa Commission of 1936 stated in this regard:

"On the evidence taken by us and from what we saw in travelling through the country and visiting the different places we could not help coming to the definite conclusion that the Ovambos are not only satisfied with the form and administration of Government which they have had since the Union Government took control of Ovamboland, but that they are also as a people contented and happy and think themselves much better off than they were under the Govern-

<sup>1</sup> *Vide* Act No. 56 of 1954 in *Statutes of the Union of South Africa 1954*, pp. 559-565 and *Proc. No. 119 of 1958 in The Laws of South West Africa 1958*, pp. 133-141.

<sup>2</sup> *Proc. No. 27 of 1929 (S.W.A.)*, sec. 3, in *The Laws of South West Africa 1929*, pp. 258-262.

ment of their own Chiefs without the supervision of Union Government officials<sup>1</sup>."

#### THE OKAVANGO NATIVE TERRITORY

58. The five tribes of the Okavango territory were, at the inception of the Mandate, all under the control of hereditary chiefs. Some of these chiefs were rather weak and inefficient, and to strengthen their position and to ensure peace and stability, a Native Affairs officer was stationed in the territory to advise chiefs in the administration of tribal affairs. The chiefs leaned more and more upon the said official to support and maintain their authority over their people<sup>2</sup>.

59. Fearing for their position, the chiefs were initially loath to have councils of headmen, but they were gradually persuaded to appoint councils, consisting of leading men of their respective tribes, to assist them in their functions, and in time the councils became firmly established. The councils advise the chiefs and assist them in carrying out executive, administrative and judicial functions. Each councillor is in charge of a particular portion of the tribal territory.

60. The chiefs, assisted by their councils, retain full political power as long as they do not countenance laws or customs contrary to public policy or natural justice, and they retain their full judicial authority under Native law except the right to adjudicate in respect of capital and other serious crimes, which are reserved to be dealt with by the Supreme Court.

Complaints are taken in the first instance to the kraal head and, if the matter is not settled there, the case is tried by the headmen or by the chief, according to its importance. Appeals lie from the headmen to the chief and from the chief to the Bantu Affairs Commissioner.

61. In 1937 a proclamation of that year<sup>3</sup> provided for the setting aside of the Okavango Native Territory as a Native reserve for the sole use and occupation of Natives and for the establishment of one or more trust funds for the tribes of that Territory, the moneys of which were to be used "upon objects . . . in the interest and calculated to promote the welfare of the tribes", but only "as directed by the Administrator (now the Minister of Bantu Administration and Development)<sup>4</sup>, after consultation with the chief or chiefs"<sup>5</sup>.

62. In practice the provision providing for consultation has been used, also in the case of the Okavango Territory, to encourage the members of the tribes to participate in the management of their affairs. They are invited to submit suggestions as to how their trust fund moneys should be expended, and their suggestions have, as far as has been practicable, been given effect to.

<sup>1</sup> U.G. 26—1936, para. 69, p. 19.

<sup>2</sup> U.G. 33—1925, paras. 113 and 116, pp. 30-31.

<sup>3</sup> Proc. No. 32 of 1937 (S.W.A.), in *The Laws of South West Africa 1937*, pp. 306-312.

<sup>4</sup> Vide Act No. 56 of 1954 in *Statutes of the Union of South Africa 1954*, pp. 559-565 and Proc. No. 119 of 1958 in *The Laws of South West Africa 1958*, pp. 133-141.

<sup>5</sup> Proc. No. 32 of 1937 (S.W.A.), sec. 3 (4), in *The Laws of South West Africa 1937*, p. 308.

63. It follows that for all practical purposes each tribe is governing itself through its own appointed chief assisted by a council of headmen. The main function of the Native Affairs official is to guide and assist them in all matters in which they need guidance. In so far as the State President is their supreme chief<sup>1</sup>, he holds this power as Respondent's representative.

64. These chiefs are not appointed by Respondent *mero motu*. The tribe itself elects its chief, usually on a hereditary basis. The State President is then notified of the tribe's choice and he is asked for his approval which is given by him in his capacity as the tribe's supreme chief. Again, as far as is known, no such request has ever been refused.

#### THE EASTERN CAPRIVI ZIPFEL<sup>2</sup>

65. In terms of a proclamation of the Governor-General of 1922<sup>3</sup>, the Caprivi Zipfel was administered, up to 1929, by the British High Commissioner of South Africa, as if it were a portion of the Bechuanaland Protectorate. From 1929 to 1939 it was administered by the Administrator of South West Africa<sup>4</sup>. From 1939 onwards, the territory has been administered by the Minister of Native Affairs<sup>5</sup> (now Bantu Administration and Development).

66. Respondent has already described<sup>6</sup> the system of tribal rule which was in operation in the Caprivi Zipfel at the inception of the Mandate. This system has continued to operate, and the hereditary chiefs, assisted by their councils (*Kuta*), have retained full power to govern their people, subject to Respondent's control.

The main functions of the *Kuta* include the following:

- (a) to try minor criminal and all civil cases;
- (b) to settle domestic and matrimonial disputes;
- (c) to allocate lands;
- (d) to administer tribal funds; and
- (e) to administer other tribal affairs.

Fines imposed by the *Kuta* are paid into tribal funds and used for tribal purposes.

Cases not triable by the *Kuta* are heard by the Bantu Affairs Commissioner, who also sits on appeals from decisions of the *Kuta*.

For better control, the territory has been divided into 15 wards or areas, with a government-paid police guard in each to assist the tribal authorities in preventing breaches of the law. The attempts of the Commissioner to influence the chiefs and other leaders to rule along sound lines, have at times been impeded by the practice on their part to

<sup>1</sup> *Vide* Book VI, Chap. III, para. 131, read with para. 121 of this Counter-Memorial.

<sup>2</sup> Hereinafter referred to as the Caprivi Zipfel.

<sup>3</sup> *Proc. No. 12 of 1922 (S.A.)*, in *The Laws of South West Africa 1915-1922*, pp. 52-53.

<sup>4</sup> In terms of *Proc. No. 196 of 1929 (S.A.)*, in *The Laws of South West Africa 1929*, pp. 126-128.

<sup>5</sup> In terms of *Proc. No. 147 of 1939 (S.A.)*, in *The Laws of South West Africa 1939*, pp. 28-30.

<sup>6</sup> *Vide* Book III, Chap. II, paras. 14-15, of this Counter-Memorial.

keep in touch with, and be influenced by, the Rotse court across the river in Northern Rhodesia.

67. In 1930 a Proclamation<sup>1</sup>, containing provisions similar to those of the Ovamboland Affairs Proclamation<sup>2</sup>, was promulgated, which, *inter alia*, gave the Administrator authority to establish one or more trust funds for the tribes in the Caprivi Zipfel. As in the case of Ovamboland<sup>3</sup> and the Okavango Native Territory<sup>4</sup>, the provisions of the Proclamation relating to consultation with the chiefs have been used to encourage the members of the tribes concerned to participate in the management of their affairs.

#### THE KAOKOVELD

68. What is now the Kaokoveld reserve, measuring over five and a half million hectares, was, at the inception of the Mandate, populated by Himba, Tjimba and Herero—all Herero-speaking Natives. At that time they must have numbered approximately 1,500, for in 1925 they totalled 2,000<sup>5</sup>, and there had been no large exodus of inhabitants in the interim.

69. In 1915, on hearing that the Union troops were about to occupy Windhoek, a group of Herero who had, during the German regime, fled to Angola, crossed the Kunene river and invaded the Kaokoveld, ousted the Himba and Tjimba from places which the latter had occupied for generations, and took full possession thereof<sup>6</sup>.

As a result there was little love lost between these groups. In addition, the Herero were divided into two camps and only a loose system of control was exercised by leaders such as Chief Oorlog.

70. In the 1927 annual report the position in the Kaokoveld was described as follows:

*“Chief Oorlog.* Affairs in this Chief's reserve have been quiet on the whole, although largely influenced by some of his headmen, he does not always exercise strict justice, but rules rather with cunning, and it is often the weaker who suffer at his hands. Because of this he has lost several of his wild Ovahimba and Ovashimba subjects who have left his reserve to take up their abode with Muhona Katiti or elsewhere where they are out of his reach. It is unfortunate that Oorlog is surrounded by such a mixed lot of followers amongst whom there is constant and keen rivalry for seniority and headmanship. Being a blood relative of many of these, Oorlog finds it very difficult to follow the straight road of justice. To add to this the Hereros are divided into two camps, viz., that of the Okahandja tribal section and that of the Omaruru, and it is here that he finds it most difficult to keep his people together. Oorlog personally is a native of outstanding intelligence and personality, and if it were not that his subjects are

<sup>1</sup> Proc. No. 27 of 1930 (S.W.A.), in *The Laws of South West Africa 1930*, pp. 144-146.

<sup>2</sup> Proc. No. 27 of 1929 (S.W.A.), in *The Laws of South West Africa 1929*, pp. 258-262. *Vide* para. 53, *supra*.

<sup>3</sup> *Vide* para. 53, *supra*.

<sup>4</sup> *Vide* para. 62, *supra*.

<sup>5</sup> *Vide* U.G. 22—1927, p. 22.

<sup>6</sup> U.N. Doc. T/175, p. 151.

comprised of much mixed sections, causing many complications, he would make an ideal native ruler.

*Chief Muhona Katiti.* This old chief possesses little force of character, and not being of royal line he does not enjoy much authority over his nomadic Ovahimbabas and Ovashimbabas. These people are undoubtedly the wildest of South-West Africa and it is at times most difficult to get into touch with them.

With frequent visits and police patrols to their little colonies in the backblocks of the Kaokoveld, however, the Native Affairs officer is getting more and more into touch with them and their affairs. They are nomads in the truest sense of the word and move with the seasons always in search of new pastures for their herds and flocks. This often makes it well nigh impossible to keep a strict control and check on all cattle movements. The Police at Tshimhaka have nevertheless done excellent work during this year.

Chief Kasupi of Ombepera is, like Muhona Katiti, an Ovahimba. Conditions in his reserve are similar to those of Muhona Katiti<sup>1</sup>.

71. The inhabitants of the Kaokoveld were scattered over a very large area, much of which is mountainous and which was, at the inception of the Mandate, served by no roads. It was, therefore, extremely difficult even for Native leaders to keep in contact with their people. For European officials it was well nigh impossible. There was consequently no alternative but to allow the very loose system of control exercised by the Chiefs to continue for a while.

72. The first step taken by Respondent was to establish on the Kunene River a police post to prevent clashes between the various groups, to maintain law and order and to obtain the co-operation of the people through their chiefs and other leaders in preventing stock movements from and to Angola.

The whole area was also placed under the jurisdiction of the Native Commissioner of Ovamboland who paid visits to it and made contact with its leaders and people. With the opening up of roads under his directions, the mountainous north-western regions became more accessible, and made it possible for the said Native Commissioner to maintain regular contact with, and to bring his influence to bear on, the tribes.

73. By 1931 a better understanding had developed between the two sections of the Herero, but the Tjimba in the extreme northwest had at their own request been divided into three sections after a dispute had arisen, and difficulties of control were not lessened. This will appear more fully from the following extracts from the 1931 annual report:

"334. The Kaokoveld has been much more quiet than last year. There now appears to be a better understanding between the two sections of the Herero people, viz. the Maherero and the Manasse. Last year they were constantly at loggerheads, but since they were brought together by Chief Oorlog for the Native Commissioner to listen to their grievances they have abided by the settlements arrived at. Whether this peaceful state of affairs will last, time alone will tell.

335. The Maherero Herero is a keen politician and is not happy unless he can suppress or rule over a different section. As mentioned in previous reports Chief Oorlog has a very difficult role in the

<sup>1</sup> U.G. 31—1928, p. 45.

Kaokoveld. The Maherero leaders, who number some very intelligent natives among them, are constantly scheming to break away from Oorlog's rule. The relationship between Chief Oorlog and the old chief Muhona Katiti until the latter's death in October was very friendly. A much better understanding existed between them and they settled their respective troubles much more amicably.

336. The Ovatjimba Hereros in the extreme North Western Kaokoveld, who formerly belonged to the old chief Muhona Kasupi and later to his son Kahewanawa, were at their own request placed under the temporary leadership of his nephew Karuho Kahewanawa and Kasupi's brother Ueripaka. Some dispute had arisen between the last two mentioned and as the split was widening the respective followers requested to be divided into three sections until such time as they can be called together to choose a single leader. These natives live in the wildest parts of South West Africa <sup>1</sup>."

74. During 1936 the Administrator visited the Kaokoveld and held a representative meeting to discuss ways and means whereby the leaders could co-operate better and also exercise more efficient control over the tribesmen. After the Administrator had spoken at length and had appealed to the leaders to settle their differences and to co-operate, the meeting resolved to set up for the Kaokoveld a council of headmen similar to those existing in some of the tribal areas of Ovamboland. It was not to be expected that everything would run smoothly from the beginning, but a definite attempt was made by the Native Commissioner to overcome the difficulties.

75. With the death of Chief Oorlog during 1937, the way was finally opened for the creation of a tribal council to take control of the Herero, and this step was duly taken <sup>2</sup>. In the 1938 annual report it was stated:

"Since the death of Chief Oorlog as reported in para. 395 of last year's Report, the Herero sections have been controlled by a Tribal Council, the members of which have been chosen by their own people. The Council meets regularly, about once a month, at Okorosave or at some other appointed place where cases and disputes are attended to <sup>3</sup>."

76. The following year a Native Affairs officer was appointed as Respondent's representative in the Kaokoveld. His main function was to act in an advisory capacity to the chiefs and other leaders. His presence immediately achieved good results. He discovered, for instance, that Herero headmen had been inclined to deal with cases and disputes without reference to the council of headmen and that cases had occurred in which favouritism and the social position and wealth of the parties had influenced the council's decisions. He used his influence with success to have such malpractices discontinued.

The new official also found that many of the Himba were under no control whatsoever. They lived in family units, had never submitted to tribal rule and were scattered over a large area where control was still almost impossible.

77. As a result of the influence of the new official the Himba started

<sup>1</sup> U.G. 17—1932, paras. 334-336, p. 53.

<sup>2</sup> U.G. 25—1938, para. 395, p. 66.

<sup>3</sup> U.G. 20—1939, para. 410, p. 55.

attending the Herero tribal meetings in increasing numbers, and submitted their disputes to the council of headmen.

Since 1941 the said council has controlled the affairs of all three groups—the Herero, Himba and Tjimba—with the assistance and advice of the Native Affairs (later Bantu Affairs) officer. At times this control has not been completely satisfactory, but, all in all, the present system has been a distinct improvement on those previously in operation.

78. In 1953, on the recommendation of the council, a government notice<sup>1</sup> was issued providing for the payment of an annual rate by the residents of the Kaokoveld to the Kaokoveld trust fund. Such revenue as is collected, is expended only in consultation with the council which is thereby afforded experience in the handling of its own affairs.

79. Today the position is that there are no chiefs in the Kaokoveld. A council of headmen has taken the place of chiefs, and deals with all matters affecting the tribes. This council consists of tribal leaders who are each in control of a portion of the tribal area. They meet regularly to discuss administrative and political matters with the Bantu Affairs official, and often thereafter sit as a court of appeal to hear cases under Native law and custom which individual headmen have been unable to settle to the satisfaction of the parties concerned.

The headmen are elected by the members of the tribe concerned, usually on an hereditary basis. The names of the elected headmen are then forwarded to the officials for approval by their supreme chief, the State President. To date, the nominees of the tribes concerned have always been approved of, as far as can be ascertained.

80. It will be seen from the above that the tribes of the Kaokoveld to a large extent govern themselves through their tribal council, and that the Bantu Affairs official merely assists and guides them in this task.

#### THE BUSHMEN

81. Among the Bushmen no tribal authority has ever been recognized<sup>2</sup>. There is no question of submitting to majority opinion, nor is a test of such opinion ever made. Consequently the Bushmen have not developed a political structure. Their lack of recognition of authority presents a difficult problem that will still take a great deal of time to overcome.

82. Respondent has from the outset made every effort to secure the confidence of the Bushmen, e.g., by placing reliable Natives at waterholes where Bushmen were in the habit of congregating for a part of the year, with a view to keeping contact with them. These experiments, however, achieved only limited success.

83. During 1950 Respondent appointed a commission to enquire into the whole matter<sup>3</sup>. One of its recommendations was that a Bushman Commissioner be appointed, and this has been given effect to. One of the duties of the Commissioner is to attempt to get the Bushmen to participate in the management of their own affairs through selected leaders instead of continuing to function as independent family units.

<sup>1</sup> G.N. No. 335 of 1953 (S.W.A.), in *The Laws of South West Africa 1953*, pp. 619-621.

<sup>2</sup> *Vide* Book III, Chap. II, para. 57, of this Counter-Memorial.

<sup>3</sup> *Vide* Book VI, Chap. III, para. 64, of this Counter-Memorial.

Some success has already attended his efforts in these directions and, as more Bush people join those settled near his headquarters (at Tsumkwe north-east of the Epukiro Native reserve), he will extend the form of control through leaders selected by the people themselves. It is hoped that in due course a representative council can be formed on the lines of the councils which have been set up for other indigenous inhabitants without hereditary leaders, to regulate their affairs under the guidance of the Commissioner.

### G. Indigenous Political Institutions within the Police Zone

84. As a result of the disruptive effect of certain historical events, to which reference has already been made <sup>1</sup>, the Herero, Nama and Dama were scattered all over the Police Zone when the Mandate was assumed. Their tribal life and institutions had broken down and no group organizations existed. The only Native leaders in control of certain factions at the time were a Dama chief in the Okombahe reserve who continued to administer the reserve with Government recognition, Chief Goliath of the Berseba Nama and the *Kaptein* of the Bondelswarts.

85. In a later chapter <sup>2</sup> Respondent will deal with its policy regarding reserves, in implementation of which reserves have been set aside for the sole use and occupation of the indigenous groups. One of the main considerations of this policy was the need to bring the dispersed remnants of the various groups together and to re-establish their tribal organizations.

86. The process of sorting out the scattered Natives was indeed an enormous task. Members of the various groups were widely and haphazardly spread out. So, for instance, Herero had been forced by circumstances to take up work as labourers in areas formerly occupied by Nama, and *vice versa*, with the result that members of the same tribes, clans and families were located at different ends of the Territory.

In settling the Natives in reserves, care had to be taken to bring together members of particular groups, or even sections of groups, in so far as it was practicable to do so. Instances of such sections were to be found among the Herero, who had, *inter alia*, a Manasse section and a Maherero section, which in the olden days functioned as independent units, and amongst the Nama who were divided into a number of tribes and clans.

At the same time, and in order to cause a minimum of inconvenience, removals from one part of the Territory to another were not enforced, and in consequence members of more than one group were admitted to some reserves.

87. The position is, therefore, that even up to the present time, it has not been possible to settle only homogenous groups in particular reserves in the Police Zone, although there are some reserves which are almost exclusively inhabited by members of particular groups. In order to facilitate the further development of the political institutions of the Natives, attention is being given to the creation of consolidated homelands for the various groups <sup>3</sup>.

<sup>1</sup> *Vide* Book III, Chap. III, of this Counter-Memorial.

<sup>2</sup> *Vide* Book VI, Chap. III, of this Counter-Memorial.

<sup>3</sup> *Vide* Book IV, Chap. VII, paras. 32 and 35, of this Counter-Memorial.

88. In the following sections Respondent will first deal with the general development of indigenous political institutions in the reserves in the Police Zone since the inception of the Mandate, and then revert to the particular institutions of the different groups.

#### THE DEVELOPMENT SINCE 1920

89. Even before the first reserves were set aside by Respondent, provision was made for the appointment of headmen for Natives who had no tribal leaders, as appears from the following extract from the 1922 annual report:

"As the connecting link between the European officials and the natives, headmen, elected by the people, are appointed by the Government and receive a small salary. They are responsible for the good behaviour of the people, settle civil disputes amongst them, represent any grievances they may have and are, in fact, the substitute for the old native chiefs. As a rule they are assisted by a council of the leading natives . . . In the urban locations which are under the control of the municipalities, superintendents and headmen are appointed and paid by the municipality concerned, subject to the approval of the Administrator <sup>1</sup>."

90. Subsequent to the setting aside of the first reserves, regulations for their control were issued <sup>2</sup>. In terms of Regulation 1 of these regulations a magistrate has general control of the Native reserves in his district, and possesses all the powers and may perform all the duties of a superintendent. Regulation 2 makes provision for each reserve to be divided into wards, if necessary, and for each such ward to be placed under the control of a headman, who in turn falls under the control of a superintendent, where one has been appointed, or of the magistrate of the district <sup>3</sup>. These headmen are chosen by the residents of their reserves, or of their particular wards in cases where reserves have been divided into wards, at representative meetings. Although the election of any headman must be approved by the Minister of Bantu Administration and Development <sup>4</sup>, such approval is generally a formality.

The superintendent of a reserve is required to keep a register of all Natives residing in or entering the reserve, and of the huts and the stock of the occupants; to make allotments of land; to collect taxes and fees, issue passes, supervise sanitation, brand stock, and generally to control the reserve <sup>5</sup>.

The headmen are required generally to assist the superintendent in the carrying out of his duties in the control of the reserve <sup>6</sup>. The Bantu

<sup>1</sup> U.G. 21—1923, p. 9.

<sup>2</sup> G.N. No. 68 of 1924 (S.W.A.), in *The Laws of South West Africa 1924*, pp. 57-63.

<sup>3</sup> *Ibid.*, p. 57.

<sup>4</sup> *Vide* sec. 1 (a) of Proc. No. 15 of 1928 (S.W.A.), in *The Laws of South West Africa 1928*, p. 58 read with Act No. 56 of 1954 (S.A.), in *Statutes of the Union of South Africa 1954*, pp. 559-565 and Proc. No. 119 of 1958 (S.A.), in *The Laws of South West Africa 1958*, pp. 133-141.

<sup>5</sup> G.N. No. 68 of 1924 (S.W.A.), Regs. 3 and 4, in *The Laws of South West Africa 1924*, pp. 57-58.

<sup>6</sup> *Ibid.*, Regs. 6, 9, 19, 23, 24 and 29 (2), pp. 58-62. The duties and privileges of chiefs and headmen are also defined in G.N. No. 60 of 1930 in *The Laws of South West Africa 1930*, pp. 418-424.

Affairs Commissioner concerned may, after consultation with the superintendent, appoint any elected member or members of a Reserve Board<sup>1</sup> to assist any headman, either specially or generally, in the execution of his duties<sup>2</sup>.

91. For each proclaimed reserve in the Police Zone a Reserve Board has been established, which consists of the Bantu Affairs Commissioner of the district, or the superintendent or welfare officer of the reserve, who is chairman of the Board, the duly appointed headmen of the reserve, and not more than six adult Native males elected by the adult Native males resident, or possessing substantial interests, in the reserve, from amongst themselves. Such election takes place at a representative meeting convened, after adequate notice thereof, at the instance of the Bantu Affairs Commissioner or the superintendent<sup>3</sup>.

This Board assists the superintendent generally in the development of the reserve and, as already mentioned, any elected member may be appointed to assist a headman in the execution of his duties.

The Board also discusses the question of the items to be included in the Reserve trust fund draft estimates to be submitted to the Minister of Bantu Administration and Development for his approval.

Under this system not only the leaders, but also the ordinary tribesmen, are given an opportunity of participating in the management of their own affairs.

92. During 1939 there was passed, with the approval of representatives of the Herero group, the Natives Trust Funds Proclamation<sup>4</sup>, which established the Herero Tribal Trust Fund and authorized the Administrator to establish the Dama, Nama and miscellaneous Native Tribal Trust Funds by notice in the *Gazette*<sup>5</sup>. The Proclamation also made provision for the imposition of a levy on members of a tribe, for payment of the levy into the relative tribal trust fund, and for the moneys in the fund to be expended "upon objects which in the opinion of the Administrator<sup>6</sup> are in the interest, and calculated to promote the welfare, of the tribe"<sup>7</sup>. Provision was also made for the Administrator to summon from time to time a council of the tribe consisting, *inter alia*, of nominated chiefs, headmen, and elected representatives of Reserve and Location Advisory Boards, to advise on the administration of the tribal fund or on any other matter concerning the tribe or Native affairs generally<sup>8</sup>.

93. To sum up, the steps taken to enable the Natives in the reserves in

<sup>1</sup> Constituted by sec. 4 of *Proc. No. 9 of 1924 (S.W.A.)*, in *The Laws of South West Africa 1924*, p. 41.

<sup>2</sup> *Reg. 2 (b) of G.N. 68 of 1924 (S.W.A.)*, in *The Laws of South West Africa 1924, 1957* as amended by *G.N. 198 of 1938 (S.W.A.)*, in *The Laws of South West Africa 1938*, p. 392.

<sup>3</sup> *Proc. No. 9 of 1924 (S.W.A.)*, in *The Laws of South West Africa 1924*, p. 41.

<sup>4</sup> *Proc. No. 23 of 1939 (S.W.A.)*, in *The Laws of South West Africa 1939*, pp. 222-232.

<sup>5</sup> *Ibid.*, sec. 1 (1) and (2), pp. 222-224.

<sup>6</sup> Now the Minister of Bantu Administration and Development, *vide Act No. 56 of 1954 (S.A.)*, in *Statutes of the Union of South Africa 1954*, pp. 559-565, and *Proc. No. 119 of 1958 (S.A.)*, in *The Laws of South West Africa 1958*, pp. 133-141.

<sup>7</sup> *Proc. No. 23 of 1939 (S.W.A.)*, sec. 1 (3) and (4), in *The Laws of South West Africa 1939*, p. 224.

<sup>8</sup> *Ibid.*, sec. 2, p. 224.

the Police Zone to participate in the management of their own affairs are the following:

- (a) For each proclaimed reserve headmen, duly elected by the residents at a representative meeting, are appointed to control the reserve under the supervision of the superintendent.
- (b) For each such reserve a Reserve Board has been constituted which consists of the Bantu Affairs Commissioner or the superintendent of the reserve, the duly appointed headmen and not more than six elected adult male Natives. This Board, apart from assisting in the administration of the trust fund, assists the superintendent generally in the development of the reserve.
- (c) In each reserve an annual general meeting is convened to enable the Bantu Affairs Commissioner to render an account of the administration of the trust fund of the reserve for the preceding 12 months, and to discuss better methods of carrying out the objects of the Fund.
- (d) The practice was initiated of holding separate meetings annually, under the chairmanship of the Chief Bantu Affairs Commissioner, with nominated and elected representatives of the Herero, Dama and Nama tribes<sup>1</sup>, to give advice on the administration of their tribal funds, if any, and to discuss and deal with any other matters concerning such tribes or Native affairs generally.

94. In addition, quarterly meetings are held regularly by Bantu Affairs Commissioners for the purposes of bringing to the notice of residents details of the latest legislation, to give them a chance to discuss their grievances and difficulties, and to provide for mutual consultation on matters concerning the inhabitants of reserves. For the last-mentioned purpose annual meetings are also held by the Chief Bantu Affairs Commissioner or his representative. Moreover, the Administrator of the Territory at various times visits the reserves and holds meetings with the residents. In this way every effort has been made to afford the inhabitants of the reserves ample opportunity of bringing requests, complaints and difficulties to the notice of Respondent.

95. The political institutions created for the groups concerned have been designed so as to recognize their traditional outlook and at the same time to meet their new needs. These institutions are consequently very flexible in order to allow the groups sufficient scope to assume more and more responsibility for their own affairs.

#### THE HERERO

96. The 1904-1907 wars left the Herero landless and without stock<sup>2</sup>. The effect which the breaking up of the tribes had in the political sphere, included not only the loss of tribal systems of government, but also of most of their former leaders and sub-leaders. Apart from direct war casualties, a large number fled the country, mainly to Bechuanaland, and later died in exile: these latter included the paramount chief, Samuel Maharero<sup>3</sup>.

<sup>1</sup> In the case of the Herero and Dama their representatives are the members of the Tribal Councils constituted in terms of *Proc. No. 23 of 1939 (S.W.A.)*, in *The Laws of South West Africa 1939*, pp. 222-232.

<sup>2</sup> *Vide* Book III, Chap. III, para. 84, of this Counter-Memorial.

<sup>3</sup> *Vide* Wagner, G., "Some Economic Aspects of Herero Life", in *African Studies*, Vol. 13, No. 3-4 (1954), p. 118.

It follows that when Respondent began to apply its policy of endeavouring to restore tribal life under tribal leaders for the Herero, it was severely handicapped and had virtually to start building up anew from the very foundations.

97. The first step taken by Respondent, after appointing a few of the leaders such as Hosea Kutako as headmen to maintain control and to act as spokesmen for their people, and after collecting members of the various tribes together, was to establish new reserves and to make provision for the Herero in eight of these reserves, viz., Aminuis and Epukiro in the Gobabis district; Waterberg East in the Otjiwarongo district; Otjituo in the Grootfontein district; Otjohorongo in the Omaruru district; Ovitoto in the Okahandja district; together with Dama in Otjimbingwe in the Karibib district, and with Dama and Nama in Tses in the Keetmanshoop district. Subsequently the Eastern reserve in the district of Gobabis was set aside principally for Herero.

98. The establishment of these reserves gave the Herero places where they could pursue their pastoral way of life with a minimum of adjustment to changed conditions. Each of these reserves was placed under the control of one or more headmen, assisted by a Reserve Board consisting of not more than six members elected by the residents. A superintendent was appointed to each reserve to guide and support the headmen and the Board in the execution of their duties, and to exercise direct control in a number of matters where control by the headmen and the Board could not be enforced.

99. The headmen are not vested with any powers under Native law and custom. Respondent has intimated that it will take the necessary steps to confer such powers on the headmen if the tribes concerned should so wish, but although their leaders have repeatedly expressed the desire that the management of tribal affairs should be placed more fully in their hands, Respondent has been unable to induce them to furnish details of any scheme they may have in mind.

#### THE NAMA

100. After the 1904-1907 hostilities some of the Nama tribes were still permitted to use certain defined pieces of land <sup>1</sup>, but these were limited and somewhat dispersed. At the inception of the Mandate the only Nama permitted to occupy land were the Berseba, under Chief Goliath, and the Bondelswarts under a *Kaptein* (Captain). Subsequently the rights of Nama clans to the Soromas, Franzfontein and Zessfontein reserves were recognized <sup>2</sup>, while other Nama were accommodated in the Neuhoof, Tses, Gibeon (Kranzplatz) and Warmbad reserves.

In all these reserves headmen, elected by the residents, were appointed, and subsequently Reserve Boards were set up.

101. According to the annual reports for 1935 <sup>3</sup>, 1936 <sup>4</sup>, 1937 <sup>5</sup> and 1938 <sup>6</sup>, the Chief of the Nama in the Berseba reserve proved to be un-

<sup>1</sup> Book III, Chap. III, para. 85, of this Counter-Memorial.

<sup>2</sup> U.G. 21—1924, p. 12.

<sup>3</sup> U.G. 25—1936, paras. 258-260, p. 44.

<sup>4</sup> U.G. 31—1937, para. 256, p. 43.

<sup>5</sup> U.G. 25—1938, para. 320, p. 55.

<sup>6</sup> U.G. 20—1939, para. 343, p. 50.

suitable and, in the interests and with the concurrence of the members of the tribe, he was deposed. At the request of the residents he was replaced by two headmen elected by them.

102. Provision was made in the Natives Trust Funds Proclamation of 1939<sup>1</sup> for the creation of a Nama Tribal Trust Fund. The members of the group have, however, thus far been opposed to its creation, and consequently a Nama Tribal Council cannot be convened under the provisions of the Proclamation. Informal meetings have nevertheless been held with representatives of the group, and have served to teach the representatives the principles of the functioning of a representative body and to keep the authorities informed of the wishes of the group as a whole.

### THE DAMA

103. Dama factions were occupying the Okombahe reserve under the leadership of a chief, when Respondent took over the administration of the Territory.

This position was left unchanged, but subsequently a Reserve Board consisting of six members was appointed to assist the superintendent.

When other reserves were set aside, members of the Dama group took up residence in the Neuhof, Tses, Franzfontein, Gibeon (Kranzplatz) and Eastern reserves, and were given representation on the Reserve Boards. Furthermore, a portion of Otjimbingwe in the Karibib district was set aside for other Dama, and they have since then had their own headman and three representatives on the Reserve Board to look after their interests.

At a later stage the Aukeigas reserve was set aside for Dama, but it was subsequently found to be too small for their needs and otherwise unsuitable, and with their concurrence the residents were moved to an extension of the Okombahe reserve. One member of the Board of Okombahe has been appointed to represent their interests.

104. In an effort to build up a tribal community from a number of disjointed units, and at the unanimous request of the Dama in the reserves, a new leader with the official title of *Opperhoof* (Supreme Chief) was appointed a few years ago. The incumbent has since proved active in working in the interests of the Dama and in developing a tribal spirit amongst them.

105. Provision was made in the Natives Trust Funds Proclamation of 1939<sup>2</sup> for the creation of a Dama tribal trust fund, and the necessary government notice to this end was issued some years ago<sup>3</sup>. Even before that time, meetings had been held regularly with representatives of this group as if they constituted the Dama Tribal Council in terms of the proclamation, and since, meetings have been held with the properly constituted council.

<sup>1</sup> *Proc. No. 23 of 1939 (S.W.A.), in The Laws of South West Africa 1939, pp. 222-232.*

<sup>2</sup> *Vide para. 92, supra.*

<sup>3</sup> *G.N. No. 1828 of 1958 (S.A.), in Government Gazette (S.A.), Vol. CXCIV, No. 6148, 5 Dec. 1958, p. 26.*

## H. Future Development

106. Respondent has given an account of the basic aspects and aims of its policies in South West Africa <sup>1</sup>. More specifically with reference to political development, Respondent contemplates an evolutionary growth of the traditional institutions of the various groups in a manner which would permit each to develop towards possible self-determination without, in the process, preventing self-determination by others.

The success of Bantu authorities in South Africa has suggested that a similar system may fruitfully be applied in the Territory—naturally with the adaptations necessary to render it best suited to the peculiar circumstances and conditions of the Territory and its peoples. Consequential amendments in the system pertaining to the White group may also be necessary, in order to avoid overlapping in what can now become more strictly parallel processes of development. All these matters form part of the topics under consideration by the Odendaal Commission, which was appointed precisely because Respondent considers the time to be ripe for accelerated advancement in these spheres <sup>2</sup>. As soon as the Commission's report is available, Respondent will give immediate further attention to the matter, and will proceed as fast as is practicable with the development of the political institutions of the Natives, towards attainment of the ultimate aims and ideals of the sacred trust.

### I. Respondent's Reply to Applicants' Allegations (Memorials)

107. In the succeeding paragraphs Respondent will deal with the allegations contained in paragraphs 78 to 87 and 114 to 127 of Chapter V of the Memorials <sup>3</sup> under the headings "Background Information", "Suffrage", "Participation in the Territorial Government", and "Government within the Native Tribes and Native Reserves", as well as with the charges formulated on the strength of such allegations in paragraph 128 (1), (2), (5) and (6) of the same Chapter <sup>4</sup>.

#### PARAGRAPHS 78-85 OF CHAPTER V <sup>5</sup>

108. Save for certain errors dealt with below, Respondent does not dispute the background information tendered by Applicants in these paragraphs. Respondent, however, states that this information is wholly inadequate for the purpose of considering the situation with regard to suffrage and participation in government in the Territory in proper perspective. Information relevant to this purpose has been adduced by Respondent in the foregoing parts of this Chapter and in earlier Chapters to which reference has been made therein, and the specific allegations of Applicants should be read against the background of the factual information supplied by Respondent.

109. In paragraph 84 <sup>6</sup> Applicants allege that legislative powers which

<sup>1</sup> *Vide* Book IV, Chaps. IV to VII, of this Counter-Memorial.

<sup>2</sup> *Ibid.*, Chap. VII, para. 35, of this Counter-Memorial.

<sup>3</sup> I, pp. 131-135 and 139-142.

<sup>4</sup> *Ibid.*, pp. 142-143.

<sup>5</sup> *Ibid.*, pp. 131-134.

<sup>6</sup> *Ibid.*, p. 133.

were withdrawn from the Governor-General and the Administrator in 1949 were "restored" by the South West Africa Affairs Amendment Act, 1951<sup>1</sup>. The impression created is not correct. Such legislative powers, which were abrogated by Act No. 23 of 1949 from a date to be proclaimed, lapsed on 17 October 1951<sup>2</sup>. On the same day, however, the Governor-General was vested with powers to legislate by proclamation by Act No. 55 of 1951<sup>2</sup>, and there was therefore no break in the existence of the powers and no restoration in such sense.

In the same paragraph, when dealing with the alleged "highly significant" transfer of administration of Native Affairs, Applicants state that the control over such administration "passed from the Administrator to the Union Minister of Native Affairs (and the Governor-General)"<sup>3</sup>. And in paragraph 85, Applicants state that "powers originally held by the Administrator were passed on to the Governor-General of the Union . . ."<sup>4</sup>.

These statements tend to create a wrong impression. The administration of Native Affairs has at all times been under the direct control of Respondent's Government, the power of administration having been vested in the Governor-General, who delegated such powers to the Administrator as a representative of Respondent's Government, and acting under the latter's instructions<sup>5</sup>. There was no question of powers "originally held" by the Administrator being "passed on" to the Governor-General. The effect of the transfer was merely this: whereas before 1955 the Governor-General-in-Council controlled and directed the administration of Native Affairs through its representative, the Administrator, the Governor-General-in-Council after 1955 controlled and directed such administration through another representative, the Minister of Native Affairs (now designated the Minister of Bantu Administration and Development)<sup>6</sup>.

#### PARAGRAPHS 86 AND 87 OF CHAPTER V<sup>7</sup>

110. In paragraph 86 Applicants deal with the rights of suffrage *within the Territory*. The material point emphasized by Applicants in the paragraph is that only White persons are allowed to vote at an election of members of the Legislative Assembly. And in paragraph 87 Applicants allege that non-Whites are excluded by law from serving as members of the Legislative Assembly, the Executive Committee or of the South African Parliament and excluded by practice from being appointed as Administrator of the Territory.

Respondent does not dispute the allegations in the paragraphs under consideration, but wishes to point out that these allegations concern only political institutions devised and intended solely for the White population group. As has been pointed out, the various population groups were and are at different stages of development, and justice can

<sup>1</sup> Act No. 55 of 1951 in *Statutes of the Union of South Africa 1951*, pp. 404-408.

<sup>2</sup> *Vide* para. 34, *supra*.

<sup>3</sup> I, pp. 133-134.

<sup>4</sup> *Ibid.*, p. 134.

<sup>5</sup> *Vide* para. 14, *supra*.

<sup>6</sup> *Vide* para. 35, *supra*.

<sup>7</sup> I, pp. 134-135.

not be done to the legitimate aspirations of the various groups, *inter alia*, in the governmental sphere, by ignoring these differences. Provision has therefore been made for the development of indigenous political institutions along lines familiar to the groups concerned and rooted in their traditions and culture<sup>1</sup>, while members of the White group participate in a form of government which is in keeping with their political and cultural background and experience. Thus the threat of domination of some by others is obviated, and the way is paved for further separate development towards possible self-determination for each.

#### PARAGRAPHS 114, 115, 125, 126 AND 127 OF CHAPTER V

111. In these paragraphs<sup>2</sup> the Applicants set out the links that have been established between the indigenous groups and the legislative and administrative organs of Respondent. These allegations are not disputed, but reference should be made to the above description<sup>1</sup> of the development that has taken place in the field of government of the indigenous groups.

#### PARAGRAPHS 116, 117 AND 118 OF CHAPTER V

112. In paragraph 116 of Chapter V of the Memorials<sup>3</sup> the Applicants refer to some of the powers conferred on the Administrator under section 1 of the Native Administration Proclamation of 1928 (S.W.A.)<sup>4</sup>. In terms of this section, in so far as it is relevant, the Administrator<sup>5</sup> is empowered:

- (a) to recognize or appoint any person as a chief or headman in charge of a tribe, etc.;
- (b) to remove any chief or headman found guilty of a political offence or for incompetency or for other just cause, and to order his removal to some other part of the Territory;
- (c) to define the boundaries of the area of any tribe or of a location;
- (d) to divide existing tribes into two or more parts or amalgamate tribes or parts of tribes into one tribe or constitute a new tribe;
- (e) to order the removal of any Native tribe or individual from any place to any other place in the Territory, whenever he deems it expedient in the general public interest; and
- (f) to exercise all political power and authority which, according to Native law and custom, are held by a supreme or paramount Native chief.

113. The powers set out in (c), (d) and (e) above, are again referred to by the Applicants in paragraph 139 of the Memorials<sup>6</sup>, and will be dealt with in Respondent's reply to the said paragraph<sup>7</sup>. It will be shown that these powers, as also the other powers conferred by section 1 of the

<sup>1</sup> *Vide* paras. 38 ff. *supra*.

<sup>2</sup> I, pp. 139, 141 and 142.

<sup>3</sup> *Ibid.*, pp. 139-140.

<sup>4</sup> *Proc.* No. 15 of 1928 (S.W.A.) in *The Laws of South West Africa 1928*, pp. 58-85.

<sup>5</sup> Now the State President: *vide* Act No. 56 of 1954 in *Statutes of The Union of South Africa 1954*, pp. 559-565.

<sup>6</sup> I, pp. 146-147.

<sup>7</sup> *Vide* Book VI, Chap. III, paras. 121 ff., of this Counter-Memorial.

Proclamation, correspond to those enjoyed by any Native chief in South Africa or South West Africa, by virtue of Native law and custom, in relation to headmen and tribesmen subservient to him, and that it was necessary for the system of tribal government under the control of a modern head of State to recognize a supreme chief in charge of all chiefs and headmen, and to confer such powers upon him <sup>1</sup>.

114. As regards the powers set out in (a) and (b) above, it was necessary, in the interests of the preservation and development of indigenous political institutions, to make provision not only for the appointment, but also for the deposition and removal, of chiefs and headmen.

As already stated <sup>2</sup>, hereditary chiefs were in control of certain tribes in the Territory when Respondent took over the administration of the Territory. Most of these chiefs had had very little contact with modern civilization, and were actively encouraging practices such as witchcraft, child marriage, etc., which Respondent was obliged to eliminate in terms of the provisions of the Mandate.

It was moreover foreseen that some chiefs and headmen—especially those in the remoter regions of the Territory, who had not previously been subject to any control—might resent Respondent's control as Mandatory and might become involved in seditious conduct. It was consequently necessary to confer on the Administrator the power to depose and remove chiefs found guilty of political offences.

115. The necessity of providing for the powers under consideration, is illustrated by the following instances in which they have been invoked:

(a) During 1934 there were complaints by the Tjimba in the Kaokoveld that one of the Herero headmen had treated them harshly and unjustly. After a full investigation, at which the complaints were clearly proved, it came to light that the headman's actions had even caused friction among the Herero themselves. The Administrator was consequently obliged to remove him. This brought about a considerable improvement in inter-tribal relations, as will appear from the following extract from the 1935 annual report:

"314. There has been considerable improvement since the removal of Headman Thomas Mutate, whose harsh and unjust treatment of the Ovatjimba gave constant rise for complaint on the part of the latter and at the same time caused friction between the Hereros themselves <sup>3</sup>."

(b) In 1938 it became necessary to depose Chief S. Mamili of the Eastern Caprivi Zipfel for the reasons set out in the 1938 annual report:

"He had been warned on several occasions against practising witchcraft, but he ignored all these warnings. In many other ways too he had proved himself quite unfitted to rule the tribe. As there is no suitable person to take his place as Chief, the Administration has decided to substitute a board of six headmen, and nominations for the filling of these posts are now under consideration <sup>4</sup>."

In 1939 the chief was re-instated at the request of some of the headmen and members of his tribe.

<sup>1</sup> *Vide* Book VI, Chap. III, para. 133, of this Counter-Memorial.

<sup>2</sup> *Vide* paras. 40 ff., *supra*.

<sup>3</sup> *U.G.* 25—1936, para. 314, p. 47.

<sup>4</sup> *U.G.* 20—1939, para. 420, p. 57.

- (c) Reference has already been made<sup>1</sup> to the harsh methods applied by Chief Ipumbu of Ovamboland, which compelled the Administrator to depose him in 1932. The effect of his removal was thus stated in the 1932 annual report: "Since the removal of Ipumbu an atmosphere of peace prevails throughout Ovamboland<sup>2</sup>."
- (d) Reference has also been made<sup>3</sup> to the circumstances under which the chief of the Nama in the Berseba reserve was deposed with the concurrence of members of his tribe.
- (e) In 1933 it was discovered that a chieftainess of the Okavango Native Territory had been aware of cases of child marriage in her tribe, and had actually condoned this practice. Although she was not deposed, she was punished by having payment of her stipend<sup>4</sup> stopped for six months, and this action had a salutary effect.

116. The case of Chief Ipumbu<sup>5</sup> may also be used to illustrate the necessity of providing for the removal of a deposed chief from the tribal area. Had Ipumbu been allowed to remain in his tribal area, there would have been divided loyalty in the tribe—because of his being of "royal" blood—and clashes would in all probability have occurred. In this regard the Native saying "you cannot have two bulls in one kraal" is apposite.

117. The powers under section I of the Proclamation as regards chiefs are now vested in the State President, while those in respect of headmen are vested in the Minister of Bantu Administration and Development<sup>6</sup>.

118. As has been pointed out<sup>7</sup>, all headmen are elected by the residents of their reserves, and their appointment is usually a mere formality. In terms of the provisions of the regulations framed under the Proclamation<sup>8</sup> a public enquiry before some senior official is always ordered if charges are made against a headman. At such enquiry the headman is told that he is at liberty to cross-examine all witnesses testifying against him, to give evidence himself and to bring supporting evidence in his defence. The matter is, therefore, not disposed of summarily, but only after careful investigation and with the support of the majority of the members of the reserve.

As far as can be established, the power to order the removal of a deposed headman has never been exercised. Not possessing any support from a hereditary point of view, such a deposed headman is not likely, by his presence, to be a danger to peace and good order in the reserve.

119. The fact that decisions under this Proclamation are taken at the highest level and only after careful investigation, consultation and consideration, affords substantial protection against arbitrary action and abuse of the powers conferred by the Proclamation. It is, therefore, not surprising that no instances of abuse of the powers conferred or of

<sup>1</sup> *Vide* para. 46, *supra*.

<sup>2</sup> *U.G.* 16—1933, para. 417, p. 75.

<sup>3</sup> *Vide* para. 101, *supra*.

<sup>4</sup> Stipends were at that time paid to chiefs in the Okavango. Subsequently the practice was discontinued with the concurrence of the chiefs.

<sup>5</sup> *Vide* para. 115 (c), *supra*.

<sup>6</sup> Act No. 56 of 1954 in *Statutes of the Union of South Africa 1954*, pp. 559-565 and *Proc.* No. 119 of 1958 in *The Laws of South West Africa 1958*, pp. 133-141.

<sup>7</sup> *Vide* paras. 48 and 90, *supra*.

<sup>8</sup> By virtue of G.N. No. 60 of 1930 (S.W.A.), in *The Laws of South West Africa 1930*, pp. 418-425.

arbitrary action have ever occurred, or that the Applicants have been unable to refer to a single instance of this nature.

120. In paragraph 117 of Chapter V of the Memorials<sup>1</sup> the Applicants refer to section 2 of the Proclamation in terms of which the Administrator (now the State President) is not subject to a court of law for or by reason of, *inter alia*, any exercise of the powers conferred by section 1. Section 2 is again referred to by the Applicants in paragraph 139 of Chapter V of the Memorials<sup>2</sup> and will be dealt with in Respondent's reply to the said paragraph<sup>3</sup>.

121. In paragraph 118 of Chapter V of the Memorials<sup>1</sup> the Applicants create the impression that the Administrator may delegate his powers to Native commissioners and magistrates. This is not the case, as section 3 of the Proclamation merely provides that the "orders and directions" of the Administrator "may be carried into execution by or under the supervision" of the officials named by the Applicants.

#### PARAGRAPH 119 OF CHAPTER V

122. The powers mentioned in this paragraph<sup>1</sup> are again referred to in paragraph 138 of Chapter V of the Memorials<sup>1</sup>. In replying to the latter paragraph Respondent will show that these powers were conferred in the interests of the Natives<sup>2</sup>.

#### PARAGRAPH 120 OF CHAPTER V

123. The allegations contained in this paragraph<sup>1</sup> are not disputed, although it may be pointed out that there are actually 18 magisterial districts in the Police Zone. In 17 of these districts the magistrate serves *ex officio* as Bantu Affairs Commissioner, and in the 18th district, Grootfontein, because of the importance of Native administration in that district, a full-time Bantu Affairs Commissioner undertakes the administration of Native Affairs.

The aspect of the control of Native administration within urban areas will be dealt with in Respondent's reply to the Applicants' allegations under the heading "Local Government"<sup>6</sup>.

#### PARAGRAPHS 121 AND 122 OF CHAPTER V

124. The statements in these paragraphs<sup>7</sup> are correct, save that all posts of welfare officers have been converted into those of superintendents, and that the headman is *always*, and not *ordinarily*, as stated by the Applicants, a Native. The whole system of indigenous political institutions has been set out above<sup>8</sup>, and the statements in the paragraphs

<sup>1</sup> I, p. 140.

<sup>2</sup> *Ibid.*, pp. 146-147.

<sup>3</sup> *Vide* Book VI, Chap. III, paras. 140-145, of this Counter-Memorial.

<sup>4</sup> *Ibid.*, p. 146.

<sup>5</sup> *Vide* Book VI, Chap. III, paras. 115-120, of this Counter-Memorial.

<sup>6</sup> *Vide* Chap. III, *infra*.

<sup>7</sup> I, pp. 140 and 141.

<sup>8</sup> *Vide* paras. 38 ff., *supra*.

under consideration should be read in the light of the background sketched and the fuller information there furnished.

125. As regards the power to dissolve a Reserve Board and to dismiss its members, it has been conferred for similar reasons as in the case of the powers to depose Native chiefs and headmen<sup>1</sup>. To date no Reserve Board has ever been dissolved, and it is unlikely that the power will be invoked in the future unless a Board refuses to function at all. The power to dismiss a member has been made use of very sparingly, and only after the receipt of complaints from the residents of a reserve followed by a public enquiry held by an official.

#### PARAGRAPH 123 OF CHAPTER V

126. The allegations contained in this paragraph<sup>2</sup> are disputed, since the headmen and the members of the Native Reserve Boards do not in fact represent the sole participation of Natives in the administration of the reserves, nor are they "wholly under the control of the 'European' officials".

127. As has been explained<sup>3</sup>, the ordinary tribesmen are encouraged to participate in the management of their own affairs by being given every opportunity to speak at meetings in the reserves and to discuss and make suggestions for the inclusion of items in the draft estimates of their reserve trust funds. Then, too, the practice was initiated of holding separate annual meetings of the representatives of the Herero, Dama and Nama.

Although it is correct that magistrates<sup>4</sup> have general control of the Native reserves, these officials have consistently encouraged the headmen and the residents to assume full responsibility for the proper control of their reserves, and where such responsibility has been assumed, the superintendent concerned merely supervises their actions.

#### PARAGRAPH 124 OF CHAPTER V

128. The first sentence of this paragraph<sup>2</sup> refers, *inter alia*, to the guidance, supervision and control exercised in respect of the functioning of indigenous political institutions in the reserves outside the Police Zone. As has been explained<sup>5</sup>, the officials appointed by Respondent in the northern areas function largely in an advisory capacity, and for all practical purposes the tribes concerned govern themselves, at least internally.

129. The latter portion of the paragraph under consideration merely contains a repetition of certain provisions of section 1 of the Native Administration Proclamation, which are also set out in paragraph 116 of Chapter V of the Memorials, and which have been dealt with in Respondent's reply to that paragraph<sup>6</sup>.

<sup>1</sup> *Vide* para. 114, *supra*.

<sup>2</sup> I, p. 141.

<sup>3</sup> *Vide* paras. 84 ff., *supra*.

<sup>4</sup> In the district of Grootfontein the full-time Bantu Affairs Commissioner.

<sup>5</sup> *Vide*, e.g., paras. 56 and 57, *supra*.

<sup>6</sup> *Vide* para. 112, *supra*.

## PARAGRAPH 128 (1), (2), (5) AND (6) OF CHAPTER V

130. The charges contained in these sub-paragraphs<sup>1</sup> have been set out in paragraphs 2 and 3 of this Chapter, and need not be repeated.

The charges emanate in part from the premise that the whole population is to be treated as an integrated unit, with identical rights for all, in the sphere of political activity. Respondent has demonstrated that this premise is wholly unfounded, in fact and in law<sup>2</sup>, and that Applicants have made no attempt to substantiate or even explain it with reference to the classification of South West Africa as a "C" Mandate, the diversity, stages of development and other factual conditions pertaining to its peoples, or the likely effect of such an approach, if adopted, on the well-being and progress of such peoples<sup>2</sup>.

In part the charges proceed from ignoring, or failing to appreciate, the significance of the manner in which systems of self-government amongst the indigenous groups, rooted in their traditions and culture, have been fostered, shaped and developed, so as to form an appropriate basis for adaptation to further development towards possible self-determination for each group.

Upon removal of these fundamental errors in the approach adopted by Applicants, it will be perceived that no basis remains for the crucial charge that Respondent deliberately and in bad faith "prevents the possibility of progress by the 'Native' population toward self-respect, responsibility or skill in any aspect of citizenship or government"<sup>3</sup>.

Respondent respectfully submits that its exposition of the policies applied in South West Africa, of the political institutions of the various groups, and of the policy and steps under way for further development towards appropriate self-realization, with justice for all, in the political sphere, amply demonstrates that the above charges on Applicants' part are unfounded and without substance, and that the same applies to the further assertion that Respondent "offers no horizon of hope to the 'Native' population"<sup>4</sup>.

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<sup>1</sup> I, pp. 142-143.

<sup>2</sup> *Vide* paras. 7 and 8, *supra*, and earlier passages there referred to.

<sup>3</sup> I, para. 128 (6), p. 143.

<sup>4</sup> *Ibid.*, para. 190, p. 162.

## CHAPTER II

### GENERAL ADMINISTRATION (CIVIL SERVICE)

#### A. Introductory

1. Applicants' charge in this regard is that "At the administrative levels of the Government of the Territory, in the Public Service, the participation of the 'Natives' is minimal. With few exceptions, 'Natives' are confined to the lowest levels of employment, involving neither skill nor responsibility"<sup>1</sup>. Applicants allege that:

"In sum, by law and by deliberate and consistent practice, the Mandatory has failed to promote to the utmost the development of the preponderant part of the population of the Territory in regard to . . . participation in any aspect of government. It has not only failed to promote such development to the utmost, it has made no notable effort to do so. To the contrary, the Mandatory has pursued a systematic and active program which prevents the possibility of progress by the 'Native' population toward self-respect, responsibility or skill in any aspect of citizenship or government, whether Territorial or local or tribal"<sup>2</sup>.

2. Applicants further allege that Respondent has "deliberately, systematically and consistently, . . . discriminated against the 'Native' population of South West Africa . . ."; that Respondent "has thwarted the well-being, the social progress and the development of the people of South West Africa throughout varied aspects of their lives . . ." including territorial government at the administrative levels; that "The grim past and present reality in the condition of the 'Natives' is unrelieved by promise of future amelioration", and that Respondent "offers no horizon of hope to the 'Native' population"<sup>3</sup>.

3. In dealing with the factual basis on which these conclusions are sought to be founded, Applicants allege<sup>4</sup> that the general administration of the Territory is governed by the Public Service and Pensions Act, 1923<sup>5</sup>, as applied to the Territory. They point out that the public service of the Territory and that of South Africa constitute a single integrated service, but that the salaries and allowances of those officials assigned to duty within the Territory, are paid by the Territory<sup>6</sup>.

4. Applicants state that the public service includes "all persons in the employment of the Government of the Union . . . or of the mandated territory" and that it is divided into five main divisions, which are set out<sup>6</sup>. The Memorials proceed that "the Public Service, *in the strict sense*, does not include the Administrator of the Territory, persons employed in the Railway Administration, teachers serving under the Adminis-

<sup>1</sup> I, para. 128 (3), p. 142.

<sup>2</sup> *Ibid.*, para. 128 (6), p. 143.

<sup>3</sup> *Ibid.*, para. 190, p. 162.

<sup>4</sup> *Ibid.*, para. 88, p. 135.

<sup>5</sup> Act No. 27 of 1923, in *Statutes of the Union of South Africa 1923*, pp. 256-369.

<sup>6</sup> I, para. 89, p. 135.

tration of the Territory, part-time or temporary employees, or any other person whose post may be excluded by the direction of the Governor-General" <sup>1</sup>. (Italics added.)

5. Applicants allege that, in terms of the Public Service and Pensions Act, 1923, only a South African citizen, a citizen of a Commonwealth country or a citizen of the Republic of Ireland, are qualified for appointment to the public service, and then only after three years' residence in South Africa or in the Territory <sup>2</sup>. After stating that in practice participation by Natives in the general administration does not appear to be excluded, they allege that "With few exceptions, however, their participation appears to be confined to the lowest and least skilled categories" <sup>3</sup>. With reference to the territorial budgets for 1946-1954, Applicants allege that the extracts given by them are a "fair sample" of what they call a "... practice of 'job-reservation' for Natives" in the various departments, branches and divisions of the public service <sup>3</sup>. Then follows a list of such extracts relative to the following departments of the Public Service:

- (a) Agriculture;
- (b) Customs and Excise;
- (c) Works, Buildings Branch;
- (d) Justice—three branches of this department;
- (e) Lands, Deeds and Surveys; and
- (f) Posts and Telegraphs <sup>4</sup>.

6. With a view to proper perspective, certain background and supplementary information requires to be furnished prior to specific replies being given to the various allegations.

### **Bi The Position Prior to the Inception of the Mandate**

7. Under the German colonial regime the government of the Territory was entirely in the hands of White German officials, except for a minimal employment of Natives in the police force and as messengers and labourers in various other departments.

The Native population was almost entirely illiterate and, by reason of outlook resulting from traditional systems of government, unsuited for employment in the civil service of the Territory. When Respondent assumed the Mandate, the Native population therefore formed no part of, and had no training or experience in, any of the branches of the public service.

### **C. General Policy**

8. The general administration or civil service is a sphere in which particular significance attaches to the contemplation of the Covenant that the Territory "... can be best administered under the laws of the Mandatory as integral portions of its territory" <sup>5</sup>, and to the corres-

<sup>1</sup> I, para. 94, p. 136.

<sup>2</sup> *Ibid.*, para. 95, p. 136.

<sup>3</sup> *Ibid.*, para. 96, p. 136.

<sup>4</sup> *Ibid.*, paras. 97-105, pp. 136-137.

<sup>5</sup> Art. 22 (6) of the Covenant.

ponding provision of the Mandate that the Mandatory "... may apply the laws of the Union of South Africa to the territory, subject to such local modifications as circumstances may require"<sup>1</sup>.

9. On assuming the Mandate Respondent sought to carry out its obligations to promote to the utmost the material and moral well-being and social progress of the inhabitants of the Territory through a system of indirect rule, as far as this was practicable, in regard to the indigenous inhabitants. This policy entailed recognition of the traditional systems of government of the various groups. And where the traditional systems of government had been impaired—and often completely destroyed—prior to Respondent's assumption of the Mandate, Respondent sought, in the first place, to re-establish such governmental institutions.

At the same time Respondent sought to encourage members of the non-White population groups to enter the civil service and to acquire the educational standards required for advancement in the service—particularly in those aspects of the service in which such persons could play a useful and even leading part in the development, progress and advancement of their own population groups. At first progress was, inevitably, slow, but already the efforts of Respondent in the past are beginning to bear fruit, and, as will be shown later on, ever-increasing numbers of non-Whites are being absorbed in various branches of the Service. The fact that today practically all of the most senior posts in the Service are still occupied by White officials, does not, as will be shown, reflect a policy of suppression of, or unfair discrimination against, the Native peoples, but is due to the historical factors to be dealt with below.

10. In view of the differences between the various population groups, and their past history, it has not been practicable to treat the inhabitants as one integrated nation for administrative purposes. As Lord Hailey has stated:

"At the inception of the Mandatory system the position of the native peoples presented problems which were peculiar to the territory, and for which it would not be easy to find a parallel in the other Mandated territories in Africa. . . . They are differences due not only to the character and traditions of the native peoples, but to the physical conditions which must determine their economic development"<sup>2</sup>.

11. Respondent, therefore, considered it to be in the best interests of all the inhabitants of the Territory to treat each group as a separate entity for administrative purposes as far as this appeared to be feasible. In the case of the White group, this meant offering them opportunities of employment in a civil service as known to them in their countries of origin. In the case of the Native peoples, to whom such a service was an unknown thing, it meant beginning with due recognition of their traditional systems of government, guided and assisted where necessary by White officials, and to promote suitable development as from that starting point.

The guidance of such White officials in the Native Reserves has been

<sup>1</sup> Art. 2 of the Mandate for German South West Africa.

<sup>2</sup> Lord Hailey, *A Survey of Native Affairs in South West Africa* (1946) [unpublished], p. 3.

directed primarily towards the modification and adaptation of the traditional systems of government, where necessary or desirable, to meet the exigencies of a modern and changing world. The role of such officials is purely of a transitional character and Respondent hopes that it will be possible to dispense progressively with these White officials in the administration of the Native areas, until they are replaced altogether by members of the groups concerned.

12. This policy was stressed, with particular reference to the public service, by Respondent's Minister of Bantu Administration and Development in a debate in the House of Assembly during 1961. Although he was referring to Respondent's policy in the Republic of South Africa, this coincides in the respect under consideration with Respondent's policy in South West Africa. The Minister said:

"... we wish to guide these various national groups as rapidly as possible towards managing their own affairs... I should like to see them building up their own public service as rapidly as possible so that the various aspects of their national life can be handed over to them so that they can control them themselves<sup>1</sup>."

13. When Respondent assumed the Mandate, there were very few Native inhabitants of the Territory who could participate effectively in the general administration of the Territory. Their stage of development was not such that they could qualify to fill any of the responsible posts in the public service, and consequently White officials had to be used.

In order, however, to encourage the Native people to participate in the administration of the Territory, and more particularly to progress more rapidly towards the eventual management of their own affairs, Respondent adopted the policy adumbrated above. Not only did this policy have the effect of giving preference to members of a particular group when it came to appointments to posts designed to serve that group, but it also served to minimize racial or group prejudice and friction which tend to arise in certain situations where members of one group exercise authority over members of another.

Moreover, if this policy had not been pursued, non-White candidates would probably not have qualified for appointment to most of the public service posts in the Territory.

14. In order to maintain an efficient civil service adequately to serve the needs of the inhabitants, a certain educational standard must be required of a civil servant, and such standards have in fact been laid down, as will appear hereafter. One of the factors which, in the past, has made it difficult for Respondent to absorb more Natives into the public service of the Territory, has been the lack of proper educational qualifications among prospective candidates. In order to overcome this difficulty Respondent encourages Native students to acquire the requisite qualifications, as will appear more fully in that portion of this Counter-Memorial dealing with education. Respondent has also, as will be shown, set a lower standard of educational requirements for Natives in certain instances so as to encourage and enable them to enter the public service.

15. The basic outlook on life arising from traditional and customary modes of living, has made it difficult for the Native peoples readily to

<sup>1</sup> *U. of S.A., Parl. Deb., House of Assembly, Vol. 1 (1961), Col. 7995.*

adjust themselves to the exigencies of an efficient civil service designed to meet the needs of a progressive modern society. The transition from the erstwhile African way of life to the present form of society, inevitably involves a considerable problem of personality adjustment for the Natives concerned—a problem which has exercised Respondent's mind in the past and which will continue to require careful thought and experimentation, as well as co-operation between Respondent and Native leaders. Respondent hopes that an educative process on a broad scale will contribute largely to a gradual solution of this problem.

#### 6 D. The Public Service Act

16. The Public Service and Pensions Act, 1923, referred to by Applicants in their Memorials has been repealed and superseded by the Public Service Act, 1957<sup>1</sup>. This Act does not govern "... all persons in the employment of the Government of the Union . . . or of the mandated territory" as alleged<sup>2</sup>, inasmuch as there are large numbers of public servants appointed by the South West Africa Administration and paid from administration funds who do not fall under the Public Service Act. That part of the public service of the Territory, however, which is subject to the Public Service Act, 1957, does form an integral part of the public service of the Republic of South Africa, despite the fact that, while serving within the Territory, the salaries of the public servants concerned are paid by the Territory. Those public servants who do not fall under the Public Service Act do not form an integral part of the public service of the Republic of South Africa. They nevertheless require to be taken into account relative to Applicants' charges that Respondent is deliberately thwarting progress on the part of the Native inhabitants at the administrative levels of the Government of the Territory<sup>3</sup>.

#### E. The Public Service Commission

17. Section 11 (3) of the Public Service Act, 1957, provides that:

"In the filling of any post or the making of any appointment in the public service, due regard shall be had to the qualifications, relative merit, efficiency and suitability of the persons who are eligible for promotion, transfer or appointment<sup>4</sup>."

18. These injunctions fall to be carried out by a body known as the Public Service Commission, which is an independent body created by the Act and primarily responsible for maintaining the high standard of proficiency required for the proper working of an efficient civil service<sup>5</sup>. The Commission, *inter alia*, makes recommendations regarding the establishment or abolition of departments in the service; the number and grading of posts on the fixed establishment; and the scales of salaries, wages and allowances of the various classes and grades of officers and

<sup>1</sup> Act No. 54 of 1957, in *Statutes of the Union of South Africa 1957*, Part II (Nos. 45-83), pp. 794-859.

<sup>2</sup> I, para. 89, p. 135.

<sup>3</sup> *Vide* paras. 1-2, *supra*.

<sup>4</sup> Act No. 54 of 1957, sec. 11 (3), in *Statutes of the Union of South Africa 1957*, Part II, pp. 820-822.

<sup>5</sup> *Ibid.*, sec. 4, p. 802.

employees. It also recommends particular people for appointment or promotion to posts in the civil service<sup>1</sup>. The actual appointment or promotion is, however, decided upon by the Minister of the department concerned or by the Administrator<sup>2</sup>, but subject to such conditions as the Public Service Commission may prescribe<sup>3</sup>.

#### F. Division of the Public Service under the Public Service Act, 1957

19. The "public service", which is governed by the Public Service Act, 1957, is divided, in terms of the Act, into the following seven divisions<sup>4</sup>:

- (a) Administrative Division;
- (b) Clerical Division;
- (c) Professional Division;
- (d) Technical Division;
- (e) General A Division;
- (f) General B Division;
- (g) The Services.

Certain qualifications have been laid down by the Public Service Commission for appointment to posts in the various divisions, and these requirements are generally insisted upon, save that Respondent has, in certain cases, reduced the necessary qualifications in order to appoint certain Native officers to particular posts. Such cases will be dealt with more fully hereafter and the reasons for Respondent's actions will be explained.

#### I. THE ADMINISTRATIVE DIVISION

20. The Administrative Division comprises the senior administrative posts in the public service, and posts in this division can only be filled by promotion from the clerical grades. Normally from 10 to 15 years must be served in such clerical grades before an officer is promoted to the Administrative Division

#### II. CLERICAL DIVISION

21. Candidates for appointment as clerks in the Clerical Division must have passed the Matriculation examination of the Joint Matriculation Board or an examination which is of a standard equivalent to or higher than the Matriculation examination<sup>5</sup>. Female typists in the clerical division are required to be in possession of a Junior—or equivalent—Certificate<sup>6</sup>, in addition to the Public Service Appointment Certificate in Typewriting or an equivalent typing qualification, i.e., a qualification requiring a standard of at least 35 words per minute.

<sup>1</sup> Act No. 54 of 1957, sec. 11 (3), in *Statutes of the Union of South Africa 1957*, Part II, pp. 808-812.

<sup>2</sup> *Ibid.*, sec. 10, p. 820.

<sup>3</sup> *Ibid.*, sec. 11, p. 820.

<sup>4</sup> Act No. 54 of 1957, *op. cit.*, sec. 3 (1), p. 800.

<sup>5</sup> This is the final school-leaving examination in South Africa and South West Africa.

<sup>6</sup> An examination two years below the Matriculation examination, also known as Standard VIII.

### III. THE PROFESSIONAL DIVISION

22. The Professional Division, as its name implies requires professional qualifications for appointment to its ranks. So, for example, a candidate is required to have at least a B.Sc. degree, with at least one major subject in the direction in which he seeks employment, before qualifying for entry into posts such as Assistant Professional Officer in Animal Husbandry, Biochemical Research, Dairying, Extension, Fisheries, Home Economics, Marine Research or Pastures and Soil-Chemistry. A candidate for appointment as an Engineer, Grade III (Civil or Mechanical), must have a recognized University degree in the appropriate direction or be an A.M.I.C.E.<sup>1</sup> So too, candidates wishing to enter the public service as architects or quantity surveyors are required to be in possession of a University degree, and to be registered with their respective Institute or Chapter.

### IV. TECHNICAL DIVISION

23. The Technical Division of the public service consists of technically trained officials who do not qualify for the professional group. It includes both skilled and semi-skilled workers. Candidates for entry into this Division require certain technical qualifications in the direction in which they seek employment. For example, a draughtsman (cartographic, civil or mechanical engineering, architectural or telecommunications) or a computer, requires a diploma (or equivalent qualification) in the appropriate field. Candidates in possession of a Matriculation certificate which includes mathematics and certain scientific subjects, can acquire the necessary qualifications for a permanent appointment by the successful completion of a four-year course of in-service training as a pupil technician.

### V. GENERAL DIVISIONS A AND B

24. All posts not classified under the other divisions of the public service mentioned above, or under the services<sup>2</sup>, fall into what is known as the General Division, which is itself divided into an A Division and a B Division. The main distinction between the two is that the holder of a post in the General B Division may be discharged from the service upon the recommendation of the Public Service Commission simply by the giving of a prescribed term of notice varying with the length of service, whereas an official in the General A Division may only be discharged for certain specified reasons or after an adverse finding at a departmental enquiry<sup>3</sup>.

25. The Public Service Commission determines which posts shall fall in the General A and which in the General B Division<sup>4</sup>, and does so on consideration of the nature of the work to be done and of factors of expediency regarding the method of discharging the incumbents. So,

<sup>1</sup> Associate Member of the Institute of Civil Engineers.

<sup>2</sup> *Vide* para. 26, *infra*.

<sup>3</sup> Act No. 54 of 1957, sec. 14 (9), in *Statutes of the Union of South Africa 1957*, Part II, pp. 830-832.

<sup>4</sup> Act No. 54 of 1957, *op. cit.*, sec. 3 (2), p. 800.

for example, principals of Bantu Youth camps, fingerprint officers, and labour officers are classified under the General A Division, while building clerks, cooks and fire officers fall under the General B Division.

## VI. THE SERVICES

26. The Services consist of the Permanent Defence Force, the Police Force and the Prisons Service. The Prisons Service in South West Africa, however, does not fall under the Public Service Act, 1957, but directly under the South West Africa Administration.

The normal requirements for a candidate seeking appointment in this branch of the Public Service are that he should be at least 16 years old and in possession of at least the Junior Certificate or its equivalent.

### G. Early Attempts by Respondent to Introduce Natives into the Public Service

27. The early attempts by Respondent to introduce Natives into the civil service generally, and the difficulties encountered in the process, are reflected in Respondent's annual reports to the League of Nations and in discussions of the Permanent Mandates Commission.

28. In 1925 Respondent reported that:

"Natives are employed in the Public Service as Interpreters and Messengers, but they are not sufficiently educated for employment in clerical posts. They are also employed in the Police <sup>1</sup>."

29. In 1928 Respondent stated:

"Certain posts in the public service are open to natives. They are enrolled as members of the South West Africa Police Force, are employed as warders in the prisons branch, and as native hospital assistants and posts as interpreters are filled by them. Native interpreters in magistrates offices usually perform minor clerical duties, but no natives occupy administrative posts in the public service <sup>2</sup>."

30. At a meeting of the Permanent Mandates Commission in 1935 it is recorded that Lord Lugard asked—

"whether any of the more intelligent natives in South West Africa knew Afrikaans or English and could qualify for subordinate posts under the Government; he noted that the magistrates had to use an interpreter".

Replying to the question Dr. Conradie, the then Administrator of South West Africa, said:

". . . some of the natives knew some English or Afrikaans or German; but they were not prepared to venture on a speech. Most of the magistrates did not know enough of the local language to converse with the natives in their district, and, in the case of speech, they found it best . . . to employ the services of an interpreter <sup>3</sup>."

31. Again in 1937 at a meeting of the Commission, M. van Asbeck asked whether there were any educated Natives occupying higher posts.

<sup>1</sup> U.G. 26—1926, p. 104.

<sup>2</sup> U.G. 22—1929, p. 7.

<sup>3</sup> P.M.C., *Min.*, XXVII, pp. 170-171.

Mr. Courtney Clarke, Respondent's accredited representative, replied in the negative, and went on to say that "There was a difficulty in obtaining educated natives even for such posts as interpreters and teachers" <sup>1</sup>.

32. The League of Nations was, therefore, kept informed of the difficulties with which Respondent had to contend in regard to introducing Natives into the general administration of the Territory. Despite these difficulties, however, Respondent has persisted in its efforts, and today a considerable improvement in the position exists, not only in the number of Natives in the public service, but also in the standard of their qualifications and consequent advancement in the service. Examples of such improvement are given below.

## H. Developments in Certain Specific Branches of the Public Service in General

### I. NATIVE AFFAIRS

#### (a) *General*

33. On assumption of the Mandate Respondent exercised its administrative functions in respect of Native Affairs through the Administrator of the Territory, assisted by an Advisory Council <sup>2</sup>. When the Legislative Assembly of the Territory was called into being <sup>3</sup>, the administration of Native Affairs was expressly excluded from its powers <sup>4</sup>. Respondent continued to exercise control in this regard through the Administrator acting as Respondent's representative and subject to Respondent's instructions. As from 1 April 1955 Respondent exercised this control mainly through its Minister of Native Affairs, now designated as the Minister of Bantu Administration and Development <sup>5</sup>, and consequently the Chief Bantu Affairs Commissioner, stationed at Windhoek, and all the officers employed by Respondent in the administration of Native Affairs, now fall under the direct control of the Secretary for Bantu Administration and Development in Pretoria.

#### (b) *Administration Outside the Police Zone*

34. Outside the Police Zone, where the traditional institutions and forms of government of the various Native peoples were still intact at the commencement of the Mandate, Respondent sought to govern through these institutions, with the guidance of individual Native Commissioners. No more than 17 White officials (four Native Commissioners, three Administrative officers, eight clerks and two Agricultural personnel) are employed by Respondent in the area outside the Police Zone. In this

<sup>1</sup> *P.M.C., Min.*, XXXI, p. 118.

<sup>2</sup> *Proc. No. 1 of 1921 (S.W.A.)*, in *The Laws of South West Africa 1915-1922*, pp. 493-495.

<sup>3</sup> Act No. 42 of 1925, sec. 1 (1), in *The Laws of South West Africa*, Vol. II (1923-1927), p. 2.

<sup>4</sup> *Ibid.*, secs. 25-26, pp. 14-16.

<sup>5</sup> Act No. 56 of 1954, in *Statutes of the Union of South Africa 1954*, pp. 559-565, and *Proc. No. 119 of 1958 (S.A.)*, in *The Laws of South West Africa 1958*, Vol. XXXVII, pp. 133-141.

area Respondent employs 483 Native officials, and recognizes a further 81 who act as chiefs, headmen or tribal councillors <sup>1</sup>.

35. Details of the policy adopted by Respondent in the areas outside the Police Zone were conveyed to the League of Nations in more than one of Respondent's annual reports. The following extract may be referred to in the annual report for 1928:

"In Ovamboland and on the Okavango River native chiefs and headmen control the natives under the guidance of the Native Affairs Officers of the Administration. Tribal law and custom are followed <sup>2</sup>."

36. In the discussion of this report at a meeting of the Permanent Mandates Commission, Mr. Werth, the then Administrator of South West Africa, in replying to a question from Lord Lugard concerning the staff of the Administration employed outside the Police Zone, said:

"The Commission would therefore see that the policy followed in Ovamboland at the moment was one of indirect government. The Administration employed there a few responsible men to advise the chiefs and to maintain their authority as the head of the tribe. The Officer-in-charge had about 50 natives on his staff to assist him <sup>3</sup>."

37. As has been shown above <sup>4</sup>, the number of Natives employed by Respondent in the administration of these areas—including the administration of the tribal trust funds—has increased considerably since 1928.

38. As recently as 1956 Lord Hailey referred to Respondent's system of administration of these areas, as follows:

"There is nowhere in the Union where the African is more self-sufficient in his way of life and less affected by contact with Europeans. The only lands held by Europeans are those occupied by missions; the number of European shops is reduced to a minimum. There is no poll tax. . . . Looking at the situation of these territories as a whole, the Native Commissioners appear to have achieved with success an unobtrusive system of personal rule <sup>5</sup>."

(c) *Administration Inside the Police Zone*

(i) *In the Native Reserves*

39. The system of indirect rule applied by Respondent to the Native areas outside the Police Zone, was also extended to the Native reserves within the Police Zone, as far as circumstances would permit of its practical application. This general policy was described to the League of Nations in Respondent's 1937 annual report, as follows:

<sup>1</sup> The officials mentioned are divided as follows: Amongst the Bushmen 1 White and 3 Natives; amongst the Ovambo 7 Whites and 107 Natives (including 3 chiefs and 18 headmen); in the Okavango 3 Whites and 366 Natives (including 5 chiefs and 2 headmen); in the Kaokoveld 3 Whites and 37 Natives (including 25 headmen); in the Eastern Caprivi 3 Whites and 51 Natives (including 2 chiefs and 26 councillors).

<sup>2</sup> *U.G.* 22—1929, p. 7.

<sup>3</sup> *P.M.C., Min.*, XIV, pp. 84-85.

<sup>4</sup> *Vide* para. 34, *supra*.

<sup>5</sup> Lord Hailey, *An African Survey*: Revised 1956 (1957), p. 437.

"The objective of the native affairs officers of the Administration in South West Africa has been as far as possible not to interfere with native organization or customs as far as they were not in conflict with good government, and to allow the native people to develop gradually, adopting European customs and methods in place of such of their own customs and habits as they are brought to realise from time to time are unsuitable to the changed conditions of life <sup>1</sup>."

40. Referring particularly to the conditions and administration of the Native reserves within the Police Zone, the same report said that:

"Inside the Police Zone, native affairs are administered by the Native Commissioners in each district and where there are native reserves in the district, a Welfare Officer is stationed in each reserve. . . .

These latter officers are provided with official motor transport and assisted by native interpreters and police. They furnish monthly reports to the Chief Native Commissioner through the local Native Commissioners . . . In the larger reserves they are assisted by European handymen paid out of the Trust Funds <sup>2</sup>."

41. Since 1937 the White handymen referred to in the report have been replaced by trained Native handymen, and additional Native artisans—e.g., masons, motor vehicle drivers, cooks and clinical assistants—have been added to the reserve staffs within the Police Zone.

At present Respondent employs 14 White officials, who act as superintendents of the various reserves, and whereas in 1937 there were 112 Native officials (who, however, included 30 headmen and 66 reserve board members) there are now 238 Native officials (who include 31 headmen and 74 reserve board members) <sup>3</sup>. In addition five White agricultural officers and five White superintendents of works attached to the office of the Chief Bantu Affairs Commissioner in Windhoek, are continuously employed to assist the Native peoples both within and outside the Police Zone.

42. In pursuance of Respondent's policy of treating the various groups as separate entities for administrative purposes as far as this proves practically feasible <sup>4</sup>, preference is given to members of the particular group when it comes to an appointment to a post designed to serve that group. Thus Herero are given preference in appointments to posts in the Herero reserves, Dama to those in the Dama reserves and Nama to those in the Nama reserves.

43. This policy is designed to enable each group as far as possible to administer its own affairs, and necessarily entails that the number of White officials must be progressively reduced as more and more

<sup>1</sup> U.G. 25—1938, para. 303, p. 50.

<sup>2</sup> *Ibid.*, paras. 283-284, p. 46.

<sup>3</sup> These officials are divided up as follows:

	In Herero Reserves	In Damara Reserves	In Nama Reserves	In Mixed Reserves	Totals
White Officials	8	1	2	3	14
Native Officials	87	11	18	17	133
Headmen	15	3	4	9	31
Reserve Board Members	35	7	11	21	74

<sup>4</sup> *Vide* paras. 11-13, *supra*.

Native candidates become available to fill these posts. Furthermore, as the various groups progress economically, more administrative and technical posts will have to be created, which will likewise be made available to members of the respective groups intended to be served thereby.

(ii) *Outside the Native Reserves*

44. Within the Police Zone and outside the Native reserves the magistrates of 17 magisterial districts act *ex officio* as Bantu Affairs Commissioners, and there is at least one post on the staff of each of these magistrates designed to deal exclusively with Native affairs. These posts are available to, and will be filled by, properly qualified Natives as and when they become available. In the district of Grootfontein a Bantu Affairs Commissioner has been appointed and he has a staff of seven, of whom three are Natives.

So too, in Windhoek, where an Assistant Bantu Affairs Commissioner functions in addition to the magistrate, a staff of eight deals exclusively with Native affairs; and of them five are Native and three White officials.

(iii) *In the Urban Areas*

45. In the administration of Native affairs within the urban areas of the Territory, where such administration falls within the purview of the urban local authorities<sup>1</sup>, progressively more and more Natives are being appointed to posts involving ever-increasing responsibility. At present such urban authorities employ 66 White officials in the Native urban residential areas throughout the Territory and 358 Native officials. Of these latter, many are employed as municipal policemen—11 sergeants and 74 constables—office clerks, location foremen, location inspectors, social workers, nurses and drivers of municipal motor vehicles.

46. In all the instances mentioned above the number of Natives employed has increased considerably during the years, and so too has the standard of the posts occupied by Natives—posts formerly held by White officials. The reason for not employing even more Natives in the administration of their own affairs is a lack of suitably qualified persons.

## II. DEPARTMENT OF INFORMATION

47. The Department of Information, which also falls directly under the control of Respondent, employs seven information officers within the Territory, of whom four are White and three non-White.

## III. THE POLICE FORCE

48. One of the methods adopted by Respondent to encourage the Native population to participate more fully in the public service of the Territory, and thereby to gain experience for the eventual administration of their own areas, was to encourage men to join the Police Force. Respondent considered that the experience gained in this field would serve also to assist the Native peoples in adapting themselves to the

<sup>1</sup> *Vide* Chap. III, *infra*.

changing circumstances of their society by acquainting them with the legal standards of modern civilization.

49. In practice, however, Respondent was faced with the problem mentioned in paragraphs 14 and 15 above, viz., a lack of adequate educational qualifications among prospective recruits. This, however, Respondent regarded as one of the instances where it would be possible to lower the educational qualifications demanded for entry, and to rely on in-service training to a considerable extent, without incurring a risk of serious difficulties arising from such a course.

The minimum qualifications for all Native recruits in the Territory were therefore set at Standard II<sup>1</sup>, instead of Standard VIII which applied in the case of European recruits. The standard of promotion examinations was also reduced—and in certain cases dispensed with altogether—so as to enable Native officers to advance to higher ranks.

Despite these measures, the posts of chief sergeant and senior sergeant<sup>2</sup> can still not be filled by Native officers, because of the lack of qualifications rendering them suitable for such posts.

50. The position of the Police Force in the Territory in 1937 was referred to in the discussions of the Permanent Mandates Commission during that year. The relevant extract from the minutes of the meeting reads as follows:

“M. Sakenobe [asked] . . . Were the police mainly European?”

Mr. Courtney Clarke replied that they were mainly European; but there were native constables, corporals and sergeants, by whom European police officers were commonly accompanied in the performance of their official duties<sup>3</sup>.”

51. Since 1937 the number of Native policemen has increased considerably. In that year Respondent employed 371 police officers inside the Police Zone, of whom 205 were White and 166 non-White. At present the Police Force inside the Police Zone consists of 594 officers, of whom 323 are White and 271 non-White. Outside the Police Zone four police stations have recently been established and these stations are manned by 24 police officers of whom 12 are White and 12 non-White.

52. Respondent continues to encourage the Native inhabitants of the Territory to join the Police Force by making the conditions of employment more attractive. It also seeks to encourage members of the force to improve their educational standards so as to qualify for promotion to the higher ranks. Whereas formerly recruits in South West Africa did a three-months' initial training course at their district headquarters, after which they were enrolled as constables, they are now trained at institutions in South Africa where they undergo the same training as that which is prescribed for the South African recruits.

The first promotion examination—that from constable to sergeant—may be taken after three years' service. Further promotion examinations may be taken at two-yearly intervals. All recruits are encouraged to study, and are given weekly lectures in an effort to improve their educational qualifications.

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<sup>1</sup> I.e., the fourth school year.

<sup>2</sup> A police sergeant is often the senior officer in charge of a police post.

<sup>3</sup> *P.M.C., Min.*, XXXI, p. 134.

## IV. THE PRISONS SERVICE

53. Natives are also employed as warders in the Prisons Service in the Territory. New recruits receive in-service basic training from non-White instructors under the supervision of White commissioned officers. They are trained in all aspects of prison administration.

54. Out of a total complement of 108 employees in the Prisons Service in the Territory 61 are non-White. All these non-White persons are employed as warders of varying ranks. Provision exists for a non-White warder to rise to the rank of senior chief warder, but as yet no suitably qualified candidates for this rank are available and the highest rank held by a non-White employee is that of chief warder.

## V. THE NURSING PROFESSION

55. In the nursing profession, too, considerable difficulty has been experienced in obtaining sufficiently interested and qualified Native women to enter the profession. Respondent has been compelled to appoint non-White nurses from South Africa to posts in South West Africa, and many White nurses have still to serve the non-White groups in the Territory.

56. The Permanent Mandates Commission discussed the nursing profession in 1923 and the following remarks appear in the relative report:

“Sir F. Lugard asked whether any natives were employed as hospital assistants.

Major Herbst replied that a number were employed in the government hospitals, though not as trained assistants. The natives were not sufficiently advanced to be capable of receiving professional instruction<sup>1</sup>.”

57. In certain instances the difficulties experienced by Respondent in its endeavours to educate the indigenous peoples to an acceptance of the need for adequate health services went deeper than appeared from the above-mentioned discussion in 1923, and are reflected in Respondent's annual report to the League for 1927 where Respondent stated as follows:

“The question of supplementing the European medical service among the native population by means of trained native assistants is one of considerable difficulty toward the solution of which a great deal of thought and attention have been directed for some years. The main obstacle to progress in this direction is the attachment to custom and tradition which at present remains as strong among the detribalized as among the rest of the native population. Experience in the various parts of the Territory has shown that, in spite of the facilities for treatment offered at the various Government and other institutions, native methods are almost invariably resorted to in the first instance in nearly all cases of sickness and in maternity work. Treatment in such cases is carried out by the older members of the group or family against the wisdom of whom the methods and experience of younger members trained under European supervision are not tolerated for a single moment. When the customary

<sup>1</sup> P.M.C., Min., III, p. 111.

measures fail or when complications arise it is time enough to seek European advice. The result is that the more intelligent young men and women, apart from preferring the comparatively free and easy life offered by domestic and other service, are disinclined to seek employment which may possibly bring them in conflict with family tradition <sup>1</sup>."

58. As stated elsewhere in this Counter-Memorial <sup>2</sup>, a scheme for the training of non-European auxiliary nurses was introduced in the Territory in 1959, when training schools for such nurses were established at the state hospitals at Windhoek, Grootfontein, Otjiwarongo, Gobabis, Walvis Bay, Keetmanshoop and Luderitz.

The minimum scholastic qualification originally laid down for non-European girls to train as auxiliary nurses was Standard IV <sup>3</sup>, as against Standard VIII as a pre-requisite for training as general nurses. It was soon found, however, that girls with only a Standard IV certificate could not cope with the theoretical part of the training, and the minimum requirement for admission to the course was accordingly raised in 1961 to Standard VI.

59. Despite the low qualifications required, and despite the reduction of the duration of the course from a period of three years as originally fixed, to 18 months, the response has been poor. In 1959, for example, there were only 29 applicants for 64 posts for non-European auxiliary nurses at the Windhoek State Hospital, and nearly one-third of the applicants were from South Africa.

Since the inception of the course 97 non-European girls have qualified as auxiliary nurses in South West Africa. While there are at present 196 posts for non-European auxiliary nurses at state hospitals in the Police Zone, and many more will be created when the new state hospital in Okatana in Ovamboland, which is now in the course of construction, has been completed, there are only 69 pupil nurses from the Territory in training as auxiliary nurses at state hospitals.

60. Outside the Police Zone Respondent has not been successful in directly assisting Native women to become trained nurses, by reason of their lack of educational qualifications, but for the last 30 years the Finnish Mission in Ovamboland, assisted by subsidies granted by Respondent, has been training Ovambo women at the Mission Hospital at Onandjokwe to become assistant nurses. This hospital was approved as a training school for auxiliary nurses by the Nursing Council in 1961. At present there are 27 auxiliary nurses in training at this centre. Respondent's scheme of subsidizing such mission training centres outside the Police Zone has been extended to other mission hospitals as well.

61. The small number of non-European girls with the necessary qualification (Standard VIII) and who are interested in nursing as a profession does not as yet justify the establishment of facilities for the training of non-European *general* nurses in the Territory. For those who are desirous of following such a course of training, there are ample facilities in South Africa <sup>4</sup>.

<sup>1</sup> U.G. 31—1928, para. 227, pp. 101-102.

<sup>2</sup> Vide Book VII, Chap. VI, paras. 6-8, of this Counter-Memorial.

<sup>3</sup> The certificate obtained after completion of the sixth school year.

<sup>4</sup> Vide Book VII, Chap. VI, para. 9, of this Counter-Memorial.

## VI. THE TEACHING PROFESSION

62. As indicated elsewhere in this Counter-Memorial<sup>1</sup> the teaching profession affords yet another example of insufficient Native candidates with the minimum educational qualifications available to enter the profession. To stimulate interest in this respect and encourage more entrants and thereby to promote the education of the indigenos peoples as much as possible through members of their own group, who would be best able to understand and appreciate the child's cultural background, Respondent was obliged for many years to allow admission to teacher training courses to Native students who had only a Standard II certificate (i.e., completion of the first four years of the primary school course). In 1947 the minimum requirement for admission to the training school at the Augustineum was raised to Standard III. By 1952 the position had improved to such an extent that the minimum requirement could be raised to Standard VI in the Police Zone, and, by 1961, also outside the Police Zone. As more Natives obtain higher educational qualifications it is hoped that the standard will eventually be raised until it is the same as that for the White pupil teachers, who usually proceed to training schools or Universities in South Africa after obtaining a matriculation certificate (i.e., Standard X).

63. These measures have resulted in the number of non-White teachers increasing inside the Police Zone from 44 in 1922, to 135 in 1940, and to 385 in 1961. Outside the Police Zone there were 294 non-White teachers in 1924, mostly untrained, whereas in 1961 there were 644 trained non-White teachers.

## VII. INTERPRETERS

64. By reason of the number of different groups to which the non-White inhabitants of the Territory belong, and the diversity of languages spoken by them, much use is made of Native interpreters throughout all branches of the civil service. These interpreters are permanently employed in the civil service and are graded into various grades according to their educational qualifications and general experience.

## VIII. OTHER BRANCHES OF THE PUBLIC SERVICE

65. Natives are also employed to a greater or lesser extent in other branches of the civil service, but, owing to the prevailing lack of proper educational qualifications, without attaining any great advancement. The nature of the responsibility involved in these branches has mostly made it impracticable for Respondent to lower the minimum qualifications for entry as it has done in other branches.

Respondent, however, continues to encourage the Native peoples to raise their educational standards, and, as and when they do achieve the requisite degree of education, their horizon for absorption and advancement in the civil service must expand considerably. That Respondent's policy is not one of inhibition, or suppression in this regard, can be demonstrated by the wider field of opportunity which is open to the Natives in the Republic of South Africa, where the standards that have

<sup>1</sup> Book VII, Chap. V, paras. 23 to 29, of this Counter-Memorial.

been achieved in regard to development of the indigenous peoples are, for various reasons, considerably in advance of those in South West Africa. Not only are there Bantu Professors and lecturers at the Bantu University Colleges, but in the schools Bantu inspectors and supervisors are appointed, Bantu matrons and Bantu nursing sisters serve in hospitals and Bantu magistrates and postmasters are also appointed in Bantu areas. In the urban areas within the Republic, local authorities employ Bantu technicians and senior Bantu administrative clerks. Respondent's policy envisages similar development in South West Africa, but at present Respondent is still seriously hampered by the dearth of educationally qualified candidates for appointment to such posts.

### I. Comparison with Other Territories in Africa

66. Up to the close of the Second World War the higher range of public service posts—and also, to a very large extent, the medium range of posts—in the administrative services of most African countries administered by European powers, were staffed by European officials. This was due not to any policy of repressing or neglecting the legitimate aspirations of the indigenous Native groups, but rather to the lack of indigenous candidates with the necessary education, experience and outlook to perform such duties satisfactorily.

67. The above was the conclusion reached by, and stated in the report of, a commission appointed by the British Colonial Office in 1947 to enquire into the civil services of Kenya, Tanganyika, Uganda and Zanzibar. Dealing with a contention advanced in evidence before it, "directed towards the breakdown of what is called racial discrimination and introduction of a system whereby all posts in the services are thrown open to competition, the successful candidates receiving the same salary, irrespective of race or colour"—a system usually referred to as "equal pay for equal work"<sup>1</sup>—the Commission reported as follows:

"79. . . . the doctrine of equal pay for equal work loses any validity it may otherwise possess unless the words 'equal work' are construed as meaning work of equal quality. On such a construction, in the field with which we are concerned, the doctrine falls to the ground. Taking first the African *vis-à-vis* the Asian, it would be true to say that, subject to individual exceptions, the African is at the present time markedly inferior to the Asian of the same educational qualifications in such matters as sense of responsibility, judgement, application to duty and output of work.

80. This statement is no mere expression of opinion unsupported by evidence or argument. On the contrary, the view which we have expressed has received the overwhelming endorsement of our witnesses on this matter, not least of those who are most anxious to further the advancement of the African. Apart from this, its truth is established beyond question by hard facts. Big business concerns in East Africa employ large numbers of Asian clerks. Some of them also employ relatively few African clerks at salaries which, though by no means niggardly when judged by the general wage-earning capacity

<sup>1</sup> Report of the Commission on the Civil Services of Kenya, Tanganyika, Uganda and Zanzibar 1947-48, Colonial No. 223, para. 74, p. 24.

of Africans, are very much lower than those paid to Asians. Companies such as these, being concerns conducted for profit, may be presumed to be unlikely to squander money on the overpayment of their employees. The question, therefore, to which those who may challenge the truth of our assertion must find an answer is 'Why, if the average African clerk is as competent as the average Asian, do not commercial and industrial firms displace the Asian by the African since it would be greatly to their financial advantage to do so?'

81. Comparisons of this sort are invidious and distasteful, but they must be made if only to bring home to the African the fact that the discrimination of which he complains rests not on racial but on other and more fundamental grounds, and to show him why we are unable to accept his plea for 'equal pay for equal work' as a sound foundation on which to build a salary structure.

82. In making these observations, nothing could be further from our thought or our intention than any belittlement of the extent of the African's achievement up to the present time. It has to be remembered that the indigenous peoples of the three mainland territories are removed by little more than fifty years from a state of society far more primitive than that of Britain at the beginning of the Christian era—a society which was completely illiterate and necessarily so, since no alphabet existed, a society with few, if any, exceptions, ignorant of the wheel, the plough and the loom, a society in which the only rule was the rule of the spear or of the sorcerer.

83. With such antecedents it would be idle to expect to find in the African of today those qualities of mind and character which go to the making of a good civil servant developed in any marked degree. Indeed, it seems to us a matter for remark that in half a century the African who comes within our purview as an actual or potential civil servant has advanced as far as he has rather than a matter for adverse comment that he has not advanced further. How such further advancement is to be achieved, whether by insistence in the field of education on the development of character rather than on the acquisition of a school certificate, by greater stress being placed on technical education as opposed to an education which produces a much large number of aspirants for 'white collar' jobs than for the technical posts, or by the further development of native councils with the encouragement which they provide to the African to take an interest in community problems, is a matter of speculation which far transcends our terms of reference. But achieved it must be if the African's own aspirations are to be realized and the declared policy of the Colonial Office as enunciated in Colonial No. 197 fully implemented, without detriment to the efficient administration of the several services<sup>1</sup>.

68. It was, however, generally recognized in these non-selfgoverning territories—as it was in South Africa and in South West Africa—that it was desirable, from a practical as well as from an ethnical point of view, to employ as many educated Natives as possible in the service of their

<sup>1</sup> *Report of the Commission on the Civil Services of Kenya, Tanganyika, Uganda and Zanzibar 1947-48, op. cit.*, paras. 79-83, pp. 24-25.

own groups. Efforts were accordingly made in most of these countries to open as many avenues of employment in the public service to these groups as was practicably possible. The limiting factors in what must necessarily be a slow process, if administrative efficiency and the interests of the population generally are not to suffer unduly, were the shortage of suitably qualified candidates. The following remarks by Lord Hailey exemplify this:

"It was stated in 1955 that the Government of Northern Rhodesia had proposed to create posts for Africans in the Administrative Services, but that no candidate had as yet come forward with the necessary qualifications <sup>1</sup>."

69. In this regard reference may also be made to a 1963 report on the economic development of Kenya by a mission organized by the International Bank for Reconstruction and Development at the request of the Governments of Kenya and the United Kingdom. In the course of the report the Mission says:

"The availability of an adequate supply of human skills in Kenya will depend at least for a number of years not only on education, but also on the presence of non-Africans, both in the civil service and in private activity. Most of the technical and professional services . . . are now provided almost exclusively by them. They are the main source of experience for the management of organized industry and the government services. For the expansion of education, reliance must be placed primarily on non-Africans for some years to come <sup>2</sup>."

70. As further indications of this lack of adequately qualified personnel in various territories in Africa, which necessarily reduces the rate at which the people as a whole can progress, the following may be cited:

(a) The 1958 Official Report on Swaziland contains, *inter alia*, the following information:

"There are no Universities in Swaziland nor, because of the size of the Territory and its small population, can any developments in this direction be contemplated.

Seven Swazi students are studying at Pius XII University College at Roma in Basutoland, one has begun his medical course at the Durban Medical School, and two are enrolled at the Goromonzi High School in Southern Rhodesia where they will follow a Cambridge Higher Certificate Course with a view to entering the University College of Rhodesia and Nyasaland <sup>3</sup>."

(b) The 1957 Official Report on the Bechuanaland Protectorate, which borders on South West Africa, states that ". . . only 13 students obtained the Primary Lower Certificate" during that year <sup>4</sup>.

71. Respondent has sought to increase the facilities for education and vocational training for the indigenous peoples of South West Africa, and, as has been shown, Respondent has been able in recent years to raise the standard of qualifications in the teaching profession and also

<sup>1</sup> Hailey, *An African Survey* (1957), p. 368.

<sup>2</sup> *The Economic Development of Kenya* (1963), p. 37.

<sup>3</sup> *Swaziland: Report for the Year 1958* (1959), p. 33.

<sup>4</sup> *Bechuanaland Protectorate: Report for the Year 1957* (1958), p. 48.

in other branches of the civil service. The forms of in-service training on which Respondent relies have had the effect of attracting more and more Native candidates to the various branches of the service, and have thereby given to the Native people an ever-increasing share in the public administration of the Territory. It is also the avowed policy of Respondent to encourage the Native peoples so to qualify themselves as to bring about full participation in all aspects of the public service designed to serve their particular groups.

72. Progress towards this ideal is, however, slow by reason of the practical obstacles already referred to, and also experienced by other colonial administrations in Africa. In the light of the diversity of population groups in the Territory, and the various stages of development at which they stand, Respondent has considered it not to be in the general interest of the inhabitants of the Territory to seek to "Africanize" those sections of the civil service serving the Native population at the same tempo as has been attempted in certain other territories in Africa. Respondent rather seeks to absorb gradually more and more of the indigenous people into the civil service, and to encourage them to take over and control all aspects of their national life as soon as possible, without serious disruption in the efficient functioning of the Service.

73. That the wisdom of such a policy was also recognized by other administering Powers before the pressure of African nationalism dictated other courses appears, e.g., from the writings of George H. Kimblé in *Tropical Africa*. After dealing specifically with the progress of "Africanization" in Nigeria, he goes on to say:

"Elsewhere in British Africa progress has been much slower. This we may take it, is partly because the demand for Africanization has been weaker, and partly because the British—seafarers that they are—believe a convoy can safely proceed only at the speed of the slowest unit, and in such territories as British Somaliland, Bechuanaland, Tanganyika, the Rhodesias and Nyasaland some of the units are barely under way. But not many African leaders are greatly interested in safety; they wouldn't be leaders for long if they were.

The other administering powers have tended to take the view that the cost of too hasty Africanization in inefficiency, inequity, and increased taxation is one that no colonial territory should be called on to bear; that their job, first and last, it to run a 'tight ship'. To them, this has meant manning it with the best-qualified people, irrespective of race<sup>1</sup>."

74. The dangers inherent in a policy of premature Africanization were foreseen by the Commissioners enquiring into the civil services of Kenya, Tanganyika, Uganda and Zanzibar, referred to above<sup>2</sup>. In the course of their report they sound the following warning:

"We sense a danger that in a laudable desire to enable Africans to participate to a greater extent than at present in the public services, governments may be tempted to seek to replace Europeans by Africans with inferior professional or technical qualifications. Nothing, in our view, could be more inimical to the future interests of the terri-

<sup>1</sup> Kimblé, G. H. T., *Tropical Africa* (1960), Vol. II, *Society and Polity*, p. 356.

<sup>2</sup> *Vide* para. 67, *supra*.

ories or, indeed, taking a long view, to the interests of the Africans themselves<sup>1</sup>.”

75. In 1956 Lord Hailey also recognized the fact that:

“Whatever may be the merits of a policy which has in recent years conceded so large a measure of political advance to the British dependencies in Africa, it is obvious that the transfer of power is finding some of them without an indigenous machinery which is adequately equipped for their administration. This may prove to be a very serious obstacle to the smooth working of the new constitutions<sup>2</sup>.”

76. An example of the consequences of indiscriminate Africanization and the dangerous implications involved for the welfare of the population in general, can be derived from the following recent statement by the Minister of Law of the Federation of Rhodesia and Nyasaland regarding the administration of justice in the self-governing colony of Nyasaland:

“Up to now people with little if any legal training or experience have been appointed to the bench. A law school has, however, been established for the purpose of giving a ‘crash’ training of three months to prospective judicial officers . . . Following the pre-existing practice in Native Authority Courts, legal practitioners were not to be given the right of audience in cases between Africans. When the Bill was before the Legislative Assembly Dr. Banda said that in cases where the jurisdiction of the courts was extended to Europeans they would be allowed the privilege of having the services of their legal advisers if they chose to do so. He warned them, however, that if a European exercised this right he would be assumed by Africans to be guilty.

In July this Ordinance has been amended so as to extend its application generally to Europeans. At the same time the opportunity was taken to deprive them of the right to the assistance of their legal advisers unless the Minister of Justice sees fit to order otherwise. In the course of the debate on the Bill Dr. Banda stated that if lawyers, magistrates and judges were allowed to run courts according to the European idea, then justice would not be seen to be done in this country<sup>3</sup>.”

77. A further warning against over-hasty Africanization is contained in an article by a Nigerian Chief, H. O. Davies, Q.C., a graduate of the London School of Economics, now practising law in Lagos, Nigeria, and former President of the West African Students Union, entitled “The New African Profile”. In this article he says, *inter alia*:

“There is an ever-present danger of overdoing ‘ization’ of the administrative service. Where this has happened, and there has been a breakdown in efficiency, the new State has had to rehire expatriates on much less favourable terms than were available initially<sup>4</sup>.”

<sup>1</sup> *Report of the Commission on the Civil Services of Kenya, Tanganyika, Uganda and Zanzibar 1947-48*, Colonial No. 223, para. 91, p. 27.

<sup>2</sup> Hailey, *An African Survey* (1957), pp. 289-290.

<sup>3</sup> *Federal Government Press Statement* 726/63/DER (30 July 1963), pp. 8-9.

<sup>4</sup> Davies, H. O., “The New African Profile”, in *Foreign Affairs* (U.S.), Vol. 40, No. 2 (Jan. 1962), p. 300.

78. Reviewing the progress made during the decade 1947-1957, a United Nations publication entitled *Progress of the Non-selfgoverning Territories states, inter alia*:

"At the beginning of the period under review, the broad employment structure of the public services in many Territories, particularly in Africa, was one in which European officers occupied the senior positions, Europeans and, in some African Territories, Asians, largely or wholly manned the middle grades of technical and clerical appointments, and indigenous persons occupied the subordinate and unskilled posts.

In some of these Territories, separate sections of the public service with distinct wage and salary scales and other conditions of employment existed for different classes of employees on the basis of race, even though admission to senior posts was open to persons of all races. In other Territories, where the principle of non-discrimination in public employment was not only accepted but generally applied, there was a preponderance of officers recruited from abroad in the senior ranks of the services, owing to the lack of qualified indigenous candidates. In the past few years more specific recommendations and programmes have been adopted in a number of Territories in order to increase facilities for training and higher education, to establish unified public services and to bring about full participation by the local inhabitants in the public services <sup>1</sup>."

79. Despite these increased educational facilities and despite the vast sums of money spent on the training of prospective civil servants in a deliberate high-priority policy of Africanization, even at the cost of efficiency, most African States still rely heavily on European civil servants to maintain the structure of their administration. In Senegal, the most advanced territory in the former French West Africa, the following was stated as in 1962: "In the secondary schools, for example, only 17 out of 253 teachers are African. This situation in Senegal is not unusual; it exists in all African countries <sup>2</sup>."

80. In Tanganyika the staff list of officers in the civil service in 1954 contained only five Natives <sup>3</sup>. The subsequent result of a deliberate policy of Africanization of this service appears from the following extracts from *African One-Party States* referred to above:

"In the 1950s when the Tanganyika government finally opened the upper ranks in the administration to Africans, it had difficulty in finding personnel; few Tanganyika Africans possessed the required university education. Although this requirement was subsequently modified and training grades were introduced, the entry of Africans was not rapid enough for local opinion. After 1957 in particular, Africanization of the administrative service became a major rallying cry for TANU, and public opinion pressed especially for Africanization in the posts most exposed to contact with the public . . . The number of Africans in senior posts increased from 112 in 1956 to 453 in 1960 out of a total senior service of approximately 3,000

<sup>1</sup> U.N. Doc. ST/TRI/SER. A/15/Vol. 3, pp. 23-24.

<sup>2</sup> Carter, G. M. (ed.), *African One-Party States* (1962), p. 132.

<sup>3</sup> *The Economic Development of Tanganyika* (1961), p. 348.

persons. In the district administration upcountry, however, there were in 1960 only 15 Africans in senior posts <sup>1</sup>."

"In practice, it seems generally admitted that Africanization has affected the efficiency of the Tanganyika civil service, though to what extent remains a matter of debate <sup>2</sup>."

81. Lord Hailey also says:

"In the Gold Coast the number of Africans holding posts in a variety of Civil Services which were formerly classified as 'senior' and were held by Europeans, rose from 171 in 1949 to 916 in 1954, but as the total number of posts had increased, the percentage of Africans had risen only from 10 to 36 <sup>3</sup>."

The Gold Coast (now known as Ghana) became independent in 1957, but in June 1959 there were still more than 900 expatriates in the Ghanaian Civil Service, and in addition several expatriates were employed as engineers, architects, and technologists of all kinds in "development posts" <sup>4</sup>.

82. Nigeria is usually regarded as an exception to the criticism that the Native peoples of the former British, French and Belgian colonial territories have not been adequately prepared for the administrative responsibilities thrust upon them as a result of recent developments. Lord Hailey, however, wrote in 1956:

"Already there are beginning to appear signs of a serious danger to the efficiency of the Administration as a whole owing to the growing insistence, especially in the Eastern Region, on a rapid process of Africanization of the superior administrative and departmental posts. This was a not unnatural outcome of the campaign for self-government; but it is clear that there is at the present time no indigenous personnel available to replace the former occupants of these offices <sup>5</sup>."

"... In Nigeria, although the Constitution of 1951 brought Higher Civil Service appointments under Federal control, the Western Region Government attempted to exercise a veto on appointments of Europeans by refusing to authorize the payment of the expatriation allowance which European officers receive in addition to the salary of the post. In Eastern Nigeria a subsequent effort of the same kind led to a minor constitutional crisis in 1955 when the Governor used his 'reserve' powers to 'certify' a budget grant for certain expatriate officers whose posts the Regional Government was seeking to retrench . . .

The 'Nigerianization' of the Public Service had been the settled policy of the Administration for several years. It was, however, embarrassed by the fact that there were still an inadequate number of qualified Nigerians to fill posts on the senior staff. In the middle of 1954 there were only 824 Nigerians on the senior staff out of an establishment of 5,127 (exclusive of the Railways). That there were even so many Nigerians qualified for this grade of service is largely

<sup>1</sup> Carter, *op. cit.*, p. 461.

<sup>2</sup> *Ibid.*, p. 463.

<sup>3</sup> Hailey, *An African Survey* (1957), p. 368.

<sup>4</sup> Kimble, *op. cit.*, p. 356.

<sup>5</sup> Hailey, *An African Survey* (1957), p. 314.

due to the award of 385 scholarships by the Nigerian Government during 1948 and the following years and to the measures taken to raise the College at Ibadan to the status of a University College. There were at the same date 2,389 pensionable Overseas Officers serving in 'Senior Service' grades, of whom 25 per cent. were on contract, and it is relevant that the Mission of the International Bank reported in 1954 that 2,000 additional recruits from overseas were required to implement the Territory's Development plans. There were 1,028 vacancies which Nigerians were either unwilling or lacked the qualifications to fill <sup>1</sup>."

83. The First Progress Report to the Secretary-General of the United Nations from the Special Representative in the Congo, Ambassador Rajeshwar Dayal, dated 21 September 1960, reflects the position in the former Belgian Congo shortly after it had attained independence. The Ambassador wrote as follows:

"At the time of independence there were only 17 Congolese university graduates, not one doctor, no engineers, professors, architects, etc., and few, if any, qualified lawyers. If there is to be a large-scale program of fellowship awards, and parallel programs of in-service training, one must find people with sufficient educational prerequisites to qualify for this training. In the field of health the ONUC [Operations of the United Nations in the Congo] Senior Consultant has estimated that it will take some 22 years before the Congo can produce enough of its own doctors to staff even a reduced schedule of health services. Recently, a government offered to train a substantial number of Congolese technicians in the much-needed skills of weather forecasting. So far, only six Congolese have been found who qualify for these awards . . . It is apparent that, for a long while to come, the Congo will have to depend on large numbers of technicians from abroad, and in fact ONUC has already been approached to use its machinery to recruit teachers, doctors, labor inspectors, administrators and other specialists who would become employees of the Government. The United Nations Educational, Scientific and Cultural Organization has been asked to undertake the task of finding over 1,000 teachers to staff, for the most part, the secondary schools. Effective recruitment is found difficult, however, because of the prevailing political conditions in the country.

Less than 50 of the 400 hospitals operating throughout the country have doctors, most of them provided by the Red Cross and bilateral aid teams. Many of these teams will have to return home within the next few months, and it will be difficult to find replacements <sup>2</sup>."

84. The fact, therefore, that the Native inhabitants do not occupy any of the higher posts in the civil service in South West Africa, does not justify an inference that they are intentionally "confined to the lowest levels of employment" so as to prevent them from acquiring posts for which they are qualified, but is in truth due rather to their lack of educational qualifications for the posts, despite the considerable

<sup>1</sup> Hailey, *An African Survey* (1957), pp. 370-371.

<sup>2</sup> Dayal, R., "First Progress Report to the Secretary-General from his Special Representative in the Congo", in *United Nations Review*, Vol. 7, No. 5 (Nov. 1960), p. 22.

progress they have made in acquiring skill and qualifications in other directions under Respondent's guidance.

Respondent has, as stated, not considered it to be in the general interests of the population of the Territory to embark on an indiscriminate programme of Africanization of the civil service in South West Africa, but has rather striven to lay a sure foundation of education and experience in the machinery of government, before entrusting high responsibility to indigenous civil servants. As and when they do acquire such education and knowledge, Respondent's policy contemplates their advancement to the higher ranks of the civil service in those branches where they will be able to serve their own people efficiently and responsibly.

## J. Respondent's Reply to Applicants' Allegations (Memorials)

### I. PARAGRAPHS 88-105 OF CHAPTER V<sup>1</sup>

#### (a) Paragraphs 88-93<sup>2</sup>

85. The Public Service and Pensions Act, 1923, referred to by Applicants, has been repealed and superseded by the Public Service Act, 1957, which, in terms of the first section of that Act, is also made applicable to South West Africa<sup>3</sup>. Applicants' further allegations are dealt with in paragraphs 16 to 26 above.

#### (b) Paragraph 94<sup>4</sup>

In addition to the list of persons mentioned by Applicants in this paragraph who do not form part of the "public service" as defined by the Public Service Act, 1957, can be mentioned nurses in the Territorial Administration's Hospitals, members of the Prisons Service in the Territory, and certain officials employed in the administration of Native Affairs, who are appointed by certain Native groups, and paid from tribal trust funds.

#### (c) Paragraph 95<sup>4</sup>

The Public Service Act, 1957, provides that no person shall be appointed permanently to the public service, as defined by that Act, unless he is a South African citizen<sup>5</sup>. As the South African Citizenship Act, 1949<sup>6</sup>, as amended<sup>7</sup>, has extended South African citizenship to all

<sup>1</sup> I, pp. 135-137.

<sup>2</sup> *Ibid.*, pp. 135-136.

<sup>3</sup> Act No. 54 of 1957, sec. 1, in *Statutes of the Union of South Africa 1957*, Part II, pp. 794-798.

<sup>4</sup> I, p. 136.

<sup>5</sup> Act No. 54 of 1957, sec. 11 (2), in *Statutes of the Union of South Africa 1957*, Part II, p. 820.

<sup>6</sup> Act No. 44 of 1949, in *The Laws of South West Africa 1949*, Vol. XXVIII, pp. 204-239.

<sup>7</sup> Act No. 64 of 1961, in *The Laws of South West Africa 1961*, Vol. XL, Part I, pp. 508-533.

persons born and residing in the Territory<sup>1</sup>, this qualification does not in any way constitute a limitation on the inhabitants of the Territory.

(d) *Paragraph 96*<sup>2</sup>

Neither in practice, nor in theory, are Natives excluded from participation in the general administration of the Territory. Respondent's policy is one which envisages advancement of Native officials to positions of responsibility in the higher categories of the public service in those areas and departments designed to serve the ethnic group of which the official concerned is a member. It is true that there are as yet relatively few Natives in the higher posts, but this is due to the serious lack of adequately qualified candidates for employment in these posts, and not to a deliberate policy of repression or what is termed "job-reservation" by the Applicants. Those posts designed to serve any particular Native group, which are presently occupied by White officials, will, in the fulfilment of Respondent's declared policy, be made available for Natives of that group as and when they achieve the qualifications required to fill them. In fact, from a practical point of view, the most important form of "job-reservation" presently applying in the public service of South West Africa, is one which reserves certain posts for Natives of the ethnic group which the post is designed to serve, in the sense that preference is given to a member of the group concerned in filling such a post. This policy has had the effect of Respondent having to refuse White candidates' applications for certain posts.

(e) *Paragraphs 97-105*<sup>3</sup>

The Territorial Budgets for the years 1946-1954 in fact reflect, *inter alia*, what Applicants set out in these paragraphs. Respondent, however, submits that by the selection of these six departments<sup>4</sup> Applicants do not present a true picture of the civil service as a whole. In treating of this subject, Respondent has indicated to what extent Natives have been incorporated and do participate in branches such as the police force<sup>5</sup>, nursing services<sup>6</sup> and the teaching profession<sup>7</sup>. Natives also participate to a considerable extent and in important respects in the Department of Information<sup>8</sup>, the prisons service<sup>9</sup> and the administration of Native Affairs<sup>10</sup>; and they further play an important role as interpreters in all branches of the civil service<sup>11</sup>.

Moreover, the limitation by Applicants of the period of the extracts

<sup>1</sup> Act No. 44 of 1949, secs. 1 and 2, in *The Laws of South West Africa 1949*, Vol. XXVIII, pp. 204-206, and Act No. 64 of 1961, sec. 2, in *The Laws of South West Africa 1961*, Vol. XL, pp. 508-510.

<sup>2</sup> I, p. 136.

<sup>3</sup> *Ibid.*, pp. 136-137.

<sup>4</sup> *Vide* para. 5, *supra*.

<sup>5</sup> *Vide* paras. 48-52, *supra*.

<sup>6</sup> *Vide* paras. 55-61, *supra*.

<sup>7</sup> *Vide* paras. 62-63, *supra*.

<sup>8</sup> *Vide* para. 47, *supra*.

<sup>9</sup> *Vide* paras. 53-54, *supra*.

<sup>10</sup> *Vide* paras. 33-46, *supra*.

<sup>11</sup> *Vide* para. 64, *supra*.

to the years 1946 to 1954, also detracts from the true position to-day—and, for that matter, as in 1961 when Applicants' Memorials were presented. Respondent has already indicated that its long-term policy of education and training of the Native peoples is now rapidly bearing fruit and more and more Natives are qualifying for and obtaining responsible posts in the civil service each year. Even in those branches of the service which Applicants have selected significant changes have occurred since 1954. As an example reference may be made to the Department of Posts, Telegraphs and Telephones. In this department provision is now made for a postmaster at Katutura, near Windhoek and four Native postal assistants and four senior Native postal assistants in other parts of the Territory. The qualifications for these posts have, in pursuance of Respondent's policy of encouraging Natives to participate in the civil service, been reduced for Native candidates to a Standard VII certificate. All these posts are at present filled by Natives.

In the Department of Agriculture<sup>1</sup> Natives are employed in the northern areas as assistant stock inspectors, and are being trained by White stock inspectors and veterinary officers to combat stock diseases such as lung-sickness, anthrax, and foot-and-mouth disease. It is hoped that with sufficient training Natives will be able eventually to take over full responsibility in this field.

In the Works and Buildings Branch of the public service, to which Applicants also refer in their Memorials<sup>2</sup>, Natives are presently employed as skilled masons, plasterers and painters and as skilled artisans. Lack of adequate educational qualifications prevents their employment in such fields as plumbing and electrical installation, but when Natives do obtain such qualifications these fields will also be open to them.

Natives further occupy positions in Native hospitals as laboratory assistants and darkroom assistants, and the training of Natives as artisans in the Roads Department is also at present being undertaken.

Out of a total of 9,918 persons employed in the public service in South West Africa in 1959, 4,048 were White and 5,870 non-White.

## II. PARAGRAPHS 128 (3) AND (6) AND 190 OF CHAPTER V<sup>3</sup>

86. Respondent denies the allegations contained in paragraphs 128 (3) and (6) and 190 (ii) (c), and says in particular that the charge of deliberately and consistently pursuing a policy which prevents the possibility of progress of the Native population towards self-respect, responsibility or skill in the public service of the Territory<sup>4</sup>, is without substance.

The above survey indicates what Respondent's policy has in fact been in this regard, as well as the considerable progress made despite the serious problems similar to those experienced all over Africa. Likewise, therefore, the similar allegations in the introductory portion of paragraph 190<sup>5</sup> are devoid of substance, as well as the assertions that

<sup>1</sup> I, para. 97, p. 136.

<sup>2</sup> *Ibid.*, para. 99, p. 136.

<sup>3</sup> *Ibid.*, pp. 142-143, 162.

<sup>4</sup> *Ibid.*, para. 128 (3), p. 142.

<sup>5</sup> *Ibid.*, p. 162.

Respondent offers the Native population no "promise of future amelioration" and "no horizon of hope"<sup>1</sup>.

The horizons of progress become ever wider and nearer towards fulfilment as the Native population avails itself of the opportunities offered to secure the necessary qualifications.

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<sup>1</sup> I, p. 162.

## CHAPTER III

### LOCAL GOVERNMENT

#### A. Introductory

1. Applicants charge Respondent with having "almost entirely" *excluded* the Native population from "participation or even any semblance of participation" in the government of the established local units within the Territory, i.e., the municipalities and village management board areas. They go on to allege that—

"The sole faint approximation of any kind of participation is to be found in the limited advisory role of the Native Advisory Boards with respect to the 'locations', 'Native villages' and 'Native hostels' and even this minimal role is carried out under the firm control of the 'white' local authorities and the Administrator (after 1 April 1955, the Minister of Native Affairs and currently the Minister of Bantu Administration and Development) <sup>1</sup>."

2. The gravamen of their charge is set out in paragraph 128 (6) of Chapter V of the Memorials where they allege that—

"In sum, by law and by deliberate and consistent practice, the Mandatory has failed to promote to the utmost the development of the preponderant part of the population of the Territory in regard to . . . participation in any aspect of government. It has not only failed to promote such development to the utmost, it has made no notable effort to do so. To the contrary, the Mandatory has pursued a systematic and active program which prevents the possibility of progress by the 'Native' population toward self-respect, responsibility or skill in any aspect of citizenship or government, whether Territorial or local. . . . <sup>2</sup>"

3. In paragraph 190 of Chapter V of the Memorials <sup>3</sup> this charge is carried further by the allegations that Respondent has "deliberately, systematically and consistently . . . discriminated against the 'Native' population of South West Africa, . . ."; that Respondent ". . . has thwarted the well-being, the social progress and the development of the people of South West Africa throughout varied aspects of their lives; . . ."; and that "The grim past and present reality in the condition of the 'Natives' is unrelieved by promise of future amelioration". It is finally alleged in the said paragraph that Respondent ". . . offers no horizon of hope to the 'Native' population".

4. In support of these allegations Applicants treat very briefly of the "two principal types of local governmental units" within the Territory, viz., municipalities and village management board areas, and of

<sup>1</sup> I, para. 128 (4), p. 142.

<sup>2</sup> *Ibid.*, p. 143.

<sup>3</sup> *Ibid.*, p. 162.

the Ordinances of 1949 and 1937 respectively, which it is alleged govern them <sup>1</sup>.

Applicants allege that the municipal councils and village management boards, which consist of White persons only,

“... exercise control over the administration of ‘Native’ affairs within the municipalities and Village Management Board Areas, subject to the general authority of the Union Minister of Native Affairs...<sup>2</sup>”

They point out that a Native Advisory Board has been established within each of such areas, to advise the urban local authority on “... any regulation affecting a location, ‘Native’ village, or ‘Native’ hostel which the local authority proposes to issue”, and to “... recommend to the local authority the adoption of any regulation which the Board deems desirable in the interests of the ‘Natives’ in the particular urban area”.

Applicants then add:

“The power of decision, however, rests firmly within the exclusive sphere of the local authority and the Administrator (after 1 April 1955, the Union Minister of Native Affairs) <sup>3</sup>.”

5. In dealing with these allegations, Respondent will endeavour to show that the present position of the indigenous population in regard to local government is due to historical and other reasons, and that, far from Respondent seeking to *exclude* them from participation in the institutions of local government, Respondent has sought systematically to guide developments so that they may fitly be *included* in such local government. Respondent will show that it has not in any way sought to prevent the “possibility of progress by the ‘Native’ population”, as alleged by the Applicants <sup>4</sup>, but has in fact sought to guide them towards “progressively increasing participation in the processes of government” under consideration <sup>5</sup>.

### B. The Position Before and When Respondent Assumed the Mandate

6. When Respondent took over control of the Territory it found that most of the towns and villages which exist today had already been established, and a form of local government had already been instituted. These towns and villages had been founded by the early European pioneers as areas for their own communal habitation. They were never intended for the communal settlement of any of the indigenous inhabitants of the Territory, and indeed such towns were something foreign and unknown to the Native population. Hence there was initially no planned provision for having any non-White inhabitants in or about the towns, and in these circumstances it was not only natural but almost inevitable that municipal organization and government was confined to the White population. Non-participation by the indigenous population of the Territory, to whom towns and their government were strange and unknown, could not possibly, in these circumstances, have been felt to be a deprivation.

<sup>1</sup> I, paras. 106-109, pp. 137-138.

<sup>2</sup> *Ibid.*, para. 110, p. 138.

<sup>3</sup> *Ibid.*, para. 113, p. 139.

<sup>4</sup> *Ibid.*, para. 128 (6), p. 143.

<sup>5</sup> *Ibid.*, para. 190 (ii), p. 163.

7. As a result of the internecine tribal wars among the indigenous people within the Police Zone, and events such as the Herero and Nama rebellions between the years 1904 and 1907<sup>1</sup>, the tribal organizations of a considerable portion of the indigenous population of the Police Zone were seriously impaired, as well as the social and economic pattern of their traditional existence.

8. The towns and villages which had been established within the Police Zone tended inevitably to attract members of the distressed Native population by the offer of remunerative employment in commercial and domestic undertakings. These people came not because of any need or desire for the type of residential facilities of a European town, but specifically to seek and find remunerative employment in the White man's monetary economy. Their sojourn in the urban areas was mostly of a temporary nature, and they, of their own accord, chose to live apart from the White inhabitants of the towns in separate residential areas adjacent to the European areas. This development is referred to by Dr. N. Mossolow in an article entitled "Eingeborene in Windhoek" in the following words:

"Since the foundation stone of the Windhoek Feste (fort) was laid in 1890 and thereby the establishment of the town of Windhoek set on foot, Whites and Natives are living peacefully side by side. When the soldiers who were engaged in the construction of the Feste (fort) saw the workseeking Natives, they noticed how these of their own accord, settled at a certain distance from the Whites and built their round huts of cow-dung and clay<sup>2</sup>." (Translation.)

9. This development was perhaps inevitable, not only by reason of the fact that the Natives concerned were members of different races, but primarily by reason of the vast difference between their ways and standards of living, and those of the European population. In addition because of the differences *inter se* members of the various ethnic groups coming to live adjacent to the European urban areas, also tended to live apart from each other. Thus Dr. Mossolow, in the same article referred to in paragraph 8 above, says:

"They were surprised to notice that the Bergdama did not want to have anything to do with the Hottentots, and the Herero in turn did not wish to associate with either of the other two tribal groups, nor to eat with them from the same pot<sup>3</sup>." (Translation.)

10. Only at this stage of development did the indigenous peoples for the first time begin to come into contact with the organization and workings of towns and villages; and thus participation on their part in the European forms of municipal government would have been anomalous and strange rather than the opposite. Such Natives as were in the domestic service of the European villagers, frequently resided on their employers' premises in the village, but took no part in the government of the community.

11. The legislation relating to local government was included in the

<sup>1</sup> *Vide* Book III, Chap. III, of this Counter-Memorial.

<sup>2</sup> Mossolow, N. "Eingeborene in Windhoek", in *Der Kreis*, Heft 12 (Nov. 1959), p. 435.

<sup>3</sup> Mossolow, N., *op. cit.*

Ordinance of the Imperial Chancellor, dated 28 January 1909<sup>1</sup>, relating to the government of German South West Africa. The relative clauses of the ordinance made provision for a *Gemeinderat* elected by the German inhabitants of the town.

The interests of the non-White population which had settled in locations in the immediate vicinity of the White townships, were represented by Native Commissioners appointed by the Governor, or in certain instances, by the *Gemeinderat* with the approval of the Governor. The locations were occupied exclusively by non-Whites, and were under the supervision of European officials who were responsible for law and order.

### C. General Policy Followed by Respondent

12. As has already been stated the different population groups of South West Africa have never formed a homogeneous or integrated community. For reasons which have also been explained Respondent considered it inadvisable, and not in the best interests of the government of the Territory as a whole, to treat the inhabitants as if they were an integrated society; and thus Respondent applied a policy designed to encourage the development of the various groups on the basis of their own respective cultures. Reference has also been made to the fact that the Allied and Associated Powers were, at the time of conferment of the Mandate, aware of the trends of a similar policy applied in the Union of South Africa, and, that in considering that South West Africa "can be best administered under the laws of the Mandatory as [an] integral [portion] of its territory"<sup>2</sup>, they contemplated, *inter alia*, extension of such a policy to the Territory<sup>3</sup>.

13. More particularly in the sphere of government, Respondent applied to the various Native groups, where possible, a system of indirect rule, the nature and implications of which have also been considered above<sup>4</sup>. Where the White inhabitants of the Territory had already congregated in the established towns and villages and on the farms within the Police Zone, Respondent accepted this position as it found it, and allowed the White group to develop culturally and economically in this area. Respondent also allowed the non-Whites in this area to remain and to pursue the economic advantages which they had come to seek.

14. Because of the largely unorganized and haphazard manner in which the non-White settlements had occurred on the outskirts of the White towns, a primary concern of the Mandatory Government, arising from this phase of development, was to see to it that the White municipal authorities and the employers of non-White labour in the towns played their part in providing these peri-urban communities with proper housing and attendant municipal facilities such as roads, water, lighting, sanitation, etc.,—things which the Natives concerned could hardly have

<sup>1</sup> *Vide Die deutsche Kolonial-Gesetzgebung, Sammlung der auf die deutschen Schutzgebiete bezüglichen Gesetze, Verordnungen, Erlasse und internationalen Vereinbarungen mit Anmerkungen und Sachregister, Dreizehnter Band (Jahrgang 1909), pp. 19-34.*

<sup>2</sup> Article 22 (6) of the Covenant.

<sup>3</sup> *Vide* Book IV, Chap. IV, paras. 36-38, of this Counter-Memorial.

<sup>4</sup> *Ibid.*, Chap. V, para. 7.

acquired if left to fend for themselves. As the ultimate responsibility rested with Respondent as Mandatory to protect and promote the well-being of the inhabitants of the Territory, it retained sole control of the determination of policy and the final say in its administration, and also established machinery to keep itself fully informed on all aspects of development.

15. It was only after the gaining of a basic degree of knowledge and experience of the organization and machinery of urban and peri-urban society, as known to the European inhabitants, that the indigenous people could be introduced to some constructive role in the municipal government thereof. In treating of this problem Respondent will endeavour to show how the intermediate stage was sought to be bridged by a system of Advisory Boards, which were intended, *inter alia*, as a training ground for wider responsibilities.

## D. Local Government of the White Inhabitants

### I. GENERAL

16. Under the German occupation of South West Africa the European inhabitants of the Territory established towns and villages within the Police Zone, but not beyond it. Since Respondent took over the Mandate this has remained the position, and all the White communities which maintain any form of local government exist only within the Police Zone.

17. Two forms of local government have been devised and are recognized by Respondent for the management of such towns and villages, viz., municipal councils and village management boards.

### II. MUNICIPAL COUNCILS

18. Municipal councils govern the larger White urban areas, which are known as municipalities. The councils act under the provisions of the Municipal Ordinance, 1963 (Ordinance No. 13 of 1963 (S.W.A.)), which superseded Ordinance No. 3 of 1949 (S.W.A.). Such councils consist of at least seven councillors elected by the White inhabitants of the municipality who conform to prescribed residential and fixed property qualifications<sup>1</sup>. The councillors in turn elect a mayor and a deputy mayor from among their number<sup>2</sup>.

19. Apart from its rights and duties in respect of the non-White inhabitants of its area, which will be dealt with in detail hereafter, the most important rights and duties of a municipal council are to provide and maintain streets, roads and public places in its area<sup>3</sup>, to provide and supply water<sup>4</sup> and electricity<sup>5</sup> for domestic and other use; to establish and maintain cemeteries<sup>6</sup>; to establish and conduct markets<sup>7</sup>;

<sup>1</sup> Ord. No. 13 of 1963 (S.W.A.), sec. 29, in *Official Gazette Extraordinary of South West Africa*, No. 2489 (29 June 1963), pp. 847-848.

<sup>2</sup> *Ibid.*, sec. 147 (2) (a) (ii), p. 872.

<sup>3</sup> *Ibid.*, sec. 177, pp. 899-900.

<sup>4</sup> *Ibid.*, sec. 210, pp. 909-910.

<sup>5</sup> *Ibid.*, sec. 234, pp. 923-924.

<sup>6</sup> *Ibid.*, sec. 219, pp. 911-912.

<sup>7</sup> *Ibid.*, sec. 226, p. 914.

to establish and carry out housing schemes<sup>1</sup>; and generally to perform auxiliary and incidental functions with the approval of the Administrator<sup>2</sup>.

A council may make regulations on the above matters falling within its powers and duties<sup>3</sup>, but again subject to the approval of the Administrator. Proposed regulations must be advertised and any person, whether he be a voter or not, who considers that his or the general public's interests will be adversely affected by the proposed regulation, is given an opportunity to make representations prior to final decision by the Administrator<sup>4</sup>.

20. Generally speaking, as will have been observed, municipal councils are subject to the overriding control of the Administrator, and practically all their powers are exercised subject to his approval. The Administrator may even frame "model regulations" which he may impose on a municipality either in whole or in part<sup>5</sup>. He controls the appointment and conditions of service of certain senior municipal officials<sup>6</sup>, and all rates and taxes levied by the municipal council<sup>7</sup>, as well as the council's annual estimates of income and expenditure, are subject to his approval<sup>8</sup>. The same applies to the purchase, exchange or hire of any immovable property by the Council<sup>9</sup>.

### III. VILLAGE MANAGEMENT BOARDS

21. Village management boards are controlled by the Village Management Boards Ordinance, 1963 (Ordinance No. 14 of 1963), which superseded Ordinance No. 16 of 1937.

Any area situated outside a municipal area may be proclaimed a village management board area by the Administrator in his discretion<sup>10</sup>, and he may then appoint a village management board for that area<sup>11</sup>. The board consists of the magistrate of the district, *ex officio*, "or any other person whom the Administrator at his pleasure may appoint", who shall be chairman and treasurer, "and, in the discretion of the Administrator, not less than two and not more than four other members appointed by the Administrator"<sup>12</sup>.

22. The rights and duties of a village management board are, generally speaking, similar to those of a municipality, viz., to provide and maintain streets and public places in its area, provide and supply water and electricity for the inhabitants of its area, and generally to provide for

<sup>1</sup> Ord. No. 13 of 1963 (S.W.A.), sec. 233, in *Official Gazette Extraordinary of South West Africa*, No. 2489 (29 June 1963), pp. 921-923.

<sup>2</sup> *Ibid.*, sec. 241 (6), p. 929.

<sup>3</sup> *Ibid.*, sec. 242, pp. 930-940.

<sup>4</sup> *Ibid.*, sec. 243, pp. 940-941.

<sup>5</sup> *Ibid.*, secs. 244 and 274, pp. 941, 946.

<sup>6</sup> *Ibid.*, sec. 148 (1), p. 874.

<sup>7</sup> *Ibid.*, sec. 166, pp. 887-889.

<sup>8</sup> *Ibid.*, sec. 159, pp. 880-881.

<sup>9</sup> *Ibid.*, sec. 174 (2), p. 896.

<sup>10</sup> Ord. No. 14 of 1963 (S.W.A.), sec. 3, in *Official Gazette Extraordinary of South West Africa*, No. 2490 (29 June 1963), pp. 958-959.

<sup>11</sup> *Ibid.*, sec. 8, pp. 959-960.

<sup>12</sup> *Ibid.*, sec. 8 (1), p. 959.

"the maintenance of good rule and government and the health, convenience, comfort, protection and safety of the inhabitants"<sup>1</sup>.

The village management boards in exercising their powers are subjected even more strictly to the control of the Administrator than the municipalities. Not only are the boards themselves appointed by the Administrator, but the appointment of any employees of a board receiving a salary of more than R40 (£20) per month must be approved by him<sup>2</sup>, and he may discharge any employee without being moved thereto in the first instance by the Board<sup>3</sup>. In other respects the situation regarding approval or control are largely the same as for municipal councils—e.g., regarding the purchase, acquisition or hiring of fixed property by the Board<sup>4</sup>, the estimates of annual expenditure<sup>5</sup>, and the making of regulations<sup>6</sup>.

23. Thus, in both forms of local government, the Administrator, who is Respondent's representative in the Territory, exercises a very real control over the actions of every local authority, and can to a very large extent influence the policy of such authority should he consider it desirable or advisable to do so.

### E. Centralized Control of Native Policy

24. Since the establishment of the Union of South Africa in May 1910, the control and administration of Native Affairs throughout South Africa vested in the Governor-General-in-Council. The provincial councils had no authority in matters of policy affecting Native Affairs, and local authorities, such as municipal councils and village management boards, similarly possessed no right to initiate Native policy. Local authorities do, however, assist in the application of policy in that regard, but this is due to the demands of expediency and not to any legislative enactment<sup>7</sup>.

25. In seeking to carry out its Mandate in South West Africa Respondent adopted the same approach in this regard, and looked upon the administration and control of Native Affairs as being its own responsibility to the exclusion of local authorities in the Territory—at any rate as far as the formulation of policy was concerned. It discharged such responsibility through the Administrator of the Territory, and, since 1 April 1955, through Respondent's own Minister of Native Affairs, now designated Minister of Bantu Administration and Development<sup>8</sup>.

26. In 1956 the then Minister of Native Affairs in the South African Government (now the Prime Minister) expressed this policy in his address to the Fifth Annual Congress of the Institute of Administrators of Non-European Affairs, in the following words:

<sup>1</sup> Ord. No. 14 of 1963 (S.W.A.), sec. 13 (1) (x), in *Official Gazette Extraordinary of South West Africa*, No. 2490 (29 June 1963), p. 966.

<sup>2</sup> *Ibid.*, sec. 10 (2), p. 961.

<sup>3</sup> *Ibid.*, sec. 10 (4), p. 961.

<sup>4</sup> *Ibid.*, sec. 11 (1), p. 961.

<sup>5</sup> *Ibid.*, sec. 23 (3), pp. 972-973.

<sup>6</sup> *Ibid.*, secs. 14 (1), 15 and 16, pp. 966-968.

<sup>7</sup> Davis, G., Melunsky, L. and du Randt, F. B., *Urban Native Law* (1959), p. 11.

<sup>8</sup> *Vide* Act No. 56 of 1954, sec. 2, in *Statutes of the Union of South Africa 1954*, p. 559.

"The true position is that there is only one source of policy in connection with Native Affairs in the country, and that is the State itself. *All the towns are solely concerned with executive activities. The task of the Urban Authorities is to carry the policy of the country into effect, not to create basic policy for themselves or for the country. It is a very clear basis, laid down in our legislation from the outset, that it would only create confusion and disorder in the country if Native Affairs became subject to a diversity of policies . . .* The founders of our State realized this very well and that is why ever since those days it has been laid down very clearly . . . that the source of policy in connection with Native Affairs in all spheres, is the State, that is to say, the Government of the Union <sup>1</sup>."

### F. Policy of Separate Development

27. The general policy which Respondent has sought to apply in South West Africa ever since it acquired the Mandate over the Territory, with adaptations from time to time in the light of changing circumstances, is one in which it seeks to encourage the various population groups to develop culturally and otherwise in separate areas—in accordance with the preferences shown by the groups themselves in this regard. Respondent realizes, however, that it is neither possible nor desirable to prevent all forms of contact between the various groups, but that, on the contrary, a large measure of economic inter-dependence is inevitable, and that co-operation between the groups, *inter alia*, in this sphere, is highly desirable.

28. It will be recalled that in his statement of the broad lines of such a policy, as set out earlier in this Counter-Memorial<sup>2</sup> the late General (later Field-Marshal) J. C. Smuts mentioned certain qualifications, *inter alia*, in these words:

"Instead of mixing black and white in the old haphazard way, . . . we are now trying to lay down a policy of keeping them apart as much as possible in our institutions. . . . *The natives will, of course, be free to go and to work in the white areas, but as far as possible the administration of white and black areas will be separated . . .*" (Italics added.)

29. The address by Respondent's Minister of Native Affairs (now the Prime Minister) on 17 September 1956<sup>4</sup> contained, *inter alia*, the following passage regarding the basic policy and its qualifications, seen in the light of developments up to that stage:

"The quintessence of the matter is that while the European enjoys all his rights and privileges in one part of the country, namely in what we call White South Africa, the Native has similar rights and privileges, but can in turn only exercise them within the Native Areas, i.e. in the Reserves—whether tribal territory or areas sub-

<sup>1</sup> *Local Authorities and the State*: Opening Speech delivered by the Hon. Dr. H. F. Verwoerd, Minister of Native Affairs, at the Fifth Annual Congress of the Administrators of Non-European Affairs in Southern Africa on 17 September 1956 (1959), p. 7.

<sup>2</sup> *Vide* Book IV, Chap. IV, para. 36, of this Counter-Memorial.

<sup>3</sup> Smuts, J. C., *Toward a Better World* (1944), pp. 12-13.

<sup>4</sup> *Vide* para. 26, *supra*.

sequently purchased. . . . In these territories the European has no claim to property and certain civil rights. There he is the temporary inhabitant who helps with the development of those areas, but they belong to the Natives. The rights of the Natives are bound up with this fact . . . . Just the opposite is the case in the European areas. There is the home of the European's rights and there the Native is the temporary resident and the guest, for whatever purpose he may be there <sup>1</sup>."

30. In its report delivered in 1922, the Transvaal Local Government Commission—also known as the Stallard Commission—urged the central government of the Union to control more effectively the administration of Native Affairs in the urban areas, and at the same time to impose a statutory duty on municipal bodies to provide adequate housing accommodation for all Natives within these areas <sup>2</sup>, including rest houses and reception houses to accommodate Natives entering such areas for the purpose of seeking employment therein <sup>3</sup>. It also urged the central government to place adequate tracts of land at the disposal of the municipalities to carry out the housing schemes envisaged <sup>4</sup>, and to establish within such Native villages Native advisory boards on which the inhabitants of such villages could be represented <sup>5</sup>, and through which they could express their wishes and carry out such duties as might be imposed upon them by law.

31. These recommendations of the Stallard Commission were given effect to by the adoption of the Natives (Urban Areas) Act, 1923 (Act No. 21 of 1923) <sup>6</sup>, which Act, with certain modifications, was applied also to South West Africa by Proclamation No. 34 of 1924 (S.W.A.) <sup>7</sup>—subsequently superseded by Proclamation No. 56 of 1951 (S.W.A.) <sup>8</sup>.

The 1924 proclamation was an important initial step in the application of Respondent's aforementioned policy, and in promoting the well-being of the urban and peri-urban Native communities in question. Further developments in these respects, are dealt with in succeeding portions of this Chapter.

### G. Population Increase in Urban Areas

32. When Respondent assumed the Mandate, the Territory had a White population of approximately 19,000, and a non-White population of approximately 200,000 <sup>9</sup> comprising various ethnic and linguistic groups. Of the latter it is difficult to say with any degree of certainty how many resided within the Police Zone and how many outside; and of those within the Police Zone, how many resided in the Reserves within the Zone and how many in the towns and on the farms.

<sup>1</sup> *Local Authorities and the State* (1959), p. 8.

<sup>2</sup> T.P. 1-1922, para. 270, p. 48.

<sup>3</sup> *Ibid.*, paras. 276-277, p. 49.

<sup>4</sup> *Ibid.*, Appendix VII, para. 10, p. 96.

<sup>5</sup> *Ibid.*, para. 295, p. 52.

<sup>6</sup> Act No. 21 of 1923, in *Statutes of the Union of South Africa 1923*, pp. 140-197.

<sup>7</sup> Proc. No. 34 of 1924 (S.W.A.), in *The Laws of South West Africa 1924*, pp. 178-190.

<sup>8</sup> Proc. No. 56 of 1951 (S.W.A.), in *The Laws of South West Africa 1951*, Vol. XXX, pp. 90-171.

<sup>9</sup> *Vide* Book III, Chap. II, of this Counter-Memorial.

By 1939 however, there were 19,000 non-Whites living in urban areas within the Police Zone<sup>1</sup>. This figure increased to 41,482 in 1951<sup>2</sup>, and to 69,677 in 1960<sup>3</sup>. The considerable increase in recent years is most probably due to the economic progress which has been made by and through the enterprise of the White inhabitants of the Territory, whereby greater opportunities were created for the economic advancement also of the non-White inhabitants.

33. A portion of the said non-White urban population consists of people from outside the Police Zone who spend a year or two away from their homes in employment within the Zone. Those ethnic groups whose homelands are outside the Police Zone, have insisted that their members who take up employment in the Police Zone return to their family units after an absence of two and a half years at the most.

Other urban non-Whites included in the above-mentioned figures normally reside in the reserves within the Police Zone, but at times work in the White urban areas on comparatively short-term contracts.

## H. Provision of Amenities in Native Residential Areas

### I. NON-WHITE HOUSING ACCOMMODATION IN URBAN AREAS

34. Proclamation No. 34 of 1924 (S.W.A.) placed a statutory responsibility on urban local authorities to provide adequate housing and accommodation facilities for non-Whites in their areas. The same duty is now provided for in Proclamation No. 56 of 1951 (S.W.A.) which superseded the former Proclamation. Section 233 of the Municipal Ordinance, 1963<sup>4</sup>, and section 28 of the Village Management Boards Ordinance, 1963<sup>5</sup>, authorize municipal councils and village management boards respectively to establish and carry out housing schemes. In addition, as pointed out in the Memorials<sup>6</sup>, Proclamation No. 56 of 1951 (S.W.A.) authorizes an urban local authority—i.e., a municipal council or village management board—subject to the approval of the Minister of Bantu Administration and Development, to set aside and lay out "one or more areas of land for the occupation, residence and other reasonable requirements of natives"<sup>7</sup>. Such an area is referred to in the proclamation as a "location".

The proclamation also authorizes a portion of a location to be set aside for what it terms a "Native village", in which Natives are allowed to acquire the lease of lots for the erection of houses or huts for their own occupation<sup>8</sup>.

<sup>1</sup> U.G. 30—1940, p. 213.

<sup>2</sup> *Vide South West Africa Population Census, 8 May 1951*, p. 8.

<sup>3</sup> 1960 Population Census (unpublished).

<sup>4</sup> Ord. No. 13 of 1963 (S.W.A.), sec. 233, in *Official Gazette Extraordinary of South West Africa*, No. 2489 (29 June 1963), pp. 921-923. Ord. No. 13 of 1963 (S.W.A.) replaced Ord. No. 3 of 1949 (S.W.A.) as from 1 July 1963.

<sup>5</sup> Ord. No. 14 of 1963 (S.W.A.), sec. 28, in *Official Gazette Extraordinary of South West Africa*, No. 2490 (29 June 1963), pp. 976-978. This Ordinance came into operation on 29 June 1963.

<sup>6</sup> I, para. 111, p. 138.

<sup>7</sup> Proc. No. 56 of 1951 (S.W.A.), sec. 2 (1) (a), in *The Laws of South West Africa 1951*, Vol. XXX, p. 94.

<sup>8</sup> *Ibid.*, sec. 2 (1) (b) and (c), p. 94.

The urban authority is, furthermore, authorized to provide buildings or huts, known as "Native hostels", within a location or Native village, for the accommodation of Natives not living under conditions of family life <sup>1</sup>, and to provide other buildings or huts for the accommodation of Native families <sup>2</sup>.

## II. FINANCIAL ASSISTANCE BY THE ADMINISTRATION

35. To enable local authorities to provide the necessary housing for the Native people in their areas, loan funds have been provided by the South West Africa Administration <sup>3</sup>. Such loans are granted at the rate of 1 per cent. interest *per annum* and are repayable over a period of 30 years.

36. During 1957 the Administration granted such a loan to the Municipality of Windhoek for an amount of R1,500,000 (£750,000), increased to R1,800,000 (£900,000) during 1960, to be used for the establishment of a new Native township called Katutura. The scheme includes provision for some 2,000 houses, hostels for single men, schools, crèches, health clinics, churches, and business premises. The houses are provided with modern facilities, including electricity, water supply and a sewerage system.

In addition to the above-mentioned scheme a new Ovambo hostel has been erected at Katutura for the housing of some 6,000 Ovambos employed in Windhoek on short-term contracts. This hostel, which cost approximately R300,000 (£150,000), was financed from the accumulated surplus funds of a pre-existing Ovambo compound, which funds were contributed by the employers of the Ovambos, and were subsequently transferred to the Native Revenue Account of the Municipality.

37. During the period 1952 to 1960 the following further loans were made, on the terms set out above, to the local authorities mentioned below for the carrying out of similar housing schemes for Natives, or for the provision of additional amenities for existing housing schemes, viz.:

Walvis Bay <sup>4</sup> . . . . .	R1,195,854	(£597,927)
Keetmanshoop . . . . .	284,800	(142,400)
Outjo . . . . .	86,400	(43,200)
Grootfontein . . . . .	171,044	(85,522)
Karasburg . . . . .	12,000	(6,000)
Okahandja . . . . .	92,174	(46,087)
Swakopmund . . . . .	230,670	(115,335)
Usakos . . . . .	114,528	(57,264)
Tsumeb . . . . .	78,000	(39,000)
Karibib . . . . .	50,000	(25,000)

<sup>1</sup> *Proc. No. 56 of 1951 (S.W.A.), sec. 2 (1) (c), in The Laws of South West Africa 1951, Vol. XXX, p. 94.*

<sup>2</sup> *Ibid., sec. 2 (1) (d), p. 94.*

<sup>3</sup> *Ibid., sec. 14 (1) (b), p. 114.*

<sup>4</sup> As has been mentioned, Walvis Bay, although part of the Republic of South Africa, is for administrative purposes treated as if it were a portion of the Territory of South West Africa. The housing here referred to was in any event provided for Natives derived largely from the Territory and employed temporarily at Walvis Bay.

Otjiwarongo . . . . .	R54,800	(£27,400)
Welwitschia . . . . .	8,000	(4,000)
Lüderitz . . . . .	8,000	(4,000)
Maltahöhe . . . . .	800	(400)
Mariental . . . . .	4,000	(2,000)

38. A further amount of R492,622 (£246,311) was spent on Native housing during that period by the following seven municipalities viz., Windhoek (R275,642—£137,821), Walvis Bay (R138,926—£69,463), Karasburg (R41,000—£20,500), Okahandja (R24,128—£12,064), Swakopmund (R6,764—£3,382), Usakos (R4,030—£2,015), Otjiwarongo (R2,132—£1,066).

39. During the period mentioned above, therefore, an amount of R4,683,692 (£2,341,846) has been spent on Native housing by local authorities in the Territory. Funds continue to be made available for this purpose and in 1961-1962 an amount of R1,297,500 (£648,750) was advanced to local authorities.

In the case of six urban non-White residential areas where the local authorities concerned were not in a financial position to meet the cost of providing water and sanitation, the Administration has itself, in terms of section 2 (1) of Ordinance No. 13 of 1944 (S.W.A.)<sup>1</sup>, spent a further R13,451 (£6,725) from its Territorial Development and Reserve Fund to provide these facilities, viz., R2,374 (£1,187) at Stampriet; R1,650 (£825) at Maltahöhe; R1,000 (£500) at Karasburg; R2,656 (£1,328) at Bethanie; R2,250 (£1,125) at Aus; and R3,520 (£1,760) at Otavi.

### III. CONTRIBUTION BY EMPLOYERS

40. The Native Housing Levy Ordinance, 1961 (Ordinance No. 33 of 1961 (S.W.A.))<sup>2</sup>, was designed to provide for contributions by employers towards the cost involved in the provision of housing for their Native employees living in the urban locations.

In terms of this ordinance the Administrator may declare any area to be a declared housing area<sup>3</sup>, that is, an area in which every person who employs one or more adult male Natives shall pay a contribution to the urban local authority concerned for the benefit of a Native housing levy fund<sup>4</sup>. The contribution is calculated according to the number of weeks during which a Native is employed<sup>4</sup>.

It is not payable where a private householder provides a domestic servant with approved accommodation<sup>5</sup>, nor where an employer otherwise provides approved accommodation free of charge<sup>6</sup>.

The contribution may not be deducted from the employee's wages, nor may his services be terminated on account of the contribution having to be paid<sup>7</sup>.

<sup>1</sup> *Ord. No. 13 of 1944 (S.W.A.), sec. 2 (1), in The Laws of South West Africa 1944, Vol. XXIII, p. 806.*

<sup>2</sup> *Ord. No. 33 of 1961 (S.W.A.), in The Laws of South West Africa 1961, Vol. XL, pp. 1308-1317.*

<sup>3</sup> *Ibid.*, sec. 2, p. 1310.

<sup>4</sup> *Ibid.*, sec. 3 (1), p. 1310.

<sup>5</sup> *Ibid.*, sec. 3 (2) (a), p. 1312.

<sup>6</sup> *Ibid.*, sec. 3 (2) (b), p. 1312.

<sup>7</sup> *Ibid.*, sec. 4, p. 1312.

41. Apart from the cost of administering the ordinance, the Native housing levy fund may only be used to defray approved expenditure incurred by the urban local authority in providing housing in Native residential areas under its control, or to make a contribution to the Native revenue account of an urban location for the purpose of reducing interest and redemption charges payable from such account in respect of loans taken up to provide housing in a Native residential area <sup>1</sup>.

42. The Native housing levy fund has made it possible for a Native to lease a house for such a nominal rental as R2.50 (£1 5s.) per month—an amount which hardly covers the cost of the services connected with such a house.

#### IV. LAYOUT OF NATIVE RESIDENTIAL AREAS

43. The Native urban residential areas have been developed on modern town planning principles in accordance with which every facility available in White townships, e.g., social welfare and sports centres, hospitals, cinemas and playgrounds for children, have been provided. In addition to the hospitals established for non-Whites in the urban areas by the South West African Administration, urban local authorities also establish clinics in the non-White residential areas, where the local authorities' medical officers of health are in regular attendance. The clinics remain open during the day when the district nurses attend to minor ailments and to pre-natal and post-natal treatment of women, and arrange for the admission of patients to hospital. The above-mentioned services are rendered free of charge as a social service.

44. Because of the preference shown by the various Native groups to live apart from other groups <sup>2</sup>, Respondent has sought to give effect to such preference and to provide, as far as is practicable, separate residential areas and other facilities for the various groups living in urban areas. Reference to this policy was made in Respondent's annual report to the League of Nations in 1927, in which it was stated:

"The different tribes [in urban areas] do not live under tribal conditions, although cohesion amongst members is still evident socially. In the allocation of sites in the Municipal Locations at Usakos and Karibib this factor is observed as far as is practicable <sup>3</sup>."

45. This tendency was again referred to in the annual report submitted by Respondent to the League of Nations in 1939, in which, referring to non-White farm employees, the following remarks appear:

"In the matter of living they tend to group themselves according to the tribe to which they belong, if members of more than one tribe are employed. This is accounted for by the fact that each tribe has its prejudices. For instance, the Hereros as a rule look down on the Damaras or Klip Kaffirs whom they regard as their inferiors. This has come about as a result of the subservient position held by the latter tribe when regular tribal life was in existence. On some farms only members of one tribe will be found. In these cases the owners of

<sup>1</sup> Ord. No. 33 of 1961 (S.W.A.), sec. 6, in *The Laws of South West Africa 1961*, Vol. XL, pp. 1312-1314.

<sup>2</sup> *Vide* para. 9, *supra*.

<sup>3</sup> U.G. 31—1928, para. 47, p. 35.

the farms have a preference for members of a particular tribe as servants. Where Ovambos and Okavangos are employed as well as Police Zone natives they will also group themselves separately from the others <sup>1</sup>."

46. Prior to the proclamation in 1925 of the first location at Windhoek, members of various groups were, of their own free will, living scattered in ethnic groupings of their own on the outskirts of Windhoek. With the proclamation of the said location the non-European advisory board, consisting of representatives of each of the ethnic groups concerned, requested that the location be planned according to the separate requirements of the various groups.

The various groups prefer to have their own separate schools, clubs, churches, sportsgrounds and other amenities, and intermarriage between the different ethnic groups is a very rare occurrence. During 1960 the Ovambos residing in the new township of Katutura near Windhoek requested the executive committee of the Territory to be provided with a separate school for their children in that township. When this request was acceded to, representatives of the urban Ovambo community called at the office of the Chief Bantu Affairs Commissioner to express their appreciation, and when the school was opened leaders from Ovamboland also publicly expressed their gratitude.

47. In the light therefore of these clear preferences of the groups themselves, and of the state of affairs pertaining when the Mandate was assumed, it was natural for Respondent to act in accordance with this tendency in the provision of proper housing and municipal facilities for the various non-White groups. In Respondent's own view it appeared to be in the general interest of the population that this tendency should be respected and given effect to. Furthermore the provision of separate residential areas and other facilities for the different groups, served to facilitate the administration of urban communities. Not only did it afford a familiar community life to those non-Whites who came into the generally unfamiliar White urban areas, but it also made it easier for Respondent to provide adequate educational facilities where the young children could be educated in their own tongue by teachers of their own group. So too, a homogeneous community, with its own artisans, tradesmen and government servants, could be encouraged to develop in a particular area.

#### V. TRADING IN LOCATIONS

48. In terms of section 31 of Proclamation No. 56 of 1951 (S.W.A.) an urban local authority "may let sites within the location or native village for trading or business purposes" <sup>2</sup>, but such sites can only be let to Natives, and no person who is not a Native may be employed on any site so let <sup>3</sup>. Business and trading rights in the locations and Native villages are therefore reserved exclusively for Natives. Reference has elsewhere been made to the Native businesses which have in

<sup>1</sup> U.G. 30—1940, para. 830, p. 142.

<sup>2</sup> Proc. No. 56 of 1951 (S.W.A.), sec. 31 (a), in *The Laws of South West Africa 1951*, Vol. XXX, p. 152.

<sup>3</sup> *Ibid.*, sec. 31 (c) (i), p. 154.

the result in fact become established in such urban areas in the Territory<sup>1</sup>.

### I. Management and Control of Locations and Native Villages

49. The regulation, control and management of urban locations vest in the first place in the urban local authorities in whose area of jurisdiction they fall<sup>2</sup>, but, as will be shown, this control is exercised subject to overriding supervision on Respondent's own part, because of its ultimate responsibility for the well-being and development of the Natives concerned.

Section 32 (2) of Proclamation No. 56 of 1951 (S.W.A.) provides that an urban local authority may make regulations as to various matters pertaining to locations, Native villages and Native hostels, e.g., the terms and conditions of residence in them; their management, control, and the maintenance of good order, health and sanitation in them; the employment of officers and other persons for purposes of management and control; the mode of election or selection of members of Native Advisory Boards, the procedure of such Boards, the period and conditions of office, and the definition of the duties and functions of the members thereof<sup>3</sup>.

50. Section 20 (1) of the said Proclamation (replacing a similar section 9 (1) of Proclamation No. 34 of 1924 (S.W.A.)) makes it imperative for a Native advisory board to be established for every location and Native village under the control of an urban local authority. Such a board consists of not less than three Native residents of the area concerned, in addition to a chairman who may be a White person<sup>4</sup>. In practice every urban local authority seems to have appointed the principal administrative officer of the particular location or his deputy as chairman of such a board.

51. The section then goes on to outline the functions of a Native advisory board, and provides that such a board shall consider and report on—

- (a) "any regulations which the urban local authority proposes to make or adopt . . ." and which affect Natives in the locations,
- (b) "any matter referred to it by the Administrator or the urban local authority", and
- (c) "any matter specially affecting the interests of natives in the urban area upon which the board may consider it useful or desirable to report, . . ."<sup>5</sup>

Such report of the board must be submitted either to the urban local authority or to the Administrator as the circumstances may require<sup>5</sup>.

A Native advisory board may also recommend to the urban local authority the making or adoption of regulations which it considers

<sup>1</sup> *Vide* Book V, sec. D, of this Counter-Memorial.

<sup>2</sup> *Proc.* No. 56 of 1951 (S.W.A.), sec. 14, in *The Laws of South West Africa 1951*, Vol. XXX, pp. 114-116.

<sup>3</sup> *Ibid.*, sec. 32 (2), pp. 156-162.

<sup>4</sup> *Ibid.*, sec. 20 (1), p. 126.

<sup>5</sup> *Ibid.*, sec. 20 (2) (a), p. 126.

necessary or desirable in the interests of the Natives in the urban areas <sup>1</sup>.

52. Every local authority which administers or controls any location, Native village, or Native hostel is required to keep a separate account, to be known as a Native revenue account, from which appropriations are made from time to time for the rendering of services to such Native residential areas, or for expenditure for the benefit or the welfare of the residents of such areas <sup>2</sup>. Such appropriation is made by the urban local authority concerned, and is subject to the written approval of the Administrator before it can be given effect to <sup>3</sup>. The proclamation, however, requires the urban local authority to refer the draft estimates for such appropriation to its Native advisory board for consideration and report thereon before passing the estimates itself <sup>3</sup>.

53. The urban local authorities in the Territory, exercising their prerogative in terms of section 32 (2) of the proclamation to make regulations concerning the mode of election or selection of members of the Native advisory boards, have, in most cases, made regulations providing for members to be elected and selected for appointment in equal numbers. The regulations for the Windhoek urban location <sup>4</sup>, as well as those for Walvis Bay <sup>5</sup>, provide for not more than three members to be appointed by the Municipal Council and for the other members to consist of one elected representative for each of the wards into which the location shall be divided for this purpose. The regulations provide for the elected members to be nominated in writing by the registered occupiers, and where the number of such nominations exceeds the number of vacancies, a proper poll is to be held at which the registered occupiers record their votes in secret, and the candidates receiving the highest number of votes are declared to be duly elected to the board. The regulations of a few of the authorities provide only for appointed members, but these are selected from the ranks of the recognized headmen who are chosen by the people <sup>6</sup>.

## J. The Objects and Future of the Native Advisory Boards

54. The Native advisory boards were intended not only as media of contact between the urban local authorities and the inhabitants of the non-White residential areas, but also as a means of assisting the Natives concerned to adjust themselves to the needs of a new social and economic order. The system had inherent in itself obvious advantages as a training ground for wider responsibilities, and, in fact, one of its avowed aims was to teach the non-White inhabitants the spirit and technique of local government in a democracy.

55. Unfortunately the advisory boards failed to measure up to the expectations entertained for them. Various reasons have been advanced

<sup>1</sup> *Proc. No. 56 of 1951 (S.W.A.), op. cit., sec. 20 (2) (b), p. 126.*

<sup>2</sup> *Ibid., sec. 17 (1) and (2), p. 118.*

<sup>3</sup> *Ibid., sec. 17 (4), p. 120.*

<sup>4</sup> Issued under G.N. No. 16 of 1962 (S.W.A.), in *Official Gazette Extraordinary of South West Africa*, No. 2369 (1 Feb. 1962), pp. 54-103.

<sup>5</sup> Issued under G.N. No. 243 of 1960 (S.W.A.), in *Official Gazette Extraordinary of South West Africa*, No. 2287 (14 Dec. 1960), pp. 1179-1227.

<sup>6</sup> *Vide, e.g., G.N. No. 25 of 1949 (S.W.A.), re Karasburg, in Official Gazette of South West Africa*, No. 1406 (1 Feb. 1949), pp. 2008-2013.

for this failure. In his address to the Congress of the Institute of Administrators of Non-European Affairs, referred to above<sup>1</sup>, Respondent's Minister of Native Affairs (now the Prime Minister) expressed the following views:

"... I do not consider the system of Native Advisory Boards a successful system. *Any advisory body which bears no responsibility, necessarily becomes a body which comes forward with all kinds of demands and requests and expectations.* In fact, the greater the demands advanced by such bodies, the greater chance the members have of being re-elected. . . . For this reason I am not in favour of the continuance of the advisory council system. *I believe that eventually the Native inhabitants should have a certain measure of joint responsibility in the regulation of the affairs of their own residential area by means of representatives, that they ought to receive a certain administrative responsibility.* (Italics added.) In other contexts it has been experienced that when the energies of the Native are enlisted to exercise a certain measure of control over his own people, then a greater sense of responsibility is displayed and a much better disposition develops, so that the work of administrative officials is made much easier. *Therefore, I believe that we must eventually arrive at a system of urban Bantu authorities . . .*" (Italics added.)

56. The first step towards the attainment of this end in South Africa itself was in the Promotion of Bantu Self-Government Act, 1959 (Act No. 46 of 1959). The Act enumerates the various broad general national or ethnic units which comprise the Bantu population of South Africa<sup>2</sup>, and goes on to provide that the territorial authority—i.e., the body having jurisdiction or responsibility in the traditional homelands of such national or ethnic units—shall, in consultation with the Minister of Bantu Administration and Development, and with the approval of the Governor-General, nominate a Bantu person to represent that authority in the areas of one or more White urban local authorities with regard to the Bantu community in such area belonging to the national unit concerned<sup>3</sup>.

The Act further provides that this representative must represent the territorial authority in such urban area, look after the interests of the members of the national unit concerned in such area, and advise the territorial authority he represents on matters concerning the general interests of the national unit in that particular area<sup>4</sup>.

57. This Act was followed up by the Urban Bantu Councils Act, 1961 (Act No. 79 of 1961, as amended by sections 26-29 of Act No. 76 of 1963), which provided (again in South Africa itself) for the substitution of Urban Bantu Councils for the former Native advisory boards<sup>5</sup>. Such Councils consist of not less than six members, of whom half are elected by the residents of the area concerned and the other half selected, after

<sup>1</sup> *Vide* para. 26, *supra*.

<sup>2</sup> *Local Authorities and the State* (1957), p. 19.

<sup>3</sup> Act No. 46 of 1959, sec. 2 (1), in *Statutes of the Union of South Africa 1959*, Part 1 (Nos. 1-60), p. 514.

<sup>4</sup> Act No. 46 of 1959, *op. cit.*, sec. 4, p. 518.

<sup>5</sup> *Ibid.*, sec. 5, p. 518.

<sup>6</sup> Act No. 79 of 1961, secs. 2 and 9, in *Statutes of the Republic of South Africa 1961* (Nos. 42-81), pp. 1266-1268, 1276-1278; and Act No. 76 of 1963, sec. 26.

their candidature has been approved by the Minister of Bantu Administration and Development and by the urban local authority, from amongst the representatives of the recognized Bantu chiefs<sup>1</sup>. In this way official recognition is given in the urban areas to the traditional forms of Bantu government. Although the Council itself cannot be described as a traditional organ of government, nevertheless it derives additional efficacy by recognizing the authority of the traditional institutions of Bantu government, in combination with an equal elective element constituted on democratic principles.

In addition to taking over the powers and duties of the Native advisory board, the Council will also exercise such powers and perform such duties of an urban local authority in connection with the Bantu, as the urban local authority may assign to it, with the concurrence of, and subject to such conditions as may be determined by, the Minister of Bantu Administration and Development. The matters in respect of which such powers and duties may be assigned to the Council are, *inter alia*:

- (a) the layout of the area;
- (b) the accommodation of Bantu not living under conditions of family life;
- (c) the management and control of the area and the maintenance of good order therein;
- (d) the prohibition, regulation or restriction of the keeping of animals and the grazing on any commonage of stock belonging to persons living in the area;
- (e) the provision of sanitary, health and medical services; and
- (f) the moral and social welfare of persons living in the area<sup>2</sup>.

The Council is also enjoined to consider and report to the Chief Bantu Affairs Commissioner or any other Bantu Affairs Commissioner on any matter referred to it by such Commissioner or on which it deems it desirable to report<sup>3</sup>.

58. The Act also makes provision for the establishment of a community guard, for the maintenance of law and order and for the prevention of crime within the area<sup>4</sup>. This community guard is subject to the control and management of the Council. The Minister is furthermore empowered to confer on a Bantu designated by the Council, and who is a member of such Council or the recognized representative of a chief, the same civil and criminal jurisdiction to try cases as may be conferred on a Bantu chief, i.e., jurisdiction to try civil claims arising out of Native law and custom brought by a Native against a Native (other than matrimonial matters), and jurisdiction to try lesser criminal offences whether under the common law or under Native law and custom<sup>5</sup>.

Provision is also made for the assignment of further functions to a Council by the Minister, and for auxiliary and incidental powers<sup>6</sup>.

59. As yet the above provisions have not been extended to South

<sup>1</sup> Act No. 79 of 1961, sec. 3, in *Statutes of the Republic of South Africa 1961* (Nos. 42-81), pp. 1268-1270; and Act No. 76 of 1963, sec. 27.

<sup>2</sup> *Ibid.*, sec. 4 (2) (a), p. 1270.

<sup>3</sup> *Ibid.*, sec. 4 (2) (c), p. 1272.

<sup>4</sup> *Ibid.*, sec. 7, p. 1274.

<sup>5</sup> *Ibid.*, sec. 5, p. 1274.

<sup>6</sup> *Ibid.*, sec. 4 (2) (a) and (f), p. 1272.

West Africa, and the system of Native advisory boards under Proclamation No. 56 of 1951 (S.W.A.) is still in force in the Territory. In conjunction however with the projected establishment in South West Africa of a system similar to that of Bantu Territorial Authorities in South Africa, Respondent envisages the early establishment in the Territory also of a system similar to that described above relative to the local government of Natives in urban areas. Experience now being gained in South Africa regarding the practical operation of such a system will no doubt enable Respondent to make such adaptations as may be necessary with a view to a system best suited to the needs, well-being and progress of the Native peoples of South West Africa.

### K. Supervisory Control of Respondent over Local Authorities

60. As has been indicated above, Respondent sought to promote to the utmost the material and moral well-being and social progress of the indigenous inhabitants of the Territory by a system of indirect government, as far as this proved feasible. Respondent, therefore, proclaimed its representative, the Administrator of the Territory, to be vested with all those powers, which, under Native law and custom, were vested in a supreme or paramount chief<sup>1</sup>. Native affairs and matters specially affecting Natives were expressly excluded from the ordinary powers conferred on the Legislative Assembly of the Territory<sup>2</sup>, and remained vested in Respondent itself.

61. Considerations of practical expediency led Respondent to delegate some of its powers of management and administration of Native affairs in urban areas to the urban local authorities, thereby in a sense constituting such authorities Respondent's agents in this regard<sup>3</sup>. Respondent has, however, reserved to itself certain powers whereby it can exercise strict control over the activities of the local authorities, more particularly in the respects set out hereunder.

The powers of a local authority to lay out Native residential areas and to build Native hostels or houses, have been made subject to the approval of the Administrator<sup>4</sup> (since 1 April 1955, of the Minister of Bantu Administration and Development)<sup>5</sup>. Where inadequate or unsuitable accommodation is provided for Natives in an urban area, the Minister (formerly the Administrator) may, after an enquiry held in public, require the local authority to remedy its default<sup>6</sup> and, failing compliance, the Minister (formerly the Administrator) is authorized to do all such things himself as may be necessary to give effect to his

<sup>1</sup> Proc. No. 15 of 1928 (S.W.A.), sec. 1, in *The Laws of South West Africa 1928*, pp. 58-60.

<sup>2</sup> Act No. 42 of 1925, sec. 26, in *Statutes of the Union of South Africa 1925*, pp. 752-754.

<sup>3</sup> Proc. No. 34 of 1924 (S.W.A.), superseded by Proc. No. 56 of 1951 (S.W.A.).

<sup>4</sup> Proc. No. 34 of 1924 (S.W.A.), sec. 1, in *The Laws of South West Africa 1924*, p. 178, and Proc. No. 56 of 1951 (S.W.A.), sec. 2, in *The Laws of South West Africa 1951*, Vol. XXX, pp. 94-96.

<sup>5</sup> Act No. 56 of 1954, sec. 2 (b), in *Statutes of the Union of South Africa 1954*, p. 559.

<sup>6</sup> Proc. No. 34 of 1924 (S.W.A.), sec. 2, in *The Laws of South West Africa 1924*, pp. 178-179, and Proc. No. 56 of 1951 (S.W.A.) sec. 3, in *The Laws of South West Africa 1951*, Vol. XXX, p. 96.

requirements, and may recover the expenditure so incurred from the local authority <sup>1</sup>.

62. Similar wide powers are conferred on the Minister where a local authority neglects to perform any act which the proclamation requires it to perform, or if it performs such act in such a manner that, in the opinion of the Minister, effect is not given to the objects and purposes of the proclamation. Here, too, the Minister may require the local authority to comply with his requirements and, on default, remedy the situation himself at the expense of the local authority <sup>2</sup>.

The Minister also has supervisory powers in respect of the establishment, maintenance <sup>3</sup>, removal, curtailment, or abolition of Native residential areas or hostels <sup>4</sup>, and he may take over a location, Native village or Native hostel at the request of the local authority if such a course is desirable in the public interest <sup>5</sup>. He supervises payments out of the Native revenue account referred to in paragraph 52 above <sup>6</sup>, approves and licenses officers assigned by the urban local authority to the management of a Native residential area <sup>7</sup>, and has the final approval also of the termination of the services of such officers or the reduction of their emoluments <sup>8</sup>.

63. To keep the Minister advised of the position in all urban areas, the proclamation provides for the appointment by him of officers known as Urban Areas Commissioners or Inspectors <sup>9</sup>. Such Inspectors are required to keep a watch on the well-being and welfare of the Natives concerned and are for this purpose given powers of access to the books and accounts of the urban local authorities <sup>9</sup>. Every Native Commissioner is deemed to have been appointed such an officer for the area of his jurisdiction <sup>9</sup>. When necessary, such officers report in writing to the Minister.

In many of the urban areas the Native Commissioner attends the meetings of the Native advisory board, and reports to the Chief Bantu Affairs Commissioner on the proceedings whenever he considers this to be necessary. Copies of the minutes of the meetings of the board are, in any case, submitted to the office of the Chief Bantu Affairs Commissioner for scrutiny and, if necessary, a report thereon to the Minister <sup>10</sup>.

### L. Local Government Outside the Police Zone

64. As has already been stated, there are no settled White communities outside the Police Zone. There are also no established non-White towns or villages, in the sense understood in modern civilizations. Every *kraal*

<sup>1</sup> *Proc. No. 34 of 1924 (S.W.A.)*, sec. 3, p. 179, and *Proc. No. 56 of 1951 (S.W.A.)*, sec. 4, pp. 96-98.

<sup>2</sup> *Proc. No. 56 of 1951 (S.W.A.)*, sec. 34, p. 164.

<sup>3</sup> *Ibid.*, sec. 14, pp. 114-116.

<sup>4</sup> *Proc. No. 56 of 1951 (S.W.A.)*, sec. 3 (2), p. 96.

<sup>5</sup> *Proc. No. 34 of 1924 (S.W.A.)*, sec. 4, pp. 179-180, and *Proc. No. 56 of 1951 (S.W.A.)*, sec. 5, p. 98.

<sup>6</sup> *Proc. No. 56 of 1951 (S.W.A.)*, sec. 17, pp. 118-122.

<sup>7</sup> *Ibid.*, sec. 21, p. 128.

<sup>8</sup> *Ibid.*, sec. 21 (1) and (2), p. 128.

<sup>9</sup> *Ibid.*, sec. 21 (3), p. 128.

<sup>10</sup> *Ibid.*, sec. 20, p. 126.

is an independent entity in itself—economically and otherwise—and is controlled according to the laws and customs of the particular Native group concerned, e.g., by a headman, sub-headman, family head, or the like. Consequently local government, in the sense as used in the Memorials, is as yet non-existent in these communities.

### M. To Sum Up in Regard to Local Government

65. The towns and villages within the Police Zone were originally established as centres for White communal settlement, and were not designed or intended to accommodate non-White inhabitants, who were then living in their traditional tribal association.

“The non-Whites, who entered the White man's . . . urban areas, came solely to seek employment, safety, health, education, all of which was provided freely by the white man, not knowing of and not expecting and not even thinking of political rights<sup>1</sup>.”

66. These non-Whites settled in separate areas in the vicinity of the established towns without having any participation in the communal life of the towns or in their local government. This was the position when Respondent assumed the Mandate—one which was common enough in all parts of central and southern Africa where White communities became established.

On the assumption of the Mandate, Respondent adopted a policy of governing the non-White peoples indirectly, and to this end sought to build up the impaired tribal organizations in the Police Zone, and to strengthen those outside that Zone. It did not, however, seek to remove those non-Whites who were living in or adjacent to the White urban areas, since it recognized that from an *economic* point of view—

“it [was] not possible to regard the European and native spheres of interest as entirely separable, though they [might] for some purposes be distinguishable<sup>2</sup>”.

Respondent realized the desirability of co-operation between the White and non-White inhabitants of the Territory in the economic sphere, for the mutual benefit of all groups.

67. In the settled urban areas within the Police Zone Respondent found the non-White peoples living haphazardly on the outskirts of the towns, and Respondent's prime concern then was to provide some machinery whereby the basic facilities requisite for urban and peri-urban existence could be made available to these people. The most obvious and practical way of attending to this need was to make the White urban authorities responsible for carrying out Respondent's general policy in this regard. The historical reason, therefore, for the measure of local governmental power given to the White municipal councils and village management boards, subject to central control, in respect of non-White urban and peri-urban communities, was the inability of the indigenous population, by reason of their complete

<sup>1</sup> *Live and Let Live*, Fact Paper 91 (Apr. 1961), p. 11. (Address delivered by the Prime Minister, Dr. H. F. Verwoerd, before the South Africa Club, London, in 1961.)

<sup>2</sup> Lord Hailey, *A Survey of Native Affairs in South West Africa* (1946) (unpublished), p. 1.

lack of knowledge and experience, to undertake such local government themselves. Although Respondent, therefore, did not accord the non-White peoples the franchise in the local government of the White areas in which they were living, it did seek to promote their interests and general welfare by itself retaining direct responsibility for their separate development and progress within such urban areas.

68. The representative institutions of the White inhabitants of municipalities and village management board areas are subject to the strict control of the Administrator, who is Respondent's representative in the Territory, and although certain powers in respect of the general welfare of non-White inhabitants of the urban areas are delegated to local authorities, Respondent not only controls the manner in which such local authorities carry out their duties, but also makes considerable sums of money available to the local authorities for the adequate provision of housing and general amenities in the non-White residential areas. Employers of Native labour are also compelled to contribute to such funds for the provision of adequate housing and attendant amenities.

69. In order to encourage the non-White urban population to take an interest in the machinery of local government, and to acquaint itself with the needs of an urban community, Respondent introduced the system of Native advisory boards. These boards were designed to convey the wishes and desires of the Native inhabitants to the local authorities and to advise them on the needs of the Natives, and at the same time to serve as a training ground for the Natives to gain experience of the machinery of local government and the responsibility attaching to it. The results of this experiment did not measure up to Respondent's hopes, but it did serve to acquaint the non-White urban dwellers with the concept of urban local government. A new system is now being devised whereby greater responsibility for the administration of their own affairs will be accorded to urban Native councils, fashioned basically on the model of the Urban Bantu Councils introduced in South Africa by Act 79 of 1961. These councils will seek to incorporate some of the authority of the traditional institutions, which still play such an important part in the lives of the indigenous peoples of the Territory, and to combine it with modern democratic elements.

The urban Native councils will give to the indigenous people a greater measure of responsibility in the regulation of their own affairs in the urban areas, although developments in that regard will necessarily proceed within the framework of Respondent's policy that political rights and power are to be exercisable by the Native groups within their own respective homelands and not within the area of the White group as such.

## N. Respondent's Reply to Applicants' Allegations (Memorials)

### I. PARAGRAPHS 106 TO 113 OF CHAPTER V <sup>1</sup>

#### (a) *Paragraph 106* <sup>2</sup>

70. Respondent agrees that a structure of local government has been established within the Territory comprising the two principal types of

<sup>1</sup> I, pp. 137-139.

<sup>2</sup> *Ibid.*, p. 137.

governmental units mentioned, viz., municipalities and village management board areas. These units, however, were provided and intended only for the local government of the White communities settled in the towns and villages of the Police Zone. The towns and villages were themselves established by the White population for their own communal settlement, and were not originally intended to cater for non-White inhabitants as well. To the indigenous inhabitants the towns and villages were strange and unknown concepts and *a fortiori* the same applied to local government thereof. Today there are still no non-White towns or villages outside the Police Zone, and the only non-White urban dwellers in the Territory are those living in the Native residential areas attached to municipalities or village management board areas. Those non-White communities outside the Police Zone have their own traditional form of government under chiefs, headmen, or sub-headmen.

(b) *Paragraph 107*<sup>1</sup>

At the close of 1959 there were 17 municipalities within the Territory, and 12 village management board areas.

(c) *Paragraph 108*<sup>1</sup>

The Municipal Ordinance, 1949 (Ordinance No. 3 of 1949), has been repealed, and the composition and powers of municipal councils are now governed by the Municipal Ordinance, 1963 (Ordinance No. 13 of 1963). This ordinance also provides that a Councillor must be, *inter alia*, a European in order to qualify for election to the Council<sup>2</sup>.

In order to qualify as a voter, a person must be a European who is either:

- (i) a South African citizen over the age of 18 years and who has resided in the municipal area for at least two months prior to the last day of August of the year in which his name is to be registered on the voters' roll, or who has owned immovable property within the municipal area of a value of at least R1,000 (£500) for at least that period; or
- (ii) a person over the age of 18 years who was domiciled in the Territory on the date of the commencement of the Ordinance and has since retained such domicile, and who has owned immovable property within the municipal area of a value of at least R1,000 (£500), or occupied such immovable property of a value of at least R2,000 (£1,000) for a period of at least two months immediately prior to the last day of August of the year in which his name is to be registered on the voters' roll<sup>3</sup>.

Every registered company, association, society, partnership or club, which is the owner of immovable property within the municipal area of a value of at least R10,000 (£5,000), and was the owner for at least the period mentioned in (i) and (ii) above, is also entitled to be enrolled as a voter on the voters' roll<sup>4</sup>.

<sup>1</sup> I, p. 137

<sup>2</sup> Ord. No. 13 of 1963 (S.W.A.), sec. 14 (1), in *Official Gazette Extraordinary of South West Africa*, No. 2489 (29 June 1963), pp. 842-843.

<sup>3</sup> Ord. No. 13 of 1963 (S.W.A.), *op. cit.*, sec. 29 (1), pp. 847-848.

<sup>4</sup> *Ibid.*, sec. 29 (2), p. 848.

The members of the Council elect a mayor and a deputy mayor <sup>1</sup>, as well as a management committee <sup>2</sup>.

(d) *Paragraph 109* <sup>3</sup>

The Village Management Boards Ordinance, 1937 (Ordinance No. 16 of 1937), has been repealed and superseded by the Village Management Boards Ordinance, 1963 (Ordinance No. 14 of 1963). This Ordinance provides that—

“A Board shall consist of the magistrate of the district concerned *ex officio* or any other person whom the Administrator at his pleasure may appoint (who shall be Chairman and Treasurer) and, in the discretion of the Administrator, not less than two and not more than four other members appointed by the Administrator <sup>4</sup>.”

Such members are appointed triennially <sup>5</sup>, and before making any such appointment the Administrator is obliged to consult a list of names which may be submitted to him by a nomination meeting <sup>6</sup> of owners of immovable property and residents of the board area over the age of 18 years <sup>7</sup>.

At present all the magistrates holding office in the Territory are Europeans, for the reasons more fully set out in the section of this Counter-Memorial dealing with the civil service.

Respondent denies that in the selection of members of the village management boards the Administrator “follows the consistent pattern and the dominant philosophy of ‘apartheid’” in the sense in which Applicants use that word in their Memorials <sup>8</sup>. It is true that in all the village management boards at present in existence the Administrator has nominated only White persons to membership, but this is due to the fact that such boards function primarily in respect of White urban communities, as has been explained above. There has, in Respondent’s view, never been any valid reason why the non-White communities housed in and around the European towns, should have, or share in, municipal governmental powers in respect of the European towns themselves—towns established specifically by Europeans for their communal living, the concept of which was initially completely strange to the indigenous people, and of which they still in fact form no real part. In so far as the boards were given certain powers also in respect of the Native communities attached to their areas <sup>9</sup>, subject to stringent central control <sup>10</sup>, this was necessary for the promotion of the welfare of such communities. When it was considered that they had gained the necessary knowledge and experience, the Native communities were allowed, *inter alia*, through the advisory board system, to share in the

<sup>1</sup> *Ord.* No. 13 of 1963 (S.W.A.), *op. cit.*, sec. 147 (2), p. 872.

<sup>2</sup> *Ibid.*, secs. 6 (1) and 147 (2), pp. 840, 872.

<sup>3</sup> *I*, p. 138.

<sup>4</sup> *Ord.* No. 14 of 1963 (S.W.A.), sec. 8 (1) (a), in *Official Gazette Extraordinary of South West Africa*, No. 2490 (29 June 1963), p. 959.

<sup>5</sup> *Ibid.*, sec. 8 (1) (b), p. 959.

<sup>6</sup> *Ibid.*, sec. 8 (5) (a), p. 960.

<sup>7</sup> *Ibid.*, sec. 8 (5) (b), p. 960.

<sup>8</sup> *I*, para. 109, p. 138.

<sup>9</sup> *Vide* para. 40, *supra*.

<sup>10</sup> *Vide* para. 26, *supra*.

responsibility for the local government in the areas occupied by them. The contemplated urban Native councils<sup>1</sup> will aim at according them a progressive measure of participation in the local government of such areas.

(e) *Paragraph 110*<sup>2</sup>

The administration and control of Native Affairs in the Territory is primarily the concern of Respondent itself, and the general policy in this regard is laid down by Respondent. Practical considerations of expediency, however, have made it desirable that local authorities assist in the administration of Respondent's policy, subject always to Respondent's overriding supervision and control. Such supervision and control vests ultimately in Respondent's Minister of Bantu Administration and Development, and machinery has been constituted whereby the Minister is kept fully informed of all the local authorities' actions in the carrying out of their functions in this regard<sup>3</sup>.

The powers and duties of the local authorities in regard to the relevant aspects of the administration of Native affairs are principally set out in the Natives (Urban Areas) Proclamation, 1951 (Proclamation No. 56 of 1951).

(f) *Paragraphs 111 and 112*<sup>4</sup>

These paragraphs are admitted<sup>5</sup>.

(g) *Paragraph 113*<sup>6</sup>

It is imperative for a Native advisory board to be established for every Native residential area subject to the control of a municipal council or village management board. The proclamation provides that such a board shall consist of not less than three Natives resident within the area of jurisdiction of the urban local authority, who may be either elected or selected as determined by the urban local authority. In practice an equal number of the members are elected and selected to most of the boards in the Territory, and in the few instances where the regulations provide only for selection by the local authority, such selection is from the ranks of the recognized headmen chosen by the people<sup>7</sup>.

The proclamation provides that the chairman of the board may be a European. In practice the principal administrative officer of the particular location or his deputy is usually appointed chairman of the board.

The powers and duties of a board as set out in the proclamation include those mentioned by the Applicants in their Memorials, and also include, *inter alia*, the right to consider and comment on the urban local authority's proposed estimates of expenditure out of the Native

<sup>1</sup> *Vide* para. 72, *supra*.

<sup>2</sup> I, p. 138.

<sup>3</sup> *Vide* para. 87, *supra*.

<sup>4</sup> I, pp. 138-139.

<sup>5</sup> *Vide* para. 43, *supra*.

<sup>6</sup> I, p. 139.

<sup>7</sup> *Vide* para. 64, *supra*.

revenue account. The powers and duties of the boards are more fully dealt with in paragraphs 51 to 53, *supra*.

Respondent does not regard these boards to have been an unqualified success, and considers that a representative body with a greater measure of administrative responsibility for the administration and regulation of their own affairs should be created for the Native residents in urban areas. The early establishment of urban Native councils, as explained in paragraphs 59 and 69, *supra*, is therefore contemplated, so that a growing measure of participation may be rendered possible for the various Native groups in the local government of their urban residential communities.

## II. PARAGRAPHS 128 (4) AND (6) OF CHAPTER V<sup>1</sup>

### (a) Paragraph 128 (4)

71. As has been shown above, there can be no suggestion that Respondent has in any way *excluded* the Native population of the Territory from participation in the local government of the municipalities or village management board areas. For historical reasons the Native population in fact *did not form part of* the towns and villages in the Territory, and thus fell out of consideration for participation in the local government thereof. In the course of time groups of Natives, attracted to the towns for largely economic reasons, formed communities on the outskirts of such towns. Urban communal living was unknown and alien to them, and Respondent's primary task was to improve their material well-being, and to secure the provision to them of proper housing and attendant municipal facilities such as roads, water, lighting, sanitation, social amenities and the like. This was accomplished largely through the agency of adjoining White local authorities under Respondent's control and its financial assistance.

The system of Native advisory boards was not established to provide a "faint approximation" of some form of participation in the established forms of local government, but rather to *introduce* the Natives to the processes of *local government of their own urban communities* so as to lead to increasing participation by them in that sphere, as in fact envisaged for them in the contemplated system of urban Native councils.

### (b) Paragraph 128 (6)

It is, for the reasons aforesaid, wholly unfounded to suggest, as Applicants do, that Respondent has "pursued a systematic and active program which prevents the possibility of progress by the Native population toward self-respect, responsibility or skill" in the sphere of local government, and that "by law and by deliberate and consistent practice, [Respondent] has failed to promote to the utmost the development" of the Native population in this respect, and "made no notable effort to do so". On the contrary, as has been shown, Respondent has directed special efforts towards improving the material and moral well-being and social progress of the urban and peri-urban Native communities in question, towards acquainting them with the form and machinery of communal

<sup>1</sup> I, pp. 142, 143.

living in towns and villages and with the working of the machinery of local government, in order thereby to equip them for the assumption of greater responsibility in the local government of their own constitutive groups. Thereby Respondent has systematically, and with considerable success, promoted, not prevented, progress by the Native population and achievement of the objectives of the Mandate in these respects.

### III. PARAGRAPH 190 OF CHAPTER V <sup>1</sup>

72. The allegations contained in this paragraph, in so far as they relate to local government are largely identical with those in paragraph 128 (4) and (6) of Chapter V of the Memorials and have thus been dealt with above. In the light of what has already been said, the allegations that "the Mandatory offers no horizon of hope to the 'Native' population", and that "the condition of the 'Natives' is unrelieved by promise of future amelioration" <sup>2</sup> are likewise devoid of substance, and are denied.

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<sup>1</sup> Introductory portion is at I, p. 162 and sub-para. (ii) (d) at p. 164 of the Memorials.

<sup>2</sup> I, p. 162.

## CHAPTER IV

### CONCLUSION

In paragraph 190 of Chapter V of the Memorials <sup>1</sup>, under the heading "Legal Conclusions", the Applicants merely repeat the charges formulated in paragraph 128 of the same Chapter <sup>2</sup>, on the strength of the allegations contained in the various sections grouped together under the general heading "Government and Citizenship".

In the preceding chapters Respondent has dealt with all these charges, and has demonstrated that they are without substance. It is consequently unnecessary to deal further with the said legal conclusions.

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<sup>1</sup> I, pp. 162 ff.

<sup>2</sup> *Ibid.*, pp. 142, 143.

## BOOK VI

### CHAPTER I

#### INTRODUCTION

1. With reference to "security of the person, rights of residence and freedom of movement", the Applicants allege that, in accordance with the "legal norms" formulated by them <sup>1</sup>,

"... the Mandatory's duties to safeguard and promote the 'material and moral well-being', the 'social progress' and the 'development' of the people of the Territory must reasonably be construed to include:

- (4) Security of such persons and their protection against arbitrary mistreatment and abuse;
- (5) Equal rights and opportunities for such persons in respect of home and residence, and their just and non-discriminatory treatment;
- (6) Protection of basic human rights and fundamental freedoms of such persons;
- (8) Social development of such persons, based upon self-respect and civilized recognition of their worth and dignity as human beings <sup>2</sup>."

2. As has already been stated <sup>3</sup>, Respondent is in general agreement that these "norms" can, on the whole, be said to be matters to which regard ought to be had in the exercise of the Mandate, but as ultimate objectives and not as concepts to be isolated from their context. It has further been indicated that in Respondent's view the ideal of "equal rights and opportunities" is not to be regarded as meaning "identical rights and opportunities", since that would, in circumstances like those of South West Africa, tend to defeat rather than to promote this ideal. And, as has also been shown, the best and probably the only method of achieving the ideals envisaged in the various "norms", is by a policy which involves differentiation—as was indeed contemplated by the founders of the mandate system—with a view to striking a fair and equitable balance between the legitimate aspirations of all the peoples of the Territory.

3. In the following chapters Respondent will reply to the Applicants' allegations under the headings "Security of the Person", "Rights of Residence" and "Freedom of Movement", with a view to showing that the charges of violations of Article 2 of the Mandate in these respects are unfounded.

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<sup>1</sup> I, pp. 107-108.

<sup>2</sup> *Ibid.*, p. 143.

<sup>3</sup> *Vide* Book IV, Chap. II, of this Counter-Memorial.

## CHAPTER II

### SECURITY OF THE PERSON

#### A. Introductory

1. In paragraph 129 of Chapter V of the Memorials<sup>1</sup> the Applicants aver that the Native population of South West Africa is affected by certain statutory provisions which create "a pattern of comprehensive, pervasive and tight control" over their lives, *inter alia*, with regard to their personal security, and in paragraphs 130 to 137<sup>2</sup> the Applicants purport to substantiate their allegation in this respect.

2. Having alleged that in terms of the statutory provisions in question Natives within the Territory "are subject to arbitrary arrest, often without any warrant", in a "variety of situations and under a variety of circumstances"<sup>3</sup>, and that the "powers to make arrests may be exercised by designated persons at their largely uncontrolled discretion"<sup>4</sup>, the Applicants conclude:

"In sum, in the entire complex of provisions for the arbitrary arrest of 'Natives' . . . the Mandatory has given consideration solely to the convenience or advantage of the Mandatory government and of the 'European' citizens and residents of the Territory. The Mandatory has uniformly failed to promote the material and moral well-being, the social progress and the development of overwhelmingly the larger part of the inhabitants of the Territory of South West Africa in terms of security for their persons . . . On the contrary, by law and by practice, the Mandatory has followed a systematic course of positive action which thwarts the well-being, inhibits the social progress and frustrates the development of the great majority of the population of the Territory in vital and fundamental aspects of their lives<sup>5</sup>."

3. The provisions on which the Applicants rely are those relating to<sup>6</sup>:
- (a) Vagrancy<sup>7</sup>.
  - (b) Idle persons in urban or proclaimed areas<sup>8</sup>.
  - (c) Idle persons in reserves<sup>9</sup>.
  - (d) Undesirable persons in reserves<sup>10</sup>.
  - (e) The deportation of persons from the Territory<sup>11</sup>.
  - (f) Infringement of the pass laws<sup>12</sup>.

<sup>1</sup> I, p. 144.

<sup>2</sup> *Ibid.*, pp. 144-146.

<sup>3</sup> *Ibid.*, para. 154 (1), p. 151.

<sup>4</sup> *Ibid.*, para. 154 (2), p. 151.

<sup>5</sup> *Ibid.*, para. 154 (5), pp. 151-152.

<sup>6</sup> For reasons of convenience Respondent does not strictly follow the sequence of the Memorials.

<sup>7</sup> *Vide* I, para. 130, p. 144.

<sup>8</sup> *Ibid.*, paras. 134-135, pp. 145-146.

<sup>9</sup> *Ibid.*, para. 131, p. 144.

<sup>10</sup> *Ibid.*, para. 132, p. 145.

<sup>11</sup> *Ibid.*, paras. 136-137, p. 146.

<sup>12</sup> *Ibid.*, para. 133, p. 145.

4. Some of these provisions are also referred to in the preceding paragraphs of Chapter V of the Memorials, and are in the context under consideration apparently relied upon only in so far as they provide for powers of arrest or similar authoritative action in prescribed circumstances. Since, however, it is not feasible to deal separately with the substantive portions of such provisions and with the portions pertaining to arrests or like actions, it will be necessary to set out hereinafter the background to, and the reasons for, the enactment of these provisions.

5. Although Respondent does not dispute that Natives within the Territory may under certain circumstances be arrested without a warrant by designated persons, it denies that this applies to Natives only, and moreover denies that any person in the Territory is subject to *arbitrary* arrest.

6. In replying to the Applicants' allegations Respondent will demonstrate that all the above provisions—some of which are incorrectly quoted or quoted out of context by the Applicants—were enacted in order to safeguard and promote the material and moral well-being, the social progress and the development of the inhabitants of the Territory, and that it is in this spirit that they have always been applied. It will also be shown that provisions similar to a number of those on which the Applicants rely, exist in other countries, and that the Permanent Mandates Commission, although fully aware of such of the above provisions as were enacted during the existence of the League of Nations, never objected to them.

7. In the result it will become apparent that the Applicants' conclusions that Respondent has authorized *arbitrary* interference with personal liberty, that it has given consideration solely to the convenience or advantage of itself and of the European inhabitants of the Territory, and that it has followed "a systematic course of positive action which thwarts the well-being, inhibits the social progress and frustrates the development"<sup>1</sup> of the Natives of the Territory, are without substance.

## B. Vagrancy

### I. THE VAGRANCY PROCLAMATION

8. The allegations in paragraph 130 read with paragraph 69 of Chapter V of the Memorials<sup>2</sup> are based on the offences created by sections 1 and 3 of the Vagrancy Proclamation, 1920. These sections, in so far as they are relevant, read:

"1. Any *person* found wandering abroad and having no visible lawful means, or insufficient lawful means of support, who, being thereunto required by any magistrate, police officer, police constable, superintendent of native locations, or owner or occupier of land, or who having been duly summoned for such purpose, or brought before a magistrate in pursuance of this Proclamation shall not give a good and satisfactory account of himself, shall be deemed and taken to be an idle and disorderly person, and on conviction thereof shall be liable to be imprisoned, with or without hard labour, and with or

<sup>1</sup> I, para. 154 (5), p. 152.

<sup>2</sup> *Ibid.*, pp. 144 and 127.

without spare diet, and with or without solitary confinement or any of them, for any period not exceeding twelve months . . . <sup>1</sup>

3 (1) Every *person* found without the permission of the owner (the proof of which permission shall lie on such person) wandering over any farm, in or loitering near any dwelling-house, shop, store, stable, outhouse, garden, vineyard, kraal or other enclosed place, shall be deemed and taken to be an idle and disorderly person; and on conviction thereof shall be liable to a fine not exceeding one hundred pounds or, in default of payment, to imprisonment with or without hard labour, and with or without spare diet, and with or without solitary confinement, or any of them, for a period not exceeding twelve months . . .

(2) Every *person* shall be deemed to be an idle and disorderly person within the meaning of and for all the purposes of this Proclamation, and shall upon conviction be liable to the penalties provided by subsection 1 of this section, who shall be found without the permission of the owner of any farm (the proof of which permission shall be on such person)

(a) loitering upon any road crossing such farm, or

(b) in or loitering at or near any hut, house or other building upon any farm, whether such hut, house or other building shall or shall not be in the possession or occupation of any servant or apprentice of the owner of such farm, or in the possession or occupation of any squatter <sup>2</sup>." (Italics added.)

9. In the above sections "wandering" means moving about without any definite object, and "loitering" has a corresponding meaning <sup>3</sup>.

## II. THE SCOPE OF THE PROCLAMATION

10. By paraphrasing the above provisions of the Proclamation in such a way as to refer to "any 'Native'" instead of "any person" <sup>4</sup>; by referring to "the precarious situation of any 'Native' under the Vagrancy Proclamation" <sup>5</sup>; by concluding that "in the entire complex of provisions for the arbitrary arrest of 'Natives' . . . the Mandatory has given consideration solely to the convenience or advantage . . . of the 'European' citizens and residents of the Territory" <sup>6</sup>, and by failing to mention the fact that the said provisions are applicable also to persons other than Natives, the Applicants create the impression that the Proclamation applies only to Natives. This is obviously not the case—it applies to all *persons* irrespective of race or colour. It consequently does not discriminate against Natives or, for that matter, against any partic-

<sup>1</sup> Sec. 1 as well as sec. 3 (1) contains the proviso that no person shall be liable to be sentenced to undergo spare diet or solitary confinement except during the first three months of any sentence of imprisonment imposed upon him.

<sup>2</sup> Proc. No. 25 of 1920 (S.W.A.), in *The Laws of South West Africa 1915-1922*, p. 280, as amended by Proc. No. 32 of 1927 (S.W.A.), in *The Laws of South West Africa 1927*, pp. 244, 246.

<sup>3</sup> *Rex v. David Mathijs and Gert Christian*, 1925 S.W.A. 98; *Rex v. Haraib Jan.*, 1937 S.W.A. 7.

<sup>4</sup> I, paras. 69 and 130, pp. 127 and 144.

<sup>5</sup> *Ibid.*, para. 130, p. 144.

<sup>6</sup> *Ibid.*, para. 154 (5), p. 151.

ular group or person. The problem of vagrancy has in fact in the past manifested itself more amongst the indigenous than amongst the Coloured or White groups, but has by no means been confined to the Natives, and the effect of the Proclamation has in no way been discriminatory.

11. The Applicants appear to object to the above provisions *only* upon the erroneous premise that they discriminate against Natives. In the succeeding paragraphs Respondent will, however, deal with these provisions on the basis that the Applicants' objection is directed to the Proclamation as such.

### III. THE HISTORICAL BACKGROUND

12. The Proclamation states its purpose to be "to suppress trespass, idleness and vagrancy"<sup>1</sup>. It is submitted that such a purpose in no way conflicts with the duties imposed by the Mandate. On the contrary the promotion of the material and moral well-being and social progress of the inhabitants of the Territory required and still requires that there should be a law against idleness and vagabondage. Such a law is required in the interests of the idle person and the vagrant as well as in the interests of the other members of the community.

13. The conditions that prevailed in the Territory in 1920 were such that a law of this nature was imperative to ensure some degree of social and economic stability in the Territory. Idleness and vagrancy were then rampant and retarded economic progress in general. Many individuals were roaming about the southern part of the Territory without any family or connections. Most of these persons had no desire to earn a living.

This state of affairs was partly due to the disruptive effects of certain historical events<sup>2</sup> and partly to the way of life of some of the indigenous groups in the Police Zone.

14. In this regard it must be kept in mind that the indigenous inhabitants of portions of the Territory later comprised in the Police Zone—i.e., the Herero, the Nama, the Bergdama and the Bushmen—were traditionally nomads who moved about from place to place in search of new pastures or hunting grounds<sup>3</sup>.

15. In their traditional mode of life the Bushmen depended on the yield of the bush or the hunt for satisfying their daily needs. Production was alien to their nomadic mode of existence, and when physical demands had been satisfied the necessity for such spasmodic labour as was required to satisfy immediate necessities ceased<sup>4</sup>.

16. The traditions and customs of the Bergdama were originally similar to those of the Bushmen. At the time they were brought into contact with a Western type of economy, however, the Bergdama had to a great extent been enslaved by the Herero and the Nama, and had ceased to operate in their traditional units. Having been thus enslaved,

<sup>1</sup> *Proc. No. 25 of 1920 (S.W.A.)*, Preamble, in *The Laws of South West Africa 1915-1922*, p. 280.

<sup>2</sup> *Vide* Book III, Chap. III, of this Counter-Memorial.

<sup>3</sup> *Ibid.*, Chap. II.

<sup>4</sup> *Ibid.*, para. 60.

they had no experience of labour in a free market, and no real notion of personal possessions acquired through organized labour <sup>1</sup>.

17. The Herero and the Nama were traditionally stock farmers, and any form of organized labour, other than that connected with the care of stock and the satisfaction of daily needs, was alien to them. Since they had no demarcated farms, their stock-farming was of a carefree nature, herds being mostly tended by children or slaves <sup>2</sup>. There was, furthermore, a marked division of such labour as was necessary, which left most of the work, even the milking of cattle, in the hands of the women. In this regard the following extract from a memorandum submitted to the Permanent Mandates Commission by one of its Members, M. Freire d'Andrade is apposite:

"In native societies, by far the heavier share of the essential work of the family is generally done by the woman; over and above her housework, she has to work in the fields, while the man undertakes the lighter work which leaves a large part of his time free for talking, singing and drinking <sup>3</sup>."

18. It is consequently clear that for the original adult male inhabitants of the Police Zone work in an organized sense as in a Western economic society was largely unknown. It is, therefore, not surprising that while the Germans brought with them economic activities which created opportunities for work in the Police Zone, there was relatively little response from the indigenous inhabitants. In this respect a considerable difference in outlook manifested itself as between the Europeans and most of the members of the indigenous groups.

19. While there was ample opportunity for work, numerous Natives continued to wander idly from place to place. These vagrants, as time went on, constituted a grave threat to the settled and law-abiding Natives as well as to the European community, many of whom were spread over a vast area living on isolated farms far removed from police stations. Being without means of subsistence, these vagrants were naturally bound to steal from others who, under the most adverse conditions, were struggling to develop and built up their lands and to increase their stock.

20. The rebellion of 1904-1907 <sup>4</sup> contributed further to the destruction of the family and communal life of the groups that were involved, especially the Herero and Nama, resulting in their case in even more vagrancy. After the rebellion the German authorities prohibited the Hereros from owning land and stock <sup>5</sup>. This measure tended to increase the numbers of those who wandered about subsisting on what they could take from others.

21. Respondent does not wish to convey the impression that vagrancy manifested itself *only* amongst the indigenous groups of the Territory. White and Coloured fortune-hunters, and eventually the 1915 campaign, further aggravated the position, with the result that when the Mandate was assumed in 1920 it was incumbent upon Respondent forthwith to

<sup>1</sup> *Vide* Book III, para. 70, of this Counter-Memorial.

<sup>2</sup> *Ibid.*, paras. 76 and 90.

<sup>3</sup> *P.M.C., Min.*, VII, p. 203.

<sup>4</sup> *Vide* Book III, Chap. III, paras. 76-81, of this Counter-Memorial.

<sup>5</sup> *Ibid.*, para. 84.

legislate against this menace. To this end there was passed the Vagrancy Proclamation, based on Act No. 23 of 1879 (Cape of Good Hope)<sup>1</sup>, which was the first vagrancy law passed in South Africa. This law had been enacted to combat a similar problem and had been found to work well in practice. It consequently served as a natural basis for legislation against vagrancy in South West Africa.

22. The proclamation is in practice not being applied to the northern areas because the problem of vagrancy does not present itself there to any appreciable extent. In this regard it must be kept in mind that owing to relatively little upheaval in these areas prior to 1920, tribal life was still intact when Respondent assumed the Mandate, and discipline could consequently be exercised through the traditional authorities. Moreover the economy of the groups concerned was of a subsistence nature, and generally the problem did not exist of disorganized wanderers with no means of subsistence<sup>2</sup>.

23. In the case of the Rehoboth Basters, their *Raad* later specifically asked that the proclamation be applied to the Rehoboth *Gebiet* and this was done by means of Proclamation No. 7 of 1939 (S.W.A.)<sup>3</sup>.

#### IV. LEGISLATION AGAINST VAGRANCY IN OTHER COUNTRIES

24. Respondent may point out that legislation of the kind in question is not something peculiar to South West Africa. Many other civilized countries have similar statutory provisions aimed at combating idleness and vagrancy; e.g., the United Kingdom, New Zealand, New South Wales, Western Australia, Canada, the United States of America, Ethiopia, Liberia, Egypt and the former Belgian Congo.

##### *The United Kingdom*

25. In 1920 the Vagrancy Act of 1824 was still in force in the United Kingdom, the relevant sections of which read:

"3 . . . Every person being able wholly or in part to maintain himself or herself, or his or her family, by work or by other means, and wilfully refusing or neglecting to do so . . . shall be deemed an idle and disorderly person within the true intent and meaning of this Act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by his own view, or by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding one calendar month.

<sup>1</sup> *Vide Statutes of the Cape of Good Hope passed by the Sixth Parliament during the Sessions 1879-1883* (1884), pp. 54-60. This Act was amended by Act No. 27 of 1889 (Cape of Good Hope), in *Statutes of the Cape of Good Hope passed by the Eighth Parliament during the Sessions 1889-1893* (1894), pp. 46-47.

<sup>2</sup> *Vide* Book III, Chap. II, para. 38, of this Counter-Memorial.

<sup>3</sup> *Proc.* No. 7 of 1939 (S.W.A.), in *The Laws of South West Africa 1939*, Vol. XVIII, pp. 150, 152. The Vagrancy Proclamation is seldom, if ever, applied in the Native Reserves within the Police Zone where idleness, etc., are dealt with under sec. 20 of *Proc.* No. 11 of 1922 (S.W.A.), in *The Laws of South West Africa 1915-1922*, p. 754, which will be dealt with more fully hereinafter. *Vide* para. 89, *infra*.

4 . . . every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or wagon, not having any visible means of subsistence, and not giving a good account of himself or herself . . . every person being found in or upon any dwelling house, warehouse, coach-house, stable or outhouse, or in any inclosed yard, garden, or area, for any unlawful purpose . . . shall be deemed a rogue and vagabond, within the true intent and meaning of this Act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months . . .<sup>1</sup>

26. This Act was amended by the Vagrancy Act, 1935, section 1 (3) of which added the following proviso to section 4 of the former Act:

"A person wandering abroad and lodging as aforesaid shall not be deemed by virtue of the said enactment a rogue and vagabond within the meaning of the said Act unless it is proved either—

- (a) that, in relation to the occasion on which he lodged as aforesaid, he had been directed to a reasonably accessible place of shelter and failed to apply for, or refused, accommodation there;
- (b) that he is a person who persistently wanders abroad and, notwithstanding that a place of shelter is reasonably accessible, lodges or attempts to lodge as aforesaid; or
- (c) that by, or in the course of, lodging as aforesaid, he caused damage to property, infection with vermin, or other offensive consequence, or that he lodged as aforesaid in such circumstances as to appear to be likely so to do.

In this sub-section the expression 'a place of shelter' means a place where provision is regularly made for giving (free of charge) accommodation for the night to such persons as apply therefor<sup>2</sup>."

27. Section 3 of the 1824 Act was partially repealed by the National Assistance Act, 1948<sup>3</sup>, and by the Criminal Justice Act, 1948<sup>4</sup>, but section 4 remained as amended by the Vagrancy Act, 1935.

### *New Zealand*

28. Section 49 of the Police Offences Act of 1927 provides:

"Every person shall be deemed an idle and disorderly person within the meaning of this Act, and be liable to imprisonment for any term not exceeding three months—

. . . . .

<sup>1</sup> 5 Geo. 4. c. 83, secs. 3 and 4, in *The Complete Statutes of England, classified and annotated in continuation of Halsbury's Laws of England*, Vol. 12 (1930), pp. 913-916.

<sup>2</sup> 25 & 26 Geo. 5. c. 20, sec. 1 (3), in *The Statutes Revised* (3rd ed.), Vol. XXII (1950), pp. 33-34.

<sup>3</sup> 11 & 12 Geo. 6. c. 29, sec. 62 (3) and Seventh Schedule (Enactments Repealed), in *The Public General Acts and the Church Assembly Measures of 1948*, Vol. I, pp. 282, 304.

<sup>4</sup> 11 & 12 Geo. 6. c. 58, sec. 1 (2), in *The Statutes Revised* (3rd ed.), Vol. XXXII (1950), p. 72.

(c) Who wanders abroad or places himself in any public place to beg or gather alms . . . <sup>1</sup>"

29. Section 50 reads:

"(1) Where any constable has reasonable cause to believe that any person has no lawful means of support or has insufficient lawful means of support he may arrest such person, either with or without warrant, and bring him before any Justice.

(2) If such person fails to prove to the satisfaction of the Justice that he has sufficient lawful means of support or that such means of support as he has are lawful, he shall be deemed to be an idle and disorderly person within the meaning of this Act, and shall be liable to imprisonment for a term of three months.

(3) The fact that any person charged under this section can produce or prove that he possesses money or property shall not be taken into account in deciding such charge unless he shows by his own or other evidence that he honestly obtained such money or property.

(4) This section shall be deemed to form part of the last preceding section <sup>2</sup>."

30. Section 52 (1) contains ten categories of persons who shall be deemed rogues and vagabonds and be liable to imprisonment with hard labour for a term not exceeding one year <sup>3</sup>. One of these categories comprises any person—

"Who is found by night without lawful excuse (the proof of which excuse shall be on him) in or on any building or in any enclosed yard, garden, or area, or in or on board any ship, launch, dredger, yacht, boat, or other vessel <sup>4</sup>."

### *New South Wales*

31. The relevant subsections of section 4 of the Fourth Vagrancy Act of 1902 read as follows:

"(1) Whosoever—

(a) having no visible lawful means of support, or insufficient lawful means, does not, on being required by or summoned to appear or brought before a justice in pursuance of the provisions of this Act, give a good account of his means of support to the satisfaction of the justice . . .

shall, on conviction before any justice, by his own view or otherwise, be liable to imprisonment with hard labour for a term not exceeding six months.

(2) Whosoever—

(i) having any unlawful purpose is found in any dwelling-house, warehouse, coach-house, stable, or outhouse, or in any en-

<sup>1</sup> Act No. 35 of 1927 (New Zealand), sec. 49, in *The Statutes of New Zealand 1955* (1956), Vol. II, p. 1781.

<sup>2</sup> Act No. 35 of 1927 (New Zealand), sec. 50, pp. 1781-1782.

<sup>3</sup> *Ibid.*, sec. 52 (1), pp. 1782-1783.

<sup>4</sup> *Ibid.*, sec. 52 (1) (i), p. 1783.

closed yard, garden, or area, or on board any ship or vessel in any port, harbour, or place within New South Wales . . . shall, on conviction before any justice, be liable to imprisonment with hard labour for a term not exceeding six months . . .<sup>1</sup>”

#### *Western Australia*

32. Section 65 of the Police Act 1892-1952, provides, *inter alia*:

“Every person who shall commit any of the next following offences shall be deemed an idle and disorderly person within the meaning of this Act and shall on conviction be liable to imprisonment for any term not exceeding six calendar months with or without hard labour:

(1) Every person having no visible lawful means of support or insufficient lawful means of support, who being thereto required by any Justice, or who having been duly summoned for such purpose, or brought before any Justice, shall not give a good account of his means of support to the satisfaction of such Justice<sup>2</sup>.”

#### *Canada*

33. Section 162 of the Criminal Code provides:

“Every one who, without lawful excuse, the proof of which lies upon him, loiters or prowls at night upon the property of another person near a dwelling house situated on that property is guilty of an offence punishable on summary conviction<sup>3</sup>.”

34. Section 164 reads:

(1) Every one commits vagrancy who—

(a) not having any apparent means of support is found wandering abroad or trespassing and does not, when required, justify his presence in the place where he is found;

(2) Every one who commits vagrancy is guilty of an offence punishable on summary conviction<sup>4</sup>.”

#### *The United States of America*

35. There exist in the United States approximately 50 vagrancy laws which are included in the Penal or Criminal Code of each of the individual states. The rules governing vagrancy in all the states are substantially similar, and have been summarized as follows:

“State legislatures and municipal governing bodies, acting under delegated authority, may within certain limitations imposed by the organic law of the State, define vagrancy and impose punishment for

<sup>1</sup> Act No. 74 of 1902 (New South Wales), sec. 4 (1) (a) and 4 (2) (i), in *The Statutes of New South Wales (Public and Private)* (1903), pp. 541-543.

<sup>2</sup> 55<sup>o</sup> Victoriae No. 27, sec. 65, in *The Reprinted Acts of the Parliament of Western Australia* (1954), Vol. 6, p. 29.

<sup>3</sup> Chap. 51, 2-3 Elizabeth II, 1953-54 (Canada), sec. 162, in *Criminal Code and Selected Statutes* (1954), p. 52.

<sup>4</sup> *Ibid.*, sec. 164, pp. 52-53.

the offence of vagrancy. The validity of such statutes has been upheld against objections that they were in violation of the State or Federal Constitutions. Statutes which have been upheld define as vagrants, *inter alia*, able-bodied persons who habitually loaf, loiter and idle in public places for the larger portion of their time without regular employment, without visible means of support, persons known to be pickpockets, thieves or burglars, persons who may be found loitering around houses of ill fame, gambling houses or places where liquor is sold to drink, persons tramping or wandering around from place to place without visible means of support . . .

Punishment provided by statutes concerning vagrancy is generally a fine or a gaol sentence with or without hard labour, usually up to six months, or one year, or three years, according to the laws of the different States <sup>1</sup>."

### *Ethiopia*

36. Article 471 (1) of the new Penal Code for the Ethiopian Empire reads as follows:

"He who has neither domicile nor regular work nor specified or apparent means of subsistence and who, whilst in good health, ordinarily and deliberately leads a life of vagrancy, misconduct, expediency or beggary whilst refusing to accept honest and remunerative work which he would be capable of doing and thereby shows himself to be dangerous to public safety, is liable to be sentenced to compulsory labour with restriction of liberty (Article 103) or imprisonment for a period up to six months <sup>2</sup>." (Translated from the French.)

37. In terms of Article 471 (3) protective measures restricting his freedom may be imposed on a convicted person over and above the sentences provided for in Article 471 (1). These measures are contained, *inter alia*, in Articles 149, 150 and 151 of the Penal Code which provide:

"Art. 149 . . . 1<sup>o</sup>. The judge has the power to impose on the convicted, over and above the penalty, a restriction on the access to or frequenting of such places as have contributed to the perpetration of offences or may enable him to offend anew, particularly bars, amusement halls, markets or other public places.

2<sup>o</sup>. In his judgment the judge shall stipulate the limits and duration of the prohibition, which shall vary between three months to one year."

"Art. 150 . . . 1<sup>o</sup>. The prohibition may for similar reasons be imposed in cases where prevention appears necessary, and entails a prohibition of establishment or entry in a town, village or determined area.

2<sup>o</sup>. The prohibition may be temporary or permanent, depending on the gravity of the offence, the character of the offender and general circumstances . . .

The judge shall stipulate in his motivation the territorial limits and duration of the prohibition."

<sup>1</sup> Report of the Ad Hoc Committee on Forced Labour, Ecosoc. O.R., 16th Sess., Sup. No. 13, p. 604.

<sup>2</sup> Le Code Pénal de l'Empire d'Ethiopie du 23 juillet 1957 (1959), Art. 471 (1), p. 134.

"Art. 151 . . . 1<sup>o</sup>. The judge may also, for determined and justified reasons, particularly when the offender has revealed himself, as a *troubler-maker* and his presence entails probable risks of vengeance, or new offences, order compulsory residence in a determined region or place.

2<sup>o</sup>. The judge shall stipulate the limits, the place and duration of the order of restricted residence, which may not be shorter than one year and not longer than five years.

3<sup>o</sup>. When the preventative measure, on condition of good conduct, (Article 139) appears sufficient, taking into account the character of the delinquent and general circumstances, the judge may limit the application thereof<sup>1</sup>." (Translated from the French.)

### *Liberia*

38. Under section 346 (b) of the Penal Law of Liberia any able-bodied person who lives idly without any visible business, employment, means of living or support, and who is offered employment and refuses to be employed or to work, may be convicted and sentenced as a vagrant. Moreover, any sheriff, constable or policeman apprehending a vagrant is entitled to a monetary reward if the vagrant is convicted<sup>2</sup>.

### *Egypt*

39. Decree No. 98 on Vagrants and Suspect Persons of 4 October 1945 provides, *inter alia*:

"1. A person is considered as a vagrant in terms of this Law-decree, when he has no legitimate means of support.—Excluded are those who have a profession or a trade but who find themselves momentarily without work.—However, those who practice games of chance, quackery, the profession of fortunetelling and all similar practices, are not considered as having legitimate means of existence.

2. Those accused of vagrancy shall be placed under the surveillance of the police for a period of six months to five years.—In case of recidivism the sentence shall be imprisonment and once again surveillance by the police for a period of one year to five years.

3. Instead of inflicting on a vagrant the sentence as set out in the first part of the preceding article, the judge may formally caution him to take steps to modify his irregular state of existence which constitutes a state of vagrancy. Against this judgment no claim whatsoever to appeal will lie.—Should the condemned resort to vagrancy within three years after having been cautioned the penalty fixed in the first part of the preceding article will be applied obligatorily<sup>3</sup>." (Translated from the French.)

<sup>1</sup> *Le Code pénal, op. cit.*, p. 70.

<sup>2</sup> Title 27, *Liberian Code of Laws, 1956*, as cited in *Report of the Commission appointed under Article 26 of the Constitution of the International Labour Organisation to examine the Complaint filed by the Government of Portugal concerning the Observance by the Government of Liberia of the Forced Labour Convention, 1930 (No. 29) (1963)*, para. 143, p. 115.

<sup>3</sup> *Décret-loi n. 98 sur les vagabonds et les personnes suspectes, 4 octobre 1945, in Répertoire Permanent de Législation Egyptienne (1952), Vagabondage, p. 11.*

*The Former Belgian Congo*

40. The Royal Decree of 23 May 1896 modified by the Decree of 11 July 1923 provides:

"1 . . . All persons of colour found in a state of vagrancy or beggary will be arrested and will be brought before the competent court.

2. The court will as far as possible ascertain the identity, the age, the physical condition, the mental condition and the way of life of the individual brought before the court for vagrancy or beggary.

3. The court will hand over to the Government to be imprisoned in one of the establishments as laid down in article 6, for a period not less than one year and not more than seven years, those persons who exploit charity as professional beggars, and those who by idleness, habitual drunkenness or dissolute morals, lead a life of habitual vagrancy.

4. Persons found leading a life of vagrancy or beggary, under circumstances not laid down in the preceding article, will also be handed to the government to be imprisoned for not more than one year.

5. The Governor-General may at all times conduct to the frontier those adult and able-bodied persons of foreign nationality who are found begging or leading a life of vagrancy or who have been sentenced to imprisonment.

6. Those persons who have been sentenced as vagrants and handed to the government will be imprisoned in work-houses or -shops . . ."<sup>1</sup>  
(Translated from the French.)

41. Further examples are:

*Southern Rhodesia*

Act No. 23 of 1879 (Cape of Good Hope)<sup>2</sup> was made applicable to Southern Rhodesia (then known as Mashonaland) in 1891<sup>3</sup>. The provisions of this Act are almost identical with those of the Vagrancy Proclamation of South West Africa. The Act was in force in Southern Rhodesia for approximately 70 years before its repeal by the Vagrancy Act, 1960<sup>4</sup>.

Section 2 of the latter act defines a vagrant, *inter alia*, as—

"(a) any beggar;

(b) any person wandering about and unable to show that he has employment or visible and sufficient means of subsistence;

. . . . .

<sup>1</sup> Strouvens, L. and Piron, P., *Codes et Lois du Congo Belge* (6th ed.), pp. 827-828. These decrees were amended by a decree of June 1958 (*Bulletin officiel*, 1 July 1958), leaving the detention of vagrants to the discretion of the courts and introducing equality of treatment as between indigenous and non-indigenous vagrants. *Vide U.N. Yearbook on Human Rights for 1958* (1960), p. 287.

<sup>2</sup> *Vide* para. 21, *supra*.

<sup>3</sup> *Vide The Statute Law of Southern Rhodesia in force on the 1st Day of January, 1939*, Revised Edition (1939), Vol. I, Chap. 45, pp. 605-608.

<sup>4</sup> Act No. 40 of 1960 (Southern Rhodesia), in *The Statute Law of Southern Rhodesia 1960* (1961), pp. 321-329.

(e) any person who is unable to show that he is living by honest means and has a settled way of honest living<sup>1</sup>.”

#### *Northern Rhodesia*

Section 158 of the Penal Code of 1931<sup>2</sup> provides, *inter alia*, that every suspected person who has no visible means of subsistence and cannot give a good account of himself, and every person found wandering in or upon or near any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose, shall be deemed to be a rogue and vagabond, and shall be guilty of a misdemeanour<sup>3</sup>.

#### *Pakistan*

In terms of section 55 (i) of Act V of 1898 any officer in charge of a police station may, without a warrant, arrest or cause to be arrested any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself<sup>4</sup>.

#### *Kenya*

In terms of Ordinance No. 9 of 1920 (Kenya) vagrancy is an offence and “a vagrant” includes any person wandering about and unable to show that he has employment or visible and sufficient means of subsistence<sup>5</sup>.

#### *Uganda*

Vagrancy is punishable with imprisonment for three months. A “vagrant” means any person found asking for alms or wandering about without employment or visible means of subsistence, and includes any Native of the Protectorate found without employment and fixed abode and unable to render a satisfactory account of himself, at such a distance from his ordinary place of abode as to make it impossible for him to proceed there without assistance<sup>6</sup>.

#### *Bechuanaland*

Act 23 of 1879 (Cape of Good Hope), on which the Vagrancy Pro-

<sup>1</sup> Act No. 40 of 1960 (Southern Rhodesia), in *The Statute Law of Southern Rhodesia 1960* (1961), sec. 2, p. 322.

<sup>2</sup> *Laws of Northern Rhodesia*, 1963 Edition, Vol. I, Chap. 6, p. 74.

<sup>3</sup> For a first offence the maximum punishment is imprisonment for three months, and for every subsequent offence imprisonment for one year.

<sup>4</sup> Chapter V of the Code of Criminal Procedure, 1898 [Pakistan] (Act V of 1898), sec. 55 (i), as cited in “Freedom from Arbitrary Arrest, Detention and Exile”, in U.N. *Yearbook on Human Rights: First Supplementary Volume* (1959), p. 178.

<sup>5</sup> Ord. No. 9 of 1920 (Kenya), as amended, in *The Laws of Kenya in force on the 21st Day of September, 1948*, Revised Edition, Vol. I, Chap. 59, p. 769.

<sup>6</sup> Ord. No. 2 of 1909 (Uganda), as amended, sec. 2, in *The Laws of the Uganda Protectorate in force on the 1st Day of January, 1951*, Revised Edition, Vol. II, Chap. 47, p. 787.

clamation of South West Africa is based, is still in force in the Bechuanaland Protectorate <sup>1</sup>.

### *Basutoland*

Chapter 31 of the Laws of Basutoland provides that every person found loitering near any dwelling, house, hut, store, etc., without lawful excuse or reason, shall be deemed to be an idle and disorderly person and upon conviction liable to a fine not exceeding five pounds or to imprisonment with or without hard labour for a period not exceeding three months <sup>2</sup>. Furthermore, Act No. 23 of 1879 (Cape of Good Hope) is still in force in the Territory <sup>3</sup>.

## V. THE PARTICULAR PROVISIONS OF THE PROCLAMATION

42. In paragraph 130 of Chapter V of the Memorials <sup>4</sup> the Applicants appear to lay particular emphasis on those portions of sections 1 and 3 of the Proclamation which are concerned with the arrest of suspected offenders and matters attendant thereon. Thus they set out that under the proclamation an offender may be arrested, with or without a warrant, not only by any magistrate or police officer, but also by any owner or occupier of land upon which the offender may be found, and that in addition every owner of a farm may enter without a warrant into any hut, etc., upon such farm for the purpose of searching for any idle and disorderly person.

43. In the ultimate summary of the charges under consideration the Applicants furthermore complain that Natives are subject to "arbitrary arrest, often without any warrant", and that the "powers to make arrests may be exercised by designated persons at their largely uncontrolled discretion" <sup>5</sup>. Although not stated in so many words, it therefore seems that the Applicants' complaints regarding the provisions of the Vagrancy Proclamation comprise one or more or all of the following:

- (a) that the power of arrest, with or without a warrant, is given at all;
- (b) that such power of arrest is an arbitrary one, or is exercised at the uncontrolled discretion of the persons upon whom it is conferred;
- (c) that such power of arrest is extended to owners or occupiers of land on which an idle and disorderly person is found;
- (d) that an owner of a farm is empowered to enter and search any hut, etc., on his land.

In the succeeding paragraphs Respondent deals *seriatim* with these aspects.

<sup>1</sup> *Vide Proc.* No. 36 of 1909 (Bechuanaland), 22 December 1909, in *The Laws of the Bechuanaland Protectorate*, containing the Orders-in-Council, Proclamations and Notices made thereunder, in force on the 1st Day of January, 1948, Revised Edition, Vol. I, Title IV, Chap. 27, p. 251.

<sup>2</sup> *Revised Edition of the Laws of Basutoland in force on the 1st Day of January, 1949* (1950), Vol. III, Chap. 31, pp. 221-222.

<sup>3</sup> *Vide Proc.* No. 2B of 1884 (Basutoland), as amended, sec. 2, in *Revised Edition of the Laws of Basutoland in force on the 1st Day of January, 1949*, Vol. I, Title III, Chap. 26, p. 408.

<sup>4</sup> *Ibid.*, p. 144.

<sup>5</sup> *Ibid.*, para. 154 (1) and (2), p. 151.

(a) *The Power of Arrest As Such*<sup>1</sup>

44. Had the Proclamation provided that a vagrant should not be arrested but summoned to appear before the court, it would have meant, in given situations, that the owner of a farm would first have to travel to the nearest police station, which might be up to 150 miles away, to lodge a complaint. Thereupon the police officer would have to travel to the farm, probably a few days later, to serve the summons. Bearing in mind the probable character of the person concerned, it may safely be assumed that he would no longer be on the farm on the arrival of the police officer, or even if still there, that he would not obey the summons and attend court. If a warrant for his arrest were then to be issued, he would in all probability have disappeared by the time of attempted service of such a warrant. To a lesser extent the same problems would be encountered in urban areas. The vagrant apprehended by a police officer in a city would obviously not wait for the latter to return with a warrant for his arrest, and probably having no fixed abode, would not easily be found.

45. It follows that not only would the alternative course cast an onerous financial burden upon the inhabitants, but it would be completely impracticable in its application, thus frustrating the object of the Proclamation by rendering it ineffective to combat the very evil it was designed to remedy.

46. In most countries which have legislated against vagrancy it was realized that the evil could not effectively be combated unless the power of summary arrest was given. The following statutory provisions in certain countries are in point:

(i) *The United Kingdom*

"It shall be lawful for any person whatsoever to apprehend any person who shall be found offending against this Act, and forthwith to take and convey him or her before some justice of the peace . . . or to deliver him or her to any constable or other peace officer . . ."<sup>2</sup>

(ii) *New South Wales*

"Any person found offending against this Act may be apprehended by a constable or other person . . ."<sup>3</sup>

(iii) *Western Australia*

"Any person found committing any offence punishable in a summary manner<sup>4</sup> may be taken into custody without a warrant by any officer or constable of the Police Force, or may be apprehended by the owner of the property on or with respect to which the offence shall be committed . . ."<sup>5</sup>

<sup>1</sup> *Vide* para. 43 (a), *supra*.

<sup>2</sup> 5 Geo. 4. c. 83, sec. 6, in *The Complete Statutes of England*, Vol. 12 (1930), p. 918.

<sup>3</sup> Act No. 74 of 1902 (New South Wales), sec. 9 (1), in *The Statutes of New South Wales (Public and Private)* (1903), p. 544.

<sup>4</sup> Vagrancy is such an offence.

<sup>5</sup> 55<sup>o</sup> Victoriae No. 27, sec. 49, in *The Reprinted Acts of the Parliament of Western Australia* (1954), Vol. 6, p. 23.

(iv) *Canada*

"Any one may arrest without a warrant a person whom he finds committing an indictable offence <sup>1</sup>."

(v) *Southern Rhodesia*

"A police officer may arrest without warrant any person who appears to be a vagrant . . . <sup>2</sup>"

47. As has already been pointed out <sup>3</sup>, Act No. 23 of 1879 (Cape of Good Hope) is still in force in Basutoland and Bechuanaland, and the power of arrest in these countries is therefore identical with those in South West Africa. The power of arrest (without a warrant) is, to mention only a few more countries, also given in New Zealand <sup>4</sup>, Uganda <sup>5</sup>, Kenya <sup>6</sup>, Pakistan <sup>3</sup>, and the former Belgian Congo <sup>7</sup>. In Liberia provision is moreover made for the payment of a monetary reward, on conviction of any vagrant, to the police officer who apprehended him <sup>8</sup>.

48. Quite evidently, therefore, it has been widely accepted that the conferment of a power of arrest is expedient and desirable for the successful combating of vagrancy.

(b) *The Alleged Arbitrary or Uncontrolled Nature of the Power of Arrest* <sup>9</sup>

49. Any power of arrest without a warrant necessarily confers a certain discretion. But the Vagrancy Proclamation of South West Africa no more authorizes an *arbitrary* arrest, or the exercise of a discretion in an *uncontrolled* manner, than does the legislation of any of the other countries referred to above.

50. No proof is furnished by Applicants to show that the power of arrest under the Proclamation is in practice exercised in an arbitrary manner, and Respondent is not aware of any case in which it has been so exercised. In any event, should this happen the arrested person would be able to avail himself of his civil remedy—a claim for damages—on the same grounds as any other person who has been unlawfully arrested.

51. The inhabitants of South West Africa are further protected by

<sup>1</sup> Chap. 51, 2-3 Elizabeth II, 1953-1954 (Canada), sec. 434, in *Criminal Code and Selected Statutes* (1954), p. 144. Vagrancy is an indictable offence.

<sup>2</sup> Act No. 40 of 1960 (Southern Rhodesia), sec. 3 (1), in *The Statute Law of Southern Rhodesia* 1960 (1961), p. 322. Up to 1960, when Act No. 23 of 1879 (Cape of Good Hope) was repealed by Act No. 40 of 1960 (Southern Rhodesia), sec. 17, the power of arrest was identical with that in South West Africa. *Vide* para. 41, *supra*.

<sup>3</sup> *Vide* para. 41, *supra*.

<sup>4</sup> Act No. 35 of 1927 (New Zealand), sec. 50 (1), in *The Statutes of New Zealand* 1955 (1956), Vol. II, p. 1781.

<sup>5</sup> *Vide* Ord. No. 2 of 1909 (Uganda), as amended, sec. 3, in *The Laws of the Uganda Protectorate in force on the 1st Day of January, 1951*, Revised Edition, Vol. II, Chap. 47, p. 787.

<sup>6</sup> *Vide* Ord. No. 9 of 1920 (Kenya), as amended, sec. 3, in *The Laws of Kenya in force on the 21st Day of September, 1948*, Vol. I, Chap. 59, p. 769.

<sup>7</sup> *Vide* para. 40, *supra*.

<sup>8</sup> *Vide* para. 38, *supra*.

<sup>9</sup> *Vide* para. 43 (b), *supra*.

section 15 of the Proclamation, which makes it an offence<sup>1</sup> on the part of a person<sup>2</sup>:

“... who shall, under colour of this Proclamation, wrongfully and maliciously, or without probable cause, arrest, or cause to be arrested, any person . . . .”<sup>3</sup>

52. It should be noted that any person arrested without a warrant must, in terms of section 33 of the Criminal Procedure and Evidence Proclamation, 1935<sup>4</sup>, as soon as possible be brought to a police station or charge office and detained until a warrant is obtained for his further detention upon a charge of an offence, and he should as soon as possible be brought before a judicial officer upon such charge. Such person may not be so detained for a longer period than is reasonably necessary to obtain a warrant for his further detention, and in any event such period shall not exceed seven days.

53. These safeguards against abuse of the power of arrest under the Proclamation therefore again refute the suggested “arbitrary” or “uncontrolled” nature of the power.

(c) *The Grant of the Power of Arrest to Land Owners and Occupiers*<sup>5</sup>

54. For obvious reasons the power of arrest is in other countries also extended to persons other than officials, as will be observed, e.g., from the extracts of the relevant legislation of the United Kingdom, New South Wales, Western Australia and Canada quoted above<sup>6</sup>.

55. If the right of arrest were to be confined in South West Africa to officials, the Proclamation would to a large extent be rendered nugatory for the reason that most farmers are too far removed from the police or other officials. And as has already been pointed out<sup>7</sup>, a vagrant found by the owner or occupier of land—be it in a rural or urban area—would obviously not wait for such owner or occupier to return with an official who has the power of arrest.

56. In the result this aspect, too, does not afford any support for the Applicants’ averments.

<sup>1</sup> Punishable with a fine not exceeding £5 or in default of payment, imprisonment not exceeding three months.

<sup>2</sup> Although such a person is also liable to pay the arrested person such amount, not exceeding the sum of £5 as and for damages, as the magistrate before whom such arrested person is brought for trial may award, the section does not deprive an aggrieved person of his civil remedies.

<sup>3</sup> Proc. No. 25 of 1920 (S.W.A.), sec. 15, in *The Laws of South West Africa 1915-1922*, pp. 284-285.

<sup>4</sup> Proc. No. 30 of 1935 (S.W.A.), sec. 33, in *The Laws of South West Africa 1935*, Vol. XIV, pp. 174, 176.

<sup>5</sup> *Vide* para. 43 (c), *supra*.

<sup>6</sup> *Vide* para. 46, *supra*. Reference may also be made to sec. 437 of the Canadian Criminal Code (Chap. 51, 2-3 Elizabeth II, 1953-1954, p. 145) which provides in general terms that the owner or person in lawful possession of property may arrest without warrant a person whom he finds committing a criminal offence on or in relation to that property.

<sup>7</sup> *Vide* para. 44, *supra*.

(d) *The Right of Entry and Search*<sup>1</sup>

57. The right conferred upon an owner of a farm to enter without a warrant any hut, house or other building upon such farm "for the purpose of searching for any idle and disorderly person", is a natural corollary of the right of arrest, and if not given, could largely frustrate the latter right. In any event, the right of reasonable entry into premises on his land is possessed by any owner under common law.

## VI. THE PRACTICAL APPLICATION OF THE PROCLAMATION

58. In recent years there have been relatively few prosecutions under the Proclamation, and the indications are that the legislation has had a salutary effect. In cases where imprisonment was imposed, the period rarely exceeded 14 days. Spare diet and solitary confinement are not nowadays imposed for contraventions of the Proclamation.

59. The following table shows the number of convictions under sections 1 and 3 of the Proclamation during the period 1959 to 1962<sup>2</sup>:

	1959	1960	1961	1962
Section 1	98	82	56	50
Section 3	30	35	46	18

## VII. THE ATTITUDE OF THE PERMANENT MANDATES COMMISSION

60. The Permanent Mandates Commission was fully aware of the provisions of sections 1 and 3 of the Vagrancy Proclamation, which were referred to and summarized in the annual reports submitted by Respondent to the League of Nations.

61. In the 1920 annual report it was stated that "the offences of trespass, idleness and vagrancy were dealt with in Proclamation No. 25, on the lines of the Cape Vagrancy Laws"<sup>3</sup>. In the 1921 report reference was made<sup>4</sup> to the enforcement of the laws against vagrancy in order to combat idleness, and in the 1922 report full details were given<sup>5</sup> of the provisions of sections 1 and 3 of the Proclamation.

62. While the Permanent Mandates Commission never objected to the provisions of these sections, individual members of the Commission in fact spoke out strongly in favour of the vagrancy legislation. So, for instance, during the Fourth Session of the Commission in 1924 M. Freire d'Andrade is reported to have said:

"In civilised countries the law punished both vagrants and those who could not show that they worked for their living, and it was only right that the same principle should apply to natives who refused to work.

Civilised society only allowed those to live in idleness who possessed the means of subsistence, property or capital . . ."<sup>6</sup>

<sup>1</sup> *Vide* para. 43 (d), *supra*.

<sup>2</sup> Departmental information.

<sup>3</sup> U.G. 26—1921, p. 2.

<sup>4</sup> U.G. 32—1922, p. 12.

<sup>5</sup> U.G. 21—1923, p. 16.

<sup>6</sup> P.M.C., *Min.*, IV, p. 116.

63. In a memorandum submitted to the Commission M. Freire d'Andrade further said:

"At the sixth meeting of the first session of our Commission, I had an opportunity of expressing my view on the labour question (see pages 30 and 31 of the Minutes), and I insisted upon it throughout our proceedings. If forced labour is to be absolutely forbidden, except when imposed by courts of law, natives must not have the right to do no work, unless they have means which enable them to live and to contribute towards the development of the country otherwise than by their labour.

If vagrancy is punished in our civilised societies, it cannot be permitted in Africa either for the natives or other inhabitants<sup>1</sup>."

### VIII. CONCLUSION

64. In the result it is submitted that the relevant provisions of the Proclamation in no way afford support for the Applicants' charges, particularly in that—

- (a) these provisions apply to *all* persons and not only to Natives<sup>2</sup>;
- (b) persons falling within the ambit of these provisions are not subject to *arbitrary* arrest<sup>3</sup>; and
- (c) it is not correct that powers to make arrest may be exercised by designated persons *at their largely uncontrolled discretion*<sup>4</sup>.

On the contrary, the Proclamation constitutes a positive step to promote the material and moral well-being and social progress of the inhabitants of South West Africa.

### C. Idle Persons in Urban and Proclaimed Areas

#### I. THE NATIVES (URBAN AREAS) PROCLAMATION

65. The exposition in paragraph 134 read with paragraph 68 of Chapter V of the Memorials<sup>5</sup> is, in certain respects, to be indicated below, not an accurate and full reflection of the relevant purport of section 26 of the Natives (Urban Areas) Proclamation 1951<sup>6</sup>, which has been amended by Ordinance No. 25 of 1954 (S.W.A.)<sup>7</sup>. In terms of the amended section—in so far as it is relevant—an authorized officer may, whenever he has reason to believe that any Native within an urban or a proclaimed area<sup>8</sup> is an idle person within the meaning of paragraph (a)

<sup>1</sup> *P.M.C., Min.*, VII, p. 203.

<sup>2</sup> *Ibid.* I, para. 154 (5), pp. 151-152 and para. 10, *supra*.

<sup>3</sup> *Ibid.*, para. 154 (1), p. 151 and paras. 49-52, *supra*.

<sup>4</sup> *Ibid.*, para. 154 (2), p. 151 and paras. 49-52, *supra*.

<sup>5</sup> I, pp. 145 and 126-127.

<sup>6</sup> *Proc.* No. 56 of 1951 (S.W.A.), sec. 26, in *The Laws of South West Africa 1951*, Vol. XXX, pp. 144-146.

<sup>7</sup> *Ord.* No. 25 of 1954 (S.W.A.), sec. 10, in *The Laws of South West Africa 1954*, Vol. XXXIII, pp. 745-751.

<sup>8</sup> In terms of sec. 22 (1), as amended by *Ord.* 25 of 1954 (S.W.A.), sec. 9, proclaimed areas are urban or other areas in which there is a large number of Natives and which have been declared such by the Governor-General (now the State President) by notice in the Official Gazette.

of sub-section (1), without warrant arrest that Native and cause him to be brought before a Native commissioner or magistrate who shall require the Native to give a good and satisfactory account of himself. If any Native who has been so required to give a good and satisfactory account of himself fails to do so, the Native commissioner or magistrate enquiring into the matter shall declare him to be an idle person<sup>1</sup>.

66. According to section 26 (1) (a) a Native is an idle person if:

- “(i) he is habitually unemployed and has no sufficient honest means of livelihood; or
- (ii) because of his own misconduct or default (which shall be taken to include the squandering of his means by betting, gambling or otherwise) he fails to provide for his own support or for that of any dependant whom he is legally liable to maintain; or
- (iii) he is addicted to drink or drugs, in consequence of which he is unable to provide for his own support or is unable or neglects to provide for the support of any dependant whom he is legally liable to maintain; or
- (iv) he habitually begs for money or goods or induces others to beg for money or goods on his behalf<sup>2</sup>.”

67. If a Native commissioner or magistrate declares any Native to be an idle person he shall:

- “(a) by warrant addressed to any police officer order that such native be removed from the urban or proclaimed area and sent to his home or to a place indicated by such native commissioner or magistrate, and that he be detained in custody pending his removal; or
- (b) if such native *agrees* to enter and enters into a contract of employment with such an employer and for such a period as that native commissioner or magistrate may approve, order that such native enter into employment in accordance with the terms of that contract<sup>3</sup>.” (Italics added.)

68. It will be noticed that the words—

“... or has without leave or other lawful cause habitually absented himself during working hours from his employer's premises or other place proper for the performance of his work”

which appear in paragraph 134 of Chapter V of the Memorials<sup>4</sup>, and which originally formed part of section 26 (1) (h)<sup>5</sup>, have fallen away, having been repealed by Ordinance No. 25 of 1954 (S.W.A.)<sup>6</sup>. It will further be noted that while the Applicants state that a Native who has been declared an idle person may be “ordered into employment”<sup>7</sup>, they

<sup>1</sup> Sec. 26 (2), in *The Laws of South West Africa 1954*, Vol. XXXIII, p. 749. Since the Applicants do not refer to the power of a magistrate or a native commissioner to declare a Native an *undesirable* person within the meaning of para. (b) of sec. 26 (1), Respondent does not propose to deal specifically with such power.

<sup>2</sup> *Vide The Laws of South West Africa 1954*, Vol. XXXIII, p. 745.

<sup>3</sup> Sec. 26 (3). *Vide The Laws of South West Africa 1954*, Vol. XXXIII, p. 749.

<sup>4</sup> I, p. 145.

<sup>5</sup> *Proc. No. 56 of 1951 (S.W.A.)*, sec. 26 (1) (h), in *The Laws of South West Africa 1951*, Vol. XXX, p. 144.

<sup>6</sup> *Ord. No. 25 of 1954 (S.W.A.)*, sec. 10, in *The Laws of South West Africa 1954*, Vol. XXXIII, pp. 745-751.

<sup>7</sup> I, paras. 68 and 134, pp. 127 and 145.

do not mention that such an order can be made only if the Native concerned had previously agreed to enter into a contract of employment.

69. It may in addition be relevant to point out that in terms of section 26 (5) of the Proclamation, as amended,

“Any native commissioner or magistrate having jurisdiction in the area in question may suspend the execution of any warrant or order issued in terms of sub-section (3) for any period and on any conditions determined by him <sup>1</sup>.”

## II. THE SCOPE OF THE PROCLAMATION

70. The provisions of section 26 of the Proclamation, which apply only to Natives in urban and proclaimed areas in the Police Zone, cover for such Natives largely the same ground as the Vagrancy Proclamation <sup>2</sup>, which applies to persons of all groups throughout the Police Zone. In broad substance the situation in both instances is the same as regards powers of arrest and enquiry into each case by appropriate authority. Consequently, what has been said above regarding these aspects <sup>3</sup>, applies here also.

71. The difference in substance between the two Proclamations lies in the treatment of the vagrant or idle person after he has through due enquiry been found to be such. Under the Vagrancy Proclamation he is dealt with as a criminal offender and on conviction he is liable to a sentence of imprisonment with or without attendant punishment <sup>2</sup>. Under section 26 of the Natives (Urban Areas) Proclamation, however, the Native concerned is not treated as a criminal at all. He is merely declared to be an idle person <sup>4</sup>, and the consequences are:

- (a) if he is prepared to mend his ways and to agree to enter into suitable employment, he may be allowed to do so, failing which
- (b) he is removed from the urban or proclaimed area, either to his home or to some other suitable place amongst his own people <sup>5</sup>.

72. If the area to which an idle Native has been removed is a reserve in the Police Zone, and he remains idle there, he can then be forced to take up employment on essential public works <sup>6</sup>. If, however, such area is situated in the northern territories, he can be dealt with by his tribal authorities under Native law and custom.

73. It is true that the Proclamation is so worded that an idle Native may be removed either to his home “or to a place indicated by . . . [the] . . . magistrate or native commissioner” <sup>5</sup>, but the power concerned is of a judicial nature, and not intended to be exercised arbitrarily. In the exercise of discretionary powers of such a kind, judicial and quasi-judicial tribunals are in South African law enjoined to have due regard to the

<sup>1</sup> *Vide The Laws of South West Africa 1954*, Vol. XXXIII, p. 749.

<sup>2</sup> *Vide para. 8, supra.*

<sup>3</sup> *Vide paras. 44-53, supra.*

<sup>4</sup> *Vide para. 65, supra.*

<sup>5</sup> *Vide para. 67, supra.*

<sup>6</sup> *Vide paras. 89, et seq., infra.*

policy underlying the legislative provision in question<sup>1</sup>, which in this case is clearly to secure the return of the idle Native to his home or to some other suitable place amongst his own people, where that should be practicable. Provision had, however, to be made for contingencies which could render section 26 nugatory—e.g., cases in which the home of such a Native could not be established and he himself refused to supply the necessary information.

### III. THE PURPOSE OF THE PROCLAMATION

74. Section 26 of the Natives (Urban Areas) Proclamation should not be considered *in vacuo*, as it were, but should be read together with the other sections of the Proclamation relating to the control of the influx of Natives into urban and proclaimed areas.

75. In another chapter Respondent will deal fully with the basic considerations of its influx control policy<sup>2</sup>. It will be shown that the main consideration underlying this policy has been the necessity to prevent urban and proclaimed areas from being overcrowded with unemployed Natives with the inevitable consequences of lower wage rates, slum areas, and the spread of crime, drunkenness and disease.

76. It stands to reason that idle persons in thickly populated areas create problems which tend towards the growth of slum conditions, and thus impede the task of the authorities to provide proper housing facilities for the inhabitants of such areas. As early as 1924 the problem of idle Natives in urban areas was emphasized in the annual report on South West Africa for that year, a relevant extract from which reads as follows:

“Experience has shown that there is a strong tendency for natives, both men and women, to drift into urban locations where in many cases they neither want nor seek employment. As they simply loaf and do not earn money honestly they resort to illicit liquor selling, prostitution, gambling and other means to obtain it and generally degenerate<sup>3</sup>.”

77. In Respondent's view it would be most unfair to the law-abiding Native inhabitants of urban and proclaimed areas, and to Natives who wish to enter such areas for the purpose of procuring employment, to allow idle Natives to remain in these areas unless they are prepared to mend their ways.

78. As already pointed out<sup>4</sup>, idle Natives are not under the Proclamation treated as criminals, since punishment as for a criminal offence could on the one hand be inappropriate as far as particular offenders are concerned, and would on the other hand not be as effective a protection for others in these areas as their removal to their rural homes where the discipline of reserve regulations and/or traditional tribal systems serve to minimize the harm they could occasion to others. Thus it will

<sup>1</sup> Reference may be made, for example, to the judgment of Chief Justice Watermeyer in *Vanderbijl Park Health Committee and Others v. Wilson and Others*, 1950 (1) S.A. L.R. 447, especially at p. 461.

<sup>2</sup> *Vide* Chap. III, paras. 163-183, *infra*.

<sup>3</sup> *U.G.* 33—1925, para. 98, p. 27.

<sup>4</sup> *Vide* para. 71, *supra*.

be evident that the special treatment of such Natives by the provisions of this Proclamation, as distinct from the Vagrancy Proclamation, in the first place operates in their favour in rendering unnecessary their treatment as criminal offenders. Secondly, this special treatment is, by reason of the basic factual situation, appropriate for Natives only. For it involves removal from an area in which their presence serves no purpose in the absence of willingness to work, to a place which is their real home. These considerations do not apply to White or Coloured persons whose only real home may be in urban and proclaimed areas.

#### IV. LEGISLATION IN OTHER COUNTRIES

79. Reference has already been made to vagrancy laws of other countries<sup>1</sup>. In the present context Respondent wishes to point out that legislation in terms of which idle persons may be removed from urban areas, instead of being treated as criminals, is not peculiar to South West Africa.

80. In terms of the Voluntarily Unemployed Persons (Provision of Employment) Ordinance, 1949, of Kenya, all unexempted unemployed persons within any declared area have to report to a labour exchange within such area within seven days of arriving in such area, or within seven days of becoming unemployed therein<sup>2</sup>. Should such unemployed person then refuse to accept an offer of employment, and should the officer in charge of the labour exchange be of the opinion that he is a voluntarily unemployed person—defined in section 2 as an unemployed person who is not genuinely seeking employment<sup>3</sup>—such officer shall order such unemployed person to report to the committee for the declared area in which such labour exchange is situated<sup>4</sup>. If he fails to do so, he is liable to arrest without a warrant<sup>5</sup>. Where any adult male appears, or is brought, before the committee, he may be required to show cause why he should not be declared to be a voluntarily unemployed person<sup>6</sup>. If he fails to do so, the committee may declare him to be a voluntarily unemployed person<sup>7</sup>, and if he has a regular place of residence outside the declared area, and if he is not domiciled within such area, and if he has refused or failed to engage in employment approved by the committee, the committee may then direct him to be repatriated to his regular place of residence and order him to remain outside the particular prescribed area or any other such area<sup>8</sup>.

81. During 1950 1,382 Natives in Nairobi were either registered as voluntarily unemployed persons or arrested by the police and taken before the committee. Of this number 321 were either repatriated or permitted to return to their homes<sup>9</sup>.

<sup>1</sup> *Vide* paras. 24-41, *supra*.

<sup>2</sup> *Ord. No. 39 of 1949 (Kenya)*, sec. 6, in *Colony and Protectorate of Kenya, Ordinances enacted during the year 1949*, Vol. XXVIII (New Series), p. 169.

<sup>3</sup> *Ibid.*, sec. 2, p. 168.

<sup>4</sup> *Ibid.*, sec. 7, p. 170.

<sup>5</sup> *Ibid.*, sec. 8, p. 170.

<sup>6</sup> *Ibid.*, sec. 11, p. 170.

<sup>7</sup> *Ibid.*, sec. 13, p. 171.

<sup>8</sup> *Ibid.*, sec. 14, p. 171.

<sup>9</sup> *Vide Report of the Ad Hoc Committee on Forced Labour, Ecosoc, O.R., Sixteenth Sess., Sup. No. 13, p. 541.*

82. Regulation No. 24 of 1957 applicable to the Trust Territory of New Guinea provides that—

“A native who is absent from his tribal area and is without adequate means of support, may . . . be ordered by a Court for Native Affairs to return to his tribal area. Failure to comply with an order, entails a penalty of three months’ imprisonment. . . . A similar provision exists in Papua <sup>1</sup>.”

83. As regards Liberia, J. Gus. Liebenow, associate professor of Government at Indiana University, has commented as follows:

“The drift of tribal people to Monrovia and other urban centres has been met by the city courts, which have taken drastic steps to remove tribal vagrants to the hinterland <sup>2</sup>.”

#### V. THE APPLICABILITY OF THE PRISONS ACT

84. In paragraph 135 of Chapter V of the Memorials <sup>3</sup> the Applicants refer to Proclamation No. 271 of 1959 (S.A.) in terms of which the South African Prisons Act, 1959 <sup>4</sup>, was made applicable to South West Africa. By then alleging that under section 20 of the Act—

“the Minister of Justice of the Union ‘may by notice in the Gazette, establish prisons . . . (e) of the type known as farm colonies to which persons declared to be idle persons may be sent to learn habits of industry and labour’ <sup>5</sup>”,

the Applicants create the impression that persons declared in South West Africa to be idle persons under section 26 of the Natives (Urban Areas) Proclamation, 1951, may be sent to farm colonies. This impression is incorrect, as will appear, although Respondent must confess to being unable to see anything wrong in the idea of sending confirmed idle persons to institutions where they can learn habits of industry and labour.

85. Section 20 of the South African Prisons Act in fact empowers the Minister of Justice to establish farm colonies—

“to which persons declared to be idle persons *in terms of the Natives (Urban Areas) Consolidation Act, 1945* (Act No. 25 of 1945), may be sent to learn habits of industry and labour <sup>6</sup>”. (Italics added.)

86. Since the Natives (Urban Areas) Consolidation Act, 1945, does not apply to South West Africa, it follows that idle persons in the Territory—whether declared to be such under section 26 of the Natives (Urban Areas) Proclamation, 1951, or under any other statutory provision applicable to the Territory—are not included in the provisions relative to farm colonies <sup>7</sup>.

<sup>1</sup> Vide U.N. Yearbook on Human Rights for 1957 (1959), p. 271.

<sup>2</sup> Carter, G. M. (ed.), *African One-Party States* (1962), p. 334.

<sup>3</sup> I, p. 145.

<sup>4</sup> Act No. 8 of 1959, in *Statutes of the Union of South Africa 1959*, Part I, Nos. 1-60, pp. 16-106.

<sup>5</sup> I, pp. 145-146.

<sup>6</sup> Act No. 8 of 1959, sec. 20, in *Statutes of the Union of South Africa 1959*, Part I, p. 34.

<sup>7</sup> In any event no farm colony has as yet been established in South West Africa.

## VI. CONCLUSION

87. In the result it is submitted that the provisions of section 26 of the Natives (Urban Areas) Proclamation, 1951, in no way afford support for the Applicants' charge since:

- (a) although these provisions apply to Natives only, the distinction is one operating for the benefit of the Natives concerned, and for the reasons indicated above <sup>1</sup>, the provisions are appropriate to Natives only;
- (b) persons falling within the ambit of these provisions are not subject to *arbitrary* arrest, nor may the powers to make arrests be exercised by designated persons *at their largely uncontrolled discretion* <sup>2</sup>.

88. As a result of the deterrent effect of section 26 of the Proclamation, it has not been necessary to apply its provisions at all in recent years.

## D. Idle Persons in Native Reserves

89. The allegations in paragraph 131 of Chapter V of the Memorials <sup>3</sup> are based upon regulation 27(*bis*) of the regulations issued under section 20 of the Native Administration Proclamation, 1922 <sup>4</sup>.

90. As part of a general scheme for dealing constructively with idle Natives so as to obviate sending them to gaol as criminal offenders, the regulation empowers a superintendent of a Native reserve in the Police Zone who, after investigation, is satisfied that a male resident of such a reserve has no regular and sufficient lawful means of support, or leads an idle existence, to order such person to take up employment on essential public works or services at a sufficient wage to be determined by the superintendent.

91. It is submitted that no objection can be raised against the habitually idle and unemployed resident of a Native reserve within the Police Zone being compelled to take up employment in lieu of being sentenced as a criminal offender to imprisonment under the provisions of the Vagrancy Proclamation. This is in his own interests as well as in the interests of his community, which require the construction of essential public works such as the erection of fences, the building of dams and roads, etc.

92. Regulation 27(*bis*) forms part of the regulations <sup>5</sup> pertaining to Native reserves within the Police Zone, and thus inevitably applies to Natives only. Idle White and Coloured persons are in a sense in a worse position than idle Natives in such reserves, since they can only be dealt with as criminal offenders under the Vagrancy Proclamation, 1920 <sup>6</sup>.

<sup>1</sup> *Vide* para. 78, *supra*.

<sup>2</sup> Para. 70 read with paras. 44-53, *supra*; and *vide* I, para. 154 (1) and (2), p. 151.

<sup>3</sup> I, p. 144.

<sup>4</sup> *Proc.* No. 11 of 1922 (S.W.A.). The regulation which is correctly quoted in para. 70 of Chap. V of the Memorials, was added by G.N. No. 121 of 1952 (S.W.A.), in *The Laws of South West Africa 1952*, Vol. XXXI, pp. 834-836.

<sup>5</sup> Issued under sec. 20 of *Proc.* No. 11 of 1922 (S.W.A.), by virtue of G.N. No. 68 of 1924 (S.W.A.), in *The Laws of South West Africa 1924*, pp. 57-63.

<sup>6</sup> *Vide* para. 8, *supra*.

93. It seems, however, as though Applicants' attack against the regulation is, in relation to security of the person, more specifically concerned with the discretionary powers conferred upon the superintendent. It will be observed that these powers are not unlimited or uncontrolled. The power to make an order as envisaged is a quasi-judicial one, and must be exercised in a *bona fide* manner, only after the matter has been investigated and the evidence has satisfied the superintendent that the "... resident of a Reserve has no regular and sufficient lawful means of support, or leads an idle existence ..."<sup>1</sup>. At this investigation the resident must be given a fair hearing and all the rules of natural justice must be observed. If the superintendent should act irregularly, e.g., if he should act arbitrarily, or without due enquiry, or if he should be actuated by malice or ulterior motives, his order may, under common law, be set aside on review by the Supreme Court<sup>2</sup>.

94. In addition, regulation 33 expressly provides that:

"Every resident in a Reserve shall have the right to appeal to the Magistrate against any ... order of the Superintendent ... and after due inquiry the Magistrate shall make such order as he may deem fit<sup>3</sup>."

Applicants make no mention of regulation 33, although regulation 27(*bis*) (2), which is cited in part by Applicants<sup>4</sup>, expressly refers, *inter alia*, to "any order of the Magistrate on appeal".

In the circumstances the charge of "arbitrary" and "largely uncontrolled", in relation to the superintendent's powers in question, is not understood.

95. It may further be pointed out that the work to be done in terms of an order made by the superintendent, is work primarily in the reserve itself<sup>5</sup>—and not for the benefit of the superintendent or of any White person or White community. In practice action is never taken under the regulation without the headman and the members of the Reserve Board first being consulted by the superintendent<sup>6</sup>.

96. In the result the charge that the Respondent has in this respect "given consideration solely to the convenience or advantage of the Mandatory government and of the 'European' citizens and residents of the Territory"<sup>7</sup>, will be seen to be as unwarranted as that pertaining to "arbitrary arrest" and "largely uncontrolled" discretion<sup>8</sup>.

<sup>1</sup> Regulation 27(*bis*) (1), G.N. No. 121 of 1952 (S.W.A.), in *The Laws of South West Africa 1952*, Vol. XXXI, p. 834.

<sup>2</sup> *Vide Union Government (Minister of Mines and Industries) v. The Union Steel Corporation (S.A.), Ltd.*, 1928 A.D. 220, at p. 236; *Hlongwane v. Roux and van Gass*, N.O., 1948 (1) S.A. L.R. 62.

<sup>3</sup> G.N. No. 68 of 1924 (S.W.A.), in *The Laws of South West Africa 1924*, p. 62.

<sup>4</sup> I, Chap. V, paras. 70 and 131, pp. 127-128 and 144.

<sup>5</sup> Although the superintendent is empowered to order an idle person to take up employment on public works and services outside the reserve—obviously in order to provide for cases in which no such employment may be available in the reserve at a given time—Respondent is not aware that this power has ever been exercised.

<sup>6</sup> The mere existence of the regulation has helped materially to eliminate idleness in the reserves, and it has lately not been necessary to apply its provisions.

<sup>7</sup> I, Chap. V, para. 154 (5), p. 151.

<sup>8</sup> *Ibid.*, para. 154 (1) and (2), p. 151.

### E. Undesirable Persons in Native Reserves

97. In paragraph 132 of Chapter V of the Memorials<sup>1</sup> reference is made to regulation 27 of the regulations issued under the Native Administration Proclamation, 1922<sup>2</sup>. This regulation reads, *inter alia*:

"In the interests of order and good government the Magistrate with the approval of the Administrator<sup>3</sup> may order any resident of a Reserve or person therein who shall in the opinion of such Magistrate be an undesirable person to leave such Reserve within a time to be specified in such order; provided that an opportunity shall first have been given to such person to show cause why he should not be so ordered to leave<sup>4</sup>." (Italics added.)

98. For reasons that will become apparent, the regulation does not apply to the Kaokoveld Native Reserve<sup>5</sup>, the Ovamboland Reserve<sup>5</sup>, the Okavango Native Territory<sup>5</sup>, the Zessfontein Reserve<sup>5</sup>, the Berseba Hottentot Territory<sup>6</sup> and the Bondels Reserve<sup>6</sup>, and consequently affects only a minor percentage of Natives living in reserves, i.e., in some reserves in the Police Zone.

99. The creation of further reserves after the assumption of the Mandate was part of the task undertaken by Respondent of rehabilitating the scattered remnants of the various Native tribes<sup>7</sup> and settling them under the guidance and supervision of trained experts who would help them to reorganize their disrupted tribal life.

100. Respondent believed that the programme of rehabilitation could best be carried out, *inter alia*, by restoring tribal authority in the reserves. It was foreseen, however, that this would be no easy matter because:

- (a) tribal control had in some instances broken down completely as a result of the events described above; and
- (b) it was not always practically possible to confine occupation of a particular reserve to members of a particular Native group only.

101. Experience showed that, especially in the circumstances just described, there could be persons who by persistent action attempt to thwart, or induce others to thwart, constructive steps to develop the reserves, sometimes for no other reason than that such measures would be foreign to unprogressive aspects of their previous mode of living. Since the peace in a particular area might be seriously threatened by the activities of one or more mischief-makers, it was considered necessary to provide for their removal. The regulation was consequently introduced to promote order and good government in certain reserves in which there would initially be little social cohesion and discipline.

<sup>1</sup> I, Chap. V., para. 154 (5), p. 145.

<sup>2</sup> Proc. No. 11 of 1922 (S.W.A.).

<sup>3</sup> Now the Minister of Bantu Administration and Development; *vide* Act No. 56 of 1954 and Proc. No. 119 of 1958 (S.A.).

<sup>4</sup> G.N. No. 68 of 1924 (S.W.A.), in *The Laws of South West Africa 1924*, p. 61.

<sup>5</sup> *Vide* G.N. No. 29 of 1941 (S.W.A.), in *The Laws of South West Africa 1941*, Vol. XX, pp. 374, 376.

<sup>6</sup> *Vide* G.N. No. 238 of 1930 (S.W.A.), in *The Laws of South West Africa 1930*, p. 458.

<sup>7</sup> *Vide* para. 13, *supra*.

102. It may be pointed out that the regulation merely confirms principles of Native customary law. In *Mokhale & Others v. Union Government (Minister of Native Affairs)*<sup>1</sup> the South African Appeal Court held, *inter alia*, that a Native chief can, according to Native law and custom, remove a recalcitrant or rebellious Native from his tribe or the tribal property.

103. As this regulation was designed to overcome a problem which would exist only in certain Native areas, it would obviously not be appropriate for White or Coloured persons<sup>2</sup>.

104. The magistrate's power to order a person to leave a reserve is by no means unlimited or uncontrolled. He may only issue such an order if, having heard all the evidence, he is of the *bona fide* opinion that such a person is an "undesirable person" from the point of view of order and good government. Should he exercise his discretion in an improper manner, his decision may be set aside on review by the Supreme Court. The order can moreover only be issued with the approval of the Administrator<sup>3</sup>, whose duty it is to satisfy himself that the evidence justifies such an order. Apart from these safeguards against the possible abuse of the power, action against a person in pursuance thereof is, in any event, in practice only taken at the request of the Headman and the Reserve Board.

105. Similar legislation exists in other countries, e.g., in Northern Rhodesia. Section 34 (3) of the Penal Code<sup>4</sup> reads:

"Where it is shown on oath to the satisfaction of the High Court that any person is conducting himself so as to be dangerous to peace and good order in any part of the Territory or is endeavouring to excite enmity between any section of the people of the Territory and Her Majesty, or between any section of the people of the Territory and any other section of the same, or is intriguing against constituted power and authority in the Territory, or has been convicted in any court of competent jurisdiction within or without the Territory of any offence which would be likely to excite enmity between any section of the people of the Territory and any other section of the same or by any section of the people against such person, the High Court may recommend to the Governor that an order be made for his deportation to such part of the Territory as may be specified in such order<sup>5</sup>."

106. Section 43 (1) of the Northern Rhodesia Order in Council, 1924, provided:

"(a) Except as provided by sub-paragraph (b) of this paragraph no native shall be removed from any kraal, or from land assigned

<sup>1</sup> *Mokhale & Others v. Union Government (Minister of Native Affairs)*, 1926 A.D. 71. *Vide* also Chap. III, para. 144, *infra*.

<sup>2</sup> White (and non-White) foreigners who cause trouble in the Territory, may be removed from South West Africa in terms of sec. 1 (1) of *Proc. No. 50 of 1920 (S.W.A.)*, in *The Laws of South West Africa 1915-1922*, p. 424. *Vide* paras. 110 *et seq.*, *infra*.

<sup>3</sup> Now Minister—*vide* footnote 3, p. 222, *supra*.

<sup>4</sup> *Laws of Northern Rhodesia, 1963 Edition*, Vol. I, Chap. 6, p. 28.

<sup>5</sup> Subordinate courts have the same powers as the High Court, but any exercise of such powers is subject to revision by the High Court (sec. 34 (4)).

to him under native customary law for occupation, except after full inquiry by, and by order of, the Governor.

- (b) It shall be lawful for a Superior Native Authority, without reference to the Governor and for good cause shown, to order the removal of a native from any kraal or land assigned to him under native customary law for occupation which is within the area of jurisdiction of such Superior Native Authority:

Provided that

- (i) no such order of removal shall take effect until full inquiry has been made and the order or removal has been confirmed by the District Commissioner of the District within which the kraal or land is situate;
- (ii) any person aggrieved by such order of removal may appeal to the Provincial Commissioner of the Province within which the kraal or land is situate.
- (c) Notwithstanding the provisions of sub-paragraphs (a) and (b) of this paragraph, where a native is to be removed from a Native Reserve into land not forming part of a Native Reserve, otherwise than in execution of the process of a competent Court, the approval of the Secretary of State shall first be obtained<sup>1</sup>.

107. As a result of the better group relations and tribal discipline which have come into being under Respondent's administration, and of the deterrent effect of the regulation, it has not been found necessary to make use of its provisions for a considerable period of time.

108. Although reference was made in the 1924 annual report to the regulations issued under section 20 of Proclamation No. 11 of 1922 (S.W.A.)<sup>2</sup>, the Permanent Mandates Commission never objected to Regulation 27 or, for that matter, to any of the said regulations.

109. Having regard to the purpose and limits of the regulation, the safeguards against abuse and the practical mode of application, as dealt with above, it will be evident that the Applicants' charges contained in paragraph 154 (1) and (2) of Chapter V of the Memorials<sup>3</sup> are in this respect also unfounded: the power and its exercise are neither "arbitrary" nor "largely uncontrolled". And since the regulation was, for reasons explained, rendered applicable only to *certain* Native reserves in the Police Zone, and directed to specific circumstances in those reserves and to the well-being of their inhabitants, there is no substance in the allegation that in enacting the regulation Respondent gave consideration solely to "the convenience or advantage of the Mandatory government and of the 'European' citizens and residents of the Territory"<sup>4</sup>.

<sup>1</sup> *The Northern Rhodesia Orders in Council 1924-1960*, in *Appendix 2 to the Laws*, 1961 Edition, pp. 15-16. The above-quoted provisions were revoked by sec. 3 of the *Northern Rhodesia (Constitution) Order in Council, 1962*, in *Appendix 3 to the Laws*, 1963 Edition, pp. 4-5; *vide The Laws of Northern Rhodesia*, Vol. VIII.

<sup>2</sup> U.G. 33—1925, para. 100, p. 27.

<sup>3</sup> I, p. 151.

<sup>4</sup> *Ibid.*, para. 154 (5), p. 151.

## F. The Deportation of Undesirable Persons from the Territory

110. In paragraph 136 of Chapter V of the Memorials<sup>1</sup> reference is made to the provisions of section 1 (1) of the Undesirables Removal Proclamation, 1920. This sub-section, as amended, reads:

"It shall be lawful for the Administrator—

- (a) if he is satisfied that any person within this Territory is dangerous to the peace, order or good government of the territory if he remain therein; or
- (b) if he is satisfied that any person has directly or indirectly inflicted or threatened to inflict upon any person any harm, hurt or loss, whether to his person, property, reputation or feelings, or has directly or indirectly done or threatened to do anything to the disadvantage of any person, with the object of compelling or inducing that person or any other person to abstain from doing any act which he has a legal right to do or to do any act which he has a legal right to abstain from doing, or because that person or any other person has abstained from doing or has done any such act; or
- (c) if he is satisfied that any person who is not a British subject has engaged actively in political propaganda in the Territory; or
- (d) on the conviction of any person of any offence under section *three, four or five* of the South West Africa Affairs Proclamation, 1937:

to direct the Secretary for the Territory to issue an order to such person to leave the Territory within such time after service of such order as may be stated therein.

Any such person found within the Territory after the expiry of such time shall be guilty of an offence and shall upon conviction be liable to imprisonment with or without hard labour for a period not exceeding twelve months, and shall further be liable at or before the expiry of such imprisonment to be removed from the Territory by warrant under the hand of the Secretary for the Territory<sup>2</sup>."

111. In terms of section 3 of Ordinance No. 4 of 1955 (S.W.A.)<sup>3</sup>, the provisions of the Proclamation are administered by the Minister for Native Affairs<sup>4</sup> in respect of all persons in Native reserves and all Natives outside the Reserves, and in these cases reference to the Administrator and the Secretary for the Territory must be read as being to the Minister and Secretary for Native Affairs respectively. As regards persons other than Natives outside the Reserves the Proclamation is still administered by the Administrator and the Secretary for the Territory. The Proclamation therefore applies to any person falling within its ambit, irrespective of race or colour.

112. If regard be had to the principles of municipal and international

<sup>1</sup> I, p. 146.

<sup>2</sup> Proc. No. 50 of 1920 (S.W.A.), sec. 1 (1), in *The Laws of South West Africa 1915-1922*, pp. 424-426, as amended by Proc. No. 51 of 1937 (S.A.), sec. 7, in *The Laws of South West Africa 1937*, Vol. XVI, p. 66.

<sup>3</sup> Ord. No. 4 of 1955 (S.W.A.), sec. 3, in *The Laws of South West Africa 1955*, Vol. XXXIV, p. 530.

<sup>4</sup> Now designated the Minister of Bantu Administration and Development.

law that a State cannot, in general, expel its own nationals<sup>1</sup>; to the fact that the Proclamation has in practice never been enforced against persons other than foreigners, and to the surrounding circumstances indicated below, especially with reference to the 1937 amendment of the Proclamation<sup>2</sup>, it is clear that it was never intended that the Proclamation should be applicable to permanent inhabitants of the Territory.

113. Since the terms of the Mandate are concerned only with the interests of the inhabitants of the Territory, it is really unnecessary to explain the background to and the reasons for the enactment of the Proclamation in its present form. In view, however, of Applicants' references to the legislative history, Respondent will briefly explain the position in that regard.

114. Before the 1937 amendment the Proclamation made provision for the deportation of a person on one ground only, viz., if such person "... is dangerous to the peace, order or good government of the territory if he remain therein..."<sup>3</sup>.

115. The promotion of the material and moral well-being and the social progress of the inhabitants of the Territory required that they should be protected against foreign agitators and trouble-makers. Most, if not all, civilized countries have similar statutory provisions which authorize officials to deport foreigners. So, e.g., the Secretary of State in the United Kingdom may make a deportation order if he "deems it to be conducive to the public good" to do so<sup>4</sup>.

116. The amendment of the Proclamation in 1937<sup>5</sup> was induced by the serious situation created by German agitators in the Territory in the circumstances prevailing shortly prior to the Second World War. The further grounds for deportation contained in section (1) (b), (c) and (d) were then added especially with a view to meeting this new situation.

117. A description of the situation in question was given in paragraphs 106 and 108 of the annual report on South West Africa for 1939<sup>6</sup>. According to the former paragraph the Government—

"... has been brought under the impression that a considerable part of the German section of the population, whether Union nationals or not, is, either by conviction or through moral pressure, intimidation or infringements upon the liberty of the individual, grouped in a separate political organization in which those who wish to use it as a means of creating and maintaining a state of affairs favourable to a return of the Territory to Germany hold sway. The right of free speech has almost ceased to exist among[s]t the German population and every member of the organization is bound to fall into line with the hints or orders of the head of the organization on pain of moral or material injury. The root principles of the organization to which each member must subscribe are thus in direct conflict

<sup>1</sup> *Vide* Weis, P., *Nationality and Statelessness in International Law* (1956), p. 50.

<sup>2</sup> *Vide* paras. 116 and 117, *infra*.

<sup>3</sup> *Proc.* No. 50 of 1920 (S.W.A.), sec. 1 (1) (a), in *The Laws of South West Africa 1915-1922*, p. 424.

<sup>4</sup> Sec. 12 (6) (c) of The Aliens Order No. 448 of 1920, quoted by Fraser, C. F., *Control of Aliens in the British Commonwealth of Nations* (1940), App. 4, p. 254.

<sup>5</sup> By *Proc.* No. 51 of 1937 (S.A.).

<sup>6</sup> *U.G.* 30—1940.

with the democratic principles on which the participation of the population in the administration of the Mandated Territory rests. Persons who are not *Union nationals and who do not wish to become such, have a preponderant influence* in shaping the policy of the organization . . . Union nationals, therefore, are bound to exercise political rights, accorded to them as Union nationals, in conformity with the instructions of an *alien*, who himself has no such rights and, moreover, *owes implicit obedience to the Head of a foreign State* <sup>1</sup>. (Italics added.)

118. The amendments were therefore aimed at meeting the exceptional circumstances which existed in the Territory immediately before and during the Second World War, when foreign subversive elements among the German population of the Territory were working for the return of the Territory to Germany.

119. In paragraphs 136 and 137 of Chapter V of the Memorials <sup>2</sup> the Applicants object to the "unbridled discretion" and the "uncontrolled scope" of the power of the Administrator under the Proclamation. In this regard reference is made to section 1 (1) (3), as amended by section 7 (2) of Proclamation No. 51 of 1937 (S.A.), which provides: "No court shall have jurisdiction in respect of any direction issued by the Administrator or in respect of any order . . . <sup>3</sup>"

120. Prior to the 1937 amendment, section 1 (1) (3) merely provided that "No appeal shall lie to any court in respect of any [deportation] order . . ." The position then was that the Administrator could act only if it was shown to his satisfaction that there were reasonable grounds for believing that a particular person was dangerous to the peace, order or good government of the Territory <sup>4</sup>.

121. Despite the fact that there was no appeal to the courts, the decision of the Administrator could be set aside on review by the Supreme Court if there were no reasonable grounds for believing that the person concerned endangered the peace or if the Administrator was actuated by ulterior motives. The result was that any person affected could virtually force the Administrator to disclose in court the grounds on which he had based his decision and the source thereof <sup>5</sup>. The inhabitants, however, were living in fear on account of intimidation by foreign subversive elements, and it was impossible to obtain information about the trouble-makers unless there was a guarantee that the identity of the informants would not be disclosed. Moreover, this movement could best be opposed if the information concerning it was not disclosed. It was with these considerations in view that the provisions of the Proclamation were amended as above indicated.

122. It should be pointed out, however, that although the jurisdiction of the courts is restricted, it is by no means completely ousted. Notwithstanding the wording of section 1 (1) (3) of the Proclamation the courts

<sup>1</sup> *U.G.* 30—1940, pp. 23-24.

<sup>2</sup> *I*, p. 146.

<sup>3</sup> *Proc.* No. 50 of 1920 (S.W.A.), sec. 1 (1) (3), in *The Laws of South West Africa 1915-1922*, p. 425, as amended by *Proc.* No. 51 of 1937 (S.A.), sec. 7 (2), in *The Laws of South West Africa 1937*, Vol. XVI, p. 66.

<sup>4</sup> Sec. 1 before the 1937 amendment.

<sup>5</sup> *Vide, e.g., Kellermann v. Minister of the Interior*, 1945 T.P.D. 179.

will nevertheless intervene if it is shown that the action taken is manifestly outside the power conferred, or if fraud or a similar element has been present<sup>1</sup>. The effect of the sub-section is therefore that a court of law cannot interfere with any *bona fide* act of the Administrator (or Minister) falling within his jurisdiction.

123. The situation in this regard is similar to that obtaining in the United Kingdom relative to the power of the Secretary of State referred to above<sup>2</sup>, to make a deportation order against an alien "if (he) deems it to be conducive to the public good". This discretion cannot, in general, be interfered with by the courts, the Secretary's acts under the Aliens Order being regarded as executive and not judicial<sup>3</sup>.

124. It is submitted that the fact that since the end of the Second World War no deportation order has been issued under the Proclamation<sup>4</sup>, further evidences the special circumstances which existed when its more stringent provisions were added by the 1937 amendment.

125. In conclusion it may be pointed out that the Permanent Mandates Commission did not object to the provisions of sections 1 and 3 of the Proclamation, either in their original or amended form, although the Commission was fully aware of the existence of these provisions. In the 1920 annual report attention was drawn to the provision made by the Proclamation "for the removal of undesirables on the lines in force in the Union"<sup>5</sup>, and during the 34th Session of the Commission in 1938<sup>6</sup> M. Palacios pointed out that Respondent had communicated the Official Gazette, No. 707 of 1937, containing Union Proclamation No. 51 of 1937 (S.A.)<sup>7</sup>.

### G. Infringements of the Pass Laws

126. In paragraph 133 of Chapter V of the Memorials reliance is placed on section 10 of the Native Administration Proclamation (Proclamation No. 11 of 1922)<sup>8</sup>. This section is only one of several sections of the Proclamation relating to the carrying of passes or certificates of exemption by Natives. Some of the other sections are referred to in the Memorials under the head of "Freedom of Movement", and it will consequently be more convenient to deal with section 10 in the reply to the allegations made under the said head<sup>9</sup>.

<sup>1</sup> *Vide Union Government v. Fakir*, 1923 A.D. 466, at pp. 469-470; *Narainsamy v. Principal Immigration Officer*, 1923 A.D. 673, at p. 675.

<sup>2</sup> *Vide* para. 115, *supra*.

<sup>3</sup> *Vide The King v. Inspector of Leman Street Police Station, Ex parte Venicoff*, 1920 3K.B. 72.

<sup>4</sup> Deportation orders have, however, been issued under *Proc.* No. 267 of 1954 (S.A.), in *The Laws of South West Africa 1954*, Vol. XXXIII, pp. 66-71 (now *Proc.* No. 148 of 1962 (S.A.), in *Government Gazette* (S.A.), Vol. IV, No. 283 (29 June 1962), pp. 1-3), which provides for the removal or deportation on a number of grounds of persons born in the Republic of South Africa.

<sup>5</sup> *U.G.* 26—1921, p. 3.

<sup>6</sup> *P.M.C., Min.*, XXXIV, p. 74.

<sup>7</sup> Which amended secs. 1 and 3 of *Proc.* No. 50 of 1920 (S.W.A.); *vide* footnote 3, p. 227, *supra*.

<sup>8</sup> *I.*, p. 145.

<sup>9</sup> *Vide* Chap. IV, paras. 68-70, *infra*.

## H. Conclusion

127. In the preceding sections Respondent has endeavoured to indicate the historical, ethnological and socio-economic factors which gave rise to the provisions complained about in paragraphs 130 to 137 of Chapter V of the Memorials. It is submitted that when the said provisions are viewed against this background, they afford no support whatsoever for the charges that Respondent legislated with the intention of oppressing or subjugating a section of the population of the Territory <sup>1</sup>.

128. As has been shown <sup>2</sup>, the relevant provisions of the Vagrancy Proclamation, 1920 <sup>3</sup>, and the Undesirables Removal Proclamation, 1920 <sup>4</sup>, apply to all persons falling within their ambit, irrespective of race or colour, while the provisions of the latter Proclamation moreover apply to foreigners only <sup>5</sup>. Regulations 27(*bis*) <sup>6</sup> and 27 <sup>7</sup> of the regulations issued under section 20 of Proclamation No. 11 of 1922 (S.W.A.) pertain only to certain Native reserves in the Police Zone, because of circumstances peculiar to them <sup>8</sup>, and thus inevitably apply to Natives only, while section 26 of the Natives (Urban Areas) Proclamation <sup>9</sup> is specifically directed towards circumstances peculiar to Natives in urban and proclaimed areas <sup>10</sup>, and thus again inevitably applies to Natives only. In all these circumstances of provisions applying to Natives only, the persons and communities primarily benefiting therefrom are Natives <sup>11</sup>.

129. It is consequently submitted that there is no substance in the Applicants' charges that in enacting these provisions Respondent—

“ . . . has given consideration solely to the convenience or advantage of the Mandatory government and of the 'European' citizens and residents of the Territory <sup>12</sup> ”.

130. As regards the Applicants' allegations contained in paragraphs 154 (1) and (2) of Chapter V of the Memorials <sup>13</sup>, only the Vagrancy Proclamation, 1920, and section 26 of the Natives (Urban Areas) Proclamation, 1951, confer powers of arrest <sup>14</sup>, and as has been pointed out <sup>15</sup>, persons falling within the ambit of these laws are not subject to *arbitrary* arrest. Moreover, in none of the instances dealt with above can it be said that any of the powers concerned are exercisable at the largely *uncontrolled* discretion of the designated persons.

<sup>1</sup> I, para. 154 (5), p. 152.

<sup>2</sup> *Vide* paras. 10 and 11, *supra*.

<sup>3</sup> *Vide* para. 8 *supra*, and I, para. 130, p. 144.

<sup>4</sup> *Vide* para. 110 *supra*, and I, paras. 136-137, p. 146.

<sup>5</sup> *Vide* para. 112, *supra*.

<sup>6</sup> *Vide* para. 89, *supra*, and I, para. 131, p. 144.

<sup>7</sup> *Vide* para. 97, *supra*, and I, para. 132, p. 145.

<sup>8</sup> *Vide* paras. 92 and 98, *supra*.

<sup>9</sup> *Vide* para. 65, *supra*, and I, para. 134, p. 145.

<sup>10</sup> *Vide* paras. 74-78, *supra*.

<sup>11</sup> *Vide* particularly paras. 71-72, 74-78, 95 and 99-101, *supra*.

<sup>12</sup> I, para. 154 (5), p. 151.

<sup>13</sup> *Ibid.*, p. 151.

<sup>14</sup> As already stated (para. 126, *supra*), Respondent will deal in another Chapter with sec. 10 of *Proc. No. 11 of 1922* (S.W.A.).

<sup>15</sup> *Vide* paras. 49-53 and 70, *supra*.

131. In the result it is submitted that the Applicants' charges relating to "Security of the Person" are unfounded. On the contrary the provisions on which the Applicants rely, demonstrate Respondent's *bona fide* endeavours to promote the material and moral well-being and social progress of *all* the inhabitants of the Territory.

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CHAPTER III  
RIGHTS OF RESIDENCE

A. Introductory

1. The allegations contained in paragraphs 138 to 145 of Chapter V of the Memorials<sup>1</sup> are summarized by the Applicants as follows:

“‘Natives’ are not allowed even a faint approximation of the degree of freedom of choice permitted to ‘Europeans’ concerning where they may reside within the Territory. On the contrary, ‘Natives’ are confined within sharply defined areas and places under prescribed conditions. The pattern of restrictions upon the residence of ‘Natives’ is uniformly arbitrary and discriminatory; it is conceived and executed to give increasingly intensive effect to the dominating principle of *apartheid* 2.”

Applicants seek to substantiate these allegations by reference to certain laws relating to rights of residence in (i) the Native reserves, (ii) the Police Zone generally, and (iii) urban areas in the Police Zone.

2. After dealing with the said laws, Applicants conclude:

“In sum, in the entire complex of . . . tight restrictions upon . . . [the] . . . residence . . . [of Natives] . . . , the Mandatory has given consideration solely to the convenience or advantage of the Mandatory government and of the ‘European’ citizens and residents of the Territory. The Mandatory has uniformly failed to promote the material and moral well-being, the social progress and the development of overwhelmingly the larger part of the inhabitants of the Territory of South West Africa in terms of . . . their rights and opportunities of residence . . . On the contrary, by law and by practice, the Mandatory has followed a systematic course of positive action which thwarts the well-being, inhibits the social progress and frustrates the development of the great majority of the population of the Territory in vital and fundamental aspects of their lives 3.”

3. Respondent does not dispute that it applies a policy involving differentiation between the various population groups of the Territory in relation, *inter alia*, to their rights of residence. Respondent emphatically denies, however, that this policy is “arbitrary” or “discriminatory” within the meaning of the Memorials; that in applying this policy it has given consideration solely to its own convenience or advantage or to that of the European citizens and residents of the Territory; that it has failed to promote the material and moral well-being, the social progress and the development of the Native inhabitants of the Territory in terms of their rights and opportunities of residence; and denies especially that it has in relation to the rights of residence of the Native inhabitants “followed a systematic course of positive action” which “thwarts [their]

<sup>1</sup> I, pp. 146-148.

<sup>2</sup> *Ibid.*, para. 154 (3), p. 151.

<sup>3</sup> *Ibid.*, para. 154 (5), pp. 151-152.

well-being, inhibits [their] social progress and frustrates [their] development". On the contrary, each of the laws referred to by the Applicants was enacted in the light of historical and socio-economic circumstances to meet a particular situation that was either found in the Territory by Respondent when it assumed the Mandate, or that arose subsequently.

4. The laws on which the Applicants rely all fall within the framework of Respondent's policy of making provision for the separate development of the various population groups, conceived by Respondent as the best and probably the only effective method of achieving the ideals of the Mandate in the peculiar circumstances of South West Africa. Before dealing with the specific laws objected to, it will therefore be necessary to outline this policy with reference to the rights of residence of the various groups in the Territory.

## B. Respondent's Reserve Policy

### I. GENERAL

5. History shows that peoples or groups who share common cultural and other interests are inclined to group themselves together and, in doing so, to confine themselves to an area where the individual feels himself secure amongst his fellow men.

In this respect the history of South West Africa constitutes no exception. For many years before Respondent assumed the Mandate, each of the various population groups had been living—or was at least trying to live—in an area of its own. This is illustrated by the numerous clashes between some of the groups, one of the main causes of which was the encroachment by one group on what another group regarded as its territorial area. When Respondent assumed the Mandate, it was consequently only logical to reserve, as far as practicable, to the various groups areas in which their members could live, to the exclusion of members of other groups.

6. In the northern areas beyond the Police Zone the reserves accorded with the areas traditionally, and more or less undisturbedly, occupied by the groups concerned since long before the establishment of European control over South West Africa. By and large, the said areas, owing to relatively favourable natural conditions<sup>1</sup>, were also sufficient for the residential and subsistence needs of these groups.

7. In the Police Zone different considerations applied. Even before the coming of the White man there had been no clear-cut division of land for occupation by the various groups. Most of them led a nomadic existence. Moreover, factions of the Herero and the Nama were almost continually involved in clashes as a result of conflicting claims to occupation of land<sup>2</sup>.

During the German occupation further disintegration followed as a result of the 1904-1907 wars, leaving a scattered Herero population of about 20,000, and not much less scattered factions of Nama, totalling about 15,000<sup>3</sup>.

<sup>1</sup> *Vide* Book III, Chap. I, para. 33, of this Counter-Memorial.

<sup>2</sup> *Ibid.*, Chap. III, of this Counter-Memorial.

<sup>3</sup> *Ibid.*, Chap. III, paras. 84-85.

8. There had meanwhile been acquisitions of land rights by Europeans through purchase, occupation of vacant land and, in some instances, punitive confiscations. For reasons already explained, Respondent's policy involved the encouragement of further settlement of White persons in the Police Zone, with a view particularly to the economic development of the Territory as a whole. The indigenous population would benefit from such development in two respects. In the first place, they would have the opportunity of obtaining remunerative employment in the White man's monetary economy, and thus also gradually become educated to modern economic practices and standards. In the second place, the general economic development of the Territory, which could be brought about by the enterprise of the European population group, could in the long run provide funds for the further uplift, development and advancement of the indigenous peoples and their territories to standards which would otherwise not have been possible.

9. By reason of these considerations the reserves, as *initially* set aside in the Police Zone, were not consolidated homelands for the various indigenous groups, but rather separate areas, some large and some small, intended primarily for sections of the various groups that were congregated in a particular region.

In the rest of the Police Zone White enterprise was to be permitted and, indeed, encouraged, with the contemplation that large numbers of the indigenous people would be employed in the economy thus established, and often housed, for the duration of their employment, at or near their places of employment.

10. In this scheme of things, portions of the Police Zone outside the non-White reserves have in effect become an area in which members of the White group enjoy certain priority rights, especially with regard to rights of residence in urban areas. This does not comprise the *whole* area of the Police Zone outside the non-White reserves. Large portions, more or less desert areas, have been set aside as Diamond Areas, to which access is forbidden to everyone save those concerned with the diamond industry. Other large tracts are unalienated state lands which have as yet not been allocated for occupation by any population group.

An important distinction between the area occupied by the White group and the non-White reserves is not to be overlooked. As a general rule White persons are not allowed to enter a non-White reserve for the purpose of performing activities for their own gain—the protection given to the residents of the reserves is in this respect absolute. In the case of the area occupied by the White group, large numbers of non-Whites are in such area for remunerative employment, and are accommodated in it for such purpose. This does not, however, detract from the fundamental situation that Respondent has treated various parts of the Territory as areas in which particular population groups are to have certain priority rights of use and occupation, and that its policy in that regard, far from being "arbitrary", is based on what Respondent considers to be a necessity inherent in the socio-economic situation in the Territory; and, far from being "discriminatory", attempts at achieving a fair balance between the legitimate aspirations of the various groups.

11. Although Respondent's policy of reserves was conceived and applied with reference to circumstances prevailing in South West Africa, it was, at the same time, influenced by Respondent's experience of

government and administration of different population groups in South Africa for more than a century. Respondent therefore proposes first to deal briefly with the development of the reserve policy in South Africa.

## II. RESERVES IN SOUTH AFRICA

12. The reservation of Native areas in South Africa emerged as a result of wars, treaties and other historical developments. At a very early stage it was realized by the then governing powers that reservation of land for the various groups was necessary to eliminate friction, and as a result of this realization the areas of the Native groups have over the years not only been preserved, but have also been enlarged substantially by the addition of Crown land and land purchased from White persons with funds provided by Parliament.

13. It is unnecessary to trace in detail the history in South Africa of the respective population movements of the Europeans from the south to the north and east, and of the Natives from the north to the south and west, with resultant tensions and conflicts. Suffice it to point out that during the early part of the nineteenth century the Native populations were decimated as a result of internecine wars, and that for greater protection and defence the survivors tended to congregate together in more-or-less confined areas, which were naturally considerably smaller than those originally inhabited by the various tribes or communities. In this regard it may be mentioned that whereas Natal proper had an estimated Native population of 100,000 before the regime of Tshaka and Dingaan<sup>1</sup>, the number had dwindled to approximately 10,000 at the time of the arrival of the Voortrekkers<sup>2</sup> circa 1838<sup>3</sup>.

14. As the Europeans moved eastwards and northwards, clashes occurred between them and the Natives who were advancing in the opposite directions. There followed a period of intermittent warfare between the two sections, as well as treaties and negotiations over land rights and annexations of land by the government of the day, which resulted over many decades in the weaving of a pattern of land adjustments.

15. The more important facets of the historical background to the reserve policy in South Africa may be summarized as follows:

### (a) *Cape Province*

- (i) After hostilities during the years 1850 to 1853, an area known as British Kaffraria was treated as a conquered territory under military occupation. In a despatch dated 13 September 1853, the then Governor, Sir George Cathcart, laid down in regard to the government of this territory that the "colonists must be restricted to their present well-defined limits on the one hand, and the Kaffirs . . . be allowed to be governed, as to their interior discipline, by their own chiefs, according to their existing laws . . ." <sup>4</sup>.

<sup>1</sup> Kings of the Zulu nation.

<sup>2</sup> Europeans who had trekked from the Eastern Cape to the interior of South Africa.

<sup>3</sup> *South African Native Affairs Commission 1903-5 (1904-1905)*, Vol. I, *Report of the Commission*, para. 23, p. 5.

<sup>4</sup> *Vide Further Papers relative to the State of the Kaffir Tribes (1855)*, p. 16, in

- (ii) In terms of Act No. 3 of 1865 (Cape of Good Hope)<sup>1</sup> this territory was incorporated within the Cape Colony, and after the 1877-1878 war land adjustments and modifications were made and Native Locations were demarcated, more or less as they appear in the Schedule to the Natives Land Act of 1913<sup>2</sup>.
- (iii) Following on a series of wars during the second half of the nineteenth century, the territory known as the Transkei was annexed to the Cape Province by a number of proclamations<sup>3</sup>. The members of the White group were, however, not allowed to enter and settle in this area. As H. Rogers puts it:

"Thus, while annexation was necessary, there was no intention of depriving the Natives of their land and for the most part what was Native territory prior to annexation remained such after annexation, the areas concerned being administered as Native dependencies rather than as integral portions of the Cape Colony<sup>4</sup>."

- (iv) Under similar circumstances other territories were annexed to the Cape Province, and Act No. 41 of 1895 (Cape of Good Hope)—by which the territory previously known as British Bechuanaland was annexed—specifically provided that no lands reserved by any law for the use of Natives in the said territory were to be alienated or in any way diverted from the purposes for which they had been set apart, otherwise than in accordance with an Act of Parliament<sup>5</sup>.

(b) *Natal Province*

- (i) Shortly after Natal was brought under British sovereignty in 1843, a commission was appointed to demarcate areas for the Natives, and reservations of land—totalling altogether approximately a million acres—were made<sup>6</sup>.
- (ii) By Royal Letters Patent, dated 27 April 1864, the Natal Native Trust was constituted, and the bulk of the Natal Native Locations were then conveyed to the Trust. The trustees were required "to grant, sell, lease or otherwise dispose of the land . . . for the support, advantage or well-being of the said Natives . . ."<sup>7</sup>.
- (iii) Under a Deed of Grant, dated 6 April 1909, 21 reserves, set aside as a result of the recommendations of a specially appointed commission,

*Parliamentary Papers* [Great Britain], *Kaffir Wars, State of the Kaffir Tribes 1851-1865*.

<sup>1</sup> Act No. 3 of 1865 (Cape of Good Hope), in *Statutes of the Cape of Good Hope, passed by the Third Parliament during the Sessions 1864-1868* (1868), pp. 127-137.

<sup>2</sup> *Vide* para. 18, *infra*.

<sup>3</sup> *Vide* Cape of Good Hope *Procs.* Nos. 110 of 1879, 229 of 1883, and 53 of 1891, in *The Cape of Good Hope Government Gazette*, Nos. 5,950 (16 Sep. 1879) pp. 7-8; 6,436 (14 Dec. 1883), p. 1291; and 7,267 (13 Feb. 1891), p. 270.

<sup>4</sup> Rogers, H., *Native Administration in the Union of South Africa*, 2nd ed. (rev.) by P. A. Linington (1949), p. 100.

<sup>5</sup> Act No. 41 of 1895 (Cape of Good Hope), sec. 17, in *Statutes of the Cape of Good Hope, 1652-1905*, Vol. III (1894-1905) [1906], p. 3575.

<sup>6</sup> *Vide* U.G. 61—1955, para. 12, p. 43 and Walker, E. A., *A History of Southern Africa* (3rd ed.), p. 273.

<sup>7</sup> *Vide* U.G. 61—1955, para. 12, p. 43 and *Report of the Commission for the Socio-Economic Development of the Bantu Areas within the Union of South Africa*, 17 Vols., Vol. 4, Chap. 11, para. 91, p. 26 (U.G. 61—1955 is a summary of the longer report).

vested in the Zululand Native Trust for the use and benefit of the indigenous inhabitants of the territory <sup>1</sup>.

- (iv) By Union Act No. 1 of 1912 <sup>2</sup> the administration of the Natal and Zululand Native Trusts was delegated to the Minister of Native Affairs, and in 1936 these trusts became vested in the South African Native Trust by virtue of the Native Trust and Land Act <sup>3</sup>.

(c) *Transvaal Province*

- (i) Under a Volksraad Resolution of November 1853, Commandants of the Republic were instructed to grant land for occupation by Natives.
- (ii) Subsequently a commission was appointed for the purpose of assigning areas of land to Natives, but before the commission could complete its work, the Anglo-Boer War (1899-1902) broke out.
- (iii) After the war another commission was appointed in 1905. This commission's report was duly accepted, and, with small modifications, the Native locations set aside as a result of the recommendations of the two Commissions referred to, are still in existence today <sup>4</sup>.

16. From the above it appears that the Provinces <sup>5</sup> before Union took concrete steps to provide for the Native groups and tribes protected possession of lands of their own. Before Union 9,976,290 morgen <sup>6</sup> had been set aside in South Africa for the exclusive use of Natives. At that time the Native population of the Union was estimated to be about 4,017,000, of whom 508,000 were living in urban areas, and 3,508,000 in rural areas, mostly under tribal authority <sup>7</sup>.

17. In 1903 a Native Affairs Commission was appointed by the British Government to consider the policy to be applied to Natives throughout South Africa. This Commission, after careful consideration, strongly advocated the principle of territorial segregation, or separation of land rights between the European and Native races in South Africa. The Commission also indicated that, in view of the fact that members of the White group were not entitled to purchase land in Native areas, indiscriminate purchasing of land by Natives outside their own areas should be stopped. It stated:

"There will be many administrative and social difficulties created by the multiplication of a number of Native units scattered throughout a white population . . . *Such a situation cannot fail to accentuate feelings of race prejudice and animosity with unhappy results*"<sup>8</sup>,  
(italics added)

and recommended that the purchase and leasing of land be limited—

<sup>1</sup> U.G. 61—1955, para. 18, p. 43.

<sup>2</sup> Act No. 1 of 1912, in *Statutes of the Union of South Africa 1912*, pp. 2-4.

<sup>3</sup> Act No. 18 of 1936, sec. 5 in *Statutes of the Union of South Africa 1936*, p. 92. *Vide* para. 22, *infra*.

<sup>4</sup> U.G. 61—1955, paras. 24-26, p. 44.

<sup>5</sup> The area comprising the present Province of the Orange Free State had not, within record, been inhabited to any appreciable extent by important Bantu tribes. There are consequently only three small reserves in this Province.

<sup>6</sup> 1.1675 morgen = 1 hectare.

<sup>7</sup> *U. of S.A., Parl. Deb., House of Assembly (1913)*, Col. 2273.

<sup>8</sup> *South African Native Affairs Commission 1903-5*, Vol. I, para. 192, p. 35.

"... to areas within which the privilege may be exercised by them without bringing them into conflict with European land-owners, and of the extension of this privilege by the creation of such areas in all Colonies and Possessions where this can be conveniently done".

18. Effect was given to the recommendations of the Commission in the Natives Land Act of 1913<sup>2</sup>, which was the initial legislation in the Union of South Africa embodying the principle of territorial segregation and separation of land rights between Natives and non-Natives.

19. The following are extracts from speeches made in the Union Parliament in 1913 which emphasized the advisability for the Native groups to have separate areas in which they could progressively attain a measure of self-government:

- (i) "If there was one thing the European must keep before him it was the improvement and development of these people. Let the native people keep their traditions and let them build themselves up along those lines. On that ground they must not try and make white men of these people, which would be a mistake. It would not be good for the white man, and it would not be good for the native. . . . [N]atives, when separated from the whites, should have a measure of self-government under white supervision. They would be able to tax themselves, and govern themselves under the control of the white man. If that was done, . . . satisfaction would ensue<sup>3</sup>."
- (ii) "When they placed the native in a separate territory they gave him an opportunity of developing, and his position would become stronger and stronger, and he would be able even to have a continually growing measure of self-government within that territory<sup>4</sup>."
- (iii) "... the bulk of the two races, the European and the native, should live in the main in separate areas . . . that was, that they should occupy and acquire land in separate areas<sup>5</sup>."

20. The Schedule to the Natives Land Act contained descriptions of areas known as Scheduled Native Areas. These areas comprised the then existing Native Reserves and Locations, together with certain land held by Native tribes, communities and individuals.

In implementation of the policy enunciated by the Act the provisions thereof prohibited, without the consent of the Governor-General being obtained, the acquisition by any person other than a Native of any land or interest in land in a Scheduled Native Area, and conversely they prohibited, without such consent, the acquisition by a Native of any land or interest in land outside a Scheduled Native Area from a person other than a Native.

21. This Act was a preliminary measure and made specific provision for the appointment of a commission whose functions would be to lay down permanent lines of territorial segregation, i.e., permanent

<sup>1</sup> *South African Native Affairs Commission 1903-5*, Vol. I, para. 195, pp. 35-36.

<sup>2</sup> Act No. 27 of 1913, in *Statutes of the Union of South Africa 1913*, pp. 436-475.

<sup>3</sup> *U. of S.A., Parl. Deb., House of Assembly (1913)*, Cols. 2515, 2518. (The Prime Minister, Gen. Louis Botha.)

<sup>4</sup> *Ibid.*, Col. 2501. (General J. B. M. Hertzog.)

<sup>5</sup> *Ibid.*, Col. 2270. (The Minister of Native Affairs, Mr. J. W. Sauer.)

Native areas, and, as a necessary corollary, permanent non-Native areas.

22. This was the stage of development reached at the time when the Mandate was conferred upon Respondent. The reports of the Native Lands Commission—appointed in terms of the Natives Land Act—and of five Local Committees<sup>1</sup> later culminated in the passing of the Native Trust and Land Act of 1936<sup>2</sup>, the object of which was—

“... to provide further areas where the natives can maintain a reasonable standard of life and develop their own institutions, and secure a better adjustment of the relations between white and black<sup>3</sup>”.

In implementation of this object, the Act created the South African Native Trust, a corporate body to be administered for the settlement, support, benefit and moral and material welfare of the Natives of South Africa. The Trust has consistently worked towards this end and, during the period 31 August 1936, to 31 March 1953, acquired further areas to the extent of 4,121,020 morgen for the sole use and occupation of Natives. Considerably more land has since been acquired<sup>4</sup>.

23. It is clear from the above historical exposition that, after a considerable period in which a policy of territorial segregation had been applied in South Africa, the statutory foundations of Respondent's reserve policy had already been laid, and given much publicity, by the time the Mandate was assumed.

As has already been shown, one of the grounds on which Respondent founded its claim to South West Africa at the Peace Conference was that it would be to the advantage of the indigenous population if Respondent applied its Native policy to the Territory. It must be assumed, therefore, that it was within the contemplation of all parties concerned that, having regard to the circumstances prevailing in South West Africa, Respondent was likely to apply to the Territory a policy basically similar to its South African reserve policy.

### III. RESERVES IN SOUTH WEST AFRICA

#### (a) *Background to the Establishment of the Reserves*

24. When Respondent assumed the Mandate it found in South West Africa a population consisting of nine main ethnic and linguistic groups<sup>5</sup>. The history of these groups has already been dealt with, and it has been shown that *conflicting claims to land led to severe conflicts between the various groups in the area later known as the Police Zone*<sup>6</sup>. These conflicts not only left bitter feelings among the groups, but also left detribalized persons scattered all over the Police Zone.

25. Reference has been made to the near extermination of the Bush-

<sup>1</sup> Appointed on a regional basis, to revise the recommendation of the Commission.

<sup>2</sup> Act No. 18 of 1936.

<sup>3</sup> *U. of S.A., Parl. Deb., House of Assembly*, Vol. 26 (1936), Col. 2747. (The Minister of Native Affairs, Mr. P. G. W. Grobler.)

<sup>4</sup> The Act prescribes a large number of areas defined in detail in the First Schedule thereto and called “Released Areas”. These areas were released from the restrictive provisions of Act No. 27 of 1913 for acquisition by Natives and the Trust.

<sup>5</sup> *Vide* Book III, Chap. II, para. 2, of this Counter-Memorial.

<sup>6</sup> *Ibid.*, Chap. III.

men, the enslavement of the Bergdama, the decades of almost perpetual war between the Hottentots and the Herero, and the 1904-1907 wars, one of the causes of which was discontent and unrest with regard to land rights as a result of transactions with Native chiefs <sup>1</sup>.

26. As a result of the wars there was considerable confiscation of tribal lands of indigenous groups which had risen against the German authorities. A Decree by the German Kaiser, dated 26 December 1905 <sup>2</sup>, made provision for the confiscation of the property of those Natives who had taken warlike or hostile action, or who had assisted with such action, directly or indirectly. Property which could be confiscated included the Native reserves which had been created by a Decree of 10 April 1898.

27. On 23 March 1906 von Lindequist, the Governor of South West Africa, issued a statement <sup>3</sup>, which was confirmed by a further statement made on 8 August 1906 <sup>4</sup>, to the effect that, subject to certain conditions, all movable and immovable property of the Herero north of the Tropic of Capricorn, as well as that of the Swartbooi Hottentots of Franzfontein and the Topnaar Hottentots of Zessfontein, would be confiscated.

28. On 8 May 1907 von Lindequist issued an additional statement <sup>5</sup>, which was confirmed by a further statement on 11 September 1907 <sup>6</sup>, in terms of which the movable and immovable property of the Witbooi, Bethanie, Fransman and Veldskoendraer Hottentots, as well as that of the Red Nation of Hoachanas and of the Bondelswarts, including the Swartmodder Hottentots, was confiscated <sup>7</sup>.

29. The Rehoboth Basters and the Berseba Hottentots, who had taken no part in the wars, retained their rights to the land which they were occupying in terms of previous treaties with the Germans, while the Bergdama were given the Okombahe reserve <sup>8</sup>.

30. When Respondent took over the administration of the Territory, the following areas in the Police Zone either had already been set aside by the Germans for occupation by Natives or were areas which Natives were permitted to occupy under treaties:

- (i) The area belonging to the Berseba Hottentot tribe, some 575,000 hectares in extent, being portion of the area described in the treaty of 28 July 1885 between the German Government and Jacobus Isaak <sup>9</sup>, and a later treaty of 7 July 1894, between the German Government and Dietrich Goliath <sup>10</sup>.

<sup>1</sup> *Vide* Book III, Chap. III, para. 75, of this Counter-Memorial.

<sup>2</sup> *Vide Die deutsche Kolonial-Gesetzgebung, Sammlung der auf die deutschen Schutzgebiete bezüglichen Gesetze, Verordnungen, Erlasse und internationalen Vereinbarungen mit Anmerkungen, Sachregister, Neunter Band (Jahrgang 1905), pp. 284-286.*

<sup>3</sup> *Ibid.*, Zehnter Band (Jahrgang 1906), pp. 142-143.

<sup>4</sup> *Ibid.*, p. 298.

<sup>5</sup> *Ibid.*, Elfter Band (Jahrgang 1907), pp. 233-234.

<sup>6</sup> *Ibid.*, pp. 370-371.

<sup>7</sup> In the case of the Bondelswarts the property and the rights referred to in the treaty of surrender of 23 December 1906 were excluded.

<sup>8</sup> *Vide Deutsches Kolonialblatt: Amtsblatt für die Schutzgebiete in Afrika und in der Südsee, XVII Jahrgang, No. 19 (1 Oct. 1906), p. 643.*

<sup>9</sup> Hesse, H. *Die Schutzverträge in Südwestafrika (1905), p. 12.*

<sup>10</sup> *Ibid.*, p. 25.

- (ii) The area occupied by the Bondelswarts tribe, in extent some 174,505 hectares, which had been excluded from confiscation because of the peace treaty of 23 December 1906 <sup>1</sup>.
- (iii) The Okombahe Réserve for the Bergdama, in extent 172,780 hectares <sup>2</sup>.
- (iv) The farm Zessfontein in the Outjo district, 31,416 hectares in extent, which had been assigned for the use of the Topnaar Hottentots <sup>3</sup>.
- (v) The farm Franzfontein in the Outjo district, 36,188 hectares in extent, assigned for the use of the Swartbooi Hottentots <sup>3</sup>.
- (vi) The farm Soromas in the Bethanie district, 8,212 hectares in extent, assigned for the use of the Bethanie Hottentots <sup>3</sup>.

If the Rehoboth *Gebiet* (1,750,000 hectares) is included, areas amounting to 2,748,101 hectares had been made available in the Police Zone for occupation by the non-Whites.

31. According to Hailey <sup>4</sup>, there were, in 1913, 1,255 White farms in private hands, comprising a total area of 13,393,606 hectares. The same authority states that the Police Zone, excluding the Namib Desert area (7,164,800 hectares), was then approximately 45,025,000 hectares in extent. There remained, therefore, some 28.75 million hectares of unallocated land in the Police Zone.

32. Faced with the intricate problems created by the existence in the Territory of various groups with opposing interests and a heritage of conflict productive of group animosities, Respondent immediately appointed a commission of experts to inquire into the situation existing in the Territory, and to advise Respondent as to its future policy in regard to the various groups, with a view to the most effective implementation of the Mandate <sup>5</sup>. This Commission recommended a policy of setting aside separate areas for the indigenous population, broadly in accordance with Respondent's South African reserve policy and with the authoritative findings of the Native Affairs Commission of 1903-1905 <sup>6</sup>.

33. In these circumstances, and especially for reasons that will be detailed hereunder; Respondent considered that the objectives of the Mandate could best be promoted by applying to South West Africa a policy of setting aside, as far as was practicable, separate, protected areas for the different population groups.

#### (b) *The Basic Considerations of the Reserve Policy*

34. The basic considerations of Respondent's reserve policy in South West Africa, which will be dealt with briefly in turn, have been:

- (i) The existence of different population groups in the Territory;
- (ii) the need to restore tribal life;

<sup>1</sup> *Vide Die deutsche Kolonial-Gesetzgebung*, Elfter Band (Jahrgang 1907), pp. 233-234.

<sup>2</sup> *Vide* para. 29, *supra*.

<sup>3</sup> *U.G.* 21—1924, p. 12.

<sup>4</sup> Lord Hailey, *A Survey of Native Affairs in South West Africa* (1946) [unpublished], p. 50.

<sup>5</sup> *Vide* para. 55, *infra*.

<sup>6</sup> *Ibid.*, para. 17, *supra*.

- (iii) the difference in the systems of land tenure of the various groups;
- (iv) the need to prevent alienation of non-White land.

(i) *The Existence of Different Groups*

35. The White population of South West Africa in 1921 numbered 19,432, of whom 7,855 were German nationals. The number of non-Whites in the Police Zone—including temporary migrant workers—was approximately 84,000, while the total number of non-Whites, including those resident in areas falling outside the Police Zone, was slightly more than 200,000<sup>1</sup>.

36. The existence of widely differing groups, particularly in the Police Zone, presented problems which were peculiar to the Territory and for which it would not have been easy to find a parallel in the other mandated territories in Africa, or elsewhere. If it is further taken into account that the various groups made conflicting claims to land, it follows that justice could not be done to the legitimate aspirations of the various groups by pursuing a land policy which completely ignored these differences. On the contrary, the obligation imposed on Respondent to "promote to the utmost the material and moral well-being and social progress of the inhabitants of the territory", compelled Respondent to recognize the existence of group conflicts and tensions in the Territory and to give full consideration thereto; a *modus vivendi* had consequently to be found for the peoples of the Territory which would prevent a resumption of traditional feuds and hostilities.

37. The problems confronting Respondent were complicated by factors peculiarly concerned with the Herero. In this regard Hailey remarks:

"The campaign [of 1915] raised hopes among the Hereros, some at least of which were doomed to disappointment. They seem to have misinterpreted the declarations made by the Union Government and in particular those of Lord Buxton as Governor-General. They believed that the end of German rule would see the Territory partitioned between themselves and the Hottentots and in this belief they set themselves to collect cattle, while some of the smaller Chiefs began to rekindle the Holy Fires. There was a swing back from Mission influences. Nor indeed does it seem that their change of religion had been effective in giving them a new code of morals which provided a substitute for the old tribal restraints, for all observers were impressed with the lack of moral discipline among the men, and of a promiscuity among the women which appeared to affect their fertility. The new Administration therefore encountered in the Hereros a people disaffected, brooding over its losses, and lacking the initiative or even, as it then seemed, the capacity to recreate itself<sup>2</sup>."

38. The concept of what land traditionally "belonged" to the Herero—or, for that matter, to any of the indigenous groups in the Police Zone—is a vague one, as is illustrated by the following extract from Hailey:

"It was not easy to say at any one time how far these vacant

<sup>1</sup> U.G. 32—1922, pp. 5, 12.

<sup>2</sup> Hailey, *A Survey of Native Affairs in South West Africa* (1946), p. 45.

lands could be said to have been occupied by natives, or by what particular natives, since the continual warfare between the Hereros and Hottentots had made it difficult to determine what were the recognized limits of Herero and Hottentot grazing<sup>1</sup>."

39. A further indication of the difficulty of achieving equity in regard to land claims, is afforded by the conduct of a group of Herero who had fled to Angola during the German regime. In 1915, on hearing that the Union troops were about to occupy Windhoek, they crossed the Kunene river and invaded the Kaokoveld, ousted the Himbas and Tjimbas from places which the latter had occupied for generations, and took full possession thereof<sup>2</sup>.

40. In these circumstances Respondent considered it highly desirable to establish separate areas, as far as practicable, for the sole use and occupation of each group, thereby also protecting the weaker groups against the stronger or more aggressive ones.

(ii) *The Need to Restore Tribal Life*

41. The severe disruption of tribal life in the Police Zone prior to the assumption of the Mandate led to the disappearance of tribal discipline, and to social disorganization and moral decay<sup>3</sup>. Reference has been made to the problems of vagrancy and idleness brought about by this disruption<sup>4</sup>.

Respondent foresaw that the rehabilitation of the disrupted tribes would take years to accomplish, but believed that their material and moral well-being and social progress required first of all that their shattered tribal life should be restored in order to form the basis for their future development. This could best be done by setting aside areas in which the dispersed remnants of such tribes could re-assemble and re-establish their traditional communal life with its undoubted material, moral and social advantages.

42. This object of Respondent's reserve policy was clearly stated in the annual report on South West Africa for the year 1925, which contained the following:

"The natives, however, will in future have centres where they can develop on their own lines, from which they can go freely in search of work in European centres and to which they can return to their families. At the same time the foundation has been laid for the building of *self-contained native communities developing on their own lines* under the supervision of selected Native Affairs officials . . ."<sup>5</sup>  
(Italics added.)

43. From this point of view the reserve policy has always had the approval of the majority of the non-Whites in the Territory. For example, in a memorandum which the Herero submitted to the Admini-

<sup>1</sup> Hailey, *Survey of Native Affairs in South West Africa* (1946), p. 48.

<sup>2</sup> *Vide U.N. Doc. T/175, in T.C., O.R., Third Sess., Sup.*, pp. 51-152; at p. 151.

<sup>3</sup> *Vide Hailey, A Survey of Native Affairs in South West Africa* (1946), pp. 25, 29 and 45.

<sup>4</sup> *Vide Chap. II, paras. 13-20, supra.*

<sup>5</sup> *U.G. 26—1926*, pp. 109-110.

stration in 1948 the principal request was that they should be re-united and the tribal organization re-established <sup>1</sup>.

(iii) *Differences in Systems of Land Tenure*

44. Each Native group in the Territory had its own laws and customs—in many cases differing *inter se*—regulating the acquisition and disposal of, and succession to, rights relating to the occupation and use of land <sup>2</sup>. The White group was accustomed to individual or private ownership on the same basis as that applying in South Africa and in Germany. This system of land tenure was foreign to the Native groups, to whom the dominant conception was that of communal, not individual, rights to land.

45. Communal tenure is not peculiar to the Natives of South West Africa. Hailey remarks in this regard:

“To the African the dominant conception is that of communal, not of individual, rights over land. By traditional African custom the individual and his family can claim an undisturbed tenure of a holding so long as they need to use it but, when they cease to do so, it reverts to the community and may be apportioned to others. Where the usual practice is that of shifting cultivation, every member of the group can claim by right the use of the necessary portion of the unoccupied waste; but the land remains from first to last the land of the community <sup>3</sup>.”

The Native Affairs Commission of 1903-1905 <sup>4</sup> reported:

“It will be seen that in all the Colonies and Possessions tracts of land have been recognised, set aside and reserved to Natives for communal occupation. History and tradition bear eloquent testimony to the fact that this form of tenure was admirably suited to the needs and habits of the aboriginal races; indeed, it was originally the only possible form. It constituted a portion of the great tribal system under which the land was administered by the Chief and his Councillors for the people <sup>5</sup>.”

46. It follows that Respondent had to take account of the traditional communal or tribal system of land tenure found among the various indigenous groups of the Territory, and that it was impossible to treat all the groups alike.

It would have been disastrous for the non-Whites if a system of individual rights to land—which they would not have understood—had been imposed upon them and compulsion used to secure subdivision and individual holding of land set apart for communal occupation. Few would have been able to support themselves and their families on the land allotted to them, with the result that most would soon have parted with their individual allotments. Such alienations had actually occurred in the case of the Basters of Rehoboth, the Bondelswarts and the Herero during the German regime, as will be shown more fully hereunder <sup>6</sup>.

<sup>1</sup> Departmental information.

<sup>2</sup> *Vide* Book III, Chap. II, of this Counter-Memorial.

<sup>3</sup> Lord Hailey, *An African Survey*: Revised 1956, p. 685.

<sup>4</sup> Reference to this Commission has been made in para. 17, *supra*.

<sup>5</sup> *South African Native Affairs Commission*, Vol. I, para. 143, p. 26.

<sup>6</sup> *Vide* paras. 51-52, *infra*.

47. Benefits of the system of communal tenure for the Natives of Africa are still recognized today, and were stressed as follows in a report of the Food and Agricultural Organization of the United Nations:

"Indeed it can be said with confidence that in a free society it would be impossible to effect an alteration in the form of land tenure which ran directly contrary to current social and religious ideas. . . .

. . . If such a system [of communal land tenure] can still survive, where the circumstances render it desirable, in a country with as high a level of civilization as Switzerland, there is no reason for supposing that it will necessarily disappear in Africa and other areas of more primitive culture, as civilization advances<sup>1</sup>."

"From the social point of view it must be emphasized that any system of communal land tenure having the general characteristics set out above has great value, since it is a strong force knitting together the community which practices it. . . .

The preliminary judgment therefore, is that on social grounds the system should be preserved, unless on economic and agricultural grounds it is inevitably condemned<sup>2</sup>."

48. It should, however, not be supposed that Respondent is irrevocably opposed to individual land tenure for Natives<sup>3</sup>. In the course of time changed economic attitudes may result in the replacement of communal by individual ownership, and this could, if introduced with the necessary circumspection, be to the advantage of the Territory. Respondent will, therefore, favourably consider the introduction of individual tenure wherever circumstances may favour such a course: but this implies, *inter alia*, that Respondent will act only in accordance with the wishes of the tribal authorities concerned, and in any event only where and when Natives exhibit in sufficient numbers a desire to secure, and a capacity to hold and enjoy, individual rights to farms and residential sites on the land in question.

49. It is Respondent's policy that the Natives must be allowed naturally and gradually to develop and change their traditional concepts in regard to land, and that this should form part of their general economic advancement from a subsistence economy to an exchange economy. A similar view was expressed in 1960 by Bauer and Yamey:

"A premature policy will arouse fears with little advantage; there is no economic merit *per se* in a change from communal to individual tenure, since the advantages depend on individuals willing and able to apply new methods<sup>4</sup>."

50. The above views correspond also with the following conclusion arrived at in 1959 by the Third Inter-African Soils Conference of the Commission for Technical Co-operation in Africa South of the Sahara:

<sup>1</sup> *Communal Land Tenure: An F.A.O. Land Tenure Study* (F.A.O. Agricultural Studies, No. 17) [March 1953], p. 2.

<sup>2</sup> *Ibid.*, pp. 26-27.

<sup>3</sup> Act No. 49 of 1919, sec. 4 (3) (in *The Laws of South West Africa 1915-1922*, p. 12) authorizes the Governor-General (now the State President) to make land in individual ownership available to Natives in the reserves.

<sup>4</sup> Bauer, P. T. and Yamey, B. S., *The Economies of Under-Developed Countries* (1960), p. 174.

"Premature introduction of individual ownership may have undesirable consequences in cases where the necessary conditions of economic organisation, social progress and moral development have not been achieved. In particular, the farmer is exposed to the risk of land speculation which leads to the development of a rural proletariat and to unsound utilisation of the soil <sup>1</sup>."

The Conference accordingly recommended that governments should avoid the premature introduction of individual ownership and should take appropriate measures, such as prohibiting the sale of land, so long as the degree of evolution of agricultural populations, or the lack of funds available to them, leave the way open to such dangers <sup>2</sup>.

(iv) *The Need to Prevent Alienation of Non-White Land*

51. During the German regime, and particularly before 1904, many non-Whites had lost their land as the result of sales or similar transactions between their chiefs and White men. So, for instance, Chief Samuel Maherero of the Herero, who was in need of money, sold a number of farms to Whites, secretly informing dissatisfied tribesmen that he would bring back all the ceded territory into the possession of his people <sup>3</sup>. So, too, the Humpata Boers <sup>4</sup> in 1884 bought from Chief Kamonde of the 'Ndonga tribe of Ovamboland a tract of land extending from west of the Naidaus and Nunab ranges to the Great Omuramba in the east—an area by and large corresponding with the present Grootfontein district—for 25 muskets, one horse and one cask of brandy <sup>5</sup>. And in 1883 the Luderitz Company of Bremen bought a coastal strip of land, stretching over 150 miles from the Orange River to the 26° S line of latitude, from Josef Fredericks for 60 guns and £500 <sup>6</sup>.

52. With reference to the Rehoboth Basters, Mr. Justice de Villiers, chairman of the Rehoboth Commission of 1926, stated that in his opinion—

"... there [was] no doubt whatever that liberty to alienate land to Europeans would inevitably result in the Burghers losing the greater portion, if not the whole, of their land within a comparatively short period of time <sup>7</sup>."

This opinion was based on fact, for during the period 1898 to 1905 the Basters disposed of 250,000 hectares of their land to Europeans <sup>8</sup>, and up to 1923 they had in all disposed of approximately 450,000 hectares, or more than one-quarter of the total area of the Rehoboth *Gebiet* <sup>9</sup>.

<sup>1</sup> *Third Inter-African Soils Conference*, Dalaba, 1959 (Publication No. 50), Vol. I, para. 3, p. 73.

<sup>2</sup> *Ibid.*, pp. 89-90.

<sup>3</sup> Vedder, H., *The Herero in The Native Tribes of South West Africa* (1928), p. 161.

<sup>4</sup> The Humpata Boers took part in the great trek which left Transvaal in 1875. They made their way to Humpata in Angola before returning to South West Africa.

<sup>5</sup> Köhler, O., *A Study of Grootfontein District (South West Africa)*, Ethnological Publications, No. 45 (1959), para. 54, pp. 19-20.

<sup>6</sup> Hesse, H., *Die Landfrage und die Frage der Rechtsgültigkeit der Konzessionen in Südwestafrika: Ein Beitrag zur wirtschaftlichen und finanziellen Entwicklung des Schutzgebietes* (1906), II. Teil, p. 199.

<sup>7</sup> *U.G.* 41—1926, p. 63.

<sup>8</sup> *Ibid.*, p. 186.

<sup>9</sup> *Ibid.*, p. 64.

53. It was consequently realized from the outset by Respondent that it was necessary to set aside land permanently for the sole use and occupation of the non-White groups and to prevent such land from being alienated, except under very special circumstances. For this reason section 4 (3) of Act No. 49 of 1919 prohibited the alienation of land set apart as reserves for Natives or Coloured persons save under the authority of Parliament<sup>1</sup>.

54. To protect the Natives from losing their land and to enable Respondent to develop the reserves for the benefit of the respective groups, it has been necessary for Respondent to retain control over the Native reserves. These reserves were consequently not transferred to the respective groups but, as in South Africa prior to 1936, remained vested in the Administration until Act No. 56 of 1954 was passed. This Act provided for the vesting of all Native reserves in the South African Native Trust<sup>2</sup>, thus equating in this respect the position in South West Africa with that in South Africa<sup>3</sup>.

It is foreseen that in time the land in the reserves will be transferred to the authorities of the respective groups, but in the present stage of economic development of the indigenous groups it would be to their detriment to do so without qualification.

#### (c) *The Native Reserves*

55. It will be recalled that when Respondent assumed the Mandate, areas amounting to 2,748,101 hectares—i.e., if the Rehoboth *Gebiet* of 1,750,000 hectares is included—had already been made available for occupation by non-Whites<sup>4</sup>. During the period of martial law Respondent made a few farms available as temporary reserves. In 1920, however, the Administrator of the Territory appointed a commission—consisting of Mr. H. Drew, a Magistrate, and Colonel Kruger—to report, *inter alia*, on “. . . the general administration of native locations and reserves in the Territory, their size and conditions prevailing therein” and “. . . the availability of native labour in such locations and reserves”<sup>5</sup>.

56. After the Commission's report was received, additional members<sup>6</sup> were appointed in June 1921 under the chairmanship of Mr. Drew, to discuss the recommendations of the first Commission and particularly to advise as to the allotment of suitable areas for permanent Native reserves.

In August 1921 the enlarged Commission made the following recommendations:

- (i) Reserves were to be created for the accommodation of Natives hitherto unprovided for, and Natives removed from areas recommended for closure.

<sup>1</sup> Act No. 49 of 1919, sec. 4 (3), in *The Laws of South West Africa 1915-1922*, p. 12.

<sup>2</sup> *Vide* Act No. 56 of 1954, sec. 4 in *Statutes of the Union of South Africa 1954*, pp. 561-563; and para. 22, *supra*.

<sup>3</sup> *Vide* Book VIII, sec. C, Chap. VII, paras. 18-25 of this Counter-Memorial.

<sup>4</sup> *Vide* para. 30, *supra*.

<sup>5</sup> U.G. 26—1921, p. 13.

<sup>6</sup> Colonel de Jager, Major Manning (Commissioner for Native Affairs), Mr. Schneider (Senior Officer, Lands Branch), and Mr. Landsberg (Surveyor-General).

- (ii) The temporary reserves <sup>1</sup> were to be closed.
- (iii) The reserves occupied under treaties were to remain as before.
- (iv) Land was to be earmarked for future extension of reserves or as alternative reserves in case the proposed new reserves should prove to be unsuitable <sup>2</sup>.

57. Pursuant to instructions, the Commission also considered the feasibility of setting aside, on lines similar to those adopted in the South African Natives Land Act <sup>3</sup>, a "Native area" in which Natives might at some future time be permitted to purchase or otherwise obtain land if they should wish to do so. An extensive area on the eastern side of the Gobabis and Waterberg districts and abutting on the Bechuanaland border was recommended for this purpose.

The following table contains the main details of the above recommendations:

	<i>Hectares</i>
(i) Proposed reserves . . . . .	794,938
(ii) Less reserves to be closed . . . . .	<u>139,288</u>
	655,650
(iii) Land earmarked for reserves in case of extension in future or of the unsuitability of proposed reserves	636,881
(iv) Land held by Natives under German treaties and agreements . . . . .	<u>945,343</u>
Total . . .	<u>2,237,874</u>

58. The Commission also considered the need for providing reserves in the Kaokoveld, and recommended that Major Manning, who had made previous tours of that area, should prepare a detailed statement. As a result, it was proposed that Zessfontein reserve should remain undisturbed while the following further reserves were to be set aside in that area <sup>4</sup>:

- (i) Ombepera for Chief Kasupi's people, roughly 106,500 hectares in extent.
- (ii) Otjijanja-sono and Hondoto for Chief Oorlog's and Chief Muhona Katiti's tribes, 257,000 hectares; and
- (iii) Owaruthe, in extent 55,000 hectares, for Herero factions <sup>5</sup>.

Ovamboland and the Okavango Native Territory, being purely Native areas beyond the Police Zone, were not discussed by the Commission.

59. The recommendations of the enlarged Commission were generally accepted as the basis upon which the reserves should be set aside. In the 1922 annual report the Administrator stated:

"I had no difficulty in discerning that to get the Natives quite contented and to revive in them an attachment to the land and an interest in their future, it was necessary to proceed as quickly as possible with the selection of large areas to be set aside as reserves

<sup>1</sup> *Vide* para. 55, *supra*.

<sup>2</sup> *U.G.* 32—1922, pp. 13-14.

<sup>3</sup> *Vide* para. 18, *supra*.

<sup>4</sup> Later the whole Kaokoveld was reserved—*vide* para. 62, *infra*.

<sup>5</sup> *U.G.* 32—1922, p. 14.

which would for all time, subject to good behaviour, of course, remain assigned to them . . .

The Reserves will be of course set aside entirely for native occupation, churches and schools may be erected there and dipping tanks constructed. Title will not be issued but, as provided in Act 48 of 1919 of the Union, the Natives cannot in future be deprived of the land without consent of the Union Parliament . . .

That the final determination of these reserves and their actual occupation have done much to allay the undoubted unrest which existed among the Natives is proved beyond a doubt . . .

The areas have been selected with every care and consideration so as to obviate, so far as human agency can prevent, the occupants being disturbed even in times of the most severe drought. Grazing is good, water is sufficient, but no expense will be spared to make every provision by boring for necessary expansion <sup>1</sup>.

60. In attempting to implement the proposed reserve policy, the Administration was confronted by the following formidable problems:

- (i) Many Natives had formed the impression that, as the German regime had come to an end, Respondent would confiscate the farms which the German Government had sold or allotted to Whites, and that they would accordingly recover land which they or their ancestors might at some stage have occupied or used for grazing. Various groups thus asked for the allotment of what they claimed to be their old tribal areas <sup>2</sup>. It was, however, not easy to establish to what extent large areas found more or less vacant by Respondent had at any given time been occupied by Natives or by which particular Native groups, since, as has already been pointed out <sup>3</sup>, continual warfare between the Hottentots and the Herero had made it difficult to determine what were the recognized limits of Herero or Hottentot grazing. Moreover, vested rights of ownership, mortgage, servitude and the like had meanwhile accrued in many areas to which claims were laid by indigenous groups, and, in the absence of sound and equitable grounds for confiscation, such rights could not be interfered with. Many of the claims thus made could therefore not be acceded to.
- (ii) Due to historical reasons it was, in the early years, difficult to secure the confidence and co-operation of some of the Native groups <sup>4</sup>.
- (iii) The areas proposed to be set aside as reserves were soon put to a searching test. A prolonged and unprecedented drought affected the underground water supplies of the country to such an extent that springs and wells, which previously had never given out, failed. Europeans and Natives had to trek, losing large numbers of their stock. It soon became manifest that not all the areas reserved would satisfy requirements, and fresh investigations were necessary <sup>5</sup>.

61. For practically ten years (1924-1934) the Administration's activities were directed to building up the reserves and making them habit-

<sup>1</sup> U.G. 21—1923, pp. 13, 15.

<sup>2</sup> *Ibid.*, p. 13.

<sup>3</sup> *Vide* para. 38, *supra*.

<sup>4</sup> *Vide* U.G. 49—1947, para. 54, p. 13.

<sup>5</sup> *Vide* U.G. 21—1923, p. 13.

able by fencing, sinking boreholes and providing dams<sup>1</sup>. It was only in the last five years before the outbreak of the Second World War that the material fruits of the reserve policy began to appear<sup>2</sup>.

62. The areas recommended for Native settlement by the enlarged Commission were soon found to be inadequate, and from time to time more land has been reserved for the sole use and occupation of Natives. The following is a list of the reserves in the Territory which have been set aside to date. The areas given are approximate.

Reserve	Legislation	Areas
RESERVES IN WHICH HERERO PREPONDERATE		
<i>Aminuis</i>	G.N. No. 122 of 1923 (SWA) . . . . .	230,000 Ha.
	G.N. No. 109 of 1925 (SWA) (substitution)	543,000 Ha.
	G.N. No. 87 of 1935 (SWA) (addition) . .	5,191 Ha.
	G.N. No. 211 of 1942 (SWA) (addition) . .	31 Ha.
	According to a recalculation the area is . .	<u>555,795 Ha.</u>
<i>Epukiro</i>	G.N. No. 122 of 1923 (SWA) . . . . .	178,000 Ha.
	G.N. No. 109 of 1925 (SWA) (substitution)	284,000 Ha.
	G.N. No. 154 of 1934 (SWA) (addition) . .	743,000 Ha.
	According to a recalculation the area is . .	<u>1,221,402 Ha.</u>
<i>Ovitoto</i>	G.N. No. 122 of 1923 (SWA) . . . . .	47,791 Ha.
	G.N. No. 173 of 1935 (SWA) (addition) . .	7,886 Ha.
	G.N. No. 182 of 1937 (SWA) (addition) . .	3,829 Ha.
	G.N. No. 46 of 1938 (SWA) (addition) . .	774 Ha.
	Total according to a recalculation . . . .	<u>61,122 Ha.</u>
<i>Waterberg East</i>	G.N. No. 27 of 1924 (SWA) . . . . .	311,000 Ha.
	G.N. No. 156 of 1936 (SWA) (substitution)	343,000 Ha.
	G.N. No. 112 of 1940 (SWA) (addition) . .	24,414 Ha.
	G.N. No. 374 of 1947 (SWA) (addition) . .	50,000 Ha.
	G.N. No. 179 of 1948 (SWA) (addition) . .	5,022 Ha.
	Ord. No. 4 of 1956 (SWA) (addition) . .	11,683 Ha.
	According to a recalculation the area is . .	<u>479,651 Ha.</u>
<i>Otjituo</i>	G.N. No. 122 of 1923 (SWA) . . . . .	105,768 Ha.
	G.N. No. 119 of 1929 (SWA) (addition) . .	89,841 Ha.
	G.N. No. 19 of 1931 (SWA) (addition) . .	10,415 Ha.
	G.N. No. 127 of 1936 (SWA) (addition) . .	166,000 Ha.
	G.N. No. 374 of 1947 (SWA) (addition) . .	39,000 Ha.
	Total according to a recalculation . . . .	<u>430,961 Ha.</u>
<i>Otjohorongo</i>	G.N. No. 108 of 1925 (SWA) . . . . .	330,000 Ha.
	According to a recalculation the area is now	<u>365,177 Ha.</u>
Grand total for reserves in which Herero preponderate . . . . .		<u>3,114,108 Ha.</u>

<sup>1</sup> *Vide* para. 63, *infra*.

<sup>2</sup> *Vide* U.G. 49—1947, p. 13.

Reserve	Legislation	Areas
RESERVES IN WHICH DAMA PREPONDERATE		
<i>Okombabe</i>	G.N. No. 122 of 1923 (SWA) . . . . .	} 172,780 Ha.
	G.N. No. 237 of 1930 (SWA) . . . . .	
	G.N. No. 374 of 1947 (SWA) (addition) . . . . .	116,000 Ha.
	G.N. No. 215 of 1950 (SWA) (addition) as amended by G.N. No. 1916 of 1959 (SA) . . . . .	133,000 Ha.
	Ord. No. 26 of 1958 (SWA) (addition) . . . . .	12,860 Ha.
	According to a recalculation the total is . . . . .	<u>434,587 Ha.</u>
RESERVES IN WHICH NAMA PREPONDERATE		
<i>Berseba</i>	G.N. No. 122 of 1923 (SWA) . . . . .	} 575,000 Ha.
	G.N. No. 237 of 1930 (SWA) . . . . .	
	According to a recalculation of the area it is	<u>586,874 Ha.</u>
<i>Bondels</i>	G.N. No. 122 of 1923 (SWA) . . . . .	} 174,505 Ha.
	G.N. No. 237 of 1930 (SWA) . . . . .	
	Total according to a recalculation . . . . .	<u>174,560 Ha.</u>
<i>Soromas</i>	G.N. No. 122 of 1923 (SWA) . . . . .	} 8,212 Ha.
	G.N. No. 237 of 1930 (SWA) . . . . .	
	G.N. No. 8 of 1928 (SWA) (addition) . . . . .	8,618 Ha.
	G.N. No. 485 of 1951 (SWA) (addition) . . . . .	6,743 Ha.
	Total according to a recalculation . . . . .	<u>25,899 Ha.</u>
<i>Warmbad</i>	G.N. No. 122 of 1951 (SWA) . . . . .	<u>14,500 Ha.</u>
	Grand total for Reserves in which Nama preponderate . . . . .	<u>801,833 Ha.</u>
RESERVE OCCUPIED BY OVAMBO		
<i>Ovambo-land</i>	Proc. No. 40 of 1920 (SWA) . . . . .	} <u>4,200,834 Ha.</u>
	Proc. No. 27 of 1929 (SWA) . . . . .	
RESERVE OCCUPIED BY OKAVANGO NATIVES AND ADJOINING RESERVE		
<i>Okavango Native Territory</i>	Proc. No. 32 of 1937 (SWA) . . . . .	3,234,855 Ha.
	Act No. 56 of 1954 . . . . .	32,000 Ha.
<i>Unnamed Reserve</i>	G.N. No. 193 of 1952 (SWA) . . . . .	356,400 Ha.
	Total according to a recalculation . . . . .	<u>3,623,255 Ha.</u>
RESERVE OCCUPIED BY NATIVES IN THE EASTERN CAPRIVI ZIPFEL		
<i>Eastern Caprivi Zipfel</i>	Proc. No. 147 of 1939 (SA) . . . . .	<u>1,153,287 Ha.</u>
RESERVE OCCUPIED BY KAOKOVELD HERERO		
<i>Kaokoveld</i>	G.N. No. 374 of 1947 (SWA) . . . . .	} 5,560,000 Ha.
	G.N. No. 156 of 1948 (SWA) . . . . .	
	Amended by G.N. No. 201 of 1953 (SWA) . . . . .	

Reserve	Legislation	Areas
	G.N. No. 262 of 1954 (SWA) (addition) . . .	11,413 Ha.
	According to a recalculation the total area is	<u>5,514,617 Ha.</u>
MIXED RESERVES		
<i>Otjim- bingwe</i>	G.N. No. 21 of 1926 (SWA) . . . . .	83,053 Ha.
	G.N. No. 90 of 1929 (SWA) (addition) . . .	308 Ha.
	G.N. No. 162 of 1930 (SWA) (addition) . . .	6,594 Ha.
	G.N. No. 163 of 1935 (SWA) (addition) . . .	3 Ha.
	G.N. No. 92 of 1939 (SWA) (addition) . . .	112 Ha.
	According to a recalculation the area is . . .	<u>91,165 Ha.</u>
<i>Neuhof</i>	G.N. No. 122 of 1923 (SWA). . . . .	20,500 Ha.
	Area according to a recalculation. . . . .	<u>19,942 Ha.</u>
<i>Tses</i>	G.N. No. 122 of 1923 (SWA). . . . .	220,925 Ha.
	G.N. No. 61 of 1935 (SWA) (addition) . . .	24,661 Ha.
	Total according to a recalculation . . . . .	<u>254,588 Ha.</u>
<i>Eastern</i>	G.N. No. 374 of 1947 (SWA). . . . .	1,260,000 Ha.
	Proc. No. 287 of 1956 (SA) (deduction) . . .	11,683 Ha.
	According to a recalculation the area is . . .	<u>1,279,156 Ha.</u>
<i>Franz- fontein</i>	G.N. No. 122 of 1923 (SWA). . . . .	36,188 Ha.
	G.N. No. 237 of 1930 (SWA). . . . .	
	G.N. No. 62 of 1938 (SWA) (addition) . . .	21,000 Ha.
	Total according to a recalculation . . . . .	<u>57,755 Ha.</u>
<i>Gibeon or Kranz- platz</i>	G.N. No. 44 of 1924 (SWA) . . . . .	38,782 Ha.
	According to a recalculation the area measures	<u>39,108 Ha.</u>
<i>Zess- fontein</i>	G.N. No. 122 of 1923 (SWA). . . . .	31,416 Ha.
	G.N. No. 237 of 1930 (SWA). . . . .	
	G.N. No. 42 of 1941 (SWA) (addition) . . .	2,000 sq. meters.
	Grand total for mixed reserves. . . . .	<u>1,775,130 Ha.</u>

The total area now set aside for the sole use and occupation of Natives is approximately 20,617,651 hectares.

63. An important factor in the provision of Native reserves has been the development of water supplies, for which purposes large sums of money had to be spent. The following extracts from the annual reports on the Territory for the years 1923, 1924 and 1930 are in point:

- (i) "... it has been the policy of the Administration not to proclaim any area as a reserve until adequate water has been provided—a very large undertaking, for it must be borne in mind that there is practically no permanent open water in the Territory, and the task of boring sufficient holes, and constructing

reservoirs for large numbers of natives with their stock is a heavy and expensive one <sup>1</sup>."

- (ii) "The chief difficulty militating against and delaying the settlement of natives in the various reserves is the water question <sup>2</sup>."
- (iii) "Hitherto the activities in the native reserves have been directed principally towards developing sufficient water. In some reserves the boring has been continued for over seven years and in many places it was only at very great expense that sufficient water could be provided <sup>3</sup>."

The process of developing the water resources of the Territory, and of preserving them, is a continuous one and will have to be carried on in perpetuity.

(d) *The Bushmen Reserve*

64. Because of their nomadic habits it has not as yet been practicable to set aside a separate area for the use and occupation of the Bushmen, but it is anticipated that this will happen in the near future. In 1950 a Commission was appointed under the chairmanship of Dr. P. J. Schoeman to investigate this matter, and it recommended, *inter alia*, that a reserve be established for the !Khung Bushmen <sup>4</sup>, who total approximately 8,000.

65. The Executive Committee of South West Africa has approved of the principle of establishing a reserve for the Bushmen, and effect will be given thereto as soon as it is considered practicable. In the proposed reserve the Bushmen will enjoy exclusive rights, and the protection of this group will in essence be the same as that afforded to the Native groups in their reserves.

(e) *The Rehoboth Baster Gebiet*

66. The Rehoboth Baster *Gebiet* is a large area, comprising some 1,380,000 hectares, situated in the centre of the Police Zone. Under the German regime the Basters were allowed to retain their *Gebiet*, and their rights were subsequently recognized by Respondent in terms of the Rehoboth Agreement of 1923. Paragraph 15 of this Agreement reads as follows:

"No person other than a lawful resident of the *Gebiet* at the date of the taking effect of this Agreement shall be permitted to reside therein or to acquire therein any interest in immovable property whether leasehold or freehold save with the written consent of the Raad of the Rehoboth Community which consent shall be subject to the approval of the Magistrate of the District; provided that in the case of a European the sanction of the Administrator of South West Africa shall be a condition precedent to such residence in the *Gebiet* or acquisition or lease of immovable property or any interest therein; provided further that nothing in this paragraph contained shall

<sup>1</sup> U.G. 21—1924, p. 13.

<sup>2</sup> U.G. 33—1925, para. 84, p. 24.

<sup>3</sup> U.G. 21—1931, para. 589, p. 82.

<sup>4</sup> *Vide* Book III, Chap. II, para. 53, of this Counter-Memorial.

affect any existing rights lawfully acquired before or at the date of the taking effect of this Agreement <sup>1</sup>.

67. In terms of section 6 (2) of Proclamation No. 9 of 1928 (S.W.A.), no person other than a member of the Rehoboth Community may acquire any interest in immovable property situated in the *Gebiet* without the written consent of the *Raad* of the Community and of the Administrator <sup>2</sup>.

68. In 1925 a commission <sup>3</sup> enquired into the question of land tenure in the *Gebiet* and recommended that individual rights of the Basters to separate pieces of land should be recognized. As a result of this recommendation a large area of the *Gebiet* has been subdivided into farms, and titles to these farms have been issued. The reserve is consequently owned by the Rehoboth community partly under individual tenure and partly communally.

In the result the protection afforded to this group in the *Gebiet* is as complete as that afforded to the Native groups in their reserves.

(f) *The Area Inhabited by the White Population*

69. This area comprises the Police Zone exclusive of—

- (i) the Native reserves and the Rehoboth Baster *Gebiet* in that Zone;
- (ii) two large proclaimed Diamond Areas, stretching to a width which varies from about 50 to about 100 miles along the coast from the Orange River in the south to a line over 300 miles north thereof, and virtually uninhabited except for the mining town of Oranjemund and the harbour town of Luderitz; and
- (iii) large tracts of unallocated land, mostly in the northern and north-eastern parts, but including also a large portion of the Namib desert north of the Diamond Areas.

70. The area has undergone considerable fluctuation under Respondent's administration, expanding with allocations of new farms and decreasing with the creation of additional Native reserves. Whilst the limit of expansion appears, by and large, to have been reached, Respondent is at present, as previously indicated, engaged upon investigations which will probably result in further reduction through the provision of larger areas for the various non-White groups.

As has already been pointed out <sup>4</sup>, the effect of Respondent's reserve policy, and of a number of its laws, is that members of the White group enjoy certain priority rights in this area. It is against some of these laws that the main attack of the Applicants regarding rights of residence in the Territory is directed, and they will therefore be dealt with in detail in the reply to the allegations contained in the Memorials <sup>5</sup>.

<sup>1</sup> U.G. 41—1926, para. 15, p. 103. The Agreement forms the Schedule to Proc. No. 28 of 1923 (S.W.A.), by which it was ratified and confirmed. (*Laws of South West Africa*, Vol. II (1923-1927), pp. 145-148.)

<sup>2</sup> Proc. No. 9 of 1928 (S.W.A.), sec. 6 (2), in *The Laws of South West Africa 1928*, p. 46. For the reasons for the enactment of this sub-section—which according to its proviso did not affect any existing rights lawfully acquired before the commencement of the Proclamation, *vide* para. 52, *supra*.

<sup>3</sup> *Vide* para. 52, *supra*.

<sup>4</sup> *Vide* para. 10, *supra*.

<sup>5</sup> *Vide* para. 113 *et seq.*, *infra*.

## IV. THE ATTITUDE OF THE PERMANENT MANDATES COMMISSION

71. As early as 1919 Respondent intimated an intention to adopt in respect of the Natives in South West Africa a policy basically similar to that followed in the Union. In the Administrator's report for 1919 it was indicated that the Governor-General had stressed the need for such a policy during his visit to the Territory<sup>1</sup>. During the discussion of the report, M. Rappard, then Director of the mandates section of the League of Nations, in a statement to the Permanent Mandates Commission, said:

"The Report contained various passages of interest; in particular, it was stated that the treatment of the natives would have to be in conformity with the policy adopted in South Africa<sup>2</sup>."

72. In the course of the ensuing years Respondent's reserve policy was repeatedly explained to the Permanent Mandates Commission by South African delegates. On various occasions the Commission approved of this policy, and it is clear that from the outset it favoured a system under which the identity and customs of the various groups would be maintained.

73. During the tenth meeting of the Second Session on 7 August 1922, Mr. Ormsby-Gore, a member of the Commission, proposed that the following be added to the Commission's observations on Respondent's report regarding the Territory: ". . . The Commission expresses the hope that the primitive organization in tribes may be maintained unaltered wherever it still exists<sup>3</sup>." This proposal was adopted.

74. In the course of the examination of the annual report for 1922, M. van Rees, a member of the Commission, asked the two South African representatives, Sir Edgar Walton and Major Herbst, to explain the whole position of the Native reserves, including the questions: what was the reason for establishing reserves, and how should they be administered? The following answer was recorded:

"Major Herbst said that a European Power on entering a territory usually found natives living in what had come to be termed 'reserves', i.e., land occupied by the natives from time immemorial. The term 'reserve' implied that these lands were reserved for the occupation of that particular tribe by the incoming Government. The rights of the natives in those reserves had always been respected by the South African Government. There were, however, cases in the past where the natives had rebelled and where the Parliament had taken away the rights in that particular reserve. In the original native reserves the native chiefs exercised full authority over their own tribes in that particular area, except that certain practices, i.e., the killing of their subjects or interference with adjoining tribes, had been restricted. Their own headmen, in the name of the chiefs, allotted land to newly married couples, and native law was administered by the chief or his headman.

In South-West Africa there were two such original native reserves, where the natives lived according to their tribal customs and where

<sup>1</sup> *Vide U.G.* 40--1920, p. 4.

<sup>2</sup> *P.M.C., Min.*, I, p. 33.

<sup>3</sup> *Ibid.*, II, p. 49.

the administration had not applied its own domestic laws or levied any taxation. These were the Ovambo and the Beersbeba reserves. These lands existed as when the South African Government took up the administration. No passes were required within these reserves. All the land was regarded as belonging to the chief, who allotted lands to married couples according to necessity <sup>1</sup>."

Replying to a question from the chairman of the Commission as to the policy of the South African Government in regard to reserves, Sir Edgar Walton gave the following explanation:

"Where . . . the natives cultivated land for themselves, it was the policy of the Government to reserve for them lands which they were not allowed to alienate and which white men were not allowed to enter . . . it was entirely in the interests of the natives. The natives, if allowed to live with the white people, eventually parted with their land and became vagrants and a source of danger. The only way to preserve the native was to bring him gradually under the influence of civilization, as was done in South Africa . . . The policy of the South African Government was one of segregation, but the extent to which it would be applied in South West Africa must depend on circumstances <sup>2</sup>."

75. During the Fourth Session of the Commission in 1924, Mr. Hofmeyr, the South African representative, is reported to have said:

" . . . the policy, which, after a long experience in the Union, now seemed to be best was one which would constitute what was known as white areas and black areas. This policy would also be followed in South-West Africa <sup>3</sup>."

The following extract from the Minutes of the Fourth Session of the Permanent Mandates Commission indicates that the Commission was fully aware of Respondent's policy and intentions regarding Native reserves:

"On the proposal of M. Orts, the *Commission decided to add*, after the fourth paragraph [of its special observations on the Administration of South West Africa], the following sentence:

"The Permanent Mandates Commission is of opinion that the soundness of the views which have prompted the Administration to adopt a system of segregation of natives in reserves will become increasingly apparent if there is no doubt that, in the future, the Administration will have at its disposal sufficient fertile land for the growing needs of the native population, and that the reserves will be enlarged in proportion to the progressive increase in the population' <sup>4</sup>."

During the same Session, one of the members of the Commission, M. Beau, said that—

"it was very praiseworthy that not only the reserves already promised by the Germans had been given to the Natives, but new, and much more important ones. It appeared also that the system in

<sup>1</sup> *P.M.C., Min.*, III, pp. 103-104.

<sup>2</sup> *Ibid.*, pp. 104-105.

<sup>3</sup> *Ibid.*, IV, p. 61.

<sup>4</sup> *Ibid.*, p. 154.

force in all the reserves was comparatively liberal, the Natives having the right to leave them and the Whites not being allowed to enter them nor to acquire land there<sup>1</sup>."

76. Mr. Courtney Clarke, representing South Africa, made the following remarks during the 18th Session of the Permanent Mandates Commission in 1930:

"... It must be remembered that, in the old days, the natives used to wander all over the territory. That was now an impossible situation. Under the German regime, there had been a series of wars which had left the native population a broken and scattered people. The centre of the territory was occupied by European farmers and, accordingly, the Administration had been obliged to make provision elsewhere for land for the natives. The basis of any native policy must necessarily be native reserves, where the native population could have its home and develop its own life. That being so, the first thing to do was to make the reserves habitable, since this was the only means of turning a nomadic people into a settled population. The Commission would see from the native section of the report that the Administration was principally pre-occupied with the water supplies of the reserves. As more water and more money became available, it would be possible to obtain settled native communities, and, when that was done, the Administration could take up questions like that of education...."

As regards the reserves, the Administration had a native reserve superintendent in each reserve, and it hoped, by means of these officers, the example of the farmers, the teaching of the missionaries, and by means of education, to bring the native population into a state of settled communities; but, as the Commission itself had observed, the population was a very backward one, and it would take many years before it reached the stage of development attained by native communities in other parts of South Africa<sup>2</sup>."

This explanation was apparently accepted by the Commission, since no further discussion on this point is recorded.

77. At the 20th Session of the Commission in 1931, Count de Penha Garcia, a member of the Commission, paid a tribute to the work done by the Administration in the reserves—

"... to combat the shortage of water and to select varieties of stock, by means of which the possibilities of production, both as regards number and value, had been greatly increased<sup>3</sup>."

78. During the 23rd Session of the Permanent Mandates Commission in 1933, Lord Lugard—

"... congratulated the Mandatory Power on the steps it had taken with a view to holding general meetings of the residents in Native reserves and hoped this movement would be extended... Apparently, these meetings were limited to reserves in respect of which a fund had been established. He hoped a fund would be created in all reserves<sup>4</sup>."

<sup>1</sup> *P.M.C., Min.*, IV, p. 62.

<sup>2</sup> *Ibid.*, XVIII, pp. 145-146.

<sup>3</sup> *Ibid.*, XX, p. 56.

<sup>4</sup> *Ibid.*, XXIII, p. 91.

79. At the 29th Session of the Permanent Mandates Commission in 1936, Lord Lugard—

“... noted that the Administrator and the Chief Commissioner for Native Affairs had visited the native reserves with excellent results. ... It was very satisfactory that the Bondels tribe had been set on its feet again.

It was also a matter for congratulation that the system of governing the various tribes through tribal councils continued to prove satisfactory and was being extended ...<sup>1</sup>”

80. Referring to Native administration in general during the 34th Session of the Commission in 1938, Lord Hailey said that most members of the Commission would agree that the Union Government had given proof of its concern for Native interests in South West Africa<sup>2</sup>.

Lord Hailey, referring to paragraph 288 of the report for 1937, also said—

“... that the practice of Natives squatting on European land, was clearly a potential source of great injury to the natives, many of whom had, as the report showed, no lands to which to return when turned out in times of depression”<sup>3</sup>.

He thought that this seemed to be “... an additional ground for pressing on with the development of the reserves”<sup>3</sup>.

During the same Session Mr. de Water, the South African representative, explained why it was of the utmost importance that the Natives should have separate reserves, and said that nothing was healthier and more hopeful than the return of the Native peoples to their original tribal lives, subject, of course, to proper and sympathetic control. He said that the policy of the Administration was to encourage the Natives to live in their reserves, to restore and repair their tribal system and to maintain their customs, so long as these did not conflict with the recognized morals of modern civilization. M. Palacios replied by saying that he was sure that the Administration was handling the situation with great tact, and personally agreed with Mr. de Water regarding “the desirability of a return by the Hereros to their old national feelings”<sup>4</sup>.

81. It therefore appears from the foregoing that the Permanent Mandates Commission was fully aware of, and approved, Respondent's reserve policy.

## C. Reserves in Other Parts of the World

### I. INTRODUCTORY

82. The task of promoting the material and moral well-being and social progress of nations and groups who are in a relatively backward stage of development, is undoubtedly a difficult one, and has given rise to many and divergent problems all over the world. This is especially

<sup>1</sup> *P.M.C., Min.*, XXIX, p. 133.

<sup>2</sup> *Ibid.*, XXXIV, p. 78.

<sup>3</sup> *Ibid.*, p. 82.

<sup>4</sup> *Ibid.*, p. 92.

true of countries populated by groups with different social, economic and cultural backgrounds.

83. To meet such problems, there developed in many countries of the world a system of reserving land for occupation by different communities or population groups, the underlying consideration generally being the protection of such people against encroachment by others. In some cases protection took the form of prohibiting or limiting the acquisition of land by all persons other than the indigenous peoples of the country concerned; in other cases, again, reservations were made of defined areas within a country for particular population groups.

In the succeeding paragraphs examples are given of arrangements made in the past in a few countries, in some of which conditions were broadly similar to those prevailing in South West Africa.

## II. BASUTOLAND

84. In 1956 Basutoland had a total African population of 638,857 as compared with only 1,926 Europeans, 247 Asiatics and 644 persons of mixed blood<sup>1</sup>.

85. Section 10 of Proclamation No. 46 of 1907 provides:

"No person, other than a native, shall be permitted to reside within the Territory except upon the Reserves set aside for use by the Government, upon sites specially set aside for trading purposes and upon sites set aside for missionary purposes, without the authority of the Resident Commissioner<sup>2</sup>."

In terms of the Regulations of 14 March 1941, applicable to Government reserves<sup>3</sup>, no person who has been granted land in a Government Reserve "shall lend, lease or dispose of such land to any other person" unless he has first obtained permission from the District or assistant District Officer.

86. The policy of the authorities is not to allow any non-Native to settle in the country<sup>4</sup>, and Basutoland is thus truly a Native "reserve". As in South West Africa, land is apportioned among Natives on the communal principle, and consequently there are no individual owners, although rights to gardens in rural areas are inheritable, as are rights to residential and garden sites in villages<sup>5</sup>.

## III. BECHUANALAND

87. Bechuanaland Protectorate has an area of about 275,000 sq. miles and a total population of approximately 300,000, including, ac-

<sup>1</sup> *Annual Report on Basutoland for the year 1957* (1959), pp. 26, 28.

<sup>2</sup> *Proc. No. 46 of 1907* (Basutoland), as amended, sec. 10, in *Revised Edition of the Laws of Basutoland in force on the 1st Day of January, 1949* (1950), Vol. I, Title III, Chap. 35, p. 447.

<sup>3</sup> *Ibid.*, Vol. III, Title III, Chap. 31, Part VI, sec. 3, p. 234.

<sup>4</sup> *Vide Year Book and Guide to Southern Africa 1961*, ed. by A. Gordon-Brown, p. 204.

<sup>5</sup> Duncan, P., *Sotho Laws and Customs: A Handbook based on Decided Cases in Basutoland together with The Laws of Lerotholi* (1960), pp. 98-99.

ording to the 1956 census, 3,173 Europeans, 676 Coloureds and 248 Asiatics.

Land is classified into five distinct categories, viz., (i) Crown lands, with an approximate area of 165,175 sq. miles; (ii) tribal territories, comprising about 108,000 sq. miles; (iii) farming areas; (iv) the Tati district, owned by the Tati company, and (v) game reserves<sup>1</sup>. Inside the tribal territories or reserves<sup>2</sup> the old Tswana system of communal land tenure prevails, and no attempt has been made by the Administration to alter it. The reserves are legally inalienable. No European may own land, or carry on business of any description in them, without first having obtained the consent of the Chief and the tribe. Further, no concession made by any Chief for mining or other purposes is valid until sanctioned and approved by the Crown<sup>3</sup>.

88. Although control over land and its resources is vested in the Chief, none of the land—except those portions reserved for him and his family—is his property; nor can he dispose of the use of it except gratuitously, and then only to members of his own tribe<sup>4</sup>.

#### IV. SWAZILAND

89. Swaziland offers a classical illustration of what tends to happen when control is not exercised over the alienation of land by indigenous chiefs and land acquisition in private ownership is freely permitted.

90. During the last century Chief Mbandini had given to Europeans concessions in the nature of land, forestry and mineral rights, which nearly exhausted the resources of the country. As a result of unrestricted concession-hunting, the southern and western portions of Swaziland—amounting to about two-thirds of the whole territory—were parcelled out by way of concessions to Europeans<sup>5</sup>.

91. This process was partly reversed during the period 1900-1910, following upon the Territory becoming a British Protectorate. In 1907 a Proclamation<sup>6</sup> provided for the laying out of reserves for occupation by the Swazis, with due regard to their existing and future needs. The lands available for this purpose included Crown lands and land resumed from concessionaires.

92. Since 1907 fairly substantial areas have been purchased by the Swazi Nation, and some small farms by individual Africans. In addition, land has been purchased under the Native Land Settlement Scheme—inaugurated in 1946 by the Administration for the purpose of establishing Swazi families on settlements under permanent lease<sup>7</sup>—to which

<sup>1</sup> *Vide Bechuanaland Protectorate: Report for the Year 1957 (1958)*, pp. 34-35. and *Bechuanaland Protectorate: Report for the Year 1959 (1960)*, pp. 34-35.

<sup>2</sup> As defined in various chapters of the laws of Bechuanaland Protectorate.

<sup>3</sup> Schapera, I., *A Handbook of Tswana Law and Custom (1938)*, pp. 195-196.

<sup>4</sup> *Ibid.*, p. 196.

<sup>5</sup> Sheet 6 of Jeppe's Map of the Transvaal or South African Republic and Surrounding Territories.

<sup>6</sup> *Proc. No. 28 of 1907 (Swaziland)*, in *Official Gazette of the High Commissioner for South Africa*, Vol. XXI, No. 312 (25 Oct. 1907), pp. 7-10.

<sup>7</sup> Hailey, *An African Survey (1957)*, p. 779.

has been added certain Crown Land. By the end of 1957 more than half of Swaziland was available for Native occupation <sup>1</sup>.

Native Areas set aside for the sole use and occupation of the Swazi people by Proclamation No. 39 of 1910 <sup>2</sup>, are vested in the High Commissioner in trust for the Swazi Nation, while land purchased from European owners by the Swazi Nation is vested in the Paramount Chief in trust for the Nation. Land set aside for the Native Land Settlement Scheme is vested in the Swaziland Government, and its use is controlled by the provisions of Proclamation No. 2 of 1946 <sup>3</sup>, in terms of which six acres per family unit may be allocated to Swazis on permanent lease <sup>4</sup>.

## V. SOUTHERN RHODESIA

93. Section 2 of the Southern Rhodesia Order in Council, 1920, provided:

"The lands known as native reserves assigned by the Company for the occupation of natives . . . are hereby vested in the High Commissioner and set apart for *the sole and exclusive use and occupation* of the Native inhabitants of Southern Rhodesia . . ." (Italics added.)

It was further provided that no person other than a Native would be entitled to—

" . . . occupy any portion of a Native Reserve except by special permission given in accordance with such regulations as may be issued by the Administrator, with the approval of the High Commissioner <sup>6</sup>."

In terms of the 1923 constitution the said Order in Council was to continue in full force and effect as if it formed part of the constitution <sup>7</sup>.

94. Under the Land Apportionment Act of 1941 <sup>8</sup> all land in the Colony, save that comprised in the reserves and the areas set aside for the sole use and occupation of Natives, was classified as (i) the European Area; (ii) the Native Area; (iii) the Undetermined Area; (iv) the Forest Area, and (v) the Unassigned Area <sup>9</sup>. It was further provided that ". . . no person other than an indigenous Native may acquire, lease or occupy land in the Native Area" <sup>10</sup>.

In terms of section 18 (1) of the Act a European landowner in the

<sup>1</sup> *Vide Swaziland: Report for the Year 1958 (1959)*, pp. 68-69.

<sup>2</sup> In *Revised Edition of the Laws of Swaziland in Force on the 1st Day of April, 1949 (1951)*, Vol. I, Chap. 62, pp. 575-576.

<sup>3</sup> *Ibid.*, Chap. 63, pp. 578-585.

<sup>4</sup> *Vide Swaziland: Report for the Year 1958 (1959)*, p. 16; *vide* also Hailey, *An African Survey (1957)*, p. 779.

<sup>5</sup> *Southern Rhodesia Order in Council, 1920, sec. 2*, in *The Statute Law of Southern Rhodesia, from 1st January to 31st December, 1920 (1921)*, p. 2561.

<sup>6</sup> *Ibid.*, sec. 4, p. 2562.

<sup>7</sup> *Vide The Southern Rhodesia Constitution Letters Patent, 1923, sec. 42*, in *The Statute Law of Southern Rhodesia, From 1st January to 31st December, 1923 (1924)*, p. 25.

<sup>8</sup> Act No. 11 of 1941, in *The Statute Law of Southern Rhodesia 1941 (1942)*, pp. 50-90.

<sup>9</sup> *Ibid.*, sec. 5 (1), p. 53.

<sup>10</sup> *Ibid.*, sec. 6, p. 53.

Undetermined Area could dispose of such land to any person, provided that no person could dispose of land in the said Area to a Native unless such Native, and the terms and conditions of such disposal, were specially approved of <sup>1</sup>.

95. Owing to the intricate problems created by land apportionment in a plural society, there were 165 changes in the Land Apportionment Amendment Act of 1941—many of them major ones—in a period of 17 years. In its basic form the Act laid down separate areas for Europeans and Africans in which to live and conduct business and agriculture. In 1961, however, came a change of policy when the Land Apportionment Amendment Act of that year <sup>2</sup> permitted Natives to purchase and live on land formerly reserved for Europeans, and to conduct business in competition with Europeans in former non-African areas.

#### VI. NORTHERN RHODESIA

96. Until 1962 all land in Northern Rhodesia proper could be divided into three categories, viz., Crown Land, Native Reserves and Native Trust Land, the last two categories comprising all except approximately 6 per cent. of the total area.

97. In regard to Native reserves, the following provisions applied:

- (i) All reserves were vested in the Secretary of State and set apart in perpetuity for the sole and exclusive use and occupation of the Natives of Northern Rhodesia.
- (ii) No portion of any reserve could be granted to any non-Native save under lease for a period not exceeding five years.
- (iii) No person other than a Native could occupy any portion of a reserve save by special permission given in accordance with regulations prescribed by the Governor <sup>3</sup>.

98. All Native Trust Land was vested in the Secretary of State and was, subject to his directions, administered by the Governor for the use and common benefit of the Natives. No titles claimed by non-Natives to the use and occupation of any such land were valid unless they had been confirmed by the Governor, who could also, when it appeared to him to be in the general interests of the community as a whole, grant rights of occupancy to non-Natives <sup>4</sup>.

99. In 1962 the Native Reserves and Native Trust Land Orders in Council were amended by allowing the Governor to make grants or dispositions of land in Reserves and Native Trust Land to individual Natives. Thereby the Secretary of State agreed to relax his rights as Trustee in favour of those individual Natives to whom grants might be made by the Governor <sup>5</sup>.

<sup>1</sup> Act No. 11 of 1941, in *The Statute of Law of Southern Rhodesia 1941 (1942)*, sec. 18 (1), p. 55.

<sup>2</sup> Act No. 37 of 1961 (Southern Rhodesia), in *The Statute Law of Southern Rhodesia 1961 (1962)*, pp. 235-285.

<sup>3</sup> *Northern Rhodesia (Crown Lands and Native Reserves) Orders in Council, 1928 to 1960*, sec. 6, in *Laws of Northern Rhodesia, 1962 Edition*, Vol. VIII, App. 5, p. 7.

<sup>4</sup> *Northern Rhodesia (Native Trust Land) Orders in Council, 1947 to 1961*, secs. 5-6, in *Laws of Northern Rhodesia, 1962 Edition*, Vol. VIII, App. 5, pp. 34-37.

<sup>5</sup> *Northern Rhodesia (Crown Lands and Native Reserves) Orders in Council, 1928 to 1962*, sec. 6 and *Northern Rhodesia (Native Trust Land) Orders in Council, 1947*

100. Within the Protectorate of Northern Rhodesia the Barotseland Protectorate enjoys a special place. Treaties between Paramount Chief Lewanika and the British South Africa Company still govern relations between the Government of Northern Rhodesia, the British Government and the Barotse Native Government. These treaties restrict immigration into Barotseland, and enshrine the rights of the Barotse Native Government and Paramount Chief to control all tribal matters within the Protectorate<sup>1</sup>. No person may alienate any portion of the territory without the consent of the Chief of the Barotse and the Secretary of State<sup>2</sup>.

## VII. KENYA

101. European settlement in the Highlands of Kenya, encouraged by the British Government, led to a policy of reservation of separate areas for Natives and Europeans. In the Kenya Crown Lands Ordinance of 1915<sup>3</sup> provision was made for the setting aside of areas for Native reserves, temporary Native reserves<sup>4</sup>, Native leasehold areas<sup>5</sup> and Native settlement areas<sup>6</sup>. On the other side of the picture, and in conformity with guarantees given by the British Government that the Highlands would be exclusively reserved for White settlement, it was provided:

- (i) that no person could, except with the written consent of the Governor, sell, lease, sub-lease, assign or part with the possession of any land situate in the Highlands to any other person<sup>7</sup>;
- (ii) that no European lessee could, without the consent of the Governor in Council, appoint or allow a non-European to be manager of, or otherwise to occupy or be in control of, the land leased<sup>8</sup>.

102. In 1952, however, the British Government appointed the East African Royal Commission which, in its report published in 1955<sup>9</sup>, among other sweeping changes recommended systematic grants of registered titles to Africans in rural areas<sup>10</sup>. Subsequently the policy of the Government was stated—

“... to aim at the progressive abolition of racial and tribal land barriers, and, in order to assist this process, to ensure that the basis of tenure and management of agricultural land is similar throughout Kenya, regardless of race and tribe as far as local economic and ecological factors permit<sup>11</sup>”.

to 1962, sec. 5, in *Laws of Northern Rhodesia*, 1963 Edition, Vol. VIII, App. 5, pp. 7-8, 34-37.

<sup>1</sup> *Vide Year Book and Guide to Southern Africa 1961*, p. 294.

<sup>2</sup> *Vide Northern Rhodesia Orders in Council, 1924 to 1960*, sec. 41 (1), in *Laws of Northern Rhodesia*, 1961 Edition, Vol. VIII, App. 2, p. 15.

<sup>3</sup> *Ord. No. 12 of 1915 (Kenya)*, as amended, in *The Laws of Kenya in force on the 21st Day of September, 1948*, Revised Edition, Vol. II, Chap. 155, pp. 2015-2108.

<sup>4</sup> *Ibid.*, sec. 55, pp. 2030-2031.

<sup>5</sup> *Ibid.*, sec. 63, p. 2032.

<sup>6</sup> *Ibid.*, sec. 57, p. 2031.

<sup>7</sup> *Ibid.*, sec. 88, p. 2040.

<sup>8</sup> *Ibid.*, sec. 36, p. 2026.

<sup>9</sup> *Cmd. 9475*.

<sup>10</sup> *Ibid.*, para. 72, p. 222.

<sup>11</sup> *Colonial Office Report on the Colony and Protectorate of Kenya for the year 1959 (1960)*, p. 34.

## VIII. LIBERIA

103. The following extract from Hailey refers to Liberia:

"The land on which the American Colonization Society planted its first settlement in Liberia was obtained by treaty from local Chiefs. The President of the Liberian Republic in his inaugural address in 1904 stated that these agreements included either express or implied reservations to Native use of land which was in actual occupation. Later in the same year, however, a number of Chiefs presented an address to him complaining that they had been 'deprived of all their lands and now practically possessed none'. While this statement may have involved some exaggeration, there is evidence that in the coastal lands aboriginal tribes were frequently dispossessed of land in the interests of American Liberians. There has on various occasions been much trouble caused owing to complaints by the Kru tribe and in the Maryland County that Native lands have been alienated for the benefit of this class. It will be recalled that persons who are not citizens of Liberia are excluded by the Constitution from the possession of land.

It was apparently the intention at one time to demarcate tribal Reserves for the protection of the lands of aboriginal tribes, but no effective steps appear to have been taken with this purpose. There is a procedure by which so-called 'tribal Reserves' are created by the grant of deeds to Native villages; land is then allocated to them at the rate of 25 acres per family. This appears to lie within the competence of the Land Commissioners, of whom there is one in each of the five Counties. They may lease or sell land to Liberian citizens, and make free 'Bounty grants' to soldiers of the Liberian militia. It has, however, been alleged that the Commissioners have no regular system of records of these grants of 'Reserves'.

The Firestone Concession of 1925, extending in the first instance to an area of 1 million acres, involved the dispossession of a large number of indigenous occupiers, though in theory 'tribal Reserves' were excluded from the Concession area. The Firestone Company announced, however, that it was prepared to allow the Chiefs, as an act of grace, to select land for the occupation of their people.

It would appear that a number of Concessions of land have been given since 1950, and there has been some indication of the intention of the Liberian Government to enact a new land law, on the ground that the existing legislation is now out of date<sup>1</sup>."

## IX. CANADA

104. In order to control the process of penetration by White settlers into the interior of Canada, the Dominion Government, after its acquisition of the future prairie provinces (Manitoba, Assiniboia, Saskatchewan, Alberta and Athabasca) in 1870, and the addition of British Columbia to the confederation in 1871, established a special Department of Indian Affairs. It also resorted to a policy of placing the Indians in territorial reservations, already introduced in the older provinces at an earlier date<sup>2</sup>.

<sup>1</sup> Hailey, *An African Survey* (1957), pp. 758-759.

<sup>2</sup> *Vide Encyclopaedia Britannica* (9th Ed.), Vol. IV, pp. 767-768.

105. In the Indian Act of 1886 Indian "reserves" received statutory recognition. They were defined as tracts of land set apart by treaty or otherwise for the use or benefit of a particular band of Indians, and it was specifically provided that only Indians of the particular band might settle, reside and hunt upon the reserve of such a band <sup>1</sup>.

106. Writing on Canada's Indian problem in 1961, Walter Gray stated, *inter alia*:

"Three years ago the Government decided to take a searching look at the problems facing Canada's 175,000 Indians, and established a Parliamentary committee to tackle the job. . . .

Canada's Indian reservations are as old as the country's history. As the White man gradually took over the vast expanse of what was once Indian territory, the natives were given huge tracts of land for their own use. Responsibility for their welfare was assumed by the Federal Government. Over the years many Indians have drifted away from the reservations, but the majority have chosen to remain together in their closely-knit society, earning small incomes on the reservations, more or less as wards of the Government. . . .

The Indians are demanding a greater voice in the running of their affairs through a transfer of responsibility to their band councils and a lessening of Government control. They want their reserves built up into healthy communities through careful development. . . .

At least another full year of study is to be carried out before the joint committee sets out its recommendations to Parliament. It is generally assumed that the reservation system will not be abandoned, for the Indians themselves cherish what land is theirs. They have the right to leave the reserves of their own accord, but when they do they lose their special rights, such as a share of the band funds and special Government allowances. Only Government legislation would protect those rights <sup>2</sup>."

## X. THE UNITED STATES OF AMERICA

107. A policy of reservations for Indians in the United States has been applied for a very long time, although there was in the early days much vacillation due to pressure by White pioneers moving ever further westwards.

108. By 1880 virtually all the Indians in the United States not absorbed into the general body of the population had been removed either to Indian Territory—lands west of the Mississippi—controlled by the Government, or to federal reservations within the borders of the various states <sup>3</sup>. Shortly afterwards the ideal of a specifically *Indian Territory* was crippled with the disintegration of the then existing area of 70,000 sq. miles bearing that name, in order to establish the state of Oklahoma <sup>4</sup>. Nevertheless, Indian reservations have been retained, and

<sup>1</sup> *Vide The Revised Statutes of Canada, 1927*, Vol. II, Chap. 98, secs. 2 (j) and 21, pp. 2 and 7.

<sup>2</sup> Gray, W., "Canada's Indian Problem", in *Rand Daily Mail*, 5 May 1961.

<sup>3</sup> Gannett, H., "Modern History and Present Distribution of North American Indians", in *Encyclopaedia Britannica* (9th Ed.), Vol. XII, p. 830.

<sup>4</sup> Beard, C. A. and M. R., *The Rise of American Civilization* (1944) [one volume edition], Vol. II, pp. 143-144.

when a new period in Indian Affairs started about 1928 with the appearance of Lewis Meriam's report<sup>1</sup>, there were some 200 tribes numbering over 350,000 souls on about 200 separate reservations in 26 states, mainly in the northern, central and western states, with the biggest number in Oklahoma, Arizona and South Dakota.

109. The Meriam Report gave rise to the Indian Reorganization Act of 18 June 1934, which has been analysed as follows:

"... as to those tribes which adopted the act by formal vote of their members, it prohibited the individual allotting of tribal lands and it authorized the Secretary of the Interior to return to tribal ownership lands which had been withdrawn for homestead entry but had not been pre-empted. The Act also authorized an annual appropriation of \$2 million to purchase land and add it to the diminished resources of the tribes, and established a revolving credit fund of \$10 million (later increased to \$12 million) to enable Indians to improve their land holdings and supply themselves with necessary equipment.

But the real heart and core of the Indian Reorganization Act was the recognition of the inherent right of Indian tribes to operate through governments of their own creation, whether customary or formalized by written documents, and through business corporations which the tribes could create and manage<sup>2</sup>."

110. Since the enactment of the Indian Reorganization Act there have again been vacillations of policy, and also an unexplained cessation of a development programme which appeared to be achieving considerable success<sup>3</sup>. Nevertheless the Indians themselves are still strongly opposed to any ideas of ending the reservation system. The Choctaw Nation, the Apache Council, the Oglala Sioux Tribe, the Chippewas, the Umatilla and the Walla Walla are only a few of the groups that have sent their protests to Washington over the so-called "termination" policy. In the words of William Stafford:

"... the Indians have declared that termination without Indian consent is a violation of the treaties which promised Government obligations in return for the vast tracts of valuable land the Indians ceded to the Government.

The tribal councils will no doubt seek to halt the Government's action through legal measures. For abandonment of the reservations may well mean the end of the Indian community and its dispersal into the rest of America—one more ingredient for the melting-pot<sup>4</sup>."

## XI. CONCLUSION

111. The above exposition shows that policies of land reservation are being, or have in the past been, applied in various countries of the

<sup>1</sup> Meriam, L., *The Problem of Indian Administration* (1928) [undertaken at the request of Secretary Herbert Work of the U.S. Department of the Interior], referred to in *Declaration of Indian Purpose*, App. 1, p. 20 (Report of the American Indian Chicago Conference, held at the University of Chicago from 13-20 June 1961).

<sup>2</sup> *Declaration of Indian Purpose*, App. 1, pp. 21-22.

<sup>3</sup> *Ibid.*, pp. 26-27.

<sup>4</sup> Stafford, W., "The Walla Walla fight for their lands", in *The Natal Daily News*, 10 Nov. 1954, p. 9. *Vide* also "Why no integration for the American Indian", in *U.S. News & World Report*, Vol. LV, No. 10 (2 Sep. 1963), pp. 62-66.

world. It also demonstrates the importance not only of protecting less developed groups, but also of providing fair opportunities for all.

112. It is true that some countries which have in the past applied policies of the kind aforesaid, have already adopted, or are now adopting, new policies of which the general effect is to abolish differentiation in *rights of land occupation and ownership*. As already indicated, Respondent sees the matter, as far as South West Africa is concerned, as one of achieving and maintaining a balance between the legitimate aspirations of various groups, each of which has a contribution to make towards, and a claim to share in, the general well-being and development of the Territory, and Respondent believes that in the circumstances of South West Africa this can best be accomplished by setting aside, as far as practicable, an area for the exclusive use and occupation of each group.

While Respondent also recognizes the need of making adjustments from time to time in the light of altered circumstances, it considers that it should not in the process abandon the fundamentals of a policy which has stood the test of time in its operation for the benefit of all the inhabitants of the Territory, and which can, with necessary and suitable adaptation, bring about the establishment of a system of creating homelands for the various population groups of the Territory.

#### D. Reply to the Applicants' Allegations

##### I. GENERAL

113. As already indicated<sup>1</sup>, the provisions to which the Applicants refer in paragraphs 138 to 145 of Chapter V of the Memorials<sup>2</sup> can conveniently be classified as those relating to rights of residence in (i) the Native reserves, (ii) the Police Zone generally, and (iii) urban areas in the Police Zone.

114. Although it is admitted that the rights of residence of Natives are to a certain extent restricted by the provisions in question, Respondent wishes to point out that the Applicants fail to make any reference to limitations imposed on the residence of the White group in Native reserves and Native urban residential areas. Since, however, the provisions imposing these limitations are in the first instance directed to the *entry* of members of the White group into such reserves and residential areas, they will be dealt with in Respondent's reply to the Applicants' allegations concerning freedom of movement<sup>3</sup>.

##### II. RIGHTS OF RESIDENCE IN THE NATIVE RESERVES

###### (a) *The Powers to Set Aside Native Reserves*

115. In paragraph 138 of Chapter V of the Memorials<sup>4</sup> reference is made to section 16 of the Native Administration Proclamation of 1922<sup>5</sup>,

<sup>1</sup> *Vide* para. 1, *supra*.

<sup>2</sup> I, pp. 146-148.

<sup>3</sup> *Vide* Chap. IV, paras. 40-44 and 50, *infra*.

<sup>4</sup> I, p. 146.

<sup>5</sup> *Proc. No. 11 of 1922 (S.W.A.)*, sec. 16, in *The Laws of South West Africa 1915-1922*, p. 753.

in terms of which the Administrator is empowered to set aside areas as Native reserves for the sole use and occupation of Natives generally, or of any race or tribe of Natives in particular, and to prescribe regulations governing the inhabitants of such reserves.

116. It may be that this provision is referred to only by way of introduction; it seems hardly likely that the Applicants should wish to object to the conferment of such power or to the fact that reserves have been set aside for the sole use and occupation of Natives.

On the other hand, the provision refers to "such restrictions and to such regulations as . . . [the Administrator] . . . may prescribe", and it may thus be that paragraph 138 was intended to be read together with paragraph 154 (3) of Chapter V of the Memorials<sup>1</sup> in which it is alleged that Natives are confined within sharply defined areas and places under prescribed conditions, and that "the pattern of restrictions" upon the residence of Natives is "uniformly arbitrary and discriminatory".

117. Respondent has dealt above<sup>2</sup> with the grounds upon which it was considered desirable, in the interest of the different groups, in the Territory, to apply a policy of setting aside, as far as practicable, areas as reserves for the various groups, the basic idea being to provide permanent homes for such groups. By so reserving the rights of a group in a particular area, the corresponding rights of other groups in that area must of necessity be limited or excluded.

118. Respondent has also shown that at the inception of the Mandate it was within the contemplation of all parties concerned that such a policy was likely to be applied to South West Africa<sup>3</sup>; that the basic principles thereof had been evolved in the light of experience of a similar problem in South Africa over a period of more than a century<sup>4</sup>; that it was known to and approved of by the Permanent Mandates Commission<sup>5</sup>; and that similar policies have been applied in many parts of the world in countries where different groups in different stages of development live together<sup>6</sup>. The allegations that the said policy is "arbitrary" and "discriminatory"<sup>7</sup> are consequently devoid of substance.

119. In so far as this policy differentiates between groups, confines groups to defined areas for residential purposes, and thus imposes restrictions as to their potential places of residence, it does so reciprocally and not to the detriment of the Natives, as alleged by the Applicants. Although the area occupied by the White population group is larger than that of any of the Native reserves, it in fact provides residential facilities for large portions of the Native population engaged in remunerative employment therein—whereas the exclusion of residence by White persons in the Native reserves is absolute (save for a few officials and others who assist the Natives concerned)<sup>8</sup>.

120. While it is true that in terms of section 16 of the Proclamation

<sup>1</sup> I, p. 151.

<sup>2</sup> *Vide* para. 35 *et seq.*, *supra*.

<sup>3</sup> *Vide* para. 23, *supra*.

<sup>4</sup> *Vide* para. 12 *et seq.*, *supra*.

<sup>5</sup> *Vide* para. 71 *et seq.*, *supra*.

<sup>6</sup> *Vide* para. 84 *et seq.* *supra*.

<sup>7</sup> I, para. 154 (3), p. 151.

<sup>8</sup> *Vide* Chap. IV, paras. 40-44, *infra*.

the inhabitants of the reserves are subject to such restrictions and regulations as the Administrator <sup>1</sup> may impose, the White population is in its area obviously also subject to statutory provisions and restrictions. For reasons already explained, the system commenced with the Administrator being the legislator as regards regulations and restrictions applicable to the reserves, but it envisages a progressive measure of self-government for the Natives in their contemplated homelands.

(b) *The Power to Preserve and Develop Native Areas*

121. In paragraph 139, and also in paragraphs 116, 117 and 124 of Chapter V of the Memorials <sup>2</sup>, reference is made to some of the powers conferred upon the Administrator (now the State President) <sup>3</sup> in terms of section 1 of Proclamation No. 15 of 1928 (S.W.A.). The relevant paragraphs of this section read as follows:

- (c) he may define the boundaries of the area of any tribe or of a location and may from time to time alter the same and may divide existing tribes into two or more parts or amalgamate tribes or parts of tribes into one tribe or constitute a new tribe as necessity or the good government of the Natives may in his opinion require;
- (d) he may, whenever he deems it expedient in the general public interest, order the removal of any tribe or portion thereof or any Native from any place to any other place within the mandated Territory upon such terms and conditions and arrangements as he may determine;
- (g) he may generally exercise all political power and authority which according to the laws, customs and usages of Natives, are held and enjoyed by any supreme or paramount native chief <sup>4</sup>.

122. These powers were conferred upon the Administrator in order to enable Respondent to carry out its policy of setting aside land for the settlement and rehabilitation of Native groups and of developing and conserving the land, the grazing and the water for their exclusive use.

123. As previously stated <sup>5</sup>, one of the main considerations of Respondent's reserve policy was to reunite scattered remnants of the various Native tribes and to settle them in their natural environment, under the supervision of experienced officials who would, with due regard to their tribal organization and customs, guide them in reorganizing their disrupted social and economic life. In the 1925 annual report it was stated:

"Simultaneously with the demarcating of the reserves it was necessary to get the natives moved into them, and this has proved

<sup>1</sup> Now the State President (Act No. 56 of 1954).

<sup>2</sup> I, pp. 139-141, 146-147.

<sup>3</sup> The powers conferred on the Administrator by the Proclamation were from 1 April 1955 vested in the Governor-General (now the State President); Act No. 56 of 1954, sec. 3 (1), in *Statutes of the Union of South Africa 1954*, pp. 559-591.

<sup>4</sup> *Proc. No. 15 of 1928 (S.W.A.)*, sec. 1, in *The Laws of South West Africa 1928*, p. 60.

<sup>5</sup> *Vide paras. 41-43, supra.*

a very difficult undertaking. Native families which had been broken up under the German regime were endeavouring to unite from opposite ends of the country in order to proceed to the same reserve. Cattle had to be collected, native ownership questions settled, transport of old and infirm dependants arranged so that the movement has been slow and is still in progress. Until the various communities were definitely settled in the reserves it was of course very difficult to secure any real development work. Competent and experienced Superintendents were, however, appointed in most of the Reserves . . .<sup>1</sup>"

124. Respondent's major task, after having brought the Natives on to the land, was to teach them how to develop and preserve their areas in order to increase their carrying capacity. To these Natives scientific methods of soil conservation and protection and preservation of grazing and water, etc., were unknown. As was to be expected, therefore, progress was slow and much damage was done over the years to the soil, grazing and water conserves.

125. Section 1 (c) of the Proclamation, which confers the powers to define the boundaries of areas set apart for the use and occupation of Natives generally or of any race or tribe of Natives in particular<sup>2</sup>, is concerned only with the establishment of *geographical* boundaries of areas set apart for the use and occupation of Natives. The powers conferred by the words "and may divide existing tribes into two or more parts or amalgamate tribes or parts of tribes into one tribe or constitute a new tribe" were intended to be used for the purpose of assigning particular geographic entities to particular tribes or portions of tribes, and for this purpose rendered it possible for the Administrator, should circumstances so require, to ignore tribal affinities, to divide a tribe geographically, and to establish more than one area for the occupation of that tribe, or to establish one area for the use and occupation of more than one tribe. These powers were not intended for any other purpose, nor is Respondent aware of any use or attempted use of the powers for any other purpose.

126. Section 1 (c) of the Proclamation must be read in conjunction with the provisions of section 4 (3) of Act No. 49 of 1919, which prohibits the alienation of land in the Territory set apart as a reserve<sup>3</sup> for Natives or Coloured persons save under the authority of Parliament, and with section 5 (1) of Act No. 56 of 1954, which provides:

"Notwithstanding anything to the contrary in any law contained the Governor-General<sup>4</sup> may, by proclamation in the *Gazette* and in the *Official Gazette* of the territory, with the approval by resolution of both Houses of Parliament, rescind any reservation or setting apart of any land or area referred to in sub-section (1) of section four, or of any portion of such land or area, subject to land of at least an equivalent pastoral or agricultural value being reserved or

<sup>1</sup> U.G. 26—1926, p. 109.

<sup>2</sup> *Vide* the comprehensive definition of "location" in sec. 25 of the Proclamation (*Laws of South West Africa 1928*, p. 78).

<sup>3</sup> Act No. 49 of 1919, in *The Laws of South West Africa 1915-1922*, pp. 10-12.

<sup>4</sup> Now the State President.

set apart, in terms of any law in force in the territory, for the sole use and occupation of natives<sup>1</sup>."

127. The powers conferred on the Administrator are necessary for the good government of the Territory. That this is the purpose of section 1 (c) of the Proclamation is clear from the words "as necessity or the good government of the Natives may in his opinion require". It is not always possible to accommodate all the members of one tribe in the same reserve, even though this may be desirable. The reserve may become so overcrowded that it is necessary to provide other areas for a portion of the tribe.

128. The Memorials seem to imply that an order issued under paragraph (c) *per se* restricts the rights of residence of the tribe or tribes concerned. It is respectfully submitted that this is not the case. The Proclamation does not require any Native to live in an area of which the Administrator has determined the boundaries. The effect of such determination is principally to exclude other groups from acquiring rights of residence in such defined areas.

129. Paragraph (d) of section 1 of the Proclamation authorizes the Administrator to order the removal of any tribe or portion thereof, or of any Native from any place to any other place within the Territory if he deems it expedient *in the general public interest*.

A number of situations may be envisaged in which the general public interest requires the removal of a tribe or a portion thereof or of an individual Native. To mention only a few:

- (i) Land may be so neglected over a period of time that it may become necessary, in the interests of the inhabitants, to remove them to another place<sup>2</sup>.
- (ii) The continued occupation by a tribal group of land in the catchment area or at the source of a river may be so detrimental to the preservation of the water sources of a particular area as to necessitate the removal of the group concerned.
- (iii) Peace and good order in a particular area may be so seriously threatened by the activities of one or more mischief-makers, or by the existence of bad blood between tribes or factions, as to render necessary the removal of individuals or groups.

130. That the existence of the powers conferred by paragraph (d) of section 1 is essential, is well demonstrated by the only four occasions—as far as can be ascertained—on which it was found necessary to invoke these powers:

- (i) The first occasion is referred to in the annual report for 1932<sup>3</sup>. An Ovambo Chief, Ipumbu, was deposed for endeavouring to stir up trouble against the authorities of his tribal area and he was banished to the Okavango. The removal order was made at the request of and with the approval of the majority of the members of the tribe, and only after careful investigation and consideration.

<sup>1</sup> Act No. 56 of 1954, sec. 5 (1), in *Statutes of the Union of South Africa 1954*, p. 563.

<sup>2</sup> *Vide* para. 124, *supra*.

<sup>3</sup> U.G. 16—1933, para. 320, pp. 52-57.

After Ipumbu's removal his son, Silas, became one of the senior headmen <sup>1</sup>.

- (ii) The 1936 annual report mentioned that the desirability of deposing Chief Andara of the Okavango Native Territory was under consideration, since he was "reported . . . to be incapable of efficiently controlling his tribe" <sup>2</sup>. Subsequent to his being deposed, he and his chief wife, who proved to be disturbing elements in the tribal area, were required to remove to Runtu in the same Territory.
- (iii) The incidents that led to the third removal order under the Proclamation were dealt with fully in the annual report for 1939 <sup>3</sup>. Four Herero agitators belonging to an organization known as the "Truppenspielers" had led a movement against Hosea Kutako, the senior Headman of the Herero in the Aminuis reserve, and the Reserve Board. To prevent bloodshed the four troublemakers were removed to other places and peace was restored in the reserve.
- (iv) In 1954 a tribesman in one of the tribal areas of Ovamboland caused trouble in that area and headed a movement against some of the tribal leaders. At the request of the tribal leaders, and after a full enquiry, at which he was present, the tribesman was removed to another tribal area in Ovamboland. After a few years he was permitted to return.

The above instances show that the powers under paragraph (d) of section I of the Proclamation have been exercised only in exceptional circumstances. Moreover, the Administrator in each instance acted only after consultation with the tribal authorities concerned.

131. In terms of section I (g) of the Proclamation the Administrator is empowered to exercise all political power and authority which, according to Native law and custom, are held by any supreme or paramount chief.

132. The position of a Native chief has been described as follows:

"The Chief is the executive head of the tribe. Nothing of any importance can be done without his knowledge and authority. But in administering tribal affairs he must always consult with his councils, both private and public; and it is one of his main duties to summon and preside over meetings of these councils as occasion arises. With them he must decide upon questions of peace and war, and see to the protection or relief of his people in case of war, pestilence, famine, or some other great calamity. He must see that the local divisions of the tribe are effectively governed by their sub-Chiefs or headmen, and take any action that may be necessary to ensure this. He controls the distribution and use of the tribal land, of which he is often figuratively termed the owner . . .

The Chief is further responsible for maintaining law and order throughout the tribe <sup>4</sup>."

133. It was consequently necessary for any system of Native administration based on traditional forms of Native government to give due

<sup>1</sup> Ipumbu was eventually allowed to return to Ovamboland.

<sup>2</sup> U.G. 31—1937, para. 341, p. 50.

<sup>3</sup> U.G. 30—1940, para. 744 *et seq.*, p. 132.

<sup>4</sup> Schapera, I., *The Bantu-Speaking Tribes of South Africa: An Ethnographical Survey* (1946), p. 178.

recognition to the position held by the chief. As each independent chief was in fact supreme or paramount in the exercise of his powers in relation to his own tribe, it was also necessary for the system of tribal government under the control of a modern Administrator or head of State to recognize a supreme or paramount chief as being in charge of all chiefs and headmen and to confer upon him the powers exercised under Native law and custom by a chief in relation to headmen and tribesmen subservient to him.

134. In South Africa this was done by means of section 1<sup>1</sup> of the Native Administration Act of 1927<sup>2</sup>, which provided as follows:

"The Governor-General shall be Supreme Chief of all Natives in the Union and shall in respect of all Natives in any part of the Union be vested with all such rights, immunities, powers and authorities as are or may be from time to time vested in him in respect of Natives in the Province of Natal<sup>3</sup>."

135. In Natal the Governor was created Supreme Chief of the Natives by section 13 of Law No. 26 of 1875, subsequently replaced by section 7 of Law No. 44 of 1887<sup>4</sup>. The powers of the Supreme Chief were set out in Chapter II of the Natal Code of Native Law<sup>5</sup>, which provided, *inter alia*:

"32. The Supreme Chief for the time being exercises in and over all Natives in the Colony of Natal, all political power and authority, subject to the provisions of section 7 of Law 44 of 1887.

33. The Supreme Chief appoints all Chiefs to preside over tribes or sections of tribes; and also divides existing tribes into two or more parts, or amalgamates tribes or parts of tribes into one tribe, as necessity or the good government of the Natives, may in his opinion require.

34. The Supreme Chief in Council may remove any Chief found guilty of any political offence, or for incompetency, or other just cause, from his position as such Chief, and may also order his removal with his family and property, to another part of the Colony. . . .

37. The Supreme Chief, acting in conjunction with the Natal Native Trust, may, when deemed expedient in the general public good, remove any tribe, or tribes, or portion thereof, or any Natives, from any part of the Colony or Location, to any other part of the Colony or Location, upon such terms and conditions and arrangements as he may determine<sup>6</sup>."

136. At the time of Union the special powers of the heads of the constituent Colonies in regard to Natives were retained by section 147 of the South Africa Act of 1909 and vested in the Governor-General<sup>7</sup>. In the

<sup>1</sup> As substituted by sec. 2 of Act No. 42 of 1956.

<sup>2</sup> Act No. 38 of 1927, in *Statutes of the Union of South Africa 1927*, Vol. I, pp. 314-351.

<sup>3</sup> Act No. 42 of 1956, sec. 2, in *Statutes of the Union of South Africa*, Part I (Nos. 1-47), p. 855.

<sup>4</sup> In *The Laws of Natal*, Vol. III (1879-1889) [1890], p. 1759.

<sup>5</sup> Contained in the Schedule to Law No. 19 of 1891 (Natal).

<sup>6</sup> *Vide The Natal Government Gazette*, Vol. XLIII, No. 2506 (11 Aug. 1891), p. 1180.

<sup>7</sup> 9 Edw. VII. C. 9, sec. 147, in *Statutes of the Union of South Africa 1909 and 1911*, p. 76.

Transvaal and Orange Free State the powers of the Supreme Chief were, however, not defined by law as in Natal<sup>1</sup>, with the result that whenever reliance was placed on such powers, the particular Native law or custom relied on had to be proved in Court<sup>2</sup>. In order to meet this hiatus, and also because of the need for consolidated and uniform provisions in the various provinces, the Native Administration Act of 1927 was enacted.

137. Provisions similar to paragraphs (c) and (d) of section 1 of Proclamation No. 15 of 1928 (S.W.A.)<sup>3</sup> were contained in the original section 5 (1) (a) and (b) of Act No. 38 of 1927<sup>4</sup>, and it is therefore apparent that the Proclamation was based on the said Act.

138. In the 1928 annual report the following reference was made to the Proclamation:

"During the year under review there was placed upon the Statute Book a Proclamation (No. 15 of 1928) which dealt comprehensively with the whole question of Native Administration. This measure, which was based on, and which closely follows similar recent legislation in the Union of South Africa, gives to the Administrator certain powers which are essential in dealing with a native population living under tribal conditions such as still exist to-day in Ovamboland, in the Kaokoveld, and on the Okavango. There was no existing enactment which conferred those powers, *and though they are such as inhere according to native custom in any Supreme Chief*, which is the relationship which the Administrator bears to native Chiefs and headmen, it was desirable that they should be constitutionally conferred on the Head of the Administration, and be clearly stated and made known<sup>5</sup>." (Italics added.)

139. From what has been stated above, the following appear:

- (i) The powers conferred by section 1 (c) and (d) of the Proclamation correspond to those enjoyed by any Native chief in South Africa or South West Africa by virtue of Native law and custom in relation to headmen and tribesmen subservient to him.
- (ii) Similar powers vested in the heads of state in Natal, Transvaal and the Orange Free State before Union, and since 1910 in the Governor-General, and the conferment of such powers was therefore part of the established South African Native policy which, as contemplated, would be applied to South West Africa<sup>6</sup>.

140. In paragraph 139 of Chapter V of the Memorials Applicants also state that—

"... in the exercise of these immense powers, the Administrator (the Governor-General) is expressly declared to be above and beyond the control or restraint of any court of law<sup>7</sup>."

They refer in this regard to section 2 of the Proclamation which provides:

<sup>1</sup> Rogers, *op. cit.*, pp. 2-3.

<sup>2</sup> *Vide Mokhalile and Others v. Union Government (Minister of Native Affairs)*, 1926 A.D. 71.

<sup>3</sup> *Vide* para. 121, *supra*.

<sup>4</sup> *Vide Statutes of the Union of South Africa 1927*, Vol. I, pp. 316-318.

<sup>5</sup> U.G. 22—1929, para. 399, p. 54.

<sup>6</sup> *Vide* para. 23, *supra*.

<sup>7</sup> I, p. 147.

"The Administrator shall not be subject to any court of law for or by reason of any order, notice, rule or regulation professed to be issued or made or of any other act whatsoever professed to be committed, ordered, permitted or done in the exercise of the powers and authority conferred by this Proclamation <sup>1</sup>."

141. A similar provision was incorporated in Chapter II of the Natal Code of Native Law <sup>2</sup>, section 40 of which reads:

"The Supreme Chief is not subject to the Supreme Court, or to any other Court of Law in the Colony of Natal, for, or by reason of, any order or proclamation, or of any other act or matter whatsoever, committed, ordered, permitted, or done either personally or in Council <sup>3</sup>."

This section, however, did not completely oust the jurisdiction of the courts. As far back as 1894 the Natal Supreme Court ruled that the section did not exclude the power of the Court to enquire into the validity of orders made by the Supreme Chief, and that his actions were immune from interference by the Court only when they fell, or were believed *bona fide* by him to fall, within his powers <sup>4</sup>.

142. In *Union Government v. Fakir* the Appellate Division of the Supreme Court of South Africa considered the meaning of section 3 (1) of Act No. 22 of 1913 which provides:

"No court of law in the Union shall, except upon a question of law reserved by a board as in this section provided, have any jurisdiction to review, quash, reverse, interdict or otherwise interfere with any proceeding, act, order, or warrant of the Minister, a board, an immigration officer or a master, had, done, or issued under this Act, and relating to the restriction or detention, or to the removal from the Union or any Province, of a person who is being dealt with as a prohibited immigrant <sup>5</sup>."

In the course of his judgment in the said case Chief Justice Innes said:

"I do not propose here to discuss the policy of such a provision. We are bound to give effect to the clear directions of the statutes. But wide though the language may be, it does not exclude the jurisdiction of the courts under every circumstance. Cases may be conceived in which interference would be justified. If there were a manifest absence of jurisdiction or if any order were made or obtained fraudulently, a competent court would be entitled to interfere and would interfere <sup>6</sup>."

143. It is respectfully submitted that, wide though the language of section 2 of the Proclamation may be, it does not have the effect of

<sup>1</sup> Proc. No. 15 of 1928 (S.W.A.), sec. 2, in *The Laws of South West Africa 1928*, p. 60.

<sup>2</sup> *Vide* para. 135, *supra*.

<sup>3</sup> *Vide The Natal Government Gazette*, Vol. XLIII, No. 2506 (11 Aug. 1891), p. 1180.

<sup>4</sup> *Siziba's Guardian v. Meseni*, 1948 N.L.R. 237.

<sup>5</sup> Act No. 22 of 1913, sec. 3 (1), *Statutes of the Union of South Africa 1913*, p. 220.

<sup>6</sup> *Union Government v. Fakir*, 1923 A.D. 466, at p. 469. *Vide also Narainsamy v. Principal Immigration Officer*, 1923 A.D. 673; *Mhlengwa v. Secretary for Native Affairs and Another*, 1952 (1) S.A.L.R. 312.

placing the Administrator <sup>1</sup> "above and beyond the control or restraint of any court of law" <sup>2</sup>. The court will intervene where it is shown that the action taken is manifestly outside the jurisdiction conferred, or where fraud or a similar element is present.

144. It may be pointed out that section 2, as also section 1, of the Proclamation merely confirm principles of Native law. In *Mokhallo and Others v. Union Government (Minister of Native Affairs)* the Appellate Division of the South African Supreme Court held:

- (i) that a paramount chief can, according to Native law and custom, remove a recalcitrant or rebellious Native from his tribe or the tribal property; and
- (ii) that his power can be exercised without an investigation or trial of the Native or Natives removed <sup>3</sup>.

145. It is further submitted that the limitation imposed on the jurisdiction of the courts by section 2 is necessary in the general public interest. It may be necessary, for instance, to act expeditiously in removing a deposed chief or a rebellious tribesman. In South Africa delay, occasioned by an interdict, in effecting a removal, has in fact resulted in the murder of a chief by a recalcitrant group in a tribe <sup>4</sup>. Protracted litigation could nullify efforts to maintain or restore law and order, and thus frustrate the purpose and aim of the Proclamation: hence the provisions of section 2.

146. The fact that decisions under section 1 of the Proclamation are taken at the highest level, and only after careful investigation, consultation and consideration, affords substantial protection against arbitrary action and abuse of the powers conferred by the Proclamation. In this connection attention is respectfully drawn to the failure of the Applicants to refer to a single case of arbitrary action under the section or of abuse of the powers conferred.

147. The Permanent Mandates Commission, although fully aware of the relevant provisions of the Proclamation <sup>5</sup>, did not object to them, and it is respectfully submitted that there is again no substance in the suggestion of "arbitrary and discriminatory" restrictions as far as the said provisions are concerned. They apply specifically to Natives, not because of any discriminatory intent, but because they relate to matters peculiarly concerned with the government of Natives living in their traditional tribal societies. This will become even more apparent as the Native groups progressively achieve self-government in their own areas, when the powers conferred by section 1 of the Proclamation can be delegated to their own authorities.

<sup>1</sup> Now the State President; *vide* footnote 3 on p. 268, *supra*.

<sup>2</sup> *Vide* I, para. 139, p. 147.

<sup>3</sup> *Mokhallo and Others v. Union Government (Minister of Native Affairs)*, 1926 A.D. 71.

<sup>4</sup> *Vide* U. of S.A., *Parl. Deb., House of Assembly*, Vol. 77 (1952), Cols. 552, 562-563, and 1236-1237.

<sup>5</sup> *Vide* para. 138, *supra*.

## III. RIGHTS OF RESIDENCE IN THE POLICE ZONE

148. In paragraph 140 of Chapter V of the Memorials<sup>1</sup> reference is made to section 6 (4) of Proclamation No. 29 of 1935 (S.W.A.)<sup>2</sup>, as amended, in terms of which Natives recruited from the northern areas for labour within the Police Zone may remain within the Zone only for the period of employment provided for in the contract, and in no case exceeding two and a half years.

In the last sentence of the said paragraph the Applicants also rely on section 9 of the Proclamation, but since the requirements of the Proclamation relating to passes are again referred to by Applicants under the heading "Freedom of Movement", Respondent will deal with section 9 in its reply to that part of the Memorials<sup>3</sup>.

149. The practical effect of the Proclamation is that labourers recruited outside the Police Zone return to their tribal areas after a fixed period of employment in the Zone. Provision therefor was made at the specific request of the tribal authorities in the northern areas who wish to protect their tribes from disintegration and to maintain tribal relations.

150. In this regard reference may be made to the following remarks of the late Major C. H. L. Hahn in 1945 while he was Native Commissioner of Ovamboland:

"Most of the labour requirements for South West Africa are met by recruits from Ovamboland. In order that these natives do not become detribalized their chiefs and headmen have specifically requested that they are employed or contracted for not longer than two years at a time. After the expiration of their contracts they are repatriated home, as required by the Administration, and are not re-contracted before they have spent at least three months with their own people. No male native under the age of 18 is accepted for contract work<sup>4</sup>."

151. Prior to the enactment of the Proclamation it was the experience of the tribal authorities that, once having left the reserve and taken up employment in the Police Zone, many of the younger contract labourers failed to return to their homes. This resulted not only in a drainage of manpower from the reserves, but also in families being left destitute. As *Silas Fikameni Ipumbu*, a senior headman of the Kuambi tribe, put it:

"... many of the ... [labourers] ... became detribalized or had children by women in the Police Zone and their own families in Ovamboland were being neglected<sup>5</sup>".

152. The Administration was consequently asked by the tribal authorities concerned to take steps to ensure the return of these labourers.

<sup>1</sup> I, p. 147.

<sup>2</sup> Proc. No. 29 of 1935 (S.W.A.), sec. 6 (4), in *The Laws of South West Africa 1935*, Vol. XIV, p. 152, as amended, *inter alia*, by Proc. No. 38 of 1949 (S.W.A.), sec. 2, in *The Laws of South West Africa 1949*, Vol. XXVIII, p. 760.

<sup>3</sup> *Vide* Chap. IV, paras. 85-90, *infra*.

<sup>4</sup> Hahn, C. H. L., *Native Policy in South West Africa: System of Indirect Rule in Ovamboland and the Kaokoveld* (unpublished memorandum dated 27 Sep. 1945), p. 9.

<sup>5</sup> In a statement confirming the request referred to below.

The most effective way this could be done was by limiting their sojourn in the Police Zone to their initial contract period, or to any extended period, but not exceeding two and a half years in all.

153. The initial contract period of one year was increased in 1949, with the approval of the Chiefs and Headmen of Ovamboland and the Okavango Native Territory, to 18 months<sup>1</sup>. Pursuant to requests made, *inter alia*, by the said Headman *Silas Fikameni Ipumbu*, Chief *Ushona Shimi* of the Ngandjera tribe, and Headman *Angula Shilongo* of the Ndonga tribe on behalf of their respective tribes, this period was, as from 1 July 1961, again reduced to the original one year<sup>2</sup>.

154. The Proclamation was also conceived to protect the Native residents of the Police Zone from an influx of Natives from the north, which would result in unemployment for many of them. That this protection is justified, becomes apparent when it is kept in mind that while the northern Natives are in a position to make a living from agriculture, many of the Natives in the Police Zone are dependent entirely upon what they earn from employment. The fact that there is virtually no unemployment in the Police Zone can thus be attributed chiefly to the control exercised under the Proclamation.

155. It is significant that the Permanent Mandates Commission, although fully aware of the provisions of the Proclamation, never objected to it.

The object of the measure was explained in the 1935 annual report as follows:

"The principal object of this measure is to prevent northern and foreign natives from flocking into the urban locations where they become detribalized and fail to support their families left behind in the reserves or locations from which they come. In times of restricted employment they come into competition with local natives and the Administration was put to considerable expense during the recent depression in repatriating such natives from Windhoek and other centres . . . 3"

156. In Respondent's submission the charge of arbitrary and discriminatory restrictions in relation to the provisions of section 6 (4) of the Proclamation is unfounded. These provisions were conceived solely in order to promote the interests of the inhabitants of South West Africa, both outside and within the Police Zone.

#### IV. RIGHTS OF RESIDENCE IN URBAN AREAS

##### (a) *The Background to the Influx Control Provisions of the Natives (Urban Areas) Proclamation*

157. In paragraphs 141 to 144 of Chapter V of the Memorials<sup>4</sup> the Applicants object to the influx control machinery created by sections 10,

<sup>1</sup> *Vide Proc. No. 59 of 1949 (S.W.A.)*, in *The Laws of South West Africa 1949*, Vol. XXVIII, p. 782.

<sup>2</sup> *Ord. No. 11 of 1954 (S.W.A.)*, in *The Laws of South West Africa 1954*, Vol. XXXIII, pp. 655-657 read with *G.N. No. 66 of 1961 (S.A.)*, in *Government Gazette (S.A.)*, Vol. I, No. 13 (16 June 1961), p. 19.

<sup>3</sup> *U.G. 25—1936*, para. 243, p. 42.

<sup>4</sup> I. pp. 147-148.

13, 22 and 25 of the Natives (Urban Areas) Proclamation of 1951<sup>1</sup>, which replaced earlier provisions controlling the entry of Natives into urban and proclaimed areas.

158. As early as 1924 Respondent decided to pass legislation in an effort to overcome the problems created by the influx of Natives into urban areas in the Territory. This was done by means of Proclamation No. 34 of 1924 (S.W.A.), to which the following reference was made in the 1924 annual report:

“The most important measure promulgated during the year was the Natives (Urban Areas) Proclamation No. 34 of 1924. This Proclamation adopts all the main provisions of the Union Natives (Urban Areas) Act of 1923, and omits only those which are not applicable to the conditions obtaining in the territory.

It was felt absolutely necessary to make provision for the better control of natives in urban areas in the interests of the natives as well as Europeans. Experience has shown that there is a strong tendency, for natives, both men and women, to drift into urban locations where in many cases they neither want nor seek employment. As they simply loaf and do not earn money honestly they resort to illicit liquor selling, prostitution, gambling and other means to obtain it and generally degenerate. Under the new law a proper system of registration is provided for, and the Administration will be able to exercise effective control and keep urban locations clear of loafers. But this is not the sole object of the Proclamation which makes for improved conditions of residence for natives in urban areas, while the service contract is in fact a protection to the native. Not an uncommon complaint is that Europeans withhold wages or pay less than the amount agreed upon, etc. The service contract will form proof of the conditions of employment<sup>2</sup>.”

159. Section 11 of the Proclamation made provision for the declaration as a “proclaimed area” of any urban area in which an area had been reserved and accommodation provided for Native occupation in terms of the Proclamation, or of any area in which Natives were congregated in large numbers for mining and industrial purposes. In respect of an area so declared the Administrator was empowered to impose, *inter alia*, the following requirements:

- (i) all contracts of service between White employers and male Natives to be registered<sup>3</sup>;
- (ii) all male Natives to report their presence on arrival in the area and to obtain a certificate to be produced on demand<sup>4</sup>;
- (iii) all male Natives ceasing to be employed to report and obtain certificates to be produced on demand<sup>5</sup>;

<sup>1</sup> Proc. No. 56 of 1951 (S.W.A.), secs. 10, 13, 22 and 25, in *The Laws of South West Africa 1951*, Vol. XXX, pp. 108-110, 112-114, 130-136, 140-142.

<sup>2</sup> U.G. 33—1925, para. 98, p. 27.

<sup>3</sup> Proc. No. 34 of 1924 (S.W.A.), sec. 11 (1) (a), in *The Laws of South West Africa 1924*, p. 183.

<sup>4</sup> *Ibid.*, sec. 11 (1) (b), p. 183.

<sup>5</sup> *Ibid.*, sec. 11 (1) (c), p. 183.

- (iv) Natives under the age of 18 years to be refused permission to enter or reside in the area, with certain exceptions <sup>1</sup>;
- (v) Natives in the area not in employment to reside at a prescribed place until employed or exempted <sup>2</sup>;
- (vi) Natives failing to find employment within a prescribed period to depart from the area and not to return within a specified period <sup>3</sup>.

160. Natives exempted from the above provisions comprised: chiefs and headmen; Native police; employees of the Administration; ministers of religion who were marriage officers, teachers in state-aided schools and members of approved professions <sup>4</sup>.

161. Subsequent to 1924 it was found that the provisions of the above legislation were inadequate to prevent Natives from coming into the urban areas in excess of the labour requirements of those areas. This was due to the fact that the relevant provisions of Proclamation No. 34 of 1924 (S.W.A.) were directed only at requiring male Natives in proclaimed urban areas to register their contracts, and at effecting the removal of those who were not employed. This measure did not prevent the entry into such areas of male Natives for whom there was no work available. By Proclamation No. 4 of 1932 (S.W.A.) there was accordingly inserted in section 6 of the original Proclamation a sub-section (6) which provided that the Administrator could declare that no Native might enter any specified urban area for the purpose of seeking or undertaking employment or of residing therein except in accordance with prescribed conditions <sup>5</sup>.

The 1932 Proclamation also added provisions to section 11 of the original Proclamation relating to proclaimed areas. These provisions authorized the Administrator to prohibit the entry of female Natives without certain certificates of approval, and required every male Native not under contract of service to register with a prescribed officer.

162. As time went on the need for more comprehensive provisions to control the entry of Natives into White urban areas became apparent, resulting in the enactment of the Natives (Urban Areas) Proclamation of 1951.

#### (b) *The Basic Considerations of Influx Control*

163. The main consideration underlying Respondent's policy of influx control has been the necessity of preventing urban areas from becoming overcrowded with unemployed Natives.

Experience in South Africa—and elsewhere—has shown the serious social and economic problems that arise when there is an undue accumulation of Natives in urban areas without any regard to actual labour requirements and existing housing facilities. Successive commissions in South Africa revealed the consequences flowing from the lack of proper

<sup>1</sup> Proc. No. 34 of 1924 (S.W.A.), sec. 11 (1) (d), in *The Laws of South West Africa 1924*, p. 183.

<sup>2</sup> *Ibid.*, sec. 11 (1) (g), p. 184.

<sup>3</sup> *Ibid.*, sec. 11 (1) (h), p. 184.

<sup>4</sup> *Ibid.*, sec. 11 (2), p. 184.

<sup>5</sup> Proc. No. 4 of 1932 (S.W.A.), sec. 3, in *The Laws of South West Africa 1932*, p. 56. Reference to the insertion of the new sub-section was made in *U.G. 16—1933*, para. 2, p. 1.

regulation of Native influx into, and of accommodation in, urban areas. For example, the reports of the Native Affairs Commission of 1903-1905<sup>1</sup>, the Assaults on Women Commission of 1913<sup>2</sup>, and the Tuberculosis Commission of 1914<sup>3</sup>, all revealed a most deplorable situation in Native locations as a whole, where primitive conditions prevailed and where, in the early years, scant attention was paid to sanitation and housing, with the result that the health of the non-White communities was adversely affected.

164. As early as 1921 the Transvaal Local Government Commission (Stallard Commission), appointed, *inter alia*, to investigate this very matter, recommended influx control in the following terms:

"In order that the problem should be reduced to dimensions which the financial and other resources of the municipality can overtake, it is in our opinion necessary that there should be secured to the municipality—

- (i) control of the ingress of natives;
- (ii) continual removal of masterless natives.

In both these matters we consider the desired ends may be achieved by close co-operation between the municipal and Native Affairs Department officials, and also those of the Department of Justice<sup>4</sup>."

165. The permanent Native Affairs Commission in its report for the years 1937-1938 stated:

"Prior to Union there was no general legal restriction upon the acquisition of land by natives in the three States of the Transvaal, the Cape and Natal, either in rural or urban areas. There was, however, a limitation in certain areas of the Transvaal proclaimed under the Gold Law. In the Orange Free State the acquisition of land by Natives outside the area of Thaba 'Nchu was prohibited. Elsewhere, there were no legal impediments. At this time, too, the influx of Natives into urban areas had not reached serious proportions, and municipalities had not assumed the responsibility for the welfare of the people living within their borders which they discharge today. Under the *laissez-faire* conditions prevailing, industrial workers, whether European or Native, sought their own accommodation where they could find it. In the case of Natives, employers, including the Government and local authorities, provided accommodation for their employees only at their own convenience.

Where land was readily available near a town a location grew by the natural segregation of the Natives themselves. In such cases a hut or a simple house was erected by a Native on land he acquired in leasehold or other tenure, which he rented to others. Asiatics or Europeans found it profitable to build a block or iron hutments—for which Natives were always waiting—without regard to the health or sanitation of the area. In this way the larger towns and their environs, especially on the Witwatersrand, became dotted with small agglomerations of Native dwellings which were leased to any Natives and their families who were able to pay the rent. In such

<sup>1</sup> *Vide* para. 17, *supra*.

<sup>2</sup> *U.G.* 39—1913.

<sup>3</sup> *U.G.* 34—1914.

<sup>4</sup> *T.P.* 1—1922, para. 271, p. 48.

manner the slums of our cities came into being and continued until the evils which they encouraged forced themselves upon the notice of the Press and the public, and compelled legislative action<sup>1</sup>.”

166. The Native Laws Commission (1946-1948), commonly known as the Fagan Commission, reported as follows:

“... the influx of Natives into many urban areas throughout the Union, but especially into the large industrial centres, continued to outstrip the capacity of public bodies to provide housing and other amenities. The lag was accentuated during the War years (1939-1945), when building activity was practically frozen, while industries that served the war effort expanded rapidly and kept crying out for labour. Most municipalities in industrial areas were unable to prevent overcrowding in their locations or in Native townships within their jurisdiction. They naturally attempted to do so by restricting entry. The result again was terrific overcrowding, with consequent deterioration in conditions, in Native townships which, like Alexandra outside Johannesburg, are close to a big industrial town but outside the jurisdiction of its municipality; and the shanty towns of squatters around the cities grew to unmanageable proportions. Indeed, in many cases it would not be wrong to say that, to the extent to which a municipality succeeded by stringent control, in preventing overcrowding of its own area, the squatting settlements around it grew in size and congestion. Pretoria, where the municipality told us it turns away about one thousand would-be Native entrants a month as being in excess of its calculated labour turnover, is hemmed in on every side by squatters' villages that exist illegally on the neighbouring farms. . . . Johannesburg is still grappling desperately with its problem of peri-urban squatters of whom over 50,000 have already been collected in the controlled squatters' camps of Moroka and Jabavu. Durban has its Cato Manor, and Cape Town its Windermere and the shanty towns on the Cape Flats<sup>2</sup>.”

167. Following on the report of the Stallard Commission<sup>3</sup>, the initial influx control legislation in South Africa, viz., the Natives (Urban Areas) Act of 1923<sup>4</sup>, aimed at making provision for the accommodation of urban Natives in separate areas, and at the same time at limiting the numbers resident therein. The Act was subsequently amended and consolidated in Act No. 25 of 1945<sup>5</sup>.

168. In South West Africa there was a development of conditions similar to those in South Africa. During the last years of German rule in the Territory the Native urban population increased rapidly, particularly because of the influx into the towns of Natives who had lost almost all they had during and after the rebellion of 1904-1907. If this trend—likely to be accentuated at times by conditions of drought and the like, and in general likely to become stronger with the growth of towns and economic activity—had been left unchecked, a situation

<sup>1</sup> U.G. 54—1939, pp. 21-22.

<sup>2</sup> U.G. 28—1948, para. 3, p. 5.

<sup>3</sup> Vide para. 164, *supra*.

<sup>4</sup> Act No. 21 of 1923, in *Statutes of the Union of South Africa 1923*, pp. 140-197.

<sup>5</sup> In *Statutes of the Union of South Africa 1945*, pp. 108-207.

would have arisen in the towns of the Territory which would have been extremely detrimental to the welfare of the Native inhabitants. Respondent already had before it the example of the conditions that had arisen in South Africa as the result of the uncontrolled congregation of Natives in the vicinity of industrial towns, and which necessitated legislation to improve and control the position. In order, therefore, to prevent a similar development in South West Africa, Proclamation No. 34 of 1924<sup>1</sup> was enacted. As has already been pointed out<sup>2</sup>, the Proclamation was subsequently superseded by the Natives (Urban Areas) Proclamation of 1951, the purpose of which, according to its preamble, was—

“... to amend and consolidate the laws in force in the Territory which provide for *improved conditions of residence for natives in urban areas and the better administration of native affairs in such areas; for the registration and better control of contracts of service with natives in certain areas and the regulation of the ingress of natives into, and their residence in, such areas; for the restriction and regulation of the possession and use of kaffir beer and other intoxicating liquor by natives in such areas and for other incidental matters*”<sup>3</sup>. (Italics added.)

169. Respondent has already shown that the Permanent Mandates Commission was kept informed of its policy to control the influx of Natives into the urban areas of the Territory. In this regard reference may also be made to the following extract from the 1937 annual report:

“It is the policy of the Administration to restrict as far as possible the congregation of large bodies of natives in the vicinity of European areas which results, if uncontrolled, in the contamination of the European as well as the native; miscegenation; lower wage rates where there is a surplus labour supply; drunkenness through the consumption of illicitly brewed intoxicants and the spread of venereal disease and tuberculosis through overcrowded and insanitary dwellings are the usual consequences of overcrowded urban locations. Unfortunately before this law was applied some of the locations were already overcrowded by natives detribalized during the German wars or who flocked into the towns after the occupation. It is the policy of the Administration gradually to remove this surplus population and settle it in the larger reserves<sup>4</sup>.”

170. The serious problems created by the influx of Natives into urban areas are not peculiar to South Africa and South West Africa. In 1953, after a thorough investigation of all aspects of urban Native administration in tropical and southern Africa, J. L. L. Comhaire, then Assistant Professor of Social Studies at Seton Hall University in the United States, came to the following conclusion:

“Housing appears, from all available evidence, to be the main problem of urban native administration in Tropical Africa. Housing conditions today are inadequate in all towns. Reports of overcrowding, of dilapidation of existing houses, of lowering of all

<sup>1</sup> *Vide* para. 158, *supra*.

<sup>2</sup> *Vide* para. 162, *supra*.

<sup>3</sup> *Proc.* No. 56 of 1951 (S.W.A.), Preamble, in *The Laws of South West Africa 1951*, Vol. XXX, p. 90.

<sup>4</sup> *U.G.* 25—1938, para. 291, p. 47.

standards, come in from every side. The consequences of such a situation are as far-reaching as can be; if nothing is done about it, medical, moral, and economic conditions may sink below the original native standards. Why do so many Africans cling to their urban dwellings in these circumstances? Some at least must have no other reasons than the opportunities provided for drinking and prostitution, and the hopes engendered by the better life which a privileged few enjoy<sup>1</sup>."

171. The following excerpts from the report of the East Africa Royal Commission of 1953-1955 are also in point:

"... We have been led by what we have seen during our tours of East Africa and by the evidence submitted to us to emphasize the importance of finding an answer to the problems which have been created by the rapidity with which urban areas have developed. . . .

A study of official reports and the evidence of witnesses with knowledge of urban matters convinces us that conditions of life for the poorer Asian and the majority of the Africans in the towns have been deteriorating over a considerable period. The unsatisfactory nature of these conditions is indeed well known. Moreover their deterioration has not yet been arrested. An attempt must therefore be made to ascertain the precise nature of the causes which underlie them.

Whilst, as the foregoing discussion clearly indicates, many of the problems are due to poverty and bad housing, physical conditions are not the only cause<sup>2</sup>."

172. A United Nations Committee on Housing and Urban Development reported as follows in 1962:

"The process of urbanization is not a new phenomenon, but its rate has greatly increased since the Second World War. In large parts of the world there is a considerable excess of manpower, without corresponding means of employment. Furthermore, urban attraction is combined with rural deficiencies, while industrial development attracts more people to cities than are able to earn their livelihood there. Most rural migrants expect to find in the city not only a job, better housing and physical amenities, but also a richer social and human experience and access to national and universal culture<sup>3</sup>."

173. In 1959 a United Nations survey pointed out that this migration had developed into a vicious circle:

"Many under-developed countries have recognized that measures taken in the cities to improve the levels of living of the urban poor will tend to increase the attractive power of cities and encourage more rapid migration unless efforts are made at the same time to improve conditions of living and productivity in rural areas.

The prospect of increased cityward migration is especially troublesome in countries where most of the migrants are young men and

<sup>1</sup> Comhaire, J. L. L., *Aspects of Urban Administration in Tropical and Southern Africa*, Communications from the School of African Studies (New Series No. 27) [July 1953], p. 67.

<sup>2</sup> Cmd. 9475, pp. 200, 209.

<sup>3</sup> U.N. Doc. ST/SOA/50, E/CN. 5/367/Rev. 1, para. 2, p. 1.

former cultivators of food crops, as in much of Africa and the Middle East, particularly if the women and old people who are left in the villages find it hard to grow enough food for their own consumption and cannot supply a surplus to feed the towns. Even the countries with rural over-population, however, may prefer that the rural surplus should remain at home, or resettle in less-crowded rural areas, since in these countries there is usually also urban over-population, and the unemployed or under-employed present more problems in the cities <sup>1</sup>."

174. The following quotations from reports of international organizations give a general impression of the social problems created by the migration of Natives to urban areas:

- (i) "One of the many consequences of the introduction of the western economic system to Africa has been the growth of large towns. The existence of these large agglomerations of the population, where previously there had been none, has brought in its train a host of social and administrative problems. Some of these problems are associated with city life all over the world; some of them are due to the fact that many thousands of Africans are being thrown into a situation for which there is no set of prescribed behaviour in their traditions; others derive from a conflict of political dogma and economic necessity <sup>2</sup>."
- (ii) "The social effects of these developments fall into two broad groups: those resulting from the creation of a heterogeneous, largely unskilled, partly illiterate wage-earning population in towns, and those resulting from the temporary or permanent absence of young men and women from tribal areas. These two aspects are, of course, part of the same problem <sup>3</sup>."
- (iii) "The migration of labour—that is the voluntary movement of a considerable number of workers within the boundaries of their own countries or from their own countries to other countries—may, in the absence of any protective measure, lead to social evils such as:
  - (1) destitution and vagrancy;
  - (2) the spread of disease;
  - (3) the break-up of family and communal life and a reduction in the normal birth-rate;
  - (4) the wasteful dissipation of man-power;
  - (5) unsatisfactory conditions of employment;
  - (6) damage to the economy and development of the migrants' own country and of the country to which they migrate <sup>4</sup>."
- (iv) "Other 'evils of the city' represent a failure of adaptation—of the individual in his habits of work, hygiene, consumption, etc., and of the urban community as a whole in its institutions and services. Lack of education and of skills and a wide cultural gap between the city and the countryside make adjustment

<sup>1</sup> U.N. Doc. E/CN. 5/332, ST/SOA/39, p. 170.

<sup>2</sup> *Social Implications of Industrialization and Urbanization in Africa South of the Sahara* (1956), p. 693.

<sup>3</sup> *Ibid.*, p. 53.

<sup>4</sup> *African Labour Conference, 11th Session, July 1950, Final Report*, p. 111.

difficult for the rural migrant and his family. Rural customs and practices that were useful or only mildly harmful in their original context are continued into city life, where they are inappropriate and can lead to various maladies of urban society. New institutions and services required by the nature of the urban environment—for example, in connection with various problems of social security—are not developed or are developed but slowly, to take the place of the old ones that disintegrate in the modern city<sup>1</sup>.”

175. In addition to the serious housing and social problems created by the unrestricted migration of Natives to urban areas, lack of influx control can also lead to grave unemployment conditions, as appears from the following extract from a United Nations report of 1962:

“In 1957 unemployment, particularly on the Copperbelt, became a problem of steadily increasing gravity. In Northern Rhodesia and Nyasaland the attractions of the mining towns, consisting of substantial wages, bonuses and welfare amenities, are well known to European and African workseekers who are prepared to travel long distances with nothing more substantial than the hope of obtaining employment on arrival. During 1957, the fall in the price of copper forced the mining companies to effect economies which were reflected not only in the numbers of their own employees but also in the number employed by the contractors directly or indirectly dependent on the mines. Most Europeans affected found it possible to move elsewhere; on leaving employment they were usually able to draw on sufficient savings to help them to travel to their next employment. Thus the number of unemployed Europeans was not especially noticeable. By the end of 1957 the pool of unemployed Africans had become very noticeable; there were at least 10,000 in the Copperbelt towns. During 1958, unemployment continued to be a grave social problem. The price of copper continued to fall during the early part of the year and this, together with production problems, resulted in the decision to cease production at Bancroft Mine at the end of March, 1958. Efforts were made to place employees at other mines but most of the African workers accepted the company's offer of free repatriation to their home villages, and in this operation about 3,300 men, 2,100 women and 3,400 children were transported to the rural areas<sup>2</sup>.”

176. It is consequently not surprising to find that other countries have also applied a policy of influx control. In Southern Rhodesia the Registration of Natives Act of 1936<sup>3</sup> provided for control of the entry of Natives into urban areas in terms which closely resembled those of contemporary legislation in South Africa and South West Africa. In 1951 there was enacted the Native (Urban Areas) Accommodation and Registration Act<sup>4</sup> which provided for the regulation and control by

<sup>1</sup> U.N. Doc. E/CN. 5/324/Rev. 1, ST/SOA/33 (Apr. 1957), pp. 112-113.

<sup>2</sup> U.N. Doc. ST/TR1/SER.A/18, pp. 28-29.

<sup>3</sup> Act No. 14 of 1936 (Southern Rhodesia), in *The Statute Law of Southern Rhodesia in force on the 1st Day of January, 1939*, Revised Edition, Vol. II, Chap. 76, pp. 275-285.

<sup>4</sup> Act No. 20 of 1951 (Southern Rhodesia), in *The Statute Law of Southern Rhodesia 1951* (1952), pp. 285-320.

local authorities of Natives seeking employment within the areas of such authorities.

177. In Kenya, Natives not in employment are prohibited from residing in urban areas for more than 36 hours without a permit <sup>1</sup>.

178. Reference may also be made to regulation 135 (1) of the Northern Rhodesian Townships Regulations, which reads as follows:

"Any native who desires to reside in a location without erecting a hut or dwelling-house shall, if he satisfies the superintendent that he follows or intends to follow a lawful occupation, receive from the superintendent a permit allowing him to search for a registered occupier with whom to reside. If, at the expiration of one week from the receipt of such permit, such native fails to find a registered occupier as aforesaid, the superintendent may order him to remove from the location, and, if such native fails to comply with such order, he shall be guilty of an offence. If such native satisfies the superintendent that there is room available for him in any hut or dwelling-house and that the registered occupier thereof consents, the superintendent shall cause such native to be entered in the register of natives to whom permission has been granted to reside with a registered occupier <sup>2</sup>."

179. Reference may further be made to the following extract from a study by M. J. B. Molohan, published in 1959:

"In an attempt to control immigration into the towns the Belgian Congo, Kenya, Northern Rhodesia and Southern Rhodesia have had for some years pass systems, whereby Africans coming into the towns in search of employment have to report their presence to the local authorities for permission to stay in the African locations and to seek and obtain employment within a given period. In some towns an elaborate system of registration has been evolved to keep a check on all the inhabitants of the locations, but the general impression I have formed is that even in those towns such as Elizabethville, where control is exercised and where there has now been introduced a modern system of identification by means of photographs and fingerprint classification, no methods yet adopted are entirely effective and a considerable degree of evasion continues to take place. Round-ups of the locations always reveal the presence of newcomers who have not reported their arrival to the authorities <sup>3</sup>."

180. It is significant that in 1950 the African Labour Conference recommended that legislation should be passed to control the migration of Natives to urban areas. The Conference stated:

"It is . . . desirable, in the interest of the migrants and of the countries from which, within which, and into which this migration takes

<sup>1</sup> *Vide* Hailey, *An African Survey* (1957), p. 579. It would seem, however, that this measure has not been fully applied in practice.

<sup>2</sup> Regulation 135 (1) in *The Laws of Northern Rhodesia*, 1963 Edition, Vol. VI, Chap. 120, p. 111.

<sup>3</sup> Molohan, M. J. B., *Detribalization: A Study of the Areas of Tanganyika where Detribalized Persons Are Living with Recommendations As to the Administrative and Other Measures Required to Meet the Problems Arising therein* (1959), para. 94, p. 38.

place that these countries should make provisions, individually by law, or together by agreement, or by both these means combined, or otherwise for the protection of the migrants.

These provisions should be directed to the following objects so far as may be practicable:

... To prevent any migration not likely to lead to the employment of the migrants; ...

... To ensure that any migrant worker and his family may return, on the completion of a period of service, to his home<sup>1</sup>."

181. In 1963 the President of Guinea issued a decree "concerning limitation of the rural exodus", articles 1 and 2 of which read as follows:

"*Article 1.* The categories of workers without speciality, labourers, caretakers, employees paid by piece-work, etc., constituting the salaried floating population shall in future be subjected to a rigorous regimentation in matters of situations vacant and employment wanted;

(a) No person shall apply for any employment in the public sector (administration, State enterprises or societies) if he cannot give proof of residence of at least five (5) years in the place in which he applies for employment. Any person wishing to find employment not necessitating any specialisation shall join to his application a certificate of residence drawn up by the regional authorities, signed by the Commissioner of Police and countersigned by the Commander of the Region concerned.

*Article 2.* Any person effecting a displacement of long duration from the rural zones to the towns shall inform, beforehand, the officer of Police responsible for the security in the locality concerned, who shall be competent to issue in his name a permit, indicating the motives for and the duration of the absence<sup>2</sup>." (Translated from the French.)

182. In the result it is submitted that the control of the influx of Natives into urban areas in South West Africa is neither an arbitrary measure nor one which discriminates to the detriment of the Natives, but that it is, on the contrary, based on a consideration of the interests of the Natives.

183. It may then be asked why influx control is not applicable to Europeans. The answer is that the circumstances which gave rise to such control apply peculiarly to the Natives, and not to the White population group or, for that matter, to any other group, e.g., the Coloured group or the Rehoboth Basters. The urban and proclaimed areas, to which the relevant legislation applies, are all situated in the area occupied by the White group and were from the outset developed by members of this group for the purposes of their communal living. There has never been any undue influx into these areas by Whites, Coloureds or Basters.

<sup>1</sup> *African Labour Conference, 11th Session, July 1950, Final Report*, pp. 111-112.

<sup>2</sup> Decree No. 43 of 18 January 1963, in *Journal Officiel de la République de Guinée*, No. 18 (1er février 1963), p. 18.

(c) *The Implementation of Influx Control*

184. The allegations in paragraph 141 of Chapter V of the Memorials<sup>1</sup> are based on section 25 (1) and (2) of Proclamation No. 56 of 1951 (S.W.A.). Sub-section (1) reads as follows:

“(1) The Administrator<sup>2</sup> may by notice in the *Gazette* declare any urban area to be an area in respect of which he may, on being satisfied that the number of Natives within that area is in excess of the reasonable labour requirements of that area, exercise the following powers:

- (a) require the urban local authority within a specified period to lodge with him a list of the names of the natives who, in its opinion, ought to be removed from the urban area;
- (b) determine which of the natives specified in that list shall be removed from the urban area;
- (c) make provision for the accommodation of the natives so removed who are lawfully domiciled in the Territory;
- (d) notify the urban local authority of the names of the natives to be so removed and of the arrangements made for the accommodation of those of them who are lawfully domiciled in the Territory<sup>3</sup>.”

185. In terms of section 25 (2) of the Proclamation an urban local authority must, upon receiving notification from the Administrator (now the State President) in terms of sub-section (1) (d), make arrangements for the removal of the Natives concerned according to such notification, and must furthermore offer to pay to such Natives the reasonable costs of their removal<sup>4</sup>.

186. Section 25 further provides that if any Native on whom a notice has been served under sub-section (2) desires to remove with his family to any place within the Territory, other than the place at which provision for his accommodation has been made under sub-section 1 (c), the Administrator may, if he is satisfied that suitable accommodation exists for that Native and his family at that other place, authorize him to remove thereto with his family<sup>5</sup>.

187. This section was designed to give effect to Respondent's influx control policy by providing for the removal of unemployed Natives who had entered urban areas before efficient machinery to control their influx was created. In practice, however, section 25 has never been invoked as it has been found that adequate action can be taken under section 10 of the Proclamation and regulation 2 of the regulations for Proclaimed Areas<sup>6</sup>, issued under section 22 of the Proclamation.

<sup>1</sup> I, p. 147.

<sup>2</sup> Later the Governor-General and currently the State President; *vide* Act No. 56 of 1954, sec. 3, in *Statutes of the Union of South Africa 1954*, pp. 559-561.

<sup>3</sup> *Proc. No. 56 of 1951* (S.W.A.), sec. 25 (1), in *The Laws of South West Africa 1951*, Vol. XXX, p. 140.

<sup>4</sup> *Ibid.*, pp. 140-142.

<sup>5</sup> *Ibid.*, sec. 25 (3), p. 142. It may also be pointed out that in terms of sec. 25 (8) [p. 142], Natives who are not lawfully domiciled in the Territory must be removed from urban areas before Natives who are lawfully so domiciled, in so far as it is practicable to do so.

<sup>6</sup> G.N. No. 65 of 1955 (S.W.A.), in *The Laws of South West Africa 1955*, Vol. XXXIV, p. 754.

188. In the event of section 25 ever being invoked, it would only be done after careful investigation and consideration at the highest official level. A Native lawfully domiciled in the Territory will not be unduly prejudiced by his removal under the section, since alternative accommodation will have to be provided and the reasonable costs of his removal paid by the State <sup>1</sup>.

189. In paragraph 143 of Chapter V of the Memorials <sup>2</sup> reference is made to section 10 of the Proclamation as it was originally enacted. A new section has, however, been substituted <sup>3</sup>, and section 10 now provides that no unexempted Native may remain for more than 72 hours in an urban area unless permission to remain has been granted to him by a designated person.

The effect of this section is that a Native who comes from outside an urban area, and who does not fall within one of the exemptions, has 72 hours <sup>4</sup> within which to secure permission to visit that area, or to look for employment therein. In terms of section 10 (2) he may then obtain permission to seek work for a further period of 14 days, which does not, however, mean that he must actually assume duty within that period <sup>5</sup>.

In terms of section 10 (3) a Native who has obtained employment in an urban area and who is then refused permission to remain in that area, has a right of appeal to the Chief Native Commissioner <sup>6</sup>.

In terms of section 10 (6) the Administrator <sup>7</sup> may, at the request of an urban local authority, declare the whole of section 10 to be inapplicable in respect of the urban area concerned <sup>8</sup>.

190. In paragraph 144 of Chapter V of the Memorials <sup>2</sup> reference is made to regulation 2 of the regulations for Proclaimed Areas <sup>9</sup>, which is one of the regulations providing for the registration and control of Natives in a "proclaimed area", so declared in terms of section 22 of the Proclamation. The regulation lays down, *inter alia*, the powers, functions and duties of the persons authorized to act on behalf of urban local authorities, and the duties and obligations of Natives entering a proclaimed area.

In brief, all unexempted male Natives entering a proclaimed area must report within 72 hours and, if seeking employment, they can be issued with permits valid for not less than seven and not more than 14 days. If employment is not found within the period of validity of the

<sup>1</sup> Proc. No. 56 of 1951 (S.W.A.), sec. 25 (2), in *The Laws of South West Africa 1951*, Vol. XXX, pp. 140-142.

<sup>2</sup> I, p. 148.

<sup>3</sup> By Ord. No. 25 of 1954 (S.W.A.), secs. 3 and 4, in *The Laws of South West Africa 1954*, Vol. XXXIII, pp. 736-741.

<sup>4</sup> It is submitted that this period is ample for the purposes of obtaining the said permission.

<sup>5</sup> *Vide Laws of South West Africa 1954*, Vol. XXXIII, p. 739. The period of validity of permits given to persons entering for purposes other than to seek work, is not limited to the same extent. Such permits are issued for periods which will enable the holders thereof to complete the purpose of their visits.

<sup>6</sup> *Laws of South West Africa 1954*, Vol. XXXIII, p. 739.

<sup>7</sup> Now the Minister of Bantu Administration and Development.

<sup>8</sup> *Laws of South West Africa 1954*, Vol. XXXIII, p. 741.

<sup>9</sup> *Vide para. 187, supra.*

permit, an order to depart from the proclaimed area within a period of not less than two days may be issued.

191. There is a certain measure of overlapping between the provisions of the regulation and those of section 10 of the Proclamation<sup>1</sup>, in that a Native who has obtained permission to remain in a proclaimed area in terms of the regulation, has automatically complied with the requirements of section 10, should this section be applicable to the particular proclaimed area<sup>2</sup>. The regulation, which was designed to enable the authorities to keep a complete record of the arrival of all unexempted *male* Natives in proclaimed areas and of Natives employed therein, goes further than section 10, however, since such Natives must report their arrival and not merely obtain permission to remain in an urban area for longer than 72 hours, as required by section 10.

192. The Applicants allege that in terms of regulation 2 a Native who enters a proclaimed urban area must register and upon registration pay a fee of a shilling and remain within a reception depot until he obtains employment, or is required by order to leave<sup>3</sup>. These allegations are not correct, since:

- (i) Only a male Native *who is not exempt from the provisions of the regulation*<sup>4</sup> has to report his arrival in a proclaimed area to the registering officer, who then grants him permission to remain in such area<sup>5</sup>.
- (ii) Only a Native not born and permanently residing in a proclaimed area, who has entered such area for the purpose of seeking or taking up employment therein, may be directed to a reception depot, "should such have been provided in the area and should accommodation be available therein". If the registering officer is satisfied that such a Native has obtained other accommodation approved by the urban local authority, he may exempt him from residing in the depot<sup>6</sup>.
- (iii) No reception depots have as yet been established in the Territory.
- (iv) Only male Natives who are not exempted, and who are under contracts of service, require certificates of registration *if they wish to remain in a proclaimed area for a period longer than 14 days*. For such a certificate a fee of one shilling is payable<sup>7</sup>, but in practice no fees have ever been charged.

193. The Applicants also refer to regulation 6 (1), which provides:

"There shall be payable by every employer in respect of every contract of service registered in his name in terms of the preceding regulation a fee of two shillings (2/-) for every month or portion thereof during the continuance of the employment of the native

<sup>1</sup> *Vide* para. 189, *supra*.

<sup>2</sup> Sec. 10 applies only to urban areas and such areas are not necessarily proclaimed areas. *Vide Proc. No. 56 of 1951 (S.W.A.), sec. 22 (1), in The Laws of South West Africa 1951, Vol. XXX, pp. 130-134.*

<sup>3</sup> I, para. 144, p. 148.

<sup>4</sup> The categories of Natives so exempt are those contained in *Proc. No. 56 of 1951 (S.W.A.), sec. 22 (2), in The Laws of South West Africa 1951, Vol. XXX, p. 136.*

<sup>5</sup> *G.N. No. 65 of 1955 (S.W.A.), reg. 2 (1) (a), in The Laws of South West Africa 1955, Vol. XXXIV, p. 754.*

<sup>6</sup> *Ibid.*, reg. 2 (1) (b), p. 754.

<sup>7</sup> *Ibid.*, reg. 4 (1) and (2), p. 758.

under such contract. The fee shall be paid on the registration of the contract and thereafter within seven days of the commencement of every month<sup>1</sup>."

The revenue derived from the registration of contracts is paid into a special fund known as the Urban Areas Pass Fees Fund. The moneys so obtained are utilized for capital works and special services in locations and Native villages in urban areas for the direct benefit of Natives<sup>2</sup>.

194. The system requiring Native workseekers entering urban and proclaimed areas to report to a designated officer in terms of section 10 (1) of Proclamation No. 56 of 1951 (S.W.A.) and to a registering officer in terms of regulation 2 of the regulations for Proclaimed Areas<sup>3</sup>, enures for the benefit of such Natives. The designated officer invariably has a list of prospective employers and is thus able to bring workseekers into contact with such employers.

195. In order to give full effect to the above legislation, it was found necessary to require all newcomers—and not only workseekers—to urban and proclaimed areas to report to the designated officer within a certain time. In the absence of such provisions it would be impossible to control the influx of Natives into such areas.

196. It has moreover been found necessary to extend influx control to peri-urban areas. In paragraph 142 of Chapter V of the Memorials<sup>4</sup> reference is made to section 13 (1) of the Natives (Urban Areas) Proclamation, which reads as follows:

"Except with the written approval of the Administrator<sup>5</sup> given after consultation with the local authority concerned and conveyed in writing under the hand of the Chief Native Commissioner, no owner, lessee or occupier of land situated outside an urban area within five miles of the boundary thereof shall allow natives to congregate upon, or any native who is not *bona fide* in his employ to reside upon, or to occupy any dwelling on, that land; and except in accordance with the approval of the Administrator so conveyed, natives shall not congregate upon, and no native who is not *bona fide* in the employ of the owner, lessee or occupier of such land shall reside upon or occupy any dwelling on, the land<sup>6</sup>."

197. Attention is respectfully drawn to the Applicants' failure to make any reference to section 13 (5) of the Proclamation, in terms of which the other provisions of the section do not apply to:

- (i) any Native who is the owner of such land as is referred to in subsection (1);

<sup>1</sup> G.N. No. 65 of 1955 (S.W.A.), *op. cit.*, reg. 6 (1), p. 762.

<sup>2</sup> Proc. No. 56 of 1951 (S.W.A.), sec. 18, in *The Laws of South West Africa 1951*, Vol. XXX, p. 122 as amended by Ord. No. 21 of 1953 (S.W.A.), sec. 3, in *The Laws of South West Africa 1953*, Vol. XXXII, p. 403.

<sup>3</sup> The regulations apply to the following proclaimed areas: Mariental, Omaruru, Warmbad, Usakos, Otjiwarongo, Walvis Bay, Windhoek, Outjo, Luderitz, Karibib, Keetmanshoop, Tsumeb, Aus, Grootfontein, Karasburg, Gobabis, Swakopmund, Okahandja, Otavi, Maltahöhe, Bethanie, and Leonardville.

<sup>4</sup> I, pp. 147-148.

<sup>5</sup> Now the Minister of Bantu Administration and Development.

<sup>6</sup> Proc. No. 56 of 1951 (S.W.A.), sec. 13 (1), in *The Laws of South West Africa 1951*, Vol. XXX, p. 112.

- (ii) any Native who is the head of a kraal, the inhabitants of which are in the *bona fide* employment of the owner, lessee or occupier of such land;
- (iii) the wife, minor child, unmarried daughter or *bona fide* dependant of any Native entitled to reside on such land; and
- (iv) Natives residing in any Native reserve lawfully established, or in any township especially exempted by the Administrator (now the Minister) <sup>1</sup>.

198. These provisions are an indispensable part of an effective influx control system. It will be recalled that the report of the Fagan Commission, to which reference was made above <sup>2</sup>, stated, *inter alia*, as follows:

"... in many cases it would not be wrong to say that, to the extent to which a municipality succeeded by stringent control, in preventing overcrowding of its own area, the squatting settlements around it grew in size and congestion" <sup>3</sup>.

Experience has shown that Natives who are not permitted to reside in urban areas tend to congregate in squatters' camps just beyond the boundaries thereof. From there they go into the urban areas to compete for work and so create a real danger of unemployment for the Native residents of such areas. Furthermore, because these squatters' camps fall outside the jurisdiction of urban local authorities, no control can be exercised over them. They are usually shanty towns and tend to become hotbeds of disease, vice and crime, creating a serious threat to the health and safety of the inhabitants of urban areas and of surrounding farms. And, as for the squatters, living under such appalling conditions holds no future for them.

199. In the result it is evident that Respondent's influx control policy is designed to promote the well-being of the inhabitants of the Territory, including, in particular, that of the Natives. The Applicants' allegations that the policy, or particular measures involved therein, are "arbitrary" and "discriminatory" towards the Natives <sup>4</sup>, that the Mandatory has thereby "given consideration solely to the convenience or advantage of the Mandatory government and of the 'European' citizens and residents of the Territory" <sup>5</sup>, and has thereby "followed a systematic course of positive action which thwarts the well-being, inhibits the social progress and frustrates the development" of the Natives <sup>6</sup>, are consequently without substance.

#### (d) *The Establishment of Native Urban Residential Areas*

200. In paragraph 145 of Chapter V of the Memorials <sup>7</sup> the Applicants refer to section 2 (1) of Proclamation No. 56 of 1951 (S.W.A.) in terms of which urban local authorities may, with the approval of the

<sup>1</sup> Proc. No. 56 of 1951 (S.W.A.), sec. 13 (5), in *The Laws of South West Africa 1951*, Vol. XXX, p. 112.

<sup>2</sup> *Vide* para. 166, *supra*.

<sup>3</sup> U.G. 28—1948, para. 3, p. 5.

<sup>4</sup> I, para. 154 (3), p. 151.

<sup>5</sup> *Ibid.*, para. 154 (5), p. 151.

<sup>6</sup> *Ibid.*, p. 152.

<sup>7</sup> *Ibid.*, p. 148.

Administrator (now the Minister of Bantu Administration and Development), *inter alia*:

- (a) define, set apart and lay out one or more areas of land for the occupation, residence and other reasonable requirements of Natives;
- (b) define, set apart and lay out any portion of a location or any other area of land as an area or areas wherein Natives shall be permitted to acquire the lease of lots for the erection thereon of houses or huts for their own occupation;
- (c) provide buildings or huts within a location or Native village for the accommodation of Natives not living under conditions of family life;
- (d) provide buildings or huts within a location or Native village for the accommodation of Native families<sup>1</sup>.

201. In terms of section 2 (2) of the Proclamation, the approval of the Administrator under sub-section (1) may be withheld until he is satisfied in regard to the suitability of the area and the situation of the land set apart and the title thereto; the general plan and lay-out of the location or Native village; the situation, nature and dimensions of any building, and the provision made for water, lighting, sanitary and other necessary services for the location, Native village or hostel, as the case may be<sup>2</sup>.

202. Reference has previously been made<sup>3</sup> to the serious conditions that arose in South Africa as a result of the uncontrolled convergence of Natives in the towns. As long as a *laissez-faire* attitude was adopted to Native urbanization, there was no prospect of the Natives in urban areas ever being properly housed, since the economic position of the vast majority was not such that they could make provision for themselves. It became clear that in the interests of the Natives the local authorities had to assume responsibility for the proper accommodation of Natives in their respective urban areas, and the necessary powers were accordingly given to local authorities by law.

203. Section 2 (1) of the Native (Urban Areas) Proclamation of 1951 merely empowers urban local authorities to take certain steps to accommodate Natives in their respective areas. Section 3 goes further, however, in providing that whenever it appears to the Administrator<sup>4</sup>, after a local enquiry, that the facilities provided by any urban local authority in its area for the needs of Natives ordinarily employed therein are inadequate or unsuitable, he may require that local authority to take all or any of the measures mentioned in section 2. The section further provides that no location, Native village or Native hostel shall be removed, curtailed or abolished without the consent of the Administrator and then only upon such terms and conditions as to compensation or otherwise as he, after consultation with the urban local authority, may direct.

204. It is consequently clear that the above provisions were conceived with the positive object of providing suitable accommodation for Natives in urban areas. Respondent respectfully fails to appreciate how exception

<sup>1</sup> Proc. No. 56 of 1951 (S.W.A.), sec. 2 (1), in *The Laws of South West Africa 1951*, p. 94.

<sup>2</sup> *Ibid.*, sec. 2 (2), p. 94.

<sup>3</sup> *Vide* para. 163, *supra*.

<sup>4</sup> Now the Minister of Bantu Administration and Development.

can be taken to provisions which are so obviously intended to promote the interests of Natives. It must therefore be assumed that the Applicants' objection is directed at the fact that *separate* residential areas may be, and have in fact been, set aside for Natives.

205. By reason of the ultimate objectives of Respondent's policy regarding reserves and separate development, Natives are not entitled to obtain permanent residential rights or ownership in the urban areas in the Police Zone. Since Natives are, however, allowed to enter these areas in order to obtain employment, it has been necessary to provide proper accommodation for them for the purpose of such employment. Such provision has thus proceeded on an entirely different basis from that applicable to the White residents of the towns who, in turn, are not entitled to reside in Native reserves.

206. An important consideration has been the practical requirement that the necessary accommodation for Natives was to be provided at reasonably cheap rates. The rental charged for the occupation of any lot, house, hut or building let for residential purposes in a location or Native village, or the amount charged for accommodation in a Native hostel, must be such as the Administrator considers fair and reasonable<sup>1</sup>. However, section 19 (4) of the Proclamation empowers an urban local authority to remit in respect of any resident in such a location, Native village or Native hostel, the whole or portion of any fees and charges for rent, water, sanitary, health, medical and other services, payable by him or his employer<sup>2</sup>.

207. In terms of section 6 (1) of Proclamation No. 56 of 1951, the right of residence in Native residential areas is exclusively reserved to Natives, for no White person (save a police officer, an official or an approved religious or social worker) may reside in such areas<sup>3</sup>, nor may members of the White group acquire any site or premises situated in a Native village or location<sup>4</sup>. Similarly, in terms of section 31 of the Proclamation, only a Native may hire a site for trading or business, and conduct a trade or business in a Native residential area.

208. In view of the customs and way of life of the Native peoples, it has in practice been found to be to their advantage to enable them to reside in their own separate residential areas, in an atmosphere not altogether different from that of their homes in the reserves. Although individual exceptions naturally exist, the majority are strangers to the White man's way of life; to his moral code and customs and to the requirements of a European community and the European tradition and views relating to the exercise and discharge of civil rights. The Native's approach and concepts in these respects are generally moulded on a different pattern and derive from other conditions, institutions, customs and traditions.

209. It is not surprising, therefore, to find that other countries in which conditions basically similar to those in South West Africa pre-

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<sup>1</sup> *Proc. No. 56 of 1951 (S.W.A.), sec. 19 (1), in The Laws of South West Africa 1951, Vol. XXX, p. 124.*

<sup>2</sup> *Ibid.*, sec. 19 (4), p. 124.

<sup>3</sup> *Ibid.*, sec. 9 (7), p. 108.

<sup>4</sup> *Ibid.*, sec. 6, pp. 98-100.

vail, have in the past also established separate Native townships and residential areas.

210. In Southern Rhodesia, the Native Urban Locations Ordinance of 1906 empowered the Administration to establish Native Locations and to introduce in them a registration and pass system<sup>1</sup>. The Private Locations Ordinance of 1908 authorized the grant to owners of licences to lease land to Natives for residential purposes, and it also enabled a number of urban employers to erect barracks for the housing of their employees on their property<sup>2</sup>. But the result of these measures was considered unsatisfactory, and the Land Apportionment Act of 1930, as amended, provided for two alternatives: one was the creation by the Government of Native Village Settlements outside municipal boundaries, the other the establishment of "Native Urban Areas" by local Town Authorities<sup>3</sup>. In 1946 there was enacted the comprehensive Native (Urban Areas) Accommodation and Registration Act No. 6 of 1946<sup>4</sup>. The large statutory undertakings, such as the Railways and Iron and Steel Commissions, now house their own employees. In the case of other undertakings the majority of Native employees are in practice required to be accommodated in Native Urban Locations provided by the local town authorities<sup>5</sup>.

211. The position that prevailed in Kenya in 1956 is stated as follows by Hailey:

"The existing legislation makes provision for the establishment of a Location in which only Africans may reside; except in the case of those who are housed by their employers, they may live outside the location only if they obtain a special permit. Africans may build their own houses, in conformity with municipal regulations, on plots rented from the municipality, or they may rent single-roomed or two-roomed quarters erected by it. Provision exists for eviction in case of failure to pay rent, or of more than one conviction under the Liquor Licensing Laws<sup>6</sup>."

212. Sections 21, 23 (1) and 23A. of the Northern Rhodesian Urban African Housing Ordinance of 1948, as amended, read as follows:

"21. Every local authority shall establish one or more African Housing Areas for the accommodation of Africans employed within the boundaries of the area under its control.

23. (1) A local authority shall provide or cause to be provided suitable accommodation for the housing of every African employed within the boundaries of the area under its control for whom accommodation is not provided in licensed private premises . . .

<sup>1</sup> Ord. No. 4 of 1906 (Southern Rhodesia), in *The Statute Law of Southern Rhodesia* (1939), Vol. II, Title IX, Chap. 84, pp. 315-320.

<sup>2</sup> Ord. No. 14 of 1908 (Southern Rhodesia), in *The Statute Law of Southern Rhodesia* (1939), Vol. II, Title IX, Chap. 83, pp. 311-314.

<sup>3</sup> Act No. 30 of 1930 (Southern Rhodesia), as amended, secs. 29 and 32, in *The Statute Law of Southern Rhodesia* (1939), Vol. V, Title XXIV, Chap. 240, pp. 120-121.

<sup>4</sup> Act No. 6 of 1946 (Southern Rhodesia), in *The Statute Law of Southern Rhodesia* 1946 (1947), pp. 6-30.

<sup>5</sup> Hailey, *An African Survey* (1957), pp. 572-574.

<sup>6</sup> *Ibid.*, p. 578.

- 23A. A local authority with the consent of the Minister may authorise non-Africans to reside in an African Housing Area, in premises to be provided for the purpose where the nature of the services provided or the duties performed by such persons in the African Housing Area make it desirable that they should reside in the Area <sup>1</sup>."

Regulation 130 of the Northern Rhodesian Townships Regulations provides:

- "(1) The local Authority may fix the boundaries of a native location (hereinafter called a 'location'), alter the site thereof and define the streets therein. In case of any such alteration of site, the local Authority shall pay reasonable compensation to the owner of any hut or dwelling-house that may require to be removed.
- (2) The local Authority may erect and maintain huts and dwelling-houses in the location, and may let such huts and dwelling-houses to natives <sup>2</sup>."

213. In South West Africa Respondent makes, as far as is practicable, separate provision for each of the different Native groups, since the majority of Natives prefer to live in ethnically grouped communities. In an ethnic survey of the district of Windhoek, Günter Wagner remarks:

"The vast majority of Natives, however, live and prefer to live, among their own people. As among the rural population, kinship counts for more than friendship. In the comparatively few cases where, e.g., a Coloured lives in the Bergdama section, he usually does so because he has married a Bergdama woman and maintains closer contacts with his wife's than his own kin <sup>3</sup>."

Apart from the fact that the Natives are in favour of ethnic grouping, there are a number of positive advantages to this system:

- (i) Schools can be sited so that they are within easy reach of the children of the same ethnic group. Thus education of children in their mother tongue is simplified and improved and the benefit which they derive from education is enhanced accordingly.
- (ii) The inhabitants choose as their leaders men who derive their influence from their status in the group or tribe of the area of their origin. Such leaders are recognized by the officials and perform a very useful function by maintaining discipline and insisting upon law and order similar to that in their home environment. They also enable better contact to be kept with the traditionally organized groups in the homeland.
- (iii) Opportunities exist for sheltered economic and social advancement of individual Natives, who do not have to fear competition from members of the White or Coloured groups, as far as the conducting of businesses, the practising of trades, and the appointment to official positions such as those of postmasters, police officers, school

<sup>1</sup> Ord. No. 32 of 1948 (Northern Rhodesia), as amended, secs. 21, 23 (1) and 23A., in *The Laws of Northern Rhodesia*, 1959 Edition, Vol. VII, Chap. 234, p. 6 (sec. 23A. was inserted by Ord. No. 9 of 1960).

<sup>2</sup> Reg. No. 130, in *The Laws of Northern Rhodesia*, 1963 Edition, Vol. IV, Chap. 120, p. 110.

<sup>3</sup> Wagner, G., *Ethnic Survey of South West Africa* [unpublished], Part I, *District of Windhoek*, para. 300, p. 104.

principals, municipal officials, etc., in Native residential areas are concerned.

- (iv) Control by local authorities is simplified and improved by the factors mentioned in sub-paragraph (ii) above, since the system of selecting persons in positions of authority from the group itself in preference to members of other groups, tends to promote harmonious co-operation and to reduce friction.
- (v) Opportunities exist for sheltered and progressive development of the various ethnic groups in the administration of their own municipal affairs.

### E. Conclusion

214. The Applicants have, in their complaints regarding rights of residence, singled out certain statutory provisions involving restrictions on Natives, without paying regard to the compensatory and reciprocity aspects of the whole policy of which they form part, and without enquiring whether that policy, on the whole, genuinely strives at the attainment of an equitable state of balance. The Applicants' approach is apparently that there should be no restrictions applicable to any population group. Respondent has demonstrated that such an approach is misguided and not in accord with the principles and purpose of the mandate system.

215. The Applicants have further alleged that the restrictions concerned are "arbitrary" and "discriminatory" towards the Natives<sup>1</sup>; that in imposing them Respondent "has given consideration solely to the convenience or advantage of the Mandatory government and of the 'European' citizens and residents of the Territory"<sup>2</sup>, and that Respondent—

"... has followed a systematic course of positive action which thwarts the well-being, inhibits the social progress and frustrates the development of the great majority of the population of the Territory in vital and fundamental aspects of their lives"<sup>3</sup>.

These are allegations of fact, of which Applicants have offered no proof other than inferences sought to be drawn from the statutory provisions themselves, singled out as aforestated and isolated from the context of the total policy of which they form part. Respondent submits that the above survey of its policy, and of the context and reasons for the provisions in question, amply demonstrates that the Applicants' allegations are unfounded and without substance.

<sup>1</sup> I, para. 154 (3), p. 151.

<sup>2</sup> *Ibid.*, para. 154 (5), p. 151.

<sup>3</sup> *Ibid.*, para. 154 (5), p. 152.

CHAPTER IV  
**FREEDOM OF MOVEMENT**

**A. Introductory**

1. The allegations in paragraphs 146 to 153 of Chapter V of the Memorials<sup>1</sup> are thus summarized by the Applicants:

"Liberty of movement has been effectively and almost completely denied to the 'Native' population of the Territory in a large number and variety of ways hereinabove more particularly described. The U.N. Committee on South West Africa, in rendering its report to the Fourteenth Session of the General Assembly in 1959, summed up the situation by stressing the 'intricate system by which the free movement of the "Non-European" population and the "Native" population in particular is restricted and controlled in the Territory of South West Africa'. The Committee emphasized that there had been no indication of any relaxation in the system of control during 1959. The Committee went on to express 'its grave concern over the unwarranted restrictions, based on race or colour, placed on the freedom of movement of the "Native" population of South West Africa, who form the overwhelming majority of the total population' of the Territory<sup>2</sup>."

2. The Applicants further allege:

"... in the entire complex of . . . tight restrictions upon . . . (the) . . . movement (of Natives), the Mandatory has given consideration solely to the convenience or advantage of the Mandatory government and of the 'European' citizens and residents of the Territory. The Mandatory has uniformly failed to promote the material and moral well-being, the social progress and the development of overwhelmingly the larger part of the inhabitants of the Territory . . . in terms of . . . their freedom of movement. On the contrary, by law and by practice, the Mandatory has followed a systematic course of positive action which thwarts the well-being, inhibits the social progress and frustrates the development of the great majority of the population of the Territory in vital and fundamental aspects of their lives<sup>3</sup>."

3. While it is conceded that the freedom of movement of Natives in South West Africa is in certain respects restricted by laws—generally described as pass laws—Respondent denies that such freedom has been "almost completely denied to the 'Native' population of the Territory"; that the system controlling the movement of Natives is "intricate", or that the restrictions are "unwarranted" and "based on race or colour". Respondent also denies that in enacting the said laws it gave consideration only to the convenience or advantage of "the Mandatory Government and of the 'European' citizens and residents of the Territory".

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<sup>1</sup> I, pp. 148-151.

<sup>2</sup> *Ibid.*, para. 154 (4), p. 151.

<sup>3</sup> *Ibid.*, para. 154 (5), pp. 151-152.

4. As will be demonstrated, the Applicants' summary of the position is misleading, in that it creates the impression that statutory limitations on freedom of movement are applicable to Natives only. On the contrary, and for reasons that will become apparent, limitations have also been imposed upon the movement of White and Coloured persons.

5. By reason of the fact that the Native groups have not yet succeeded in creating important points of economic growth in their own areas which offer opportunities of employment to themselves and to members of other groups, there has been no need to limit and regulate in detail the movement of other groups in Native reserves. On the other hand, the area occupied by the White group has, since the assumption of the Mandate, offered such extensive opportunities of employment to members of other groups that even extra-territorial Natives have been flocking to this area. This has made it necessary to create machinery for the control of entry into, and movement in, this area in order to protect the interests of the settled White and non-White communities.

6. If the movement of members of other groups in the area occupied by the White group were not controlled, it would necessarily lead to a concentration in and around the towns and villages of this area of a large number of Natives, for many of whom there would be no employment, no adequate housing, and no other necessary facilities. This would in turn lead to the creation of slum areas and all their attendant evils<sup>1</sup>.

7. In what follows, Respondent will demonstrate that when the restrictions imposed on the freedom of movement of the inhabitants of South West Africa are judged against the background of socio-economic conditions in the Territory, it can not be said that the obligations imposed by the Mandate have been violated.

8. Since the pass or permit system as applied in the particular circumstances of South West Africa has been influenced by experience gained in South Africa, it will be necessary to trace briefly the history of the system in South Africa.

## B. The Pass System in South Africa

### I. GENERAL

9. The system of control of the movement of Natives in the White areas of South Africa by means of passes or permits has undergone a long process of development from the various different systems previously in operation to a relatively simple and uniform system for the whole of the Republic.

10. During a period of more than a century this problem of control has received the attention of several commissions of enquiry and of many experienced administrators all over the country and it has, furthermore, since Union been under constant consideration by the Department of Native Affairs (now Bantu Administration and Development). Questions repeatedly considered were, on the one hand, the possibility of abolishing the system altogether, and, on the other hand, the retention of the system but with elimination of cumbersome controls, duplication, and unnecessary restrictions.

<sup>1</sup> *Vide* Chap. III, paras. 163 *et seq.*, *supra*.

These enquiries and experience over a long period have convinced Respondent that a system of control is inevitable in a multi-group country like South Africa with so many conflicting group interests, that it is to the advantage of all the groups, and that it is essential for good and healthy relations.

11. The system which is in the process of being applied in the Republic is based on the issue to every adult of an identification card. Movement of members of one group into and in the area of another group will, as envisaged in this system, be controlled by the endorsement of such identification cards.

## II. THE DEVELOPMENT OF THE PASS SYSTEM BEFORE UNION

12. It is unnecessary to trace in detail the development of the different pass systems in South Africa before Union. A brief account will indicate that it was considered necessary in all parts of South Africa to exercise some control over the movement of Natives.

13. In Natal provision was made in 1884 for inward and outward passes<sup>1</sup>, and from 1901 identification passes had to be carried by Native servants, while employers had to keep a pass register and to enter a copy of each pass therein<sup>2</sup>.

14. In the South African Republic (Transvaal) Article 37 of a resolution of the Volksraad of 17 September 1858<sup>3</sup> provided that no non-European<sup>4</sup> could travel without a pass signed by a field-cornet. This provision was subsequently relaxed<sup>5</sup>, but in 1895 both a general pass law<sup>6</sup> and a law to control entry into, and egress from, certain proclaimed gold areas<sup>7</sup> were passed. In terms of the first of these measures a Native required a pass from his employer when moving about in his district of residence, and from a state official when moving beyond that district.

15. In the Orange Free State provision was made for a greater variety of documents in the nature of passes than anywhere else in South Africa. So, for instance, there were inward and outward passes<sup>8</sup>, travelling

<sup>1</sup> *Handbook on Race Relations in South Africa*, ed. by E. Hellmann (1949), p. 277.

<sup>2</sup> *Vide* Act No. 49 of 1901 (Natal), secs. 5, 6 and 12, in *Acts of the Parliament of the Colony of Natal, passed in the Fifth Session of the Second Colonial Parliament, 1901*, pp. 169-170 and Act No. 3 of 1904 (Natal), in *Acts of the Colony of Natal, passed in Second Session of the Fourth Colonial Parliament, 1904*, pp. 6-7.

<sup>3</sup> *Vide* Eybers, G. W. (ed.), *Select Constitutional Documents Illustrating South African History, 1795-1910* (1918), p. 413.

<sup>4</sup> It is true that the word "Kleurling" (Coloured) appears in the Article, but from the context it is clear that the word must be construed to include "Naturel" (Native).

<sup>5</sup> Law No. 6 of 1880 (South African Republic), in *De Locale Wetten der Zuid Afrikaansche Republiek 1849-1885* (1887), pp. 748-751.

<sup>6</sup> Law No. 22 of 1895 (South African Republic), in *De Locale Wetten en Volksraadsbesluiten der Zuid-Afr. Republiek*, benevens de Proclamaties van ZHEd. den Staatspresident en de belangrijke Gouvernements-Kennisgevingen, gedurende het jaar 1895 (1896), pp. 228-231.

<sup>7</sup> Law No. 23 of 1895 (South African Republic), in *De Locale Wetten en Volksraadsbesluiten der Zuid-Afr. Republiek* (1896), pp. 232-244.

<sup>8</sup> *Vide Handbook on Race Relations in South Africa* (1949), p. 280.

passes for all non-Europeans<sup>1</sup>, urban residential passes<sup>2</sup>, and rural residential passes<sup>3</sup>.

16. In the Cape Province there was much vacillation of policy from 1809, when a Proclamation of that year required every Hottentot to obtain a certificate when leaving his fixed place of abode<sup>4</sup>, to approximately 1887, when most of the pass laws fell into disuse<sup>5</sup>. It may be pointed out, however, that Act No. 40 of 1902 (Cape of Good Hope) made provision for passes for Natives leaving and entering urban locations<sup>6</sup>, and that Act No. 30 of 1895 (Cape of Good Hope) empowered local authorities to make regulations prohibiting the presence without a pass of unexempted Natives in public places between 9 p.m. and 4 a.m.<sup>7</sup>

17. Most of the efforts of administrations and of commissions which have since 1900 enquired into the operation of the pass laws, have been directed towards the simplification of existing systems, rather than their abolition. Thus Lord Milner, when High Commissioner for South Africa after the Anglo-Boer War (1899-1902), in reply to representations by the Aborigines Protection Society for the abolition of pass laws, said:

"The root idea of the old Pass Law was not a wrong one. If aboriginal natives are to come and go in large numbers in search of labour, and to reside for considerable periods in the midst of a white community, there must be some passport system, else the place will be a pandemonium. Alike for the protection of the natives and for the protection of the whites, it is absolutely essential to have some reasonable arrangements by which the incoming native can be identified, and his movements traced<sup>8</sup>."

It is significant that Lord Milner found it necessary to retain nearly all the restrictions on movement of Natives imposed by the old Transvaal legislature, at least as far as labour districts were concerned.

18. Lord Milner, seeking to introduce a comprehensive Native policy for South Africa as a whole, in 1903 appointed the South African Native Affairs Commission. This Commission was under the chairmanship of Sir Godfrey Lagden, Commissioner of Native Affairs, who had previously dealt with the pass and labour problems in the Transvaal, and who is recorded to have said:

"I am convinced of the necessity of all natives being compelled to carry passes as much for the security and protection of themselves as for the white people<sup>9</sup>."

<sup>1</sup> *Vide Handbook on Race Relations in South Africa* (1949), p. 280.

<sup>2</sup> *Ibid.*; *vide also* Law No. 8 of 1893 (Orange Free State), sec. 2, in *The Statute Law of the Orange River Colony* (1907), p. 220.

<sup>3</sup> *Vide Handbook on Race Relations in South Africa* (1949), p. 280 and Law No. 8 of 1899 (Orange Free State), sec. 1, in *The Statute Law of the Orange River Colony* (1907), p. 265.

<sup>4</sup> *Vide Egerton, H. E., A Short History of British Colonial Policy* (6th ed.), p. 271.

<sup>5</sup> *Vide Handbook on Race Relations in South Africa* (1949), pp. 276-277.

<sup>6</sup> Act No. 40 of 1902 (Cape of Good Hope), sec. 11 (13), in *Statutes of the Colony of the Cape of Good Hope passed by Parliament during the Sessions 1902-1906*, Vol. V (1906), pp. 4515-4516.

<sup>7</sup> Act No. 30 of 1895 (Cape of Good Hope), sec. 2, in *Statutes of the Cape of Good Hope 1652-1895*, Vol. III, 1887-1895 (1895), p. 3531.

<sup>8</sup> Cd. 904, pp. 23-24.

<sup>9</sup> *Ibid.*, p. 20.

The Commission was specifically instructed to compare the situation in the Cape and Natal with that in the two former Republics of the Transvaal and the Orange Free State. The Commission considered that a pass system was necessary in most of the areas covered, though it recommended, *inter alia*, that there should be less hindrance to Natives by local regulations, less irritating and needless delay at border stations and other points <sup>1</sup>.

### III. THE DEVELOPMENT OF THE PASS SYSTEM AFTER UNION <sup>2</sup>

19. In 1923 the Natives (Urban Areas) Act <sup>3</sup> repealed some of the earlier pass laws and regulations in force in the Cape, Transvaal and the Orange Free State, and provided for a considerable measure of uniformity in the pass regulations of the various provinces applicable to labour districts and proclaimed urban areas. In its original form, section 12 of the Act, *inter alia*, required every Native entering an urban area to report his arrival and to obtain written permission to remain in such area, and furthermore required any Native not finding work within a prescribed period to leave the area. Natives holding letters of exemption, registered parliamentary voters in the Cape, landowners, chiefs, headmen, and certain teachers, clergymen and interpreters were exempted <sup>4</sup>.

20. The report of the Native Economic Commission, published in 1932, contained the following comments in a section dealing with *Pass Laws and Exemption*:

"724. Reasons generally given for the enforcement of the system are:

- (1) It affords a protection to the rural Native who comes into surroundings which are entirely new and strange to him;
- (2) in so far as the pass represents a service contract it affords a further means of protection to the Native;
- (3) the pass is necessary as a means of identification;
- (4) it assists the employer in preventing strange Natives from living or sleeping on his property;
- (5) it prevents absconding from farms or other forms of employment;
- (6) in general it prevents crime;
- (7) it affords some means of stopping wholesale entry of Natives into towns, where, if not required to carry passes, a large number will deliberately refrain from being employed and will loaf and ultimately live on their wits.

725. These are reasons of practical convenience affecting the good order and well-being of the community, but many people question whether they are sufficient to justify the imposition of such drastic restrictions on liberty of movement as the pass laws require. In our opinion the reason and justification for them must be looked

<sup>1</sup> *Vide South African Native Affairs Commission 1903-5 (1904-1905), Vol. I, Report of the Commission, paras. 264-268, pp. 50-51.*

<sup>2</sup> It is not Respondent's intention to deal fully with this development, but only to touch on some of its more important facets.

<sup>3</sup> Act No. 21 of 1923, in *Statutes of the Union of South Africa 1923*, pp. 140-197.

<sup>4</sup> *Ibid.*, sec. 12, pp. 158-164.

for in the fact of the contact between the higher European civilization and the primitive indigenous society of the Native . . .

726. As regards the town problem anyone who has had the opportunity which the Commission had, of inspecting slums of the larger towns of the Union, might hesitate to assent to a statement that no control of entrance to and residence in the towns by Natives is necessary<sup>1</sup>."

21. In 1934 a Proclamation applying to the Orange Free State and the Transvaal, relaxed some of the old pass laws by making it easier for Natives to obtain certificates of exemption<sup>2</sup>. In 1945 the various pass provisions relating to urban areas were consolidated in the Natives (Urban Areas) Consolidation Act<sup>3</sup>, which, as regards Natives in urban areas, replaced Act No. 21 of 1923 as the basic control measure.

22. The report of a Commission, under the chairmanship of Mr. Justice Fagan, which had been appointed to "investigate the Native pass laws, to examine the operation of the Natives (Urban Areas) Act and if necessary to draft a new Bill", was published in 1948<sup>4</sup>. The Commission reaffirmed the basic principles of the said Act, but recommended simplification of the then existing pass laws. The main proposals of the Commission with reference to influx control and freedom of movement have been summarized as follows:

"The Commission felt that control of the large-scale movement of Natives and regulation to maintain racial separation were necessary. It advised the establishment of a system of country-wide but centrally-organized labour bureaux. With the object of gradually doing away with passes, the Commission recommended that identity cards be issued to voluntary applicants (men and women over the age of 18 years), which would allow a central record to be kept of the whereabouts of the bearers. A standing committee of representatives of the Departments of Native Affairs and of Justice should consider from time to time how far the identity card system, the stabilization and improvement of the Natives' position, and the elimination of criminal elements would permit the removal of various pass laws.

The Commission also devised a plan whereby the non-production of a document would not be an offence; a police officer, if not satisfied that a particular pass law had been complied with and if in reasonable doubt as to whether a summons could be served on a Native and whether the Native would appear in answer to it, could arrest a Native, on whom the onus would be to prove he had complied with the pass laws.

In the Commission's view, the registration of service contracts

<sup>1</sup> U.G. 22—1932, pp. 105-106.

<sup>2</sup> Proc. No. 150 of 1934 (S.A.), in *The Union of South Africa Government Gazette*, Vol. XCVII, No. 2216 (17 Aug. 1934), pp. 383-386. This Proclamation was promulgated by virtue of the provisions of Act No. 38 of 1927 (in *Statutes of the Union of South Africa 1927*, Vol. I, pp. 314-351) which empowered the Central Government to amend or repeal pass laws and to make regulations relating to passes and pass areas.

<sup>3</sup> *Vide* Act No. 25 of 1945, secs. 23, 31 and 38, in *Statutes of the Union of South Africa 1945*, pp. 154-163, 174-176, 190-200.

<sup>4</sup> U.G. 28—1948.

had many advantages, and indeed might be extended to all races for workers whose cash wages did not exceed £4 per week. Those earning over £4 per week did not need protection. The system should be extended to the rural areas.

Were its recommendations to be accepted, the Commission felt that possession of an identity card could be added to the list of exemptions—save that service contract registration should apply to all Natives earning up to £4 per week. The identity card system would provide better machinery for tracing and identifying Natives than any of the existing passes<sup>1</sup>."

23. A much simplified "pass system" was introduced in 1952 with the enactment of the Natives (Abolition of Passes and Co-ordination of Documents) Act, the purpose of which was: "To repeal the laws relating to the carrying of passes by natives; to provide for the issue of reference books to natives . . .<sup>2</sup>"

In terms of this Act every Native who has attained the age of 16 years is required to be in possession of a reference book incorporating an identity card and particulars of tax payments, permits and exemptions. The Act also makes it compulsory for all employers to report the engagement or discharge of Native employees, and establishes a Native Affairs Central Reference Bureau which keeps a record of all Natives to whom reference books have been issued. A reference book relieves the holder from carrying other documents, including passes, as provided for in earlier pass laws.

Section 16 of the Act specifically provides that the Governor-General (now the State President) may, by proclamation in the *Gazette*, and subject to such conditions, modifications and exceptions as may be prescribed, apply the provisions of the Act to South West Africa<sup>3</sup>.

24. An official memorandum issued by the Department of Native Affairs shortly after Act No. 67 of 1952 was passed, described the main advantages of the new system as follows:

"The object of this Act is to repeal the various Pass Laws which have not effectively controlled the movement of Natives in South Africa, and to provide each Native over 16 years of age with a Reference Book in which will be incorporated the identity card with photograph prescribed by the Population Registration Act, 1950 . . .

The advantage to the Native of the new system, apart from the freedom of movement that it confers, is that he is not required to carry a number of separate documents which he cannot readily prove are actually his own, and instead in one compact booklet there will be contained his name, identity number, photograph, name and address of employer, particulars of tax payments, and any other authorities or concessions that might have been granted to him.

The advantage to the employer is that by comparing the photograph with the holder of the reference book, he will be reasonably sure that there has been no impersonation and, should he later wish to contact the Native for any purpose, the Department of Native

<sup>1</sup> *Handbook on Race Relations in South Africa* (1949), footnote 2, p. 291.

<sup>2</sup> Act No. 67 of 1952, Title, in *Statutes of the Union of South Africa 1952*, p. 1013.

<sup>3</sup> Act No. 67 of 1952, *op. cit.*, sec. 16, p. 1025.

Affairs will in most cases be able to supply his latest address. The employer must, however, keep a note of the Native's identity number. The employer will also be certain that he is not engaging someone who is a deserter, or that his own employees may unlawfully leave his service . . .

In conclusion it should be noted that the Reference Book is not a 'Pass' book as the pass laws do not apply to the holder thereof. It proves who the holder is and what rights and privileges he enjoys, particularly in European areas<sup>1</sup>.

25. Most of the provisions of the Act have stood the test of practice and are still in force. Apart from its primary purposes, the present system of identification and control of movement has been found to have many practical advantages for the majority of Natives. Some of these advantages are:

- (a) Impersonation and fraud, not infrequent in the past, in regard to post office and other savings accounts held by Natives, have now become virtually impossible.
- (b) The administration of deceased estates of Natives, which formerly often gave rise to grave problems, owing, for example, to the difficulty of tracing illiterate heirs and relatives, has been made easier.
- (c) The claims of Natives entitled to payment of pensions, disability allowances, etc., can now be more easily established and recorded.
- (d) The present uniform system of identification has rendered it possible to make the registration of Native births and deaths compulsory. Before the introduction of the present system such registration was hardly practicable.
- (e) Reference books provide a positive means of determining age, often a subject of dispute in the courts.
- (f) Natives who are entitled to Workmen's Compensation now have less difficulty in proving their claims, and delays in payment can be reduced to a minimum.
- (g) The same applies to compensation payments for sufferers from miner's phthisis. Long delays were frequent in the past, as such Natives often returned to their homes in the Native territories before their cases could be disposed of, making it difficult to trace them through imperfect district records.
- (h) Identification has been made much easier in the case of deaths or serious accidents. Relatives can also now be traced and notified with far less trouble than in the past.

26. Considering the simplicity of the system as applied in South Africa today, it would hardly be possible to go further in the direction of freedom of movement while retaining, at the same time, essential and effective measures of control over the influx by Natives into European and Native urban residential areas.

27. If regard be had to the long history of the pass system in South Africa, and if it is further taken into account that one of the grounds on which Respondent founded its claim to South West Africa at the Peace Conference was that it would be to the advantage of the indigenous population if Respondent applied its Native policy to South West

<sup>1</sup> *Memorandum on the Natives (Abolition of Passes) Act, 1952* (unpublished), pp. 1-2.

Africa<sup>1</sup>, it must be assumed that when the Mandate was conferred it was within the contemplation of all parties concerned that Respondent was likely to apply to the Territory a pass policy in accordance with local conditions.

### C. The Development of the Pass or Permit System in South West Africa

#### I. THE GERMAN PASS SYSTEM

28. A German Imperial Ordinance, dated 10 April 1898, made provision for establishment of reserves for the indigenous groups<sup>2</sup>. In terms of this Ordinance persons who were not members of the group for whom a particular reserve was established, were not allowed, without the consent of the Chief Magistrate, to enter such a reserve or to reside or carry on business therein.

An Ordinance of the Governor of the Territory, dated 25 January 1906, prohibited all persons, save missionaries and inhabitants of Ovamboland, from entering that area save with the consent of the Imperial Governor. Entry into the Caprivi Zipfel without a permit was also strictly forbidden<sup>3</sup>.

29. After the rebellion of 1904-1907 the German authorities imposed a rigid pass or permit system for the Natives of the Territory. An Ordinance of the Governor, dated 18 August 1907<sup>4</sup>, compelled all Natives in the Police Zone—with the exception of children under the age of seven—to carry passes in the form of metal registration badges. Natives were required to have these badges with them at all times, and to produce them whenever requested to do so by any White person. If a Native wished to leave the district in which he resided, he had to obtain a travelling pass from a police station<sup>5</sup>.

Natives were also subject to curfew regulations. By virtue of section 8 of the above Ordinance, which required all local authorities to create the necessary machinery for the purpose, regulations were made forbidding Natives to leave their locations between 9 o'clock in the evening and 4 o'clock in the morning<sup>6</sup>.

30. It should be noted that Europeans—and the Rehoboth Basters, while they resided in the Rehoboth district—were not subject to these regulations, but other restrictions were placed on their freedom of move-

<sup>1</sup> *Vide* Book IV, Chap. IV, para. 36, of this Counter-Memorial.

<sup>2</sup> Hesse, H., *Die Landfrage und die Frage der Rechtsgültigkeit der Konzessionen in Südwestafrika*: Ein Beitrag zur wirtschaftlichen und finanziellen Entwicklung des Schutzgebietes (1906), II. Teil, pp. 94-95.

<sup>3</sup> *Vide Die deutsche Kolonial-Gesetzgebung*, Sammlung der auf die deutschen Schutzgebiete bezüglichen Gesetze, Verordnungen, Erlasse und internationalen Vereinbarungen mit Anmerkungen, Sachregister, Zehnter Band (Jahrgang 1906), pp. 25-27.

<sup>4</sup> *Ibid.*, Elfter Band (Jahrgang 1907), pp. 347-349.

<sup>5</sup> Secs. 1, 2, 3 and 10 of the Ordinance.

<sup>6</sup> *Vide*, e.g., the Notice dated 30 Nov. 1907 in respect of Swakopmund, in *Die deutsche Kolonial-Gesetzgebung*, Elfter Band (Jahrgang 1907), para. 290, p. 421 and the Notice dated 3 Dec. 1910 in respect of Grootfontein, in *Amtsblatt für das Schutzgebiet Deutsch-Südwestafrika*, I. Jahrgang, No. 20 (15. Januar 1911), p. 260.

ment. So, for instance, Europeans were barred from entering Native locations at night—in the case of Karibib, Grootfontein and Tsumeb, from entering at all—without written permission from the Police<sup>1</sup>.

## II. THE PASS SYSTEM DURING THE PERIOD 1916-1920

31. When the South African forces occupied South West Africa many Natives in the Police Zone were unemployed, and were roaming over the Territory as vagrants. In many cases families had been broken up and there was an almost entire absence of any form of tribal control<sup>2</sup>.

32. In the circumstances which prevailed the authorities were compelled to introduce control measures for the purpose of restoring law and order in the Police Zone. A memorandum signed by the Deputy Secretary, Windhoek, on 3 August 1916, retained the main feature of the German system, viz., that Natives should carry passes, but made it applicable only to males above the age of 14, and, in urban areas, also to females over 14 years.

The memorandum envisaged three kinds of passes:

- (a) Passes for Natives in employment, which were to serve also as contracts of service.
- (b) Certificates of exemption, intended mainly for Natives having visible means of support.
- (c) Passes to seek work, intended for Natives who did not possess certificates of exemption and were not in employment<sup>3</sup>.

It was also provided that a Native in employment had to obtain a travelling pass from the Police when travelling for his own purposes, and from his employer when proceeding in the latter's service.

33. The above provisions applied only to the Police Zone. In regard to Ovamboland, the provisions of Martial Law Regulation No. 30 prohibited the movement of persons, other than government officers and Native residents of Ovamboland, into and from that territory without special permits<sup>4</sup>. Persons other than government officers also required a special permit to enter the Caprivi Zipfel.

34. No legislation was passed to enforce this system, with the result that it was not strictly or uniformly applied<sup>5</sup>.

<sup>1</sup> Vide the Police Ordinance dated 14 Nov. 1907 in *Die deutsche Kolonial-Gesetzgebung*, Zwölfter Band (Jahrgang 1908), pp. 26-27 and the Local Ordinance dated 3 Dec. 1910, in *Amtsblatt für das Schutzgebiet Deutsch-Südwestafrika*, I. Jahrgang, No. 20 (15. Januar 1911), p. 259.

<sup>2</sup> Vide Chap. II, para. 13, *supra*.

<sup>3</sup> *Protectorate of South-West Africa, Native Affairs: Memorandum concerning (a) the Laws affecting the Native population in the Protectorate of South-West Africa; (b) the practice followed by the present Administration in carrying out the provisions of these Laws; and (c) the Native policy generally of the Protectorate Administration (1916)*, paras. 1-14, pp. 6-7.

<sup>4</sup> Vide G.N. No. 16 of 1916 (S.W.A.), in *Official Gazette of the Protectorate of South West Africa in Military Occupation of the Union Forces*, No. 7 (15 Mar. 1916), p. 3.

<sup>5</sup> Vide para. 48, *infra*.

## III. THE SYSTEM INTRODUCED AFTER 1920

(a) *Introductory*

35. To appreciate the necessity for introducing a system of control by means of passes or permits, regard must be had to the socio-economic effect of the above-mentioned disintegration of tribal life in the Police Zone.

In the life of the indigenous peoples all activities centred primarily around the existence and well-being of the tribal group. Within the group there was assigned to each individual his appropriate role, determined according to sex, age, position and kinship relations. In such a society people are primarily responsible to a social code, which provides its own sanctions controlling the behaviour of individuals.

36. The destruction of tribalism, and the end of their traditional form of communal living, forced the Natives concerned to fend for themselves in circumstances foreign to their customs and background. The sanctions controlling the behaviour of individuals were greatly impaired, and substitutes not yet properly appreciated. The discipline of regular labour, which involves observance of obligations towards an employer, not by reason of any traditional authority vested in him, but on account of a relationship governed by contract, was unfamiliar to the Natives. For their subsistence economy had not called for regular work, but merely for the performance of tasks necessary to provide for a living from day to day.

37. Another relevant characteristic of the Natives concerned was their nomadic habits. Basically, the Dama, the Herero and the Nama were nomads who had by no means settled down at the time of inception of the Mandate<sup>1</sup>.

38. By reason of the above, many Natives, in their detribalized state, were inclined to drift from one place to another, taking up employment for only limited periods, and moving on again when their immediate needs had been satisfied. Many existed merely on what they could take from others. A situation thus arose which threatened the safety and peaceful existence of all law-abiding inhabitants of the Police Zone.

39. To protect Natives living in the reserves against encroachment by others, it was found necessary to introduce measures controlling entry into, and movement in, such reserves.

As regards the area occupied by the White group, where opportunities of employment in a modern economy and the attractions of town life would naturally be conducive to an influx of Natives, it was particularly necessary to create a system of control regulating entry into, and movement in, such area.

(b) *Control of Movement into and in Native Reserves*

40. Regulation 11 (1) of the regulations applicable to the Berseba and Bondels Reserves provides:

"No person shall encamp, reside or be within, or enter the Reserve without a written permit so to do, signed by the Superintendent

<sup>1</sup> *Vide* Book III, Chap. II, of this Counter-Memorial.

thereof or the Native Commissioner and any person not being the lawful holder of such a permit then in force who shall encamp, reside or be within, or enter the Reserve shall except as hereinafter provided, be guilty of an offence <sup>1</sup>."

41. In terms of regulation 11 (3) any *Native* may enter these reserves for the purpose of obtaining from the superintendent a written permit to encamp, reside or be within the reserves, provided that he proceeds to the superintendent's office to obtain such permit within 48 hours of having entered the reserve. It is further provided that no building of any kind whatsoever may be erected in these reserves by any person other than a *Native* <sup>2</sup>.

Almost identical regulations apply to the other *Native* reserves in the Police Zone. <sup>3</sup>

42. Section 2 (1) of the Prohibited Areas Proclamation of 1928 provides:

"No person, not being a person employed by the Administration or the Union Government, and travelling on public service, or a native inhabitant of the District of Ovamboland as created and defined by Proclamation of the Administrator dated the second day of September, 1920 (Proclamation No. 40 of 1920), as altered from time to time, shall enter or reside or be in the said District, as altered from time to time, unless he is in possession of a permit issued to him either by or on behalf of the Secretary for South West Africa <sup>4</sup> or by the Officer in Charge of *Native* Affairs at Ondongwa <sup>5</sup>."

Section 3 of the Proclamation, which applies to the Okavango *Native* Territory, the Kaokoveld, the Eastern Caprivi Zipfel and the Bushman area beyond the Police Zone, contains similar provisions, except that permits may be issued only by or on behalf of the Secretary for South West Africa <sup>6</sup>.

43. It will be observed from the above provisions that entry into, and movement in, every *Native* reserve are strictly controlled. As regards the reserves in the Police Zone, there is a measure of differentiation between *White* and *Coloured* persons on the one hand, and *Natives* on the other, in that the latter may enter a reserve for the purpose of obtaining permits, while the former must first obtain permits before entering any reserve.

44. These measures of control were not only designed to protect the

<sup>1</sup> G.N. No. 130 of 1938 (S.W.A.), reg. 11 (1), in *The Laws of South West Africa 1938*, Vol. XVII, p. 344.

<sup>2</sup> G.N. No. 239 of 1930 (S.W.A.), reg. 15, in *The Laws of South West Africa 1930*, p. 464.

<sup>3</sup> *Vide* G.N. No. 68 of 1924 (S.W.A.), in *The Laws of South West Africa 1924*, pp. 57-63.

<sup>4</sup> Now the Secretary for Bantu Administration and Development, *vide* Ord. No. 4 of 1955 (S.W.A.), sec. 3 (1) (a), in *The Laws of South West Africa 1955*, Vol. XXXIV, p. 530.

<sup>5</sup> *Proc.* No. 26 of 1928 (S.W.A.), sec. 2 (1), in *The Laws of South West Africa 1928*, p. 106, as amended by sec. 2 and item 4 of the First Schedule of Ord. No. 2 of 1955 (S.W.A.), in *The Laws of South West Africa 1955*, Vol. XXXIV, p. 530.

<sup>6</sup> *Ibid.*, sec. 3, pp. 106-108.

inhabitants of reserves against encroachments by others<sup>1</sup>, but they in fact serve that purpose, and thus promote the interests of the inhabitants concerned.

(c) *Control of Movement into and in the Rehoboth Gebiet*

45. Paragraph 14 of the Schedule to Proclamation No. 28 of 1923 (S.W.A.) provides:

"No person other than a lawful resident of the Gebiet or a person *bona fide* travelling through the Gebiet shall be permitted to enter the Gebiet save with the written consent of the Magistrate of the District of Rehoboth who shall in every case prior to according or refusing such permission as the case may be consult with the Raad of the Rehoboth Community. An appeal from the decision of the Magistrate shall lie to the Administrator. Any person who unlawfully enters the Gebiet without the required permission shall be liable to be punished and to be removed therefrom by warrant under the hand of the Magistrate of the District of Rehoboth<sup>2</sup>."

46. By virtue of section 5 of Proclamation No. 9 of 1928 (S.W.A.) the above provisions are not applicable to:

- "(a) . . . any officer of the Administration of the Territory or the Railways and Harbours Administration for the purpose of carrying out his official duties, or of any member of the household of any such officer accompanying him; or
- (b) . . . any person *bona fide* searching for stock suspected to have strayed or been stolen; or
- (c) . . . any person for the purpose *bona fide* of transacting any business with any officer of the Administration of the Territory or the South African Railways and Harbours Administration connected with the official duties of such officer<sup>3</sup>."

47. In terms of Proclamation No. 36 of 1936 (S.W.A.) the provisions of Proclamation No. 11 of 1922 (S.W.A.)—which will be dealt with hereinafter<sup>4</sup>—were, with certain modifications, extended to the Rehoboth Gebiet<sup>5</sup>. The effect of these modifications is, *inter alia*, that a member of the Rehoboth Baster community has the same authority to issue a pass to his Native employee for travelling in the Gebiet as has a White employer in respect of his Native employee in the Police Zone<sup>6</sup>.

(d) *Control of Movement into and in the Area occupied by the White Group*

48. A Commission appointed by the Administrator during 1920 to enquire into the matter of Native locations, reserves and labour, made the following observations:

<sup>1</sup> *Vide* para. 39, *supra*.

<sup>2</sup> *Proc.* No. 28 of 1923 (S.W.A.), Schedule, para. 14, in *The Laws of South West Africa 1923*, p. 56. *Vide also* *U.G.* 41—1926, p. 102.

<sup>3</sup> *Proc.* No. 9 of 1928 (S.W.A.), sec. 5, in *The Laws of South West Africa 1928*, p. 46.

<sup>4</sup> *Vide* paras. 62 *et seq.*, *infra*.

<sup>5</sup> *Proc.* No. 11 of 1922 (S.W.A.), in *The Laws of South West Africa 1915-1922*, pp. 749-754 and *Proc.* No. 36 of 1936 (S.W.A.), sec. 2 and Schedule I, in *The Laws of South West Africa 1936*, Vol. XV, p. 104.

<sup>6</sup> *Proc.* No. 36 of 1936 (S.W.A.), Schedule I (2), in *The Laws of South West Africa 1936*, Vol. XV, p. 104.

"Until about a year ago the administration of native affairs was to a great extent regulated by the provisions of a memorandum, and we feel sure that had these been observed in spirit as well as letter the question of native control would have been on a much better footing than it is today. The absence of a pass law and the promulgation of the Master and Servant Proclamation of 1920 have rendered its provisions nugatory, and created a position under which it is practically impossible to exercise any satisfactory control. The written contract the visiting pass as well as the pass to seek for employment have been dispensed with and it cannot now be readily ascertained [whether a Native] found travelling along a road or across country is a vagrant or not . . .

To ensure . . . control the enactment of a pass law will be necessary, but unless its provisions are strictly enforced and uniformly carried out and unless the public render reasonable assistance, there can be little hope of satisfactory results being obtained <sup>1</sup>."

The Commission recommended that provision be made for the following passes: employers' passes for Natives travelling on their masters' business; official travelling passes for Natives proceeding to places of employment or going out in search of work; visiting passes, and residential passes applicable to Native reserves <sup>2</sup>.

49. It is against this background that there was passed in 1922 a Proclamation requiring Natives to obtain or carry passes under certain circumstances <sup>3</sup>. During the ensuing years it was also found necessary to require Natives from the northern territories to carry identification passes while in the Police Zone, and to enact specific provisions controlling the entry of Natives into urban and proclaimed areas.

All these provisions are referred to in paragraphs 146 to 153 of Chapter V of the Memorials <sup>4</sup>, and they will be dealt with below in the specific replies to be furnished to the allegations of the Applicants <sup>5</sup>.

#### (e) *Control of Movement into and in Native Urban Residential Areas*

50. Experience has shown that in order to avoid group friction, slum conditions and crime, it is necessary to control the entry of non-residents into Native urban residential areas. Provision for such control has consequently been made in the regulations of local authorities, as the following examples will illustrate:

- (i) Regulation 31 (11) of the Native Location Regulations for Walvis Bay provides:

"Any person desiring temporarily to enter, be or remain within the location, shall obtain a permit, hereinafter called a visitor's permit, from the Superintendent or from another person duly authorised by the Superintendent to issue such permits during the

<sup>1</sup> *Report of Native Reserves Commission (S.W.A.)*, 8 June 1921 (unpublished), pp. 14-17.

<sup>2</sup> *Ibid.*, pp. 16-17.

<sup>3</sup> *Proc. No. 11 of 1922 (S.W.A.)*. *Vide para. 62, infra.*

<sup>4</sup> *I*, pp. 148-151.

<sup>5</sup> *Vide paras. 62 et seq., infra.*

absence of the Superintendent. Any person found in the location without a visitor's permit, shall be guilty of an offence <sup>1</sup>."

Persons exempted from the provisions of the sub-regulation are clergymen, medical practitioners and officials <sup>1</sup>.

- (ii) Regulation 32 of the Okahandja Location regulations provides that no Europeans, save medical practitioners, clergymen and officials, may enter the location without written permission from the local authority concerned <sup>2</sup>.
- (iii) Regulation 8 (4) of the Tsumeb Location regulations reads as follows:  
 "No person other than a native shall be within a Location at any time, unless he is in possession of a written permit signed by the Magistrate or the superintendent . . . <sup>3</sup>"

In terms of its proviso, however, the sub-regulation does not apply to medical practitioners, ministers of religion and officials.

51. In practice, permits are granted to Europeans to enter Native urban residential areas only for very good and lawful reasons, and at night only in cases of emergency. During the period 1951 to 1960 approximately 10,000 such permits were issued to Europeans in 12 of the major urban areas in the Territory, averaging approximately 83 permits per year per urban area <sup>4</sup>.

#### (f) *The Attitude of the Permanent Mandates Commission*

52. The Permanent Mandates Commission was fully aware of the various measures relating to the control of the movement of the different groups in the Territory since the relevant legislation was referred to in the annual reports to the League of Nations.

53. The following is a summary of some of the statements in the annual reports:

*The 1922 report* <sup>5</sup>: Particulars were given of the provisions of Proclamation No. 11 of 1922 (S.W.A.) (the original Pass Law) <sup>6</sup> and of the Curfew Regulations Proclamation of 1922 <sup>7</sup>.

*The 1924 report* <sup>8</sup>: Details were given of the provisions of Proclamation No. 34 of 1924 (S.W.A.) <sup>9</sup> regulating, *inter alia*, the entry of Natives into urban areas <sup>10</sup>, and of the application of these provisions to Windhoek. Reference was also made to the Regulations for Native reserves published under Government Notice No. 68 of 1924 (S.W.A.) <sup>11</sup>.

<sup>1</sup> G.N. No. 243 of 1960 (S.W.A.), in *Official Gazette Extraordinary of South West Africa*, No. 2287 (14 Dec. 1960), p. 1196.

<sup>2</sup> G.N. No. 170 of 1933 (S.W.A.), in *Official Gazette of South West Africa*, No. 536 (1 Nov. 1933), p. 8677.

<sup>3</sup> G.N. No. 325 of 1952 (S.W.A.), in *Official Gazette of South West Africa*, No. 1726 (1 Nov. 1952), p. 3570.

<sup>4</sup> Departmental information.

<sup>5</sup> U.G. 21—1923, pp. 3, 18.

<sup>6</sup> *Vide* para. 62, *infra*.

<sup>7</sup> *Vide* para. 108, *infra*.

<sup>8</sup> U.G. 33—1925, pp. 4, 22, 27.

<sup>9</sup> Proc. No. 34 of 1924 (S.W.A.), in *The Laws of South West Africa 1924*, pp. 178-190.

<sup>10</sup> *Vide* para. 92, *infra*.

<sup>11</sup> *Vide* footnote 3 to para. 41, *supra*.

*The 1933 report*<sup>1</sup>: Reference was made to Proclamation No. 17 of 1933 (S.W.A.)<sup>2</sup> which amended Proclamation No. 11 of 1922 (S.W.A.) in respect of the issue of permits to persons other than Europeans entering the Territory<sup>3</sup>.

*The 1935 report*<sup>4</sup>: Attention was drawn to Proclamation No. 29 of 1935 (S.W.A.)<sup>5</sup> which provides for the control of the movement of northern and extra-territorial Natives in the Police Zone<sup>6</sup>.

*The 1936 report*<sup>7</sup>: Reference was made to Proclamation No. 36 of 1936 (S.W.A.) which extended the provisions of Proclamation No. 11 of 1922 (S.W.A.) to the Rehoboth *Gebiet*<sup>8</sup>.

*The 1937 report*<sup>9</sup>: A summary was given of the principal laws affecting Natives, including the pass laws.

54. During the Third Session of the Permanent Mandates Commission in 1923, after Major Herbst, the South African representative, had dealt with the requirement of passes for Natives, M. d'Andrade, a member of the Commission, said:

"... that the pass system was used in many of the colonies of South Africa and the territories of the Union. It was analogous to the passport system in Europe. The passes indicated the origin of the native, who was his chief, etc. It was no burden on the native"<sup>10</sup>.

55. During the Fourth Session of the Commission in 1924, Sir Frederick Lugard asked Mr. Hofmeyr, the South African representative, whether the pass system "... was absolutely necessary, together with the obligation to obtain permits to enter or leave the country or to travel"<sup>11</sup>. Mr. Hofmeyr replied by saying that "... it was absolutely necessary, under present conditions, if for no other reason than for the safety of the native"<sup>11</sup>.

Replying to another question of Sir Frederick Lugard concerning curfew regulations, Mr. Hofmeyr observed that—

"... regulations of this kind were necessary in towns. Natives living in the municipalities might not be abroad in the streets between nine in the evening and four in the morning. During this time they went to their location, which the white man was not allowed to enter between sunset and sunrise and where the natives might do as they pleased"<sup>12</sup>.

No further discussion followed this reply.

56. During the same session M. Beau, another member of the Commission, expressed the opinion—

"... that the system in force in all the reserves was comparatively

<sup>1</sup> U.G. 27—1934, p. 2.

<sup>2</sup> Proc. No. 17 of 1933 (S.W.A.), in *The Laws of South West Africa 1933*, p. 128.

<sup>3</sup> Vide para. 80, *infra*.

<sup>4</sup> U.G. 25—1936, pp. 4, 42.

<sup>5</sup> Proc. No. 29 of 1935 (S.W.A.), in *The Laws of South West Africa 1935*, Vol. XIV, pp. 148-158.

<sup>6</sup> Vide para. 85, *infra*.

<sup>7</sup> U.G. 31—1937, p. 3.

<sup>8</sup> Vide para. 47, *supra*.

<sup>9</sup> U.G. 25—1938, pp. 48-49.

<sup>10</sup> P.M.C., *Min.*, III, p. 106.

<sup>11</sup> *Ibid.*, IV, p. 64.

<sup>12</sup> *Ibid.*, p. 79.

liberal, the natives having the right to leave them and the whites not being allowed to enter them nor to acquire land there<sup>1</sup>.

57. In 1937, during the 31st Session of the Commission, Mr. Courtney Clarke, the South African representative, in reply to questions by Lord Hailey, said that—

“... natives required a pass to go from one reserve to another. Any native entering an urban area had to procure a pass, and to be registered as soon as he obtained employment. The Native Affairs Branch had powers to close any urban area against fresh natives coming in to seek work there. The policy was to restrict the presence of natives in urban areas to the bare requirements of urban employers<sup>2</sup>.”

58. In view of the fact that the Permanent Mandates Commission never commented adversely on Respondent's pass or permit system, it is clear that the Commission did not regard the pass laws or the steps taken in connection therewith as violations of the duties imposed by the Mandate, or, indeed, as being in any way objectionable.

#### D. Reply to the Applicants' Allegations

##### I. GENERAL

59. The statutory provisions on which the Applicants rely in paragraphs 146 to 152 of Chapter V of the Memorials<sup>3</sup> can conveniently be dealt with under the following heads:

- (a) The movement of Natives in the areas inhabited by the White group.
- (b) Egress from the Territory.
- (c) Entry into the Territory.
- (d) The movement of northern Natives into and in the Police Zone.
- (e) The entry of Natives into proclaimed areas.
- (f) Curfew restrictions.

60. As already indicated<sup>4</sup>, the Applicants object only to those provisions which restrict the movement of Natives, while no mention is made of the control exercised over the movement of White and Coloured persons<sup>5</sup>. In this way the Applicants create an entirely misleading impression of Respondent's pass or permit policy.

61. In replying to the Applicants' allegations, Respondent will demonstrate that their conclusion that “liberty of movement has been effectively and almost completely denied to the ‘Native’ population of the Territory”<sup>6</sup>, is unwarranted since:

- (a) Natives enjoy complete freedom of movement in their own areas: and
- (b) the control exercised in the areas inhabited by the White group does not unduly restrict the movement of Natives.

<sup>1</sup> P.M.C., Min. IV, p. 62.

<sup>2</sup> *Ibid.*, XXXI, p. 139.

<sup>3</sup> I, pp. 148-149.

<sup>4</sup> *Vide* para. 1, *supra*.

<sup>5</sup> *Vide* paras. 40-42 and 50, *supra*.

<sup>6</sup> I, para. 154 (4), p. 151.

## II. THE MOVEMENT OF NATIVES IN THE AREAS INHABITED BY THE WHITE GROUP

62. In paragraph 146 of Chapter V of the Memorials the Applicants allege:

"Under Section 11 of the Native Administration Proclamation 1922, no 'Native' may travel within the Police Zone except 'upon a pass issued [to him] . . .'"<sup>1</sup>

This is not a correct statement of the legal position.

In the first place, it is not section 11 of the Proclamation<sup>2</sup> which creates a prohibition against travelling without a pass. This section merely prescribes the persons by whom passes may be issued to Natives. The relevant prohibition is contained in section 10<sup>3</sup>, the material part of which reads as follows:

"Every native found beyond the confines of the location, reserve, farm or place whereon he resides or where he is employed shall be bound upon . . . demand . . . to produce his pass or his certificate of exemption . . ."<sup>4</sup>

It is clear from section 10 that a pass is only required when a Native travels outside his location or reserve or away from the farm or place where he resides, or is employed.

In the second place, section 1 of the Proclamation defines "Native" as "every male over 14 years of age one of whose parents is a member of some aboriginal race or tribe of Africa"<sup>5</sup>. It follows that section 10 does not apply to Native women and children, who may travel in the Police Zone without a pass. In this respect it is apposite to note that every White person—male or female—requires a pass or a permit to travel in a Native reserve or to enter an urban Native residential area<sup>6</sup>.

In the third place, section 6 of the Proclamation, which is not referred to by the Applicants, exempts the following Natives from the requirement of obtaining and carrying passes:

- "(a) A native policeman or messenger while on the service of the Government provided that he is in possession of a certificate of employment signed by the head of the department to which he belongs;
- (b) any native to whom a certificate of exemption has been granted by the Minister of Native Affairs<sup>7</sup> under the hand of the Chief Native Commissioner of South West Africa ;

<sup>1</sup> I, para. 154 (4), p. 148.

<sup>2</sup> Proc. No. 11 of 1922 (S.W.A.), sec. 11 (1) in *The Laws of South West Africa 1915-1922*, p. 752, as amended by Proc. No. 11 of 1927 (S.W.A.), sec. 3, in *The Laws of South West Africa 1927*, pp. 110-112, and Proc. No. 15 of 1928 (S.W.A.), Schedule, in *The Laws of South West Africa 1928*, p. 80.

<sup>3</sup> To which reference is made under the heading "Security of the Person"; vide I, para. 133, p. 145.

<sup>4</sup> Proc. No. 11 of 1922 (S.W.A.), sec. 10, in *The Laws of South West Africa 1915-1922*, pp. 751-752, amended by Proc. No. 11 of 1927 (S.W.A.), sec. 2, in *The Laws of South West Africa 1927*, p. 110.

<sup>5</sup> Proc. No. 11 of 1922 (S.W.A.), sec. 1, in *The Laws of South West Africa 1915-1922*, p. 750.

<sup>6</sup> Vide paras. 40-43 and 50, *supra*.

<sup>7</sup> As construed in terms of Act No. 56 of 1954, in *Statutes of the Union of South*

- (c) any native missionary or teacher;  
 (d) any native in the employ of a European master while accompanying such master <sup>1</sup>."

63. The number of exemptions granted under section 6 (b) during the years 1951 to 1960 was 676 out of a total of 918 applications (i.e., 73.6 per cent.), while 350 out of 363 applications for renewal of exemptions (i.e., 96.4 per cent.) were approved during the same period. Factors generally considered in applications for exemption are the applicant's general intelligence, educational qualifications, character, age, etc.

The number of Natives automatically exempted—including headmen, councillors, members of Advisory Boards, teachers, police officers, messengers, clergymen, etc.—is approximately 1,000 <sup>2</sup>.

64. To sum up, the Applicants' allegation that "no 'Native' may travel within the Police Zone except upon a pass issued" (italics added) <sup>3</sup> to him by an authorized person, is incorrect in that the relevant section of the Proclamation does not apply to:

- (i) Native females;  
 (ii) Native males of the age of 14 years and under;  
 (iii) any Native travelling within his reserve or residential area;  
 (iv) exempted Natives.

65. The essence of the provisions of section 10, read with sections 1 and 11, of the Proclamation is consequently that, for reasons already explained <sup>4</sup>, an unexempted male Native over the age of 14 years is not permitted to travel beyond his place of residence or employment in the Police Zone unless he is in possession of a pass issued by an authorized person.

The practice today is that passes are issued almost as a matter of course to Natives who wish to travel in the Police Zone.

66. The various categories of persons who may issue passes in terms of section 11—employers, magistrates, officers in charge of Native affairs, Native commissioners, superintendents of reserves, police officers, etc.—show that Respondent has endeavoured to make it as easy as possible for Natives to obtain passes.

A number of Native officials in reserves have been empowered to issue passes when, for instance, the superintendent is absent. Headmen have been appointed in reserves where there are no resident superintendents.

67. For a person in employment application for a pass is ordinarily a simple matter. And if his employer refuses to issue a pass, he is free to approach a prescribed official for one <sup>5</sup>.

68. In paragraph 133 of Chapter V of the Memorials <sup>6</sup>, under the

*Africa* 1954, pp. 559-565 and *Proc. No. 119 of 1958 (S.A.)*, in *The Laws of South West Africa 1958*, Vol. XXXVII, pp. 133-141.

<sup>1</sup> *Proc. No. 11 of 1922 (S.W.A.)*, sec. 6, in *The Laws of South West Africa 1915-1922*, p. 751.

<sup>2</sup> Departmental information.

<sup>3</sup> I, para. 146, p. 148.

<sup>4</sup> *Vide paras. 35 et seq., supra.*

<sup>5</sup> *Proc. No. 11 of 1922 (S.W.A.)*, sec. 11 (1) in *The Laws of South West Africa 1915-1922*, p. 750, as amended by *Proc. No. 11 of 1927 (S.W.A.)*, sec. 3, in *The Laws of South West Africa 1927*, p. 112.

<sup>6</sup> I, p. 145.

heading "Security of the Person", reference is made to section 10 of the Proclamation, some of the provisions of which have been dealt with above <sup>1</sup>. The Applicants apparently object to the fact that a Native who, in certain circumstances, has no pass or neglects or refuses to produce the same, may be summarily arrested by an authorized person.

69. In order to enforce the pass system properly, it was, and is, necessary to confer on authorized persons the power to demand the production of a pass and to arrest a Native <sup>2</sup> who fails to comply with such demand. The whole system would be rendered nugatory if there were no persons authorized to demand the production of passes in order to establish whether Natives travelling beyond their reserves or areas of residence or employment have in fact permission to do so.

70. Respondent has already explained why provision is made for the arrest of vagrants without warrant by certain designated persons <sup>3</sup>. For the same reasons the power to arrest Natives offending against the provisions of section 10 of the Proclamation has been conferred on authorized persons. If any such person exercises the power of arrest in an arbitrary manner, the arrested Native can avail himself of the ordinary civil remedy—viz., a claim for damages—available to all persons who have been unlawfully arrested.

71. Various provisions of the Proclamation serve to avoid hardship and to prevent an abuse of the pass system, viz.:

- (a) Section 8 makes it an offence for any person maliciously to deprive a Native of a pass, or maliciously to withhold it from him <sup>4</sup>.
- (b) Section 11 (5) permits a Native to approach an authorized person for a pass if he is unable to obtain a pass because of the absence of his employer, or for other sufficient cause <sup>5</sup>.
- (c) Section 11 (6) makes it an offence for an employer to neglect to give a pass to a Native travelling in his service <sup>5</sup>.
- (d) Section 12 (2) gives the Chief Native Commissioner the power to issue a pass when an authorized person refuses to do so <sup>6</sup>.
- (e) Section 12 (3) authorizes the Administrator <sup>7</sup> to order the issue of a pass to any Native <sup>8</sup>.

72. Reference has already been made <sup>9</sup> to the report of the South African Native Economic Commission of 1930-1932, in which it was concluded that enforcement of the pass system "affords a protection to the

<sup>1</sup> *Vide* para. 62, *supra*.

<sup>2</sup> *Vide* para. 64, *supra*.

<sup>3</sup> *Vide* Chap. II, para. 44, *supra*.

<sup>4</sup> *Proc.* No. 11 of 1922 (S.W.A.), sec. 8 in *The Laws of South West Africa 1915-1922*, p. 751.

<sup>5</sup> *Proc.* No. 11 of 1922 (S.W.A.), sec. 11, as amended by *Proc.* No. 11 of 1927 (S.W.A.), sec. 3, in *The Laws of South West Africa 1927*, p. 112.

<sup>6</sup> *Proc.* No. 11 of 1922 (S.W.A.), sec. 12 (2), as amended by *Proc.* No. 15 of 1928 (S.W.A.), Schedule, in *The Laws of South West Africa 1928*, pp. 80-82. *Vide* para. 79, *infra*.

<sup>7</sup> Now the Minister of Bantu Administration and Development; *vide* Act No. 56 of 1954, in *Statutes of the Union of South Africa 1954*, pp. 559-565 and *Proc.* No. 119 of 1958 (S.A.), in *The Laws of South West Africa 1958*, Vol. XXXVII, pp. 133-141.

<sup>8</sup> *Proc.* No. 11 of 1922 (S.W.A.), sec. 12 (3), in *The Laws of South West Africa 1915-1922*, p. 752.

<sup>9</sup> *Vide* para. 20, *supra*.

rural Native who comes into surroundings which are entirely new and strange to him". The system is also useful in removing difficulties for many Natives—so, for instance, when a Native desires to travel to an urban area, an official finds out in advance whether accommodation and employment are available in such an area.

73. It may be pointed out that other countries in which conditions basically similar to those in South West Africa prevail or have prevailed, have also found it necessary to apply a pass or permit system. The following are examples:

(a) Sections 7, 8, 9 and 10 of Chapter 77 of the Laws of Southern Rhodesia read as follows:

"7. Every male native within the Colony over the apparent age of 14 years shall register himself at the proper pass office of the district in which he resides, or with a pass officer appointed for the purpose.

Provided that this section shall not apply to any native registered under the laws heretofore in force.

8. At the time of being so registered, a certificate in the prescribed form shall be delivered to him.

9. Every male native within the Colony and being under the age of 14 years shall immediately on attaining such age register himself as in section seven of this Act provided, and obtain a certificate in the prescribed form.

10. Any native desiring to leave his district in search of work may obtain free of charge from the pass officer of the district in which he resides, or from the nearest pass officer in the direction in which he intends to proceed, a 'pass to seek work' in the prescribed form, which shall be in force for a period not exceeding 30 days <sup>1</sup>."

In terms of section 20 no person may employ or take into his service for a period longer than four days any Native who is not in possession of a certificate <sup>2</sup>.

The following general information regarding the application of the Southern Rhodesian pass system shortly after the establishment of the Central African Federation, is furnished by Hailey:

"In Southern Rhodesia every male African over 16 must obtain a registration certificate, which is both a document of identity and a record of contracts of service. Within towns proclaimed under the Native Registration Act and under the Native (Urban Areas) Accommodation and Registration Act, every unemployed African male and every unemployed African female and child not accompanied by a husband or parent must carry a pass authorizing him or her to seek employment or to visit the town; those residing in towns must possess a certificate that they are earning their living by employment within the town area. Non-indigenous Africans on first entering the territory must obtain a registration certificate and pass. In certain proclaimed towns every African in employment must possess a certificate of service (town pass) renewable every six months. It is a special feature of the Southern Rhodesian system that the registration certificate shows the rate of wages paid to the

<sup>1</sup> *The Statute Law of Southern Rhodesia in force on the 1st Day of January, 1939*, Revised Edition, Vol. II, Chap. 77, pp. 287-288.

<sup>2</sup> *Ibid.*, sec. 20, p. 289.

African by his employer, and that a medical examination is required before an African enters into a contract of service in a proclaimed municipality or town. Though the pass system in Southern Rhodesia appears complicated, its practical operation is mainly confined to the larger towns and the system is not in fact greatly in evidence in the smaller towns and rural areas<sup>1</sup>."

- (b) In Northern Rhodesia every male Native of taxable age must register and, if he resides in or visits certain proclaimed districts, be in possession of a registration certificate. In the townships Natives not in employment must carry both a registration certificate and a visitor's or resident's pass. Municipal and township regulations further provide that Natives must carry passes if they are outside their compounds between 10 p.m. and 5 a.m.<sup>2</sup>
- (c) The main features of the pass system existing in Kenya in 1956, have been summarized as follows by Hailey:

"In Kenya the Registration Ordinance of 1915 introduced a procedure under which all Natives were registered and had to carry a certificate of registration (*kipande*). This was subsequently brought into use as a record of employment and discharge. A Native was not called upon to carry his *kipande* in his Reserve, but it came to be treated as a pass when he left it, and more particularly when he visited an urban area. As has been shown in a previous chapter, the necessity for carrying the *kipande* has of late years become a political issue, and recent legislation has extended registration to all communities in the territory, but the certificate of registration now records identity only, not the terms of employment<sup>2</sup>."

74. At the present stage of development of the indigenous groups of South West Africa, the abolition of the system controlling the movement of Natives would, in Respondent's opinion, be ill-advised.

Although Respondent denies that the system at present in operation can be described as "intricate" as the United Nations Committee on South West Africa has done<sup>3</sup>, it may be pointed out that a simplification of the system is under consideration.

In view of the fact that the new system in operation in South Africa<sup>4</sup> is proving a success, Respondent contemplates applying a similar system in South West Africa as soon as practical difficulties have been overcome.

### III. EGRESS FROM THE TERRITORY

75. In paragraph 147 of Chapter V of the Memorials the Applicants allege that in terms of sections 11 and 12 of Proclamation No. 11 of 1922—

"... no 'Native' may leave the Territory of South West Africa except upon a pass which may be issued to him only by a magistrate or by the Administrator<sup>5</sup>."

76. Section 11 (2) of the Proclamation reads:

"A pass to leave the Territory shall only be issued by a magistrate,

<sup>1</sup> Lord Hailey, *An African Survey*: Revised 1956 (1957), pp. 1422-1423.

<sup>2</sup> *Ibid.*, p. 1423.

<sup>3</sup> I, para. 154 (4), p. 151.

<sup>4</sup> *Vide* para. 23, *supra*.

<sup>5</sup> I, p. 148.

native commissioner, assistant native commissioner or officer in charge of native affairs <sup>1</sup>."

This sub-section should be read with section 5, which provides that no unexempted Native may leave the Territory unless he is in possession of a pass duly issued for that purpose by an authorized person <sup>2</sup>, and with section I which defines "Native" as "... every male over 14 years of age one of whose parents is a member of some aboriginal tribe or race of Africa" <sup>3</sup>. It is consequently clear that the following Natives do not require a pass to leave the Territory:

- (a) Native females;
- (b) Native males of the age of 14 years and under;
- (c) exempted Natives <sup>4</sup>.

77. The pass required by sections 5 and 11 (2) of the Proclamation in the case of a Native who wishes to leave the Territory, is really in the nature of a passport, which must also be obtained by a White or Coloured person who intends to leave South West Africa. The only difference in this respect between Natives and White or Coloured persons is that a Native requires permission to leave the Territory for any other country, including South Africa, while a White or Coloured person requires permission to leave the Territory for any country other than South Africa <sup>5</sup>.

78. The reason for this differential treatment is to ensure that Natives in the Territory who are inexperienced, illiterate or in poor financial circumstances, do not in ignorance embark upon trips to South Africa without realizing the implications of such ventures. In cases where applicants are fully aware of the position and can meet the financial responsibilities attaching to such visits, or if they wish to go to the Republic for educational or other like purposes or to visit relatives there, passes are obtainable without difficulty <sup>6</sup>.

During the period 1951 to 1960 nearly 3,000 passes were issued to Natives to leave the Territory.

79. In paragraph 147 of Chapter V of the Memorials <sup>7</sup> the Applicants further allege that any person authorized to issue a pass under section 12 of the Proclamation, has a discretion to refuse to do so. The Applicants fail, however, to mention the provisions of section 12 (2) of the Proclamation, in terms of which there is an automatic review in every case where a pass is refused. This sub-section reads:

"If any authorized person other than a native commissioner,

<sup>1</sup> Proc. No. 11 of 1922 (S.W.A.), sec. 11 (2), as amended by Proc. No. 11 of 1927 (S.W.A.), sec. 3, in *The Laws of South West Africa 1927*, p. 112 and Proc. No. 15 of 1928 (S.W.A.), Schedule, in *The Laws of South West Africa 1928*, p. 80.

<sup>2</sup> Proc. No. 11 of 1922 (S.W.A.), sec. 5, in *The Laws of South West Africa 1915-1922*, pp. 750-751.

<sup>3</sup> *Ibid.*, sec. 1, p. 750.

<sup>4</sup> *Vide* para. 62, *supra*.

<sup>5</sup> *Vide* Act No. 34 of 1955, in *Statutes of the Union of South Africa 1955*, Part I (Nos. 1-55), pp. 238-245.

<sup>6</sup> The maximum penalty for travelling within or leaving the Territory without a pass is, in the case of a first offence, a fine not exceeding one pound (£1) or in default of payment imprisonment for a period not exceeding 14 days. (Proc. No. 11 of 1922 (S.W.A.), sec. 5, in *The Laws of South West Africa 1915-1922*, pp. 750-751.)

<sup>7</sup> I, p. 148.

assistant native commissioner or magistrate refuses to issue a pass to leave the Territory or travel therein, he shall immediately report such refusal to the native commissioner or assistant native commissioner within whose area of jurisdiction the refusal takes place, and if there is no such native commissioner or assistant native commissioner, to the magistrate of the district; and the officer to whom the report is made shall issue or refuse to issue the pass, as he deems fit. If the authorized person refusing to issue such pass is a native commissioner, assistant native commissioner or magistrate, he shall immediately report such refusal to the Secretary for South West Africa, who shall issue or refuse to issue the pass, as he thinks fit <sup>1</sup>."

Moreover, in terms of section 12 (3) of the Proclamation the Administrator <sup>2</sup> has authority to order that a pass be issued to any Native notwithstanding any prohibition or other provision in the Proclamation <sup>3</sup>. There are consequently ample safeguards to ensure that a pass will only be refused for sufficient reasons.

#### IV. ENTRY INTO THE TERRITORY

80. In paragraph 148 of Chapter V of the Memorials <sup>4</sup> reference is made to section 4 (1) of Proclamation No. 11 of 1922 (S.W.A.) in its original form <sup>5</sup>. The sub-section has been amended by Proclamations No. 17 of 1933 (S.W.A.) and No. 24 of 1935 (S.W.A.), and now reads:

"No person other than a European shall enter the Territory, and no employer shall bring into the Territory as an employee any such person as aforesaid, without a permit from the Administrator <sup>6</sup> or some officer deputed by him <sup>7</sup>."

81. In terms of section 4 (4) of the Proclamation the Administrator may, upon the conviction of any person for a contravention of the provisions of sub-section (1), direct the Secretary for South West Africa to serve an order on such person to leave the Territory <sup>8</sup>. It is consequently clear that section 4 (1) was never intended to apply to inhabitants of the Territory, and, in conformance with the principle of municipal and international law that a State cannot expel its own nationals <sup>9</sup>, the section has been enforced against foreigners only.

<sup>1</sup> Proc. No. 11 of 1922 (S.W.A.), sec. 12 (2), as amended by Proc. No. 15 of 1928 (S.W.A.), Schedule, in *The Laws of South West Africa 1928*, pp. 80-82.

<sup>2</sup> Now the Minister of Bantu Administration and Development.

<sup>3</sup> Proc. No. 11 of 1922 (S.W.A.), sec. 12 (3), in *The Laws of South West Africa 1915-1922*, p. 752.

<sup>4</sup> I, p. 149.

<sup>5</sup> Proc. No. 11 of 1922 (S.W.A.), sec. 4, in *The Laws of South West Africa 1915-1922*, p. 750.

<sup>6</sup> In the case of a Native, the Minister of Bantu Administration and Development. (*Vide* Act No. 56 of 1954 and Proc. No. 119 of 1958 (S.A.).)

<sup>7</sup> Proc. No. 11 of 1922 (S.W.A.), sec. 4 (1), as amended by Proc. No. 24 of 1935 (S.W.A.), sec. 1, in *The Laws of South West Africa 1935*, Vol. XIV, p. 140.

<sup>8</sup> Proc. No. 11 of 1922 (S.W.A.), sec. 4 (4), in *The Laws of South West Africa 1915-1922*, p. 750. If the convicted is a Native, "Administrator" and "Secretary for South West Africa" are to be construed as "Minister of Bantu Administration and Development" and "Chief Native Commissioner of South West Africa" respectively. (*Vide* Act No. 56 of 1954 and Proc. No. 119 of 1958 (S.A.).)

<sup>9</sup> *Vide* Weis, P., *Nationality and Statelessness in International Law* (1956), p. 50.

82. The purpose of section 4 (1) is to control the entry of foreign non-Whites into the Territory. This measure is necessary for the protection of the non-White employees of the Territory, and ensures that they are not replaced by non-Whites from the Republic and other countries. The subsection also prevents foreign Natives from becoming stranded in the Territory and having to be repatriated at government expense. Furthermore, it serves as a check on the entry of undesirable persons.

83. Permits to enter South West Africa are readily granted to *bona fide* visitors and also to skilled and semi-skilled labourers who have been offered positions which cannot readily be filled by inhabitants of the Territory. Available information shows that more than 5,000 such permits were issued to Natives during the period 1951 to 1960.

84. Since members of the White group are easily absorbed in the economy of the country, there has been no need to introduce measures to regulate their entry by means of permits or passes—indeed, their settlement has, in the interest of the development of the country, been encouraged.

#### V. THE ENTRY OF NORTHERN NATIVES INTO THE POLICE ZONE

85. In paragraph 149 of Chapter V of the Memorials<sup>1</sup> the Applicants refer to the provisions of sections 3 and 9 of the extra-territorial and Northern Natives Control Proclamation of 1935<sup>2</sup>. Section 3, read with sections 1 and 2, provides, *inter alia*, that every Native whose domicile of origin is outside the Police Zone must be in possession of an identification pass when in that Zone<sup>3</sup>, and in terms of section 9 such a Native must have his pass with him at all times and produce it on the demand of any authorized person, any police officer and any person to whom he engages or offers to engage himself as a servant<sup>4</sup>.

86. The purpose of the Proclamation, as stated in its preamble, is—  
 “. . . to make provision for the control of natives recruited beyond the boundaries of the territory or beyond the limits of the Police Zone, for labour within the said Zone<sup>5</sup>, and for the control of such natives as aforesaid who have voluntarily entered the said Zone<sup>6</sup>”.

<sup>1</sup> I, p. 149.

<sup>2</sup> Proc. No. 29 of 1935 (S.W.A.), in *The Laws of South West Africa 1935*, Vol. XIV, pp. 148-158.

<sup>3</sup> In terms of the proviso to sec. 3—inserted by Proc. No. 133 of 1961 (S.A.), sec. 2, in *The Laws of South West Africa 1961*, Vol. XL, p. 548—every such Native who is in possession of a current duplicate service contract, as described in regulation 5 of G.N. No. 65 of 1955 (S.W.A.) [*Laws of South West Africa 1955*, Vol. XXXIV, pp. 760-762], in his name, shall be deemed to comply with the requirement of being in possession of an identification pass.

<sup>4</sup> Proc. No. 29 of 1935 (S.W.A.), sec. 9, in *The Laws of South West Africa 1935*, Vol. XIV, p. 154.

<sup>5</sup> In terms of sec. 5 of the Proclamation (pp. 150-152) the recruiting or labour organization by which an extra-territorial or northern Native has been recruited, is obliged to hand to such Native an identification pass.

<sup>6</sup> Proc. No. 29 of 1935 (S.W.A.), Preamble, in *The Laws of South West Africa 1935*, Vol. XIV, p. 148.

87. In another context <sup>1</sup> Respondent has already dealt with section 6 (4) of the Proclamation, which provides that Native labourers recruited from areas outside the Police Zone may remain within the Zone only for the period of employment provided for in the contract, and in no case exceeding two and a half years <sup>2</sup>. It was pointed out that this limitation on the sojourn of labourers from the northern territories was imposed at the specific request of the tribal authorities of those areas who wish to protect their people against detribalization.

88. In order to ensure the exercise of proper control over the influx of extra-territorial and northern Native labourers into the Police Zone, it was necessary to require that *all* Natives outside the Police Zone must be in possession of identification passes when in the said Zone. In the absence of such a provision it would be impossible to distinguish between labourers and visitors, and impossible to ensure the return of migrant workers after the expiration of their contracts.

89. Identification passes are issued on a generous scale, as appears from the following list of such passes granted during the period 1950 to 1960 <sup>3</sup>:

1950 . . . . .	19,497
1951 . . . . .	20,108
1952 . . . . .	21,880
1953 . . . . .	19,511
1954 . . . . .	20,131
1955 . . . . .	23,199
1956 . . . . .	20,361
1957 . . . . .	23,411
1958 . . . . .	23,009
1959 . . . . .	23,303
1960 . . . . .	24,187
Total . . . . .	<u>238,597</u>

90. In view of the circumstances dealt with above and in view of the requirement that White or Coloured persons must have permits to enter the northern territories, which are inhabited exclusively by Natives, Respondent respectfully submits that there is no substance in the allegation that the relevant provisions of the Proclamation discriminate against Natives on the ground of race or colour.

<sup>1</sup> *Vide* Chap. III, paras. 148-156, *supra*.

<sup>2</sup> *Proc. No. 29 of 1935 (S.W.A.), sec. 6 (4)*, in *The Laws of South West Africa 1935*, Vol. XIV, p. 152, as amended by *Proc. No. 37 of 1940 (S.W.A.), sec. 3*, in *The Laws of South West Africa 1940*, Vol. XIX, pp. 288-290; by *Proc. No. 38 of 1949 (S.W.A.), sec. 2*, in *The Laws of South West Africa 1949*, Vol. XXVIII, p. 760, by *Proc. No. 59 of 1949 (S.W.A.), sec. 1*, in *The Laws of South West Africa 1949*, Vol. XXVIII, p. 782, by *Proc. No. 33 of 1951 (S.W.A.), sec. 2*, in *The Laws of South West Africa 1951*, Vol. XXX, p. 64; and by *Ord. No. 3 of 1955 (S.W.A.), sec. 1*, in *The Laws of South West Africa 1955*, Vol. XXXIV, p. 528.

<sup>3</sup> Departmental information.

## VI. THE ENTRY OF NATIVES INTO PROCLAIMED AREAS

91. In paragraphs 150 and 151 of Chapter V of the Memorials<sup>1</sup> reference is made to some of the powers conferred on the Administrator<sup>2</sup> by section 22 (1) of the Natives (Urban Areas) Proclamation<sup>3</sup>.

In paragraph 144 of Chapter V of the Memorials<sup>4</sup>, under the heading "Rights of Residence", the Applicants refer to regulation 2 of the Regulations for Proclaimed Areas<sup>5</sup> by virtue of which the Administrator exercised the powers mentioned in paragraph 150 of the same Chapter of the Memorials. In the present context the attack of the Applicants is apparently directed at the power of the Administrator (now the State President) to require Natives entering proclaimed areas to obtain permission to be in such areas.

92. Respondent has pointed out that section 22 is one of a number of sections of the Natives (Urban Areas) Proclamation designed to control the influx of Natives into urban and proclaimed areas. It was shown that provision for such control had been made as early as 1924 by means of Proclamation No. 34 of that year<sup>6</sup>; that Proclamation No. 4 of 1932 (S.W.A.) amended section 6 of the original Proclamation by empowering the Administrator to declare that no Native might enter any specified urban area for the purpose of seeking or undertaking employment or of residing therein, except in accordance with prescribed conditions<sup>7</sup>, and that it added provisions to section 11 of the original Proclamation which authorized the prohibition of the entry of female Natives into such areas without certificates of approval<sup>8</sup>. Respondent also dealt with the basic considerations of its influx control policy<sup>9</sup>, and demonstrated that a similar policy has been applied in other countries<sup>10</sup>. It remains to deal with the requirements of section 22 relating to the obtaining of permits or certificates<sup>11</sup>.

93. The portions of section 22 of the Proclamation on which the Applicants rely, provide that the Administrator<sup>12</sup> may require every male Native entering a proclaimed area, unless exempted by regulation, to report his arrival within a prescribed period; to obtain written permission to remain in such area, and to produce such document on demand to an authorized officer. Permission to be in a proclaimed area may be refused if there is a surplus of Native labour available in such area;

<sup>1</sup> I, p. 149.

<sup>2</sup> Now the State President; *vide* Act No. 56 of 1954.

<sup>3</sup> *Proc.* No. 56 of 1951 (S.W.A.), in *The Laws of South West Africa 1951*, Vol. XXX, pp. 90-171.

<sup>4</sup> I, p. 148.

<sup>5</sup> G.N. No. 65 of 1955 (S.W.A.), in *The Laws of South West Africa 1955*, Vol. XXXIV, p. 754. *Vide* Chap. III, para. 190, *supra*.

<sup>6</sup> *Proc.* No. 34 of 1924 (S.W.A.), in *The Laws of South West Africa 1924*, pp. 178-190. *Vide* Chap. III, para. 158, *supra*.

<sup>7</sup> *Proc.* No. 4 of 1932 (S.W.A.), sec. 3, in *The Laws of South West Africa 1932*, pp. 54-56. *Vide* Chap. III, para. 161, *supra*.

<sup>8</sup> *Ibid.*, sec. 4, p. 58. *Vide* Chap. III, para. 161, *supra*.

<sup>9</sup> *Vide* Chap. III, paras. 163-175, *supra*.

<sup>10</sup> *Ibid.*, paras. 176-181.

<sup>11</sup> *Proc.* No. 56 of 1951 (S.W.A.), sec. 22, in *The Laws of South West Africa 1951*, Vol. XXX, pp. 130-137.

<sup>12</sup> Now the State President; *vide* footnote 2 to para. 91, *supra*.

if the Native concerned has failed to comply with the requirements of the pass law<sup>1</sup>, or if he is under the age of 18 years unless he is accompanied by, is coming to, or is residing with, his parent or guardian in the said area.

94. The Administrator may also prohibit any Native female from entering a proclaimed area for the purpose of residing or obtaining employment therein, unless she is in possession of certain certificates. The provisions relating to such certificates are correctly set out in paragraph 151 of Chapter V of the Memorials<sup>2</sup>.

95. The Applicants fail to mention the provisions of section 22 (2) of the Proclamation, in terms of which the following Natives are exempt from the aforestated requirements:

- “(a) chiefs and headmen approved in such manner as may be prescribed;
- (b) native ministers of religion who are marriage officers or who carry and produce on demand to an authorized officer a certificate under the hand of the European minister, priest or missionary in charge of their church in the Territory to the effect that they are wholetime officers of such church; teachers at state-aided educational institutions, members of a police force established by law and members of any profession approved by the Administrator<sup>3</sup> by regulation;
- (c) members of the South African Police or Criminal Investigation Department;
- (d) prison warders, messengers, interpreters of the various courts of the Territory . . . while in actual employment;
- (e) any native, to whom a certificate of exemption has been granted by the Administrator under the provisions of paragraph (b) of section six of the Native Administration Proclamation, 1922 (Proclamation No. 11 of 1922) . . .”

96. The provisions of section 22 (1) of the Proclamation—which do not substantially differ from those contained in section 11 of Proclamation No. 34 of 1924<sup>5</sup>—were designed to create effective control over the influx of Natives into proclaimed areas and are in Respondent's view necessary for this purpose<sup>6</sup>.

In this regard reference may be made to the following extract from the 1932 annual report:

“With regard to material conditions, as has been made clear earlier in this report, the depression and consequent difficulty of obtaining employment has affected the urban natives more seriously than others. The position was relieved by the repatriation of considerable numbers of unemployed natives who had come from areas outside the Police Zone. Practically all of them were Ovambos. No objection to this course could be perceived as the food supply in Ovamboland

<sup>1</sup> Proc. No. 11 of 1922 (S.W.A.).

<sup>2</sup> I, p. 149.

<sup>3</sup> Now the Minister of Bantu Administration and Development.

<sup>4</sup> Proc. No. 56 of 1951 (S.W.A.), sec. 22 (2), in *The Laws of South West Africa 1951*, Vol. XXX, p. 136. *Vide* para. 62, *supra*.

<sup>5</sup> *Vide* para. 92, *supra* and Chap. III, para. 158, *supra*.

<sup>6</sup> *Vide* Chap. III, para. 163, *supra*.

was adequate and it was felt that it would be much better for them to mark time where plenty prevailed, than starve in the towns or use up the resources of other natives. Moreover, many of them, *being idle or short of food, began to resort to crime and, in the case of women, to prostitution. This action has undoubtedly helped and those remaining behind can and are being helped through*<sup>1</sup>."

97. The system for the control of the movement of members of the Native groups into and in proclaimed areas has in practice worked well in overcoming the difficulties which it was designed to remedy. Moreover, this system is simple in its application. The members of the groups concerned are fully acquainted with the system, and are in a position to obtain the prescribed documents without undue hardship or inconvenience. Thus, a Native residing in a reserve in the Police Zone who desires to proceed to a proclaimed area, applies to the superintendent of the reserve for a pass to travel to the proclaimed area. On entering this area such Native calls at the office of the registering officer where the necessary permit to look for work, or to be in the area for other purposes, is issued to him. On termination of his employment or at the end of his stay for other purposes, he obtains a travelling pass to return to the reserve.

A rural Native outside a reserve, who desires to proceed to a proclaimed area, can obtain the necessary pass from his employer, or, if not in employment, from one of the prescribed officials, and can then proceed to the urban area where the procedure is the same as stated above.

Northern Natives proceed to the offices of the New South West Africa Native Labour Association (which are well known throughout the Territory) where they are furnished with all necessary documents, and where arrangements are made for their conveyance to their respective places of employment.

98. Respondent has already pointed out<sup>2</sup> that the Permanent Mandates Commission was kept informed of the policy to control the influx of Natives into the urban areas of the Territory. Full details of the provisions of Proclamation No. 34 of 1924 (S.W.A.)<sup>3</sup> were given in the 1924 annual report<sup>4</sup>, while Proclamation No. 4 of 1932 (S.W.A.)<sup>5</sup>, which empowered the Administrator to prohibit Native females from entering proclaimed areas without certificates of approval, was referred to in the 1932 annual report<sup>6</sup>.

99. In the 1922 annual report the Administrator stated that he considered it extremely undesirable to encourage Natives to crowd into *municipal locations*<sup>7</sup>, and in the 1937 annual report the Commission was informed that "It is the policy of the Administration to restrict as far as possible the congregation of large bodies of natives in the vicinity of European areas . . ."<sup>8</sup>

<sup>1</sup> U.G. 16—1933, para. 327, p. 69.

<sup>2</sup> *Vide* Chap. III, paras. 158 and 169, *supra*.

<sup>3</sup> *Vide* para. 92, *supra*.

<sup>4</sup> U.G. 33 of 1925, pp. 4, 22, 27. *Vide* para. 53, *supra*.

<sup>5</sup> *Vide* Chap. III, para. 161, *supra*.

<sup>6</sup> U.G. 16—1933, p. 1.

<sup>7</sup> U.G. 21—1923, p. 13.

<sup>8</sup> U.G. 25—1938, para. 291, p. 47.

100. The Permanent Mandates Commission did not object to the provisions of Proclamations Nos. 34 of 1924 (S.W.A.) and 4 of 1932 (S.W.A.), or to the policy as outlined in the above statements, and it seems clear that the Commission did not regard influx control as a violation of the obligations imposed by the Mandate, or as being objectionable in any other way.

101. The provisions of section 22 of Proclamation No. 56 of 1951 (S.W.A.) are not materially different from the influx control provisions of the above Proclamations, and only provide more efficient machinery for the control of the influx of Natives into proclaimed areas. The permit system created by section 22 is, in fact, the most effective and the most reasonable method of controlling the movement of Natives into and in proclaimed areas. It is consequently submitted that if the restrictions placed on the influx of Natives into such areas are justified—as Respondent contends they are—it follows that the permit system cannot be objected to.

102. It is to be observed that section 22 merely enables the Administrator<sup>1</sup> to exercise the powers to which the Applicants refer in paragraphs 150 and 151 of Chapter V of the Memorials<sup>2</sup>. To date the power to prohibit Native females from entering proclaimed areas has not been invoked.

#### VII. CURFEW RESTRICTIONS

103. In paragraph 152 of Chapter V of the Memorials the Applicants allege, with reference to section 27 (1) of Proclamation No. 56 of 1951 (S.W.A.)<sup>3</sup>, that—

“The Administrator may at the request of any urban local authority prescribe a curfew, under which no ‘Native’ shall be in any public place within the area controlled by such authority during such hours of the night as are specified . . .’<sup>2</sup>”

104. The omission on the part of the Applicants to mention all the provisions of sub-section (1), or any of the provisions of sub-section (4) of section 27, tends to create a distorted impression of the extent of the powers conferred by the section.

Sub-section (1) reads as follows:

“The Administrator<sup>1</sup> may, by notice in the *Gazette* at the request of any urban local authority, declare that no native, male or female, shall be in any public place within the area controlled by such authority during such hours of the night as are specified in such notice *unless such native be in possession of a written permit . . .*’<sup>4</sup>”  
(Italics added.)

The permit required by the sub-section may be issued by an employer or his representative, an officer in charge of a police station, or a designated official.

105. In terms of sub-section (4) of section 27 any notice under sub-section (1) shall not apply:

<sup>1</sup> Now the State President.

<sup>2</sup> I, p. 149.

<sup>3</sup> Proc. No. 56 of 1951 (S.W.A.), sec. 27 (1), in *The Laws of South West Africa 1951*, Vol. XXX, p. 146.

<sup>4</sup> *The Laws of South West Africa 1951*, Vol. XXX, p. 146.

- (i) in any location or Native village;
- (ii) to any Native exempted in terms of paragraphs (a) to (d) of section 22 of the Proclamation<sup>1</sup>, or to any female who is a dependant of such a Native.

106. It will be observed that the following features have not been mentioned by the Applicants:

- (i) any Native may be in a public place during curfew hours if in possession of a permit;
- (ii) curfew restrictions do not apply to exempted Natives<sup>1</sup>, or in any Native residential area.

107. The curfew restrictions were conceived to prevent large numbers of Natives loitering at night in White urban areas, since it has been the Respondent's experience in South Africa and South West Africa that the congregation of Natives in such areas at night is apt to lead to disturbances. These restrictions have also been devised as a remedy against crime.

108. Provision for the application of curfew restrictions to South West Africa was made as early as 1922 by means of Proclamation No. 33 of that year<sup>2</sup>. The curfew provisions of this Proclamation, which are not materially different from those under consideration, were referred to in the 1922 annual report<sup>3</sup>, and in the 1928 annual report<sup>4</sup> reference was made to Proclamation No. 19 of 1928 (S.W.A.), which amended the 1922 Proclamation by providing for the publication in the Official Gazette of the Territory of all curfew regulations made by local authorities<sup>5</sup>. The Permanent Mandates Commission was consequently fully aware of the provision that had been made for the imposition of curfew restrictions, and in the absence of any adverse comment, it must be assumed that the Commission appreciated the necessity for such legislation.

109. In this regard it may be pointed out that in other countries it was also found necessary to impose curfew restrictions. So, for instance, regulation 31 of the Northern Rhodesian Townships Regulations provided:

"Between the hours of 10 p.m. and 5 a.m. no native shall be outside a compound or location used for the housing of natives, or his employer's close or native compound unless he is in possession of, and carries a pass from the District Officer, his employer, his employer's agent, or a member of his employer's family, or a quarterly pass issued to him in accordance with the provisions hereinafter contained<sup>6</sup>."

110. In South West Africa curfew notices have been issued in respect of 14 urban areas<sup>7</sup>. The usual curfew hours are between 9 p.m. and

<sup>1</sup> *Vide* para. 62, *supra*.

<sup>2</sup> *Proc.* No. 33 of 1922 (S.W.A.), in *The Laws of South West Africa 1915-1922*, pp. 863-865.

<sup>3</sup> *U.G.* 21—1923, p. 3.

<sup>4</sup> *U.G.* 22—1929, p. 2.

<sup>5</sup> *Proc.* No. 19 of 1928 (S.W.A.), sec. 1 (2), in *The Laws of South West Africa 1928*, p. 88.

<sup>6</sup> *Ord.* No. 53 of 1929 (Northern Rhodesia), as amended, sec. 27, Part VI, reg. 31, in *Laws of Northern Rhodesia 1962 Edition*, Vol. IV, Chap. 120, p. 98.

<sup>7</sup> These are Aus, Bethanie, Gobabis, Grootfontein, Karasburg, Karibib, Mariental, Otavi, Otjiwarongo, Outjo, Stampriet, Tsumeb, Usakos and Warmbad.

4 a.m., and the restrictions consequently cause very little hardship. As has already been stated, a curfew notice restricts the movement of unexempted Natives only in public places in the White areas of towns and cities during curfew hours. If Natives desire to be within such areas during these hours, they can obtain the necessary permits from their employers with whom they are usually in daily contact, or from authorized persons. In practice numbers of Natives are present in public places in White urban areas during all hours of the night.

111. When reasons are alleged to exist for the issuing of a curfew notice—for example, crime committed by Natives, or continual disturbance of the public peace at night within White urban areas—the local authority concerned consults the Native Advisory Board, and the local authority's application, together with the views of the Board, is then transmitted to the Bantu Affairs commissioner or magistrate, who also obtains the views of the Police. The said commissioner or magistrate then submits the application and the reasons therefor, the views of the Native Advisory Board and of the Police, together with his own recommendation, to the Department of Bantu Administration and Development, which in turn submits its recommendation to the State President.

A curfew notice is consequently not lightly issued. It is only done if the State President is satisfied that a curfew is necessary to establish or maintain peace and order in a particular urban area.

112. With further advancement in the general educational level of the Native populations in the cities and towns, and their fuller adaptation to the urban environment and living conditions, it is hoped that it will be possible gradually to relax curfew restrictions and that they will ultimately disappear. In the interest of good group relations, however, a too sudden repeal is in Respondent's view not desirable.

113. In conclusion, it may be pointed out that the type of restrictions involved in a curfew is entirely reciprocal. The location regulations, to which reference has already been made<sup>1</sup>, control the movement of members of the White group in Native urban residential areas at least as stringently, in that White persons may enter such areas only on the authority of their superintendents whether by day or by night.

## VIII. REPLY TO PARAGRAPH 153 OF CHAPTER V OF THE MEMORIALS

### (a) *Introductory*

114. In the said paragraph of the Memorials the Applicants allege that in their cumulative effect—

“... the multiple restraints upon the movement of ‘Natives’ and the vulnerability of the ‘Natives’ to arbitrary arrest press upon the individual ‘Native’ with an almost suffocating weight”<sup>2</sup>.

Relying on a number of provisions to which reference is made under the headings “Security of the Person”, “Rights of Residence”, and “Freedom of Movement”, the Applicants then purport to portray “the situation from the angle of vision of any individual ‘Native’”<sup>2</sup>.

<sup>1</sup> *Vide* para. 50, *supra*.

<sup>2</sup> I, p. 150.

The situation which the Applicants attempt to depict in this paragraph is a false one. As will be shown, there can, in practice, never be such a concurrence of circumstances and restraints in respect of any "individual 'Native' " as is alleged by the Applicants.

115. The provisions on which the Applicants rely are those relating to:

- (i) Undesirable persons in reserves.
- (ii) The removal of Natives within reserves.
- (iii) The movement of northern Natives into and in the Police Zone.
- (iv) Entry into the Territory.
- (v) The entry of Natives into proclaimed areas.
- (vi) Curfew restrictions.
- (vii) The removal of Natives from urban areas.
- (viii) Vagrancy.
- (ix) The movement of Natives in the area inhabited by the White group.
- (x) Idle persons in proclaimed areas.
- (xi) The deportation of undesirable persons from the Territory.

Before considering the applicability of these provisions, it will be convenient, with a view to proper perspective, to restate briefly certain of Respondent's replies to the relevant paragraphs of the Memorials.

(b) *Undesirable Persons in Reserves*

116. In its reply to paragraph 132 of Chapter V of the Memorials<sup>1</sup> Respondent pointed out<sup>2</sup> that the regulation providing for the removal of undesirable persons from Native reserves was introduced to promote order and good government in *certain* reserves in which there would initially be little social cohesion and discipline. It was also pointed out<sup>3</sup> that as a result of the improvement of tribal discipline, it has for a considerable period not been necessary to invoke this measure.

117. The Applicants allege that the regulation applies to any Native who is a resident of a reserve "whether within or outside the Police Zone"<sup>4</sup>. As has already been pointed out, this is not correct, since the regulation does *not* apply to reserves outside the Police Zone, nor to the Berseba and Bondels Reserves within the Police Zone.

It is consequently clear that the regulation, which at any rate was invoked in the past only in very exceptional circumstances, applies only in limited areas, and does not affect the vast majority of Natives in the Territory.

(c) *The Removal of Natives within Reserves*

118. In replying to paragraph 139 of Chapter V of the Memorials<sup>5</sup>, Respondent demonstrated<sup>6</sup> that the powers conferred upon the Administrator (now the State President) under section 1 (*d*) of Proclamation No. 15 of 1928 (S.W.A.)<sup>7</sup>—which includes the power to remove a Native

<sup>1</sup> I, p. 145.

<sup>2</sup> *Vide* Chap. II, paras. 97-101, *supra*.

<sup>3</sup> *Ibid.*, para. 107.

<sup>4</sup> I, para. 153, p. 150.

<sup>5</sup> *Ibid.*, pp. 146-147.

<sup>6</sup> *Vide* Chap. III, paras. 129-130, *supra*.

<sup>7</sup> *Proc.* No. 15 of 1928 (S.W.A.), sec. 1 (*d*), in *The Laws of South West Africa* 1928, p. 60.

resident in a reserve to some other place within it—are necessary to implement Respondent's reserve policy, which was designed primarily to promote the interests of the residents of the Native reserves.

119. The power to order the removal of a Native in a reserve can obviously not be invoked in respect of Natives in urban or rural areas of the Police Zone, and it is also evident that no Native will be ordered to leave a reserve in terms of the regulation referred to in paragraph 116 above, and at the same time also be removed to some other place within it.

120. The provisions of section 1 (*d*) of the Proclamation are not only very limited in their scope, but they come into operation only when the Native concerned is himself to blame for it according to the judgment of his own group, as is demonstrated by the only four occasions—as far as can be ascertained—on which the powers conferred have been invoked<sup>1</sup>.

(d) *The Movement of Northern Natives into and in the Police Zone*

121. As has been shown<sup>2</sup> in the replies to paragraphs 140 and 149 of Chapter V of the Memorials<sup>3</sup>, the provisions of Proclamation No. 29 of 1935 (S.W.A.), which require northern Natives to be in possession of identification passes when in the Police Zone, and which restrict the period of employment of such Natives in that Zone to a maximum of two and a half years<sup>4</sup>, were designed:

- (i) to protect the Natives in the Police Zone—who are more dependent upon wage employment than northern Natives—against unfair competition from the latter; and
- (ii) to protect and preserve the social life and tribal organization of the northern Natives, whose tribal authorities requested that these measures be introduced.

122. In paragraph 153 of Chapter V of the Memorials the Applicants create the impression that these provisions—which obviously do not apply to Natives resident in the Police Zone—require a northern Native to be in possession of one pass for the purpose of entering the Police Zone, and, if employed in that Zone, of another pass or other proof "showing his right to hold the job"<sup>5</sup>. This is not the case, since an identification pass issued under section 9 of the Proclamation confers upon a Native employee from the northern territories the right to enter the Police Zone *and* to remain in it for the period of his employment<sup>6</sup>.

(e) *Entry into the Territory*

123. In paragraph 153 of Chapter V of the Memorials the Applicants allege that—

<sup>1</sup> *Vide* Chap. III, para. 130, *supra*.

<sup>2</sup> *Vide* paras. 85-90, *supra*, and Chap. III, paras. 149-154, *supra*.

<sup>3</sup> I, pp. 147, 149.

<sup>4</sup> *Proc.* No. 29 of 1935 (S.W.A.), secs. 3 and 6 (4), as amended, *vide* footnote 2 to para. 87, *supra*.

<sup>5</sup> I, p. 150.

<sup>6</sup> *Proc.* No. 29 of 1935 (S.W.A.), sec. 9, in *The Laws of South West Africa 1935*, Vol. XIV, p. 154.

"... wherever ... (a northern Native) ... may be, whether inside or outside the Police Zone, he may be required at any time to produce a pass showing that he has a right to be within the Territory<sup>1</sup>".

In its reply to paragraph 148 of Chapter V of the Memorials<sup>2</sup>, Respondent has shown<sup>3</sup> that section 4 of Proclamation No. 11 of 1922 (S.W.A.), which provides that no Native may enter South West Africa without a prescribed pass<sup>4</sup>, does not apply to *Native inhabitants of the Territory*.

#### (f) *The Entry of Natives into Proclaimed Areas*

124. In replying to paragraph 150 of Chapter V of the Memorials<sup>2</sup>, Respondent has shown<sup>5</sup> that the provisions of section 22 (1) of Proclamation No. 56 of 1951 (S.W.A.)<sup>6</sup> were designed to control the influx of Natives into urban areas in order to prevent such areas from being overcrowded with unemployed Natives.

These provisions do not apply to Natives resident in proclaimed areas, and affect only newcomers to such areas. Moreover, in terms of section 22 (2) of the Proclamation, certain classes of Natives are expressly exempted from the influx control provisions of sub-section (1) of that section<sup>7</sup>.

#### (g) *Curfew Restrictions*

125. By alleging in paragraph 153 of Chapter V of the Memorials that a Native "must take care lest he find himself within a public place (in an urban area) after curfew"<sup>1</sup>, the Applicants create the misleading impression that curfew restrictions apply to:

- (i) all urban areas;
- (ii) all public places in such areas;
- (iii) all Natives.

As has been pointed out<sup>8</sup> in the reply to paragraph 152 of Chapter V of the Memorials<sup>9</sup>, this is not the case, since curfew notices have been issued in respect of only 14 urban areas in the Territory and in these areas the restrictions do not apply to exempted Natives, or in any Native residential area.

The scope of the existing curfew restrictions—which curtail freedom of movement only during certain hours of the night—is consequently limited.

<sup>1</sup> I, p. 150.

<sup>2</sup> *Ibid.*, p. 149.

<sup>3</sup> *Vide* para. 81, *supra*.

<sup>4</sup> *Proc.* No. 11 of 1922 (S.W.A.), sec. 4, in *The Laws of South West Africa 1915-1922*, p. 750.

<sup>5</sup> *Vide* para. 92, *supra*.

<sup>6</sup> *Proc.* No. 56 of 1951 (S.W.A.), sec. 22 (1) in *The Laws of South West Africa 1951*, Vol. XXX, p. 130.

<sup>7</sup> *Ibid.*, sec. 22 (2), p. 136.

<sup>8</sup> *Vide* paras. 106 and 110, *supra*.

<sup>9</sup> I, p. 149.

(h) *The Removal of Natives from Urban Areas*

126. In alleging in paragraph 153 of Chapter V of the Memorials that—  
“... even if ... [a Native] ... succeeds in establishing his right to reside and be employed within an urban area, he may be removed at any time as ‘redundant’”<sup>1</sup>,

the Applicants rely on section 25 of Proclamation No. 56 of 1951 (S.W.A.)<sup>2</sup>.

As indicated<sup>3</sup> in the reply to paragraph 141 of Chapter V of the Memorials<sup>4</sup>, the provisions of this section, which were designed to prevent urban areas from being overcrowded by unemployed Natives, are not enforced in practice, since the influx control provisions of sections 10 and 22 of the Proclamation are adequate to serve this purpose<sup>5</sup>.

(i) *Vagrancy*

127. In paragraph 153 of Chapter V of the Memorials the Applicants further allege:

“Even though lawfully employed, ... [a Native] ... must be constantly on guard during his moments of leisure. If he should simply take a walk, he may be challenged to prove that he is not ‘an idle and disorderly person’ ... If he should happen to be upon any road crossing a farm, or near a dwelling house or shop or store, he may be challenged as a loiterer and arrested without a warrant by any police officer or any owner or occupier of land on which he may happen to be ...”<sup>6</sup>

As was pointed out<sup>7</sup> in the reply to paragraph 130 of Chapter V of the Memorials<sup>8</sup>, the Applicants create the impression that the provisions of the Vagrancy Proclamation<sup>9</sup> apply to Natives only. This is not the case—it applies to *all* persons.

As has also been stated<sup>10</sup>, the Vagrancy Proclamation is not enforced in the northern territories and is seldom, if ever, applied in the Native reserves within the Police Zone.

128. There is no substance in the allegation that a Native—or for that matter any person—who “simply take[s] a walk”, or “happen[s] to be upon any road crossing a farm, or near a dwelling house or shop or store”, may be arrested without a warrant<sup>11</sup>. Section 1 of the Proclama-

<sup>1</sup> I, p. 149.

<sup>2</sup> Proc. No. 56 of 1951 (S.W.A.), sec. 25, in *The Laws of South West Africa 1951*, Vol. XXX, pp. 140-143.

<sup>3</sup> Vide Chap. III, para. 187, *supra*.

<sup>4</sup> I, p. 147.

<sup>5</sup> Proc. No. 56 of 1951 (S.W.A.), secs. 10 and 22, in *The Laws of South West Africa 1951*, Vol. XXX, pp. 108-110, 130-137.

<sup>6</sup> I, p. 150.

<sup>7</sup> Vide Chap. II, para. 10, *supra*.

<sup>8</sup> I, p. 144.

<sup>9</sup> Proc. No. 25 of 1920 (S.W.A.), in *The Laws of South West Africa 1915-1922*, pp. 280-286, as amended by Proc. No. 32 of 1927 (S.W.A.), in *The Laws of South West Africa 1927*, pp. 244-246.

<sup>10</sup> Vide Chap. II, para. 22, and footnote 3 to para. 23, *supra*.

<sup>11</sup> I, para. 153, p. 150.

tion applies to "Any person found wandering abroad and having no visible lawful means, or insufficient lawful means of support . . ." <sup>1</sup>. Possession of a pass, for example, indicating employment or permission to look for employment, would by itself take a person out of this category.

Section 3 again applies to any person found *without the permission of the owner* "wandering" over a farm, or "loitering" near a dwelling house, shop, etc. <sup>2</sup>

129. It is not disputed that the danger exists that an inhabitant of the Territory may be unlawfully arrested by a person purporting to act under the Vagrancy Proclamation—but then the danger of unlawful arrest exists whenever a power of arrest is conferred by law. And, as has been shown <sup>3</sup>, section 15 of the Proclamation makes it an offence for any person—

" . . . who shall, under colour of this Proclamation, wrongfully and maliciously, or without probable cause, arrest, or cause to be arrested, any person . . ." <sup>4</sup>

(j) *The Movement of Natives in the Area Inhabited by the White Group*

130. The allegation in paragraph 153 of Chapter V of the Memorials that "if . . . [a Native] leaves the confines of his place of residence or place of employment, he does so at his peril, for he may be challenged at any moment to produce a pass . . ." <sup>5</sup>, is not correct, since, as has been shown <sup>6</sup> in the reply to paragraphs 133 and 146 of Chapter V of the Memorials <sup>7</sup>, the relevant provisions of Proclamation No. 11 of 1922 (S.W.A.) do not apply to:

- (i) Native females, and males of the age of 14 or less;
- (ii) exempted Natives;
- (iii) any Native when in a Native reserve or Native residential area.

131. It is consequently clear that the relevant provisions of the Proclamation by no means affect all Natives, and in any event, do not affect any Native while carrying on his normal activities in the Police Zone. It is only when a Native travels in the Police Zone beyond the confines of his place of residence or employment, that these provisions come into play, and, as the required passes or permits are easily obtainable, the system does not cause any undue inconvenience.

It may be pointed out that on administrative instructions the Police make summary arrests for contraventions of the pass laws only in exceptional circumstances.

(k) *Idle Persons in Proclaimed Areas*

132. Although the allegation in paragraph 153 of Chapter V of the Memorials that—

<sup>1</sup> Proc. No. 25 of 1920 (S.W.A.), sec. 1, in *The Laws of South West Africa 1915-1922*, p. 280.

<sup>2</sup> *Ibid.*, sec. 3 (1), p. 280. *Vide* Chap. II, para. 8, *supra*.

<sup>3</sup> *Vide* Chap. II, para. 51, *supra*.

<sup>4</sup> Proc. No. 25 of 1920 (S.W.A.), sec. 15, in *The Laws of South West Africa 1915-1922*, p. 284.

<sup>5</sup> I, para. 153, p. 150.

<sup>6</sup> *Vide* para. 62 *et seq.*, *supra*.

<sup>7</sup> I, pp. 145, 148.

"... [a Native] ... may find himself arrested without a warrant at any time within a proclaimed area by any officer who suspects that he may lack a sufficient means of livelihood ...<sup>1</sup>"

is substantially correct, it is to be observed:

- (i) that such an officer must have *reason to suspect* that a Native whom he intends arresting is an idle person; and
- (ii) that a Native is an idle person only if he has no sufficient honest means of livelihood *and* is habitually unemployed<sup>2</sup>.

The further allegation that such a Native may also be arrested if an authorized officer has reason to believe that "he has absented himself during working hours from his employer's premises", is not correct<sup>3</sup>.

133. As was pointed out<sup>4</sup> in the reply to paragraph 134 of Chapter V of the Memorials<sup>1</sup>, the provisions of section 26 of the Natives (Urban Areas) Proclamation<sup>5</sup> are complementary to those of the Vagrancy Proclamation, and were designed to combat a similar evil. These provisions, which apply only to towns in the Police Zone, were, moreover, designed to promote the interests of the Native residents of proclaimed areas by preventing such areas from becoming overcrowded by unemployed Natives. For this reason an idle Native who is not prepared to work and so mend his ways, may be removed from such an area<sup>6</sup>.

#### (1) *The Deportation of Undesirable Persons from the Territory*

134. In the concluding sentence of paragraph 153 of Chapter V of the Memorials the Applicants allege:

"... any interchange with any other person may subject ... [a Native] to arrest and expulsion from the Territory, if the Minister of Bantu Administration and Development in his uncontrolled discretion should choose to interpret the interchange as falling into any one of several extremely vague categories<sup>7</sup>".

This allegation does not correctly reflect the powers conferred by section 1 of the Undesirables Removal Proclamation<sup>8</sup>, since, as was pointed out<sup>9</sup> in the reply to paragraphs 136 and 137 of Chapter V of the Memorials<sup>10</sup>, the provisions of this section—

- (i) apply to all persons falling within their ambit; but
- (ii) do not apply to any inhabitant of the Territory.

As these provisions relate to foreigners only, it is respectfully submitted that they are irrelevant to the present proceedings.

<sup>1</sup> I, p. 150.

<sup>2</sup> *Vide* Chap. II, paras. 65-66, *supra*.

<sup>3</sup> *Ibid.*, para. 68.

<sup>4</sup> *Ibid.*, para. 70.

<sup>5</sup> Proc. No. 56 of 1951 (S.W.A.).

<sup>6</sup> *Vide* Chap. II, para. 73, *supra*.

<sup>7</sup> I, pp. 150-151.

<sup>8</sup> Proc. No. 50 of 1920 (S.W.A.), sec. 1, in *The Laws of South West Africa 1915-1922*, pp. 424-425.

<sup>9</sup> *Vide* Chap. II, paras. 111-112, *supra*.

<sup>10</sup> I, p. 146.

(m) *Summary: The Position of Natives in Reserves in the Police Zone*

135. Of the provisions enumerated in paragraph 115 above, only (i) or (ii) and (viii) could possibly apply to Natives resident in reserves in the *Police Zone*. It is evident that any one Native would not be required to remove from a reserve, and to move to another place in the reserve<sup>1</sup>. It is moreover inconceivable that action under the Vagrancy Proclamation<sup>2</sup> would be taken against a Native in a reserve if it were decided to order him to remove from the reserve or to move to another place in it.

The other provisions could not apply since:

*Re* (iii): Proclamation No. 29 of 1935 (S.W.A.) applies only to Natives resident in the northern territories<sup>3</sup>.

*Re* (iv): Only foreign Natives require a permit to enter the Territory<sup>4</sup>.

*Re* (v): Section 25 of Proclamation No. 56 of 1951 (S.W.A.) applies only to proclaimed areas within the area inhabited by the White group<sup>5</sup>.

*Re* (vi): Curfew restrictions do not apply to any place in a Native reserve<sup>6</sup>.

*Re* (vii): The urban areas from which unemployed Natives may be removed are all situated in the area inhabited by the White group<sup>7</sup>.

*Re* (ix): In terms of Proclamation No. 11 of 1922 (S.W.A.) Natives have to be in possession of passes, *inter alia*, only when they travel beyond the confines of their reserves<sup>8</sup>.

*Re* (x): There are no proclaimed areas in Native reserves<sup>9</sup>.

*Re* (xi): Only foreigners may be deported from the Territory.<sup>10</sup>

(n) *Summary: The Position of Natives in the Northern Territories*

136. The only provision of those enumerated in paragraph 115 above which is applicable to Natives of the northern territories while resident in their reserves, is that mentioned in (ii), in terms of which a Native living in a reserve may be required to remove to some other place in it. For the reasons set out in paragraph 135 above, (iii) to (vii) and (ix) to (xi) could not apply to such Natives. Furthermore, (i) and (viii) could not apply since:

*Re* (i): Only Natives resident in reserves in the *Police Zone* may be required to remove to another place in the Territory<sup>11</sup>.

*Re* (viii): The Vagrancy Proclamation is not enforced in the northern territories<sup>12</sup>.

It is only when such Natives wish to enter the *Police Zone* that (iii) comes into play and that identification passes have to be obtained<sup>3</sup>.

<sup>1</sup> *Vide* paras. 116-120, *supra*.

<sup>2</sup> *Proc.* No. 25 of 1920 (S.W.A.). *Vide* paras. 127-129, *supra*.

<sup>3</sup> *Vide* para. 121, *supra*.

<sup>4</sup> *Vide* para. 123, *supra*.

<sup>5</sup> *Vide* para. 124, *supra*.

<sup>6</sup> *Vide* para. 125, *supra*.

<sup>7</sup> *Vide* para. 126, *supra*.

<sup>8</sup> *Vide* para. 130, *supra*.

<sup>9</sup> *Vide* para. 133, *supra*.

<sup>10</sup> *Vide* para. 134, *supra*.

<sup>11</sup> *Vide* para. 117, *supra*.

<sup>12</sup> *Vide* para. 127, *supra*.

(o) *Summary: The Position of Natives in the Rural Areas of the Police Zone*

137. The following provisions of those enumerated in paragraph 115 above apply to a Native in the rural areas of the Police Zone (exclusive of the Native reserves): (viii), (ix) and, should he enter an urban or a proclaimed area, (v), (vi), (vii) and (x). As regards (ix), such a Native requires a pass only if he leaves the place of his employment or residence <sup>1</sup>, and the possession of such pass would ensure that no action is taken against him in terms of the Vagrancy Proclamation (viii) <sup>2</sup>.

The following provisions could not apply to such a Native as long as he remains in a rural area:

- (i) and (ii), which apply only to Natives in reserves <sup>3</sup>;
- (iii), which applies only to northern Natives <sup>4</sup>;
- (iv) and (xi), which apply only to foreigners <sup>5</sup>;
- (v), (vi), (vii) and (x), which apply only to urban and proclaimed areas <sup>6</sup>.

(p) *Summary: The Position of Natives in Urban and Proclaimed Areas*

138. Of the provisions set out in paragraph 115 above, only the following apply to Natives resident in urban or proclaimed areas: (vi), (vii), (viii), (ix) and (x).

The other provisions could not apply since:

- Re* (i) and (ii): These provisions are applicable to Natives in reserves <sup>3</sup>.
- Re* (iii): Only northern Natives require an identification pass <sup>4</sup>.
- Re* (iv) and (xi): These provisions apply only to foreigners <sup>5</sup>.
- Re* (v): Section 22 of Proclamation No. 56 of 1951 (S.W.A.) applies only to newcomers to proclaimed areas <sup>7</sup>.

139. It is to be observed that if a Native is in possession of an exemption certificate <sup>8</sup>, action can not be taken against him under any of the provisions applicable to Natives living in urban or proclaimed areas. Moreover, employed Natives in such areas would never be proceeded against under (vii), (viii) or (x), since these provisions are directed against habitually idle Natives.

### E. Conclusion

140. In their complaints regarding freedom of movement the Applicants have stressed certain statutory restrictions on Natives, without taking into consideration the provisions limiting the movement of White and Coloured persons, and without paying any regard to Respondent's pass or permit policy as a whole. Their allegations that Respondent—  
 "... has given consideration solely to the convenience or advantage of the Mandatory government and of the 'European' citizens and residents of the Territory <sup>9</sup>".

<sup>1</sup> *Vide* para. 131, *supra*.

<sup>2</sup> *Vide* para. 128, *supra*.

<sup>3</sup> *Vide* paras. 117 and 119, *supra*.

<sup>4</sup> *Vide* para. 121, *supra*.

<sup>5</sup> *Vide* paras. 123 and 134, *supra*.

<sup>6</sup> *Vide* paras. 124-126 and 133, *supra*.

<sup>7</sup> *Vide* para. 124, *supra*.

<sup>8</sup> *Vide* para. 95, *supra*.

<sup>9</sup> I, para. 154 (5), p. 151.

and that Respondent—

“... has followed a systematic course of positive action which thwarts the well-being, inhibits the social progress and frustrates the development of the great majority of the population of the Territory in vital and fundamental aspects of their lives <sup>1</sup>”,

are consequently based on a one-sided approach directed only to certain facets of the said policy, and are unfounded.

141. The Applicants have further alleged that Respondent has by an “intricate system” almost completely denied liberty of movement to the Natives <sup>2</sup>. No factual proof of this allegation has been furnished by the Applicants, and Respondent submits that the above survey of the context and reasons for the provisions applicable to Natives demonstrates that the allegation is without substance.

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<sup>1</sup> I, para. 154 (5), p. 157.

<sup>2</sup> *Ibid.*, p. 151.

## CHAPTER V

### CONCLUSION

1. In paragraph 190 of Chapter V of the Memorials<sup>1</sup>, under the heading "Legal Conclusions", the Applicants allege that Respondent "*has violated, and continues to violate its obligations as stated in the second paragraph of Article 2 of the Mandate and Article 22 of the Covenant*" in a number of respects. As regards "security of the person", "rights of residence" and "freedom of movement", the Applicants enumerate<sup>2</sup> almost *verbatim* the charges contained in paragraph 154 of Chapter V of the Memorials<sup>3</sup>.

2. Respondent has dealt with these charges in the preceding chapters, and it is consequently unnecessary to deal with the relevant "legal conclusions". Suffice it to reiterate that the said charges, and therefore also the said conclusions, are unfounded and without substance.

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<sup>1</sup> I, pp. 162 ff.

<sup>2</sup> *Ibid.*, para. 190 (iii), pp. 164-165.

<sup>3</sup> *Ibid.*, pp. 151-152.



## BOOK VII

### CHAPTER I

#### INTRODUCTION TO BOOK VII

1. At pages 152 to 161 of the Memorials, Applicants deal very briefly with the system of education, educational policies and various aspects of administration of education in South West Africa. On their description of the policies applied in education and the facilities offered to the different population groups, Applicants charge Respondent with unfair discrimination against the Native population of the Territory. The respects in which they allege that there is such discrimination are summarized by Applicants as follows:

“In sum, the Mandatory has failed to use the possibilities of education to promote the well-being, the social progress and the development of the overwhelming majority of the people of South West Africa. To the contrary, through deliberate and systematic control of the processes of education, the Mandatory has taken positive action which drastically restricts opportunities for education for ‘Native’ children and ‘Native’ young men and women, and which curtails the opportunities, restricts the rewards and depreciates the status of ‘Natives’ who do manage to acquire some vocational education (e.g., teachers, nurses, engineering assistants). In this way, the Mandatory has removed opportunities for any significant improvement in the well-being, social progress and development of the preponderantly ‘Native’ population of the Territory<sup>1</sup>.” (Italics added.)

It is upon the basis of these charges that Applicants advance the contention in their “Legal Conclusions”<sup>2</sup> that with regard to education Respondent has in several respects violated its duty under the Mandate *in so far as the Native population of the Territory is concerned*.

2. In their introduction to Chapter V of the Memorials<sup>3</sup>, which deals also with the subject of education, Applicants make the general allegation that Respondent—

“... has ... failed to promote ... [the] material and moral well-being and social progress [of the people of South West Africa] in any significant degree whatever”.

3. Respondent denies that in its administration of education in South West Africa it has unfairly, or with improper motives, discriminated against any section of the inhabitants of the Territory, or that it has failed in its duty to promote the well-being and progress of the inhabitants.

4. To understand and to appreciate the reasons and objectives underlying Respondent’s educational policies and administrative measures, it

<sup>1</sup> I, pp. 160-161.

<sup>2</sup> *Ibid.*, pp. 165-166.

<sup>3</sup> *Ibid.*, p. 108.

is necessary to view and consider the matter in the wider picture of the history of South West Africa, the geographic and economic circumstances of the Territory, and the differences in the languages, cultures and aspirations of the various population groups in the Territory and their varying stages of advancement.

It would be entirely unrealistic simply to draw superficial comparisons between conditions and facilities in education as they exist for, on the one hand, the European population group, and, on the other hand, the various Native groups, without due consideration of all relevant circumstances and factors which either directly or indirectly bear upon the formulation of sound policies of administration. And likewise, in considering whether Respondent has, or has not, failed in its duty to promote the well-being and progress of the inhabitants in the sphere of education, it is necessary, *inter alia*, to compare conditions in education as they exist in the Territory today, with conditions as they were when the Mandate was conferred upon Respondent, and with conditions in comparable States.

5. The subject of education will accordingly be dealt with hereinafter against the background of relevant historical facts and in the light of the particular circumstances of South West Africa and of its peoples, and an account will be given of progress made since the inception of the Mandate, with a comparison of conditions in other Territories in Africa where there are more or less comparable communities or groups with the same basic educational problems.

6. At the outset it is, however, necessary to draw attention, in explanation of Respondent's treatment of the subject, to the following matters:

- (a) Although it is Respondent's contention that the Mandate has lapsed<sup>1</sup>, Respondent will nevertheless, in dealing with Applicants' charges, assume, for the purposes of argument, as it has done in the other parts of its reply to Chapter V of the Memorials, that the Mandate is still in force.
- (b) Inasmuch as Applicants' case is, as in the whole of Chapter V of the Memorials, confined to alleged unfair discrimination against the *Natives of South West Africa*, and as no complaint is made with regard to the education of Coloured persons<sup>2</sup>, a full account of education of the last-mentioned group does not appear to be necessary. In the premises, and to avoid unnecessary burdening of what is already an extremely lengthy pleading, Respondent will deal with the education of Coloured persons only in so far as certain aspects of the education of that group are touched upon by Applicants in their "Statement of Facts", or in so far as it may otherwise be necessary for the purpose of explaining Respondent's policies, or for purposes of clarity, or the like.
- (c) Where reference is made by Respondent to educational policies applied, or conditions prevailing, in other States, it is, as is the position throughout this Counter-Memorial, not done with the object of disparaging or criticizing such States. It is done for the sole purpose of demonstrating that particular circumstances and conditions create elsewhere in Africa, as they do in South West

<sup>1</sup> *Vide* Book II, Chap. V, of this Counter-Memorial.

<sup>2</sup> *Vide* summary of complaints at pp. 159 and 161 of the Memorials and legal conclusions at pp. 165-166.

Africa, difficulties and problems which hamper or retard educational advancement, or compel the adoption of particular policies in education. Only by comparing conditions and standards in South West Africa with those in other States where there are more or less comparable communities with comparable educational problems, can there be a fair evaluation of Respondent's achievements in South West Africa.

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## CHAPTER II

### THE HISTORY OF EDUCATION IN SOUTH WEST AFRICA BEFORE THE MANDATE WAS CONFERRED

#### A. Establishment of Mission Schools for Natives

1. The history of education in South West Africa dates back to the early years of the nineteenth century, when European missionaries started mission work amongst the Natives in the southern part of the Territory. Until then no education in the western sense had existed among the Natives. During the period 1805 of 1842 missionaries of the London and Wesleyan Missionary Societies established themselves in the Territory, but they had to cope with immense difficulties and did not make much progress. They finally left the field in 1842, when missionaries of the Rhenish Missionary Society started work in *Damaland* and *Namaland*<sup>1</sup>. This Mission carried a lone burden in the Territory until 1870, when missionaries of the Finnish Missionary Society came to *Ovamboland*<sup>2</sup>. Thereafter, in 1888, the Catholic Church sent missionaries to *Namaland*, and in 1896 also to *Damaland*. At about the turn of the nineteenth century the Rhenish Mission started work also in *Ovamboland*<sup>3</sup>.

2. The first mission school in the Territory was established by the London Missionary Society at Warmbad in the south in 1805, but it was almost 40 years before the next school came into being<sup>4</sup>. Progress was made after the advent of the Rhenish missionaries, although conditions were by no means conducive to peaceful development. As described elsewhere in this Counter-Memorial<sup>5</sup>, the Native groups were often at war with each other, and furthermore, their nomadic habits made it extremely difficult to establish schools which had any permanency<sup>6</sup>.

3. After the establishment of the German Protectorate over the Territory in 1884, the various missions were left free to carry on their religious activities and to establish schools. The education of the Native population was for all practical purposes left completely in their hands. The Territorial Government reserved to itself the right to inspect mission schools, but there is no evidence that this right was ever exercised<sup>7</sup>. The Government's own efforts to provide education for Natives were confined to Windhoek, where a European teacher was appointed in 1894 to instruct young Native boys in German and arithmetic, and young

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<sup>1</sup> Lemmer, C. J. C., *Onderwys in Suidwes-Afrika* (Unpublished Thesis, University of South Africa, 1934), pp. 3-4. *Damaland* was the name of the area occupied by the Hereros, who were also referred to as the Dama[ra] of the Plains.

<sup>2</sup> *Ibid.*, p. 33.

<sup>3</sup> *Ibid.*, pp. 33-34. *Vide* also *U.G.* 22—1929, p. 68.

<sup>4</sup> Lemmer, *op. cit.*, pp. 3. 33-34.

<sup>5</sup> *Vide* Respondent's general account of history in Book III of this Counter-Memorial.

<sup>6</sup> Lemmer, *op. cit.*, p. 31.

<sup>7</sup> *Ibid.*, p. 37.

Native girls in housework. In 1895 courses in German and arithmetic were instituted for Natives who were in the employ of the Government <sup>1</sup>.

All the mission societies made it their task to establish schools in conjunction with their religious activities, and by the end of the German regime in 1915 there were, as far as can be determined, about 115 mission schools, with approximately 5,490 pupils, in the whole of the Territory <sup>2</sup>. This number included pupils of all ages—children and adults—who attended school and Sunday-school classes. In Ovamboland, particularly, much of the instruction given was of a purely religious kind.

### B. Subjects Taught in Native Mission Schools

4. The subjects taught in the different Native mission schools varied, and the work done was not of a uniform standard. At the Rhenish Mission schools the curricula and syllabuses were largely determined in the light of local circumstances and according to the ability of the teachers. In most schools instruction was given in religion, German, reading, writing and arithmetic, and in some also in history, geography and a few practical subjects <sup>3</sup>. In the Catholic schools attention was largely devoted to religion and to practical subjects such as woodwork, building, brickmaking and gardening, while girls were taught ironing, needlework and cooking <sup>4</sup>. In Ovamboland, where conditions were more primitive than in the Police Zone, the Finnish Mission schools concentrated largely on religious instruction. In these schools there were no separate classes, and the same course was offered to all pupils. The older and more intelligent pupils usually completed the course in two or three years, while others sometimes took as long as six or seven years <sup>5</sup>.

### C. Teachers in Native Mission Schools

5. Initially the only teachers at mission schools were the missionaries themselves, but with the passage of time they trained the more intelligent of their pupils to assist them in their work <sup>6</sup>. The first training school for teachers in the Territory, called the Augustineum, was established by the Rhenish Mission at Otjimbingwe in 1866. This school was later transferred to Okahandja <sup>6</sup>. In about 1905 the Catholic Church established a training school at Doeбра near Windhoek <sup>7</sup>, and in 1913 the Finnish Mission established a similar school at Oniipa in Ovamboland <sup>8</sup>. These institutions gave instruction of a very elementary kind, and were very little, if anything, more than present-day lower primary schools.

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<sup>1</sup> Lemmer, *op. cit.*, pp. 37, 39.

<sup>2</sup> *Ibid.*, p. 36.

<sup>3</sup> *Ibid.*, pp. 39, 41.

<sup>4</sup> *Ibid.*, p. 42.

<sup>5</sup> *Ibid.*, p. 40.

<sup>6</sup> *Ibid.*, p. 43.

<sup>7</sup> *Ibid.*, p. 44.

<sup>8</sup> Departmental information.

### D. Financing of Native Mission Schools

6. The mission schools received no financial assistance from the German Government until 1902. As from that year subsidies were granted to those schools which could satisfy district boards that they had given proper attention to the teaching of the German language and that their pupils had made satisfactory progress in learning that language. The subsidies were granted under a budget item styled "Zur Verbreitung der deutschen Sprache". In 1902 the total subsidy was 5,000 RM; in 1903 it was 7,000 RM; and as from 1909 it was 9,000 RM per year<sup>1</sup>. Save for such subsidy provided by the Government, the mission schools were financed entirely by the respective missions.

### E. Schools for Coloured Persons

7. Both before and during the German regime Coloured children, the off-spring of European fathers and Native mothers of the Territory, usually attended the same schools as Native children. These Coloured children, called "Half-Whites" by the Germans, were not accepted in European society and, in many instances, also not in Native society, and it was felt in time that their interests would best be served in separate institutions. There is evidence that as early as the 1870s the presence of such "Half-White" children caused friction at mission schools where the majority of pupils were Native children<sup>2</sup>. Their numbers were very small, however, and as they were scattered over a vast territory, there was never a sufficient supply of teachers to allow of any general scheme of separate schools for all such children. A few separate institutions for them were, however, established. In about 1890 the Rhenish Mission established such an institution at Okahandja, and shortly thereafter also at Keetmanshoop<sup>3</sup>. In 1903 the Roman Catholic Church also established a separate institution for Coloured children<sup>4</sup>.

The Rehoboth Basters, as already mentioned<sup>5</sup>, were a more-or-less homogeneous group who inhabited their own *Gebiet* at Rehoboth as from about 1870. A school was established for them in their area soon thereafter, and although some Native children also attended this school, the Basters at all times looked upon themselves as a separate and distinct group, and preferred to have separate schools for their children.

### F. Schools for the White Group

8. The first school in the Territory for European children was established by the Rhenish Mission at Otjimbingwe in 1876, and, except for a short interruption during the years 1891 to 1894, this school remained in existence until 1901, when the mission station at Otjimbingwe was closed down<sup>6</sup>.

<sup>1</sup> Lemmer, *op. cit.*, p. 37.

<sup>2</sup> Schutte, C. H. J., *Kleurlingonderwys in Suidwes-Afrika* (Unpublished Thesis, University of South Africa, 1924), p. 14.

<sup>3</sup> *Ibid.*, pp. 17-18.

<sup>4</sup> *Ibid.*, pp. 20-21.

<sup>5</sup> *Vide* Book III, Chap. III, paras. 34, 37, 88 and 89, of this Counter-Memorial.

<sup>6</sup> Lemmer, *op. cit.*, pp. 72, 73 and 73bis.

The second school was established at Windhoek in 1894 for the children of German settlers in the vicinity. This school was, however, closed down after four years as a result of disagreement between the parents, some contending that the school offered too little, while others maintained that much of what was taught was not needed in a pioneer community<sup>1</sup>.

From about 1900 concerted efforts were made by the authorities to establish schools for the children of European settlers, who were by then no longer confined to Windhoek and its vicinity. By 1904 there were six government schools in various parts of the country. Thereafter the wars with the Herero and Nama<sup>2</sup> retarded development for some time, but between 1906 and 1913 four additional schools were established in the northern part of the Police Zone, four in the central area, and seven in the south<sup>3</sup>.

9. Two secondary schools, one for boys and one for girls, were established by the Catholic Church at Windhoek in 1906. The boys' school was closed shortly after the establishment of the "Kaiserliche Realschule" in Windhoek in 1909, but the girls' school was still in existence at the time when South Africa assumed the Mandate over the Territory<sup>4</sup>.

The "Realschule" at Windhoek was modelled on a German "Realschule", except that English was initially taught as first foreign language instead of French<sup>5</sup>. A similar "Realschule" was established at Swakopmund in 1909<sup>6</sup>, and a third at Luderitzbucht in 1911. The last-mentioned school was, however, closed down after some months because the German Government refused to provide it with financial aid<sup>7</sup>.

At the end of the German regime there were 17 primary schools for European children in the Territory, two secondary "Realschulen" and one private Catholic secondary school for girls.

### G. Factors in Development of European Education

10. A feature of the development of education of the Europeans during the German regime was the active part played by the "Schulvereine", associations of parents who interested themselves in the education of their children<sup>8</sup>.

Another important factor was the introduction, in 1906, of a measure which made attendance at school compulsory for all European children living within 4 kilometres of a school. In 1911 attendance was made compulsory also for children living more than 4 kilometres from a school, save that they were not required to attend school for more than four years. Children living within the 4-kilometre limit were obliged to attend school for eight years<sup>9</sup>. Circumstances made it impossible, however, for all children to attend school, despite the Government's policy of providing hostel facilities at schools in towns and in the more densely popu-

<sup>1</sup> Lemmer, *op. cit.*, pp. 74-76.

<sup>2</sup> *Vide* Book III, Chap. III, paras. 76-81, of this Counter-Memorial.

<sup>3</sup> Lemmer, *op. cit.*, p. 78.

<sup>4</sup> *Ibid.*, pp. 114-115.

<sup>5</sup> *Report of the Education Commission 1958* (S.W.A.), para. 13, p. 12.

<sup>6</sup> Lemmer, *op. cit.*, pp. 120-121.

<sup>7</sup> *Ibid.*, pp. 122-123.

<sup>8</sup> *Ibid.*, p. 80.

<sup>9</sup> *Ibid.*, pp. 80, 99-100.

lated country areas. The sparse population, spread over a vast territory, made it impossible to bring schools within a reasonable distance of all children of school-going age. A further consideration was that Afrikaans-speaking settlers from South Africa were averse to sending their children to German schools, where an avowed policy of Germanization was followed throughout the whole period of the German regime.

Farmers from South Africa had been among the very first settlers in South West Africa, and by the time the German Protectorate was established in 1884 there was already a fair number of them in the vicinity of Grootfontein. Later, especially during and after the Anglo-Boer War (1899-1902), many more came to the Territory. By the end of the century settlers from South Africa constituted about 22 per cent. of the entire European population of South West Africa<sup>1</sup>. The German authorities encouraged the immigration of farmers from South Africa, and they were allowed to establish private schools for their children. From 1902 onwards, however, South African parents were required to send their children, when between the ages of 10 and 15, to government schools for a period of at least two years, and during that time they were obliged to stay in hostels attached to such schools<sup>2</sup>.

#### H. Financing by the German Government of European Education

11. The exact amounts spent on European education by the Government during the German regime cannot be determined. All that is known are the amounts reflected in the budgets from year to year. The total recurring expenses budgeted for rose from 1,700 Mk in the financial year 1896-1897 to 329,600 RM for the year 1914-1915<sup>3</sup>.

By the end of the German regime the White section of the community was served by a well-developed primary and secondary school system, which provided education for about 800 primary and secondary pupils in 20 schools, all of which, save 4, had hostel facilities<sup>4</sup>.

#### I. The First World War

12. The First World War disrupted the work of the missionaries in South West Africa, and many Native mission schools were closed for the duration of the war, and even for some time thereafter<sup>5</sup>.

The war also forced the European schools in the Territory to close down, but this was not for very long. After the surrender of the Territory to the South African military forces<sup>6</sup>, the military authorities allowed the German schools to remain under the control of the Germans in the Territory, and these schools were then conducted as private schools by the German "Schulvereine"<sup>7</sup>.

<sup>1</sup> Lemmer, *op. cit.*, pp. 1, 86-89.

<sup>2</sup> *Ibid.*, pp. 87-88.

<sup>3</sup> *Ibid.*, p. 108.

<sup>4</sup> Departmental information.

<sup>5</sup> It was only in 1923, for example, that the Rhenish Mission reopened the Augustine training school for teachers at Okahandja, and it was not until 1924 that the Roman Catholic training school at Doebera was reopened; *vide* Chap. V, para. 23, *infra*.

<sup>6</sup> On 9 July 1915.

<sup>7</sup> Lemmer, *op. cit.*, pp. 129-130.

### J. The Period of Military Occupation, 1915-1920

13. Towards the end of 1915 the families of civil servants, railway personnel and military officers and men started to come to the Territory from South Africa, and within a short time considerable numbers of South Africans found themselves in all parts of the country. These people, whose presence was necessary for proper administration of the Territory, required educational facilities for their children, and as the only schools then in existence were German-medium private schools, the provision of more schools soon became a pressing necessity.

The first school for South African children was established at Windhoek in November 1915. In 1916 the South African Government appointed an organizing inspector of education for the Territory, whose task it was, *inter alia*, to build up a school system based on that of the Cape Province in South Africa and to provide for the educational needs of the children of South Africans in the Territory<sup>1</sup>.

Rapid development followed, and by the time South Africa was entrusted with the Mandate, there were in the Territory, in addition to German-medium private schools<sup>2</sup>, 23 government schools accommodating 975 European pupils, 215 of whom were housed in 9 hostels, with 55 teachers in employment<sup>3</sup>.

During the period of military occupation numbers of Cape Coloured people came from South Africa, mainly to work on the railways in South West Africa. The South African authorities imported Coloured teachers from the Cape Province to teach the children of these people in separate classes which were instituted at the mission schools.

### K. The Position at the Time when the Mandate was Conferred

14. The foregoing historical survey shows that at the time when the Mandate was assumed, Native education was in the hands of certain missionary societies, which had established and were conducting mission schools for some of the Native groups. There were separate facilities, although limited, for the Coloured group, including the Rehoboth Basters, and separate government and private schools for the White group.

While Native education was still in an infant stage, the White group was served by an established and well-developed system of primary and secondary education.

At no time in the history of the Territory, either before or during the German regime, had European and non-European children attended the same schools.

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<sup>1</sup> Lemmer, *op. cit.*, pp. 157-158.

<sup>2</sup> *Vide* para. 12, *supra*.

<sup>3</sup> Departmental information.

## CHAPTER III

### THE CONTROL AND ADMINISTRATION OF EDUCATION IN SOUTH WEST AFRICA AFTER CONFERMENT OF THE MANDATE

#### A. Legislative and Administrative Powers

1. Pursuant to the powers conferred upon him by the Treaty of Peace and South West Africa Mandate Act, 1919 (Act No. 49 of 1919)<sup>1</sup>, the Governor-General of South Africa, by Proclamation No. 1 of 1921, delegated his power to legislate by proclamation to Respondent's representative in the Territory, the Administrator of South West Africa<sup>2</sup>. This power to legislate for the Territory, *inter alia*, also in respect of education, remained vested in the Administrator until 1949.

By the South West Africa Constitution Act, 1925 (Act No. 42 of 1925), the power to legislate in relation to, *inter alia*, "primary or secondary education in schools supported or aided from the revenues of the territory"<sup>3</sup>, was conferred also on the Legislative Assembly of South West Africa. This power could in terms of the said Act, however, be exercised within the first three years only with the consent of the Governor-General previously obtained, and after the said period only if the Governor-General by proclamation declared the Assembly competent to legislate in respect of education<sup>4</sup>.

2. The position remained as stated above until 1949, when the Legislative Assembly of South West Africa became entitled by the South West Africa Affairs Amendment Act, 1949 (Act No. 23 of 1949), to legislate, *inter alia*, in relation to education, without the consent of the Governor-General. This is still the position today<sup>5</sup>.

The legislative powers of the Assembly are, however, subject to control in that the Administrator has the right to reserve any Ordinance for the signification of the pleasure of the Governor-General (now the State President) of South Africa<sup>6</sup>.

Furthermore, full legislative powers over the Territory have been retained by the Parliament of South Africa, which may by Act override any Ordinance of the Legislative Assembly of South West Africa<sup>7</sup>.

3. Full administrative powers relating to, *inter alia*, education in the Territory, have at all times been vested, and are still vested, in the Administrator of South West Africa. Until 1949 such powers were

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<sup>1</sup> Act No. 49 of 1919, sec. 2 (c), in *The Laws of South West Africa 1915-1922*, p. 11.

<sup>2</sup> Proc. No. 1 of 1921 (S.A.), 2 Jan. 1921, in *The Laws of South West Africa 1915-1922*, p. 46.

<sup>3</sup> Act No. 42 of 1925, sec. 27 (1) (c), in *Statutes of the Union of South Africa 1925*, p. 754.

<sup>4</sup> *Ibid.*, sec. 27, pp. 754-756.

<sup>5</sup> Sec. 27 of Act No. 42 of 1925 was repealed by sec. 17 of Act No. 23 of 1949; *vide The Laws of South West Africa 1949*, Vol. XXVIII, p. 178.

<sup>6</sup> Act No. 42 of 1925, sec. 32, in *Statutes of the Union of South Africa 1925*, p. 758.

<sup>7</sup> *Ibid.*, sec. 44, pp. 764, 766, as amended by sec. 22 of Act No. 23 of 1949; *vide The Laws of South West Africa 1949*, Vol. XXVIII, p. 180.

exercised by the Administrator with the assistance of an advisory council, and since 1949 by the administrator-in-executive-committee.

4. What is stated in the foregoing paragraphs does not apply to that part of the Territory known as the Eastern Caprivi Zipfel, which is at present not administered through the South West Africa Administration<sup>1</sup>.

### B. Administration of Education

5. The first law passed in relation to education in South West Africa after the Mandate was assumed, was Proclamation No. 55 of 1921 (S.W.A.), which came into operation on 1 January 1922. This Proclamation was, with the exception of certain provisions thereof, repealed by Proclamation No. 16 of 1926 (S.W.A.), which, as amended from time to time, is still in force.

Proclamation No. 16 of 1926 (S.W.A.) will be superseded by Education Ordinance No. 27 of 1962 (S.W.A.)<sup>2</sup>.

The said Education Ordinance will come into operation on a date to be notified by proclamation. As yet such date has not been proclaimed.

In terms of Proclamation No. 16 of 1926 (S.W.A.), as amended, as was the position under Proclamation No. 55 of 1921 (S.W.A.), the general control, supervision and direction of education are vested in the Administrator<sup>3</sup>.

The Department of Education, in charge of which is the Director of Education<sup>4</sup>, is the central educational authority and is responsible, *inter alia*, for the performance of all work necessary for, or incidental to, the control of education, including the establishment, maintenance and general control of schools, the framing and application of syllabuses of instruction, the instituting and conducting of examinations and the inspection of schools, teachers and pupils<sup>5</sup>.

The Administrator is empowered to appoint inspectors of schools and other special officers to assist in the work of the Education Department<sup>6</sup>, while the Director may appoint departmental organizers to assist in organizing and supervising the teaching of special subjects<sup>7</sup>.

6. In the exercise of the powers aforesaid, appointments have been made from time to time of an increasing number of officers employed as assistants to the Director, inspectors, supervisors and organizers.

The growth of such staff over the years is reflected in the following table:

<sup>1</sup> Vide Chap. V, para. 82, *infra*.

<sup>2</sup> Promulgated under G.N. No. 116 (S.W.A.), 4 July 1962, in *Official Gazette Extraordinary of South West Africa*, No. 2413 (4 July 1962), pp. 878-919.

<sup>3</sup> Proc. No. 16 of 1926 (S.W.A.), 15 Sep. 1926, sec. 2, in *Laws of South West Africa*, Vol. II (1923-1927), p. 228, Proc. No. 55 of 1921 (S.W.A.), 19 Nov. 1921, sec. 2 (a), in *The Laws of South West Africa 1915-1922*, p. 633. Vide para. 4, *supra*, as to the position in the Eastern Caprivi Zipfel.

<sup>4</sup> Proc. No. 16 of 1926 (S.W.A.), sec. 4 (1), in *Laws of South West Africa*, Vol. II, (1923-1927), p. 230.

<sup>5</sup> *Ibid.*, sec. 4 (2), p. 230.

<sup>6</sup> *Ibid.*, sec. 5, p. 230.

<sup>7</sup> *Ibid.*, sec. 5bis (1), p. 230.

1921	1951	1961	1963
(a) Director of Education	(a) Director of Education	(a) Director of Education	(a) Director of Education
(b) 1 Inspector of Schools	(b) 5 Inspectors of Schools (1 medical)	(b) Deputy Director of Education	(b) Deputy Director of Education
	(c) 2 Organizers	(c) Professional Assistant	(c) Professional Assistant
		(d) 7 Inspectors of Schools	(d) 8 Inspectors of Schools
		(e) 6 Organizers	(e) 6 Organizers
		(f) 4 Guidance Officers	(f) 2 Professional Assistants to Native Inspectors of Schools
			(g) 3 Supervisors
			(h) 4 Guidance Officers
			(i) Chief of Language Bureau

In addition to the staff aforementioned and the members of the teaching staff employed in the various educational establishments, particulars of which will be given in Chapters V and VII hereinafter, the Department of Education employs an administrative staff at head office in Windhoek, the complement of which increased from 3 in 1921 to 12 in 1951, to 42 in 1961, and to 46 in 1963.

## CHAPTER IV

### GENERAL POLICY

1. Before dealing with the education of the respective population groups of South West Africa, Respondent devotes this chapter to a treatment of circumstances and considerations which respectively:

- A. govern the application in the Territory of a system of education which makes provision for separate facilities for the various groups;
- B. affect expenditure on, and the provision of particular facilities for, the education of the various groups;
- C. govern the question of compulsory education in the Territory.

#### A. Separate Facilities for the Various Groups

##### I. CIRCUMSTANCES AND CONSIDERATIONS GOVERNING THE SYSTEM OF SEPARATE FACILITIES

2. Elsewhere in this Counter-Memorial<sup>1</sup> Respondent dealt generally with the application in South West Africa, by reason of the particular circumstances of the Territory and of its peoples, of a policy of differentiation which aims at and allows for the separate development of the various population groups.

That policy is applied also in the educational system of the Territory, which makes provision, as far as is practicable, for separate educational facilities for the different groups.

3. The first educational law passed for South West Africa after the Mandate was assumed<sup>2</sup>, gave legislative recognition and sanction to a practice which had become established in the history of the Territory before the Mandate, viz., the provision of separate educational facilities for, on the one hand, the European group, and, on the other hand, the non-European groups<sup>3</sup>.

This position was maintained in Proclamation No. 16 of 1926 (S.W.A.)<sup>4</sup>, under which the educational system is organized in three main divisions, in the sense that, as far as is practicable, separate schools are provided and maintained for the children of the Native, the Coloured and the European or White groups. Under each of these three sections there are also subdivisions which will be referred to hereinafter.

4. At no time since the inception of the Mandate has there been cause for effecting a change in the pre-Mandate system of providing separate facilities for the different groups. On the contrary, that there were, and still are, sound and compelling reasons for continuing with and extending that system, will be shown in the following paragraphs, where the matter is dealt with in the light of the particular circumstances of South West

<sup>1</sup> *Vide* Book IV of this Counter-Memorial.

<sup>2</sup> *Proc.* No. 55 of 1921 (S.W.A.), in *The Laws of South West Africa 1915-1922*, pp. 632-683.

<sup>3</sup> *Vide* Chap. II, *supra*.

<sup>4</sup> *Vide* Chap. III, para. 5, *supra*.

Africa and of its peoples, and with reference to Respondent's experience gained not only in the Territory itself, but also in the administration of education over a long period in a plural or multi-group society in South Africa. The reasons aforementioned all centre around the differences between the population groups which, in the field of education, give rise to particular implications and problems. These will be dealt with herein-after under the following headings:

- (a) Varying stages of advancement of the different groups.
- (b) Different languages.
- (c) Different syllabuses.
- (d) Different social entities and parent communities.

(a) *Varying Stages of Advancement of the Different Groups*

5. The population of South West Africa is composed of the following main groups:

- the Nama (Khoi, or Hottentots);
- the Herero;
- the Ovambo (collective name for the various tribes living in Ovambo-land);
- the Okavango (collective name for the various tribes living in the Okavango);
- the Dama (or Bergdama(ra), or Klipkaffers);
- the Bushmen;
- the tribes in the Eastern Caprivi;
- the Rehoboth Basters;
- the other Coloureds; and
- the White group.

Each of these groups had its own identity, its own culture, customs and language (save that the Basters and other Coloureds spoke one of the European languages, and the Dama the Nama language, as they still do). There were in these respects differences not only between the White, Coloured and Native groups, but also between the various Native groups *inter se*. There were, furthermore, as there still are, vast differences in the levels and stages of development of the various groups, particularly as gauged by standards of what is generally known as Western civilization.

6. The members of the White group were derived entirely from peoples and communities regarded as bearers of Western civilization. At the inception of the Mandate they were already served by 23 government schools for South African children in the Territory, and an almost equal number of private schools for German children<sup>1</sup>. Both these sections of the White population were displaying an active interest in the promotion of education. There was, therefore, as far as the education of White children was concerned, a sound foundation on which to base further development after the pattern of the school systems of the Western world.

As far as the indigenous groups of the Territory were concerned, however, conditions were vastly different. Considering the traditional systems, customs and circumstances under which they had been living before contact with members of the White group, and the limited extent

<sup>1</sup> *Vide* Chap. II, para. 13, *supra*.

and brief span of such contact—in general less than half a century—it was inevitable that the standards, skills and values of the White group's literary, monetary and technological civilization should have been wholly or largely unknown, and indeed strange and foreign, to the indigenous peoples. The result was that in these respects the difference in the level of development—as between the White group and the indigenous peoples on the whole—could probably be measured in terms of centuries. If there are added the influences of witchcraft and superstition, and the effects of an unfortunate clash of arms between some of the indigenous peoples and the first European regime, it will be apparent that a certain measure of suspicion and distrust of the strange new things introduced by the White group was also inevitable.

In such circumstances, education of the Natives would necessarily be a slow process and one which could, for some time at least, best be promoted, as it had been done in the period before the Mandate, by missionaries in conjunction with their primary task of teaching religion to and civilizing the Native communities among whom they worked <sup>1</sup>. That progress would, in all the circumstances, be slow, was appreciated by the Permanent Mandates Commission. This appears particularly from a statement in 1930 by M. van Rees, a member of the Commission, who is recorded to have said, *inter alia*—

“ . . . that the natives in South West Africa were for the most part in a very low state of civilization. That being so, he did not think it wise for the Commission to show too great impatience or to be too exacting in so far as the education of natives in the reserves was concerned. Such education inevitably took a long time, and was at the moment in the hands of the Missions <sup>2</sup>.”

Furthermore, as has already been stated <sup>3</sup>, among the Native groups themselves different stages of development had been attained; and differences in this respect persist even today.

In all these circumstances, the interests of the Native groups could be served only by providing them with educational facilities which took account not only of their languages, traditions and cultures, but also of their varying stages of development.

7. Mixed schools would not have served the best interests of the Native children, and would, moreover, have hampered the progress of the children of the White group. For the latter the special adaptations requisite in the case of education of Native children would have been unnecessary and, indeed, wasteful as regards rates and standards of progress in education. This could in due course have resulted in a “levelling down” of the educational standards of the White group, without comparable and compensatory benefits for Native children, to the detriment of the country as a whole.

The same considerations, though to a lesser degree, applied in the case of the Coloured group. Though standing generally nearer to the

<sup>1</sup> *Vide* in this connection the remarks of the then Administrator of South West Africa, Mr. Hofmeyr, before the Permanent Mandates Commission in 1924 (*P.M.C., Min.*, IV, p. 44).

<sup>2</sup> *P.M.C., Min.*, XVIII, p. 138.

<sup>3</sup> *Vide* Book III, Chap. II, of this Counter-Memoriam.

level of civilization and development of the White group than the Native groups, they were nevertheless much less advanced than the White group. Whereas in the history of the Territory before the Mandate<sup>1</sup> the missionaries generally admitted Coloured children to the Native mission schools, there were, by the time the Mandate was conferred, separate schools for some of the so-called "Half-White" children, and separate facilities for the Rehoboth Basters; and, for the Cape Coloureds that had come from South Africa during the period of military occupation, separate classes were conducted in some mission schools by Coloured teachers imported from South Africa<sup>2</sup>.

(b) *Different Languages*

8. Mention has already been made<sup>3</sup> of the number of different languages spoken in South West Africa. Among the White group provision had to be made for instruction in both the official languages, Afrikaans and English, and, in accordance with the policy of home-language instruction followed in the Territory<sup>4</sup>, also for instruction in German, at least up to a certain stage. In practice this entailed the creation of different language medium schools or, at least, separate Afrikaans, English and German divisions at the same school.

While the vast majority of the Coloured population spoke either Afrikaans or English, the members of the indigenous population spoke one or more of a number of Native languages, depending on the particular group to which they belonged. The principal Native languages spoken were, and still are:

. Kuangali and Diriku (among the Natives of the Okavango); Ndonga, Kuanyama and Kuambi (among the Natives of Ovamboland); Herero, Nama, Bushman, Tswana (in the case of a small section) and Sikololo, also known as Silosi (among the Natives of the Eastern Caprivi).

9. The multiplicity of languages spoken called for, and indeed necessitated, the establishment and maintenance of separate schools and the application of a policy of differentiation not only as between the White, Coloured and Native groups, but, as far as practicable, also as between the various Native groups.

From a practical point of view, it would hardly have been feasible to provide for education in the Native languages in schools where provision had already to be made for three European languages. Furthermore, quite apart from such practical considerations, sound educational policy required that separate schools be provided for the children of the various Native groups in which they could be taught in the vernacular by teachers of their own group within their own social and domestic milieu.

It is Respondent's experience, in South West Africa as well as in South Africa, that such policy, founded upon mother-tongue instruction and its attendant implications, is necessary to ensure sound progress.

<sup>1</sup> *Vide* Chap. II, para. 7, *supra*.

<sup>2</sup> *Ibid.*, para. 13.

<sup>3</sup> *Vide* Book III, Chap. II, paras. 16, 28, 42, 58, 68, 75 and 88, of this Counter-Memorial.

<sup>4</sup> *Vide* paras. 15-22, *infra*.

*Mother-Tongue Education in South Africa*

10. In South Africa the principle of mother-tongue education, in so far as the White group of the population was concerned, found proper application only after the recognition of Afrikaans<sup>1</sup> as one of the official languages of South Africa.

At the establishment of the Union of South Africa in 1910, Dutch and English were made official languages, to be treated on an equal footing and to enjoy equal rights in Parliament and elsewhere.

By legislation in 1925 Afrikaans was recognized as an official language and from then on in practice replaced Dutch in the educational as well as in other spheres. Since 1925 the principle of mother-tongue instruction has prevailed in South Africa and, consequently, separate educational facilities have been established for the Afrikaans and English-speaking sections of the community<sup>2</sup>.

11. The languages spoken by the Coloured people in South Africa are Afrikaans and English, but preponderantly the former. In the case of the Coloured people, as in the case of the Europeans, the principle of mother-tongue education finds application in the establishment as far as is practicable of separate facilities for the different language groups.

12. As regards the various Bantu groups in South Africa, it was only natural that in the beginning most of them should have been taught through the medium of European tongues, especially English, since most of the missionaries were from Europe and taught the subjects they knew in their own languages. Experience showed, however, that few of their pupils stayed at school long enough to acquire an adequate grounding in English, and that they consequently failed to absorb a great deal of the instruction given in that language.

The possibility of effectively employing the Bantu vernaculars for educational purposes had been realized at a very early stage by certain of the missionary bodies, for example by some of the English missionaries in the Transkei (from 1831) and in Zululand, as well as by the Berlin Mission in the Transvaal.

13. As Bantu teachers in South Africa increased in numbers and capacity, mother-tongue instruction became practicable, although many of these teachers had been educated in English and Afrikaans themselves and were at first inclined to be prejudiced against teaching through the medium of a Bantu tongue. The Native Education Commission of 1949-1951, under the chairmanship of Dr. W. W. M. Eiselen, whose report laid the foundation for the South African Bantu Education Act of 1953, recommended very strongly that the mother tongue of the different Bantu groups "should be used as the medium of instruction for at least the duration of the primary school", not only on purely educational grounds, but also because of the "positive contribution which the schools can make in the development of the Bantu languages

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<sup>1</sup> Afrikaans could be described as a sister-language of modern Dutch and Flemish. It developed from the seventeenth-century Dutch in vogue at the time of the first colonization of the Cape along lines somewhat, though not entirely, divergent from modern Dutch and Flemish.

<sup>2</sup> Being either entirely separate schools, or separate divisions of the same school depending on practical circumstances.

both for their own use and for other institutions of Bantu life, e.g., Bantu Courts and Councils" <sup>1</sup>.

This policy of promoting mother-tongue education, with its corollary of using Bantu teaching personnel to the maximum possible extent, has been more vigorously implemented in South Africa since 1954 by the Department of Bantu Education. While English and Afrikaans are being taught from an early age, the policy is that the medium of instruction in the primary standards should be the vernacular. A Bantu language board has been constituted to develop the recognized languages as school and teaching languages, and experts in various fields serve on this board and its several language committees.

14. Initially a shortage of suitable text-books, and the lack of an adequate educational vocabulary and terminology in the various Native languages, presented serious difficulties, but the Department actively encouraged experts to prepare the necessary books, and today there are approved graded class-books in nearly all the major Bantu languages spoken in South Africa for all the subjects taught in the primary schools <sup>2</sup>.

Referring to the use of the mother tongue as medium of instruction and to the development of the Bantu languages in South Africa, Paul Giniewski, a French author who visited South Africa recently, says the following:

"The principle is certainly valid in the primary and secondary schools.

Transformation of the fluctuating, oral tribal culture into a written culture, the elevation of little-known literatures to literatures taught and analysed in class; the changing of dialects which are not rich in vocabulary into teaching languages, must eventually enrich these cultures, these literatures, and these languages for the benefit of the people who possess them. . . . The Bantu languages are being endowed with the scientific terminology required by modern education in all fields; the writing of textbooks will allow Bantu writers who wish to renovate their language to enter the domain of disciplined and methodical creation. With regard to the Bantu community, encouraging the use of the mother tongue certainly represents a positive measure <sup>3</sup>."

#### *Mother-Tongue Education in South West Africa*

15. In regard to South West Africa, the 1958 Commission of Inquiry into Non-European Education in South West Africa, after fully considering local conditions as well as the experience gained from years of Bantu education in South Africa, recommended the use of the vernacular as medium of instruction in the substandards (i.e., the first two years' schooling), and as far as possible also in Standards I and II <sup>4</sup>.

<sup>1</sup> U.G. 53—1951, p. 131.

<sup>2</sup> This was no mean achievement, considering that at least seven major Bantu languages are spoken in South Africa.

<sup>3</sup> Giniewski, P., *Bantustans: A Trek towards the Future* (1961), p. 103. This work was originally published in French under the title *Un faux Problème Colonial: l'Afrique du Sud* (1961).

<sup>4</sup> *Report of the Commission of Inquiry into Non-European Education in South West Africa* (1958), Part I, *Native Education*, para. B124, p. 116.

In Respondent's opinion, these courses are by far the most important ones as far as the Native groups are concerned, since the majority of Native pupils leave school after the first few years of schooling. These courses therefore aim at making the largest possible number of children of school-going age literate in their mother tongue and at providing them, at the same time, with a knowledge of Afrikaans and English.

The Commission also recommended that the "... home language as a subject should be taught with Afrikaans and English up to Standard VI and also for the Junior Certificate"<sup>1</sup>.

The recommendation as to mother-tongue instruction did not constitute an innovation of principle as far as Native education in the Territory was concerned, but endorsed a policy and aim which had for a long time been pursued by the Administration, namely that instruction in the lower standards should, as far as possible, be in the pupil's home language.

Thus in 1924 the Director of Education for South West Africa, in a memorandum which was placed before the Permanent Mandates Commission, said, *inter alia*:

"The chief native languages in the country number four: Nama, Herero, Ovambo and Sechuana [Tswana]. In accordance with the principle of mother-tongue instruction, all these languages are taught in our schools<sup>2</sup>."

Experience has shown that pupils absorb much more when instruction is given them in their home language, than when it is done in a language not their own, and, also, that children who are first taught to read and write in their own language generally learn a foreign language more easily and quickly than others.

16. That Respondent's policy in this regard was in accord with the views held by the Permanent Mandates Commission, appears clearly from reports by individual members of the Commission and from discussions in the Commission.

Thus in a report submitted by Mme Wicksell to the Commission at its 12th Session, in 1927, there appeared, *inter alia*, the following:

"The African schools have one great handicap—the number of different languages, which makes it necessary to teach a foreign language and, in some territories, even to carry on instruction in a foreign language . . .

The African schools are, or ought to be, independent of European school grades; their curricula can be and ought to be founded upon African conditions and African mentality . . .

. . . the educational problems of Africa are distinctly African. The success of the whole 'dual policy' depends, among other things, on the African system of education; the establishment of schools capable of teaching the Africans themselves to take over the agricultural production of these rich tropical countries is a necessary condition of the fulfilment of the sacred trust of civilisation<sup>3</sup>."

Lord Lugard is reported to have congratulated Mme Wicksell on the

<sup>1</sup> *Report of the Commission of Inquiry into Non-European Education in South West Africa* (1958), Part I, *Native Education*, para. B122 (c), p. 113.

<sup>2</sup> *P.M.C., Min.*, IV, p. 176 (Annex 4).

<sup>3</sup> *Ibid.*, XII, p. 186 (Annex 6).

report, which was printed as an Annexure to the Minutes of the 12th Session.

In the Minutes of the Twentieth Session of the Commission, in 1931, the following is recorded:

"Mlle. Dannevig thanked the mandatory Power for the very detailed and valuable information on the education of native children. As regards the statement in paragraph 312 she observed that it had obviously never been the idea of the Mandates Commission that the aim of education should be to Europeanise the natives but, on the contrary, to convert them into better natives <sup>1</sup>."

And in 1934, during the Twenty-sixth Session of the Commission, Respondent was commended for its efforts in mother-tongue education. The following is an extract from the Minutes of the Commission:

"Mlle. Dannevig. . . further referred to the statement in paragraph 172 that 'the new syllabus provides for more systematic instruction in the mother tongue'. What was meant by the 'mother tongue'?"

Mr. Louw replied that, in the case of some Coloured children, the mother tongue would be Afrikaans or English, while, in the case of natives, it would be the vernacular.

Lord Lugard congratulated the Administration on this encouragement of the mother tongue. Was not that a new policy? <sup>2</sup>"

17. A difficulty in making progress with mother-tongue education among the Natives was that in the earlier stages the staffs of the schools for Natives in South West Africa were composed of teachers of whom many did not have an adequate knowledge of the Native languages. Gradually, however, the position changed. Encouraged by the Administration, many European teachers became fluent Native linguists, and a large number of Natives were trained to teach in the vernacular.

In 1930 it was reported to the Permanent Mandates Commission that "The policy is to train selected men in each race and appoint them to do the educational work among their own people"<sup>3</sup>. Despite Respondent's efforts there has always been a scarcity in South West Africa of teachers with an adequate knowledge of the various Native languages spoken in the Territory, and a difficult position has been made more difficult by the fact that some of the Native groups have produced only a limited number of teachers to take care of the teaching of pupils of their language groups. The Herero, in particular, show very little interest in the teaching profession, with the result that there is an acute shortage of Herero teachers. Substantial progress has nevertheless been made, as is illustrated by the statistics relative to Native teachers given in Chapter V<sup>4</sup> below.

18. The problem of giving pupils their initial schooling in their home language is further complicated by the fact that some areas are occupied by members of more than one language group. This is especially so in certain parts of the Police Zone. In the northern territories, where large areas are inhabited by more or less homogeneous groups, the position is much easier.

<sup>1</sup> *P.M.C., Min.*, XX, p. 66.

<sup>2</sup> *Ibid.*, XXVI, p. 59.

<sup>3</sup> *U.G.* 21—1931, para. 314, p. 51.

<sup>4</sup> *Vide* Chap. V, paras. 43 and 55, *infra*.

Despite all the difficulties, however, every possible effort is made by the Administration to ensure that as many pupils as possible are taught through the medium of their own language by teachers of the same language group. Wherever circumstances allow it to be done, the vernacular is used as the sole medium of instruction in the substandards, and as the most important medium in Standards I and II. During the third and fourth years (i.e., Standards I and II), an official language is gradually introduced as medium. In the higher primary standards (i.e., Standards III-VI) an official language is at present the sole medium of instruction, and this is also the position in the secondary standards.

It is the ultimate aim that the vernacular be used as the medium of instruction in all standards. But this will take time, and will only become possible when the various Native languages have been sufficiently developed to be used as teaching languages in all the standards, and when sufficient Native teachers with post-matriculation qualifications become available for the teaching of secondary classes.

19. In order to promote the principle of "introducing the home language as medium of instruction throughout the lower and higher primary schools"<sup>1</sup>, the above-mentioned 1958 Commission also recommended the establishment of an official Bureau for Native Languages<sup>2</sup> to develop Ndonga and Kuanyama (for Ovamboland), Kuangali (for the Okavango group), Nama and Herero as written and school languages and to provide the necessary primers, text-books, etc.<sup>3</sup> This Bureau has been established and specific tasks which have been assigned to it are the following:

- (i) The composing of a grammar for each of these languages where there is none in existence or published.
- (ii) The composing of school readers and graded school text-books.
- (iii) The production of wholesome general reading matter for persons at various stages of development.
- (iv) The encouragement of Native as well as European teachers to write and to collect unwritten folklore.
- (v) The development of subject terminology for school use.
- (vi) The editing of a regular newsletter in the Native languages.

20. The Bureau officially came into operation on 1 January 1962, but subcommittees thereof were established earlier in Ovamboland and in the Police Zone to commence the task of adding to school literature which had gradually over the years been built up by the Missions and the Education Department. The Bureau is headed by a European Bantu philologist, and posts have been created on the staff for five Native assistants.

The establishment of such a Bureau, and the objectives pertaining thereto, are in striking accord with ideals and methods that have been advocated at recent educational conferences dealing with the problems of education in Africa generally. So, for example, at the meeting of Ministers of Education of African countries participating in the implementation of the Addis Ababa plan, held in Paris in March 1962, the

<sup>1</sup> *Report of the Commission of Inquiry into Non-European Education in South West Africa* (1958), Part I, para. B124, p. 115.

<sup>2</sup> *Ibid.*, para. B127, pp. 118-120.

<sup>3</sup> *Ibid.*, para. B127 (d) (i) (ii) and (iii), pp. 119-120.

teaching of African languages was stressed as being of basic importance for a number of reasons, *inter alia*, "as a factor in the rediscovery of African traditions and a consciousness of African identity"<sup>1</sup>. In regard to the study of vernacular languages, it was pointed out that "the desirability of Unesco aid for the creation of an African languages study institute has actually been mooted"<sup>2</sup>.

21. In the particular circumstances of South West Africa, with its multiplicity of languages, the policy of home-language instruction obviously requires that pupils of different language groups should be taught in separate schools, or at least in separate classes. Wherever it is possible to do so, pupils of the same language group are, up to the Standard II stage, accommodated in a school of their own. Where the numbers of a minority group at any particular school, or in any particular area, are not sufficient to justify the establishment of a separate school, every possible effort is made to institute separate classes for such minority group at existing schools. The policy at present is to institute a separate class for a minority group at any school as soon as they number 20 in all classes from Substandard A to Standard II. Separate schools for the higher primary classes are as yet not justified because of the relatively small numbers involved at the various schools, but where the numbers do warrant it, separate classes in the same school are established.

There are certain areas where the pupils of a minority language group are so few in number that even the establishment of separate classes is not practicable. In most of these cases, however, the different language groups live in the same area and understand each other's language, and often the teachers, too, have a sufficient knowledge of the languages involved to be able to explain lessons to all the pupils in a class. Only very rarely does it happen that so many language groups are represented in the same class that no Native language at all can be used as the medium of instruction, but when such a situation does arise, the Administration allows one of the official languages to be used as medium.

22. The language medium position in the Native schools in South West Africa may be summed up as follows:

- (i) Of the 102 schools in the *Police Zone* at present, 1 offers instruction in 3 languages, and 20 in two languages. Herero, is the medium of instruction in 11 schools, and 10 of these are attended almost exclusively by Herero pupils, Nama is the medium in 68 schools: in 6 of these lessons are also explained in Herero, and in the others Nama-speaking pupils form the overwhelming majority. Tswana is the medium of instruction in 2 schools, at both of which Tswana-speaking pupils form the vast majority<sup>3</sup>.
- (ii) *Outside the Police Zone*, in Ovamboland, the Okavango, and the Kaokoveld, the language most commonly used by the group concerned is taught in the schools, and the problem is not as intricate as in the south where, for reasons dealt with elsewhere in this Counter-Memorial, intermingling of the groups has taken place. Respondent has, however, every hope that in the not too distant future all the children in the Territory will be given the opportunity of receiving

<sup>1</sup> Unesco/ED/191, para. 73, p. 17.

<sup>2</sup> *Ibid.*, para. 76, p. 18.

<sup>3</sup> Departmental information.

instruction in their home language, at first only in the lower standards, but in due course also in the more advanced classes.

(c) *Different Syllabuses*

23. As education for the children of a particular community must preferably, and as far as is practicable, be provided in their immediate environment and in accordance with the needs, stage of development, economic, cultural and social background of that community, it follows that where population groups differ as widely as they do in South West Africa, sound educational policy requires different syllabuses for the children of the various groups.

For the White group of South West Africa, which had the advantage of the educational tradition of Western civilization extending over centuries, there was little difficulty in devising a syllabus suitable to its needs.

Provision of suitable curricula for the Native groups in the Territory was, however, in view of their particular circumstances, a matter beset with various problems which have taken years to overcome.

During the German regime the missions prescribed their own curricula for the Natives in the various mission schools. Those prescribed by the Rhenish Mission (in the Police Zone) were based on the curricula for German primary schools:

“... with the necessary adjustments to allow for conditions amongst the Natives in South West Africa. The standard of work ... was lowered and adapted to the actual mental development of the pupils<sup>1</sup>.”

Outside the Police Zone each mission had its own approach, but the object of education there was mainly to teach the pupils to read the Bible. The educational needs of the Natives outside the Police Zone were different from those of the groups in the Police Zone, particularly because of the fact that the traditional life of the former, with their subsistence economy, had not been affected by the impact of the Western economy of the White group.

24. After assumption of the Mandate by Respondent, and upon the promulgation of the Education Proclamation of 1921<sup>2</sup>, education for all groups was reorganized. In order to lay a foundation for future uniformity in education in Native schools in the Police Zone, the Director of Education convened a conference in October 1923 and at that conference suitable curricula were considered<sup>3</sup>.

There were, however, problems which left the authorities no choice but to employ syllabuses for the Native groups drawn up against the cultural and traditional background of the White group.

The major difficulties were:

- (i) the lack of teachers qualified to teach through the medium of Native languages;

<sup>1</sup> *Report of the Commission of Inquiry into Non-European Education in South West Africa* (1958), Part I, para. B43 (e), p. 36.

<sup>2</sup> *Proc. No. 55 of 1921 (S.W.A.)*.

<sup>3</sup> *Report of the Commission of Inquiry into Non-European Education in South West Africa* (1958), Part I, paras. B47 and 48, pp. 40-41.

- (ii) the lack of suitable readers, text-books, manuals and other teaching aids in the Native languages: in many cases the existing school books in English or Afrikaans had to be used.

The provisions of the Education Proclamation of 1921, were, however, not applied to schools outside the Police Zone: at that stage, because of the undeveloped state of education in that part of the Territory, it would not have been reasonable to expect the Finnish Mission to assume the greater educational duties involved<sup>1</sup>.

Nor were the provisions of the Education Proclamation of 1926 enforced outside the Police Zone. The Finnish Mission, therefore, continued to provide its own adaptable syllabuses, and the other missions which started educational work there at a later stage were allowed to do the same.

25. From 1933 to 1951 revised syllabuses, prescribed by the Education Department, were introduced into many of the mission schools. Nevertheless, despite the efforts of the Organizer of Native Education<sup>2</sup>, a lack of uniformity in courses persisted until 1952, when uniform syllabuses for Native schools were introduced throughout the Territory.

The aforesaid 1958 Commission recommended that the syllabuses in use in Bantu schools in South Africa for, *inter alia*, the lower primary, higher primary, junior certificate and lower primary teachers' courses, should, with suitable adaptations to meet local conditions, be introduced in the Native schools of South West Africa<sup>3</sup>.

#### *Special Syllabuses in Bantu Schools in South Africa*

26. By 1958 good progress had been made with the special syllabuses in Bantu schools in South Africa, particularly as a result of putting into practice the findings and recommendations of the South African Native Education Commission of 1949-1951. In its report this Commission referred to recommendations in regard to the need for differentiated syllabuses made over the years by other commissions and committees of inquiry<sup>4</sup>, and stated that these earlier recommendations had largely been ignored in practice, due mainly to—

“... insufficient attention being devoted to the social, economic and administrative structure which determines very largely the role of the schools and their success in fulfilling it<sup>5</sup>”.

The Commission held the view that the content and methods of Bantu education must to a very large extent be dictated by the fact that it has to deal with—

<sup>1</sup> *Vide* Chap. V, paras. 49 and 63, *infra*.

<sup>2</sup> *Vide* Chap. III, para. 6, *supra*, and Chap. V, paras. 41-42, *infra*.

<sup>3</sup> *Report of the Commission of Inquiry into Non-European Education in South West Africa* (1958), Part I, para. B121 (b), pp. 111-112.

<sup>4</sup> The South African Native Affairs Commission of 1903-1905, the Select Committee on Native and Coloured Education (Cape) of 1908, the Native Economic Commission of 1930-1932, and the Inter-Departmental Committee on Native Education, 1935-1936.

<sup>5</sup> *U.G.* 53—1951, p. 8.

"... a child trained and conditioned in Bantu culture, endowed with a knowledge of a Bantu language, and imbued with values, interests and behaviour patterns learned from a Bantu mother"<sup>1</sup>.

Consequently, the Commission recommended, *inter alia*, that the syllabuses in South Africa for Bantu schools should be revised to provide for the special needs and conditions of the Bantu groups, with particular emphasis on literacy in the mother tongue and the cultivation of a proper pride in the groups' own national customs and traditions, without, however, neglecting the study of the two official languages (Afrikaans and English):

"... as a means of communication with Europeans, as a help in economic matters, and as a means of securing contact with the knowledge of the wider world"<sup>2</sup>.

27. On the basis of the aforementioned recommendation, the Department of Bantu Education in South Africa secured the services of experienced educationists for the purpose of drafting a series of special syllabuses for Bantu schools, and appointed specialist organizers for a number of subjects to ensure that teaching in those fields would be of maximum benefit to the pupils following those courses, as well as to the Bantu communities to which they belonged and which they would eventually serve.

The standard of these syllabuses is in no way inferior to that of the syllabuses used in European schools, but they do, to a certain extent, involve a difference of approach, content and method, determined in the light of the pupil's environment and cultural background.

28. The introduction of special syllabuses in Bantu schools in South Africa has been acclaimed by educationists and others.

Thus Mr. P. A. Moore, an Opposition Member of Parliament and former Inspector of Schools, is reported to the effect—

"... that there is nothing 'inferior' about it [the primary curriculum for Bantu children] compared with the syllabus of White children in the same classes"<sup>3</sup>.

The Rev. Dr. J. B. Webb, eminent churchman and President of the South African Methodist Conference, said in a broadcast over the B.B.C.: "... we educationists regard the new syllabuses as an improvement on the old ones"<sup>4</sup>. (Translation.) Another educationist, Mrs. Whyte, Adult Education Officer of the South African Institute of Race Relations, said: "In theory at least, the Government's Bantu education programme was a good one, and the syllabuses among the four best in the world." Paul Giniewski<sup>5</sup> wrote the following in regard to some of the subjects in the Bantu primary school syllabus in South Africa:

"As for the four practical subjects in which people have seen proof of the 'degradation' of Bantu education—manual work, Bantu craftsmanship, gardening and that extraordinary course in 'tree planting and soil conservation'—these should be made compulsory

<sup>1</sup> *U.G.* 53—1951, p. 131

<sup>2</sup> *Ibid.*, p. 132.

<sup>3</sup> *The Star*, 1 Dec. 1954, p. 9.

<sup>4</sup> *Die Transvaler*, 19 Aug. 1955, p. 7.

<sup>5</sup> *Vide* para. 14, *supra*.

throughout Africa and Asia. Are not trees and soil the basic problems in this new black-yellow world taking shape on these continents? <sup>1</sup>"

And:

"It seems to me excellent that history, geography and ethics are being taught as a single subject, 'social studies', and it would be a good idea to extend this principle to White schools. It is, after all, normal that the emphasis should be put on the Bantu environment rather than on the heritage of Western civilization and at a given moment one must stop talking about 'our ancestors, the Normans', to the descendants of Chaka and Dingaan <sup>2</sup>."

*Special Syllabuses in Native Schools in South West Africa*

29. The recommendation of the 1958 Commission of Inquiry into Non-European Education in South West Africa concerning special syllabuses <sup>3</sup> was adopted by the South West African Administration. Suitably amended lower and higher primary syllabuses were introduced in the areas outside the Police Zone in 1961. Their introduction in schools within the Police Zone was postponed for one year in order to give teachers and other interested persons an opportunity of making proposals for their further amendment, if necessary.

The junior certificate syllabus of the Bantu Education Department has been introduced at all teacher training schools which prepare students for the junior certificate examination, while the lower primary teachers' syllabus has thus far been introduced at the teacher training schools in Ovamboland.

30. It is not at this stage intended to give full particulars of the various syllabuses. Respondent merely wishes to stress the fact that the syllabuses in use in the lower and higher primary schools since 1961 (in the northern territories) and since 1962 (in the Police Zone) have been specially designed to meet the needs of pupils of the various Native groups in the Territory. Based on the syllabuses used in South Africa's Bantu schools, and amended in the light of conditions in South West Africa, they are, as compared with the syllabuses previously used in the Territory, much better suited to relate the subject-matter taught to the pupil's cultural background and experience, and to the problems of his own environment.

The subjects taught are the same for all language groups, but regard is had to the fact that the various groups speak different languages, that they have different traditions and cultures, that they live, to a large extent, in different areas, and that the education of the young has to be carried on in a particular social and domestic milieu. The syllabuses are accordingly of an elastic nature, and allow of differentiation and adaptation to meet the needs of a particular community or group living in a particular area. This is particularly true in regard to the study of the pupil's home language, and the subjects environment study, social studies, nature study, health education, and some of the practical courses.

Without entering into details, the approach to the syllabuses can be illustrated by a reference to the teaching methods employed in a few courses. In environment study and in social studies (which is a continu-

<sup>1</sup> Giniewski, *op. cit.*, p. 102.

<sup>2</sup> *Ibid.*, p. 106.

<sup>3</sup> *Vide para. 25, supra.*

ation of environment study, and which includes history and geography), the starting point is the pupil's own home, village and group, and from there the course progresses in ever-widening circles until the history and geography of South West Africa, Africa and the rest of the world are included. In health education the conditions under which pupils grow up form the starting point, and wherever necessary pupils are informed of group peculiarities and customs which may be detrimental to health, and acquainted with more salutary forms of living. In general, it may be said, the syllabuses stress the importance of making the child's own environment the starting point of all further education, and of leading the child from what he knows and understands to that which is unknown.

31. Upon the basis of recommendations in that regard by the 1958 Commission, the educational authorities are aiming also at a certain measure of differentiation of syllabuses in secondary courses for Coloured students so as to adapt their education to the special needs of their group. The small number of pupils involved, however, creates practical difficulties.

(d) *Different Social Entities and Parent Communities*

32. Continuation of the system of separate schools, which operated before the inception of the Mandate, was in accordance with the prevailing social order in the Territory. There had been no social integration between Europeans and non-Europeans either before or during the German regime, nor had there been any such relationship during the period of the country's military occupation. The introduction of a mixed school system would have run directly counter to the prevailing social order, and would, for that very reason, have failed.

33. The provision of separate educational facilities was also, to a large extent, in accordance with the prevailing relationship between Natives and Coloureds. As already stated<sup>1</sup>, the Rehoboth Basters were a more or less homogeneous group who occupied a territory of their own and had their own schools. For the Cape Coloured group separate facilities had, as far as was practicable, been provided from an early date<sup>2</sup>, and the so-called "Half-Whites" were not welcome in the European society, and, in many instances, not accepted in the Native society<sup>3</sup>. Practical difficulties have, to this day, prevented the complete implementation of the policy of having separate schools for all Coloured children, though various Coloured communities have from time to time urged the Administration to provide separate facilities for them. In testifying before the 1958 Commission of Inquiry into Non-European Education in South West Africa, several Coloured witnesses objected to the fact that Coloured school children were still at times "forced to attend schools for Natives"<sup>3</sup>, and to the fact that "Bantu teachers [were] sometimes appointed to Coloured schools"<sup>4</sup>.

34. The desire not to integrate socially was, and still is, apparent also as between various Native groups. When regard is had to the differ-

<sup>1</sup> *Vide* Chap. II, para. 7, *supra*.

<sup>2</sup> *Ibid.*, para. 13.

<sup>3</sup> *Report of the Commission of Inquiry into Non-European Education in South West Africa* (1958), Part II, *Coloured Education*, para. K115 (k), p. 38.

<sup>4</sup> *Ibid.*, para. K115 (m), p. 38. *Vide* also subpara. (n).

ences between these groups, it is only natural that the members of any particular group should prefer to associate with other members of their own group. This tendency is also apparent as far as the schooling of children is concerned. A few examples may be cited. The Ovambos, who have frequently indicated their desire for separate schools for their children, recently made representations to the Administration to have a separate school for young Ovambos in the new Native township of Katutura, at Windhoek. In the Okavango it has been the experience of the Finnish Mission that Okavango parents prefer having their children taught by members of their own group, and that they encourage Okavango students to become teachers. Recently, when a second Native school was built in the Katutura township of Windhoek, Nama-speaking parents and teachers urgently requested the Administration to make this school a school for Nama-speaking pupils only. And, as a final example: at the end of 1961 there was a vacancy on the teaching staff at the Herero school at Okakarara in the Waterberg-East Reserve. Due to a shortage of Herero teachers, the Chief Inspector of Native Education offered the principal of the school a Nama teacher. The principal refused to have him on his staff, and when asked the reasons for his refusal, he politely stated that he doubted whether a Nama teacher would be acceptable to Herero parents and children, and that a Nama teacher would be unhappy among the Hereros of the Reserve.

The attitude of the respective groups, is as far as possible, respected by providing separate facilities for them.

35. Closely allied to the considerations aforesaid is the desirability, in Respondent's view, that, as sound educational policy, the parents of a group or community should take an active part in the control and management of education and in the determination of the content of education. Respondent believes that in this way education can become a living reality which evolves with the group. It is consequently Respondent's aim that the parents of every group should form an integral part of the school system in the Territory. This being the position, it is more practical and more conducive to good group relations if separate schools with separate parent organizations exist for the groups which form different social entities and which have different needs and aspirations.

36. The White group in South West Africa has always taken an active part in the education of its children. Provision for European school committees was made in the first Education Proclamation for the Territory<sup>1</sup> and was retained in the subsequent Proclamation, No. 16 of 1926 (S.W.A.)<sup>2</sup>. Parents serve on these committees and assist in the promotion of the education of their children.

The Native groups, however, were in this respect, at any rate during the earlier years, not sufficiently advanced to make any real contribution. It was only after recommendations were made by the 1958 Commission that active steps were taken to promote their participation in the education of their children.

<sup>1</sup> Proc. No. 55 of 1921 (S.W.A.), secs. 9-19, in *The Laws of South West Africa 1915-1922*, pp. 635-638.

<sup>2</sup> Proc. No. 16 of 1926 (S.W.A.), secs. 10-28, in *Laws of South West Africa*, Vol. II (1923-1927), pp. 232-242.

The evidence given before the Commission in this regard is summarized as follows in its report to the Administration:

"Most of the churches and the mission societies have drawn the parents into rendering service to their schools by establishing school committees. They have all come to the conclusion, however, that such committees would not be able to make any real contribution without the guidance of European chairmen. Certain circles expressed the opinion that bodies of parents would be incapable of bearing any important responsibilities in school matters. Even the Teachers Association felt that school committees and school boards would be undesirable for purposes of control. And yet it was remarkable to what extent the idea of serving on such bodies and exercising authority over their schools stirred the imagination of Native parents, tribal councils and chiefs, without exception. Everywhere great enthusiasm was shown for such a system of control and they were all quite confident that they would be able to fulfil the duties explained to them. They expressed the desire that such opportunities should be created as soon as possible<sup>1</sup>."

The Commission recommended that the system of community schools in South Africa should be introduced in the Territory.

#### *The System of Community Schools in South Africa*

37. The desirability of the parents of each group playing an active part in the planning and administration of its own educational services was recognized in South Africa from a relatively early date. There were, however, special reasons why the development of such institutions as school boards and school committees was a slower process among the non-White groups than among the Europeans. There was no educational tradition in the Western sense among the non-White groups, and it was thus inevitable that they could not provide the necessary basis of educated adults until several generations had passed through the schools.

In the case of the White group in South Africa, provision for participation by parents in the education of their children has been in existence for many years in the form of school boards and school committees. Similar provision was made later also in regard to some Coloured schools, and current legislation contemplates the extension thereof to all Coloured schools.

38. In the case of the Bantu groups, however, it was not until the passing of the Bantu Education Act in 1953 that a similar system was introduced. This was done on the basis of a recommendation by the Commission on Native Education 1949-1951, which pointed out in its report that "Bantu parents should as far as practicable have a share in the control and life of the schools", since it is "only in this way that children will realise that their parents and the schools are not competitors but that they are complementary", and that "the schools will educate the parents in certain social values"<sup>2</sup>. As a means of bringing into existence

<sup>1</sup> *Report of the Commission of Inquiry into Non-European Education in South West Africa* (1958), Part I, para. Bro6 (b), p. 80.

<sup>2</sup> U.G. 53—1951, para. 766 (j), p. 131.

an "educational system [which] should have educative results not merely on the children but on the whole community"<sup>1</sup>, the Commission stressed "the importance of giving the Bantu a real share in the responsibility for their education", and regarded it as "fundamentally important that the Bantu should have a share in the financing of schools, in the formulation of policy, in the shaping of syllabi, in the management of Bantu schools and in the examination of the professional work of these schools"<sup>2</sup>.

In implementation of the aforesaid recommendations, the Bantu Education Act, 1953 (Act No. 47 of 1953), and regulations thereunder, made provision for the establishment of Bantu community schools in South Africa.

39. The system of community schools offers Bantu parent communities the opportunity of playing an active part in the control of the education of their children, and at the same time affords them an excellent training ground in self-management and citizenship.

Community schools, while subsidized by the State, fall under the local control of Bantu school committees, each consisting of seven members, elected by and from amongst the parent community concerned. Bantu school boards, again, exercise control over all community schools in given areas, determined on the basis of language groups and community interests. Some of the members of a school board are elected by the parent communities concerned, while others are appointed by the Department and by the local authority concerned to represent religious and local interests.

There have been established, throughout South Africa, school committees for more than 4,700 schools and also more than 500 school boards, each consisting of at least ten members. This means that more than 33,000 Bantu men and women are now taking an active part in the control and promotion of their children's education—and, at the same time, gaining valuable experience in managing their own affairs.

Bantu communities have shown an ever-increasing interest in the education of their children since the introduction of community schools and the system of Bantu school committees and school boards, and this has in no small way contributed to the big increase in the number of children at school during the past few years. In 1955 it was estimated that 40 per cent. of all Bantu children in South Africa between the ages of 7 and 16 attended school, and by 1960 the percentage had risen to 60.

40. Paul Giniewski<sup>3</sup> deals with the system of community schools, school committees and school boards in the following terms:

"These figures are important: they represent 4,500 meeting places where 30,000 Bantu persons can have a controlling interest in their own affairs and a training ground for their active participation in the management of their destiny. Through the education of the children the whole community is being educated, through the concrete problems of running a school, populations which have been spoonfed for generations are taught that a book, a pencil, a school bench, a teacher, mean money and that they are not manna coming from the omnipotent and far-off government in the town but the

<sup>1</sup> U.G. 53—1951, para. 962, p. 152.

<sup>2</sup> *Ibid.*, para. 963, p. 152.

<sup>3</sup> *Vide* para. 14, *supra*.

fruits of an effort that the community which benefits from them must make. The system as a whole is thus certainly on this level, a positive contribution to the development of the body civic of the Bantu and fits in very well with the guiding thought which theoretically underlies the whole edifice of apartheid: apprenticeship of national independence<sup>1</sup>."

The community school system, with its school boards and school committees, has been generally welcomed by Bantu communities in South Africa. In the Bantu newspaper *Ilanga Lase Natal* of 19 November 1955, M. H. S. Makhanya, Supervisor of Bantu Schools, is reported to have said at a meeting of the Natal African School Supervisors' Society:

"We are grateful . . . to the Department of Bantu Education for this fine gesture in giving us Africans a bigger share in the responsibility of African education. This will mean a greater gain eventually to Bantu education and we would like to assure the powers-that-be that they will have nothing to regret in the fine step they have taken.

The thinking Bantu is hailing, with much appreciation, this giving them of a large share in the responsibility of African development!<sup>2</sup>"

#### *Community Schools in South West Africa*

41. The recommendation of the 1958 Commission concerning community schools<sup>3</sup> was adopted by the Administration.

Implementation of the new system commenced in 1961, when the Administration took over the lower primary schools, 85 in number, of the Finnish Mission in Ovamboland. A school committee was established for each of the schools, and Ovamboland was furthermore divided into six school board districts<sup>4</sup>. The implementation of the system in the Police Zone began in 1962<sup>5</sup>.

After its experience thus far of community schools in Ovamboland, the Administration has every confidence that the system will be a success. School committees and school boards, acting under the guidance and with the advice of the Administration's officials, are doing good work, and it is hoped that all Native parent communities will in time utilize to the full the opportunity which has been given them of promoting education through their own efforts.

42. With regard to the Coloureds, Ordinance No. 27 of 1962 (S.W.A.)<sup>6</sup> makes provision for the election of school committees, composed of Coloured parents, for government Coloured schools.

43. The system of community schools does not only afford the parents of each group an opportunity of participating in the planning and administration of its own educational services, but it also serves as a step in a process of development which has as its aim the eventual assumption by each group of control of its education—that is, when the groups can shoulder the necessary administrative and financial responsibility.

<sup>1</sup> Giniewski, *op. cit.*, p. 104.

<sup>2</sup> *Ilanga Lase Natal*, 19 Nov. 1955, p. 15.

<sup>3</sup> *Vide* para. 36, *supra*.

<sup>4</sup> *Vide* Chap. V, para. 35, *infra*.

<sup>5</sup> *Vide* further Chap. V, para. 36, *infra*.

<sup>6</sup> *Vide* Chap. III, para. 5, *supra*.

In this regard the 1958 Commission stated that it had: "... learned from Native representatives and bodies that the idea of greater financial burdens was acceptable" <sup>1</sup>.

And the Commission pointed out that—

"As a matter of fact, the principle has in part been accepted already, as witness the voluntary help and contributions given by communities with the erection of mission schools, and further the raising of voluntary levies for educational purposes and the appropriation of these levies from the tribal funds <sup>2</sup>."

## II. THE ATTITUDE OF THE LEAGUE OF NATIONS TOWARDS RESPONDENT'S POLICY OF DIFFERENTIATION

44. The policy of having separate schools in South West Africa for European, Coloured and Native children was one of which the Permanent Mandates Commission, and therefore also the Council of the League, was at all times fully aware. Not only were the Education Proclamations of 1921 and 1926 brought to the notice of the League, but in Respondent's annual reports to the League the education of European, Coloured and Native children was dealt with separately. A few references should suffice as illustration. In Respondent's annual report to the League of Nations in 1921 it was stated:

"An Education Proclamation on the lines of the Cape Consolidated Ordinance was issued in November, 1921, and came into force on 1st January, 1922. It contains important provisions for educational administration and school management by committees, on the grading, emoluments, and pensions of teachers, *on native education*, on private schools, and on the medical inspection of schools, as well as other important matters <sup>3</sup>." (Italics added.)

In 1922 it was reported that—

"Since the arrival of the missionaries, from the earliest times, the *teaching of the native children has been entirely in the hands of the Missionaries* who were subsidised by the late Government <sup>4</sup>." (Italics added.)

In 1923 it was stated:

"*All the native schools* are Denominational Mission Schools at present. They cannot do without the constant guidance of the local missionary <sup>5</sup>." (Italics added.)

In the same year Major Herbst, Respondent's representative, is recorded as having informed the Permanent Mandates Commission that—

"... the establishment of *State schools for natives* was contemplated. This idea has, however, been abandoned for the present as the recent missionary conference to which reference has been made, proved entirely satisfactory, under the arrangements which now exist the Director of Education has a say in the syllabus and the right of

<sup>1</sup> Report of the Commission of Inquiry into Non-European Education in South West Africa (1958), Part I, para. B146, p. 138.

<sup>2</sup> *Ibid.*, pp. 138-139.

<sup>3</sup> U.G. 32—1922, p. 15.

<sup>4</sup> U.G. 21—1923, p. 20.

<sup>5</sup> U.G. 21—1924, p. 33.

inspection of mission schools, and the missions are working in close co-operation with the Administration. A change, therefore, seems unnecessary.

I think it is generally the policy *to leave the pioneer work in connection with native education to missionaries*, the Government rendering financial assistance <sup>1</sup>." (Italics added.)

45. In 1924 Mr. Hofmeyr, the then Administrator of South West Africa, furnished the Permanent Mandates Commission with particulars of Native schools in the Police Zone and in the northern territories, as well as of estimated expenditure on Native education <sup>2</sup>. He also gave the Commission a summary of what had been accomplished during his term of office, and in that regard he stated, *inter alia*:

"An Education Law, making provision for the recognition of mission schools, details of which have been supplied, was promulgated. According to the terms of this law, *coloured and native schools* are under the direct control of the various Missions . . ." (Italics added.)

He also said:

"In order to work out a common plan and promote co-operation in *native and coloured education*, I instructed the Director of Education last year to call a conference to which all churches and missionary organisations interested in educational work were invited. A common understanding was reached as to the syllabus to be drawn up for mission schools, and later on a *vacation course for native teachers* was held. We have in course of preparation elementary *reading-books in the native languages* for the use of these mission schools <sup>4</sup>." (Italics added.)

Respondent's 1926 annual report contained the following:

"Proclamation No. 16 of 1926. The new Education Proclamation provides, *inter alia*, for improved salary scales for *teachers in the coloured and Native schools*, . . ." <sup>5</sup> (Italics added.)

46. In 1930 the South African representative, Mr. Courtney Clarke, in addressing the Permanent Mandates Commission, said that Native education: ". . . was being conducted through the Missions, and, in the case of backward races, that was the best possible method <sup>6</sup>." In its report for that year Respondent outlined briefly its policy with regard to the education of the Native population in the following terms:

"The aim is definitely not to europeanize the natives. They must retain their language and their customs as far as the latter do not clash with the great general principles on which civilization rests. Hereros must develop into better Hereros, the Hottentots into better Hottentots, etc. <sup>7</sup>"

Count de Penha Garcia, a member of the Commission, is reported to have said:

<sup>1</sup> U.G. 21—1924, p. 35.

<sup>2</sup> P.M.C., *Min.*, IV, p. 51.

<sup>3</sup> *Ibid.*, p. 54.

<sup>4</sup> *Ibid.*, pp. 51-52.

<sup>5</sup> U.G. 22—1927, p. 56.

<sup>6</sup> P.M.C., *Min.*, XVIII, p. 137.

<sup>7</sup> U.G. 21—1931, para. 312, p. 51.

"... *The education of the African native* was a difficult problem. In many parts of Africa, when natives were given the same education as white men, the result was often the opposite of what was intended. A class of half-educated natives, if he might so use the term, was created, which only too often exercised a harmful influence over the primitive native...

The native had not the same mentality as the white. *Educational methods must be adopted which were suited to his mentality and to his process of evolution towards a civilisation which was not always that of the white man himself*<sup>1</sup>. (Italics added.)

In 1936 it is recorded that the Commission noted "with satisfaction":

"... the efforts made by the mandatory Power in the educational sphere, and in particular the opening of a *first Government native school in a native reserve*. It hopes that it may be found possible to open similar schools in other native reserves...<sup>2</sup>" (Italics added.)

47. The policy of having separate schools, which was applied in South West Africa when South Africa assumed the Mandate, was the policy which was followed during all the years of the existence of the League of Nations. While fully aware of the application of this policy, neither the Permanent Mandates Commission nor the Council of the League at any time suggested that the policy was not in keeping with the terms of the Mandate, and at no time was Respondent requested to adopt a different policy. On the contrary, a reference to the proceedings of the Permanent Mandates Commission shows that the members of the Commission were at all time aware of the vast differences between the various groups in their respective levels of civilization, their traditions and cultural backgrounds, and it is submitted that they appreciated and did not oppose Respondent's view that the interests of the various groups could best be served in separate schools. Of particular significance in this regard is the attitude adopted by the Commission towards Respondent's policy of mother-tongue education<sup>3</sup>.

### III. SEPARATE EDUCATIONAL FACILITIES IN OTHER MANDATED TERRITORIES

48. That separate educational facilities for different population groups also existed in other mandated territories during the lifetime of the League, appears from the Minutes of the Permanent Mandates Commission. The following extracts from these Minutes are cited as examples.

#### (a) *The Pacific Islands—under Japanese Mandate*

In a note read by the Japanese representative to the Commission during the fourteenth meeting of the Third Session, in 1923, it was stated, *inter alia*:

"... an improvement has been made in the system of education with a view to dealing more adequately with the present situation in the

<sup>1</sup> *P.M.C., Min.*, XVIII, pp. 138-139.

<sup>2</sup> *Ibid.*, XXIX, p. 212.

<sup>3</sup> *Vide* para. 16, *supra*.

islands. There are two kinds of schools—primary schools for non-natives and public schools for the natives<sup>1</sup>.

(b) *New Guinea—under Australian Mandate*

At the fourth meeting of the Thirteenth Session in 1928, in reply to a question by Lord Lugard concerning "the facilities for the education of white, Chinese and half-caste children", the Australian representative, Sir Glanville Ryrie, is recorded as having stated:

"... that there was a good school at Raboul staffed by white teachers . . . the number of pupils attending the school at Raboul was 22, and the numbers of pupils attending the Chinese schools were 43, 57 and 11 respectively. There was also the school for Europeans at Kieta<sup>2</sup>."

And at the seventeenth meeting of the Thirty-sixth Session, in 1939, the Australian representative, Mr. Halligan, is recorded as having said: "European, Chinese and native schools were maintained during the year . . ."<sup>3</sup>

(c) *Tanganyika—under British Mandate*

The following statement is recorded in the Minutes of the seventeenth meeting of the Thirteenth Session, in 1928:

"Additional funds had also been voted for opening a girls' school in Tabora, the first effort of the Government to undertake the education of girls, and for setting up a central school for Indian children in Dar-es-Salaam. Monies had also been voted for the instruction of the children of Europeans in some of the main centres<sup>4</sup>."

And at the third meeting of the Eighteenth Session, in 1930, the Mandatory's representative is recorded as having stated that—

"... the Advisory Committee advised the Government solely on matters relating to native education. The two Advisory Boards (on Indian and European Education) would be confined respectively to Indian and European Education. They would be three quite separate organisations<sup>5</sup>."

#### IV. RETENTION OF THE SYSTEM OF SEPARATE EDUCATION

49. The circumstances which brought about a system of separate education in South West Africa still exist today.

The difference between the levels of civilization and development of the European and Native peoples of the Territory in 1920 was such that it could not be eliminated in a generation or two. Steady progress has been made in the education of the Native groups during the last 40 years, but, on the whole, the gap is still a wide one. Moreover, the customs, cultures and traditions of the Native groups have remained

<sup>1</sup> *P.M.C., Min.*, III, p. 80.

<sup>2</sup> *Ibid.*, XIII, p. 31.

<sup>3</sup> *Ibid.*, XXXVI, p. 141.

<sup>4</sup> *Ibid.*, XIII, p. 141.

<sup>5</sup> *Ibid.*, XVIII, p. 37.

vastly different from those of the Europeans, and, in addition, still vary from group to group. The languages spoken by the several Native groups are all different from those spoken by the Europeans and the other non-White groups. Geographically, the majority of the Native population are domiciled in separate, demarcated areas, where they have their own communal interests.

50. The policy of separate education as applied in the past is also in accordance with the wishes of the vast majority of the population of the Territory.

In the case of the Natives, each group wishes to retain its own identity and culture. The Coloured people prefer that their children be taught in schools of their own. On the side of the White population differentiation exists even amongst the three language groups. The White group, like the other groups, prefers that its children be taught in separate schools.

In the circumstances Respondent sees no way of meeting the needs and desires of the various groups, and of preserving harmonious relations between them, without retaining a system which makes provision for separate schools for them.

51. It is Respondent's belief, furthermore, that the policy of having separate schools for the children of the White, Coloured and the various Native groups is, in the circumstances which prevail in South West Africa, educationally sound. It is the considered opinion of educationists of standing throughout the world that the interests of any particular community, which is clearly distinct from other communities, can best be served by providing education for its children in their immediate environment and in accordance with their specific needs, their stage of development, and their cultural background.

52. In regard to Native, or "African", education in particular, modern educationists agree that such education calls for an approach which is different from that followed in the case of Europeans.

Thus D. G. Scanlon, Assistant Professor of Education at the State Teachers College, Newark, New Jersey, U.S.A., and former member of the Unesco Fundamental Education Project, in 1954 wrote in an article, "Education and Social Change in West Africa":

*"Formal education must be carried on within the social and domestic milieu of the young African. Village schools where the child remains in his own home while receiving his early education are imperative."*

And:

*"The curriculum of the village schools should be designed to meet the needs of the community. . . Each area should be studied before constructing a curriculum for the school. Too often, curricula are copied from countries whose needs and cultures are vastly different from those of Africa. Such a curriculum, usually of an academic nature, contributes little towards helping the child in his culture.*

*Teaching materials should be produced which will be meaningful to the children in the village<sup>1</sup>."*

P. P. Tempels, a missionary in the Belgian Congo for many years, wrote:

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<sup>1</sup> Scanlon, D. G., "Education and Social Change in West Africa", *Teachers College Record*, Vol. 56, No. 3 (Dec. 1954), p. 134.

"We experience more and more that *our civilisation, our ideas, at least in their Western form, do not appeal to the Bantu*; their souls are not touched thereby.

... Who amongst those responsible for their education and evolution build upon a sound, real Bantu foundation?

The result is on the whole miserable. We have at present to deal with a mass of 'évolués' who look down with disdain on members of their race, but who are themselves at sea with life because they have lost the meaning of it <sup>1</sup>." (Translated from Dutch.) (Italics added.)

Clement Odunukwe, lecturer with the Emergency Training Scheme, Lagos, has stated:

"American education is different from British education. American education is good for America because it is what the people want and are willing to pay for. It must be presumed that British education is good for Britain. Neither as such is good for Nigeria. *Education is a social function which must fit the environment for which it is designed* <sup>2</sup>." (Italics added.)

Million Neqniq, Director of Research and Curriculum Development in the Ethiopian Ministry of Education, has written:

"The curriculum of the schools *must be adapted to the peculiarities of the cultural, social and environmental characteristics of Ethiopia*. It cannot be sufficiently stressed that our needs and problems are different and cannot be solved by adapting other nations' educational systems <sup>3</sup>." (Italics added.)

Jan Eigenhuis quotes Albert Schweitzer as saying:

"I grow steadily more convinced that the Europeans, who are being sent out by the missions to educate the natives can only do a part of the work. The real educator of the negroes is the negro himself. *There can be no real progress until the negroes feel the call to serve as the educators of their people* <sup>4</sup>." (Italics added.)

P. B. Ballard, a British educationist, has written:

"... training in the use of the mother tongue—the tongue in which a child thinks and dreams—becomes the first essential of schooling and the finest instrument of human culture <sup>5</sup>."

In a "Study of Discrimination in Education", issued by the United Nations Economic and Social Council in 1956, it is stated:

"They [the experts] accept as axiomatic, on psychological, sociological and educational grounds, that the best medium for teaching a child is his mother tongue. Consequently, they recommend that every effort should be made to provide education in the mother tongue to as late a stage of education as possible <sup>6</sup>."

<sup>1</sup> Tempels, P. P., *Bantoe-Filosofie* (1946), p. 108.

<sup>2</sup> Odunukwe, C., "Education in a Dynamic Society", *West African Journal of Education*, Vol. 2, No. 3 (Oct. 1958), p. 93.

<sup>3</sup> Neqniq, M., "The Most Urgent Needs in the Expansion of Ethiopian Education", *Ethiopia Observer*, Vol. II, No. 4 (Mar. 1958), pp. 138-139.

<sup>4</sup> Eigenhuis, J., *Albert Schweitzer* (1929), p. 97.

<sup>5</sup> Ballard, P. B., *Thought and Language* (1934), p. 17.

<sup>6</sup> *Vide U.N. Docs. E/CN. 4/Sub. 2/181, 7 Nov. 1956, para. 527, pp. 168-169 and E/CN. 4/Sub. 2/181/Rev. 1, p. 109.*

53. There can be no doubt that in the view of the educationists referred to above the education provided for the children of any of the Native groups in South West Africa must, in certain major respects at least, be different from that provided for White children in the Territory. It is also clear that the successful application of the various principles mentioned above demands that Native children should receive their education in their own schools, where full effect can be given to the principles involved.

These principles furthermore entail that there should be differentiation even in the education of various Native groups when they have different languages, cultures and traditions.

54. In addition to the views of the educationists referred to above, attention is drawn to the educational programmes which have been adopted by a large number of African countries, including the Applicants, in recent years. Available information shows that African countries have generally decided that existing patterns and systems of education for Africans should be discarded as being "European" and foreign to the African background and cultural heritage; that education should be "Africanized"; that educational curricula and teaching materials should be adapted to African conditions and interests and that they should, particularly at the primary and lower secondary level, be adapted to rural and village life; that education at all levels should rest on a foundation of specifically African culture, and that education should serve to revive African civilizations.

Respondent refers in this regard to the report on the proceedings of the "Conference of African States on the Development of Education in Africa", held at Addis Ababa from 15 to 25 May 1961. In Chapter I (I) (b) of the report it is stated:

"The leaders of education speaking of their countries' needs, have stressed a second major aspect—the desire to accelerate the reorientation of the education patterns and systems to the economic and social needs of their individual areas. *They wish to give proper stress in education at all levels and by all possible means to their own culture.* As the students of Africa are exposed to the scientific and cultural aspects of the outside world, they need to be thoroughly grounded in a firm knowledge of their own cultural heritage. The education for the future citizen of Africa must be a modern African education <sup>1</sup>." (Italics added.)

The following is said in regard to text-books:

"The problem of the production of textbooks adapted to new curricula requirements and African conditions is crucial. On the side of content, scientific and technological books in many cases produced for non-African consumers, *must be adapted to African teaching conditions.* For history, literary and social studies subjects, there is an urgent need for *adaptation of textbooks more relevant to African life and culture* <sup>2</sup>." (Italics added.)

55. In regard to rural education, the said report contains the following:

"There is interest in *adapting educational curricula, particularly at the primary and lower secondary level, to rural and village life.*

<sup>1</sup> Unesco/ED/181, para. 6, p. 3.

<sup>2</sup> *Ibid.*, para. 12, p. 5.

Efforts are being made to bring the school to the countryside physically and in terms of a programme more in line with rural needs and interests. This new direction will be an important factor in raising the productivity of the agricultural economy, in enriching the community life in the villages, and in increasing employment opportunities in rural areas. It will help diminish the number of school leavers who flock to the towns and cities for employment which, in certain areas often is almost non-existent. Concern was expressed over the problems posed by the uprooting of young people too abruptly from their rural and family surroundings, producing individuals 'suspended between two worlds'. In the effort to adapt educational programmes to rural conditions, consideration was given to experiments in *rural school curricula combined with rural community programmes*, to the potential role of agricultural extension services in improving rural education and to the importance of developing a new sense of *the crucial role of agricultural activity and rural living in the productive life of Africa*<sup>1</sup>. (Italics added.)

The report also deals with "The Need of Development of African Culture" in the following terms:

"Against this description of urgent needs and plans for the expansion and modernization of education in Africa and the progressive Africanization of teaching personnel, *there is major concern that curricula and teaching materials be adapted to African conditions and interests*. This can only be brought about through the development for all levels of education of textbooks and teaching materials which *illuminate the familiar environment of the pupils and reflect their cultural history*. In adult education programmes as well, materials of instruction can be more thoughtfully adapted to local cultural needs. At the higher levels of instruction, there is need for the training of specialists in African history, languages, culture and art.

Whether in the field of adult and civic education, in formal education, or in the broad and important area of the creative arts, *the growth of a wider consciousness and understanding of African cultural values*, will only be effectively developed by a greater study and knowledge of the sources of African culture and by an expansion in each nation of programmes of research on the traditions, the ways of thought and living particular to each country. From this will grow a larger conception and appreciation of African culture as a whole and of its contribution to the common cultural heritage of mankind<sup>2</sup>." (Italics added.)

56. In Chapter V of the report the following is said, *inter alia*, in regard to "The reform of the content of education":

"The Commission discussed at length the problem of reforming the content of education in the African countries, and heard a most informative statement on the subject from the Unesco consultant, Mr. Joseph Ki Zerbo of Upper Volta (see Annex IV).

The need for such adaptation is generally recognized. The educational systems in force were modelled, by and large, on those of the former metropolitan countries. Moreover, even in the latter they fre-

<sup>1</sup> Unesco/ED/171, para. 18, pp. 5-6.

<sup>2</sup> *Ibid.*, paras. 24-25, p. 7.

quently require overhauling, as they had been worked out long since. They are in line neither with existing African conditions, nor with the postulate of political independence, nor yet with the dominant features of an essentially technological age or of the imperatives of balanced economic development involving rapid industrialization. Based as they are on a non-African background, they allow no room for the African child's intelligence, powers of observation and creative imagination to develop freely, nor do they help him to find his bearings in the world. For the *African personality to assert itself, it is necessary to rediscover the African cultural heritage to which an important place should be allotted in education.* Stress must be laid on the cultural and social features common to the African countries, thus strengthening African unity and helping the countries of the continent to get to know each other better. An understanding of African customs, languages, psychology and sociology cannot but facilitate the work of medical personnel, demographic experts, statisticians and other specialists.

*... curricula should be correspondingly reformed by allotting less time to the teaching of dead languages and ending the preferential treatment given by the former metropolitan powers to the teaching of history and geography little related to Africa or African needs<sup>1</sup>.*" (Italics added.)

57. Mr. Joseph Ki Zerbo, referred to in the above-mentioned report, said in a "Background Paper", entitled "The Content of Education in Africa", that if education was to fulfil its many functions satisfactorily, it would have to be "African", that is, "it must rest on a foundation of specifically African culture and be based on the special requirements of African progress in all fields"<sup>2</sup>.

58. The said Conference adopted what is called an "Outline of a Plan for African Educational Development"<sup>3</sup>. In this "Outline" the importance of a reform of teaching materials is stressed in the following terms:

*"There exists a persistent need for the reform of teaching materials at all levels. School experiences should contribute to the learner's greater understanding and appreciation both of his cultural heritage and that of all other nations and of all aspects of his nation's present and probable future. His basic and supplementary materials for study should be born of African conditions and interests. Throughout the textbooks the African child studies should run the fabric of African life and culture. Production of such material will require considerable research, writing, and publication, but its importance to the development of proper concepts and of learning experiences appropriate to the African child makes it a need of crucial urgency<sup>4</sup>."* (Italics added.)

The Conference expressed the view that "the present content of education in Africa" was "not in line with... African conditions", but was—

"... based on a non-African background, allowing no room for the

<sup>1</sup> Unesco/ED/181, paras. 23-24, 26, pp. 38-39.

<sup>2</sup> *Ibid.*, Annex IV, p. 55.

<sup>3</sup> Unesco/ED/180c.

<sup>4</sup> *Ibid.*, para. (h), p. 8.

African child's intelligence, powers of observation and creative imagination to develop freely and help him find his bearings in the world...<sup>1</sup>,

and accordingly recommended, *inter alia*, that—

“... African educational authorities should revise and reform the content of education in the areas of the curricula, textbooks, and methods, so as to take account of African environment, child development, cultural heritage and the demands of technological progress and economic development, especially industrialization...<sup>1</sup>” (Italics added.)

59. In this regard, reference may be made also to two statements by leading African personalities. On 10 December 1962, according to a press report, Dr. Julius Nyerere, the President of the new Tanganyika Republic, told Parliament that traditional Tanganyika music and dances would be revived to foster pride in the country's indigenous culture, and that a Ministry of National Culture and Youth had been set up to carry out the task. While warning his listeners that to revive one's own culture did not mean that one should refuse to learn from foreign cultures he is reported to have said:

“Of all the crimes of colonialism, there is none worse than the attempt to make us believe we had no indigenous culture of our own.

Some of us, particularly those who acquired a European type of education set ourselves to prove to our colonial rulers that we had become ‘civilised’, and by that we meant that we had abandoned everything connected with our own past and had learnt to imitate only European ways.

Our young men's ambition was not to become well-educated Africans, but black Europeans<sup>2</sup>.”

And in November 1962, according to a press report, the Director of the Ghana Institute of Art and Culture, Chief Kobina Nketia IV:

“... advocated that the people of Africa should rewrite their history, abolish European customs and practices and revive their indigenous traditional institutions”,

and told members of the Soviet Association for Friendship with Peoples of Africa that “... the European association had made an evil impact on African culture and civilisation”<sup>3</sup>.

60. From the preceding paragraphs it appears clearly that educational authorities in many African countries (including the Applicant States, Ethiopia and Liberia) subscribe to the view that the content and methods of “African education”—education for the indigenous peoples of Africa—must rest on a foundation of African culture; that it must, therefore, in part at least, be different from European education, and that a European, or Western, orientated education cannot possibly serve the best interests of children who have an African cultural heritage.

These views are readily appreciated by Respondent. As indicated above, they have been recognized and applied for a number of years in Bantu education in South Africa, and are also put into practice with regard to the Natives of South West Africa.

<sup>1</sup> Unesco/ED/180. para. (1), p. 23.

<sup>2</sup> *The Star*, 11 Dec. 1962, p. 7.

<sup>3</sup> *Ibid.*, 15 Nov. 1962, p. 21.

61. Just as European, or Western orientated education cannot do justice to the African cultural heritage, it will be appreciated that the converse must be equally true: an education based on true African fundamentals cannot do justice to a European, or Western cultural heritage.

It seems clear that there can be no system or pattern of education which can rest on a foundation of specifically African culture and at the same time on a foundation of specifically European, or Western, culture; that there can be no text-book throughout which there can run "the fabric of African life and culture"<sup>1</sup> and, at the same time, the fabric of European, or Western, life and culture. This being so, it necessarily follows that no single, or joint system of education can serve the best interests of both White, or European, and African children; that no teacher with a European background and a European cultural heritage can be a true educator of children with an African background and an African cultural heritage, and *vice versa*; and that no single, or so-called "integrated" school or class can properly serve the interests of both European and African children. In this respect the following statement by W. C. Taylor with regard to education in Liberia is of particular significance:

*"Teaching of American and European children in the same schools and classes as the Liberian children is impracticable, owing to the language barrier and to the very large differences in the children's ages, curricula, and cultural backgrounds. For example, the average age in the first grade of the Liberian schools is 14, as compared with 6 in the American and European school. For this reason alone, the classes could not be integrated. A school building is provided for educating the children of the American and European staff."<sup>2</sup>*  
(Italics added.)

62. In the light of the above considerations and Respondent's extensive experience of multi-group interests and needs, both in South Africa and in South West Africa, it is Respondent's firm belief that it would be failing in its duty under the Mandate if it were to abolish its present system of separate schools for the respective groups and to substitute for it schools which will be open to all the groups. Not only would such a system lead to dissatisfaction and group friction, but it would also result in the neglect of the needs of all the groups and in irreparable harm to the Territory as a whole.

#### **B. Circumstances and Considerations affecting the Question of Expenditure on, and the Provision of Particular Educational Facilities for, the Various Population Groups**

63. Particulars of expenditure on the education of the Native and White population groups of South West Africa are given in Chapters V and VII hereinafter. It will be observed from such particulars that ever-increasing amounts have over the years been spent on the education of each of the groups, and that expenditure per pupil in each group has

<sup>1</sup> Unesco/ED/180, para. (h), p. 8. *Vide* para. 58, *supra*.

<sup>2</sup> Taylor, W. C., *The Firestone Operations in Liberia* (1959), p. 76.

also risen steadily. It will further be observed that, on a relative basis of comparison, more has been spent on European education than on Native education, and that more has been spent on Native education in the Police Zone than in the areas beyond that Zone.

Various factors relating to the question of expenditure on, and the provision of particular educational facilities for, the different population groups, will be dealt with in Chapters V and VII. In this Chapter it is intended to deal with only one basic aspect of the problem, namely the question of educational expenditure as seen against the background of development of the Territory as a whole, and of the economic status and level of advancement of each of the population groups.

64. The differences in the social and economic levels of development of the various population groups in South West Africa have at all times had a governing influence on the educational requirements of the respective groups, and consequently also on the expenditure involved in providing therefor.

In the case of the White group, with its long tradition of education, it was only natural that there should from the outset have been an almost universal demand for education for its children, and that the demand should over the years have increased with regard both to the quantity and the quality of educational facilities. Moreover, with its dynamic and progressive economy, the White group was able not only to generate more wealth than the traditional economies of the indigenous groups, but also to provide better opportunities for employment and other wealth-earning potentialities, which in turn served as an incentive for the advancement of its children in education.

In the circumstances it was natural, and almost inevitable, that the demand for education on the part of the White group should, not only in the interests of that group, but also with a view to the development of the Territory as a whole, have been acceded to by Respondent.

In the case of the indigenous groups, however, the situation was vastly different. There was, on their part, not only an absence of an educational tradition, but, also, because of their background and tradition-bound economies, also of those qualities and incentives which characterize a modern economy and which make for the creation of economic opportunities and potentialities. It was for these reasons, *inter alia*, that the education of the indigenous groups could initially best be left mainly in the hands of missionaries who could, in conjunction with their primary task of teaching religion, best inculcate in the children of these groups the desire for education.

It has only been in recent years that it has been possible for Respondent to assume a major share of responsibility in this sphere, especially as regards the northern parts of the Territory.

65. Respondent was virtually compelled to adopt the course aforesaid by the facts of the situation as it found them on taking over control of South West Africa; and such course in turn regulated the application of funds in providing educational facilities for the different population groups. Any other approach based, for example, on the supposition that all groups should at all points of time be treated equally in the allocation of funds—also in the educational field—would have been completely artificial in the circumstances of the Territory. It would not only have operated in disregard of the needs of the different popu-

lation groups, but would have prevented any real progress on the part of any of them.

66. Although the efforts of the missions in educating the indigenous peoples, and Respondent's own efforts in that regard particularly in more recent years, have brought about considerable advancement of these peoples, the differences between the various groups, for example in economic outlook, still exist, although to a lesser degree. One of the greatest problems in promoting progress among the non-White groups arises from the difficulty of altering their traditional attitude towards organized and regular work. Realizing that the educational advancement of these groups, as in the case of the White group, must go hand in hand with their economic and social progress, Respondent is actively engaged in what might well be called the economic education of the non-White groups—i.e., encouraging them to make use of the opportunities which are brought about in the development and improvement of their economic life, which in turn will stimulate a desire for more advanced education and, at the same time, increase their capacity to contribute towards the education of their children.

67. The planning of educational facilities for a community against the social and economic conditions of its members appears to be in accord generally with modern thinking on the subject. Thus, in a paper prepared for the guidance of the Conference of African States on the Development of Education in Africa (Addis Ababa, May 1961), Professor W. Brand, Professor of Economics at the University of Leyden, said, *inter alia*:

“It should be appreciated that in planning the expansion of education, various alternative routes may be followed depending upon the political, economic and social climate and other factors<sup>1</sup>.”

After surveying various factors which may influence expenditure on education, he said:

“This list of factors which needs to be weighed in costing an educational plan is not meant to be exhaustive, but is given to emphasize that different choices exist in attaining certain educational goals. What means will be most feasible will depend to a large extent upon the circumstances prevailing in a particular country<sup>2</sup>.”

And development by stages in any society, and especially in under-developed societies, has been stressed in the following terms in a recent United Nations report on the World Social Situation:

“As a rule, economic and social factors complement or support each other in the objective process of development. With certain exceptions, and in varying degrees, progress in any one field (industry, transportation, education, labour, welfare, health, etc.) tends to be held back by failure to advance in other fields<sup>3</sup>.”

“The General Assembly of the United Nations, as well as the Economic and Social Council and its Social Commission, have adopted a number of resolutions in recent years *emphasizing the importance of ‘balanced’ and ‘integrated’ social and economic develop-*

<sup>1</sup> Unesco/ED/181, Annex IV, p. 32.

<sup>2</sup> *Ibid.*, p. 33.

<sup>3</sup> U.N. Doc. E/CN.5/346/Rev. 1, ST/SOA/42, p. 96.

*ment and urging that action in these two fields go 'hand in hand' 1.*" (Italics added.)

While the idea of balanced development stresses the complementary aspect of the relationship between social and economic advancement at different stages of general development, it also lays emphasis on balance in respect of available resources—it allows for the competitive aspect in allocating resources. So, for example, it is pointed out in the report that—

"... there is also competition among sectors and [between economic and social objectives] for the expenditure of available resources—competition for money and manpower, particularly skilled manpower—so that in this respect progress in one field can hamper progress in other fields... Similarly, in the case of public expenditures, there are limits to investment in a given field beyond which further investment will appear to have, broadly considered, a negative net effect 2."

Looking at the same problem mainly from the educational point of view, another body of United Nations experts recently formulated their findings with regard to progress in Non-Self-Governing Territories in the following terms:

"It may be noted that the less developed the Territory is, the greater the need for concentrating resources on the basic economic structure (communications, agriculture, etc.), so that progress in educational services is likely to be slowest in areas where the need is greatest 3." (Italics added.)

68. Colour and racial origin *per se* do not determine the distribution of educational facilities or differential expenditures on education in South West Africa. In other countries in Africa particular local circumstances, economic conditions and historical developments have brought about similar differences in the education of African population groups.

This is well illustrated in an article by Phillip J. Foster published in the October 1962 issue of the *Comparative Education Review*.

The author states, *inter alia*:

"... it will be indicated that regional inequalities in provision of schools are *virtually inevitable* in areas where there has been a *differential internal rate of economic and social change*. This has been the case in virtually every African territory... 4" (Italics added.)

After a survey of the historical development of certain of the ethnic groups in Ghana, the author describes the position of education in that country by 1948 as follows:

"By 1948 the geographical pattern of inequality was very clear. The proportion of the population with six years of education or more stood at 5.8 per cent. in the Colony, 3.9 per cent. in Ashanti, but only 0.21 per cent. in the Northern Territories. The continuing close association between education and urbanization processes stood

<sup>1</sup> U.N. Doc. E/CN. 5/346/Rev. 1, ST/SOA/42, p. 23.

<sup>2</sup> *Ibid.*, p. 96.

<sup>3</sup> U.N. Doc. ST/TRI/SER.A/15/Vol. 4, p. 37.

<sup>4</sup> Foster, P. J., "Ethnicity and the Schools in Ghana", *Comparative Education Review*, Vol. 6, No. 2 (Oct. 1962), p. 128.

out very clearly; average education levels in the larger towns were between two and three times that for the population as a whole.

*This kind of picture is common enough in most parts of Africa and is inevitable so long as local rates of social and economic change differ so markedly*<sup>1</sup>. (Italics added.)

The author states further:

"During the colonial period, low levels of education among particular ethnic groups did not necessarily militate to their disadvantage, but there is now a belated recognition by some of these groups, particularly in the north, that ethnic demands for educational parity in the schools must be asserted if they are to achieve their share of the 'commanding heights' in the new polity. Consequently, the present government has had to face the criticism that it has discriminated against certain ethnic minorities in the provision of education. That such criticisms are largely unjustified in view of the historical evolution of Ghana is beside the point. Inequalities do exist and provide powerful weapons in the hands of separatist or regionalist political leaders"<sup>2</sup>. (Italics added.)

And after analysing certain statutes, he states:

"Though space precludes fuller analysis of the data, there is little doubt that apparent ethnic inequalities are almost entirely explainable in terms of these other variations in student background. This type of evidence accords well with our general hypothesis that ethnic inequalities stem largely from differential internal rates of social and economic change and are not attributable to the operations of ethnic factors *per se*"<sup>3</sup>.

And later, in conclusion:

"It may be possible to indicate very rational causes for such inequality but such explanations do not satisfy ethnic minorities who perceive the issue as one of discrimination . . .

Perhaps the greatest tragedy is that the immediate requirements for maximal-economic growth sometimes suggest that inequalities in educational provision are not disastrous and are themselves a necessary, if temporary, corollary of development. However, such judgments do not determine the nature of educational expansion and run counter to the political aspirations of the masses. For them parity of access and the universal diffusion of formal education is the point at issue. Indeed, political demands so frequently run counter to actual development requirements"<sup>3</sup>.

69. The "tragedy" referred to by this author in the quotation above results inevitably from differences in the tempo of development between groups with a dynamic progressive economy and outlook, and other groups which, for reasons often beyond the control of any administration, are still tradition-orientated and live in a relatively static economy.

In South West Africa, during the entire period before the Second World War, when the economic situation of the Territory was such that avail-

<sup>1</sup> Foster, P. J., "Ethnicity and the Schools in Ghana", *Comparative Education Review*, Vol. 6, No. 2 (Oct. 1962), p. 129.

<sup>2</sup> *Ibid.*, p. 130.

<sup>3</sup> *Ibid.*, p. 134.

able funds were severely limited, it was essential for Respondent to bear this fact and the foregoing considerations constantly in mind when determining the amounts that could with advantage be invested in the education of the various population groups.

In the main the problem as at that phase can be said to have concerned the awakening amongst the greater portion of the indigenous population of a desire to receive even elementary education, in contrast with an almost universal demand and need for relatively advanced educational facilities on the part of the White population group. Since the war the financial position has improved considerably, and there has been a general increase in the interest shown in education by the members of the Native groups. Nevertheless, aspects of the above considerations have still, and perhaps now particularly, to be borne in mind. Of special importance at this stage of development are the considerations of "limits . . . beyond which further investment . . . have . . . a negative net effect"<sup>1</sup>, and of co-ordination between educational and economic advancement, with a view to rendering available suitable employment opportunities for members of the non-White groups at various stages of educational progress<sup>2</sup>. These considerations require to be taken into account not only in determining the total amount that can be expended on education in competition with other phases of the development programme, but also in allocating amounts to various aspects of the educational programme itself.

70. The need for maintaining "balanced" socio-economic development, is illustrated by the contemporary problem in many underdeveloped countries of finding employment for the growing number of the "educated", and of adapting educational policy to domestic needs. In this connection a group of well-known scholars has recently, in a publication entitled *The Emerging Nations*, stressed the point that—

"The dangers of training men inappropriately are as great as the dangers of not training them at all. If educational goals, curricula, and procedures based on the practices of *developed societies* are applied *hastily* to *underdeveloped* areas, the result is likely to be a class of *educated unemployables who may be the most disruptive element in a transitional society*. To be effective in developing the kinds of human capital most needed, technical assistance experts in all fields must have a deep *understanding not only of the economic but also of the social and cultural needs of the people in the countries to which they are assigned*."<sup>3</sup> (Italics added.)

71. In this context also Professor W. Arthur Lewis, Principal of the University College of the West Indies, has made the following observations:

"Apart from its cost, universal primary education, if attained with speed, raises problems of absorption. In a community where only 20 per cent. of children enter primary school, and only 10 per cent. finish the course, the demand for primary school graduates is such

<sup>1</sup> *Vide U.N. Doc. E/CN. 5/346/Rev. 1, ST/SOA/42, p. 96, quoted in para. 67, supra.*

<sup>2</sup> *Vide para. 66, supra.*

<sup>3</sup> Millikan, M. F. and Blackmer, D. L. M. (eds.), *The Emerging Nations: Their Growth and United States Policy* (1961), p. 117.

that they command considerable salaries in white collar jobs. If the number entering primary school is pushed up from 20 to 80 per cent. of the age group within ten years, as has happened in some West African countries, the result is frustration. The children pouring out of the primary schools look to the town for clerical jobs, and are disappointed when they do not find employment. The towns fill up with discontented youths, faster than houses, jobs, water supplies, or other amenities can be provided, and urban slums and delinquents multiply while the countryside is starved of young talent<sup>1</sup>.

And later:

"The limited absorptive capacity of most West African economies today—especially the backwardness of agriculture—makes frustration and dislocation inevitable if more than 50 per cent. of children enter school. This, coupled with the high cost due to the high ratio of teachers' salaries to average national income, and with the time it takes to train large numbers of teachers properly, *has taught some African countries to proceed with caution—to set the goal of universal schooling twenty years ahead or more rather than the ten years ahead or less which was associated with the first flush of independence movements.* This decision is highly controversial to those for whom literacy is a universal human right irrespective of cost, to those who feel that it is better to be taught by untrained teachers than not to be taught at all, and also to those who see in the frustrations generated by incapacity of the current social fabric to absorb the very stuff which will promote needed change rapidly. On the other hand, considering that in most African territories less than 25 per cent. of children aged 6 to 14 are in school, a goal of 50 per cent. within ten years may be held to constitute revolutionary progress<sup>1</sup>." (Italics added.)

72. In South West Africa the position is, generally, that the demand for educated non-Whites in certain professions and vocations has not yet been satisfied. There is still a serious shortage of, *inter alia*, qualified teachers, nurses, policemen and civil servants among all the non-White groups. This shortage is largely due to the slow response of these groups to education, owing, no doubt, to the absence of a keen feeling for the need for such services at their present stage of social evolution.

To overcome the problem to some extent, Respondent has been obliged to accept lower qualifications for such posts than those prescribed for corresponding posts in the case of the White group. So, for example, despite all efforts made and encouragement given in the past to raise the qualifications of Native teachers, the Native groups are at present to a large extent still served, as far as the education of children in primary schools is concerned, by teachers who have only passed Standard VI plus a teachers' training course, while the White group is served by teachers who have passed Standard X plus a teachers' training course, or who are in possession of a university degree. And, because the Native teacher is not so well qualified as the Coloured or White teacher, he naturally commands a lower salary than those whose education has cost more.

<sup>1</sup> Lewis, W. A., "Education and Economic Development", *Oversea Quarterly*, Vol. 2, No. 8 (Dec. 1961), p. 233.

Another consideration to which weight has had to be given is that a teacher's salary should bear a relationship to the normal income of other members of his group so as to ensure that he does not become separated, or estranged, from them as a result of an artificial financial barrier. When this happens, the teacher ceases to be able to exercise the required influence over his own people, and accordingly fails to be an effective instrument in advancing their spiritual and material progress. As the socio-economic structures within the Native groups are still at much lower levels of development than those within the White group, it is inevitable that their teachers should at present command lower remuneration than the teachers of the White group. In this regard the Coloured groups occupy an intermediate position, in accordance with their socio-economic levels of development.

73. European Powers administering other African Territories encountered problems similar to those experienced by Respondent regarding scales for government servants, and, more particularly, for White and non-White teachers and civil servants.

The Commission which conducted an investigation into the structure, remuneration and superannuation arrangements of the civil services of Kenya, Tanganyika, Uganda and Zanzibar in 1947-1948, reported, *inter alia*, that, in formulating scales of salary, governments cannot ignore the law of supply and demand, that they cannot, because of some ideology, disrupt the economies of their countries by paying salaries which are out of all proportion to those paid for similar work in outside employment, that regard should be had to relevant local circumstances, such as, e.g., the ruling income levels amongst those classes from which public servants are recruited, and that at least some of the differences in salaries paid to Europeans and Asians, on the one hand, and to Africans, on the other hand, rested not on racial but on other and more fundamental grounds<sup>1</sup>.

Some idea of the differential scales recommended by the Commission may be gained from the following table of grades and salary scales proposed by the Commission for the suggested general and clerical divisions of the civil service in Kenya, Tanganyika and Uganda<sup>2</sup>:

Grade	Salary Scale		
	European £	Asian £	African £
IV	—	—	48 × 3-60* × 3-72
III	—	—	75 × 3-90* × 3-108
II	295 × 22-5-565	180 × 10-240* × 15-315* × 15-375	100 × 6-136* × 6-172
I	580 × 20-720	390 × 15-450	154 × 6-178 × 9-223* × 9-268
Special	740 × 20-800	450 × 20-550	276 × 12-348

\*Efficiency Bar

<sup>1</sup> *Vide Report of the Commission on The Civil Services of Kenya, Tanganyika, Uganda and Zanzibar 1947-1948*, Colonial No. 223, paras. 77-87, pp. 24-26.

<sup>2</sup> *Ibid.*, para. 100, pp. 29-30.

74. A policy of promoting balanced growth for the respective population groups of South West Africa—the only policy which can, in the light of Respondent's experience, really produce lasting results—must, in the particular circumstances of the Territory and of its people, inevitably bring about differences in the amounts spent on the education of the various groups and in the facilities provided for them. This is the natural and inevitable result of the many differences between these groups, differences in stages of development, in social, economic and educational needs, and in their desire for education for their children.

General progress and advancement of the various groups will gradually and progressively bring about increased and better educational facilities for the non-White groups, with resultant increases of educational expenditure on such groups, thereby reducing the margin of difference presently existing.

### C. Compulsory Education

#### I. COMPULSORY EDUCATION IN SOUTH WEST AFRICA

75. Education in South West Africa is free for all children who attend school—European, Coloured and Native—and is also compulsory for all European children in the Territory.

Although it is Respondent's desire and aim to make education compulsory for all children in the Territory, it has as yet not been advisable or practicable to do so in respect of the children of the Coloured and Native groups.

In Respondent's experience it is only when a group or community has reached a stage where it feels the need for education, when it realizes that its youth needs to be educated to equip it for the role which it has to play in the life of the group, and when it is prepared to make education part of its life, that compulsory education can usefully be introduced for such a group. Premature measures of compulsion can only cause hardship and resentment, and thus retard progress.

76. At the inception of the Mandate the three sections of the White group—Afrikaans, English and German—were at a stage of educational development which rendered them eager and active in the promotion of education for their children. Even during the German regime there existed a form of compulsion for the education of European children<sup>1</sup>. And for the White South Africans who came to the Territory during and after the First World War, the system of compulsory education was nothing new.

In the South West Africa Education Proclamation of 1921<sup>2</sup> (and also in the Proclamation of 1926<sup>3</sup>, which superseded it), provision was made for compulsory education for all European children between the ages of 7 and 16, save that exemption could be granted to children who had passed Standard VI before their sixteenth birthday and who were engaged in regular employment. It was, however, realized at the

<sup>1</sup> *Vide* Chap. II, para. 10, *supra*.

<sup>2</sup> *Proc. No. 55 of 1921 (S.W.A.), sec. 69 (a), in The Laws of South West Africa 1915-1922, p. 655.*

<sup>3</sup> *Proc. No. 16 of 1926 (S.W.A.), sec. 87, in Laws of South West Africa, Vol. II (1923-1927), p. 286.*

time that it would be difficult to apply the law strictly, and provision was accordingly also made for exemptions in cases where parents could not afford to send their children to distant schools, or to pay for their boarding. Subsequent events proved that for some years to come it would not be possible to achieve in full the purpose of the law. During the difficult years after the First World War, many parents could not afford to send their children to school, and in 1923, for example, between 1,600 and 1,700 European children of school-going age were not at school. With the development of the Territory this number gradually decreased, but during the severe economic depression of the 1930s the number again increased. In 1932, there were 682 European children of school-going age not at school, and it was only in the late 1930s, after conditions in the Territory had greatly improved, that it became possible to achieve the ultimate purpose of the compulsory education law, namely to have all European children of school-going age at school<sup>1</sup>.

77. The aforementioned statutory provisions remained in force until 1955, when the minimum scholastic attainment for exemption from compulsory attendance was raised from Standard VI to Standard VIII<sup>2</sup>. Development over the years had made this change not only possible, but also necessary in the interests of the country as a whole. For a long time a Standard VI certificate had given Europeans access to various fairly remunerative fields of employment, but this situation gradually changed, especially after the Second World War, and in time there remained hardly any worthwhile employment open to those who possessed no more than a Standard VI certificate. The raising in 1955 of the scholastic attainment for exemption from compulsory school attendance was to enable young men and women better to hold their own in a modern post-war society which provided increased opportunities of employment for Europeans with higher educational qualifications. The White group welcomed the new provision. It has caused no real hardship and criminal proceedings to enforce it occur only by way of rare exception.

78. In the case of the Coloured group, more than 80 per cent. of all children of school-going age at present attend school, and the numbers are increasing every year. There is, however, still a large measure of early school-leaving. According to the report of the 1958 Commission of Inquiry into Non-European Education, this is due, *inter alia*, to lack of interest and ambition on the part of pupils and poor parental control and lack of encouragement<sup>3</sup>.

The Commission was requested by the South West African Coloured Teachers Association to recommend the introduction of compulsory education for Coloured children, save for those who attend mission schools<sup>4</sup>. The Commission suggested that the initiative in the matter be left to Coloured school boards, the establishment of which it recommended<sup>5</sup>.

<sup>1</sup> Lemmer, *op. cit.*, p. 159.

<sup>2</sup> Proc. No. 16 of 1926 (S.W.A.), sec. 87 (1) (c) as substituted by Ord. No. 23 of 1955 (S.W.A.); *vide Laws of South West Africa*, Vol. II (1923-1927), p. 286.

<sup>3</sup> *Vide Report of the Commission of Inquiry into Non-European Education in South West Africa* (1958), Part II, para. K125, p. 42.

<sup>4</sup> *Ibid.*, para. K115 (j), p. 38.

<sup>5</sup> *Ibid.*, para. K236, p. 81.

The new Education Ordinance of 1962<sup>1</sup> gives the Administrator the power to introduce, on the recommendation of the Department, compulsory education at any state school for Coloured children<sup>2</sup>.

Having regard to their present rate of advancement and with the growing demands of economic life in the Territory, it seems reasonable to expect that the Coloured people will before long show themselves sufficiently convinced of the value of education to allow of the successful introduction of compulsory education for all Coloured children.

79. For the Native groups of South West Africa there is no system of compulsory education, and at no time in the past has it been possible to introduce such a system.

The position as it exists at present must be viewed against the background of the level of civilization and development of the indigenous groups at the time when Respondent became responsible for the administration of South West Africa, and in the light of the historical development of education amongst the various Native groups<sup>3</sup>.

For reasons which have largely been indicated, the extension of education to the various indigenous groups was a slow and difficult process. There were numerous obstacles in the path of progress, some of which have even now not been entirely overcome. The various difficulties encountered by the missions, and in time also by the Administration, as it began to establish government schools for Native children, are dealt with in Chapter V below<sup>4</sup>.

80. When the 1958 Commission of Inquiry into Non-European Education in South West Africa conducted its hearings, none of the Native groups requested it to recommend the introduction of compulsory education. The Commission considered that Native parent communities had reached a stage of development where they could, with assistance from the Education Department, be entrusted with the local control of their own schools, and that the initiative in the matter of compulsory education should be left to Native school boards, the establishment of which it recommended. The Commission's recommendations in regard to compulsory education read as follows:

- “(a) that the Education Department should not take the initiative in introducing compulsory attendance at Native schools;
- (b) that it should be left to every school board to decide whether it wants to introduce compulsory attendance at the schools within its province with due regard to the facilities available;
- (c) that the co-operation of school boards should be obtained to ensure regular attendance by children once enrolled<sup>5</sup>”.

81. With regard to the northern territories outside the Police Zone, no one has ever seriously suggested that education could at any time in the past have been made compulsory. In reply to an enquiry by the Administration in 1961 as to whether compulsory education could possibly be introduced in the northern territories, the Finnish Mission

<sup>1</sup> Ord. No. 27 of 1962 (S.W.A.); *vide* Chap. III, para. 5, *supra*.

<sup>2</sup> Ord. No. 27 of 1962 (S.W.A.), sec. 97 (2), in *Official Gazette Extraordinary of South West Africa*, No. 2413 (4 July 1962), p. 911.

<sup>3</sup> *Vide* para. 6, *supra*.

<sup>4</sup> *Vide* Chap. V, paras. 2-30, *infra*.

<sup>5</sup> *Report of the Commission of Inquiry into Non-European Education in South West Africa* (1958), Part I, para. B136, pp. 132-133.

replied: "Not yet in the Okavango. Before the community reaches a certain stage of development it is not possible or advisable <sup>1</sup>." Regarding the position in Ovamboland, the Finnish Mission said:

"Compulsory education is not yet practicable because the support of a majority of the population is necessary for such a step. As for the future, and with a view to its possible eventual introduction, an experiment could perhaps be made in respect of certain school board districts to test the practicability thereof <sup>1</sup>." (Translated from Afrikaans.)

In the Police Zone, too, circumstances have in the past never been such that any system of compulsory education could successfully have been introduced. There is, to this day, a large body of parents who do not send their children to school, even when schools are available nearby, for no other reason than that they do not want to do so and see no good in schools. Likewise there are many who allow their children to go to school, but take them out again as often as they need their services at home, or as soon as they consider them old enough to go out to work. It may be suggested that this is the very reason why education should be made compulsory, but experience has taught the Administration that the Native groups in the Territory are generally of a conservative nature, and that they resent being forced into anything they do not know. In the light of its experience, the Administration has no doubt that any system of compulsory education, unless it can be introduced with the consent of the Native group concerned and with full appreciation on its part of what it will entail, will inevitably lead to dissatisfaction and probably also destroy much of the good work that has been done in the past.

82. Requests for compulsory education have occasionally in the past been received from Native parents. But almost invariably it appeared that the parents concerned failed to appreciate that compulsory education would place on themselves the burden of seeing to it that their children attended school regularly, and that their failure in that regard would make them subject to penalties at law. As an illustration may be cited a request for compulsory education which was put to the Chief Inspector of Schools and the Chief Bantu Affairs Commissioner at a Herero tribal meeting in the Waterberg Reserve during October 1960. The Natives present were taken aback at the idea that compulsory education entailed the punishment of parents who failed to send their children to school without lawful excuse. The Chief Inspector then suggested that the Reserve Board indicate centres in the Waterberg East area where a number of small schools could be built which would be within easy reach of all children in the area, and that by way of experiment a system then be introduced whereunder parents who failed to send their children to school regularly would be fined by the Board. The Reserve Board was asked to consider the suggestions made and to inform the authorities of their decision. No reply has as yet been received.

The Administration is prepared to introduce compulsory education wherever and whenever practicable, but until such time as it is satisfied that parent communities in any particular area desire the introduction of such a scheme and fully appreciate what it entails, its introduction can only create hardship and cause resentment.

<sup>1</sup> Departmental information.

83. Quite apart from all that has been said above, there has at all times been, and there still is, an insurmountable obstacle to universal compulsory education. This is the scarcity of teachers, which has at all times hampered the extension of Native education<sup>1</sup>. The position in 1960 in the Territory, excluding the Eastern Caprivi Zipfel, may be taken as an example. In that year, on the assumption that children of school age constitute 23 per cent. of the total population<sup>2</sup>, there would have been 94,929 Native children of school age. In the same year there were 1,074 full and part-time teachers, and 37,801 children actually at school. If it is assumed that 1,074 teachers could cope with 37,801 pupils<sup>3</sup>, it follows that 2,698 teachers would have been required to teach the whole school-going population of 94,929 pupils: i.e., an additional 1,624 teachers would have had to be found. The supply of teachers at present available is barely able to cope with the pupils enrolled, and this in itself renders unrealistic any suggestion that there should, or can, be universal compulsory education. There cannot be any virtue in having a provision for compulsory education on the statute book when it cannot possibly be implemented.

84. The Administration is nevertheless anxious to introduce some form of compulsory education for Native children on a regional basis at the earliest possible moment. It is hoped that it will be possible to do so in selected areas as the position in regard to teachers might permit, and as the Native school committees and school boards become firmly established in their areas of jurisdiction, when their members can, by virtue of their leading positions and the active role which they play in the promotion of education, create such a favourable attitude towards schools and education in general as will ensure the successful introduction of compulsory schooling in their areas.

The new Education Ordinance of 1962<sup>4</sup> contains no provisions in regard to compulsory education for Native children. The attitude of the authorities is that it will be time enough, and an easy matter, to amplify the law when the Native groups show themselves ready for the introduction of a system of compulsory education.

85. Despite all the difficulties encountered, steady progress has been made in the field of Native education. During the last ten years especially progress has been substantial, and in 1961 approximately 44 per cent. of the school-age Native children in the Territory were enrolled at school<sup>5</sup>. Serious difficulties still remain, but the foundations for sound and more rapid development in future have now been firmly laid, as has been indicated above. Of particular importance in this regard are: the development project of the major Native languages as teaching languages, so that more pupils will be taught in their home language by teachers of their own group<sup>6</sup>; the introduction of syllabuses adapted to the needs and backgrounds of the various groups<sup>7</sup>; and the opportunity for Native parents to serve on the school committees and boards which control

<sup>1</sup> *Vide* Chap. V, paras. 22-30, *infra*.

<sup>2</sup> *Ibid.*, para. 57.

<sup>3</sup> An assumption which involves an average of about 35 pupils per teacher.

<sup>4</sup> *Ord.* No. 27 of 1962 (S.W.A.); *vide* Chap. III, para. 5, *supra*.

<sup>5</sup> *Vide* Chap. V, para. 58, *infra*.

<sup>6</sup> *Vide* para. 19, *supra*.

<sup>7</sup> *Ibid.*, paras. 29-30.

community schools, and thereby to be trained to take an active part in the education of their children<sup>1</sup>. Respondent firmly believes that the Native groups will henceforth progress rapidly towards the stage where they themselves will feel the need to introduce a system of compulsory education in their own schools.

## II. COMPULSORY EDUCATION IN OTHER STATES IN AFRICA

### (a) *South Africa*

86. In South Africa it took two and a half centuries of educational development before school attendance was, after the turn of the nineteenth century, made compulsory for European children. Previously the widely scattered White settlements, and an insufficiently strong public opinion in favour thereof, had made attempts to promote the principle of compulsory education abortive. Today the principle applies to its fullest extent to the White group in South Africa, and prosecutions of parents for failing to send their children to school are almost unknown. This can, in Respondent's view, be ascribed largely to the fact that the system was not introduced until social and economic conditions, as well as a sufficient measure of favourable public opinion, made it practicable to do so.

87. The conditions which made it practicable to introduce compulsory education for the White group in South Africa do not yet exist to a sufficient extent in the case of the Coloured people to justify the introduction of universal compulsory education for them.

Many Coloured parents are not yet converted to the idea of compulsory education. And for some there are also financial difficulties involved.

However, schooling has been made compulsory for Coloured children in certain areas where there is a demand for it and where circumstances permit. A steady increase in the number of Coloured pupils, especially over the last ten years, indicates that the system can gradually be extended also to other areas until it can eventually with advantage be made of application to all Coloured children in South Africa.

88. For the Bantu groups in South Africa there is as yet no provision for compulsory education. The same basic factors which govern and retard Native education in South West Africa have been evident in their case. Although greater progress has been made by them in overcoming the difficulties involved, their stage of development, social and economic, still renders compulsory school attendance premature as a general measure, and consequently no provision was made therefor in the Bantu Education Act of 1953.

As regards progress made towards the achievement of the ideal, it may briefly be noted that the number of Bantu pupils in state and state-aided schools in South Africa increased from 56,845 in 1917 to 747,026 in 1950, and to 1,500,000 in 1961. In addition, there are at present approximately 90,000 pupils in unaided church schools. The Bantu literacy rate in South Africa, which was 21.8 per cent. in 1952 rose to approximately 33 per cent. by 1960, when more than 3,500,000 Bantu in the Republic were able to read and write. The present South

<sup>1</sup> *Vide* paras. 41 and 43.

African Bantu literacy rate is the highest in Africa<sup>1</sup>. It is expected that the rate will rise to 90 per cent. within the next generation and that at the close of the century practically all the Bantu in South Africa will be able to read and write<sup>2</sup>. In 1960, as was pointed out above<sup>3</sup>, about 60 per cent. of all Bantu children between the ages of 7 and 16 attended school.

In at least certain areas in South Africa the goal of compulsory education for the Bantu has almost been attained. So, for example, in dealing with the Transkei, the most advanced Bantu homeland in South Africa, where the territorial authority is about to assume responsibility for control of educational policy and services, Mr. F. J. de Villiers, a former Secretary for Bantu Education in South Africa, after quoting statistics of enrolment, said:

"If the Transkeian Territorial Authority, therefore, should assume control of primary school education in the near future, as it well might under government policy, it will be in a fair position to enforce compulsory attendance for the age-group 7-14 years, at least in those school board areas that are asking for it<sup>4</sup>."

#### (b) *Other African States*

##### (i) *Generally*

89. In general, the factors which have hitherto impeded the implementation of a policy of compulsory education for the children of the Native groups in South West Africa and for the children of the Bantu groups in South Africa are basically similar to those experienced by educational authorities in other parts of Africa.

As regards the immediate post-war period, Lord Hailey says, *inter alia*:

"Some territories are now coming in sight of a system of universal education. It has been made compulsory for Asian boys in Nairobi, Mombasa, and Kisumu. In Nyasaland and Tanganyika enrolment is optional, but the attendance of children once enrolled is compulsory. Northern Rhodesia in 1943 introduced compulsory education in the Broken Hill, Choma and Livingstone areas for children from 12 to 16 living within three miles of a school. It will, however, be realized that the efficacy of any such regulation depends on the maintenance of an efficient body of School Attendance officers, a class that is not readily secured in present conditions in Africa<sup>5</sup>."

After dealing with certain territories where educational fees are charged, the author says:

"It has to be remembered that, except in the form of experiments

<sup>1</sup> *State of South Africa: Economic, Financial and Statistical Year-Book for the Republic of South Africa, 1962*, pp. 89-90; *vide also U.N. Doc. E/CN. 5/324/Rev. 1, ST/SOA/33 (Apr. 1957)*, pp. 79-81.

<sup>2</sup> *Vide State of South Africa: op. cit.*, p. 90.

<sup>3</sup> *Vide para. 39, supra.*

<sup>4</sup> de Villiers, F. J., *Bantu Education: Where the Money Comes from—and Where it Goes* (An Address on the Financing of Bantu Education delivered at the Annual Council Meeting of the S.A. Institute of Race Relations at Cape Town on 18 Jan. 1961), p. 10.

<sup>5</sup> Lord Hailey, *An African Survey: Revised 1956 (1957)*, p. 1169.

in limited areas, compulsory education of Africans does not really exist, and that as children assist their parents in the house and 'garden' they are not willingly spared for long periods<sup>1</sup>."

90. In discussing the difficulties encountered by various administrations in their efforts to attain the ideal of universal and compulsory education, the compilers of *Progress of the Non-Self-Governing Territories under the Charter*, Volume 4, *Educational Conditions*, make the following observations:

"Apart from financial aspects, a broader range of economic factors tended to impede progress towards universal primary schooling. The child's place in the family economy is well recognized in agricultural areas and many Territories reported the difficulty of ensuring regular attendance during harvest seasons or (where boys herd cattle) throughout the year. Moreover, schooling may mean more than losing a useful hand in the home—it involves direct and indirect costs to the parents—tuition fees in one case, clothing and general maintenance in the other.

The attitude of parents to schooling was a factor of great importance. In some cases the demand for schools exceeded existing facilities, while in others parental resistance to sending children to school was reported. Reasons for this are social as well as economic: an appreciation of the advantages of schooling, especially where girls are concerned, requires a certain level of educational attainment on the parents' part. When family conditions are unsettled through migrant labour, or where the entire family moves with a pattern of shifting cultivation or nomadism, it is no easy matter to develop a stable school system. In parts of Africa the population is scattered over a wide area with few centres of even village importance. The problem here is one of siting a school and of the distance over difficult terrain which pupils must cover to come to school. Communications and weather are obstacles to regular attendance in most Territories. Under such circumstances, the need for parents to be fully convinced of the usefulness of schooling becomes the greater. Wastage in the school system and a high rate of absenteeism indicate, among other things, a public dissatisfaction with the school system, or a lack of interest which produces the same results. During the past decade education authorities in the Territories increasingly turned their attention to measures such as local participation in control, improvement of the curriculum and of teaching methods, and parent-teacher groups, all designed to make the primary school a recognized part of the community<sup>2</sup>."

Most of the factors referred to in the quotation above are only too well known to Respondent from experience both in South Africa and in South West Africa<sup>3</sup>, and in both countries these factors have served to retard the educational advancement of the indigenous population groups.

91. Further indication of the extent to which Respondent's experiences have been paralleled in other parts of the African continent, is

<sup>1</sup> Lord Hailey, *op. cit.*, p. 1229.

<sup>2</sup> *U.N. Doc. ST/TRI/SER. A/15/Vol. 4, p. 38.*

<sup>3</sup> *Vide* Chap. V, paras. 2-30, *infra*.

afforded by the following extract from the publication quoted in the previous paragraph:

"From available statistics, it appears that in the rapidly growing school systems, particularly those of African and Asian Territories, there was a characteristic distribution of pupils in the primary grades: the great bulk were found in the two lowest grades, and thereafter numbers dwindled fast. A previous study of this question by UNESCO drew attention to the problem and provided a statistical approach to the measurement of wastage in the school system. In brief, wastage results from two factors: dropping out, where children leave school before progressing far up the ladder, and failure, where pupils are not promoted to the next grade but are kept back to repeat the year's work one or more times. The effect of these two practices is a school system where most of the pupils are found in the lowest grades. . . ."

From studies reported by territorial authorities, such as those of British Honduras, Northern Rhodesia, Puerto Rico, and Zanzibar, it is evident that wastage in the broad sense was connected with a number of educational questions. In regard to premature school-leaving a Zanzibar study showed that African boys dropped out of primary school classes for a variety of reasons: movement of family (26 per cent. of cases); parents uninterested (24 per cent.); truancy (13 per cent.); employment (22 per cent.); and marriage, illness, decease, over-age, distance from school (together 15 per cent.). These figures revealed that 'the attitude of parents to the school and their control of their children are major factors in the occurrence of wastage'. In turn, lack of interest by parents and children may stem from educational as well as social or economic causes. When the school curriculum is unrelated to life, the quality of teaching is poor, or the pupil fails repeatedly to be promoted, public neglect of the school is inevitable. Many of the reform measures reported by Territories were in fact designed to bring the school closer to the community, and thereby deal with the wastage problem at its roots<sup>1</sup>."

The publication notes that the principle of universal compulsory education "was generally recognized in Non-Self-Governing Territories", and that—

"... delay in putting the principle into practice depended more upon the resources available (funds, teachers, buildings) than upon the unwillingness of the authorities to accept the principle<sup>2</sup>".

92. Primary education for girls, as in many parts of South West Africa, presents special problems in the Non-Self-Governing Territories, some of which are dealt with in the said publication as follows:

"While co-education was generally accepted, the fact remains that in a considerable number of Territories it was found difficult to attract girls to school. The reasons were social, economic and educational in turn. The status of women in society was one determining factor. Where girls traditionally remained in the home, married early and performed economically necessary tasks in the family, it was not easy to persuade parents to send them to school. More

<sup>1</sup> *U.N. Doc. ST/TRI/SER. A/15/Vol. 4, pp. 41-42.*

<sup>2</sup> *Ibid.*, p. 42.

especially, and undiversified economy provides few opportunities for girls with education to find employment, so that incentives to the family are lacking. Since education, whether fees are charged or not, represents a cost to parents, preference is usually given to maintaining the boys at school. Among educational factors, the shortage of women teachers appeared to have great importance. Where education of girls lagged behind that of boys, it was relatively more difficult to recruit women teachers, yet it was among women teachers that the turnover was greatest, because of marriage; and the absence of women on primary-school staffs in turn inhibited the enrolment of girls. The process was thus a vicious circle<sup>1</sup>."

(ii) *Particular Territories*

93. In a United Nations *Special Study on Educational Conditions in Non-Self-Governing Territories*, published in New York during 1960<sup>2</sup>, there appeared a significant tabulation of official statements and remarks in regard to compulsory education in African territories. The following are statements and remarks concerning the situation in particular territories<sup>3</sup>:

*I. Central African Territories*

*Status of Compulsory Education*

*Problems and Policy Trends*

Belgian Congo

"The colonial authorities do not yet feel that the time has come to make school attendance in the Belgian Congo compulsory. There must first be enough non-fee-paying schools to accommodate all children of school age. (WSE '56.)

Education for Europeans is neither free nor compulsory. (NSGT '56.)"

"The Government is doing everything possible to increase the number of primary schools so that all children may be accommodated. Only later when the Government has successfully transformed the native mentality in the more backwards regions will it be possible to consider the introduction of compulsory education. At present the main obstacles are undoubtedly the shortage of schools and teachers, and, in different regions, the dispersion of the population over very large areas, the low birth rate, polygamy, and the attitude of the natives, who are not always convinced of the benefits to be derived from education, especially where girls are concerned. (WSE '56.)"

French Equatorial Africa

"Education is compulsory in so far as the accommodation and

"When there are sufficient schools and teachers, the provisions

<sup>1</sup> *U.N. Doc. ST/TRI/SER. A/15/Vol. 4, p. 49.*

<sup>2</sup> *U.N. Doc. ST/TRI/SER. A/16.*

<sup>3</sup> *Ibid.*, pp. 41-43.

numbers of teachers available allow of it...

Children come to school of their own accord and no recourse to compulsion is needed to get them there. (WSE '57.)"

#### Northern Rhodesia

"Compulsory education for Africans is not practical in Northern Rhodesia owing to the shortage of staff and buildings and the heavy cost involved. Compulsory attendance regulations were at one time applied in the urban areas but, because of shortage of accommodation, are not being enforced at present except in Livingstone. A number of Native Authorities have applied compulsory education for the four years lower primary course in their areas and the majority of Native Authorities have made orders for enforcing the regular attendance of voluntarily enrolled pupils until they have completed their course. (Northern Rhodesia: *African Education, Triennial Survey, 1955-1957.*)"

#### Nyasaland

"In Nyasaland school attendance is not compulsory. (WSE '58.)

Some Native Authorities have introduced rules governing compulsory attendance of children voluntarily enrolled at assisted schools. (NSGT '55.)"

### 2. East African Territories

#### British Somaliland

"Education is not compulsory at any stage for any race within the Protectorate'. (Somaliland: *Education Department, Triennial Survey, 1955-1957.*)"

regarding compulsory attendance in force in France will be made generally applicable. The only factor impeding the extension of primary schooling to the whole child population is finance—lack of funds for the building of elementary primary schools and of specialised establishments for teacher training. (WSE '57.)"

"Compulsory education is in sight for African children in towns. (WSE '58.)"

"Up to 1957 even the existing elementary schools were quite inadequate and could not accept more than a proportion of the boys seeking admission. (Somaliland: *Education Department, Triennial Survey, 1955-1957.*)"

## French Somaliland

"Attendance at school is not compulsory in this Territory. (WSE '57.)"

"Education is still at the 'penetration' stage. In order to promote its expansion, the Administration is developing urban school units and setting up rural schools wherever the population is large enough. (WSE '57.)"

## Kenya

"There is no compulsory education for African children. (WSE '58.)"

Compulsory education applies only to Asian boys between the ages of 7 and 15 living in Nairobi, Kisumu and Mombasa.

There is no compulsory education for Arab children. . . . There is compulsory education for European children between 7 and 15 years of age. (Kenya: *Education Department, Triennial Survey, 1955-1957.*)"

"Efforts are being made to provide enough schools to accommodate all (African) children living in urban areas. (WSE '58.)"

## Uganda

"Education is neither free nor compulsory for the children of any race. (NSGT '55.)"

"The ultimate aim of the Government is to provide primary education for all children; the more immediate policy is to ensure a minimum of four years schooling within walking distance of the home of every child, and to build up progressively the four grade schools to full six-grade primary schools. (WSE '58.)"

## Zanzibar and Pemba

"Education is not compulsory since it is impossible for reasons of finance to provide enough schools for all school age children. (WSE '57.)"

"The objectives of the 1955-59 period, as regards primary education, are as follows: to start schools to accommodate all boys of primary school age in urban areas and half in rural areas; to develop girls' primary education; to extend as many schools as possible to Standard 8. . . . (WSE '57.)"

3. *Southern African Territories*

## Basutoland

"Primary education is not compulsory. (NSGT '55.)"

"Provision is made in the Education Proclamation for the making of rules to order the compulsory attendance of African children at any school, to fix the ages and levels of attainment for such compulsory attendance. . . . However, the large percentage of children in school and the absence of any large centres of population have not yet made it necessary to enforce attendance in any area. (WSE '57.)"

## Bechuanaland

"There is as yet no question of compulsory education [for African children]. (WSE '57.)"

European education is not compulsory but nearly all children of school age attend school. (Bechuanaland: *Annual Report of the Education Department*, 1956, Mafeking.)"

"The main goals of the Department may be summed up as being to bring primary education within the reach of a much larger proportion of children of school age. (WSE '57.)"

## Swaziland

"Education is not compulsory for African children. . . . Education is compulsory for all Europeans from 7 years of age until the completion of the sixteenth year or the prior completion of the eighth standard. . . . The small Eurafrikan community is served by Government-aided mission schools. . . . Education is not compulsory by law [for Eurafrikan] but practically the same result has been achieved on a voluntary basis. (WSE '56.)"

"Apart from the financial problems involved in such a step [compulsory education for African children], there are serious social and geographical obstacles. The Swazi do not live in villages but in family kraals scattered throughout the Territory. Children still play an important part in the economic life of the kraal (the boys' duties as herdsmen often make for irregular attendance), and until considerable social changes occur compulsory education except in a few urban areas<sup>1</sup>. (WSE '56.)"

<sup>1</sup> This sentence is incomplete.

#### 4. *West African Territories*

##### French West Africa

"School attendance is compulsory until the full quota of pupils for the preparatory stage of primary schools has been reached. . . . Parents and guardians of children of primary school age who are certified as truants are liable to imprisonment not exceeding five days and/or fine not exceeding 1,200 francs. (WSE '57.)"

Primary education is compulsory to the extent that the available accommodation permits. (NSGT '55.)"

"Efforts have been concentrated on the quantitative development of primary education. (NSGT '55.)"

##### Gambia

"Education is not compulsory, though great progress has been made in providing increased facilities for primary education especially in the Protectorate. (WSE '57.)"

"Apathy has to be overcome; there is considerable wastage, the migratory nature of the population causing children to leave school before they have acquired basic skills. (WSE '57.)"

##### Federation of Nigeria

"[The introduction of free primary education in the Western Region] is regarded as the first step towards achieving compulsory education . . . . In the Northern Region there are no immediate plans for introducing compulsory education. (WSE '58.)"

##### Sierra Leone

"Education is not compulsory as yet in either Colony or Protectorate because of the expenditure involved. (WSE '57.)"

94. In regard to some African territories not mentioned in the aforesaid publication, the following quotations illustrate that similar practical difficulties in regard to the introduction of compulsory education also have their parallels in these territories:

### I. *Tanganyika*

The following citation is from an official report:

"675. There is no provision for compulsory education in respect of the non-African population. As regards the African population provision exists under the Townships Compulsory Education Rules, 1947, and compulsory attendance Orders made under the Native Authority Ordinance, Cap. 72. The general introduction of compulsory education will not be practicable until adequate educational facilities are available for all children of school age. At the present stage of development compulsory attendance orders are confined to certain townships where conditions are particularly favourable and school accommodation is adequate. A considerable expansion of primary schools for Africans within the Dar es Salaam municipality is taking place, and it is expected that the position should be reached in the fairly near future, provided that the necessary staff can be trained, when consideration can be given to the introduction of compulsory education in this important area.

678. There is no restriction under local laws upon facilities for the education of girls. Although in some parts of the territory there was in the past considerable opposition on the part of the people and native authorities to African girls' education, this attitude has in general changed in recent years, and there is now wide-spread and keen enthusiasm for such education . . .

688. The regularity of attendance at African primary schools varies considerably in different parts of the territory and may be largely affected by local and seasonal conditions. The conditions experienced in some areas during the rainy season are not conducive to regular attendance, particularly where children have some distance to go to school, and seasonal agricultural activities are often an important factor. Much depends not only on the general attitude of the local community towards education but also on the individual energy and enthusiasm of teachers and native authorities in maintaining attendances at a high average figure. The same considerations apply to the question of 'educational wastage' but speaking generally this is becoming progressively less of a problem. Provision exists for the enforcement of the regular attendance of enrolled pupils in compulsory attendance orders made under the Native Authority Ordinance. Non-attendance and wastage do not present problems in non-African primary education <sup>1</sup>."

### 2. *Ethiopia*

Ernest W. Luther, who did research work in Ethiopia from 1950 to 1956, makes the following comments on the Ethiopian primary and secondary school situation at about the time when a new education programme was beginning to take effect:

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<sup>1</sup> *Tanganyika under United Kingdom Administration*: Report by Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the General Assembly of the United Nations for the year 1958, Colonial No. 342, pp. 168-169, 171-172.

"Ethiopian education is still in its elementary stages. Before the Italian occupation not more than a dozen government schools existed in the whole of Ethiopia. In addition there were some privately run foreign mission schools, plus the centers of lay and religious instruction which the Ethiopian Church had maintained for centuries. A few score students had been sent abroad to study at government expense. *Since the restoration a great deal has been done to broaden the educational base, but clearly this is only a beginning and a far cry from the Emperor's announced ideal of compulsory mass education for his people.* In 1956 there were approximately 70,000 Ethiopian children attending government schools, with perhaps an equal number receiving private and religious instruction, the whole comprising only a very small fraction—certainly under 5 per cent.—of the school-age population. Most of the 500-odd existing schools are elementary giving instruction up to the eighth grade only. Only a few are secondary; in 1956 the total number of students at secondary schools was less than 2,500. There is also one college, the University College in Addis Ababa, offering a four-year preparatory course leading to professional or university studies abroad <sup>1</sup>." (Italics added.)

In 1960, according to United Nations Social Statistics, only 2 per cent. of the total Ethiopian population of school-going age (5 to 19 years) were enrolled in primary and secondary schools. Three per cent. of the age group 5 to 14 years were enrolled in primary schools, while only 0.4 per cent. of the population aged 5 to 19 years were enrolled in secondary schools <sup>2</sup>.

### 3. Liberia

The difficulty of translating principle into practice is probably nowhere more graphically illustrated than in the case of Liberia. A law providing for compulsory education was passed as far back as 1912, but it has never been possible to implement the provisions of the law. In 1957, says Dr. G. H. T. Kimble:

"... the number of children enrolled in primary schools was still less than 15 per cent. of the estimated school-age population, and not more than 10,000 of those enrolled were expected to go beyond the third grade. *In the same year the number of primary school teachers was still less than 8 per cent. of the number (approximately 25,000) needed to make it possible to enforce Liberia's compulsory education law...*" <sup>3</sup>." (Italics added.)

And a report of an International Atomic Energy Agency Mission to Liberia, 1961, contains the following:

"At the present time 90% of the population outside of the capital is illiterate. Even in Monrovia (as of 1956) 80% of the population over five years of age was illiterate... It is estimated that more than 200,000 children, who are technically required by law to attend, do not attend school <sup>4</sup>."

<sup>1</sup> Luther, E. W., *Ethiopia Today* (1961), p. 27.

<sup>2</sup> U.N. Doc. ST/STAT/SER. K/2, p. 323.

<sup>3</sup> Kimble, G. H. T., *Tropical Africa* (1960), Vol. II, *Society and Polity*, p. 126.

<sup>4</sup> I.A.E.A. Doc. STI/DOC/36, p. 31; *vide* also Chap. V, para. 59 (a), *infra*.

95. From the foregoing it is clear that virtually all of the countries in Africa which share Respondent's desire to introduce universal compulsory education experience the same difficulties as Respondent in attempting to translate this ideal into practice.

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## CHAPTER V

### NATIVE EDUCATION

#### A. Introductory

1. In this Chapter a detailed account is given of Native education in South West Africa—other than vocational and technical training, higher education and adult education, which are dealt with in the next Chapter.

Inasmuch as the charges made by the Applicants concern the education of Natives generally, it is not proposed to deal separately with the education of each of the Native groups, which, in any event, would entail an excessively lengthy record. Where, however, particular circumstances or conditions are peculiar to certain groups, or affect them alone, attention will be drawn thereto.

At the end of the Chapter a separate account is given of education in the Eastern Caprivi Zipfel, which is at present not administered through the South West Africa Administration<sup>1</sup>.

#### B. Retarding Circumstances and Factors in the Development of Native Education in South West Africa

2. The development of Native education in the Territory and the progress made since the inception of the Mandate, can be considered and evaluated only against the background of particular circumstances and factors which have hampered and retarded the educational advancement of the Native groups.

The more important of these circumstances and factors, although broadly indicated in the previous Chapter, will in the next succeeding paragraphs be dealt with more specifically in the following order:

- I. Attitude of mind towards schools and European influences.
- II. Nomadic habits and scattered population.
- III. Vastness of the Territory and the low density of population.
- IV. Language difficulties.
- V. Economic and financial difficulties.
- VI. Shortage of teachers and difficulties encountered in teacher training.

#### I. ATTITUDE OF MIND TOWARDS SCHOOLS AND EUROPEAN INFLUENCES

3. The extension of education to primitive societies with no tradition of literacy is inevitably a slow process. Although prior to the assumption of the Mandate missionaries had been active in some parts of South West Africa for many years, that had resulted in little more than making small sections of the Native population somewhat more amenable to European influences than others. On the whole, the indigenous peoples

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<sup>1</sup> *Vide* para. 82, *infra*.

still had all the conservatism and aversion to change which are characteristic of primitive societies.

Moreover, the Native population, in their way of life at the time, had little need of education as known to and understood by Europeans. The primitive pastoralist, who lived off his cattle as his forbears had done, the primitive peasant farmer, who knew that there would not be enough to eat when there was no rain, and the roving hunter who lived off the veld and its game, could not easily be persuaded that what their children could be taught in a school could be of any use to them. Until their old way of life changed, and new demands were made upon them, they could not imagine what need there was of something which they had not required before. As they saw it, they had all the education needed for life as they lived it <sup>1</sup>.

By 1920 only an insignificant number of Native parents had been to school, and there were many thousands who had not even seen a school. It was only natural that such communities would see no need for schools, and that they would regard them as useless innovations. Thus in Respondent's annual report to the League of Nations for 1925 it was stated, *inter alia*: "The Hereros as a race do not believe in education for their children <sup>2</sup>."

This attitude of mind is also illustrated by an experience of the year 1925. The Rhenish Mission offered to open a school in the Herero Reserve, Otjituo, and a meeting of the Reserve Board was held to discuss the question. The magistrate who presided at the meeting reported that not a single member of the Board had anything to say in favour of schools, and that, on a vote being taken, the idea of having a school in the Reserve was rejected unanimously <sup>3</sup>.

Another example is recorded in the Minutes of the Permanent Mandates Commission of the Fourteenth Session, during the year 1928. Mlle Dannevig, having commented on what she described as "a sad picture of native conditions" in the Territory, said that she—

"... fully realised the difference between the whites, who desired education for their children, and the natives, who did not, but she thought it was essential that education should be given to the children of the natives in order to prevent them from becoming as lazy, improvident and immoral as their fathers and mothers <sup>4</sup>".

The reply of the South African representative, Mr. Werth, is recorded as follows:

"... Mlle. Dannevig had made an indictment that was certainly not deserved by the Administration. She had herself laid her finger on the

<sup>1</sup> This kind of attitude is paralleled also in other parts of Africa. So, e.g., C. L. Simpson, former Vice-President of Liberia and Liberian Ambassador in Washington and London, says, *inter alia*, in *The Symbol of Liberia* (1961), p. 117:

"There is perhaps a grain of truth in the suggestion that the Liberian educational authorities have had to contend with difficulties unknown in European countries. For it is a fact that the native African's approach to education, that is to Western education, is different from that of a European. . . . To a Liberian tribesman in his own environment Western education does not necessarily convey the idea of these social and economic advantages, unless he envisages transplanting himself into an entirely different society."

<sup>2</sup> *U.G.* 26—1926, p. 111.

<sup>3</sup> *U.G.* 22—1927, para. 39, p. 33.

<sup>4</sup> *P.M.C., Min.*, XIV, pp. 108-109.

real difficulty, the fact that the natives did not want education. Mr. Werth had personally visited Rehoboth with the object of ascertaining what schools should be constructed there, but the majority of the Rehoboths had refused to send their children to the schools subsidised by the Government. He was not going to cause a native war in the attempt to thrust education upon people who did not want it <sup>1</sup>."

And the Chairman, the Marquis Theodoli, is recorded to have said that he—

"...knew that Dr. Kastl [a Member of the Commission] could confirm Mr. Werth's statement from his own experience. He thought the Mandates Commission would therefore confine itself to taking note of the accredited representative's statement, and to recommending that everything possible should be done to remedy the present state of affairs <sup>1</sup>."

4. Not only was there the attitude that schools could serve no useful purpose. Schools, and the resultant drawing away of children from home and the duties normally performed by them, were regarded by Native parents as factors which were disruptive of normal, traditional life—as, in a sense, they were. In this regard the Director of Education said in a Memorandum submitted to the Permanent Mandates Commission in 1924:

"According to the native ideas the man is the head of the home and should not have to work. His wife is expected to do most of the work and she makes the children help her. When the children can be spared they are sent to school, but it very frequently happens that a school child has to stay at home to carry water, to mind the baby and to tend the sheep or to work in the fields <sup>2</sup>."

As long as such ideas prevailed, it was to be expected that schools would be looked upon with disfavour. In a report which was put before the Permanent Mandates Commission in 1930, Dr. Vedder, historian and ethnologist, who was at that time Praeses of the Rhenish Mission Society and Principal of the teachers' training school at Okahandja, dealt as follows with this attitude on the part of Native parents and with the efforts of the missionaries to convince them of the value of education for their children:

"As the possibility is afforded them [Natives in Reserves] to lead their lives in the Reserves in the same manner as their forbears had done of yore, they think more of their cattle than of their children. They, moreover, fear that the schools in the Reserves will prevent them from employing their children as cattle herds. Hence the task has arisen for the Mission first of all to prepare the soil by their missionaries and itinerant teachers and to impress on the parents the significance of the school for their later lives <sup>3</sup>."

5. The task of "preparing the soil" and of trying to convince parents of the value of education for their children was further complicated by a measure of mistrust of European intentions on the part of some of the Native groups.

<sup>1</sup> *PMC., Min., XIV*, p. 109.

<sup>2</sup> *Ibid.*, IV, p. 177 (Annex 4).

<sup>3</sup> *U.G. 21—1931*, p. 60.

Respondent's annual report to the League of Nations in 1930 stated in this regard:

"The educationist who wishes to achieve success must first gain the confidence of the natives. After the bitter wars of comparatively-speaking recent years between European and native in this country this is not an easy matter. The natives, and in particular the Hereros, are of a suspicious nature. The progress made thus far in this connection may be regarded as sound and satisfactory. Any attempt to force the pace, however, would defeat its own purpose <sup>1</sup>."

To win the confidence of people with such views and attitudes, and to inculcate in them the correct attitude of mind towards the education which the Europeans tried to bring to them, were matters which required tact, patience and time. In 1939 the Organizing Inspector of Native Schools reported to the Administration that—

"Generally . . . parents do not regard their responsibility as proceeding beyond the duty of refraining to prevent their children from attending school <sup>2</sup>."

And the Administration itself stated:

" . . . parents were definitely unwilling to allow their children to attend school for more than two or three years. To the Native the adolescent child is a source of income, the attendance at school extending over many years an unnecessary loss of support <sup>3</sup>."

6. Although steady progress has been made over the years, there are still many parents who do not send their children to school for no other reason than that they see no good in schools. To this day, also, many parents still look upon their young sons as a source of income, and keeping them at school for more than four or five years is regarded as an unwarranted loss of support. Amongst certain groups, again, girls marry when very young, and sending them to school for any length of time is regarded as an unnecessary sacrifice and loss of services.

That such attitudes of mind still prevail, particularly amongst the less developed groups, is illustrated by the position in the Okavango, where missionary activity is of comparatively recent origin as contrasted with that in Ovamboland, where the Finnish Mission started work in 1870. In 1961 the Finnish Mission, in answer to a request whether they were prepared to transfer their schools to the Administration in order to be converted into government community schools, replied that in their view sufficient progress had been made in Ovamboland for such a step to be taken, but that it could not successfully be done in the Okavango, where their activities had commenced only in 1926. In regard to the Okavango they said:

"The parents of children of school-going age in the Okavango are for the greater part still heathens and they look upon the schools as their enemy preventing the children from taking over all the work in and around their homes. The Mission is the only body able to keep the schools going by influencing the parents to send their children to school regularly <sup>4</sup>."

<sup>1</sup> *U.G.* 21—1931, p. 51.

<sup>2</sup> *U.G.* 30—1940, para. 550, p. 104.

<sup>3</sup> *Ibid.*, para. 547, p. 103.

<sup>4</sup> Departmental information; *vide* also Chap. IV, para. 81, *supra*, for the view of

## II. NOMADIC HABITS: SCATTERED POPULATION

7. Reference has already been made<sup>1</sup> to the scattered and disrupted state of most of the indigenous groups in the Police Zone at the time when Respondent assumed the administration of the Territory. Having no settled homes, small groups of Natives continually moved from place to place. Others, nomads by nature, were always on the move in search of veld foods and game. The establishment and maintenance of fixed schools for such groups were matters of great difficulty, and during the first years progress was seriously hampered by this factor.

Speaking of the members of such nomadic groups, the Director of Education, in a memorandum placed before the Permanent Mandates Commission in 1924, stated, *inter alia*:

"He is improvident. If he has hunted down and chased all the game away from his surroundings, has dug up all the edible roots, and burnt up all the fuel, he moves to another place<sup>2</sup>."

And, later in the memorandum:

"This nomadic instinct is so strong with him that even when he lives under civilised conditions and the foregoing inducements no longer apply, it is found that from time to time he still insists on making a change for no apparent reason. The 'wanderlust' becomes so strong that he must move.

As a result of this characteristic, those who work for the advancement of the natives, find their influence frequently interrupted, and the long intervals during which they are away from missionary centres nullify the good work that has been done. In the schools a large percentage of the children make little or no progress, and because of their constant coming and going the classification of pupils into standards becomes a very difficult matter<sup>3</sup>."

8. The aforementioned difficulties were gradually overcome as the scattered remnants of tribes were settled in Reserves of their own, and as it became possible to restore order and to reconstruct social life. To this day, however, the problem is a very real one in the case of the Bushmen.

## III. VASTNESS OF THE TERRITORY AND THE LOW DENSITY OF POPULATION

9. The extension of education has at all times been hampered by the vastness of the Territory and the low density of the population. Serious enough in themselves, these are factors which create well-nigh insuperable difficulties when teachers are in short supply, as has at all times been the position in South West Africa.

The difficulties experienced by the Administration will readily be understood by all who have had to cope with similar problems elsewhere in Africa. A recent United Nations publication deals as follows with education in sparsely populated regions in Tropical Africa:

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the Mission regarding the feasibility of introducing compulsory education in the Okavango.

<sup>1</sup> *Vide* Book III, Chap. III, paras. 84-89, of this Counter-Memorial.

<sup>2</sup> *P.M.C., Min.*, IV, para. (c), p. 176.

<sup>3</sup> *Ibid.*, paras. (e) and (f).

"Education is still impossible for most young Africans unless they are ready to travel great distances or quit their homes altogether—a solution which is accepted at a pinch for boys but rarely for girls.

The situation is particularly serious in sparsely populated regions. In a large part of Ethiopia, in Somalia and in the huge semi-arid plains which stretch from the Nile to the Atlantic between the Sahara and the forest zone there are less than five inhabitants per square kilometre. But it is not even necessary to take these regions, where development will require especially strenuous efforts: they are not the only under-populated areas. Three countries—Liberia, Guinea and Sierra Leone—together cover an area of 432,323 square kilometres—i.e., more than Great Britain or Japan. Their total population is roughly the same as London's and much less than Tokyo's. *It has been claimed that under-population represents a permanent obstacle to economic development; certainly it is disastrous in its effect on the development of an effective and complete network of schools.* It may be said that the percentage of African children attending school is always related to the density of population. Examples are provided in Madagascar by the Tananarive region or, on the west coast, by southern Ghana and the southern provinces of Nigeria. In the latter country, the western and eastern regions are the most densely populated and are the richest in towns, roads and transport: more than 70 per cent. of the children attend school. Their young Hausa compatriots are less fortunate; their neighbours of the upper Volta, the Niger and the northern Cameroons still less: they are victims of a geographical accident. The authorities, however inadequate the funds available, are always ready to provide a school and the necessary teachers if requested to do so by a town with a population of 10,000 but they admit their helplessness when it is a question of providing the same facilities for 50 villages of 200 inhabitants<sup>1</sup>." (Italics added.)

And with regard to teachers the report stated: "It is the teacher who makes the school, not the building. The real problem is the problem of teachers<sup>2</sup>."

10. Much of what is said in the above citation applies with even greater force to South West Africa. As has been pointed out<sup>3</sup>, the Territory has, next to Bechuanaland, the lowest population density in Africa south of the Sahara.

The Territory is almost twice the size of the 432,323 sq. kms. of Liberia, Guinea and Sierra Leone combined, and its total population is nowhere near "roughly the same as London's": it amounts to little more than 6 per cent. of the population of Greater London.

While large parts of Ethiopia, Somalia and the semi-arid plains referred to in the above quotation are said to have "less than five inhabitants per square kilometre", it may be pointed out that in 1960 the density of population in the Okavango was 0.0077 to the hectare (or 0.77 to the sq. km.), and, in the Kaokoveld, 0.0018 to the hectare (or 0.18 to the sq. km.).

<sup>1</sup> *Asia, Arab States, Africa: Education and Progress* (1961), pp. 51-52.

<sup>2</sup> *Ibid.*, p. 52.

<sup>3</sup> *Vide* Book III, Chap. I, para. 4, of this Counter-Memorial.

In parts of the northern territories of South West Africa people live in innumerable small scattered kraals, while in the Police Zone one or two Native families often find themselves on European farms which are far from schools. And what was said above in regard to the situation in the countries of Tropical Africa, is also true of Native education in South West Africa, namely "the real problem is the problem of teachers".

11. As far as the education of European children in the Territory is concerned, problems presented in this regard can be solved—as they have been solved—by a policy of centralization and the establishment of school hostels in various towns<sup>1</sup>. European parents can provide for their children's travelling expenses and bear the major part of the boarding expenses of their children at such hostels, and there is a sufficient supply of teachers to make such a policy practicable. In the case of Native education such facilities have thus far been found practicable only to a very limited extent. Quite apart from a lack of means on the part of Native parents, the problem in the case of Native education is inextricably bound up with the shortage of teachers. As long as teachers are in short supply, schools can be provided only where there are sufficient concentrations of Natives to justify their establishment.

At present there are in the Police Zone 31 schools for Native children with boarding facilities, and 27 in the area outside the Police Zone. Whereas the establishment of more hostels would enable a larger number of children to attend school than is the position today, the establishment of hostels by itself cannot solve the problem to any appreciable extent, for the main obstacle is the shortage of teachers. The supply of teachers presently available is barely sufficient to cope with the needs of the children now at school, and even then many of these teachers have to teach children in a number of standards combined—a situation which is not satisfactory, but which cannot at present be avoided. Moreover, a fair proportion of the teachers employed in Native schools are part-time teachers who are not properly qualified, but whose services must be retained in an effort to educate as many Native children as possible.

12. A problem of particular difficulty in the Police Zone is the schooling of Native children whose parents are employed on European farms. In this Zone, especially in the arid regions in the south, farms are large, as they have to be in order to function as economic units. Farm homesteads are often miles apart. The children on any one particular farm are seldom, if ever, enough to warrant the establishment of a separate school, and, in view of the shortage of teachers, the employment of a teacher or teachers at a place where there is not a substantial concentration of Natives would not only be unreasonable, but impossible. The children of two or more farms could not readily attend the same school, unless farm schools were built with hostel facilities, or transport to and from school were provided every school day. In view of the exceedingly high costs that would be involved, and the relatively small numbers of children that would benefit, such projects can in view of the teacher shortage hardly rank equally with the claims of areas where there is a concentrated Native population. Nevertheless, a real attempt is being made to cope with the problem in a practical way, as will appear from the next succeeding paragraph.

<sup>1</sup> *Vide* Chap. VII, paras. 2-5, *infra*.

13. The 1958 Commission of Inquiry into Non-European Education in South West Africa found that about 17 per cent. of all Native children on farms were at school. The Commission advised the establishment of farm schools, and recommended:

- “(i) that the minimum enrolment for a farm school be put at 15 pupils;
- (ii) that a small-salaried teacher, even, if need be, unqualified, be appointed to such a school;
- (iii) that the owner of the farm should take the initiative in establishing a school and that he be expected to put up the building himself and either to manage the school himself or to nominate another suitable person as manager;
- (iv) that a farm school should be *State-aided* and the teacher be in the service of the farmer; the Department, however, paying the teacher's salary and providing allowances for equipment, books, etc.’”

The principle of farm schools as recommended by the Commission, was approved by the Administration, and under section 102 of the 1962 Education Ordinance grants-in-aid will be available to enable farmers to build and maintain schools for Native children<sup>2</sup>.

Since the principle of having such schools was adopted, three farm schools have been established at Dabib, Mitgard and Duwisib. All three are one-teacher schools, with enrolments in 1961 of 19, 40 and 15 children respectively. In all three instances class rooms have been provided by the farmers concerned. The Education Department pays the teachers' salaries, and provides the necessary furniture, equipment and teachers' text-books, and also pays 50 per cent. of the price of all books and stationery supplied to pupils. The three teachers are paid on the same scale as teachers at other schools.

In supplementation of the above scheme, steps have now been taken which will enable the missions to provide hostel facilities for farm children either on farms or in Native residential areas in towns in the Police Zone. The Administrator-in-Executive-Committee has decided to assist the missions with loans for the erection of hostel buildings, the loans to be repayable free of interest, or else at a nominal rate of interest, over a period of 30 years, and, furthermore, to subsidize such hostels in accordance with the number of boarders. The same assistance will be available in respect of mission hostels erected in Native Reserves in the Police Zone.

The Rhenish Mission has informed the Administration of its desire to erect hostels for farm children at 22 different places where it has schools, and the Roman Catholic Church has also indicated its preparedness to assist in the scheme.

#### IV. LANGUAGE DIFFICULTIES

14. The diversity of Native languages spoken in the Territory<sup>3</sup>, coupled with a lack of suitable teachers with an adequate knowledge of

<sup>1</sup> *Report of the Commission of Inquiry into Non-European Education in South West Africa (1958)*, Part I, para. B120 (8) (b), p. 109.

<sup>2</sup> Ord. No. 27 of 1962 (S.W.A.), sec. 102, in *Official Gazette Extraordinary of South West Africa*, No. 2413 (4 July 1962), p. 912; *vide* Chap. III, para. 5, *supra*.

<sup>3</sup> *Vide* Chap. IV, paras. 8 and 9, *supra*.

those languages, has been a serious retarding factor in the education of Native children.

In 1924 the Director of Education referred to the language difficulty in the following terms:

"Some schools are attended simultaneously by children who speak three different languages, and in practically all the schools there are children speaking two different languages. In each school one of the two official languages of the Union of South Africa must be taught, so that to the list of four languages must be added English and Dutch. This makes a total of six languages for which we have to provide <sup>1</sup>.

In larger centres where there are two or three schools it would simplify matters if the pupils could be divided into the different schools according to their home languages. The attachment of the native to his own particular church is, however, so strong that this scheme for the present is not feasible on any appreciable scale <sup>2</sup>."

With regard to the language qualifications of teachers, he said:

"Our native teachers are very poorly qualified. The great war interrupted all facilities for training teachers, with the result that at times teachers have to be appointed whose qualifications do not extend beyond being able to read, write and speak one of the six languages mentioned <sup>3</sup>."

To this day it has not been possible to achieve in full the goal of separate schools for all children who speak the same language. In some parts of the Police Zone where members of different language groups are found in the same area, the limited number of teachers with an adequate knowledge of the various languages has to date made a complete division on purely language lines impossible.

15. As already stated <sup>4</sup>, in practice all possible steps are taken to give young pupils their early instruction in their home language, and since 1952 special efforts have been made to give separate instruction to minority language groups in schools. There have at all times, however, been serious practical difficulties, and the result has been that young pupils have often had to receive their initial training in a language foreign to them—whether another Native language or one of the official languages.

In view of the fact that the Native peoples in the Territory had no literary culture, the task of providing for Native languages as school media and school subjects has been a formidable one. When South Africa assumed the Mandate, there was not a single suitable reader in any of the Native languages for use in the schools. There were no philologists or trained linguists who could make an expert study of the various languages and prepare suitable reading material, and it was only by the painstaking efforts of the missionaries over the years that some books could be composed for use in the schools.

The Native languages of the Territory are, furthermore, the languages of nomads, peasants and pastoralists, and although their vocabularies

<sup>1</sup> The number of Native school languages has since grown; *vide* para. 16, *infra*.

<sup>2</sup> *P.M.C., Min.*, IV, pp. 176, 177 (Annex 4).

<sup>3</sup> *Ibid.*, p. 177.

<sup>4</sup> *Vide* Chap. IV, paras. 21-22, *supra*.

are rich enough to meet the day to day needs of people living in a subsistence environment, they are all poor vehicles of abstract thought. Without modification and development they could not be used as teaching languages. Over the years the missionaries, who, from the nature of their work and their close contact with the Natives, possessed a greater knowledge of the various languages than other Europeans, did much to bring about the necessary modification and development.

16. It would have been an impossible task, however, to prepare school books in each of the various languages or dialects spoken in the Territory, or to convert each of them into a teaching language, and the policy consequently was to concentrate on the development of those languages which are spoken by most of the Natives. Thus far Ndonga, Kuanyama, Kuangali, Herero, Nama and Tswana have achieved the status of school languages, but, because of insufficient development as yet, mother-tongue instruction is generally not yet feasible beyond the Standard II level in these languages. Since the establishment of the Bureau for Native Languages<sup>1</sup>, active steps are being taken by the Administration to effect the further development of these languages as teaching languages, and to prepare suitable school books in each of them.

In the final result, however, it will be for the groups themselves to contribute to the development of their languages to meet all educational needs.

#### V. ECONOMIC AND FINANCIAL DIFFICULTIES

17. Reference has already been made to the effects during the 1930s in South West Africa of the then world-wide economic depression. Coupled with a severe drought, which lasted till the end of 1933, and an epidemic of foot-and-mouth disease during 1934-1935, the depression resulted, *inter alia*, in the drop of the total national income of South West Africa from approximately R14 million (£7 million) in 1929 to R4,200,000 (£2,100,000) in 1933, and a decline of about 60 per cent. in real domestic income<sup>2</sup>. Naturally this had a detrimental effect on all development in the Territory, including development in the educational field.

18. In spite of these disastrous events all education remained free, as it had been previously, and the Administration did everything in its power to increase its expenditure on education.

At a meeting of the Permanent Mandates Commission in 1931, Mlle Dannevig is reported to have said that she was sure—

“ . . . that the Commission appreciated the great interest taken by the Administration, and the progress made in the last three years in native education, which was all the more remarkable in view of the great economic difficulties<sup>3</sup>”.

In the financial year 1932-1933 Respondent was, however, obliged to decrease by 30 per cent. the amount expended on European and Native Education<sup>4</sup>.

<sup>1</sup> Chap. IV, paras. 19 and 20.

<sup>2</sup> *Vide* Book V of this Counter-Memorial.

<sup>3</sup> *P.M.C., Min., XX*, p. 57.

<sup>4</sup> *U.G. 27—1934*, para. 150, p. 24.

In 1933 Mlle Dannevig expressed her appreciation of the efforts of the Administration "to maintain the standard of education in spite of financial difficulties", and she noted that while expenditure on education had been cut down, the cut had been less in the case of Native education than in the case of European education<sup>1</sup>.

The Permanent Mandates Commission noted increases in expenditure on European and Native education at its meetings in 1936 and 1937<sup>2</sup>.

19. Like other sections of the community, the Native population, particularly in the Police Zone, was hard pressed by the difficult conditions of the time, and many parents kept their children from school to do chores at home, or else took them out of school as soon as they thought them old enough to work or to contribute to the family's support in some other way.

The detrimental effect of these conditions on school attendance of Native children in the Police Zone during the period 1930-1940 is illustrated by the enrolment figures over the said years<sup>3</sup>.

20. After the Second World War there was a substantial improvement in the economic position of the Territory, and from then on sustained progress in the educational field became possible.

21. The point which it is desired to emphasize is that there were serious interruptions in the development of Native education at an early and crucial stage of its development, and that the position would no doubt have been more favourable than it is today if it had not been for such interruptions.

## VI. SHORTAGE OF TEACHERS AND DIFFICULTIES ENCOUNTERED IN TEACHER TRAINING

### (a) *South West Africa*

22. As already stated, a shortage of teachers in South West Africa has in the past retarded progress, and it does so until this day.

The training school for Native teachers at Okahandja (the Augustineum) and the training school at Doebra, referred to in Chapter II above<sup>4</sup>, are still in existence. A third training school was established by the Roman Catholic Church at Tses in 1927, but it survived for only ten years<sup>5</sup>.

In the northern territories beyond the Police Zone, the first training school for Native teachers, established at Oniipa, in Ovamboland<sup>6</sup>, was transferred to Onguedira in 1955, and is still in existence. A second training school in Ovamboland was established by the Anglican Mission at Odibo in 1936. It remained in existence until 1960, when a shortage of personnel forced it to close down. Secondary classes for theological students of the Mission were later introduced at this institution. In 1948 a training school for women students was established by the Finnish Mission at Ongandjera, and it is still in existence. A further training

<sup>1</sup> *P.M.C., Min.*, XXIII, p. 93.

<sup>2</sup> *Ibid.*, XXIX, p. 135; XXXI, p. 128.

<sup>3</sup> *Vide* table, para. 43, *infra*.

<sup>4</sup> Para. 5.

<sup>5</sup> *Vide* para. 24, *infra*.

<sup>6</sup> *Vide* Chap. II, para. 5, *supra*.

school was established at Oshigambo in 1952, but it was converted into a secondary school in 1960.

23. As stated in Chapter II above <sup>1</sup>, Native education in the Territory virtually came to a standstill during the First World War, and all the training schools, save the one at Oniipa, were closed down. This was still the position when South Africa assumed the Mandate.

In 1923 the Rhenish Mission, with the assistance of a grant-in-aid by the Administration, reopened its training school at Okahandja, and in 1924 the Roman Catholic Church reopened its training school at Doeбра.

These training schools had to draw their students from pupils who had been to the mission primary schools, and the aim was to recruit as many as possible of those who had passed Standard II and to train them for three years thereafter.

For some years the teachers produced were, on the whole, of a very poor quality, but in the circumstances this could not be otherwise. Great difficulties were experienced in finding a sufficient number of trainees who had passed Standard II. The annual report to the League of Nations in 1930, after stating Respondent's policy of training selected men in each race to work amongst their own people <sup>2</sup>, continued as follows:

"Previous reports have repeatedly made mention of the fact that it is this shortage of suitable teachers which makes more rapid progress impossible.

The conditions of training have been made as easy and as favourable as possible. Instruction at the Training Schools is free and the Department pays a grant for the maintenance of the students so that their course of training costs them nothing. The successful completion of the first four years of the primary school course is ordinarily required before admission is granted to the Training School, but to get more students the Department frequently has to sanction the admission of students who have completed the third year only. On occasions even the second year has been accepted <sup>3</sup>."

It was not practicable to recruit Native teachers in South Africa—where there was, in any event, also a shortage—for they had no knowledge of the various Native languages spoken in the Territory. The same position obtained in regard to European teachers in the Territory and in South Africa. The only solution to the problem was to try to achieve a gradual improvement in the quality of Native teachers and in the general standard of education. In all the circumstances progress could not but be slow and difficult.

24. In 1933 a revised and improved primary school syllabus was introduced, and the same year saw the establishment of the first school with classes up to Standard VI. Due to the lack of trained teachers, however, few schools had classes beyond Standard II, and the raising of the *minimum qualification for admission to the training schools* could not yet be contemplated. The Administration offered bursaries to deserving students to further their studies in South Africa, but the numbers of those who availed themselves of this opportunity were small. In 1938

<sup>1</sup> Chap. II, para. 12.

<sup>2</sup> *Vide* Chap. IV, para. 17, *supra*.

<sup>3</sup> U.G. 21—1931, pp. 51-52.

the training school at Tses was forced to close down for lack of sufficient suitable candidates, and generally there was such a disinclination on the part of Native parents to keep their children at school for more than three or four years that the Director of Education, despairing of the situation, suggested to the Department of Education in 1939 that an allowance be paid to those parents who were prepared to allow their children to be trained at the training schools.

In the years immediately preceding the Second World War the Administration considered the feasibility of taking over the training schools, and of establishing schools with classes up to Standard VI in conjunction therewith, so as to ensure a steady flow of pupils with a Standard VI certificate to the training schools. However, financial considerations, the impossibility of obtaining the services of lecturing staffs with an adequate knowledge of the various Native languages, and the virtual certainty that it would have less success than the missionaries in recruiting suitable candidates from amongst the Natives, caused the Administration to postpone a decision in the matter. Reference to the difficulties experienced at the time was made by Respondent in its annual report to the League of Nations in 1939 in the following terms:

“Experience has shown that about 40 per cent. of the candidates admitted to the first year of a three years’ training course, commencing ex-Standard II in mission training schools had to be eliminated on both mental and moral grounds before the completion of that course. From this it would appear that the enrolment of large classes from Standard II upwards would be necessary to ensure ultimate success in the training of teachers. The actual position, however, was not encouraging. Only few primary schools proceeded beyond Standard II, finding it very difficult to maintain a Standard III class, mainly because parents were definitely unwilling to allow their children to attend school for more than two or three years. To the Native the adolescent child is a source of income, but the attendance at school extending over many years an unnecessary loss of support. As a result of that attitude of mind taken up by the Natives the recruiting field was narrowed down considerably and consequently the missions, in spite of the great influence they exercise over the minds of the Natives, did not succeed in enrolling the desired number of pupil-teachers for their own institutions. Undoubtedly the Government would probably meet with even greater difficulties in its efforts to secure the required number of pupils in its preparatory school or schools to ensure a steady flow of pupil-teachers to a Government training school. In addition to providing free clothes and maintenance in hostels the Administration would probably have to consider the matter of granting parents an allowance for permitting their children to complete their training. It is hardly doubtful that the initial stages would impose a heavy burden on the State if success were to be secured regardless of costs<sup>1</sup>.”

The outbreak of the Second World War delayed the taking of immediate steps on any of the lines mentioned. In 1943, however, the Augustineum training school at Okahandja was taken over by the Administration. It became a full government training school, and subsequent develop-

<sup>1</sup> U.G. 30—1940, para. 547, p. 103.

ments at this institution enabled it to make an important contribution to the advancement of Native education in general.

25. A step forward was taken in 1947 when Standard III was made the minimum requirement for admission to the training school at the Augustineum. Of the 36 applicants for admission to the training course in 1948, 26 had passed Standard III, three Standard IV, six Standard V, and one Standard VI. Of the 37 applicants for admission in 1951, 16 had passed Standard III, five Standard IV, seven Standard V, eight Standard VI, and one Standard VII.

26. A further advance was made in 1952, when the successful completion of Standard VI was made the minimum qualification for admission to the training schools at the Augustineum and at Doeбра.

As was anticipated, the introduction of this higher entrance qualification in 1952 caused a rather sharp fall in the number of students able to enrol for a teacher training course. In 1954, for example, there were 39 pupil-teachers in training as against 111 in 1951. It was felt, however, that in all the circumstances the step was justified, as it would lead to an improvement in the quality of teachers produced and, eventually, to a rise in the general standard of education. By 1960 the number of teacher trainees in the Police Zone had increased to 85, and in 1961 the number was 94 with 44 at the Augustineum and 50 at Doeбра.

27. In Ovamboland the minimum qualification for admission to the boys' training school at Onguedira was raised to Form I (i.e., one year after Standard VI) in 1961, and, in the same year, to Standard VI in the case of the girls' training school at Ongandjera. Prior to this date the minimum qualification had been Standard IV.

The number of pupil teachers in Ovamboland in 1960 was 83. In 1961 the number was 60, the fall in numbers being due to the raising of entrance qualifications as stated above.

28. As from the beginning of 1964 Form I (i.e., one year after Standard VI) will be the minimum entrance qualification to both the training schools in the Police Zone.

It is the aim of the Administration to raise the entrance qualification to the training school at the Augustineum to Form II (Standard VIII) as soon as such a step should prove to be practicable. At present there are not enough students with a Standard VIII certificate to justify such a measure, and its introduction at too early a stage would inevitably lead to too few teachers being made available to take up teaching posts. The position is improving, however, and in 1961, for example, four pupil-teachers with a Standard VIII certificate completed a two years' training course.

29. Every effort has been made to encourage teacher trainees at the Augustineum, which is open to students of all the Native groups from all parts of the country, and to give them as sound a training as possible. They receive free tuition, free books, free board and lodging, free transport to and from their homes, and also a small sum as pocket money every week. The lecturing staff consists mainly of Europeans. At present there are 11 Europeans on the teaching staff and three Native teachers, two of whom give instruction, *inter alia*, in the Native languages. All three Native teachers have Standard VIII certificates, and two of them have also had two years' professional training. The objective is

to fill all the posts at the Augustineum with Native teachers as and when suitably qualified persons become available.

Despite all the advantages offered, however, particularly at the Augustineum, the results are not what might be expected. The numbers who enrol for teacher training remain disappointing, and of those that do enrol a large percentage are lost on the way by reason of either moral instability or inability to maintain the sustained effort required to complete the prescribed two-year course. The situation is one which requires sympathetic handling.

30. At the beginning of 1957 a scheme was set afoot which, it was hoped, would enable at least some of the teachers already in service to improve their qualifications. A course of evening classes was instituted at Windhoek, being initially a Standard VIII class with an enrolment of 14. Teachers who took the course were required to pay a tuition fee of R20 (£10) each per year, and the Administration provided European lecturers. The scheme, however, proved a failure. Due to poor attendance and lack of interest the class had to be discontinued at the end of the year.

A similar scheme was introduced in July 1961, when 40 students were enrolled in five different secondary courses. The tuition fee was fixed at R8 (£4) per year. Once again the scheme was a failure, and by the end of the year the number of students had dwindled to nil<sup>1</sup>.

There is little reason to believe that similar schemes will at present meet with any greater success, and the main hope for improvement in the qualifications of Native teachers seems to be a gradual raising of the minimum requirements for admission to the various training schools.

#### (b) *Other African Territories*

31. The many problems encountered by the Administration of South West Africa in its efforts to produce teachers for Native children, and to improve the quality of such teachers, have been experienced by Respondent also in the administration of Native education in South Africa. And these basic problems also have their parallel in many States in Africa where it has been the task of the authorities to bring modern education to African communities which have no or little tradition of such education. In many parts of the continent of Africa advancement in this field has been slow and difficult, and serious problems still remain, even in those countries in which the history of the education of the communities concerned is very much older than in South West Africa. In most of these countries the initial burden of teaching children and training teachers was carried almost wholly by missionaries. Much has been done by the missions and the various governments to awaken under-developed indigenous communities to the benefits of modern education, and to bring education to them. But a great deal still remains to be done, and it seems that, as in South West Africa, progress will be hampered for years to come by a shortage of teachers.

The paragraphs below give an indication of conditions in a few countries in Africa relative to teachers and their training.

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<sup>1</sup> *Vide* Chap. VI, para. 45, *infra*.

(i) *Southern Rhodesia*

32. With regard to teacher-training, the following statement appeared in an official publication of August 1962:

"Until the opening of the first Government Teacher Training School in Umtali, 1956, all teacher training had been carried on by the various missionary institutions. To these institutions must be given most of the credit for the very great advances which have been made in the training of teachers <sup>1</sup>."

As in South West Africa, the minimum qualifications required of teachers could only be raised by degrees. The minimum qualification for untrained teachers was raised to Standard IV in 1937 (six years' schooling), to Standard V in 1945, and then to Standard VI in 1951 <sup>2</sup>.

In the *Handbook to the Federation of Rhodesia and Nyasaland*, 1960, the following statistics are given regarding the qualifications of teachers:

"In 1950-1951, 58.5 per cent. of the country's teachers were untrained, and the percentage of untrained teachers in aided primary schools was 70.5 per cent. At the present time the percentage of uncertificated teachers is 43.8 per cent., whilst the percentage of untrained teachers in village schools has been reduced to 47.6 per cent. <sup>3</sup>"

(ii) *Nyasaland*

As in many other countries in Africa, the teacher training schools in Nyasaland have to draw their material from a small field. According to an estimate made by the Director of Education in 1957, about 57.7 per cent. of the total number of children of school age do not proceed beyond Standard I (i.e., three years' schooling), and only about 3 per cent. receive education up to Standard VI. Those who receive education up to Standard VIII amount to 0.25 per cent. of the school-age population, and those who receive education up to Standard X, 0.07 per cent. <sup>4</sup>

Official figures for 1960 show that there were 6,974 primary school teachers in assisted and unassisted mission schools in that year, and that of that total 3,395 (about 48.7 per cent.) were classified as "Unqualified teachers" <sup>5</sup>.

(iii) *Sierra Leone*

The position in Sierra Leone in 1962 is stated as follows:

"There is still an acute shortage of qualified teachers at all levels, with the possible exception of the university level. The primary pupil-teacher ratio of 35 to 1 and secondary ratio of 20 to 1 appear satisfactory, but only 1,181 of the 2,625 primary school teachers have teaching qualifications. The comparable figures in secondary schools are 347 out of 436; but of these 347, 82 hold qualifications

<sup>1</sup> *African Education in Southern Rhodesia*, Southern Rhodesia Information Sheet, No. 25 (1962), para. 35, p. 7.

<sup>2</sup> *Vide The Progress of Africans in Southern Rhodesia* (1958), pp. 10-11.

<sup>3</sup> Brelsford, W. V. (ed.), *Handbook to the Federation of Rhodesia and Nyasaland* (1960), p. 493.

<sup>4</sup> *Report on an Economic Survey of Nyasaland 1958-1959*, C. Fed. 132, p. 174.

<sup>5</sup> *Nyasaland: Report of the year 1960* (1961), p. 100.

suitable only for primary school teaching, and only 204 are graduates. In the training colleges, 32 of the 57 members of staff are graduates and 2 have full technical or specialist qualifications other than degrees<sup>1</sup>."

(iv) *Nigeria*

The following is a statement in a publication of 1955 relative to the general position of teachers in Nigeria:

"The need to increase the output of teachers is, of course, obvious and urgent. The major problem is the securing of candidates and providing adequate staff for the training colleges<sup>2</sup>."

(v) *Chad*

The shortage of teachers in Chad has been described as follows:

"There is an acute shortage of teachers throughout the country<sup>3</sup>."

"Primary education suffers from a serious shortage of teachers. There are 925 teachers for 84,993 pupils, i.e., 91 pupils per teacher. This theoretical figure produces in reality classes of up to 300 pupils under one teacher<sup>4</sup>."

(vi) *Cameroon*

The following quotations refer to the problem of the shortage of teachers in the Cameroon:

"The need for teachers has increased at all levels<sup>5</sup>."

"As a result of the rapid increase in school enrolments, both in primary schools and in secondary and technical education, the need for teachers has increased to such an extent that all levels of education suffer from a shortage of qualified staff. Overcrowded classes, the lack of school premises, the use of unqualified teachers are all brakes upon the development of education in the country<sup>6</sup>."

(vii) *Liberia*

In regard to education in the early years of Liberia, Dr. G. H. T. Kimble writes:

"For the first 80 years or so of its history [from 1847], the Liberian Republic had the unenviable distinction of being the most illiterate sovereign state in the world. Even some of the presidents had difficulty with their reading and writing. The only education to be had was provided by the few undernourished Christian missions . . . and the initiation schools<sup>7</sup>."

The Liberian Government took an increasing interest in educational matters as from the beginning of this century, and in 1912 a law providing for compulsory elementary schooling was passed<sup>7</sup>. This law, as

<sup>1</sup> *International Yearbook of Education*, Vol. XXIV (1962), p. 320.

<sup>2</sup> *Resources and Needs for Training Facilities for Africans in British Africa, Ethiopia and Liberia* (1955), p. 210.

<sup>3</sup> *International Yearbook of Education*, Vol. XXIV (1962), p. LX.

<sup>4</sup> *Ibid.*, p. 81.

<sup>5</sup> *Ibid.*, p. LIX.

<sup>6</sup> *Ibid.*, p. 65.

<sup>7</sup> Kimble, *op. cit.*, p. 125.

already stated<sup>1</sup>, has remained a dead letter. The main problem has been one of teachers.

An official publication of the year 1959 refers to the position of teachers as follows:

"Eighty five per cent. of our elementary school teachers are not qualified to teach in the schools. . . . We cannot fight in raising the standards of our schools when we have teachers who are not qualified and will not avail themselves of the opportunity to learn<sup>2</sup>."

(viii) *Ethiopia*

The position regarding teachers in Ethiopia was described by Ernest W. Luther as follows:

"The quality of most of the teaching is inferior, often no more than a case of the blind leading the blind. Fewer than one-fifth of the teachers are foreign, and some of these are incompetent. . . . For one reason or another, most Ethiopians who have had a little schooling quickly conclude that they have learned enough<sup>3</sup>."

In 1954 the Ethiopian Ministry of Education pointed out that of the 2,013 Ethiopian teachers then in service, only four had studied at the college or university level; ten had completed the secondary school; and 31 had completed two years of secondary school. A total, therefore, of 45, or less than 3 per cent. of all Ethiopian teachers, had completed more than eight years at school<sup>4</sup>.

Writing in 1962, G. A. Lipsky gave the following particulars in regard to teachers:

"The teacher shortage and the inadequate training of teachers are among the most pressing problems of Ethiopian education. In 1958, a majority of the country's 3,627 native teachers, 346 of them women, were qualified only to teach the primary grades one through four. Middle school grades (five through eight) are generally taught by teachers from India. Secondary and higher schools are staffed almost exclusively by teachers from Europe and the United States, a total of 469 in 1958<sup>5</sup>."

### C. The Role of the Missions in Education

#### I. MISSION SCHOOLS IN SOUTH WEST AFRICA, AND THEIR CONVERSION INTO GOVERNMENT SCHOOLS

33. In South West Africa the question arose at an early stage whether the Administration should assume complete control of all Native education in the Territory, or whether the various missions should be allowed to promote the work which they had pioneered and be granted financial aid by the Administration to assist them in their efforts. In 1923, at

<sup>1</sup> *Vide* Chap. IV, para. 94 (3), *supra*.

<sup>2</sup> *The Fourth Annual Report of the Department of Public Instruction R.L. [Liberia] covering the period Sep. 1, 1958—Oct. 31, 1959*, pp. 53-54.

<sup>3</sup> Luther, *op. cit.*, pp. 27-28; *vide* also Chap. IV, para. 94 (2), *supra*.

<sup>4</sup> *Ethiopian Ministry of Education Yearbook*, 1954, p. 78, as quoted by Shack, W. A., "Organization and Problems of Education in Ethiopia", *The Journal of Negro Education*, Vol. XXVIII, No. 4 (1959), p. 416.

<sup>5</sup> Lipsky, G. A., *Ethiopia: its People, its Society, its Culture* (1962), p. 96.

the aforementioned conference between representatives of the Administration and the various mission societies, it was agreed that, having regard to the state in which most of the Natives still found themselves, it would be in the best interests of Native education if the missions were left free to establish schools wherever and whenever they could, and be granted financial aid by the Administration to assist them in their efforts.

In 1930 Respondent's annual report to the League of Nations contained the following statement by Dr. H. Vedder<sup>1</sup>:

"The question may be asked whether it is necessary and wise to tackle the education of native children from two sides—the Government and the Mission—in close co-operation. It is reasonable to demand that the Government, the sole responsible authority for the education of the upgrowing youth, should do the work alone. . . . Even in missionary circles this question has again and again been discussed and debated, but these discussions invariably led to the conclusion not to recommend nor to bring about any change for the present, as this might perhaps lead to irreparable detriment to the school system which is developing in such a gratifying manner at present. . . .

No matter where one looks to discover a way by which the aim of education may be reached in another manner, one is again and again brought back to that line which has been followed since a decade<sup>2</sup>."

It was in regard to the question whether the Administration should take over mission schools in the Native Reserves that Dr. Vedder expressed the view already cited above that it was still necessary for the missions to "prepare the soil"<sup>1</sup>. He added:

"It may be that in the course of a few decades, Government will be able to take the first step towards taking over the Mission schools. Nobody can conscientiously recommend it to take this step at this juncture<sup>2</sup>."

It appears from the Minutes of the eighteenth session of the Permanent Mandates Commission in 1930 that the Chairman remarked that "the education of natives in the reserves . . . inevitably took a long time, and was at the moment in the hands of the Missions"<sup>3</sup>.

34. The first government Native school was established at Rietquelle in the Aminuis Herero Reserve in 1935. A number of government schools were established thereafter, while a few schools which the missions concerned had difficulty in maintaining were taken over by the Administration.

Development and the passage of time eventually called for a reassessment of the policy of leaving the major responsibility for Native education in the hands of the missions. In testifying before the 1958 Commission of Inquiry into Non-European Education in South West Africa, the various religious bodies concerned were not agreed on the question whether the time had arrived for the Administration to take over mission schools. Headmen and tribal councils were, with few exceptions, in favour of such a step, and so was the Native Teachers' Association.

<sup>1</sup> *Vide* para. 4, *supra*.

<sup>2</sup> *U.G.* 21—1931, pp. 61-62.

<sup>3</sup> *P.M.C., Min.*, XVIII, p. 138.

The Commission expressed great admiration for the work which the various missions had done in the past but nevertheless thought that the existing system had certain shortcomings which called for a change. These shortcomings, according to the Commission, were that missionaries could as a result of pressure of other work not always exercise proper supervision over all their schools, and that parent communities had no share in the control, management and financing of schools. This latter factor, the Commission thought, was not conducive to parents taking a proper interest in the education of their children <sup>1</sup>.

The Commission found a difference of opinion on the question whether mission schools should be converted into government community schools, of which the local control and management would be entrusted to Native school committees and school boards. A summary of the evidence given before the Commission in this regard has already been cited <sup>2</sup>.

The Commission recommended, in brief, that the missions controlling Native schools be asked to transfer their schools to the Administration, and that—

- (a) teacher training schools, secondary schools and vocational schools requiring the employment of European staff be made *government schools* under the direct control of the Education Department, and
- (b) that all primary schools, as well as schools without European staff, be made *government community schools* under the local management and control of Native school committees and school boards <sup>3</sup>.

35. The Administration adopted the aforementioned recommendations, and section 16 of Ordinance No. 19 of 1960 (S.W.A.) amended Proclamation No. 16 of 1926 (S.W.A.) so as to give the Administrator the power to take over mission schools as "Government Native Schools" <sup>4</sup>. Section 15 of the same Ordinance made provision for the institution of managing bodies for government Native schools <sup>5</sup>.

When implementation of the new policy commenced in 1961, there were already 15 government schools for Natives in the Territory. The Administration took over the lower primary schools, 85 in number, of the Finnish Mission in Ovamboland. School Committees of Native parents were established for all these schools, and Ovamboland was divided into six school board districts, each under the jurisdiction of a school board, whose members are Native parents. The school boards, each assisted by a full-time paid secretary, have been in operation since August 1961, under the guidance of the Inspector of Schools and the Organisers of Education in the northern territories. The school committees and school boards are statutory bodies and perform duties prescribed by regulations made by the Administration <sup>5</sup>.

<sup>1</sup> *Report of the Commission of Inquiry into Non-European Education in South West Africa* (1958), Part I, paras. B106 (a), B108 (b) and (c), pp. 79, 85-86.

<sup>2</sup> *Vide* Chap. IV, para. 36, *supra*.

<sup>3</sup> *Report of the Commission of Inquiry into Non-European Education in South West Africa* (1958), Part I, para. B130 (i) and (ii), p. 123.

<sup>4</sup> Ord. No. 19 of 1960 (S.W.A.), sec. 16, in *The Laws of South West Africa 1960*, Vol. XXXIX, p. 681.

<sup>5</sup> Sec. 130 of *Proc. No. 16 of 1926* (S.W.A.), as amended (in *Laws of South West Africa*, Vol. II (1923-1927), pp. 306-308) as substituted by sec. 17 of Ord. No. 19 of 1960 (S.W.A.) (in *The Laws of South West Africa 1960*, Vol. XXXIX, p. 683) and sec. 156 (d) (*ter*) of *Proc. No. 16 of 1926* (S.W.A.) as inserted by sec. 20 of Ord.

The Finnish Mission agreed to the taking over of their schools in Ovamboland, but requested the Administration to postpone the taking over of their schools in the Okavango territory, where the Mission considered that a sufficient stage of development to warrant such a step had not yet been reached<sup>1</sup>. The Administration acceded to this request.

The Rhenish, Roman Catholic and African Methodist Episcopal Missions have agreed to the taking over of their schools by the Administration. The Anglican Mission is not yet prepared to do so, and has chosen to continue on the old basis of being subsidized by the Administration—which it will be allowed to do, the policy at present being to take over the schools of those missions which are prepared to transfer them to the Administration.

36. The implementation of the policy of taking over mission schools and converting them into government community schools was carried a step further in 1962, when some of the schools of the Rhenish Mission in the Police Zone were transferred to the Administration and converted into government community schools. Opposition to such transfer and conversion was first encountered in the Reserves occupied by members of the Herero group, and later some of the Damas and Namas in their respective Reserves also adopted the same attitude. This has caused a delay in the further implementation of the policy, and thus far only six schools in the Police Zone have been converted into community schools. Respondent is firmly under the impression that the attitude of the groups which raised objection was brought about by external political instigation: the impression is supported by the fact that not one of the groups concerned has been able to advance reasons of any substance for its attitude. However, Respondent is continuing its attempts at securing the co-operation of these groups.

With regard to Native education generally, the stage has been reached in South West Africa where the Government and the Native parent communities play a more important part in education than ever before, and where the Government has assumed the major portion of the burden which was, in the early years, carried largely by the missions. Whilst development will in future no doubt take place at a faster rate than in the past, sight must not be lost of the fact that such accelerated development will have been rendered possible only by the valuable pioneering work done by the missions in the past.

## II. MISSION SCHOOLS IN OTHER AFRICAN TERRITORIES

37. In many other parts of Africa mission societies played a role similar to the one they performed in South West Africa, and generally the development of education followed much the same pattern as in South West Africa.

The following paragraphs deal briefly with the educational activities of mission societies in a few African territories.

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No. 19 of 1960 (S.W.A.) (p. 683). The prescribed regulations are contained in G.N. No. 8 (S.W.A.), 1 Feb. 1961, in *The Laws of South West Africa 1961*, Vol. XL, pp. 1332-1377.

<sup>1</sup> *Vide* para. 6, *supra*.

(a) *Southern Rhodesia*

The history of the development of Native education in Southern Rhodesia, especially during the early years, is to a large extent the history of the expansion of Christian missionary work. From the very beginning the various missions regarded the establishment of schools as an important adjunct to their religious work. The London Missionary Society established the first mission station in the country in 1859, and by the end of the nineteenth century there were ten missionary societies at work in the Territory<sup>1</sup>.

The first government school—an industrial and agricultural school—was established in 1920. An official statement relating to the position in the year 1950 reads as follows:

“The missions are still providing the vast bulk of educational services; in 1950 between 97 per cent. and 98 per cent. of the pupils were attending mission schools. The missions have played and will continue to play a most important part in African education, especially in the reserves<sup>2</sup>.”

In 1961 there were 479,565 pupils enrolled in 2,758 government-aided mission primary schools as against 45,858 pupils in 56 government primary schools<sup>3</sup>; 3,563 pupils in 26 aided mission secondary schools as against 1,606 in eight government secondary schools<sup>4</sup>, and 612 pupils in eight aided mission technical and vocational schools as against 793 pupils in six such government schools<sup>5</sup>.

(b) *Nyasaland*

Christian missions played a major role in the education of African children in Nyasaland. In a government report relating to the period 1958-1959 the following is stated:

“Until 1949, the Missions provided and staffed practically all African schools, assistance being given in approved cases in the form of Government grants-in-aid. Since 1949 the Government has established its own secondary schools and a number of primary schools in the main urban centres. A start has also been made in providing technical training facilities at artisan level, and in supplementing the Missions' teacher training facilities by the establishment of Government teacher training centres. A small number of local authority primary schools has also been established in recent years, but these do not as yet make any appreciable contribution to the total educational facilities available to Africans. In spite of the educational facilities provided by the Government, the majority of Africans are educated in Mission schools<sup>6</sup>.”

In 1957 there were the following schools in Nyasaland: 10 government

<sup>1</sup> *Vide The Progress of Africans in Southern Rhodesia* (1958), p. 9.

<sup>2</sup> *The African in Southern Rhodesia*, No. 1, Education, p. 2.

<sup>3</sup> *African Education in Southern Rhodesia*, Southern Rhodesia Information Sheet No. 25 (1962), table 1, p. 4.

<sup>4</sup> *Ibid.*, table 4, p. 5.

<sup>5</sup> *Ibid.*, table 5, p. 6.

<sup>6</sup> *Report on an Economic Survey of Nyasaland 1958-1959*, C. Fed. 132, para. 3, p. 168.

schools, 26 local authority schools, 747 government-aided mission schools and 2,245 unaided mission schools<sup>1</sup>.

### (c) *Liberia*

It has been said of the missionaries in Liberia that they "... laid the foundation for what is being accomplished in bringing the life of the aborigines of Liberia into accord with civilization"<sup>2</sup>.

In 1944, it is stated in an official report of the United States of America, about three-quarters of all school children in Liberia were enrolled in private and mission schools<sup>3</sup>.

Dr. Kimble says that until the end of the Second World War "... 80 per cent. of the educational work was being done by Christian missions"<sup>4</sup>.

In 1959, according to the annual report of the Liberian Department of Public Instruction, there were, in addition to tribal and private schools, 366 elementary and secondary government schools, and 170 elementary and secondary mission schools<sup>5</sup>.

The Liberian government is appreciative of the good work done by the missions in the educational field, and encourages their efforts. R. Earle Anderson writes in this regard:

"The Americo-Liberians themselves are a religious people, and the Liberian Government gives to the missions the fullest co-operation. In return, it is required that each mission station operate a school, thus making of the missions the backbone of the Liberian educational system. There has resulted a sprinkling of small elementary schools throughout the hinterland and counties, and the establishment of schools for the Americo-Liberians, including some of high-school status<sup>6</sup>."

"It has been a Government requirement that all mission stations throughout the country have elementary schools as a condition to their franchise<sup>7</sup>."

"Because of the close co-operation that exists among the various religious, philanthropic, and governmental activities in the educational field, a general pattern is beginning to be evident, the rudiments of an integrated educational system<sup>8</sup>."

### (d) *Ethiopia*

In Ethiopia, according to W. A. Shack—

"Mass education before 1935 was primarily of ecclesiastical character with the centres of study in certain monasteries and churches. In return for fees of food and grain, priests and monks

<sup>1</sup> These particulars have been taken from *Report on an Economic Survey of Nyasaland 1958-1959*, C. Fed. 132, table 2, p. 171.

<sup>2</sup> Anderson, R. E., *Liberia: America's African Friend* (1952), p. 197.

<sup>3</sup> *Foreign Labor Information: Labor in Liberia* (May 1960), p. 4.

<sup>4</sup> Kimble, *op. cit.*, p. 125.

<sup>5</sup> *The Fourth Annual Report of the Department of Public Instruction R.L. [Liberia] covering the period Sep. 1, 1958—Oct. 31, 1959*, table III, Appendices VI and VII.

<sup>6</sup> Anderson, *op. cit.*, p. 198.

<sup>7</sup> *Ibid.*, p. 208.

<sup>8</sup> *Ibid.*, p. 210.

taught children to recite the Psalter, sacred passages in Ge'ez, some writing of Amharic and simple arithmetic. Others were often engaged in tutorial work for the families of the rich<sup>1</sup>."

The first government schools were established during the first decade of this century<sup>2</sup>, but for some time the main burden continued to be carried by the church and by the missions.

Though the Ethiopian Government has never favoured the educational activities of foreign missions in the traditionally Christian areas of the country, it acknowledges the value of their educational services in other areas. W. A. Shack points out that "Muslim and pagan areas are open to proselytizing by missions which are willing to provide medical as well as educational services<sup>3</sup>."

In 1959-1960, according to an official report, there were 224,934 pupils in the schools of the Empire (Ethiopia and Eritrea). Of this total 180,163 were in government schools; 20,497 in mission schools; 14,790 in private schools; 5,095 in community schools; and 4,389 in Church schools<sup>4</sup>.

#### (e) *Ruanda-Urundi*

In Ruanda-Urundi, while under Belgian control, mission schools qualified for government aid when they complied with certain conditions. Apparently there were no government schools before 1954<sup>5</sup>.

In 1959, according to official statistics, there were 40 government schools of all types in Ruanda-Urundi<sup>6</sup>, and 3,002 government-aided mission schools<sup>7</sup>. The enrolment in the government schools was 6,060<sup>8</sup>, and in the aided mission schools 243,102<sup>9</sup>.

Mission schools, aided by the government, played the major role in education during the Belgian administration of Ruanda-Urundi. In this regard Dr. Kimble states that the Belgians' African educational policy was, *inter alia*, based on the belief "that all education is the better for being in the hands of men of faith"<sup>10</sup>.

#### (f) *French Cameroons*

Education in the Cameroons owes a great deal to the Christian missions. The following was said in a report published by the International Labour Office in regard to the position in 1953:

"In the French Cameroons the missions have played and still con-

<sup>1</sup> Shack, *The Journal of Negro Education*, Vol. XXVIII, No. 4 (1959), p. 405.

<sup>2</sup> Kimble, *op. cit.*, p. 127.

<sup>3</sup> *Ministry of Education and Fine Arts, Bureau of Educational Research and Statistics, Government, Mission, Private, Community and Church-Schools 1959-1960*, p. 6.

<sup>4</sup> *Vide Kimble, op. cit.*, pp. 115-116 and *Rapport sur l'Administration Belge du Ruanda-Urundi pendant l'Année 1959* (1960), para. 151, pp. 253-254, and para. 153, p. 257.

<sup>5</sup> *Vide Rapport sur l'Administration Belge du Ruanda-Urundi pendant l'Année 1959* (1960), p. 472.

<sup>6</sup> *Ibid.*, p. 474.

<sup>7</sup> *Ibid.*, p. 475.

<sup>8</sup> Kimble, *op. cit.*, p. 115.

tinue to play, a major role in the development of educational facilities; in 1953, in the field of primary education, the enrolment at state schools was 42,770 and at mission schools 113,381<sup>1</sup>."

(g) *Ghana*

In Ghana, Christian missions laid the foundations of education, and they have at all times played an important part in the educational work of the country. As in other countries, the government encouraged the missions in their educational work, and granted financial assistance to the mission schools of which it approved for purposes of financial assistance. F. M. Bourret says the following in regard to mission schools in Ghana:

"They take a major part in the educational work of the country. In 1957, for example, of the 4,882 primary and middle schools there were 2,189 under the larger Protestant Mission bodies (Presbyterian, Methodist, Anglican) and 1,162 under Catholic auspices [a total of 3,351 Mission schools]. On the secondary and teacher training level, the same high proportion of missionary-directed schools obtains. Actually, then, only a small percentage of the country's schools is under full government control, but the education department grants substantial sums to all approved schools, and thus bears a good proportion of the expense<sup>2</sup>."

In 1959 there were 663,439 students in all educational institutions in the country. Of this total, 618,905 (approximately 93.3 per cent.) were enrolled in "Approved Schools". In government institutions there were in all 3,924 students (approximately 0.59 per cent.). There were 4,274 students in teacher training colleges, and of these 3,749 (approximately 87.7 per cent.) were in "approved" institutions<sup>3</sup>.

#### D. Types of Schools for Natives in South West Africa

38. Schools for Native education in the Territory are of the following kinds:

- I. Government schools.
- II. Government teacher training schools.
- III. Mission schools.
- IV. Mission teacher training schools.
- V. Private schools.
- IV. Farm schools.

Proclamation No. 16 of 1926 (S.W.A.) makes provision for the establishment by the Administrator of government schools and government training schools<sup>4</sup>. The highest and lowest standard in any such school, as well as the subjects of instruction, are subject to the approval of the Director of Education<sup>5</sup>. Government schools may be established when the Director is satisfied that the educational needs of the locality call

<sup>1</sup> *African Labour Survey* (1962), p. 37.

<sup>2</sup> Bourret, F. M., *Ghana—The Road to Independence 1919-1957* (1960), p. 218.

<sup>3</sup> *Vide Education Statistics 1959*, Statistical Reports (Ghana), Ser. 1, No. 6, p. 7.

<sup>4</sup> Proc. No. 16 of 1926 (S.W.A.) as amended, sec. 122 (1), in *Laws of South West Africa*, Vol. II (1923-1927), p. 302.

<sup>5</sup> *Ibid.*, sec. 122 (2), p. 302.

for such establishment, that a regular attendance of at least 20 pupils can be maintained, and that the accommodation to be utilized is suitable for the purpose<sup>1</sup>. Similar conditions apply to the establishment of training schools, save that no minimum number of students is prescribed.

39. The control and management of government schools and government training schools vest in the Director of Education or in a manager appointed by him, but the Director may, with the consent of the Administrator, institute managing bodies for such schools<sup>2</sup>.

There is one government training school in the Territory, the Augustineum at Okahandja<sup>3</sup>.

Proclamation No. 16 of 1926 (S.W.A.) makes provision for the establishment of mission schools and mission training schools<sup>4</sup>, for the recognition of such schools and training schools, and for government grants in respect thereof<sup>5</sup>. The control and management of recognized schools and training schools vest in the church or missionary body or other person responsible for the establishment of the school concerned, but the appointment of the manager of each school is subject to the approval of the Director of Education, and the manager must perform his duties to the satisfaction of the Director<sup>6</sup>.

40. There are at present three mission teacher training schools in the Territory: the Roman Catholic institution at Doeбра, near Windhoek, and two Finnish training schools at Onguedira and Ongandjera, in Ovamboland<sup>7</sup>. As from 1964 the two last-mentioned institutions will be financed by the Administration on the same lines as in the case of the Augustineum, although they will remain under the control of the Finnish Mission. There are a few private schools in the Territory, conducted mainly by the African Methodist Episcopal Church. At present there are three farm schools in operation in the Territory<sup>8</sup>.

The 1962 Education Ordinance<sup>9</sup> empowers the Administrator—

- (a) to establish and maintain "Native schools to be known as State Native Schools"<sup>10</sup>;
- (b) to subsidize and assist in the establishment or maintenance of Native community schools<sup>11</sup>;
- (c) to make grants-in-aid to any "state-aided Native school"<sup>12</sup>. This

<sup>1</sup> *Proc. No. 16 of 1926 (S.W.A.) as amended, sec. 122 (4), in Laws of South West Africa, Vol. II (1922-1927), p. 302.*

<sup>2</sup> *Proc. No. 16 of 1926 (S.W.A.), sec. 122 (7), as substituted by Ord. 19 of 1960 (S.W.A.), sec. 15; vide The Laws of South West Africa 1960, Vol. XXXIX, p. 681. Vide also para. 35, supra.*

<sup>3</sup> *Vide para. 24, supra.*

<sup>4</sup> *Proc. No. 16 of 1926 (S.W.A.), sec. 123, in Laws of South West Africa, Vol. II (1923-1927), p. 304.*

<sup>5</sup> *Ibid., secs. 125, 126 and 127, pp. 304-306. As to the number of schools—Government and Mission—vide paras. 43 and 55, infra.*

<sup>6</sup> *Proc. No. 16 of 1926 (S.W.A.), sec. 128, in Laws of South West Africa, Vol. II (1923-1927), p. 306.*

<sup>7</sup> *Vide para. 22, supra.*

<sup>8</sup> *Vide para. 13, supra.*

<sup>9</sup> *Vide Chap. III, para. 5, supra.*

<sup>10</sup> *Ord. No. 27 of 1962 (S.W.A.), sec. 101 (1) (a), in Official Gazette Extraordinary of South West Africa, No. 2413 (4 July 1962), p. 912.*

<sup>11</sup> *Ibid., sec. 102 (1), p. 912.*

<sup>12</sup> *Ibid., sec. 103 (1), p. 912.*

term includes those mission schools or mission training schools recognized by the Director under the Educational Proclamation No. 16 of 1926 (S.W.A.).

### E. Officers and Field Staff for Native Education

41. For many years there were no officers of the Education Department specially detailed to organize or inspect Native schools. All the work was done by officers and inspectors who performed their duties in respect of all schools in South West Africa.

In 1945 an officer, styled organizer, was appointed to organize and supervise Native schools and teaching in the areas outside the Police Zone, and in 1953 a second such organizer was appointed. These two organizers were also responsible for the inspection of schools in those areas.

In 1952 an organizer of Native Education was appointed for the Police Zone, but inspections continued to be carried out by the same inspectors who inspected European and Coloured schools.

As a result of recommendations made by the 1958 Commission of Inquiry into Non-European Education, certain changes were brought about with a view to giving Native schools in the Territory better professional supervision and more specialized attention.

In 1960 a chief inspector of Native schools was appointed, and also an inspector of Native schools for the Police Zone. The aforementioned post of organizer, which had been created in 1952, was then abolished. In 1961 an administrative organizer was appointed for the Police Zone, whose function it is, in general, to assist and guide schools and school board secretaries in their work. Three posts of supervisor of schools have been created for the northern territories: two of these posts have already been filled by Natives, whilst the third is presently filled by a Finnish missionary pending the appointment of a suitable Native candidate. Two similar posts have been created for the Police Zone. A supervisor's functions are to assist inspectors in their inspections of schools and other professional work, to give professional guidance to teachers, and to supervise instruction given in the mother tongue in the sub-standards and lower primary classes.

As already stated<sup>1</sup>, it has been decided to appoint five Natives on the staff of the Bureau for the development of the Native languages in the Territory. Two of these have already been appointed to assume duty on 1 January 1964. Posts have also been offered to two others to assume duty on the same date, and a suitable candidate is being sought to fill the fifth post. These men will have a sound knowledge of the following languages: Herero, Nama, Ndonga, Kuanyama and Kuangali.

42. As far as the areas outside the Police Zone are concerned, the posts of organizer and second organizer have been done away with, but the services of the officers holding the positions have been retained as professional assistants to inspectors of schools. In 1961 two inspectors of schools were appointed, and also an administrative organizer.

In addition to the aforementioned officers, whose duties relate solely to Native education, there are an organizer of domestic science and

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<sup>1</sup> *Video* Chap. IV, para. 20, *supra*.

needlework and an organizer of handwork for boys, who serve European, Coloured and Native schools in the Police Zone.

The present complement of professional officers, field staff and administrative staff concerned with Native education in the Territory is reflected in the following table:

*Head Office (serving all groups in the Territory)*

director of education  
deputy director of education  
professional assistant  
administrative staff—46 in number

*Field Staff (serving all groups in the Police Zone)*

organizer for domestic science and needlework  
organizer for handwork for boys  
organizer for music

*Field Staff (serving only Native groups, both inside and outside the Police Zone)*

chief inspector of schools

*Field Staff (serving only Native groups in the Police Zone)*

inspector of schools  
administrative organizer  
professional assistant

*Field Staff (serving Native groups outside the Police Zone)*

2 inspectors of schools  
1 professional assistant  
3 supervisors  
2 administrative organizers.

**F. Survey of Native Schools, Pupils and Teachers within the Police Zone**

43. In the table below particulars are given of schools, pupils and teachers in the Police Zone in various years since 1922.

The mission schools referred to are recognized mission schools. Schools which did not, or do not, comply with the requirements laid down by the Department of Education are not included in the table.

The number of students given for the years 1922 and 1930 include a comparatively small number of Coloured pupils who were then in Native schools.

Year	Schools	Pupils	Teachers
1922	Rhenish	2,430	47 (including 3 Europeans)
	Roman C.		
	Wesleyan		
	—		
	43		
1930	Rhenish	4,747	123 26 (part-time)
	Roman C.		
	Anglican		
	Wesleyan		
	—		
	67		149 (including 12 Europeans)

Year	Schools	Pupils	Teachers
1940	Government	2	Government 240 Mission 4,216 ----- 4,456 191
	Rhenish	50	
	Roman C.	24	
	Wesleyan	1	
	Anglican	1	
	-----	78	
1950	Government	6	Government 553 Mission 6,080 ----- 6,633 259
	Rhenish	45	
	Roman C.	26	
	Wesleyan	1	
	Anglican	1	
	-----	79	
1960	Government	13	Government 2,191 Mission 9,476 ----- 11,667 441
	Rhenish	56	
	Roman C.	26	
	A.M.E.	1	
		-----	
1962	Government	20	Government 4,065 Mission 10,704 ----- 14,769 472
	Rhenish	50	
	Roman C.	27	
	A.M.E.	1	
		-----	
1963	Government	22	Government 5,521 Mission 11,243 ----- 16,764 529
	Rhenish	48	
	Roman C.	27	
	A.M.E.	5	
		-----	

44. The figures in the above table show, regard being had to the various factors which have served to retard development, that steady progress has been made.

In 1922 there were only 44 Native teachers, few of whom had had any real training. The teacher training school at Okahandja was only reopened in 1923<sup>1</sup>, and three years later 12 students completed their training. Thereafter—save during the 1930s when economic conditions had serious effects on educational development<sup>2</sup>—there was a gradual increase in the number of teachers, and they were also progressively better trained. Between 1950 and 1960 the position improved considerably, and the number of full-time Native teachers increased from 166 to 297, i.e., by almost 79 per cent. That there is still a shortage of teachers, however, is shown by the large number of part-time teachers who have to be employed.

<sup>1</sup> Vide para. 23, *supra*.

<sup>2</sup> Vide paras. 17 to 19, *supra*.

Year	Sub-standards			Standards									
	a <sup>1</sup>	A	B	I	II	III	IV	V	VI	VII <sup>2</sup>	VIII	IX	X
1949 . . . . .	903	2,340	1,035	786	588	274	112	43	19				
1951 . . . . .	2,154 100	1,598 74.2	1,136 52.7	944 43.8	598 27.8	340 15.8	139 6.5	70 3.3	24 1.1				
1954 . . . . .	1,979 100	1,523 77.0	1,293 65.3	1,033 52.2	701 35.4	436 22.0	196 9.9	120 6.1	76 3.8	17 0.9			
1955 . . . . .	2,040 100	1,563 76.6	1,311 64.3	1,126 55.2	817 40.0	472 23.1	235 11.5	166 8.1	93 4.6	29 1.4	3 0.1		
1960 . . . . .	3,397 100	2,373 69.8	1,765 51.9	1,358 39.9	1,043 30.7	708 20.8	375 11.0	225 6.6	186 5.4	61 1.8	24 0.7	5 0.15	1 0.03
1961 . . . . .	3,555 100	2,886 81.2	2,147 60.3	1,566 44.0	1,189 33.4	845 23.7	474 14.0	278 7.8	153 4.3	57 1.6	11 0.3	3 0.3	2 0.04
1962 . . . . .		5,970 100	3,254 54.5	1,938 32.4	1,371 22.9	882 14.7	595 9.9	343 5.7	206 3.4	58 0.9	17 0.3	4 0.07	3 0.05
1963 . . . . .		4,297 100	4,972 115.7	2,987 69.5	1,719 40.0	1,165 27.1	656 15.2	459 10.6	282 6.5	79 1.8	20 0.5	4 0.1	3 0.06

<sup>1</sup> Until the end of 1961, a sub-standard "a" preceded sub-standards "A" and "B". As from 1962, the first year of schooling has been sub-standard "A".

<sup>2</sup> In this column are included students in Forms I and II (i.e., one and two years respectively after completion of Standard VI).

Reference has already been made to the detrimental effect which economic conditions during the 1930s had on school attendance<sup>1</sup>. This is reflected in a comparison between the number of pupils enrolled in 1930 and the number enrolled in 1940. After 1940 there was fair progress, and excellent progress was made during the years 1950 to 1960, when the number of pupils rose from 6,663 to 11,667, representing an increase of almost 76 per cent.

45. In the table above are shown the enrolment figures in the various sub-standards and standards in schools in the Police Zone during the years 1949, 1951, 1954, 1955, 1960, 1961, 1962 and 1963, and comparisons with 100 in the lowest sub-standard as basis. The table does not include pupils in teacher training schools or in the industrial classes at the Augustineum<sup>2</sup>.

46. The above table shows that the vast majority of pupils are in the lower primary standards, but that the numbers of those in the upper primary standards are becoming progressively larger. The fact that all schools do not have a full range of classes up to Standard VI partially accounts for the comparatively low enrolment in the upper primary standards (i.e., Standards III to VI), but it must be borne in mind that until the end of 1962 the only condition for instituting a class higher than Standard II was that there had to be at least five pupils for such a class; and, that if the number fell below five in the course of a year, such class nevertheless continued till the end of that year. Since the beginning of 1963 the position is as follows: if a Standard III class starts with five pupils, such class continues till the end of Standard IV, even if the number falls below five in the course of the Standard III or Standard IV year; if a Standard IV class starts with five pupils, it continues till the end of the Standard IV year even if the number falls below five in the course of that year; if a Standard V class starts with five pupils, it continues till the end of Standard VI, even if the number falls below five in the course of the Standard V or Standard VI year. These requirements are dictated by the shortage of teachers.

The fall-off in numbers in the lower primary classes cannot be attributed to any lack of facilities, and when regard is had to the decline in numbers in the lower standards, it is not surprising to find that so few of those who go to school proceed to the upper primary standards.

It is an encouraging fact, however, that of those pupils who do go beyond the lower primary standards, progressively more proceed to Standard VI. In 1949, as the table above shows, there were 19 students in Standard VI. Eleven years later, in 1960, the number was almost ten times as great, namely 186. In 1961, for no apparent reason, the number fell to 153, but it rose again to 206 in 1962, and in 1963 it was 282.

47. Secondary education for Natives in South West Africa is of fairly recent origin. Junior secondary courses (up to Standard VIII) were instituted at the Augustineum in 1953, and senior secondary courses (up to Standard X) in 1958. Junior secondary courses have been offered at Doepra since 1956.

Enrolments in the secondary courses in 1963 are reflected in the above table as follows: 79 pupils in Standard VII, 20 in Standard VIII, 4 in Standard IX and 3 in Standard X.

<sup>1</sup> *Vide* para. 19, *supra*.

<sup>2</sup> As to such classes *vide* Chap. VI, para. 3, *infra*.

Not nearly full use is made of the facilities offered at the Augustineum and at Doebra, and many more students can be accommodated than are presently taking secondary courses.

The Augustineum provides for three different courses: an academic course up to Standard X, teacher training, and technical training in masonry, woodwork and tailoring. It is open to all Native students in the Territory, and, as already stated <sup>1</sup>, all students receive free tuition, free books, free board and lodging, and free transport to and from their homes as well as pocket money. The Roman Catholic institution at Doebra is subsidized by the Administration, and tuition and boarding are free.

48. As stated above <sup>2</sup>, the Administration started to take over the Rhenish Mission schools in the Police Zone in 1962.

As soon as the mission schools in the Reserves within the Police Zone have been taken over, the Administration intends establishing at least one higher primary school in each Reserve and of making funds available for the erection of hostels in conjunction therewith, while lower primary schools will be established at every so-called "post" in the Reserves where there is a sufficient concentration of inhabitants to warrant the building of a school.

### G. Conditions relating to Education Outside the Police Zone

#### *Ovamboland*

49. At the 1923 educational conference, a provisional syllabus for use in primary classes up to Standard II was agreed upon by the Administration and the various missions represented at the Conference. As already stated <sup>3</sup>, the Finnish Mission did not see its way clear to adopt this syllabus. It was felt that, having regard to the stage of development of the population in the northern areas, it was still in the best interests of the people to devote more time to religious instruction than the syllabus would have permitted. Another major difficulty was the lack of teachers who had received sufficient training. Of the 304 teachers in Ovamboland in 1924, only 61 had received any teacher training, and the general standard of work was understandably very low. Most of the schools—there were 168 in 1924—were nothing more than mere bush schools, and the instruction given was mostly of an elementary and religious kind. It was only gradually, as the quality of teachers improved, that instruction could be given on somewhat broader lines.

There was only one teacher training school in Ovamboland in 1924 <sup>4</sup>—that at Oniipa—and it was only in that year that the Roman Catholic and Anglican Missions started work in Ovamboland.

50. Improvement in the standard of the schools was slow, although special efforts were made to raise the quality of the main station schools, to which European principals were appointed, and where hostel facilities were created. Useful work was done at the Oniipa training school and at the Onguedira industrial school, established by the Finnish Mis-

<sup>1</sup> *Vide* para. 29, *supra*.

<sup>2</sup> *Vide* para. 36, *supra*.

<sup>3</sup> *Vide* Chap. IV, para. 24.

<sup>4</sup> *Vide* para. 23, *supra*.

sion in 1928, where a three-years' practical training course was given in carpentry, agriculture, cattle raising, gardening and tree-planting. Inasmuch as they did not comply with the conditions which would have qualified them for the subsidy paid to recognized schools, the Administration made annual grants to these institutions.

In 1936 the Director of Education visited Ovamboland to investigate the possibility of introducing measures to improve conditions at the mission schools and to find a basis for subsidizing the schools without their having to comply with the conditions which had been laid down as a qualification for government aid. In the interim, until steps could be taken to put education on a sounder footing, it was proposed to make grants towards meeting the salaries of teachers with the necessary qualifications.

51. The Second World War prevented the taking of any positive steps to improve education in Ovamboland, but in 1945 an organizer of education was appointed in the northern territories and from then onwards the financial aid granted to schools increased appreciably. Grants were made in respect of trained teachers in day schools, to industrial schools, training schools, so-called boys' and girls' schools, and also to district inspectresses in the service of the missions. From 1952 onwards subsidies have been paid to missions not in respect of particular services, but in the form of a global sum to each mission, to be used at its discretion.

In time the standard of the schools improved, and although a great deal was still left to the discretion of the mission concerned, the activities of the Organizer of Education and his assistant, appointed in 1953, did much to achieve greater uniformity amongst the various schools; the progressive adoption of more advanced syllabuses, and a gradual adaptation to conditions applying in the schools in the Police Zone. In 1948 the Finnish Mission established a separate training school for girls<sup>1</sup>. The Mission also imported a few teachers with University degrees from Finland, who were then enrolled at a South African university to take a teacher's course and to learn Afrikaans, and some Native students were sent to South Africa to be trained as teachers.

Ovamboland students wrote the Standard VI examinations conducted for pupils in the Police Zone for the first time at the end of 1960, and the results bear witness to the progress that has been made in recent years. Of the 130 candidates who entered for the examination 110 passed (i.e., 85 per cent.). Of the 166 candidates in the Police Zone, 109 passed (i.e., 66 per cent.). A concession was made to the Ovamboland students. They wrote English on a Standard IV level but, on the other hand, they offered one subject more than the Police Zone students in that they also wrote an examination in their home language.

52. Further evidence of progress is the fact that, as from 1961, Form I (i.e., one year after Standard VI) has been the minimum requirement for admission to the training school at Onguedira, and Standard VI the minimum requirement for admission to the training school at Ongandjera<sup>2</sup>. This is a step which will henceforth serve to improve the quality of teachers and of the work done at schools. As stated above<sup>3</sup>,

<sup>1</sup> *Vide* para. 22, *supra*.

<sup>2</sup> *Vide* para. 27, *supra*.

<sup>3</sup> *Vide* para. 40, *supra*.

both the training schools will in future be financed by the Administration on the same lines as the Augustineum.

Another important advance in education in Ovamboland was the introduction in 1961 of secondary courses at the training schools at Ongandjera and Onguedira<sup>1</sup>.

As already stated<sup>2</sup>, the lower primary schools of the Finnish Mission in Ovamboland were converted into government community schools in 1961, and the Roman Catholic Mission has agreed to transfer its schools in Ovamboland to the Administration. Fifteen higher primary schools of the Finnish Mission were taken over by the Administration in 1963. The Administration has also decided to establish, as soon as possible, lower primary schools at all so-called "posts" in Ovamboland where there is a sufficient concentration of inhabitants to warrant the establishment of such schools. The minimum requirement for establishing an upper-primary class in Ovamboland is ten pupils; elsewhere in the northern territories the minimum is five, as in the Police Zone<sup>3</sup>.

### *The Okavango*

53. The Okavango is a vast area with a population, according to the 1960 census, of 28,252<sup>4</sup>.

It was only in 1910 that the first missionaries started work in this area, when a Roman Catholic school was established at Diriko. The first Finnish missionaries came to the Okavango in about 1930. At present there are 46 mission schools in this territory, seven of which are higher primary schools.

The bulk of population is concentrated along the Okavango River, where most of the schools are, but almost the whole of the occupied portion of the area is served by schools.

At the request of the Finnish Mission<sup>2</sup>, the Administration has decided, at least for the present, not to convert the mission schools in the Okavango into government community schools.

### *The Kaokoveld*

54. The Kaokoveld, about 5,560,000 ha. in extent, has a population, according to the 1960 census, of 10,099, which gives a population density of about 0.0018 to the hectare.

The inhabitants of the Kaokoveld led a completely secluded existence as far as missionary activity was concerned until the late 1920s. In 1927 the Finnish Mission started conducting services a few times a year at Okorosawe, while the Rhenish Mission started doing the same at Zessfontein as from 1930. It was not until 1946, however, that a school was established in the area. In that year the Rhenish Mission started a school at Zessfontein. The services of a teacher trained at the Augustineum were obtained, and the Administration granted an allowance in respect of his salary. All subsequent attempts to obtain a second teacher failed. Teachers cannot readily be persuaded to go to the Kaokoveld, a

<sup>1</sup> *Vide para. 68, infra.*

<sup>2</sup> *Vide para. 35, supra.*

<sup>3</sup> *Vide para. 46, supra.*

<sup>4</sup> The population density is 0.0077 to the hectare; *vide para. 10, supra.*

wild and isolated territory, while there is a demand for their services in more attractive parts of the country.

The enrolment at the aforementioned school rose from 44 in 1947 to 70 in 1955, but in 1960 it was only 50 and in 1962 it was 65. Experience has shown that very few pupils, hardly more than 15 per cent. in any year, stay at school after completing the sub-standards. The pupils at the school are Nama and Bergdama. Herero parents have consistently refused to support the school, their professed attitude being that they are not interested in mission schools.

In view of the attitude of the Hereros, the Administration took steps to establish a government school in the area. In 1955 a school building was erected at Okorosawe from South African Native Trust funds, but the Department of Education could not find a suitable teacher who was prepared to take up duties there. When the Dutch Reformed Church entered the field some time thereafter, they declined to make use of this school building at Okorosawe—being unwilling to encroach on the land of the Hereros living there—and in 1961 started a school at Orumana instead. It was not until 1961 that the Education Department succeeded in obtaining the services of a teacher for its proposed school at Okorosawe. This teacher agreed to take up his duties there at the beginning of 1962, and in January 1962, the school at Okorosawe was started as a government school.

#### H. Survey of Native Schools, Pupils and Teachers in the Northern Territories

55. In the table below particulars are given of schools, pupils and teachers in the aforementioned areas outside the Police Zone.

It must be pointed out that what were referred to as "schools" in the early years would not all be classified as such today. At that time there were no prescribed syllabuses and most of the education given was aimed at teaching the Natives to read, with the specific purpose of preparing them for Bible study and religion. And in many instances the pupils attending such "schools" were adults.

<i>Year</i>	<i>Schools</i>	<i>Pupils</i>	<i>Teachers</i>	
1924	Finnish	168	4,689	304 (including 10 Europeans)
1932	Finnish Roman C. Anglican	179	9,378	293 (including 20 Europeans)
1939	Finnish Anglican Roman C.	100 14 32 146	13,655	(Information not available)
1950	Finnish Roman C. Anglican Rhenish	151	16,026	441 (including 19 Europeans)

Year	Schools	Pupils	Teachers
1960	Finnish Roman C. Anglican Rhenish	161	26,134 633 (including 25 Europeans)
1961	Government (community schools) Roman C. Finnish Anglican Rhenish Dutch Ref.	85 43 33 10 1 1 173	29,452 669 (including 25 Europeans)
1962	Government (community schools) Finnish Roman C. Anglican Rhenish Dutch Ref.	110 31 44 10 1 1 197	30,801 766 (including 28 Europeans)
1963	Government (community schools) Finnish Roman C. Anglican Rhenish Dutch Ref.	136 14 45 9 1 1 206	32,533 765 (including 29 Europeans)

56. As the figures in the above table show, rapid progress has been made since 1950.

During the period 1950 to 1960 the number of pupils at school increased by more than 60 per cent.

The table below contains the enrolment figures in the various classes in 1960, 1961, 1962 and 1963.

The decrease in the number of teacher trainees in 1961 was due to the raising of the minimum qualification for admission to the teacher training schools<sup>1</sup>.

There is no apparent reason for the comparatively low number (580) of pupils in Standard III in 1961. It cannot be ascribed to any lack of school facilities, for in 1960 the number of Standard III pupils had been almost twice as large, namely 1,085.

<sup>1</sup> *Vide* para. 27, *supra*.

<i>Standard</i>	1960	1961	1962	1963
Sub. A . . . . .	15,819	16,999	15,714	15,232
Sub. B . . . . .	3,522	5,105	6,340	6,895
Std. I . . . . .	2,793	3,378	4,259	4,653
Std. II . . . . .	2,269	2,663	2,379	2,795
Std. III . . . . .	1,085	580	1,163	1,445
Std. IV . . . . .	270	374	456	745
Std. V . . . . .	178	146	250	389
Std. VI . . . . .	95	96	119	201
Form I (Std. VII) . . . . .	20	32	28	63
Form II . . . . .	—	19	18	13
Form III . . . . .	—	—	19	17
Form IV . . . . .	—	—	—	10 <sup>1</sup>
Teacher Training . . . . .	83	60	56	75

<sup>1</sup> Theological students at Odiba; *vide* para. 22, *supra*.

## I. School Attendance

### I. PERCENTAGE OF NATIVE CHILDREN ATTENDING SCHOOL IN SOUTH WEST AFRICA

57. Because census statistics do not record the ages of persons enumerated, it is impossible to determine with absolute precision what percentage of Native children of school-going age attend schools in South West Africa.

For the purpose of presenting certain calculations to the Court, it is assumed that children of school-going age constitute 23 per cent. of the total population<sup>1</sup>.

Working on the basis of 23 per cent., the following calculations can be made.

<sup>1</sup> The percentage of the total population regarded to be of school-going age must of necessity vary according to what is considered to be "school age". The Committee on South West Africa, in its report to the General Assembly of the United Nations in 1954, took non-European children of school age in the Police Zone to constitute 20 per cent. of the non-European population of that area. (*Vide G.A., O.R., Ninth Sess. Sup. No. 14 (A/2666), p. 30.*) The 1958 Commission of Inquiry into Non-

According to the census taken in 1951 the Native population of South West Africa (excluding the Eastern Caprivi Zipfel, which is dealt with separately hereinafter) was 351,397. Based on the assumption aforementioned, there must in that year have been 80,820 Native children of school age. The children actually at school numbered 24,527<sup>1</sup>, which means that 30.3 per cent. of all Native children of school-going age were at school in that year.

In 1960, according to the census taken in that year, the Native population of South West Africa numbered 412,735 (excluding the Eastern Caprivi Zipfel). In that year there were in fact 37,801 Native children at school, and, calculating in the manner aforesaid, it means that 39.8 per cent. of all Native children of school-going age were at school in that year.

58. The aforesaid calculations show that substantial progress was made during the period 1951 to 1960. And what is of particular significance, is the fact that the number of children enrolled rose much more rapidly than the number of children of school age. The increase in the number of children of school age was approximately 17.4 per cent. (from 80,820 to 94,929), and in the case of children enrolled it was no less than 54.1 per cent. (from 24,527 to 37,801).

It was particularly during the five years 1955 to 1960 that rapid progress was made. During that period the number of Native children enrolled in the Police Zone increased by 47.8 per cent. (from 7,893 to 11,667), and in the northern territories by 49.2 per cent. (from 17,515 to 26,134).

The enrolment figures for 1961 again show a striking increase over those of 1960. In the northern territories the increase was 12.7 per cent., and in the Police Zone it was 13.1 per cent.

If it be assumed that the 1961 population figure was 2 per cent. higher than the 1960 figure (giving a total population of 420,990 for 1961), and that 23 per cent. of the population were children of school age, it would follow that there were 96,828 Native children of school age in 1961. The children actually at school in that year numbered 42,750, which means that slightly more than 44 per cent. of all Native children of school age attended school in 1961.

It is confidently expected that under the new system of government community schools which has been introduced in the Territory, there will be an even more rapid increase in the number of children at school than there has been of recent years. This has certainly been the experience in South Africa, where there was an increase of 33 per cent. in the number of Bantu schools between 1956 and 1960 as compared with an

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European Education in South West Africa took the percentage to be 25 (*vide* the Commission's Report, Part I, para. B119 (b), p. 99). Respondent considers that a percentage of 23 is reasonable. In 1960, when, it can be assumed, all European children of at least the compulsory school age (i.e., up to their sixteenth year) were at school, the total number of European children actually at school constituted 22.2 per cent. of the total European population.

<sup>1</sup> The numbers of children given in the tables in paras. 43 and 55, *supra*, reflect enrolments at the beginning of the second semester of the years concerned: that is, no account is taken of pupils who enrolled at the beginning of a year and left school during the first semester.

increase of 8 per cent. during the preceding five years, and where the percentage of Bantu school-age children enrolled in 1960 was approximately 60 as compared with approximately 40 in 1955.

## II. SCHOOL ATTENDANCE IN OTHER AFRICAN TERRITORIES

59. That good progress has been made in South West Africa, and that the results compare well with what has been achieved in other parts of the continent of Africa, even where education has had a much longer history, is shown in the following paragraphs, which are devoted to a brief survey of school attendance in other territories in Africa.

### (a) Liberia

It is impossible to determine with any measure of exactness the percentage of children of school-going age in Liberia who actually attend school, inasmuch as no population census has, as far as is known, ever been taken.

According to Dr. Kimble, until the end of the Second World War "only 3 per cent. or so of the school-age population was actually attending school"<sup>1</sup>.

A United Nations publication gives the percentage of total population enrolled in the primary, secondary and technical schools of the country as 2 and 3.5 respectively in 1950 and 1955<sup>2</sup>.

In a publication dealing, *inter alia*, with educational developments in Liberia in 1961-1962, it is stated that, according to "the latest figures", the total enrolment at public, mission, private and tribal schools was 63,989<sup>3</sup>. Calculated on the basis that the total population of the country was 1,250,000 at the time, and that children of school age constitute 23 per cent. of the total population<sup>4</sup>, it would mean that about 22.26 per cent. of a school-age population (calculated at 287,000) were enrolled at the time.

### (b) Ethiopia

As far as is known, no population census has ever been taken in Ethiopia, and it is, therefore, impossible to determine with any exactness the percentage of children of school-age who attend school. In 1956, according to a United Nations' estimate, the total population was 20 million<sup>5</sup>; and in 1960, according to the Ethiopian Ministry of Information, it was 22 million<sup>6</sup>.

Ernest W. Luther estimated the number of children at school in 1956 as "comprising only a very small fraction—certainly under 5 per cent.—of the school-age population"<sup>7</sup>.

<sup>1</sup> Kimble, *op. cit.*, p. 125.

<sup>2</sup> *Vide U.N. Doc. E/CN. 5/324/Rev. 1, ST/SOA/33 (Apr. 1957), p. 80.*

<sup>3</sup> *Vide International Yearbook of Education, Vol. XXIV (1962), p. 223.*

<sup>4</sup> *Vide para. 57, supra.*

<sup>5</sup> *Vide U.N. Doc. E/CN. 14/28, p. 13.*

<sup>6</sup> *Ethiopia: Facts and Figures (1960), p. 3.*

<sup>7</sup> Luther, *op. cit.*, p. 27.

In 1959-1960, according to official Ethiopian sources, the total number of pupils in the Empire's government, mission, private, community and church schools was 224,934<sup>1</sup>. If, for purposes of calculation, the total population in 1959-1960 is taken as 20 million, and if it be further assumed that the school-age population constituted 23 per cent. of the total population<sup>2</sup>, it follows that about 4.9 per cent. of the school-age population attended school in 1959-1960.

Another United Nations publication gives the primary school enrolment in 1960-1961 as about 177,000<sup>3</sup>, and the secondary school enrolment as about 8,500<sup>4</sup> (a total enrolment figure of 185,500). According to the same source the official population estimate for 1961 was 19,500,000<sup>5</sup>.

### (c) Generally in African Territories

The position of school enrolment generally in Africa is described as follows in a United Nations publication of 1961:

"The recent phenomenal expansion of school facilities, however, has by no means brought educational opportunity for African children and youth to a desirable level. Today, for the African States as a whole, only 16 per cent. of the children of school age are enrolled [sic] in school. The situation varies from State to State, ranging from less than 2 per cent. of the school-age population in school in several States to nearly 60 per cent. in others. In the majority of cases, the proportion of children out of school exceeds 80 per cent."<sup>6</sup>

60. The following table reflects:

in *column (A)*: the estimated total population of various countries in Africa in the years indicated;

in *column (B)*: the total enrolments in such countries in the said years;

in *column (C)*: the calculated percentage of the total population enrolled in the various countries in the said years.

The particulars contained in columns (A) and (B) have been taken from the *International Yearbook of Education*, Vol. XXIV (1962), Educational Statistics, tables I and II.

<sup>1</sup> *Ministry of Education and Fine Arts, Bureau of Educational Research and Statistics Government, Mission, Private, Community and Church-Schools 1959-1960*, p. 6.

<sup>2</sup> *Vide* para. 57, *supra*.

<sup>3</sup> *Vide* UNESCO/ED/191, table I, p. 153.

<sup>4</sup> *Ibid.*, table II, p. 154.

<sup>5</sup> *Ibid.*, p. 81.

<sup>6</sup> *Vide* UNESCO/ED/180, p. 5.

Country	(A) Population	(B) Total enrolments	(C) % of population enrolled
Burundi (1961) . . . . .	2,224,000	103,178	4.639
Cameroon (1959) . . . . .	4,066,000	423,793	1.042
Central African Republic (1961) . . . . .	1,227,000	75,386	6.143
Chad (1961) . . . . .	2,680,000	96,435	3.598
Dahomey (1961) . . . . .	2,050,000	102,245	4.987
Ethiopia (1960) . . . . .	20,000,000	182,146	0.910
Gabon (1961) . . . . .	448,000	66,376	14.816
Ghana (1959) . . . . .	4,911,000	653,491	13.30
Guinea (1961) . . . . .	3,059,000	122,801	4.014
Ivory Coast (1960) . . . . .	3,160,000	250,213	7.918
Liberia (1961) . . . . .	1,315,000	58,132	4.421
Madagascar (1960) . . . . .	5,393,000	475,277	8.813
Mali (1959) . . . . .	4,100,000	55,313	1.349
Niger (1961) . . . . .	2,870,000	25,201	8.781
Nigeria (1961) . . . . .	35,752,000	2,966,612	8.298
Senegal (1961) . . . . .	2,980,000	134,713	4.521
Sierra Leone (1961) . . . . .	2,450,000	100,648	4.11
Somalia (1960) . . . . .	2,010,000	24,589	1.233
Tanganyika (1960) . . . . .	9,239,000	465,171	5.035
Togo (1961) . . . . .	1,480,000	122,039	8.246
Uganda (1960) . . . . .	6,677,000	564,203	8.45
U.A.R. (1961) . . . . .	26,578,000	3,255,075	12.247
Upper Volta (1960) . . . . .	3,635,000	58,488	1.61

The corresponding position in South West Africa in 1960 was as follows:

Total Native population (excluding the Eastern Caprivi Zipfel)	Enrolment	% of population enrolled
412,735	37,801	9.2

61. It is submitted, with reference to the foregoing statistics, that good progress has been made in the education of the Native population of South West Africa, especially when regard is had to all the difficulties that have been encountered and to the relatively brief history of the education of the indigenous people of the Territory.

### J. Courses, Syllabuses and Examinations for Native Pupils

62. The curriculum in every government training school, government Native school, recognized mission school and mission training school is determined and regulated by the Director of Education <sup>1</sup>.

#### I. PRIMARY SCHOOLS

63. A provisional curriculum was formulated at the education conference of 1923 between representatives of the Administration and various missionary bodies conducting Native schools at that time. Because of a lack of teachers, it was agreed that the ordinary course in such schools would at first cover only classes up to Standard II, and that the curriculum could later be amended or extended as circumstances demanded or permitted. As stated before <sup>2</sup>, the Finnish Mission in Ovambo-land did not see their way clear to adopt the provisional syllabus, and held the view that more time had to be devoted to religious instruction than the syllabus would have allowed.

The provisional syllabus was:

- (a) Religious instruction.
- (b) Reading and writing of the home language.
- (c) Speaking, reading and writing of one official language.
- (d) Elementary arithmetic.
- (e) Manual instruction in at least two branches of handwork (Boys: woodwork, metal work, gardening, building, etc.; Girls: needlework, basketmaking, housework, etc).
- (f) Hygiene (practical application rather than theory).
- (g) Singing.

64. In 1931 the provisional syllabus was extended and thoroughly revised. The main characteristics of the revised syllabus, which came into force in 1933, were:

- (a) The introduction of a further school year, Standard III. The lack of adequately trained teachers did not permit of the introduction of any higher standard at that time. Pupils under the age of 17 who had completed Standard III were permitted to re-enrol in Standard III and to do such further work as could be arranged for them.
- (b) More systematic instruction in the mother tongue, with the help of better books.
- (c) Initial instruction in an official language through the mother tongue.
- (d) Higher demands in arithmetic and hygiene.
- (e) The introduction of geography as a subject.

65. The syllabus thus revised was amended and extended from time to time, and remained in force until the end of 1951.

The 1952 syllabuses made provision for the completion of the primary course in nine years, and applied to all Native schools in the Territory. The subjects were:

- (a) Bible history and ethics as an examination subject.
- (b) Hygiene as an examination subject from Standard I to Standard VI.

<sup>1</sup> Proc. No. 16 of 1926 (S.W.A.) as amended, sec. 129, in *Laws of South West Africa*, Vol. II (1923-1927), p. 306.

<sup>2</sup> *Vide* para. 49, *supra*.

- (c) Physical training (compulsory).
  - (d) First language (home language) from Sub (a) to Standard II.
  - (e) Second language: one of the two official languages, taught as a second language from Sub (a) to Standard II.
  - (f) Third language: the other official language, taught from Standard II.
  - (g) Drawing: from Sub (a) to Standard IV.
  - (h) Writing: up to Standard IV.
  - (i) Arithmetic: from Sub (a) to Standard VI.
  - (j) History
  - (k) Geography
  - (l) Nature study
- |   |   |
|---|---|
| } | Sub (a)-Sub B in home language.         |
| } | Std. I-Std. VI in an official language. |
- (m) Handicrafts for boys: Sub A to Standard VI.
  - (n) Needlework for girls: Sub A to Standard VI.
  - (o) Singing: Sub (a) to Standard VI.

These syllabuses remained in force until 1961, when new syllabuses, based on those in use in the Bantu schools in South Africa and adapted to local conditions, were introduced in the northern territories. In 1962 they were introduced in the schools in the Police Zone.

66. The new courses are divided into a lower and higher primary part. They make provision for eight school years and for the use of the mother tongue as a medium of instruction in the sub-standards and, as far as possible, also in Standards I and II.

The subjects in the lower primary course are:

Scripture, Mother Tongue, Afrikaans, English, arithmetic, environment study, hygiene, writing, singing, drawing, cleaning work, weaving and claywork, needlework (Girls), scrap work (Boys), gardening.

The subjects in the higher primary course (Standards III-VI) are:

Scripture, Mother Tongue, Afrikaans, English, arithmetic, social studies, hygiene, nature study, singing, gardening, tree planting and soil conservation (Boys), wood, leather and scrap work (Boys), needlework (Girls), handicrafts.

Because so many pupils leave school at an early stage, the lower primary course is intended to be a more-or-less complete course, giving a grounding in elementary knowledge in several fields.

Standard VI has been retained as the final year of the primary course in Native schools<sup>1</sup> because comparatively few Native students progress beyond Standard VI, and because a Standard VI certificate entitles Native students to be enrolled at teacher training schools. It furthermore opens various fields of employment to Native students.

All promotion examinations up to Standard V are conducted by the schools themselves, subject to the control of the Education Department. The Standard VI examination is an external examination and is conducted by the Examination Committee of the Education Department.

<sup>1</sup> As compared with a change in 1956 in European and Coloured schools from Standard VI to Standard V; *vide* Chap. VII, para. 25, *infra*.

## II. SECONDARY SCHOOLS

67. As already stated <sup>1</sup>, junior secondary education was first offered at the *Augustineum* in 1953, and at *Doebra* in 1956. The subjects offered were:

*At the Augustineum*: Afrikaans, English, history, geography, biology, physiology and arithmetic, plus non-examination subjects such as handwork, physical training, singing and Bible history.

*At Doebra*: Afrikaans, English, Arithmetic, Latin, mathematics, history and biology, plus non-examination subjects such as Bible history, singing, physical training and handwork.

Both courses prepared pupils for the Junior Certificate examination of the University of South Africa, which body also conducted the examinations until 1960.

As from 1960 the syllabus used for the Junior Certificate examination has been that of the Bantu Education Department of South Africa, and at the end of 1961 candidates wrote the Junior Certificate examination of that Department. South African Native candidates for the Junior Certificate examination offer seven subjects instead of six as is required in the case of European and Coloured pupils, the extra subject being the pupil's home language. Candidates from South West Africa are allowed to offer only six subjects, the Native languages of the Territory having not yet been developed to a stage where the teaching of them is feasible on the Junior Certificate level.

The examination and non-examination subjects are:

<i>Examination Subjects</i>	<i>Non-examination Subjects</i>
<i>Augustineum</i>	
Afrikaans	Religious instruction
English	Singing
Biology	Physical culture
Social studies	
Arithmetic	
Agriculture	
<i>Doebra</i>	
Afrikaans	Religious instruction
English	Singing
Latin	Physical culture
Mathematics	
Biology	
Social studies	
<i>Ovamboland</i>	
Afrikaans	Singing
English	Bible history
Mathematics	Physical culture and
General science	health education
Social studies	Mother Tongue
Agriculture/needlework	

The South West African Education Department has a representative on the Examination Board of the Bantu Education Department.

<sup>1</sup> *Vide* para. 47. *supra*.

The Junior Certificate course extends over three years, as in the case of European pupils, but Native pupils spend one more year at the primary school. The extra year in the case of Native pupils is necessary largely, because of language difficulties, and in order to bring the standard of their work on a par with that of European students.

68. Secondary courses were introduced in 1961 at both the training schools, Ongandjera and Onguedira, of the Finnish Mission in Ovambo-land. The syllabus used there is that of the Bantu Education Department of South Africa.

69. The course for senior secondary education (Standards IX-X) at the Augustineum is that of the Joint Matriculation Board of South Africa, and the subjects are: Afrikaans, English, history, geography, agriculture and biology. There is no difference between the standard of work done in the senior secondary course at the Augustineum and that done in European schools, nor in the standard of the final examinations. The only difference is that, because so few Native students enrol for the course, no subject differentiation has so far been possible. In 1960, for example, there were in the Territory 275 European candidates for the Senior Certificate examination as against only 1 Native candidate. In 1962 the relevant figures were: 321 European candidates and 2 Native candidates.

## **K. School Buildings, Equipment and Books for Native Pupils**

### **I. GOVERNMENT SCHOOLS**

70. In urban areas schools for Native children are erected and maintained by the responsible local authority. For this purpose the Administration grants the local authorities loans at low rates of interest. The Native inhabitants in the area of the local authority concerned contribute to the cost by way of a small increase in the rent they pay for their dwellings. In the new township of Katutura, e.g., the increase is 20 cents per house per month. Natives do not own property in such areas, and are not subject to urban taxation. From February 1962 to May 1963 the sum of the increase was R4,500, while the total cost of the three new Native schools in the township was R55,470.

In some Native Reserves in the Police Zone buildings have been erected by the Department of Bantu Administration and Development, and the cost defrayed out of tribal funds. The Administration has also decided to contribute towards the cost of erecting schools and hostels in conjunction therewith in the Reserves where tribal funds are not sufficient to bear the expense. For the financial year 1962-1963, R100,000 (£50,000) was set aside for this purpose. The Administration intends making continued provision for such expenditure in future. Money so set aside is spent in providing materials and skilled labour for the erection of school buildings within the Police Zone and in the northern territories. The contribution by parents is at present limited to unskilled labour, rendered on a voluntary basis. Such parents receive a small remuneration for their services, and also rations where necessary.

In the case of government community schools, the Native communities concerned are responsible for the erection and maintenance of school buildings, the Administration providing the building materials. As in the case of the schools referred to in the paragraph immediately above.

however, parents who assist in the erection of school buildings are paid a small reward for their services. School committees are responsible for providing hostel facilities, and parents are expected to contribute to the boarding of their children. The Administration grants assistance in the form of subsidies.

Furniture and equipment are provided free by the Administration, while books and stationery are supplied to students at reduced prices—at present 50 per cent. of the cost. Text and reference books for use by teachers are supplied free to all schools.

To encourage the purchase of library books, the Administration subsidizes schools for the non-European groups on a R6 (£3) per R2 (£1) basis.

## II. MISSION SCHOOLS

71. In the case of mission schools the necessary buildings are provided by the mission concerned, and must be approved by the Director of Education for purposes of government financial assistance. The Administration grants the missions a subsidy towards the maintenance of their buildings at approved schools, calculated on the basis of not more than 50 cents. (5 s.) per annum per pupil enrolled.

The provision by the Administration of furniture, equipment, books and stationery, and the grant of subsidies for library books, are the same as for government schools.

### L. Salaries and Emoluments of Native Teachers in South West Africa

72. Native teachers in South West Africa receive the following remuneration in respect of their services:

- I. A salary, based on qualifications, and fixed in accordance with scales laid down from time to time.
- II. A cost-of-living allowance, the amount of which depends on the salary, sex and marriage status of the individual.
- III. A regional allowance, payable to teachers in the Police Zone.
- IV. A principal's allowance, where applicable.

Particulars of the foregoing are given in the paragraphs below.

#### I. SALARY SCALES

73. The salary scales applicable to Native teachers in South West Africa, as laid down from time to time, and in force until 1961, are set out in the tables on pages 453 and 454.

MEN (MARRIED AND SINGLE): PER ANNUM

<i>Category according to qualifications</i>	1926	1947	1951	1953
Below Std. VI		R96 × 8-144 (£48 × 4-72)	R120 × 8-168 (£60 × 4-84)	R144 × 16-228 (£72 × 8-114)
Equivalent to Std. VI		R144 × 12-288 (£72 × 6-144)	R192 × 12-336 (£96 × 6-168)	R216 × 24-360 (£108 × 12-180)
Std. VI plus 1 year further training or schooling		R168 × 12-312 (£84 × 6-156)	R204 × 12-348 (£102 × 6-174)	R228 × 24-372 (£114 × 12-186)
Std. VI plus 2 years further training or schooling	R120 × 12-200 (£60 × 6-100)	R192 × 12-336 (£96 × 6-168)	R216 × 12-360 (£108 × 6-180)	R240 × 244-384 (£120 × 12-192)
Std. VI plus 3 years further training or schooling		R216 × 16-360 (£108 × 8-180)	R228 × 16-372 (£114 × 8-186)	R256 × 24-400 (£128 × 12-200)
Std. VI plus 4 years further training or schooling		R240 × 16-384 (£120 × 8-192)	R240 × 16-384 (£120 × 8-192)	R272 × 24-416 (£136 × 12-208)
Std. VI plus 5 years further training or schooling		R264 × 16-404 (£132 × 8-202)	R264 × 20-404 (£132 × 10-202)	R290 × 30-440 (£145 × 15-220)
Std. VI plus 6 years further training or schooling		R288 × 16-428 (£144 × 8-214)	R288 × 20-428 (£144 × 10-214)	R310 × 30-460 (£155 × 15-230)

## WOMEN: PER ANNUM

<i>Category according to qualifications</i>	1926	1947	1951	1953
Below Std. VI		R96 × 8-144 (£48 × 4-72)	R120 × 8-168 (£60 × 4-84)	R144 × 16-228 (£72 × 8-114)
Equivalent to Std. VI		R120 × 12-240 (£60 × 6-120)	R168 × 12-288 (£84 × 6-144)	R192 × 24-312 (£96 × 12-156)
Std. VI plus 1 year further training or schooling		R144 × 12-264 (£72 × 6-132)	R180 × 12-300 (£90 × 6-150)	R204 × 24-324 (£102 × 12-162)
Std. VI plus 2 years further training or schooling		R166 × 12-288 (£84 × 6-144)	R192 × 12-312 (£96 × 6-156)	R216 × 24-336 (£108 × 12-168)
Std. VI plus 3 years further training or schooling	R96 × 8-160 (£48 × 4-80)	R192 × 16-320 (£96 × 8-160)	R204 × 16-332 (£102 × 8-166)	R228 × 24-348 (£113 × 12-174)
Std. VI plus 4 years further training or schooling		R216 × 16-344 (£108 × 8-172)	R216 × 16-344 (£108 × 8-172)	R244 × 24-364 (£122 × 12-182)
Std. VI plus 5 years further training or schooling		R240 × 16-368 (£120 × 8-184)	R240 × 16-368 (£120 × 8-184)	R260 × 24-380 (£130 × 12-190)
Std. VI plus 6 years further training or schooling		R264 × 16-392 (£123 × 8-196)	R264 × 16-392 (£132 × 8-196)	R276 × 24-396 (£138 × 12-198)

74. New scales for professionally qualified Native teachers came into operation on 1 April 1961<sup>1</sup>. These scales, which are still applicable, are as follows<sup>2</sup>:

<i>Grade</i>	<i>Qualifications</i>	<i>Scale per annum</i>
1.	Lower primary Teachers certificate	
	Men . . . . .	R240 × 18-402 (£120 × 9-201)
	Women . . . . .	R180 × 12-300 (£90 × 6-150)
2.	Higher primary teachers certificate	
	Men . . . . .	R276 × 18-492 (£138 × 9-246)
	Women . . . . .	R204 × 12-372 (£102 × 6-186)
3.	Matriculation plus professional certificate	
	Men . . . . .	R360 × 24-720 (£180 × 12-360)
	Women . . . . .	R260 × 16-532 (£130 × 8-266)
4.	Four degree courses plus professional certificate	
	Men . . . . .	R396 × 24-756 (£198 × 12-378)
	Women . . . . .	R284 × 16-556 (£142 × 8-278)
5.	Eight degree courses plus professional certificate	
	Men . . . . .	R432 × 24-792 (£216 × 12-396)
	Women . . . . .	R308 × 16-580 (£154 × 8-290)
6.	Degree plus professional certificate	
	Men . . . . .	R516 × 24-900 (£258 × 12-450)
	Women . . . . .	R364 × 16-652 (£182 × 8-326)

All teachers in service at the date of coming into operation of the above scales who held qualifications lower than the minimum professional qualification recognized for teachers (*viz.*, the Lower Primary Teachers Certificate, or Standard VI plus two years teachers' training), are deemed<sup>3</sup>, for salary purposes, to have such minimum qualification.

Persons entering the service after the said date without any teacher's qualifications are paid a fixed salary, which is lower than the above-mentioned scales for teachers.

<sup>1</sup> New salary scales for Native teachers, to operate with retrospective effect as from a date in 1963, are at present under consideration.

<sup>2</sup> These scales apply to all qualified teachers in the Police Zone, to qualified teachers at government community schools in the northern territories and to qualified teachers of those missions in the said territories which have agreed to their schools being taken over by the Administration. In the northern territories male teachers with a Lower or Higher Primary Teachers Certificate teaching in lower primary schools are paid according to the scales applicable in the case of women.

<sup>3</sup> By virtue of a resolution of the Administrator-in-Executive Committee, adopted in January 1961.

## II. COST-OF-LIVING ALLOWANCE

75. In addition to their salaries, all teachers receive a cost-of-living allowance. The allowances payable per annum in respect of different salaries for qualified teachers<sup>1</sup> are as follows:

<i>Salary group</i>	<i>Married men</i>	<i>Single men and women</i>
R168-180 (£84-90)	R146 (£73)	R73 (£36 10s.)
R180-200 (£90-100)	R160 (£80)	R80 (£40)
R200-220 (£100-110)	R176 (£88)	R88 (£44)
R220-240 (£110-120)	R192 (£96)	R96 (£48)
R240-260 (£120-130)	R208 (£104)	R104 (£52)
R260-300 (£130-150)	R256 (£128)	R128 (£64)
R300-400 (£150-200)	R336 (£168)	R168 (£84)
R400-432 (£200-216)	R348 (£174)	R144 (£72)
R432-468 (£216-234)	R348 (£174)	R120 (£60)
R468-516 (£234-258)	R348 (£174)	R108 (£54)
R516-720 (£258-360)	R420 (£210)	R108 (£54)
R720-780 (£360-390)	R420 (£210)	R72 (£36)
R780-840 (£390-420)	R420 (£210)	R48 (£24)
R840-900 (£420-450)	R420 (£210)	R24 (£12)
R900 (£450 )	R468 (£234)	— (—)

## III. REGIONAL ALLOWANCE

76. Teachers in the Police Zone are paid a regional allowance in addition to their salaries. The allowance is R80 (£40) per annum in the case of married teachers, and R40 (£20) per annum in the case of unmarried male and female teachers. This allowance is paid to teachers in the Police Zone because, firstly, their salaries were already higher than those applicable in South Africa when it was decided in 1961 to adopt the scales applicable in South Africa, and, secondly, because the cost of living is higher in the Police Zone than in the areas beyond the Police Zone<sup>2</sup>.

<sup>1</sup> *Vide* para. 74, *supra*.

<sup>2</sup> As from January 1963 Native teachers at the Augustineum are paid an additional annual allowance of R100 (£50).

## IV. PRINCIPAL'S ALLOWANCE

77. In addition to their basic salaries, principals of schools, including those called "first teachers" at mission schools, are paid an annual principal's allowance which is determined in accordance with the enrolment of pupils at their schools. These allowances were increased as from April 1961, and are now as follows:

Enrolment	Allowance per annum
25- 50	R24 (£12)
51-100	R48 (£24)
101-200	R72 (£36)
201-300	R96 (£48)
301-450	R120 (£60)
451-600	R144 (£72)
600-	R168 (£84)

78. At present the *commencing income* of a married male teacher in the Police Zone with the lowest recognized qualification—or with what is deemed to be its equivalent<sup>1</sup> is R512 (£256) per annum, calculated as follows:

<i>Starting salary</i> . . . . .	R240 (£120)
<i>Cost-of-living allowance</i> . . . . .	R192 (£96)
<i>Regional allowance</i> . . . . .	R80 (£40)
<i>Total</i> . . . . .	R512 (£256)

As compared with 1926, when the commencing income was R120 (£60), there has, accordingly, been an increase of 326.66 per cent.

The *maximum income* of a married male teacher in the Police Zone with the lowest qualifications increased from R200 (£100) in 1926 to R830 (£415) in 1961 (i.e., salary of R402 (£201), plus cost-of-living allowance of R348 (£174), plus a regional allowance of R80 (£40)). This represents an increase of 315 per cent.

### M. Expenditure by the Administration of South West Africa on Native Education

#### I. THE POLICE ZONE

79. The table below contains particulars of the expenditure on Native education in the Police Zone in 1922 and certain years thereafter.

The amounts in the table do not include moneys spent by the Adminis-

<sup>1</sup> *Vide* para. 74, *supra*.

stration in connection with education or training in institutions which do not fall under the jurisdiction of the Education Department (for example, training of nurses). Nor do the amounts in the table include moneys spent by the various missions, particulars of which are not known.

<i>Year</i>	<i>Amount spent</i>	<i>Per capita expenditure on pupils at school</i>
1922	R862 (£431)	
1929/30	R25,810 (£12,905)	
1939/40	R27,404 (£13,702)	R5.95 (£2 19s. 6d.)
1949/50	R103,438 (£51,719)	R16.60 (£8 6s.)
1959/60	R299,994 (£149,997)	R26.43 (£13 4s. 4d.)
1962/63	R405,432 (£202,716)	R27.45 (£13 14s. 6d.)

The figures in the above table show that over the years increasingly larger amounts have been spent on Native education in the Police Zone. From 1939-1940 to 1962-1963 the *per capita* expenditure on Native pupils increased by 361 per cent. (i.e., from R5.95 to R27.45).

## II. THE NORTHERN TERRITORIES OUTSIDE THE POLICE ZONE

80. Until about 1945 only small annual subsidies were granted in respect of certain mission schools, the reason being that the missions in the northern territories did not comply with the conditions which would have entitled them to the payment of subsidies. After 1945, although the missions were still not complying with such conditions, larger subsidies were granted.

In the table below particulars are given of the amounts spent by the Administration in 1947-1948 and various years thereafter:

<i>Year</i>	<i>Amount</i>	<i>Per capita expenditure on pupils at school</i>
1947/48	R18,396 (£9,198)	R1.28 (12s. 10d.)
1949/50	R21,624 (£10,812)	R1.46 (14s. 8d.)
1954/55	R53,612 (£26,806)	R2.84 (£1 8s. 5d.)
1959/60	R82,590 (£41,295)	R3.80 (£1 18s.)
1960/61	R98,876 (£49,438)	R3.78 (£1 17s. 10d.)
1961/62	R169,695 (£84,847)	R5.76 (£2 17s. 7d.)
1962/63	R251,689 (£125,844)	R8.17 (£4 1s. 8d.)

The figures in the above table do not include amounts spent by the various missions. During 1960, for example, the moneys spent by the Roman Catholic and Finnish Missions on their schools in the northern territories amounted to R127,490 (£63,745). No particulars are available of the amounts spent by the other missions.

The taking over by the Administration in 1961 of the Finnish Mission lower primary schools in Ovamboland<sup>1</sup> immediately brought about increased expenditure. The amount spent by the Administration in 1961-1962 (R169,695) (£84,847) on education in the northern territories was 71 per cent. higher than the amount spent in 1960, and expenditure will increase as more mission schools are taken over by the Administration.

### III. PER CAPITA EXPENDITURE ON NATIVE EDUCATION IN SOUTH WEST AFRICA

81. In the foregoing paragraphs separate expenditure figures were given for the Police Zone and the northern territories. As an indication of the *per capita* expenditure on education in the whole of South West Africa (excluding the Eastern Caprivi Zipfel), the 1959-1960 figures reveal the following:

<i>Total population (1960 Census)</i>	<i>Total expenditure</i>	
412,735 <sup>2</sup>	Police Zone:	R229,994 <sup>3</sup>
	Northern territories:	R 82,590 <sup>4</sup>
	<hr/>	<hr/>
	Total	R382,484
 <i>Expenditure per Capita of Total Population in 1960</i>		
R0.93 <sup>5</sup> (qs. 4d.)		

#### N. Education of Natives in the Eastern Caprivi Zipfel

82. The control and administration of the area known as the Eastern Caprivi Zipfel was, in terms of Proclamation No. 147 of 1939 (S.A.), vested in the South African Minister of Native Affairs (now designated Minister of Bantu Administration and Development). Education in the area is under the control of the Department of Bantu Administration and Development, which has the benefit of the services of officers of the South African Department of Bantu Education in so far as education in the Zipfel is concerned.

83. The history of education in the Eastern Caprivi Zipfel has been

<sup>1</sup> *Vide* para. 35, *supra*.

<sup>2</sup> *Vide* para. 57, *supra*.

<sup>3</sup> *Vide* para. 79, *supra*.

<sup>4</sup> *Vide* para. 80, *supra*.

<sup>5</sup> Comparative figures in the case of the Applicant States are given in the *International Yearbook of Education*, Vol. XXIV (1962), table VI, p. 496:

*Liberia*: expenditure per inhabitant of the population in 1961: 1.6 U.S. dollars = R1.14.

*Ethiopia*: expenditure per inhabitant of the population in 1959: 0.6 U.S. dollars = R0.43.

very much like that in the most isolated parts in the northern areas of South West Africa. At the time when South Africa assumed the Mandate, the area was even wilder and less developed than Ovamboland and the Okavango. The inhabitants made their first real contact with civilization only in about 1920, when a missionary of the Seventh Day Adventist Church came to the area. Missionaries were given a free hand in the educational field, and in time they established a few schools in conjunction with their religious work. Most of the instruction given in these schools—as was the position in Ovamboland and the Okavango during the early years—was, however, of a religious kind.

In 1934, when there were six mission schools in the area, the missionaries asked for, and were given, permission to establish 12 schools, but a serious famine in the following year saw the closing down of all schools. In 1936 there were six schools, viz., at Katima Mulilo, Sikanjakuba, Kalembeza, Ikaba, Luhofu and Linyandi, with a total enrolment of 270 pupils. The missionaries, however, had a difficult task in making their influence felt, and as time went by they seemed to achieve less and less. In 1939 there were four schools with a total enrolment of 169 pupils. By 1942 the enrolment in the four schools had fallen to 136, and in 1943, when there was only one school, the Seventh Day Adventists ceased their educational activities, and retained only a few Church sites.

The Capuchin Fathers of the Roman Catholic Church then entered the field, and in the years that followed progress was made. The task facing the Church—and civilization—in the area has, however, remained an immense one. Even today the two Churches together have no more than approximately 900 adherents out of a total population of 15,840<sup>1</sup>.

84. In 1944 four schools were established by the Catholic Church, and three years later four more followed. In 1953 a school with classes up to Standard V was established—the first school in the area with classes beyond Standard II. The first government school, with lower and higher primary classes, and conducted on the same lines as the community schools in South Africa and those recently established in the rest of the Territory, was established in 1960, and it proved an immediate success. Most of the Native parents concerned welcomed the opportunity of playing a part in the education of their children, and in 1961 a second lower primary community school was established.

At present there are 18 schools in the area. Higher primary classes are offered at the aforementioned higher primary community school and at both the boys' and girls' sections of the higher primary Catholic school at Katima Mulilo. A Form I (i.e., one year after Standard VI) class will be instituted at the Catholic School at Katima Mulilo as from the beginning of 1964. Hostel facilities are provided for both boys and girls at this school.

85. Particulars of enrolment of pupils, and of teachers employed, are given below.

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<sup>1</sup> Census figure in 1960 (unpublished).

## PUPILS

	1961	1962	1963
Sub-A . . . . .	601	810	668
Sub-B . . . . .	337	387	361
Std. I . . . . .	234	294	345
Std. II . . . . .	139	175	239
Std. III . . . . .	85	113	126
Std. IV . . . . .	70	72	69
Std. V . . . . .	34	62	65
Std. VI . . . . .	3	27	50
	1,503	1,940	1,923

Female pupils usually constitute about 25 per cent. of the total enrolment.

## TEACHERS

1961 . . . . .	39 Native teachers, 2 of whom were women, and 3 European teachers
1963 . . . . .	41 Native teachers, 2 of whom were women, and 3 European teachers

Five additional teachers' posts have been created, and will be filled, as from 1964.

86. The comparatively small number of female pupils, and teachers, is due to the fact that girls often marry at an early age, and to send them to school, or to keep them at school for any length of time, is regarded as an unnecessary sacrifice by many parents. The women in the area are required to work either at home or on the lands, and many parents believe that by attending school their daughters become lazy, and, accordingly, less attractive to prospective husbands.

Apart from an unwillingness on the part of parents to keep their daughters at school for long, many boys are also kept from school because they have to herd cattle and work in the fields.

87. When due regard is had to the difficulties which have to be coped with, and, in particular, to the short time which has elapsed since any real start could be made with education in the area, there can be no doubt that good progress has been made. The standard of work done in the schools has shown substantial improvement since the early years when most of the instruction was of a religious kind only. The mission schools have since 1960, at their request, been using syllabuses based on those prescribed by the Bantu Education Department for its schools in

South Africa. An indication of a growing interest in education is the fact that each of the two main tribes in the area has shown itself prepared to grant bursaries from tribal funds to students who wish to be trained as teachers. Recently these tribes granted bursaries of R100 (£50) a year to two students taking teacher training courses in South Africa.

88. In 1960, according to the census taken in that year the Native population of the Eastern Caprivi Zipfel was 15,840. The total school enrolment in that year was approximately 1,300. If it be assumed that children of school age constitute 23 per cent. of the total population<sup>1</sup>, it follows that the school-age population in 1960 must have been approximately 3,634 and that the percentage of children of school-age who attended school was about 35.7. In 1963, with 1,923 pupils at school out of an estimated total population of 17,500, the percentage of school-age children actually at school is about 47.7.

89. A shortage of teachers has at all times hampered development in the area. Because of language difficulties, teachers cannot readily be obtained from South Africa. Several South African Native teachers have in the past been recruited for service in the area, but not one remained for more than a few months. All found the area too isolated, and conditions generally too strange, to work there rather than in South Africa. The only real field for recruitment has been across the Zambesi from among the Silozi-speaking people, who study in Rhodesian schools and teacher-training schools.

At present Respondent annually offers two bursaries of R100 (£50) a year for three or five years (depending on the duration of the course) to deserving students who wish to take teacher-training courses at institutions in South Africa and who are prepared to give an undertaking to serve as teachers in the Eastern Caprivi Zipfel for a period of at least three years after completing their courses. Students in the Eastern Caprivi are, however, not keen to go to distant South Africa. Those who wish to train as teachers, or to further their studies otherwise, prefer to attend nearer schools across the Zambesi in Rhodesia, where they find themselves amongst members of related tribes who speak a language they understand. At present there are four Caprivi teacher trainees at the Botswana Training School at Mafeking in South Africa, two on government bursaries, and two on tribal bursaries.

90. The Church schools in the area are under the control of the Church, but there is close co-operation between the Mission and the Bantu Affairs Commissioner stationed in the area. This officer also maintains close contact with the government community schools and the Bantu Education Department. An Inspector of the Department of Bantu Education, stationed in Pretoria, carries out periodic inspections of all schools in the area, and also conducts vacation courses for teachers.

91. All education in the Eastern Caprivi is free. The Department of Bantu Administration and Development subsidizes the Church schools to the full extent of teachers' salaries and allowances on the scales set out below, and an annual lump-sum payment (at present R900 (£450)) is made in respect of the salaries of the three European teachers. The Department also subsidizes the Church schools in respect of books and school requisites to the extent of 50 per cent. of the actual cost thereof.

<sup>1</sup> Vide para. 57, *supra*.

Each of the two community schools receives an annual grant of R200 (£100) for this purpose. A *per capita* allowance of 30 cents (3s.) per year, based on the average yearly attendance, is paid to Church schools in respect of school equipment and repairs to buildings, and an annual subsidy is paid to the Church in respect of a school-feeding scheme at Katima Mulilo.

92. The salary scales applicable to teachers, operative as from 1 April 1961, are set out below.

(a) *Men and Women with no Professional Qualifications*

(i) Standard IV.	R108	(£54) per annum.
(ii) Standard V.	R120	(£60) per annum.
(iii) Standard VI.	R132	(£66) per annum.
(iv) Form I (Standard VII).	R144	(£72) per annum.
(v) Junior Certificate (Standard VIII)	R168	(£84) per annum.
(vi) Senior Certificate (Standard X).	R234	(£117) per annum.

(b) *Teachers with Professional Qualifications*

(i) Std. IV plus 2 years' training.	R132	(£66) per annum.
(ii) Std. V plus 2 years' training.	R144	(£72) per annum.
(iii) Lower Primary Teachers' Course II (1 year after Form I).	R156 × 18—246	(£87 × 9—123).
(iv) Elementary Primary Course (Rhodesian) (2 years after Std. VI).	R156 × 18—246	(£78 × 9—123).
(v) Lower Primary Teachers' Course III.		
Men	R240 × 18—402	(£120 × 9—201).
Women	R180 × 12—300	(£90 × 6—150).
(vi) Higher Primary Teachers' Course. Junior Certificate plus 2 years Std. VI plus 5 years.		
Men	R276 × 18—492	(£138 × 9—246).
Women	R240 × 12—372	(£120 × 6—186).
(vii) Matriculation plus Professional Certificate (i.e., 2 years).		
Men	R360 × 24—720	(£180 × 12—360).
Women	R260 × 16—532	(£130 × 8—266).
(viii) Four degree courses plus Professional Certificate.		
Men	R396 × 24—756	(£198 × 12—378).
Women	R284 × 16—556	(£142 × 8—278).

(ix) Eight degree courses plus Professional Certificate.	
Men	R432 × 24—792 (£216 × 12—396).
Women	R308 × 16—580 (£154 × 8—290).
(x) Degree plus Professional Certificate	
Men	R516 × 24—900 (£258 × 12—450).
Women	R264 × 16—652 (£182 × 8—326).

93. In addition to their salaries, all teachers receive a cost-of-living allowance in accordance with the following scales:

<i>Salary Group</i>	<i>Annual Cost-of-Living Allowance</i>	
	<i>Married men</i>	<i>Unmarried men and women</i>
R96—R108 (£48—£54)	R81.60 (£40 16s.)	R40.80 (£20 8s.)
R108—R120 (£54—£60)	R91.20 (£45 12s.)	R45.60 (£22 16s.)
R120—R132 (£60—£66)	R100.80 (£50 8s.)	R50.40 (£25 4s.)
R132—R144 (£66—£72)	R110.40 (£55 4s.)	R45.20 (£22 12s.)
R144—R156 (£72—£78)	R120.00 (£60)	R60.00 (£30)
R156—R168 (£78—£84)	R129.60 (£64 16s.)	R64.80 (£32 8s.)
R168—R180 (£84—£90)	R139.20 (£69 12s.)	R69.60 (£34 16s.)
R180—R200 (£90—£100)	R152.00 (£76)	R76.00 (£38)
R200—R220 (£100—£110)	R168.00 (£84)	R84.00 (£42)
R220—R240 (£110—£120)	R184.00 (£92)	R92.00 (£46)
R240—R260 (£120—£130)	R200.00 (£100)	R100.00 (£50)
R260—R300 (£130—£150)	R240.00 (£120)	R120.00 (£60)
R300—R400 (£150—£200)	R320.00 (£160)	R160.00 (£80)
R400—R600 (£200—£300)	R480.00 (£240)	R200.00 (£100)
R600—R700 (£300—£350)	R560.00 (£280)	R200.00 (£100)
R700 (£350)	R640.00 (£320)	R200.00 (£100)

94. Principals of schools have since 1961 received a principal's allowance. The allowance, determined in accordance with the number of pupils at a particular school, is as follows:

<i>Number of pupils</i>	<i>Allowance</i>
-50	R24 (£12) per annum
51-100	R48 (£24) " "
101-200	R72 (£36) " "
201-300	R96 (£48) " "
301-450	R120 (£60) " "
451-600	R144 (£72) " "
600-	R168 (£84) " "

95. The following amounts have been spent by Respondent on education in the Eastern Caprivi since 1944:

	R	£
1944/45 to 1946/47 . . . . .	6,570	3,285
1947/48 „ 1949/50 . . . . .	7,800	3,900
1950/51 „ 1952/53 . . . . .	9,700	4,850
1953/54 „ 1955/56 . . . . .	12,944	6,472
1956/57 „ 1958/59 . . . . .	15,116	7,558
1959/60 „ 1960/61 . . . . .	17,676	8,838
1961/62 . . . . .	9,632	4,816
1962/63 . . . . .	15,282	7,641

The aforementioned amounts of expenditure do not include moneys spent by the missions or from Trust Funds.

## CHAPTER VI

### VOCATIONAL TRAINING, HIGHER EDUCATION AND ADULT EDUCATION FOR NATIVES

#### A. Vocational Training

##### I. SCHOOLS

1. The syllabuses used in the primary schools in South West Africa have always made provision for training in manual subjects, such as needlework, basketmaking, pottery, tinwork, woodwork and gardening.

Included in the curriculum of lower primary schools at present are weaving, claywork, needlework, scrapwork and gardening. In the higher primary course training is given in gardening, treeplanting and soil conservation, woodwork, leatherwork, scrapwork and needlework.

Agriculture is offered as a subject in the junior secondary course at the Augustineum and at Onguedira in Ovamboland. In the first year of the said course, instruction in leatherwork, scrapwork and tinwork is given to boys, while girls do needlework.

In the senior secondary course agriculture is offered as a subject.

##### II. SEPARATE INDUSTRIAL SCHOOLS

2. The Rhenish Mission, with the financial assistance of the Administration, established an industrial school at Otjimbingwe (in the Otjimbingwe Reserve) in 1924, and another at Krantzplatz (in the Gibeon Reserve) in 1927. Trained European craftsmen were employed as instructors, and for some time these schools functioned well, but the ultimate results were disappointing in that students who had completed their courses were loath to leave their own neighbourhood to take up employment elsewhere. Interest gradually waned, and the school at Otjimbingwe was closed down for lack of support in 1940, and the school at Krantzplatz, for the same reason, some years later.

##### III. INDUSTRIAL COURSES AT THE AUGUSTINEUM

3. In January 1956 separate industrial courses were instituted at the Augustineum. This school offers a three-year training course in one of three trades, carpentry, tailoring and masonry, and is open to all students who have passed Standard IV. The instructors are properly qualified Europeans. In addition to the practice and theory of the three main subjects, the syllabus includes instruction in practical Afrikaans and English, practical arithmetic, practical hygiene, singing, physical training and religion. At the end of the course a theoretical and practical examination is conducted by the Education Department.

Like the other courses offered at the Augustineum, this training course is entirely free, and students receive free board and lodging.

free transport to and from their homes, and also a small sum as pocket money every week <sup>1</sup>.

Regard being had to the facilities offered, the number of pupils that enrol for the various courses is disappointing. Many more students can be accommodated than are taking the course. In 1961, when there were 61 students in training, not a single student enrolled for the masonry course. The poor support given the courses generally is shown in the following table of enrolments in the last quarter of each year since 1956.

Course of training	Number of pupils enrolled							
	1956	1957	1958	1959	1960	1961	1962	1963
Carpentry . . . . .	5	11	16	15	6	15	11	16
Masonry . . . . .	4	8	14	13	3	0	0	0
Tailoring . . . . .	10	13	18	23	19	28	22	17

#### IV. TEACHER TRAINING SCHOOLS

4. As stated in Chapter V <sup>2</sup>, there are four institutions at which teacher training facilities are provided for Natives in South West Africa. Two of these, the Augustineum at Okahandja and the training school at Doebrä, are in the Police Zone. The other two are at Onguedira and Ongandjera in Ovamboland.

The Augustineum is a government institution <sup>3</sup>, while the other three institutions are mission training schools.

The course of training followed at the Augustineum and at Doebrä is as follows:

- (a) principles and method of teaching;
- (b) school organization;
- (c) practical teaching;
- (d) blackboard work and writing;
- (e) Afrikaans;
- (f) English;
- (g) Nama and Herero;
- (h) history;
- (i) geography;
- (j) nature study (including soil erosion, gardening, treeplanting);
- (k) hygiene and first aid;
- (l) religion;
- (m) arithmetic;
- (n) singing;
- (o) physical training;
- (p) practical work (woodwork, leather work, building, needlework).

The syllabuses used in the training schools in Ovamboland are not

<sup>1</sup> *Vide* Chap. V, paras. 29 and 47, *supra*.

<sup>2</sup> Para. 22.

<sup>3</sup> *Vide* Chap. V, para. 24, *supra*.

quite the same as in the training schools in the Police Zone, but are gradually being brought into line therewith. As already stated<sup>1</sup>, the training schools in Ovamboland will be financed by the Administration as from 1964 on the same lines as the Augustineum, and the intention is to establish vocational training sections in conjunction with teacher training, as at the Augustineum.

The final teachers' examinations at the Augustineum and at Doebrä are partly internal and partly external. Internal examinations are conducted in the following subjects: arithmetic, history, geography, nature study, health education, Bible study and practical work. Question papers and scripts in these subjects are moderated by the Education Department. The examinations in the other subjects are external, and are conducted by the Examination Committee of the Education Department.

In Ovamboland the final examinations at the training schools are conducted internally, but examination questions and scripts are moderated by the Inspector of Native Education. As from 1964, when the schools will be financed by the Administration, the system will be the same as in the Police Zone.

The aforementioned schools are at present sufficient to cater for all Natives who wish to be trained as teachers in the Territory. In fact, many more students can be accommodated at these schools than attend them at present.

#### V. FACILITIES FOR VOCATIONAL AND TECHNICAL TRAINING IN SOUTH AFRICA

5. Native students who wish to take technical or vocational courses for which no provision is made in South West Africa, can obtain financial assistance in the form of loans and bursaries from the South West African Administration<sup>2</sup>.

Students who have passed Standard VIII, IX or X may enrol at agricultural schools for Bantu in South Africa, and the Administration is prepared to grant financial assistance to all suitable applicants who wish to receive training at such institutions.

#### VI. NURSING

##### (a) *Training of Nurses*

6. Before 1960 there were no facilities for the training of general nurses (European or non-European) in South West Africa. In that year a training school for European general nurses was established at the Windhoek State Hospital.

Prior to 1960 steps had been taken to determine whether it would be feasible to introduce similar courses for non-European girls with the necessary qualification (i.e., at least Standard VIII), but the results showed that the introduction of such a training scheme in South West Africa would not yet be warranted. There were two Native girls with a Standard VIII certificate, but they were not interested in nursing. There

<sup>1</sup> Chap. V, para. 40.

<sup>2</sup> *Vide* paras. 24-25, *infra*.

were 15 Coloured girls with the necessary qualifications, but most of them gave preference to teaching.

The Administration consequently set afoot a scheme for training non-European girls as auxiliary nurses, and since 1959 training schools for such nurses have been established by the Administration at the state hospitals at Windhoek, Grootfontein, Otjiwarongo, Gobabis, Walvis Bay, Keetmanshoop and Luderitz<sup>1</sup>.

In the northern territories outside the Police Zone the Finnish Mission Hospital at Onandjokwe was approved as a training school for auxiliary nurses by the Nursing Council in 1961. This hospital had been training auxiliary nurses for 30 years. At present there are 27 pupil auxiliary nurses in training at this centre. The hospital at Runtu, in the Okavango, has also applied for recognition as a training school for auxiliary nurses.

7. The prescribed course for auxiliary nurses is the same as that followed by the Transvaal Provincial Administration in South Africa for the training of non-European auxiliary nurses. The course as originally introduced in South West Africa in 1959 took three years to complete, but the period has since been reduced to 18 months. Certificates granted to qualified auxiliary nurses by the South West African Administration are recognized by the South African Nursing Council.

8. When the scheme for training non-European auxiliary nurses was instituted in 1959, the response was poor. In Windhoek, for example, there were only 29 applicants for 69 posts, and nearly a third of the applicants were from South Africa. Facilities and opportunities for the training of non-European auxiliary nurses in South West Africa are ample, and even more will be created when the new state hospital at Okatana in Ovamboland, which is now in the course of construction, is completed.

The minimum scholastic qualification for non-European girls to train as auxiliary nurses, as originally laid down, was Standard IV. It was soon found, however, that girls with only a Standard IV certificate could not cope with the theoretical part of their training, and most of the Standard IV girls have, despite all possible personal attention by the teaching staff, eliminated themselves. As from 1961 the minimum requirement for admission to the course was accordingly raised to Standard VI. Since the inception of the course, 97 girls have qualified as auxiliary nurses.

9. The Administration is keen on offering training as general nurses also to non-European girls, and will do so as soon as there is a sufficient number of students of the required educational standard<sup>2</sup>. In the meantime, non-European girls with the necessary scholastic qualifications are going to South Africa for training as general nurses. Since 1958 approximately a dozen Coloured girls with the necessary minimum qualifications have proceeded to South Africa for training. Two Herero girls have already completed their training as general nurses in South Africa, and at present two others are following a nurses' course in South Africa.

The Administration's experience is, however, that few of the small

<sup>1</sup> All non-European hospitals in the Police Zone are state hospitals, and all mission hospitals are state-aided.

<sup>2</sup> *Vide* para. 6, *supra*.

number of Native girls who pass Standard VIII are interested in nursing as a career, and the experience of the Finnish Mission in Ovamboland is the same. In 1961, for example, one girl passed Standard VIII in Ovamboland, but she preferred to take up teaching. In 1962 there were three girls in Standard VIII, but not one was interested in becoming a nurse.

10. At present the state hospitals in South West Africa provide 1,540 beds for non-Europeans and 182 for Europeans.

There are 71 posts in state hospitals for trained non-European general nurses and 196 for auxiliary nurses. At present there are 64 pupil nurses from the Territory in training as auxiliary nurses, and also 26 pupil auxiliary nurses from South Africa. Of the 71 posts for trained non-European general nurses, 29 are filled, and of these only one is filled by a person from the Territory.

It will be observed from the above that the basic problem in regard to nurses in the Territory has been the shortage or absence of persons academically qualified for training as nurses. The greater advancement of the members of the White group in this field arises inevitably and solely from the differences in educational background—in view of which the interest thus far displayed by the non-White groups in the nursing profession must probably not be regarded as entirely unsatisfactory. The response to the opportunities offered has been slower than was hoped for, but probably no slower than could really have been expected. Modern health education in particular is something entirely foreign to the traditional life of the indigenous groups, and something to which they can only be conditioned gradually by a process of social evolution. However, with the opportunities being offered, and to be offered in future, these groups will continue to be encouraged towards providing a sufficient force of properly trained nurses to cater for the needs of their respective communities.

#### (b) *Registration of Nurses*

11. Inasmuch as Applicants deal in their Memorials<sup>1</sup> with certain provisions of the South African Nursing Act, 1957 (Act No. 69 of 1957), which is applicable in South West Africa, Respondent proposes to give a brief account in this section of the reasons for differentiation in the Act between the different population groups in the nursing profession.

12. As in South West Africa, the non-White groups of South Africa originally had an entirely different attitude from that of the White group towards modern knowledge of disease, medicine and health services. The scientific approach of the White group, in common with that of other developed nations, was absent in their case and for a long time they could not be interested in health matters as understood by the White group. This was particularly true of the Bantu groups. In these circumstances it was inevitable that the medical profession and its auxiliary services in South Africa and South West Africa should initially have been organized and controlled entirely by members of the White group, and that organized nursing and health services developed mainly in

<sup>1</sup> I, pp. 155-156.

the area of the White group and in accordance with the views and ideals of that group.

13. As in the case of education, the mission churches were the first to take active steps to influence the non-White groups to change their traditional attitudes to medicine and health services. Thereafter the State began to play its part, and, with the assistance of the schools, vigorous efforts have been made to educate these groups to accept modern scientific views about health and health services.

At present there are 27 training centres for Bantu nurses in South Africa, 10 training schools for midwives, 1 for mental nurses, and 11 training centres where Provincial Nursing Certificates can be obtained. These institutions are of a modern type and of a high standard<sup>1</sup>.

14. In regard to the Coloured group in South Africa, equally remarkable progress has been achieved in recent years.

At present there are in the Cape Province a number of well-equipped Coloured hospitals, nursing homes, clinics, etc., where almost the entire staff consists of Coloured doctors, matrons, sisters and nurses.

15. Over the years increasingly large numbers of non-Europeans have joined the nursing profession in South Africa. In 1933 only 2 per cent. of the entries for the final examination for general nurses were non-Europeans. In 1938 the percentage was 18; in 1948, 36; and in 1960, 43.

In 1960 and 1962 the numbers of persons on the South African registers for nurses were as follows:

	<i>Whites</i>	<i>Coloureds</i>	<i>Natives</i>	<i>Total</i>
1960 . . . . .	17,947	1,002	5,147	24,096
1962 . . . . .	19,244	1,240	6,944	27,428

16. In view of the considerable differences in the social background, habits and customs of the various population groups, it has always been Respondent's policy to provide separate hospitalization and health services for the respective groups, and to make provision for each of the groups to be served as far as possible by its own members. At first, as may readily be imagined, the White group provided such services for all the groups. But as the other groups advance in this sphere, their members are given preference in the service of their own groups. Many members of the non-White groups are still working under the guidance of better-qualified members of the White group, but Respondent's policy envisages that when they have gained sufficient experience and a mature sense of responsibility, complete control of their own health services will be handed over to the respective groups themselves.

17. Although the courses for non-White nurses have always been the same as those for members of the White group, it has been found necessary to provide separate training facilities for them.

The reasons for providing separate training facilities for the different

<sup>1</sup> *Vide The Progress of the Bantu Peoples towards Nationhood* (S.A. Department of Information), p. 52.

groups are basically those which have been dealt with in Chapter IV above relative to education generally, coupled with the additional fact, as far as nursing is concerned, that provision, in accordance with Respondent's policy of separate hospitalization and health services for the different population groups, virtually makes separate training inevitable.

From the point of view of the nursing profession there are also particular considerations motivating separate training of nurses. In memoranda submitted to, and evidence heard by, the Parliamentary Select Committee on the Nursing Amendment Bill, later passed as the Nursing Act, 1957 (Act No. 69 of 1957)<sup>1</sup>, the following considerations were, *inter alia*, raised:

- (i) That by reason of the differences in the social, educational and cultural background and development of the various groups, the average Native nurse takes longer than the average European nurse to complete the same course, and it would be doing an injustice to the Native nurse if she were treated on a par with the European nurse as far as her training is concerned.
 

Although the training, syllabuses and examinations are the same for all sections, the period of training for the Native nurse is six months longer than that for the European and Coloured nurse.

Experience has shown that the Native students need more time to adapt themselves, and the first (additional) six months is devoted largely to that purpose.
- (ii) That in the training of nurses consideration must be given not only to the physical, but also—and particularly—to the psychological and social needs of the patient. Whereas the psychological and social needs of patients differ from group to group, it is impossible to do justice to the tuition of nurses from different groups—having entirely different social, educational and cultural backgrounds—if they are put into and trained in one class.
- (iii) That in the case of the non-European, and particularly Bantu, nurses, more detailed attention is necessary in respect of certain aspects of training, e.g., control and guidance in fostering responsibility in their professional work.

18. With regard to control and registration of nurses, each province of the Union of South Africa had, prior to 1928, its own medical council in which the control of the Nursing and Midwifery professions vested. In 1928 the control of nursing and midwifery in the Union was placed under the South African Medical and Dental Council by the Medical, Dental and Pharmacy Act, 1928 (Act No. 13 of 1928). At that time the number of nurses and midwives, overwhelmingly members of the White group, did not justify the establishment of a separate council for these services. With the ever-increasing demand for nursing and midwifery services, however, control by a separate body became desirable. The result was the enactment of the Nursing Act, 1944 (Act No. 45 of 1944). This Act set up a Nursing Council, which was intended to serve the interests of the public as a whole, and a Nursing Association, which was to look after the interests of nurses and midwives.

Under the Nursing Act of 1944 no distinction was made between

<sup>1</sup> Vide S.C. 6—1955 and Act No. 69 of 1957, in *Statutes of the Union of South Africa 1957*, Part II, Nos. 45-83, pp. 1086-1133.

European and non-European nurses in any respect whatever. There was only one register, and all members of the Nursing Association were entitled to vote in the election of members of the Nursing Council and of the Board of the Nursing Association.

The aforementioned Act had not been in operation for very long before certain problems arose which indicated that differentiation between the groups was desirable. These problems were dealt with in testimony before the Select Committee referred to in paragraph 17 above. Some of them can be briefly indicated as follows.

- (i) In practice it appeared that non-European members of the Nursing Association were diffident about expressing their views in joint meetings with their European colleagues, and nursing branches in fact proceeded to form separate European and non-European sections, which held separate meetings. It was found that in their separate meetings the non-European nurses discussed their problems much more freely and satisfactorily than when they met as a minority group amongst a large number of Europeans.
- (ii) Experienced members of the profession expressed the view that separation in the training of the groups naturally made for separation in registration of nurses of the different groups, and that the ultimate aim therefore should be separate and self-controlled nursing professions for the various groups. At the same time, however, these members considered that members of the non-European sections had on the whole not yet reached a stage of sufficient maturity and responsibility in the profession to control autonomous professional organizations of their own. For some time the non-European sections would require the assistance, guidance and supervision of the European section, not only in their training as nurses but also in the control of the profession through its organizations. This should be temporary and transitional only, and steps should be taken for the further advancement of the non-Europeans to ultimate self-control of their members in the profession.
- (iii) For the reasons mentioned in sub-paragraph (ii) above, it was considered inadvisable that members of the non-European sections should be eligible for election to the Nursing Council, a body which not only controls the profession but shapes its educational policies, and through its Committees takes disciplinary action in cases of transgressions. It was felt that in the transitional stage the interests of the non-European nurses would be best served if they were represented on the Council by more experienced members of the White group, and that such an arrangement would also avoid possible friction in the profession.

19. To overcome the difficulties referred to above, and to provide for a system which will operate until the non-European groups have reached a stage of development where they can exercise the control and management of their own professional organizations, the Nursing Act, 1957 (Act No. 69 of 1957), makes provision for, *inter alia*:

- (i) the keeping of separate registers and rolls "in respect of white persons, coloured persons and natives"<sup>1</sup>;

<sup>1</sup> Act No. 69 of 1957, sec. 12 (4), in *Statutes of the Union of South Africa 1957*, Part II, p. 1104.

- (ii) the appointment or election of White persons only as members of the South African Nursing Council<sup>1</sup>, or as members of the Board of the South African Nursing Association<sup>2</sup>;
- (iii) the establishment of an advisory board for Natives and an advisory board for Coloured persons, which boards may advise the council on such matters relating to nurses or midwives who are Coloured persons or Natives, as may be referred to such boards by the Council, or upon such matters as any board may wish to report to the Council<sup>3</sup>;
- (iv) the division of membership of the South African Nursing Association into three separate categories, viz., "white persons", "coloured persons" and "natives", and the holding of separate meetings for these categories<sup>4</sup>.

20. The number of trained nurses in South West Africa is too small to warrant the establishment of a separate nursing control organization for the Territory.

In the whole of South West Africa there is, at present, only one trained non-European general nurse (a Sister) who hails from the Territory. Otherwise the only South West African non-European nurses affected by the Nursing Act of 1957 are those who are in training or have qualified as auxiliary nurses.

Under the provisions of the said Act, nurses of the Territory, both European and non-European, are benefited in that, *inter alia*:

- (i) they may avail themselves of the facilities and the organization of the Nursing Council and the Nursing Association;
- (ii) they receive the benefit of the Nursing Council's training regulations and examination facilities; and
- (iii) they can, by registering with the South African Nursing Council, extend their possible field of employment to the Republic of South Africa and to those other countries with which the Nursing Council has reciprocal registration agreements.

## B. Higher Education

### I. FACILITIES FOR HIGHER EDUCATION

21. There are no facilities in South West Africa for higher education. The number of students who qualify for a university education is not sufficient to warrant the establishment at this stage of any institution for such education in the Territory.

Over the years 1960 to 1962 the number of students who attained the necessary qualifications for admission to a university was as follows:

	1960	1961	1962
Native	1	2	2
Coloured	7	5	3
European	157	199	156
	<u>165</u>	<u>206</u>	<u>161</u>

<sup>1</sup> Act No. 69 of 1957, *op. cit.*, sec. 4 (1) (c), p. 1092.

<sup>2</sup> *Ibid.*, sec. 35 (4), p. 1120.

<sup>3</sup> *Ibid.*, sec. 16, pp. 1108-1110.

<sup>4</sup> *Ibid.*, sec. 33 (1), p. 1118.

And, naturally, not all who attained the necessary qualifications were desirous of taking a university education.

22. The establishment of a university or university college is not a matter that can be undertaken lightly. A certain stage of development has first to be reached, and there must be a sufficient number of students with the necessary school education, ability and desire for further study before such a step can be contemplated. In other words, in circumstances such as have prevailed, and still prevail in South West Africa, and to a large extent in many parts of Africa, universities can only come after a long process of development.

The problem of financing a university in underdeveloped countries is one which has presented itself in many parts of Africa. In this regard Kimble says:

"The reasons that may be advanced for the slow progress of secondary education apply even more strongly to college and university education. It is at once the costliest and most demanding of all scholastic enterprises. It is also, from the standpoint of priorities, the least urgent. For many years the number of Africans capable of taking advantage of such education was so small that governments and mission boards found it much cheaper to send those who did measure up to the required standards to foreign universities than to attempt to provide local facilities. Those colleges that did offer post-secondary courses of instruction, for example Achimota College in Ghana, were habitually hard-pressed for funds and faculty <sup>1</sup>."

Professor W. A. Lewis, Principal of the University College of the West Indies, in a paper entitled "Education and Economic Development" which he prepared for the Conference of African States on the Development of Education, held at Addis Ababa from 15 to 25 May 1961, included the following comment on this subject:

"Absence of a university in the territory is not fatal to a small country, since it is cheaper to send students to universities in Europe than it is to train them in small universities at home. To be economic, a liberal arts school of the American type needs 500 students, while a British type combination of Faculties of Arts, Science and Social Science needs about 1200 students. Medicine to be economic needs 300 students and agriculture and engineering need 200 each. Most of the new universities founded in Africa since the war have cost their countries two to three times as much per student per annum as it costs to maintain a university in Europe. The larger African countries need universities of their own, but the smaller African countries would be wiser to share university facilities on a regional basis, where this is feasible. (As a rough guide, in an African country of 1,000,000 inhabitants, the number of persons aged 21 is about 20,000. If 0.5 per cent. of these go to a university, the university will have only about 400 students.) The most important economic advantage of having a university on the spot is that one assembles in the teaching staff a group of scientists and scholars who do research on local problems, and play a part in the life of the community. This justifies spending more than it would cost to send the

<sup>1</sup> Kimble, *op. cit.*, pp. 121-122.

students to foreign countries; but these same advantages can be achieved by establishing universities on a regional basis, at least in the beginning while the number of students involved is still small<sup>1</sup>."

23. Native students of South West Africa who desire post-matriculation education can, like Europeans and Coloured students, proceed to institutions for higher education in South Africa.

Higher education facilities for Native students are available at several institutions in South Africa. They are:

- (a) the University College of Fort Hare, at Fort Hare, Cape Province;
- (b) the University College of the North, Turfloop, Pietersburg, Transvaal;
- (c) the University College of Zululand, Ngoye, Natal;
- (d) the Medical School for non-Europeans of the University of Natal.

All four institutions are residential institutions.

The standard of work done at the university colleges is in no way inferior to that at European universities. The members of the various lecturing staffs are well-qualified European and non-European professors and lecturers. Many of the European members of the staffs previously held positions at European universities in South Africa.

Native students, like Europeans and Coloureds, can also enrol at the University of South Africa, which is not a residential university, but conducts all its teaching—save for vacation courses—by means of correspondence.

Subject to certain conditions, Native students may also, with the written consent of the Minister of Bantu Education, enter European universities in South Africa<sup>2</sup>.

The facilities for higher education in South Africa—both for its own Bantu population and the Native population of South West Africa—compare very favourably with the facilities for higher education in other African territories. A reference to the position in regard to universities and university colleges in the Non-Self-Governing Territories of Africa south of the Sahara shows that in 1958 there were ten universities, university colleges or institutions of an equivalent status to serve a total population of approximately 100 million<sup>3</sup>.

In South Africa a population of about 10 million Bantu is served by five institutions for higher education, and all these facilities are also available to the Native population of South West Africa.

## II. FINANCIAL ASSISTANCE FOR HIGHER EDUCATION

24. Native students, like Europeans and Coloureds, can apply to the Administration for loans to enable them to study at institutions in South Africa. There is no limit to the number of loans that may be granted, and the Administration would welcome more applications than there have been in the past.

Few Natives have matriculated in the Territory. In 1962 only two applications for assistance were received. Both applications were granted. One of the students is now busy on further studies, but the second one

<sup>1</sup> Unesco/ED/181, Annex IV, p. 78.

<sup>2</sup> Vide Act No. 45 of 1959, sec. 31, in *Statutes of the Union of South Africa 1959*, Part I, Nos. 1-60, p. 506.

<sup>3</sup> Vide U.N. Doc. ST/TRI/SER. A/16, p. 66.

has not made use of the assistance offered. This was the second occasion on which the latter had applied for, and was granted, a loan without making use of it. Since 1962 one further application was received from, and granted to, a Native student presently studying at the University College of the North, Pietersburg, South Africa. Because so few applications are received, no real regard is at present had to merit, and loans are consequently made to applicants who would on merit have been rejected if they had been Europeans.

The loans are usually for an amount of R150 (£75) per year for each year of the course proposed to be followed, but there is no fixed limit to the amount. Loans are similarly available to students who have not matriculated but wish to take a course for which no facilities are available in the Territory, for example, a teacher in service who wishes to follow a special course at an institution in South Africa.

25. The Administration annually awards a maximum of six bursaries (grants) of R400-500-600 (£200-250-300) to students who wish to take a secondary teacher training course, and a similar number of bursaries of the same amount in respect of courses other than teacher training. These bursaries are open to all students in the Territory, and are awarded on merit. In practice all applications for loans from non-European students are carefully scrutinized to see whether the applicants cannot qualify for any of these bursaries, but thus far no Native student has in any way merited such an award.

From the beginning of 1963, bursaries of R40 per annum have been made available specially for Native students who take post-matriculation teacher training courses in South Africa. At present there are three such students studying in South Africa on loans granted them by the Department of Education, and in each case R40 of the loan will now be regarded as a free grant.

As from January 1964, a bursary of R150-175-175-200 (£75-87.5-87.5-100), or for the normal duration of the particular course followed, will annually be made available specially to a deserving Native student who proposes to follow a post-matriculation course in South Africa.

The children of all persons in the service of the South African Railways who are full-time students at any university or other educational institution in South Africa are entitled to free rail transport to and from such institutions at the beginning and end of each quarter. To all other scholars and students who are the children of residents in South West Africa rail transport to and from South Africa is provided at reduced rates.

### III. SEPARATE UNIVERSITIES FOR THE DIFFERENT POPULATION GROUPS IN SOUTH AFRICA

26. Inasmuch as the Applicants draw attention in their Memorials<sup>1</sup> to Respondent's policy of providing separate universities for the different population groups in South Africa, Respondent proposes to give a brief historical account of the development of separate university facilities in South Africa.

27. Higher education in South Africa developed from very small

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<sup>1</sup> I, p. 157.

beginnings during the period of colonial rule in the old Cape Colony, now the Cape Province of the Republic of South Africa. As was only natural, regard being had to the respective levels of development of the European and non-European population groups at the time, the first facilities for education on a higher level than was normally offered by schools in the Colony were created by Europeans for European students who desired such education.

The actual beginning of a system of higher education may be traced to the year 1829, when the South African College was established at Cape Town. This was not a university in the modern sense of the word, although some post-secondary school courses were offered, and it was not really until the establishment of the University of the Cape of Good Hope in pursuance of the University Act of 1873 that any real advance towards the provision of adequate facilities for higher education was made.

The aforementioned University was succeeded by the University of South Africa as from 2 April 1918, and at the same time the University of Cape Town (which had meanwhile grown out of the institution referred to in the paragraph above) and the University of Stellenbosch (which succeeded the Victoria College, established in 1881) became separate and independent universities in terms of Acts of Parliament passed in 1916.

The University of South Africa was originally intended to group together as constituent colleges a number of institutions of semi-university status, and to assist in their development into universities of full status which would serve different parts of the country. As a result of this policy, the Transvaal University College in Pretoria became the University of Pretoria as from 1930, and the South African School of Mines and Technology in Johannesburg became the University of the Witwatersrand in 1922. By a similar process of development elsewhere there came into being the independent University of the Orange Free State, the Rhodes University at Grahamstown, the University of Natal, and the University of Potchefstroom.

The University of South Africa, which no longer has constituent colleges, has continued to exist as an examining body and for the purpose of conducting correspondence courses of university standard for students (amongst whom there are many non-Whites at the present time) who are unable to make use of facilities offered at residential institutions.

28. All the universities mentioned above are autonomous institutions, and, although subsidized by the State, conduct their own affairs through their governing Councils and Senates.

The University of South Africa has a mixed student body, but at the other eight universities the vast majority of students are Whites. The Universities of Pretoria, Potchefstroom, the Orange Free State and Stellenbosch are attended mainly by Afrikaans-speaking students, and those of Cape Town, the Witwatersrand, Natal and Grahamstown, mainly by English-speaking students.

It will be seen from the foregoing paragraphs that the development of higher education for the two main White groups in South Africa has been a process of gradual growth from very modest beginnings to the elaborate and modern system which exists today, where universities afford education in the arts and sciences, and professional training in medicine, dentistry, agriculture, engineering, economics, law, etc.

29. The first step towards providing Natives with education of a higher level than that offered at the ordinary schools was taken in 1841, when Lovedale Institution was opened as a so-called "seminary of higher learning", and a "College Department" was established<sup>1</sup>. This Institution, it should be pointed out, was not a university in the modern sense of the word. There was, at that time, no demand for a university for the Native population of South Africa. Lovedale Institution was, in fact, a state-controlled high school, and it was graded as a first-class school by the Cape Education Department<sup>2</sup>. The College Department, however, offered a course which was more advanced than the courses normally provided for at schools. In 1872 this course of study included history, English literature, mathematics, philosophy, political economy, Latin and Greek<sup>3</sup>. This course was taken by Europeans as well as by a few Natives, but history records that few Natives completed it<sup>4</sup>. In fact, it seems clear that the Institution as a whole failed to achieve the goal which it had been intended to achieve in regard to Native students. The Principal of the Institution declared in 1908 that—

"... the present situation was one of miserable failure at Lovedale. Out of sixty or seventy young men who had joined the school higher classes that year, not so many as five would ever reach even matriculation, and of course matriculation was only the beginning of a University course; not one of them could hope to reach the true goal<sup>5</sup>."

The failure of the Institution has been ascribed to the fact that the courses were designed for Europeans, and not for pupils who came from a completely different cultural and social background. In this regard an educationist, C. T. Loram, says:

"... the state of affairs ... is due to the imposition of a hard-and-fast curriculum, designed for European pupils, upon the children of another race differing in environment, institutions, mental development, and future occupations<sup>6</sup>."

Loram also points out that the Native students entering the College were so deficient in English that they could not understand the matter of the text-books<sup>5</sup>.

30. The next landmark in the history of higher education for Natives was the publication in 1905 of the report of the South African Native Affairs Commission of 1903-1905. The members of this Commission represented all the colonies in South Africa, Rhodesia and Basutoland, and, chiefly because of the general shortage and poor quality of Native teachers, they recommended the establishment of—

"... some central institution or Native college which might have the advantage of the financial support of the different Colonies and Possessions, and which would receive Native students from them all<sup>6</sup>."

<sup>1</sup> Loram, C. T., *The Education of the South African Native* (1917), p. 296.

<sup>2</sup> *Ibid.*, p. 129.

<sup>3</sup> *Ibid.*, p. 297.

<sup>4</sup> *Ibid.*, footnote 2.

<sup>5</sup> *Ibid.*, p. 130.

<sup>6</sup> *South African Native Affairs Commission 1903-5 (1904-1905)*, Vol. 1, *Report of the Commission*, para. 347, p. 74.

The immediate advantages of such a scheme, the Commission stated, appeared to be—

“... the creation of adequate means for the efficient and uniform training of an increased number of Native teachers, and the provision of a course of study in this country for such Native students as may desire to present themselves for the Higher School and University Examinations<sup>1</sup>”.

A scheme was thereupon launched to establish such an institution, and, to test the opinion of the Natives of South Africa, a convention was held at Lovedale in December 1905, at which 152 Natives, representing “65 districts and countries” were present<sup>2</sup>. The convention was unanimous in supporting the scheme, and promises of substantial financial aid came from various sources. At a second convention, held at Lovedale in 1908, it was decided to establish the proposed College at Fort Hare, about a mile from Lovedale. It later appeared, however, that much of the financial aid previously promised would not be forthcoming, and after some delay the College, called the South African Native College, was opened at Fort Hare in July 1915, with a class preparing for the Cape Matriculation, a class in agriculture, and a class in theology<sup>3</sup>.

This college, established as a result of co-operation between certain individuals, the South African Government, the Native Councils of the Transkeian Territories and Basutoland, and certain mission societies, was primarily intended to serve the Bantu of South Africa and neighbouring territories. At that time, it may be pointed out, there were also teacher training and industrial schools to cater for the needs of the Native population<sup>4</sup>.

Educationists at the time, having learned from the experience of Lovedale, expressed the view that too great emphasis should not be placed on purely academic subjects, and that the College should aim at practical education.

31. Although primarily intended to serve the Bantu, the College at Fort Hare also admitted, until fairly recently, a certain number of Coloured and Indian students. Their numbers had always been small, however; so, for example, there were 23 Indian and 36 Coloured students in 1949, as against 284 Bantu students<sup>5</sup>. Separate provision has since been made for Coloured and Indian students at Cape Town and Durban respectively<sup>6</sup>.

The Higher Education Act, 1923 (Act No. 30 of 1923) placed the College of Fort Hare under the control of the Department of Education, and, in terms of the provisions of Act No. 15 of 1949, it was temporarily affiliated to Rhodes University at Grahamstown<sup>7</sup>. As was stated by the Council of Rhodes University:

“The affiliation is considered to be a temporary measure which

<sup>1</sup> *South African Native Affairs Commission 1903-5 (1904-1905)*, Vol. I, *Report of the Commission*, para. 347, p. 74.

<sup>2</sup> Loram, *op. cit.*, p. 298.

<sup>3</sup> *Ibid.*, p. 300.

<sup>4</sup> *Ibid.*, pp. 132, 151.

<sup>5</sup> *Vide U.G.* 53—1951, table LXXIII, para. 380, p. 69.

<sup>6</sup> *Vide* para. 38, *infra*.

<sup>7</sup> Act No. 15 of 1949, sec. 33, in *Statutes of the Union of South Africa 1949*, p. 126.

brings the Native College academic standards under the control of the proposed Rhodes University until such time as the Native College can be established as a completely independent institution for non-Europeans<sup>1</sup>."

During the early years, when the numbers of Bantu, Coloured and Indian matriculants who desired a University education were small, it was found necessary, purely as a temporary measure, to admit those students who did not wish to go to Fort Hare, or who wished to take courses for which no provision was made at Fort Hare, to certain European Universities, i.e., those of Cape Town and the Witwatersrand, where non-White students attended lectures with European students, and also that of Natal, where separate lectures were arranged for Indian and Bantu students.

32. The position in regard to higher educational facilities for Bantu students in South Africa before the passing of the Extension of University Education Act of 1959 was described as follows by the Commission on Native Education 1949-1951:

"... Bantu students are admitted to one University institution conducted chiefly for Bantu students, with direct State aid; to two recently founded private institutions (Kolege ya Bana ba Afrika, at Pretoria, and the Pope Pius XII University College at Roma, Basutoland); to two South African Universities chiefly providing for European students (Cape Town and Witwatersrand); to one university which provides separate facilities for non-Europeans (University of Natal); to correspondence courses of the Division of External Studies of the University of South Africa; and to correspondence courses conducted by private correspondence colleges preparing students for the external examinations of the University of South Africa<sup>2</sup>."

The number of Bantu University students admitted to various institutions in the year 1948 was as follows<sup>3</sup>:

<i>Institution</i>	<i>Number of Bantu students</i>
Fort Hare . . . . .	226
Kolege ya Bana ba Afrika . . . . .	37 <sup>4</sup>
Pope Pius XII . . . . .	26
University of Cape Town . . . . .	18
University of Witwatersrand . . . . .	65
University of Natal . . . . .	56
University of S.A. (External Studies) . . . . .	317
Strydom Training School, Bloemfontein . . . . .	4
Private Correspondence Colleges . . . . .	?
Total . . . . .	749

33. The Native Education Commission of 1949-1951 investigated the whole field of Native education in South Africa, including university

<sup>1</sup> *U.G.* 53—1951, para. 376, p. 69.

<sup>2</sup> *Ibid.*, para. 391, p. 71.

<sup>3</sup> *Ibid.*, table LXXX, para. 391, p. 71.

<sup>4</sup> For the year 1949.

education. With regard to the latter the Commission, after remarking on the small number of Bantu students attending universities and emphasizing the importance of university education for the Bantu, expressed itself as follows:

"Your Commission is of the opinion that the following three principles are important in connection with the provision of the necessary facilities for university education for the Bantu, viz.:

- (a) that adequate facilities should be provided by the State with a view to the eventual founding of an independent Bantu university;
- (b) that Bantu students who wish to study subjects for which their own institutions do not yet make provision should temporarily be provided with the necessary training facilities in conjunction with European institutions within the Union of South Africa;
- (c) that future development of university education must largely depend on the Development Plan and the employment possibilities which evolve from it<sup>1</sup>."

34. The underlying reasons for the introduction of the Extension of University Education Bill in 1959 appear from statements made by Members of the Government during the relevant debates in Parliament.

During the debate in Parliament on 26 February 1959, and subsequent days, on the introduction of the Bill, the Deputy Minister of Education, Arts and Science pointed out, *inter alia*, that in 1910, following on an offer by two prominent public men (Messrs. Wernher and Beit) to provide funds for the establishment of a university at Cape Town to provide "equal opportunities to all who require university teaching", General Smuts, then Minister of the Interior, had stated as follows:

"In regard to the stipulation of 'equal opportunities for all', there can be no possible difficulty as regards the White people of South Africa. . . . It will probably be found desirable at some later date to make separate provision at a suitable centre for the higher education of Natives . . . it would be a mistake to lay down today that as a matter of public policy higher education for Whites and Natives should for all time be conducted at the same institution<sup>2</sup>."

The Deputy Minister continued:

"Here we have a principle which is as old as the Union of South Africa itself . . . The universities established in South Africa, and particularly the University of Cape Town, were established with the money made available by Messrs. Wernher and Beit, and it was distinctly understood between those gentlemen and the Government of those days, as expressed by General Smuts . . . that the university would provisionally be allowed to have non-Whites as students, but that in the course of time separate facilities should be created for the non-Whites, as this Bill aims at doing<sup>3</sup>."

Speaking during the same debate, the Minister of Bantu Administration and Development said that the vast majority of non-Whites in South Africa were in favour of separate universities for their sections of the community and had in fact for a long time pleaded for it. Having

<sup>1</sup> *U.G.* 53—1951, para. 959, p. 151.

<sup>2</sup> *U. of S.A., Parl. Deb., House of Assembly*, Vol. 99 (1959), Col. 1544.

<sup>3</sup> *Ibid.*, Col. 1545.

stated that the non-White population considered the White universities too expensive for them, that certain White universities allowed only a certain quota of non-Whites, and that non-Whites could not aspire to teaching posts in White universities, the Minister said:

"It has been said here that we are interfering with academic freedom. But this whole system will result in the non-White universities being developed as fast as possible and to the highest possible degree. In addition we have the fact that these people say that they do not have the opportunity of ever becoming professors or lecturers in the White universities. There is a ceiling beyond which they cannot pass. In these universities they will be encouraged even to become professors and lecturers in the course of time. Care will be taken to ensure a high standard of academic qualifications and education. The opportunities are being created and the way is being opened to the Bantu to serve his own people in the academic sphere and to bring his own universities to the highest possible level, and to utilize those universities in the service of their own people. . . . Every section of the population has a duty towards itself, and the Bantu also have that duty. Just as the White man is entitled to the best university training, so the Bantu and the other non-White groups are also entitled to it; and it is the duty of this House to see that this is done <sup>1</sup>."

35. Later the Minister of Bantu Education, in the same debate, explained the four fundamental considerations on which the Bill was based.

The following is a summary of the Minister's speech:

- (a) *The first fundamental consideration* was the need for university training for non-Europeans in general, and for the Bantu in particular. The Government's policy of separate development required that non-Whites should be given every opportunity to develop as individuals and for development as separate communities. If there was to be balanced development, separate development demanded that every individual national unit should produce, from its own ranks, the necessary leaders, thinkers, educationists, professional and technical people. This would open up new possibilities for individuals in their own communities, and, in the interests of balanced development, particularly of the Bantu national community, there emerged the necessity of replacing as soon as possible the White persons working as teachers, doctors, ministers of religion, agricultural extension officers, etc., in the Bantu areas, with Bantu persons. All this would require large-scale training of the Bantu also at university level.

After surveying the advancement of the Bantu and the Coloured people in the field of education, the Minister indicated that the potentialities and tendencies were such as to justify the establishment of a number of institutions for the higher education of both the Bantu and Coloured groups <sup>2</sup>.

- (b) *The second fundamental consideration* was the conviction that

<sup>1</sup> *U. of S.A., Parl. Deb., House of Assembly, Vol. 99, Cols. 1548-1549.*

<sup>2</sup> *Ibid.*, Vol. 100 (1959), Cols. 3259-3263.

higher education could best be provided in separate institutions for the different groups. In this regard the Minister said:

"Every national group of any consequence, if it wishes to hold its own should have its own schools and its own university or universities—universities that not only serve as the focal point of its pride and self esteem, but as a means to educate the community in the true meaning and value of university training as such. Any system which is not devised to enable the members of a particular national unit (volksseenheid) ultimately to constitute the council, the senate, the student body and other bodies concerned with the financing and control of a university, any system which does not provide for that, is a system that withholds from the community the most valuable opportunity there can be for self-development . . .

In the second place it is self-evident that a university which in the first instance does not serve a particular national community and which draws its students from heterogeneous national units, will not only find it difficult to provide for the special needs of national units, but more often than not no regard at all is had to the needs of particular national units. That is true, particularly where you have national groups at different levels of development as in South Africa . . . In the third place there is the consideration, of course, that if a university institution serves a particular national group, the students are more easily and better equipped for living in and serving the community to which they belong . . .

When students study at a university serving a particular national group, they are not required to go through a difficult and frequently unnecessary process of adapting themselves, socially for instance. Students belonging to a minority group, and moreover a less developed group, are continually in danger of being overwhelmed by the majority. Then it is extremely difficult, and more often than not impossible, for such a student to avoid having his own cultural roots uprooted and destroyed and rendered contemptible to him.

A fourth reason why higher education can best be provided in separate institutions, is the fact that the task of the teachers is facilitated because the students are drawn from one cultural group, something that undeniably will raise academic standards and accelerate cultural development . . .

In the fifth place it is important that the members of the community as well as the students should have an opportunity to take an active part in all aspects of university life. If it is impossible for the community and the students to participate in all aspects of university life, as it is impossible at the mixed universities, and as it is impossible at one which, although it is only for non-Whites, such as Fort Hare, tries to serve a whole lot of groups, then the university cannot have its full share in the development of that community; and the consequence for instance of the attendance of Bantu or non-White persons at mixed universities, as we know them today, is a complete misconception of the whole nature of a university and of its task of moulding the individual as well as the community. That is why I say higher education can best be provided in universities intended for particular national groups<sup>1</sup>."

<sup>1</sup> U. of S.A., Parl. Deb., House of Assembly, Vol. 100 (1959), Cols. 3263-3265.

- (c) *The third basic consideration* was that the State should take the initiative in establishing and maintaining the non-White universities.

The fundamental approach, said the Minister, was that control of any university should ultimately vest in the community that is served by that university and within which it is established. The non-White groups were not yet in a position to take control of the universities provided for them, and the State, as the guardian of the non-White groups, was the only body that could take control and later transfer to them, judiciously and in accordance with the rate of their development, control of their own institutions<sup>1</sup>.

- (d) *The fourth fundamental consideration* was the conviction that the continued admission of non-Whites to the White universities should be stopped. In this regard the Minister said:

"In the first place it should be remembered that the admission of non-Whites to certain White universities is a practice that arose not as a result of a carefully planned policy. It was merely an unimportant gesture at a time when facilities for the non-Whites did not exist or were quite inadequate. But since adequate provision is now being made for non-White university institutions of a comparable standard, the continued admission of non-Whites to the so-called open universities—the mixed universities—really has no other significance than a complete negation of the principle on which the policy of separate development is based. If it is still to be permitted, it will create the fatal impression that apartheid is something which is applied and should be applied only until the non-White has received his matriculation certificate, that is to say, until he has overcome a certain defect or deficiency in his being, and, of course, there is no suggestion at all that the policy of separate development is the result of a defect or deficiency in the non-Whites, or the result of inferiority. It is a question of separate development of different racial groups each of which is and ought to be proud of its own cultural heritage . . . But in the second place no university which, like the mixed universities, is controlled by Whites, where the personnel consists almost exclusively of Whites, where the overwhelming majority of the students are Whites, universities which have been established to provide for the needs of a White population group—today no such university in South Africa can be in a position to provide the kind of higher education that has regard to the needs of the non-Whites<sup>2</sup>."

36. In regard to the Coloured group, the Deputy Minister of the Interior, in the course of the said debate, informed Parliament that throughout the preparation of this legislation there had been negotiations and the closest possible consultation between the Department of Education and the Department of Coloured Affairs. He stated that the interests of the Coloured people had been taken into account throughout, that the Department of Coloured Affairs had been consulted, and that it was the intention to establish a separate Coloured university<sup>3</sup>.

37. The Extension of University Education Act, 1959 (Act No. 45 of

<sup>1</sup> *U. of S.A., Parl. Deb., House of Assembly, Vol. 100 (1959), Cols. 3265-3267.*

<sup>2</sup> *Ibid.*, Cols. 3267-3268.

<sup>3</sup> *Ibid.*, Col. 3438.

1959) authorized the Minister of Bantu Education to establish university colleges to which only non-Whites were to be admitted, and after a period of transition—to allow for the provision of alternative facilities for certain courses not then available on a separate basis at Fort Hare or elsewhere—non-Whites were no longer to be admitted to White universities in South Africa.

38. The particular institutions for higher education in South Africa serving the Bantu groups have been described in paragraph 23 above.

As regards higher education for the other two main non-White groups of South Africa's population, viz., the Coloured people and the Indians, progress has also been made in providing separate university facilities. The distribution of the Coloured people, who are mainly concentrated in the western part of the Cape, and of the Indians, of whom most are resident in Natal, has made it impracticable at this stage to have more than one university college for each of these groups. The University College of the Western Cape for Coloureds was opened at Bellville near Cape Town in 1960, and the University College for Indians at Durban, in 1962. The University College for Coloureds is controlled by the Department of Coloured Affairs, and the University College for Indians by the Department of Education, Arts and Science.

Prior to the establishment of these separate institutions, as has been pointed out above<sup>1</sup>, some Indian and Coloured students attended the South African Native College at Fort Hare, while small numbers were also admitted to the three so-called "open" universities (Cape Town, Natal and the Witwatersrand). At the University of Natal classes and lectures for non-White students were separate from those for White students.

#### IV. VIEWS ON SEPARATE EDUCATIONAL FACILITIES

39. In Chapter IV above, Respondent referred to the views of educationists who support the policy of providing education to suit the cultural background and needs of different communities, and to the present trend in other States in Africa to "Africanize" education for the African.

Respondent submits that its policy of providing separate universities for the different population groups in South Africa accords with such views and with the trend of education in the other African States.

In this regard it is only necessary to refer here to views expressed concerning university education.

40. In 1948 Dr. Kenneth Mellanby, the first principal of the University College, Ibadan, said that—

"The standards of the University College must be equal to those of the best universities of any country, but the college must also have an African bias, and while not neglecting any branch of learning must concentrate on subjects of special interest and importance to Africa<sup>2</sup>."

Mr. Herbert Morrison, former Foreign Secretary in England (now Lord Morrison of Lambeth), is reported to have said in the House of Commons on 9 March 1959:

<sup>1</sup> *Vide* para. 31, *supra*.

<sup>2</sup> Kimble, *op. cit.*, p. 122.

"Will the hon. Gentleman's Department [Commonwealth Relations] keep in mind the desirability also of universities in Africa of an African character and that there is something to be said for the Africans having university facilities of their own in their own countries rather than that the general run of them should come to British universities and go back with somewhat un-African ideas? 1"

And Kimble says of the University of Dakar:

"The doors of the University are open to all qualified students. However, its curricula are designed primarily to serve 'the aspirations and needs of the African peoples', and to 'give the modern African an opportunity to re-examine the values of his own cultural heritage and to acquire a deeper knowledge of other technical and moral values from the West' 2."

41. In reply to a published lecture by Sir Eric Ashby, Master of Clare College, Cambridge, entitled "Universities under Siege" 3, which was critical of South Africa's policy of providing separate universities for the various groups, Professor Dr. C. H. Rautenbach, Rector of the University of Pretoria, Chairman of the Council of the Bantu University College of the North and Chairman of the National Advisory Education Council of the Republic of South Africa, made the following points, among others, in a pamphlet entitled "Open Discussion on Closed Universities":

"Sir Eric ends with a peroration that we only too readily would quote:

'I am not too familiar with the curricula in Arts faculties in South African universities, so that I cannot comment on what happens here, but when I visit the universities of tropical Africa I find a social mimicry of European education which is at once touching and depressing. Every year Nigerians who are going to administer their people as district officers leave the university with honours degrees concentrated upon Latin and Greek and Ancient History. They have never studied the political and economic systems of their own people nor their religious and social traditions and folk-lore, nor their languages. Questions such as how to transfer ideas from Ibo to English; what kind of ideas there are which cannot be transferred from one language to the other; what is the impact on an African mind of European ideas of justice and equity; how systems of social welfare will replace the obligations of the extended family; what tensions occur in the African when he becomes urbanised and has to discipline himself to a routine and work either with Europeans or like Europeans; questions such as these are never studied by the majority of students in tropical African universities, perhaps not in South African universities either. Yet upon an understanding of such questions as these the fate of the Continent depends. Is it (for example) necessary to accept Western ethics and standards of behaviour along with Western technology? Or will the African, like

<sup>1</sup> *Parliamentary Debates (Hansard), House of Commons, Fifth Series, Vol. 601 (1958-1959), Cols. 885-886.*

<sup>2</sup> Kimble, *op. cit.*, p. 112.

<sup>3</sup> Ashby, E., "Universities under Siege", in *Minerva*, Vol. I, No. 1 (Autumn 1962), pp. 18-29.

the Japanese, adopt Western material values while retaining indigenous spiritual values? Is the new Africa going to produce the most vulgar civilisation the world has ever known—a nightmare of European gadgets without even the rudimentary European morality which still survives in our cities? Or will the Africans in the end do better than we have, preserving for themselves a relaxed urbanity and courtesy and rejecting our phrenetic money-making economy?' . . .

He indeed brings something new in his beautiful peroration quoted above, new to him and to his academic ilk, but antiquated to us, the supporters of apartheid. What he says there about the need for the Africanization (adjustment or adaptation to African cultural-philosophical patterns) of university institutions in Africa is for us the very crux of the matter in our policy of separate development. Experienced British officials of the colonial era in Africa and elsewhere long ago realized and experienced what Sir Eric now preaches. We refer to the article in the *British Universities Quarterly* of September 1958 on: *The Idea of an African University*. This is however the first time that I have, from the mouth of an eminent British university man, heard such ringing oratory in complete accord with this line of thought. We are indeed making progress<sup>1</sup>.

The *Bulletin of the International Association of Universities*, published in October 1962, contains extracts from a paper read by Sir Eric Ashby on "Patterns of Universities in Non-European Societies" in which he said, *inter alia*, the following with regard to universities in West Africa:

"However, despite minor adjustments in curricula to suit local conditions, the curricula in West African universities are drawn up on the assumption that the African has no indigenous culture worth studying and no organisation of society worth the attention of undergraduates. We do not go so far as to advise Africans—as Indians were brashly advised a hundred years ago—to despise their culture because it is degrading: we simply discourage them from paying serious attention to it by the device of excluding it from the requirements for a degree . . .

The difficulties in the way of incorporating African studies into the undergraduate curriculum are of course, formidable . . . (But if universities are to put down roots in tropical Africa the first step must surely be to study traditional African societies and the way they change under the influence of the West, as a compulsory subject at the core of the curriculum; not simply as a somewhat unconventional option, as it is at present in those places where it is taught at all. For the danger in West Africa is similar to the danger to which India has succumbed: that the inevitable gap between the intellectuals and the mass of population will widen until in the end even kinship ties and tribal loyalty may be unable to bridge it<sup>2</sup>."

Of the aforementioned extracts, only a part of which is quoted above, Professor Rautenbach says that they—

<sup>1</sup> Rautenbach, C. H., *Open Discussion on Closed Universities* (trans. by M. W. Smuts) (1963), pp. 3-5.

<sup>2</sup> *International Association of Universities, Bulletin*, Vol. X, No. 4 (Nov. 1962), p. 254.

"... unwittingly drive home the argument in favour of separate academic facilities for the Bantu with ... remarkable vigour and eloquence ...<sup>1</sup>"

42. At an international seminar on "Inter-University Co-operation in West Africa", Sir Eric Ashby is reported to have said:

"There are no West African universities—yet. There are British and French universities in West Africa but they are importations; they are no more indigenous than the motor-cars. They have minor modifications, of course, just as motor-cars have sun hoods. But the West African university is still to be born ... The West African university, when it appears, will be a slow and natural outgrowth ... Its roots will be in the universities of Europe, acknowledged everywhere in the world as part of the international family of universities, but it will have its own West African identity. In brief, West African universities like British or French or American or Russian universities, serve their purpose only if they fulfil a dual loyalty: a loyalty to their own society and a loyalty to world standards of higher education<sup>2</sup>."

Respondent does not know whether Sir Eric is correct in saying that West African universities do not yet have a West African identity, but would point out that if Africans of West Africa must have universities with a West African identity, and not British or French "importations", Southern Africa's Bantu peoples (who are also "Africans") should also be entitled to their own, specifically Bantu, universities. South Africa's White universities—which are, with certain adaptations, European "importations"—cannot "fulfil a loyalty" to Bantu society, and they cannot have a Bantu "identity". And the converse is, of course, equally true.

### C. Adult Education

43. It is the policy of the South West Africa Administration to provide facilities for adult education as far as is practicable. Its efforts in this regard in relation to the Native groups have met with many setbacks, and progress has been slow, for reasons basically the same as have been noted in the discussion of other aspects of Native education. Sometimes apathy was to blame, sometimes lack of real incentive or of disciplined perseverance. Again this has probably been inevitable, and can be countered only by patient and sympathetic continuation of the efforts, as part of the steady advancement of education generally.

44. Various attempts have been made by the Administration to provide schooling for adult Natives. A scheme of evening classes was started at Windhoek in 1948, and thereafter evening classes were also instituted at various other towns. Instruction was given in English and Afrikaans, and in all primary-school subjects, so as to give students an opportunity of obtaining a Standard VI certificate. Qualified European teachers were appointed to conduct the classes.

There appeared to be a good deal of enthusiasm in the initial stages,

<sup>1</sup> Rautenbach, *op. cit.*, p. 12 (postscript).

<sup>2</sup> Ashby, E., "African Higher Education", in *Oversea Quarterly*, Vol. 3, No. 2 (June 1962), p. 44. (Reprint of an address by Sir Eric Ashby given at an international seminar on "Inter-University Co-operation in West Africa", held at the University College of Sierra Leone in Freetown, Dec. 1961.)

but students soon lost interest, and seemed to be incapable of the sustained effort necessary to achieve success. The class which began with 45 pupils at Otjiwarongo in 1951 came to an end in the same year for lack of attendance. The school at Tsumeb opened with 30 pupils in March 1954, but after the June vacation only 11 returned, and by the end of the year the school had petered out completely. The school at Omaruru, which started in September 1956, had 40 pupils at the beginning of 1957, but by August of the same year had to be closed for lack of support.

The school at Windhoek was, to some extent, an exception. It existed for about seven years before it was closed down for lack of attendance. During this period a few students who displayed the necessary perseverance passed Standard VI.

45. At the request of the Organizer of Native Education, the night school at Windhoek was reopened in 1956. Whereas instruction had been provided free before, a tuition fee of 20 cents (2/-) per quarter was levied. It was hoped that such payment, small as it was, might encourage those who attended the classes to set greater store by what was provided for them. The classes commenced in April 1956 with 33 pupils and two European teachers, but by September of the same year the number had dwindled to 9, and thereafter the school was closed.

In 1957 evening classes were again instituted at Windhoek, this time with a view to enable teachers in service to improve their qualifications. A junior certificate class with 14 students commenced the course at the beginning of the year, but due to poor attendance the scheme proved a complete failure, and the class had to be discontinued at the end of the year<sup>1</sup>.

Evening classes were again started at Windhoek in July 1961, when courses were offered on both the primary and the secondary level. It was decided that tuition in the primary classes would be free, but that secondary students would be required to pay a fee of R8 (£4) per year. There were 40 students, taking five different secondary courses, when the classes started, but by the end of the year their numbers had dwindled to 6, who were taking one subject only. The attempt at providing primary education was for some time more successful, and in the last quarter of the year there were 251 pupils in the various classes. During the first half of 1962 the numbers in the primary classes increased to 282, while there was no improvement in respect of the secondary classes. The number of pupils in the primary classes at present total 93, while the secondary classes have come to an end for the lack of support.

46. The 1962 Education Ordinance<sup>2</sup> empowers the Administrator to "establish and maintain evening or continuation classes with a view to training and instructing Native pupils or persons"<sup>3</sup>. The Administrator may also, in terms of the Ordinance, prescribe:

"... courses for the instruction and training or further instruction and training of persons who, under normal circumstances, do not fall within the limits of the school-going age, with a view to—

(a) combating illiteracy in so far as this may exist;

<sup>1</sup> *Vide* Chap. V, para. 30, *supra*.

<sup>2</sup> *Vide* Chap. III, para. 5, *supra*.

<sup>3</sup> *Ord. No. 27 of 1962 (S.W.A.), sec. 101 (1) (b), in Official Gazette Extraordinary of South West Africa, No. 2413 (4 July 1962), p. 912.*

(b) affording persons an opportunity to acquire better equipment for themselves and for civil life <sup>1</sup>”.

It is hoped that attempts at encouraging adult education for Natives will in future prove more successful than has been the experience in the past.

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<sup>1</sup> Ord. No. 27 of 1962 (S.W.A.), sec. 4 (1) (d) (iv), in *Official Gazette Extraordinary of South West Africa*, No. 2413 (4 July 1962), p. 882.

## CHAPTER VII

### EUROPEAN EDUCATION

#### A. Introductory

1. The nature of Applicants' complaints<sup>1</sup> makes it necessary to deal also with the education of the European group in South West Africa. This Chapter is devoted to a brief account of such education.

Before the particular educational facilities provided for the said group are dealt with, mention will be made of certain circumstances and factors which generally affect the education of European children in the Territory.

These will be dealt with under the following heads:

- I. Centralization of European education.
- II. The different European language groups.
- III. Medium of instruction.

#### B. General Circumstances and Factors Affecting the Education of European Children

##### I. CENTRALIZATION OF EUROPEAN EDUCATION

2. Before 1915 the education policy of the German authorities relative to European children in South West Africa was characterized by a high measure of centralization, and it was only in the towns and more densely populated areas that schools were established. The country was thinly populated, and, because of the vast distances involved, it was impossible to bring schools within reach of all children. Children had to be brought to the schools and housed there, and the result was the development of an extensive scheme of school hostels<sup>2</sup>. Allowances were made by the German authorities to parents whose children boarded at these hostels.

3. After 1915 the South African authorities, realizing that it would be more economical to bring children from far outlying districts to hostels at centrally situated schools than to establish a series of small schools in distant and sparsely populated areas, continued with the policy of centralization, though not to the same extent as under the German regime<sup>3</sup>.

Difficulties were soon experienced, however, when the number of school-going children grew apace and the available hostel accommodation proved inadequate. Money was in short supply in the post-war recession of 1921-1922, and in 1922 the Administration was forced to abandon, at least temporarily, its policy of centralization, and to establish more schools on farms in the country districts. The 1921 Education

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<sup>1</sup> *Vide* Chap. I, para. 1, *supra*.

<sup>2</sup> *Vide* Chap. II, para. 11, *supra*.

<sup>3</sup> Lemmer, *op. cit.*, p. 176.

Proclamation made no provision for grants-in-aid of private schools, with the result that a number of farm schools were established <sup>1</sup>.

4. The crippling droughts and economic depression in the late 1920s and early 1930s <sup>2</sup> prevented the Administration from providing the facilities which it would have liked to provide, and the result was a considerable increase in the number of private schools, which then received subsidies from the Administration in terms of the provisions of the 1926 Education Proclamation. There were 22 private schools in 1926, and by 1931 the number had risen to 74. The number of these schools decreased as conditions in the Territory improved and farmers again became able to send their children to schools in the towns, and by 1937 there were only 11 private schools left <sup>3</sup>.

Increased prosperity and the desire for progress created a demand by the European group for improved educational facilities, and because of the country's thinly scattered population, and for economic reasons, such facilities could, with justification, only be provided in certain localities. This necessitated the building and maintenance of hostels at many of the larger centres.

At present nearly 40 per cent. of the European school children in the Territory are accommodated in hostels.

5. The 1958 Education Commission found that the average annual cost of accommodation per European pupil at rural hostels was R110.80 (£55 8s. 3d.) and at urban hostels R120.76 (£60 7s. 8d.), and that while parents paid 82 per cent. of such actual cost in 1948, the percentage was only 69 in 1957 <sup>4</sup>. The Administration thereafter decided that hostel fees should be so determined that parents be required to pay approximately 80 per cent. of the actual cost involved.

The ever-increasing demand for better education, and the tendency on the part of parents to send their children to schools in the bigger centres to obtain such education have led to a decline of the smaller rural schools. It was found by the 1958 Commission that practical and economic considerations required that primary schools in the thinly populated southern areas should be about 100 miles apart and, in the more densely populated northern areas, about 50 to 60 miles apart <sup>5</sup>.

The advantage of the policy of centralization, despite the high cost involved in the hostel system which it necessitates, are undeniable from an educational point of view. It may be said, in general, that it allows of facilities being offered which would otherwise have been impossible. There are at present 67 hostels for European children at government schools (one being a state-subsidized private hostel) and six hostels at private schools.

## II. THE DIFFERENT EUROPEAN LANGUAGE GROUPS

6. A special problem arises from the need for providing for the educational requirements of three language groups—Afrikaans, English and

<sup>1</sup> Lemmer, *op. cit.*, p. 176.

<sup>2</sup> *Vide* Chap. V, para. 17, *supra*.

<sup>3</sup> *Vide Report of the Education Commission 1958 (S.W.A.)*, para. 35, p. 39.

<sup>4</sup> *Ibid.*, para. 278, p. 109.

<sup>5</sup> *Ibid.*, paras. 311-313, pp. 123-127.

German—and, in particular, of the two groups which are numerically in the minority, viz., the English and German groups.

The vast majority of European pupils are Afrikaans-speaking, and only about 1 per cent. of them attend private schools, all the others being in government schools in the Territory, except for a small number who are at boarding schools in South Africa.

In 1961 only about 6.8 per cent. of all pupils at government schools were English-speaking. There were then 11 government schools which offered English medium classes to a total of 1,023 pupils. In only two of these schools the English medium groups were fairly large, but in all other schools they were very small. The 1958 Education Commission found that there were three schools with less than 30 English-speaking pupils in all classes from sub-Standard A to Standard V. In one school, the Commission pointed out, the English medium group, consisting of 29 pupils, was divided into two classes of 19 and 10 pupils each, with 2 teachers, whereas in the same school 1 teacher had 48 Afrikaans-speaking pupils under her care in Standard I<sup>1</sup>.

With regard to German-speaking pupils the position is only slightly more favourable. In 1961, 1,324 pupils received instruction through the medium of German (i.e., as far as Standard V) in 12 government schools. This constituted 8.84 per cent. of all pupils at government schools.

7. Providing education for the minority language groups in such circumstances requires thorough organization on the part of principals of schools and of the Education Department. Every effort is made to ensure the most economical use of teachers, who are already in short supply, but great difficulties remain. The lower teacher-pupil quota and the fact that there are fewer pupils to a classroom than in the case of the majority group, necessarily result in a higher expenditure per unit.

A possible answer to the problem may be to make only a limited number of schools available where instruction can be received in English and German, or to have separate schools to cater for the needs of the minority groups, but both these methods will create difficulties, including hardship for many of the parents and pupils concerned, and there is, in reality, no easy solution to the problem at hand.

In 1962, it may be pointed out, circumstances rendered it necessary for the Administration to establish an English-medium government high school in Windhoek.

### III. MEDIUM OF INSTRUCTION

8. Of the three European languages spoken in the Territory, Afrikaans and English are official languages.

In September 1920 General Smuts stated at a public meeting at Windhoek that the South African Government had no intention of suppressing the German language, but that the education of German children would, in their own interest, be made part of the Government's school system<sup>2</sup>. The intention initially was that in government schools

<sup>1</sup> *Vide Report of the Education Commission 1958* (S.W.A.), para. 320, p. 133.

<sup>2</sup> *Vide Lemmer, op. cit.*, p. 133.

German would be permitted as a medium of instruction up to the end of Standard IV only, but in view of the opposition of the "Landes-verband", a central association of the German "Schulvereine"<sup>1</sup>, it was finally decided that German would be a medium of instruction up to the end of Standard VI, and this remained the position until the end of 1943. From the beginning of 1944 German could be used as a medium of instruction only up to the end of Standard IV, while in the Standards above Standard IV one or more subjects, as determined by the Director of Education, had to be taught in one of the official languages. In 1946—in the aftermath of the Second World War—it was decided that German could no longer be used as a medium of instruction in government schools, but this restriction was removed in 1950. German was then again allowed as a medium of instruction up to the Standard IV stage. As from 1960, as a result of recommendations made by the 1958 Education Commission, German is used as a medium up to the end of Standard V, with the proviso that in Standard IV one, and in Standard V two, subjects are taught in either Afrikaans or English so as to give German-speaking pupils some preparation for their secondary school work which is, as far as government schools are concerned, limited to English and Afrikaans as media of instruction.

In German private schools German is used as medium up to the end of Standard VIII, and the Education Department conducts its Junior Certificate examinations in German as well as in English and Afrikaans.

9. As far as Afrikaans and English-speaking pupils are concerned, the policy has always been that instruction should be given in a pupil's home language, at least as far as his primary school education is concerned. The standard up to which such instruction had to be given in the home language has, however, not always been the same. Double medium instruction (English and Afrikaans) was introduced in 1944, when, after the fourth standard, one or more subjects, as determined by the Director of Education in his discretion, had to be taught through the medium of the official language other than the home language. As from the beginning of 1949, however, this arrangement became permissive.

10. At present the position is as follows:

- (a) Home-language instruction is compulsory for all Afrikaans and English-speaking pupils up to the end of Standard VIII, with the proviso that if the parent desires to change the pupil's medium when he proceeds to the secondary classes (i.e., Standard VI onwards), this is allowed if the principal of the school concerned and the inspector of schools are satisfied that the pupil is sufficiently well-versed in the second language to have his instruction in this medium.
- (b) Home-language instruction is compulsory for German-speaking pupils up to the end of Standard V in all subjects excluding English and Afrikaans in all Standards, health education in Standards IV and V, and geography in Standard V. In the secondary standards one of the official languages becomes the medium of instruction in all government schools, but instruction in German as medium may be obtained in German private schools up to the end of Standard VIII.

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<sup>1</sup> *Vide* Chap. II, para. 10, *supra*.

- (c) Where a pupil, on coming to school for the first time, knows and understands two languages equally well, his parents are entitled to choose his medium of instruction.

Experience in South Africa and in South West Africa has convinced educational authorities of the soundness of the policy of home-language instruction, and the policy is, furthermore, approved of and desired by the vast majority of parents in the Territory.

### C. Types of Schools

11. Proclamation No. 16 of 1926 (S.W.A.) makes provision for the establishment of the following types of schools: primary schools; farm schools; secondary schools; high schools; teacher training schools; industrial schools; special schools; private schools<sup>1</sup>.

12. *Primary schools* cover the lower standards up to a limit approved by the Director of Education. At present the general upper limit is Standard V (i.e., seven years' schooling), as against Standard VI prior to 1956. For a primary school to be established, the Director must be satisfied of the need for such school, of a prospective regular attendance of at least 15 pupils and of the suitability of the proposed accommodation<sup>2</sup>.

In view of the policy of centralization<sup>3</sup>, and in order to avoid uneconomical use of staff, the establishment of a primary school is, as a matter of present policy, only considered where the enrolment is likely to remain reasonably constant and justifies at least four teachers where there is a hostel attached to the school, or at least two in other cases.

13. *Farm schools* are established for instruction in the lower standards. The proprietor of the farm or land on which the school is situated is expected to supply, free of charge, school-rooms and board and residence for the teachers at such schools. Such a school may be established only if there is reasonable certainty that a minimum average enrolment of ten pupils can be maintained<sup>4</sup>.

14. *Secondary schools* are for instruction up to Standard VIII (ten years' schooling). A school may be recognized as a secondary school if the Director is satisfied of the need thereof in the locality and of the efficiency of the work done at the school, and if a minimum average enrolment of 20 pupils in the fourth and fifth standards combined has been maintained for at least one year<sup>5</sup>.

The present policy is to consider the establishment of a secondary school only if a minimum enrolment of 50 pupils per language medium in Standard VI is assured, unless there are no facilities for secondary education over a large area.

<sup>1</sup> *Vide Proc. No. 16 of 1926 (S.W.A.) as amended, secs. 29-36, 177-112bis, in Laws of South West Africa, Vol. II (1923-1927), pp. 242-248, 300-302.*

<sup>2</sup> *Ibid.*, sec. 32 (2) (a) and (b), p. 246.

<sup>3</sup> *Vide paras. 2-5, supra.*

<sup>4</sup> *Vide Proc. No. 16 of 1926 (S.W.A.), sec. 33 (1) and (2) (a) and (b), in Laws of South West Africa, Vol. II (1923-1927), p. 246.*

<sup>5</sup> *Ibid.*, sec. 31 (1) and (2) (b) and (c), p. 244.

15. *High schools* are for instruction up to Standard X (12 years' schooling). A school may be recognized as a high school if the Director is satisfied of the need of such a school and of the efficiency of the work done, and if a minimum average enrolment of 40 pupils in Standards VII and VIII combined has been maintained for at least one year <sup>1</sup>.

The present policy is to consider the establishment of a high school only if the number of pupils will be sufficient to justify adequate differentiation in the courses offered.

16. *Teacher training schools*: although the Education Proclamation provides for the establishment of teacher training schools, no such schools are conducted for the White group in South West Africa. The facilities for training of European teachers in South Africa will be dealt with hereinafter <sup>2</sup>.

17. *Industrial schools* are for the training of pupils in industrial pursuits, including agriculture <sup>3</sup>.

18. *Special schools* are schools with special curricula, approved by the Director, and suited to the peculiar needs of the localities concerned <sup>4</sup>.

19. *Private schools*: the Education Proclamation provides for the establishment of schools by private initiative, and for grants in aid of such schools. To ensure proper standards, private schools are subject to inspection by the Department's Inspectors, and appointments of teachers are subject to the approval of the Director <sup>5</sup>.

The general policy is not to subsidize private schools in centres where there are government schools. Some such schools do receive assistance, but in their case the number of students in respect of whom aid is given has been limited. Otherwise the policy is to subsidize private schools which offer educational facilities not provided by government schools, for example, schools in localities where there are no government schools, or schools which offer secondary education through the medium of a language not offered as a medium at a government school.

#### D. Local Control of Schools

20. The local control of every government school for European children is vested in a school committee elected by parents. In general the duty of a school committee is to interest itself in the welfare of the school and to advise the Director of Education on such matters as school buildings and grounds, school hours, parents' representations, misconduct on the part of teachers and pupils, and matters referred to the committee by the Director for its views <sup>6</sup>.

<sup>1</sup> *Vide Proc.* No. 16 of 1926 (S.W.A.), sec. 30, p. 244.

<sup>2</sup> *Vide paras.* 38 and 39, *infra*.

<sup>3</sup> *Vide Proc.* No. 16 of 1926 (S.W.A.), sec. 34, in *Laws of South West Africa*, Vol. II (1923-1927), p. 246.

<sup>4</sup> *Ibid.*, sec. 35, p. 248.

<sup>5</sup> *Ibid.*, secs. 117-121bis, pp. 300-302.

<sup>6</sup> *Ibid.*, secs. 10-28, pp. 232-242.

## E. Officers and Field Staff

21. In addition to the Director of Education, the Deputy Director and the Administrative Staff of the Department of Education at Windhoek <sup>1</sup>, the White group is served by the following professional and field staff:

4 Inspectors of Schools;  
 organizer for domestic science and needlework;  
 organizer for handwork for boys;  
 organizer for music;  
 organizer for German-medium classes;  
 organizer for infant school method.

The organizers, save the two last mentioned, serve all groups of the population—European, Coloured and Native. The Organizer for infant school method is concerned only with schools for Coloured and European children, and the Organizer for German-medium classes only with European children.

## F. Survey of Schools, Pupils and Teachers

22. In the table below particulars are given of the number of schools, pupils and teachers over various years:

Year	Schools	Pupils	Teachers
1920	Government : 23	Government : 975	Government : 55
1930	Government :	Government :	Government :
	High 2	Primary 4,225	Certificated 195
	Secondary 2	Secondary 232	Uncertificated 1
	Burger <sup>2</sup> 1		
	Agricultural <sup>2</sup> 1		
	Primary 51		
Farm 15			
	72	4,457	196
Private :	55	Private :	Private :
		Primary 991	Certificated 60
		Secondary 83	Uncertificated 32
		1,074	92
1940	Government :	Government :	Government :
	High 2	Primary 5,092	Certificated 208
	Secondary 3	Secondary 495	Uncertificated 3
	Burger <sup>2</sup> 1		
	Primary 48		
		54	5,587
Private :	18	Private :	Private :
		Primary 618	Certificated 44
		Secondary 112	Uncertificated 7
		730	51

<sup>1</sup> Vide Chap. III, para. 6, *supra*.

<sup>2</sup> The "Burger" and "Agricultural" schools are dealt with in para. 36, hereinafter.

Year	Schools	Pupils	Teachers
1950	<i>Government :</i>	<i>Government :</i>	<i>Government :</i>
	High	Primary	Certificated
	Secondary	Secondary	Uncertificated
	Primary		
1960	<i>Government :</i>	<i>Government :</i>	<i>Government :</i>
	High	Primary	Certificated
	Secondary	Secondary	Uncertificated
	Primary		
	Special		
1962	<i>Government :</i>	<i>Government :</i>	<i>Government :</i>
	High	Primary	Certificated
	Secondary	Secondary	Uncertificated
	Primary		
	Special		
1963	<i>Government :</i>	<i>Government :</i>	<i>Government :</i>
	High	Primary	Certificated
	Secondary	Secondary	Uncertificated
	Primary		
	Special		

The substantial increase in the number of secondary students in 1960 as compared with 1950 is to a large extent to be ascribed to the fact that Standard VI became the first year of the secondary course as from 1956<sup>1</sup>.

### G. Enrolment of European Pupils in Government Schools in Different Standards

23. In the following table particulars are furnished of the enrolment in the different standards in government schools in various years, and comparisons with 100 in sub-Standard A.

Year	A	B	I	II	III	IV	V	VI	VII	VIII	IX	X	Un- classified
1940	625	594	682	731	709	630	620	488	237	139	63	52	
	100	95	109.1	117.0	113.4	100.8	99.2	78.1	37.9	22.2	10.1	8.3	
1950	949	882	974	915	969	862	810	622	326	228	79	76	12
	100	92.9	102.6	96.4	102.1	90.8	85.3	65.5	34.4	24.0	8.3	8.0	1.3
1960	1,750	1,745	1,536	1,534	1,623	1,512	1,357	1,089	917	654	340	240	132
	100	99.7	87.8	87.7	92.7	86.4	77.5	62.2	52.4	37.4	19.4	13.7	7.5
1961	1,684	1,718	1,705	1,519	1,576	1,552	1,396	1,170	961	762	305	298	246
	100	102.0	101.3	90.2	93.6	92.2	82.9	69.5	57.1	45.3	22.9	17.7	14.6
1962	1,728	1,685	1,715	1,695	1,511	1,490	1,448	1,268	1,082	851	471	306	289
	100	97.5	99.3	98.1	87.4	86.2	83.8	73.4	62.6	49.3	27.3	17.6	16.7
1963	1,735	1,681	1,675	1,675	1,707	1,451	1,384	1,285	1,171	951	518	407	316
	100	96.9	96.5	96.5	98.4	83.6	79.8	74.1	67.5	54.8	29.9	23.5	18.2

### H. Percentage of European Children at School

24. Virtually all European children of school age in South West Africa attend school. A small number of such children attend schools in South Africa.

<sup>1</sup> *Vide para. 12, supra.*

## I. Courses, Syllabuses and Examinations

### I. COURSES AND SYLLABUSES

25. During the German regime the courses and syllabuses which applied in Germany were, with certain modifications, followed in the European schools in South West Africa. After the Mandatory Administration was established the courses offered were based on those of the Cape Province of South Africa.

Up to 1956 provision was made for an eight-year primary course, namely the two sub-Standards A and B and Standards I to VI. This was followed by a two-year secondary course for the Junior Certificate, and a further two-year course for the Senior Certificate.

As from 1956 these courses were reorganized to provide for a seven-year primary course up to the end of Standard V, a three-year secondary course for the Junior Certificate, and a further two-year secondary course for the Senior Certificate.

The primary course has always been what can be described as a "flat course". There is no choice of subjects and all the pupils have to take the same courses, except that girls and boys are offered different handwork subjects and that German-speaking pupils study German in addition to the other subjects. The subjects are: English, Afrikaans, arithmetic, history, geography, nature study, handwriting, religious instruction, health education, music and handwork.

As from 1956 the three subjects history, geography and nature study have been combined into one subject, called environment study, for the two sub-standards and Standards I and II.

The syllabuses used have always been those of the Education Department of the Cape Province, modified, where necessary, to suit local conditions.

26. The secondary courses, which until quite recently were almost exclusively of an academic nature, at present allow for some measure of differentiation. Pupils can now follow:

- (a) a strictly academic course;
- (b) a general course;
- (c) a practical course (with two handwork subjects);
- (d) a commercial course.

The handwork subjects referred to are woodwork and metalwork for boys, and needlework and domestic science for girls. The number of pupils taking these subjects is, however, very small. Only three schools, for example, offer metalwork at present, and in order to place the teaching of these subjects on an economical basis, the Department is considering limiting the number of schools at which such subjects may be offered.

The commercial subjects offered are: bookkeeping and typewriting at high and secondary schools, and shorthand at high schools. The number of pupils taking commercial subjects is satisfactory, so that these subjects can be taught at all high and secondary schools.

27. Subject differentiation is, however, limited by the following factors:

- (a) The number of pupils in each class must be sufficiently large to

## PER ANNUM

<i>Category</i> <sup>1</sup>	1926 <i>Primary schools</i>	1947 <i>Primary schools</i>	1953 <i>Primary and secondary schools</i>	1955 <i>Primary and secondary schools</i>	1958 <i>Primary and secondary schools</i>
A	R360 × 30-810 (£180 × 15-405)	R600 × 50-1,150 (£300 × 25-575)	R650 × 50-1,500 (£325 × 25-750)	R870 × 50-1,720 (£435 × 25-860)	R1,000 × 100-1,800 × 120-2,520 (£500 × 50-900 × 60-1,260)
B	R450 × 30-810 (£225 × 15-405)	R700 × 50-1,250 (£350 × 25-625)	R750 × 50-1,700 (£375 × 25-850)	R970 × 50-1,920 (£485 × 25-960)	R1,100 × 100-1,800 × 120-2,640 (£550 × 50-900 × 60-1,320)
C	R540 × 30-810 (£270 × 15-405)	R800 × 50-1,350 (£400 × 25-675)	R850 × 50-1,750 (£425 × 25-875)	R1,070 × 50-1,970 (£535 × 25-985)	R1,200 × 100-1,800 × 120-2,760 (£600 × 50-900 × 60-1,380)
D	R540 × 30-810 (£270 × 15-405)	R850 × 50-1,400 (£425 × 25-700)	R950 × 50-1,800 (£475 × 25-900)	R1,170 × 50-2,020 (£585 × 25-1,010)	R1,400 × 100-1,800 × 120-2,880 (£700 × 50-900 × 60-1,440)
E	R540 × 30-810 (£270 × 15-405)	R900 × 50-1,450 (£450 × 25-725)	R1,050 × 50-1,850 (£525 × 25-925)	R1,270 × 50-2,070 (£635 × 25-1,035)	R1,600 × 100-1,800 × 120-3,000 (£800 × 50-900 × 60-1,500)
F			R1,150 × 50-1,900 (£575 × 25-950)	R1,370 × 50-2,120 (£685 × 25-1,060)	R1,700 × 100-1,800 × 120-3,120 (£850 × 50-900 × 60-1,560)

<sup>1</sup> The categories A to F have at all times roughly represented from one to six years' successful and recognized training after matriculation (Standard X). Category G was a special higher category.

allow of a choice of subjects, for if the section of a class taking any particular subject is too small, it results in an uneconomical use of staff. It follows that little, if any, differentiation in subjects is possible at the smaller schools.

- (b) All schools are obliged to offer courses which prepare pupils for university entrance, and when this requirement has been met, the choice that remains is limited, especially in the smaller schools.
- (c) Lack of sufficient qualified staff often prevents the introduction of certain subjects.

## II. EXAMINATIONS

28. All examinations in the primary standards are taken internally, and promotions are controlled by the inspectors of schools. In the secondary courses internal examinations are also taken in Standards VI, VII and IX.

Public examinations are written at the end of Standard VIII and X. The South West African Department of Education conducts its own Junior Certificate examinations. The Standard X candidates write the Senior Certificate Examination of the Education Department of the Cape Province of South Africa.

### J. Salaries and Emoluments

29. The remuneration of European teachers in the service of the Education Department is at present composed of <sup>1</sup>:

- I. A salary, determined in accordance with prescribed salary scales, based on the teacher's qualifications.

Special scales apply in the case of principals and vice-principals of schools, depending on the grade of the school concerned.

- II. A special allowance, payable to teachers who hold a teacher's diploma.

### I. SALARIES

30. The salary scales which were applicable in the case of European male teachers, as determined in the years 1926, 1947, 1953, 1955 and 1958, are reflected in the table opposite:

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<sup>1</sup> No particulars are given of the cost-of-living allowance which was payable to European teachers until 1 October 1958 when increased salary scales came into operation. Nor are particulars given of the non-pensionable allowance which became payable to teachers after the said date in lieu of the cost-of-living allowance, and which no longer applies to teachers entering the service after 1 April 1963. In respect of teachers in receipt of such non-pensionable allowance as at 1 April 1963, special provisions apply to bring their emoluments into conformity with the salary scales in operation at present.

## SECONDARY SCHOOLS

Category <sup>1</sup>	1926	1947
A . . . . .	R390 × 30-1,140 (£195 × 15-570)	R650 × 50-1,300 (£325 × 25-650)
B . . . . .	R480 × 30-1,140 (£240 × 15-570)	R750 × 50-1,400 (£375 × 25-700)
C . . . . .	R570 × 30-1,140 (£285 × 15-570)	R800 × 50-1,500 (£400 × 25-750)
D . . . . .	R660 × 30-1,140 (£330 × 15-570)	R850 × 50-1,600 (£425 × 25-800)
E . . . . .	R750 × 30-1,140 (£375 × 15-570)	R900 × 50-1,700 (£450 × 25-850)
F . . . . .		R950 × 50-1,800 (£475 × 25-900)
G . . . . .		R1,000 × 50-1,900 (£500 × 25-950)

<sup>1</sup> The categories A to F have at all times roughly represented from one to six year's successful and recognized training after matriculation (Standard X). Category G was a special higher category.

Women's salary scales were, as they still are, somewhat lower than those applicable to men, on the principle that male teachers should be enabled to provide for the needs of themselves and their families. These scales, as determined in the years 1926, 1947, 1953, 1955 and 1958, are not set out here.

31. The salary scales set out in the tables below have been applicable to European male and female teachers in primary and secondary schools since 1 April 1963.

## MEN (PER ANNUM)

Category <sup>1</sup>	Scale
A . . . . .	R1,206 × 102-1,920 × 120-2,760
B . . . . .	R1,308 × 102-1,920 × 120-2,880
C . . . . .	R1,512 × 102-1,920 × 120-3,000
D (i) Without recognized university degree . . . . .	R1,716 × 102-1,920 × 120-3,360
(ii) With recognized university degree . . . . .	R1,920 × 120-3,360
E (i) Without recognized Honours or Masters degree . . . . .	R1,920 × 120-3,600
(ii) With recognized Honours or Masters degree . . . . .	R2,160 × 120-3,600
F (i) Without recognized Doctor's degree . . . . .	R2,160 × 120-3,840
(ii) With recognized Doctor's degree . . . . .	R2,400 × 120-3,840

<sup>1</sup> Ditto.

## WOMEN (PER ANNUM)

Category <sup>1</sup>	Scale
A . . . . .	R1,020 × 60-1,440 × 84-2,280
B . . . . .	R1,140 × 60-1,440 × 84-2,280 × 120-2,400
C . . . . .	R1,320 × 60-1,440 × 84-2,280 × 120-2,520
D (i) Without recognized university degree . . . . .	R1,440 × 84-2,280 × 120-2,880
(ii) With recognized university degree.	R1,692 × 84-2,280 × 120-2,880
E (i) Without recognized Honours or Masters degree. . . . .	R1,692 × 84-2,280 × 120-3,120
(ii) With recognized Honours or Masters degree . . . . .	R1,860 × 84-2,280 × 120-3,120
F (i) Without recognized Doctor's degree . . . . .	R1,860 × 84-2,280 × 120-3,360
(ii) With recognized Doctor's degree . . . . .	R2,028 × 84-2,280 × 120-3,360

<sup>1</sup> The categories A to F have at all times roughly represented from one to six year's successful and recognized training after matriculation (Standard X). Category G was a special higher category.

32. Special scales, determined in accordance with the grade of the school concerned, apply in the case of principals and vice-principals of schools. As from 1 April 1963 these scales are:

## PRINCIPALS

Grade of School	Men (per annum)	Women (per annum)
Higher special . . . . .	R4,650 (fixed)	R4,200 (fixed)
Higher or Secondary A . . . . .	R4,500 (fixed)	R4,080 (fixed)
Higher or Secondary B . . . . .	R4,350 (fixed)	R3,960 (fixed)
Higher or Secondary C . . . . .	R4,200 (fixed)	R3,840 (fixed)
Higher or Secondary D . . . . .	R4,080 (fixed)	R3,720 (fixed)
Higher or Secondary E . . . . .	R3,960 (fixed)	R3,600 (fixed)
Lower special . . . . .	R4,350 (fixed)	R3,960 (fixed)
Lower A . . . . .	R4,200 (fixed)	R3,720 (fixed)
Lower B . . . . .	R3,960 (fixed)	R3,480 (fixed)
Lower C . . . . .	Teacher's salary plus 4 notches to maximum R3,720	Teacher's salary plus 4 notches to maximum R3,240
Lower D . . . . .	Teacher's salary plus 3 notches to maximum R3,480	Teacher's salary plus 3 notches to maximum R3,000
Lower E . . . . .	Teacher's salary plus 2 notches to maximum R3,240	Teacher's salary plus 2 notches to maximum R2,760

## VICE PRINCIPALS

<i>Grade of school</i>	<i>Men (per annum)</i>	<i>Women (per annum)</i>
Higher special . . . . .	R4,200 (fixed)	R3,720 (fixed)
Higher A . . . . .	R4,080 (fixed)	R3,600 (fixed)
Higher B . . . . .	R3,960 (fixed)	R3,480 (fixed)
Lower special . . . . .	Teacher's salary plus 4 notches to maximum R3,840	Teacher's salary plus 4 notches to maximum R3,360
Lower A . . . . .	Teacher's salary plus 4 notches to maximum R3,720	Teacher's salary plus 4 notches to maximum R3,240

## II. SPECIAL ALLOWANCE

33. In addition to their salaries, all European teachers who hold a teacher's diploma are paid a special allowance of R200 (£100) per year. This allowance was introduced in 1952 to attract and encourage teachers to exercise their profession in South West Africa.

34. As will appear from the foregoing tables the commencing salary of a married male teacher in the lowest category increased from R360 (£180) in 1926 to R1,206 (£603), plus a special annual allowance of R200 (£100), i.e., a total of R1,406 (£703), in 1963. This represents an increase of 291 per cent.

The maximum salary of such teacher increased from R810 (£405) in 1926 to R2,760 (£1,380), plus a special annual allowance of R200 (£100), i.e., a total of R2,960 (£1,480), in 1963. This represents an increase of 265 per cent.

### K. Expenditure by the South West Africa Administration on European Education

35. Particulars of expenditure by the Administration on the education of European children over various years are reflected in the following table:

<i>Year</i>	<i>Government schools : total and per capita</i>	<i>Private schools : total and per capita</i>	<i>Government and private schools combined : total and per capita</i>
1940	Total: R191,126 (£95,563)	R1,926 (£963)	R193,052 (£96,526)
	<i>Per capita :</i> R34.75 (£17 7s. 6d.)	R2.28 (£1 2s. 10d.)	R31.00 (£15 10s.)

Year	Government schools : total and per capita	Private schools : total and per capita	Government and private schools combined: total and per capita
1950	Total: R448,906 (£224,453)	R2,608 (£1,304)	R451,514 (£225,757)
	Per capita: R61.75 (£30 17s. 6d.)	R1.59 (£1 5s. 11d.)	R54.51 (£27 5s. 1d.)
1960	Total: R1,474,930 (£737,465)	R44,638 (£22,319)	R1,519,568 (£759,784)
	Per capita: R107.11 (£53 11s. 1d.)	R25.46 (£12 4s. 7d.)	R97.89 (£48 18s. 11d.)
1963	Total: R1,830,125 (£915,062)	R61,478 (£30,739)	R1,891,603 (£945,802)
	Per capita: R117.78 (£58 17s. 9d.)	R30.18 (£15 1s. 9d.)	R107.62 (£53 16s. 2d.)

The amounts reflected in the above table as *per capita* expenditure do not include hostel expenses, as the major portion thereof is recoverable from the parents of pupils boarding in school hostels<sup>1</sup>.

## L. Vocational and Technical Training

### I. AGRICULTURAL SCHOOLS

36. Two early attempts were made by the Administration to provide for training of European children in agriculture. The first was the establishment of an agricultural school at Gammams, a farm near Windhoek, where a practical course of two years was offered to students who had passed Standard VI. On completion of the course, trainees were placed with progressive farmers for further practical training<sup>2</sup>. The second was the establishment at Stampriet, in 1928, of a "Burger-skool", a country school where the main emphasis was placed on instruction in agricultural and practical subjects. Here boys and girls who had passed Standard VI could follow a two-years' course in horticulture, poultry farming, woodwork and metalwork (for boys), and domestic science (for girls). Cultural subjects, such as religious instruction, languages, history and civics, were also taught<sup>3</sup>.

By 1943 both these attempts at providing vocational training for future farmers had been abandoned for lack of support. Most parents, it appeared, preferred to let their children take the academic course offered at the secondary and high schools.

<sup>1</sup> *Vide* para. 5, *supra*.

<sup>2</sup> *Vide* Lemmer, *op. cit.*, p. 162.

<sup>3</sup> *Ibid.*, pp. 163-166.

At present the Agricultural Branch of the Administration offers a two-year practical training course in agriculture at the Neudamm Agricultural College near Windhoek. European boys in possession of the Junior or Senior Certificate are enrolled for this course, but preference is given to those who have obtained the Senior Certificate. The College can accommodate a maximum number of 32 students.

## II. SCHOOLS

37. In the differentiated secondary courses offered since 1955, provision is made for instruction in certain handwork subjects, such as woodwork and metalwork for boys, and domestic science and needlework for girls<sup>1</sup>. These courses also provide for the teaching of certain commercial subjects, bookkeeping, typewriting and shorthand<sup>1</sup>.

A system of evening classes for apprentices was introduced at Windhoek in 1961. Three lecturers were appointed for the purpose, and in 1962 a total of 47 apprentices attended lectures in motor mechanics theory, mathematics and machine construction and drawing.

Periodic investigations have shown that the demand for technical training is not such as to justify the high costs which would be involved in the creation of such facilities. Students wishing to receive technical training can proceed to any one of a number of technical schools in South Africa.

In 1955 there were 33 students from South West Africa at such institutions in South Africa. Four of them were girls taking courses in domestic science, while the 29 boys were taking 11 different courses at 11 different schools<sup>2</sup>. At present there are 76 boys and 17 girls taking technical courses at institutions in South Africa.

## III. TEACHER TRAINING

38. Before the Second World War very few matriculants from South West Africa took up teaching as a profession. There were never more than three per year, and in the 15 years from 1925 to 1939 an average of less than two per year. During that period South West Africa depended almost entirely on South Africa for its supply of European teachers.

Since the war there has been a considerable increase in the number of teacher trainees, both for primary and secondary work. This is probably to be ascribed largely to increased salary scales for teachers, and to the financial aid offered since 1950 by the Administration in the form of bursaries and loans.

Nevertheless there has been, and still is, a considerable shortage of properly qualified teachers. To relieve the situation, many married women are employed on a temporary basis, and use has to be made of persons not fully qualified to teach certain classes and/or subjects.

It has as yet not been considered feasible to train European teachers within the Territory. Student teachers have to attend teacher-training institutions of the Provincial Departments of Education in South Africa.

<sup>1</sup> *Vide para. 26, supra.*

<sup>2</sup> *Vide Report of the Education Commission 1958 (S.W.A.), para. 114 (b), p. 52.*

39. All teacher training provided for European students in South Africa since 1928 is post-matriculation. Most of the institutions offer a course of two years for women, with the option of a third-year's specialized course in infant school method, needlework, domestic science, music, art, physical education, or academic subjects. Men usually take a three-year course, specializing in subjects such as handwork, physical education, music, art or academic subjects.

Secondary teachers are trained at universities. The Lower Secondary Teachers' Diploma is obtained after three-years' post-matriculation study, the course being partly academic and partly professional. The lowest post-graduate certificate obtainable is the Secondary Teachers' Diploma.

Students at universities can also take degrees in education.

#### IV. TRAINING OF NURSES

40. As already stated<sup>1</sup>, there were no facilities in South West Africa for the training of European nurses before 1960. In that year a training school for European general nurses was established at the Windhoek State Hospital.

Trainees must hold a matriculation certificate, although a Matron may admit to the training course students who have obtained a first class pass in Standard VIII with, *inter alia*, mathematics and science as subjects.

In 1960 there were 47 trainees, in 1961 there were 53, and in 1962, 62.

#### M. Higher Education

41. The only post-matriculation education for European children in the Territory is provided by the Neudamm Agricultural College<sup>2</sup>.

The demand for higher education has never been such as to warrant the establishment of a local university, or a college for vocational training. All students who wish to attend a university or a college for vocational training proceed elsewhere, mainly to institutions in South Africa.

42. The Administration grants financial assistance of the following nature to such students:

- (a) A maximum of 50 merit bursaries of R120 (£60) per annum (plus loan of R300 (£150) per annum) are awarded each year to students who wish to take up teaching as a career. Candidates agree to take up teaching posts in South West Africa after completion of their studies for as many years as they receive financial assistance, but in any event for a period of at least two years.
- (b) A maximum of six bursaries, each of R400—500—500—600 (£200—250—250—300) are awarded annually to students who wish to qualify as secondary teachers.

These bursaries—which, like those mentioned under (c) below, are available to European, Native and Coloured students—are awarded on merit, and applicants undertake the same obligations to the Administration as set out in (a) above.

<sup>1</sup> *Vide* Chap. VI, para. 6, *supra*.

<sup>2</sup> *Vide* para. 36, *supra*.

- (c) A maximum of six bursaries, each of R400—500—500—600 (£200—250—250—300), are awarded annually in respect of courses followed at a university in South Africa. Awards are made on merit to encourage higher education in fields in which the Administration experiences a shortage of man-power.
- (d) In addition to the abovementioned bursaries, study loans are, as in the case of non-European students, available to European students who proceed to a university in South Africa.

#### N. Adult Education

43. Provision for adult classes has been made at Windhoek for a number of years. These classes offer instruction in English, Afrikaans, and German, some commercial subjects, and some hobby subjects, such as dressmaking, millinery, spinning and weaving, art, needlework and cabinet making.

Fees are charged for courses in these subjects, save in the case of apprentices, and the lecturers are paid by the Administration.

There has always been a demand for such courses at Windhoek, and during the last few years requests for similar classes have come from a few of the larger towns in the Territory.

In 1960 the control and organization of adult education was made the special charge of the Education Department's professional assistant, and the Administration's policy is to render this service in co-operation with local bodies. Such bodies are required to appoint local committees whose functions are, *inter alia*, to ascertain local needs and bring them to the attention of the Department, to create interest in the work, to make the necessary arrangements for classes, and to exercise a measure of control over the work in their respective centres.

It is the view of the Administration that the initiative in promoting this type of education should proceed from local bodies and that, although it should, initially at least, give financial assistance, the very usefulness of the system lies in its being maintained by private individuals or organizations.

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## CHAPTER VIII

### RESPONDENT'S REPLY TO THE ALLEGATIONS IN THE APPLICANTS' MEMORIALS

1. In Chapters II to VII above Respondent dealt with the history and development of education in South West Africa in the light of the particular circumstances of, and the conditions prevailing in, the Territory.

This Chapter deals specifically<sup>1</sup> with the allegations made by Applicants in their Memorials relevant to education—i.e., in Chapter V, Section B<sup>2</sup>, and Chapter V, Section C<sup>3</sup>.

2. With regard to Applicants' "Statement of the Law"<sup>4</sup>, Respondent refers to its submission in Book IV of this Counter-Memorial relative to Applicants' formulation, with reference to the provisions of Chapters XI, XII and XIII of the Charter of the United Nations, of so-called "legal norms". Respondent is, however, in agreement with Applicants to the extent that its own conception of its duties under Article 2 of the Mandate includes (to employ the Applicants' words) the "educational advancement" of the people of the Territory, and their "social development . . . based upon self-respect and civilized recognition of their worth and dignity as human beings"<sup>4</sup>.

Respondent has, as indicated in the foregoing account of the history and development of education in the Territory, conscientiously striven after attainment of these ideals, and has come to a stage where, after long perseverance, substantial results on an ever-increasing scale are being achieved with regard to Native education.

3. *Paragraphs 155 and 156*<sup>4</sup>.

(a) Subject to what is stated in sub-paragraph (b) below with regard to the Eastern Caprivi Zipfel, these paragraphs are admitted.

Particulars regarding the control and administration of education in South West Africa are contained in Chapter III above, from which it will appear that Respondent exercises control over education in the Territory (excluding the Eastern Caprivi Zipfel) through its representative, the Administrator, in whom vests the "general control, supervision and direction of education"<sup>5</sup>.

(b) Education in the Eastern Caprivi Zipfel is also under Respondent's control, but through the agency of the South African Department of Bantu Administration and Development<sup>6</sup>.

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<sup>1</sup> On the assumption stated in Chap. I, para. 6, *supra*, namely that the Mandate is still in force.

<sup>2</sup> I, pp. 152-153.

<sup>3</sup> *Ibid.*, pp. 165-166.

<sup>4</sup> *Ibid.*, p. 152.

<sup>5</sup> *Proc. No. 16 of 1926 (S.W.A.)*, sec. 2, in *Laws of South West Africa*, Vol. II (1923-1927), p. 228.

<sup>6</sup> *Vide* Chap. V, para. 82, *supra*.

4. *Paragraph 157*<sup>1</sup>.

This paragraph is correct in substance. The Commission and its report have repeatedly been referred to in the foregoing Chapters. In regard to Native Education the Commission's suggestion, referred to by Applicants, in fact read that "consideration should be given to the desirability of transferring Native education in South West Africa to the [South African] Department of Native Affairs (Bantu Education)"<sup>2</sup>.

It was decided, however, to leave the position as it was—at least for the time being.

5. *Paragraph 158*<sup>3</sup>.

(a) It is correct that the educational system of the Territory is organized in three separate divisions, in the sense that separate schools are maintained for European, Native and Coloured children.

At the time when the Mandate was assumed there were separate facilities for the children of the White group, and for the Native groups, and to a lesser extent also for the children of the Coloured group<sup>4</sup>. Under the Mandate the education laws of the Territory provided for separate facilities for the children of the different population groups<sup>5</sup>, a position which is still maintained.

It is denied that the policy of separation as applied by Respondent in the Territory constituted, or constitutes, the application of any doctrine, called by whatever name, according to which—

"... the status, rights, duties, opportunities and burdens of the population of the Territory are determined and allotted arbitrarily on the basis of race, color and tribe, without regard either to the needs or capacities of the individuals or groups affected or to the duties of [Respondent] under the Mandate"<sup>6</sup>,

as is alleged by the Applicants. As fully explained in Chapter IV A above, the policy of continuing with the provision of separate facilities does not rest on any arbitrary basis, or on disregard for the needs and capacities of the various groups and individuals affected thereby, nor was it in conflict with the duties imposed upon Respondent by the Mandate.

On the contrary, Respondent's policy in this regard is based on what are considered to be sound reasons, concerned solely with the needs and capacities of the respective groups, including specifically their "Social development . . . based upon self-respect and civilized recognition of their worth and dignity as human beings"<sup>1</sup>. Respondent believes that in so far as education is concerned, the provision of separate schools for the various groups is the best, and most probably

<sup>1</sup> I, p. 152.

<sup>2</sup> *Report of the Commission of Inquiry into Non-European Education in South West Africa (1958)*, Part I, para. B.157 (c), p. 144.

<sup>3</sup> I, pp. 152-153.

<sup>4</sup> *Vide* Chap. II, *supra*.

<sup>5</sup> *Vide* Chap. IV, paras. 2-4, *supra*.

<sup>6</sup> I, p. 153.

the only effective method of discharging its obligations under the Mandate in respect of each of these groups.

- (b) The honourable Court is respectfully referred to Chapter IV A above, where it is shown, *inter alia*, that differences between the White, Native and Coloured population groups of the Territory in regard to levels of development, cultures, languages and needs and capacities have at all times called for a policy of differentiation in the schooling of the children of the various groups<sup>1</sup>.

The system of having separate schools for different population groups, not only in South West Africa, but also in other mandated territories, was well known to the Permanent Mandates Commission and the Council of the League of Nations, and at no time during the existence of the League was it suggested that the system was educationally unsound or in conflict with Respondent's duties under the Mandate<sup>2</sup>.

Not only is the system of separate schooling in accordance with the wishes of the vast majority of the population of the Territory<sup>3</sup>, but it is also in line with the views of educationists of standing<sup>4</sup> and, in particular, gives effect to those views in so far as the Native population of the Territory is concerned, and also to the desire, shared by Africans generally in African territories, that education for the African should rest on a foundation of specifically African cultures and should serve to revive African civilizations<sup>5</sup>.

- (c) A system of mixed schooling in the Territory would prevent Respondent from doing justice to all the population groups, more particularly in the following respects:

- (i) promoting the development of the different languages spoken by the various groups, and applying the sound and accepted policy of mother-tongue education<sup>6</sup>;
- (ii) providing suitable syllabuses in accordance with the needs of the different groups<sup>7</sup>;
- (iii) fostering among the different groups, which constitute different social entities, an interest in the schooling of their children, and promoting participation by the different parent communities in such schooling<sup>8</sup>;
- (iv) providing facilities for each group in keeping with its particular need of education, in step with stages and trends of development, and in accordance with the opportunities, existing and in the course of creation, of employment for its educated youth<sup>9</sup>;

and generally in the development of education with due regard to the customs, cultures and stages of development of each of the population groups.

<sup>1</sup> *Vide* Chap. IV, paras. 2-43, *supra*.

<sup>2</sup> *Ibid.*, paras. 44-48.

<sup>3</sup> *Ibid.*, para. 50.

<sup>4</sup> *Ibid.*, paras. 51-52.

<sup>5</sup> *Ibid.*, paras. 54-61.

<sup>6</sup> *Ibid.*, paras. 8-22.

<sup>7</sup> *Ibid.*, paras. 23-31.

<sup>8</sup> *Ibid.*, paras. 32-43.

<sup>9</sup> *Ibid.*, paras. 63-74.

6. *Paragraph 159*<sup>1</sup>.

Applicants' statement that a European child has to attend school "until the age of 16 *and* completion of Standard VIII" (italics added) is not correct. The true position is that a child is obliged to attend school until completion of the year in which he becomes 16 unless he has passed Standard VIII before that time<sup>2</sup>. Before 1955 the minimum scholastic attainment required for exemption from compulsory attendance was Standard VI<sup>3</sup>.

The comparison of the education offered to European children in South West Africa with that given in the United Kingdom, the United States and the continental countries of Western Europe is substantially correct, except for local adaptations and limitations that will, to some extent, be apparent from the discussion of European education in Chapter VII above<sup>4</sup>.

7. *Paragraph 160*<sup>1</sup>.

- (a) It is true that education for the various Native groups and for the Coloured group has not yet been made compulsory in South West Africa, but in so far as it is suggested that this is because of unfair discrimination against the groups concerned, such suggestion is denied. Any suggestion that compulsory education for the Coloured or Native groups should, in the interest of the groups concerned, have been introduced before now is born of a failure to appreciate the facts and the factors involved—factors which are basically similar to those encountered by governments in many African territories.

Respondent does not wish to repeat what has already been said in this regard and respectfully refers to Chapter IV above<sup>5</sup>.

- (b) In regard to compulsory education for Coloured children, the position is that more than 80 per cent. of all Coloured children of school-age now attend school, although the wastage factor is still high, and that a stage has been reached where compulsory education can be selectively introduced for the Coloured group in particular areas. The 1958 Commission of Inquiry into Non-European Education recommended that the initiative in the matter be left to the Coloured school boards; and the Education Ordinance of 1962 empowers the Administrator to introduce compulsory education at any state school for Coloured children<sup>6</sup>.
- (c) In regard to the question of compulsory education for Native children in South West Africa, reference should be made to Chapters IV<sup>7</sup> and V<sup>8</sup> above, where Respondent dealt with various difficulties which

<sup>1</sup> I, p. 153.

<sup>2</sup> *Proc. No. 16 of 1926 (S.W.A.) as amended, sec. 87 (1), in Laws of South West Africa, Vol. II (1923-1927), p. 286.*

<sup>3</sup> *Vide Chap. IV, paras. 76-77, supra.*

<sup>4</sup> *Inler alia, the particulars of courses offered as set out in paras. 25-27 thereof.*

<sup>5</sup> *Vide Chap. IV, paras. 75-95, supra.*

<sup>6</sup> *Ibid., para. 78.*

<sup>7</sup> *Ibid., paras. 79-83.*

<sup>8</sup> *Vide Chap. V, paras. 2-30, supra.*

have served to retard the education of Native children in the Territory.

Similar difficulties have been experienced with regard to the education of Natives in South Africa<sup>1</sup> and in other territories in Africa<sup>2</sup>.

While it is Respondent's desire and aim to make education compulsory for all children in South West Africa<sup>3</sup>, it is, in view of the difficulties aforesaid, as yet not advisable or practicable to do so in respect of the Native groups, although selective application of the principle in particular areas may become feasible in the foreseeable future<sup>4</sup>. In other African territories universal compulsory education has, for similar reasons, not been feasible as yet<sup>5</sup>, or has, where in fact introduced by law, been impossible to implement<sup>6</sup>.

- (d) Respondent's efforts in promoting the education of the Native groups in South West Africa have resulted in the enrolment as at 1961 of approximately 44 per cent. of the school-age Native children in the Territory<sup>6</sup>, which compares very favourably with what has been achieved in other parts of the continent of Africa where education has had a much longer history, including the Applicant States<sup>7</sup>.
- (e) With regard to Applicants' allegation that "segments of the 'Native' and 'Coloured' population have requested compulsory education"<sup>8</sup>, Respondent respectfully refers to Chapter IV above<sup>9</sup>, where it is indicated that the 1958 Commission of Inquiry into Non-European Education in South West Africa was requested by the Coloured Teachers Association to recommend the introduction of compulsory education for Coloured children, but that the Commission made the more qualified suggestion that the initiative in the matter be left to the Coloured school boards<sup>9</sup>.

None of the Native groups requested the said Commission to recommend the introduction of compulsory education for Native children<sup>10</sup>. Occasional requests for compulsory education from Native parents in the past have shown that such parents failed to appreciate that failure to send a child to school under a system of compulsory education would make its parents liable to penalties at law<sup>11</sup>.

It is the policy of the Administration to give attention to all relevant factors before deciding that compulsory education can with advantage be introduced for some or all of the Native groups of the Territory, and to determine the time and manner of the introduction thereof in consultation with the groups concerned.

<sup>1</sup> *Vide* Chap. IV, paras. 86-88, *supra*.

<sup>2</sup> *Ibid.*, paras. 89-94, *supra*.

<sup>3</sup> *Ibid.*, para. 75.

<sup>4</sup> *Ibid.*, paras. 84-85.

<sup>5</sup> *Ibid.*, para. 94 (3).

<sup>6</sup> *Ibid.*, para. 85, and Chap. V, paras. 57-58, *supra*.

<sup>7</sup> *Vide* Chap. V, paras. 59-60, *supra*.

<sup>8</sup> I, p. 153.

<sup>9</sup> Para. 78.

<sup>10</sup> *Ibid.*, para. 80.

<sup>11</sup> *Ibid.*, para. 82.

8. *Paragraph 161*<sup>1</sup>.

This paragraph is admitted. For particulars as to the type of schools for Natives in South West Africa, reference should be made to Chapter V above<sup>2</sup>. The provision for the recognition of mission schools has proved beneficial for Native education: it encourages missions to provide better facilities, and serves to ensure a uniformly good standard of work. It is significant that a similar system seems to have been followed in other parts of Africa, i.e., of subsidizing "approved", or "aided" schools<sup>3</sup>.

9. *Paragraph 162*<sup>1</sup>.

- (a) It is correct that comparatively few schools provide a course of instruction beyond Standard VI, but it is incorrect to say that "Opportunity for education beyond 'Standard VI' for 'Native' and 'Coloured' children is almost negligible". There are at present four schools for children of the Native groups in the Territory which offer secondary courses, including one high school (the Augustineum<sup>4</sup>). All four of these institutions have hostel facilities. At the Augustineum, as pointed out before<sup>5</sup>, students receive free board and lodging, free books, and free transport to and from their homes. Despite all the facilities offered, the numbers of those who are willing to utilize them are disappointingly small<sup>5</sup>. There is no objection of principle or policy to establishing further government high schools for Natives, but there can be no point in doing so when full use is not made of the existing facilities at the Augustineum.

As far as Coloured education beyond Standard VI is concerned, there is at present one high school with hostel facilities. This is just about sufficient to cope with the present demand, but a new high school with full hostel facilities is now in the course of construction at Rehoboth and further schools will be built at Wiidhoek and Keetmanshoop in the near future.

- (b) As to Applicants' allegation that instruction reaches the Standard VI level "only when there are sufficient pupils to make the addition of classes and teachers appear justifiable to the Territorial Administration", the position is that a class can be established when there is a minimum of five pupils for such class, save in Ovamboland, where the minimum is ten<sup>6</sup>.

The requirements, though minimal, cannot be dispensed with in view of the shortage of teachers, which necessitates regulation to ensure that available teachers are utilized in a manner which would benefit the maximum number of children. Respondent refers in this regard to Chapter V above<sup>7</sup>, where particulars are given of the

<sup>1</sup> I, p. 153.

<sup>2</sup> Paras. 38-40.

<sup>3</sup> *Vide* Chap. V, para. 37 (a) (Southern Rhodesia); para. 37 (b) (Nyasaland); para. 37 (e) (Ruanda-Urundi); para. 37 (g) (Ghana).

<sup>4</sup> *Vide* Chap. V, paras. 47, 52, 67, 68.

<sup>5</sup> *Ibid.*, para. 47.

<sup>6</sup> *Ibid.*, paras. 46 and 52.

<sup>7</sup> *Ibid.*, paras. 22-30.

efforts which have been made to train Native teachers and to improve their qualifications, and of the difficulties which have been encountered in that regard. It also appears from the same Chapter that a shortage of properly qualified teachers has similarly retarded education in other countries in Africa<sup>1</sup>. Such shortages inevitably result in most education being limited to the primary level.

Moreover, the position obtains in European schools also that the highest standard in the curriculum of any particular school is subject to the approval of the Director of Education<sup>2</sup>.

In 1963, for example, only 13 government schools out of a total of 61 offered classes above Standard V<sup>3</sup>.

Such regulation of curricula, both in the case of European and Native schools, is a practical one designed to operate in the interests of education, and nothing sinister attaches to it.

#### 10. Paragraph 163<sup>4</sup>.

Applicants, for the purpose of comparing enrolment at school of European and Native children in South West Africa, make certain calculations which are partially based on estimates.

It would be safer to make calculations on known, rather than on estimated, figures. According to the 1960 census the European population in that year was 73,464. The number of European children at government and private schools was 16,257, which means that about 22.13 per cent. of the total European population attended school in South West Africa<sup>5</sup>.

The Native population of the Territory (excluding the Eastern Caprivi Zipfel) in 1960 was 412,735, and the number of children of the Native groups at school was 37,801<sup>6</sup>. This means that about 9.16 per cent. of the total Native population attended school.

As has been shown in Chapters IV and V above<sup>6</sup>, many factors beyond Respondent's control account for the difference in school attendance between the groups—factors which have, to a greater or lesser degree, also manifested themselves in a number of other territories in Africa where school attendance statistics are remarkably similar to, and in some cases considerably lower than, those of the Native groups in South West Africa<sup>7</sup>.

Perhaps the most important feature, however, is the constant and steady increase in the percentage of children of the Native groups in South West Africa who attend school. In 1951, as shown above<sup>5</sup>, the percentage of children of school-age who attended school was about 30.3, and by 1960 it had risen to 39.8. The percentage increase in the

<sup>1</sup> *Vide* Chap. X, paras. 31-32.

<sup>2</sup> *Proc. No. 16 of 1926 (S.W.A.), sec. 32 (1), in Laws of South West Africa, Vol. II (1923-1927), pp. 244-246.*

<sup>3</sup> *Vide* Chap. VII, para. 22, *supra*.

<sup>4</sup> *I*, p. 154.

<sup>5</sup> *Vide* Chap. V, para. 57, *supra*.

<sup>6</sup> *Vide* in particular Chap. IV, paras. 75-85, and Chap. V, paras. 2-30, *supra*.

<sup>7</sup> *Vide* Chap. IV, paras. 89-94, and Chap. V, paras. 59-60.

Native population between 1951 and 1960 was about 17.4, and during the same period the school population increased by 54.1<sup>1</sup>.

In 1961 the percentage of Native children of school-age attending schools in South West Africa was approximately 44<sup>1</sup>.

### II. *Paragraph 164*<sup>2</sup>.

The system of recognizing mission schools for the purposes of payment of subsidies is not applied in the northern territories. For a long time the general standards of the schools were such that few, if any, could comply with the requirements for recognition as applied in the Police Zone. In the interests of education the Administration therefore decided on a policy of paying lump-sum subsidies to the missions concerned, to be used at their discretion, instead of giving recognition—and, therefore, financial aid—only to such individual schools as could possibly be regarded as complying with the requirements therefore<sup>3</sup>.

It is true that in the northern territories most mission schools offer courses of study up to approximately Standard III only. Until 1961, in the northern territories, and until 1962 in the Police Zone, completion of Standard III represented six years' schooling, viz., three sub-standards and then three years thereafter. Since the years mentioned relative to the said areas, completion of Standard III has represented five years' schooling.

Educational advancement in the northern territories has been slower than in the Police Zone, where education has had a longer history<sup>4</sup> and where the Natives have been in closer contact with the education of the European and with economic development. The particular conditions in the northern territories which have retarded educational development, and the gradual progress that has been made, were described in Chapter V<sup>5</sup>. A factor which particularly inhibited progress was the great shortage of teachers with the necessary qualifications to teach pupils beyond the lower primary standards<sup>6</sup>. For a long time circumstances were such that the minimum requirement for admission to a teacher-training course could not be raised beyond Standard II. Teachers with such qualifications could hardly be entrusted with the teaching of children beyond Standard II or III, and there were no European teachers who could be employed to do the necessary work. The only remedy was to try to raise the qualifications of teachers gradually, and it was not until 1961 that the minimum entrance qualification to a teacher-training course in the northern areas could be raised to Standard VI in the case of the one training school and to Form I (Standard VII) in the case of the other one<sup>7</sup>. In the Police Zone Standard VI became the minimum qualification in 1952<sup>8</sup>.

In 1961, as shown in Chapter V above<sup>9</sup>, the lower primary schools,

<sup>1</sup> *Vide* Chap. V, para. 58.

<sup>2</sup> I, p. 154.

<sup>3</sup> *Vide* Chap. V, paras. 51 and 80, *supra*.

<sup>4</sup> *Vide* Chap. II, paras. 1-2, *supra*.

<sup>5</sup> *Vide* Chap. V, paras. 49-54.

<sup>6</sup> *Ibid.*, paras. 22-30.

<sup>7</sup> *Ibid.*, para. 27.

<sup>8</sup> *Ibid.*, para. 26.

<sup>9</sup> *Ibid.*, para. 35.

85 in number, of the Finnish Mission in Ovamboland were taken over by the Administration and converted into government community schools. This was done as part of a policy to take over all mission schools in the Territory. There are already indications of more rapid progress under the new system whereby Native parents play an active part in the promotion of education.

It is true, as is alleged by Applicants, that the larger part of the Native population live in the northern territories beyond the Police Zone. While it is also true that most of the schools in the northern territories at present offer courses of study up to approximately Standard III only, it is misleading to suggest that Standard III "represents the limit of education practically available to most of the 'Native' children"<sup>1</sup>. The establishment of higher classes depends only on the enrolment of the requisite number of pupils to constitute a class and, naturally, on the availability of a teacher. This is a provision which also applies in the Police Zone<sup>2</sup>. As has been indicated<sup>3</sup>, there has, in recent years, been a steady increase in the number of pupils enrolled in the higher primary standards, and it is confidently expected that the numbers will rise even more rapidly in future, particularly as more schools are converted into government community schools.

12. *Paragraph 165*<sup>1</sup>.

It is true that there is only one high school for children of the Native groups (i.e., up to Standard X), but, as has been shown, the facilities offered at this school are not nearly utilized to the full despite free provision of everything required by pupils, including travelling, board and lodging, books and pocket money<sup>4</sup>. It is also correct that there is, at present, only one high school for Coloured children. In this regard Respondent refers to what has been stated above as to present demand for and provision of more facilities<sup>5</sup>.

In paragraph 165 of the Memorials the impression may be created that all European schools have a full range of classes up to Standard X. This is not so. Only 10 of the 61 government schools, and 3 of the 13 private schools, are high schools<sup>6</sup>.

The facilities provided for the different groups accord with the demand for high-school education in each group. The system itself therefore provides, in the case of each of the population groups, in so far as is required, a full range from the sub-standards through the primary standards, the secondary standards and the high-school standards, to Standard X.

13. *Paragraph 166*<sup>1</sup>.

(a) It is correct, as the Applicants state, that in 1959 there were 61 hostels for European children in the Territory: of these, 60 were

<sup>1</sup> I, p. 154.

<sup>2</sup> *Vide* Chap. V, paras. 46 and 52, *supra*.

<sup>3</sup> *Ibid.*, paras. 55-56.

<sup>4</sup> *Vide* Chap. V, para. 47, *supra*.

<sup>5</sup> *Vide* para. 9 (a), *supra*.

<sup>6</sup> *Vide* Chap. VII, para. 22, as to government schools.

government hostels and the other one a state subsidized hostel at a government school. There were also five private school hostels. At present there are 73 hostels, government and private, for European children <sup>1</sup>.

For Native children there are at present 31 schools with hostel facilities in the Police Zone (including the hostels at the Augustineum and in the Aminuis and Waterberg East Reserves), and 27 mission schools which have hostel facilities in the area outside the Police Zone <sup>2</sup>.

- (b) One of the reasons why the provision of hostels for Natives cannot proceed on the same scale as for Europeans, is that in the case of the latter the parents to a great extent bear the cost of the facilities provided. The present policy is to fix hostel fees at such a level that about 80 per cent. of the actual cost of the boarding of White children is recoverable from the parents <sup>1</sup>. Non-White parents, on the other hand, are generally not in a position to make such a substantial contribution in this regard, or any contribution at all.
- (c) Even amongst the rural Native groups there are parts in which Natives live in fairly close proximity to one another, e.g., along the banks of the northern rivers. In such cases schools can be spaced within reasonably short distances of the homes of a large proportion of the children, and many of the other school-going children can be, and frequently are, accommodated either in mission hostels, or else with relatives or friends in accordance with the customary practice of mutual help which exists amongst members of Native groups. The need for hostel accommodation is therefore not such a universal one in the case of the rural Native population as in the case of the rural European population, living spread-out over the southern and drier parts of the Territory, where farming units must necessarily be large in order to be economically viable. Nevertheless, there are portions of the Native population that are in this respect similarly situated to the rural European population, and for whose needs increasing provision is being made—as has been indicated in Chapter V <sup>3</sup>, and is summarized again below.
- (d) The question of increasing hostel facilities for Native children cannot, however, be considered in isolation from other factors and problems affecting Native education. There is particularly the problem of a shortage of teachers. Merely to provide more hostels, and thereby to increase the enrolment of Native pupils, cannot, in such circumstances as prevail, really solve the problem. As Respondent has indicated, the presently available supply of teachers can barely cope with Native children who already attend school <sup>4</sup>.
- (e) With due regard to the above considerations, the task of providing for the needs of Natives living in spread-out conditions is proceeding with as much expedition as is reasonably practicable. The Administration has set itself the aim of establishing at least one higher primary school in each Reserve and of making funds available for the

<sup>1</sup> *Vide* Chap. VII, para. 5, *supra*.

<sup>2</sup> *Vide* Chap. V, para. 11, *supra*.

<sup>3</sup> *Ibid.*, paras. 12-13, *supra*.

<sup>4</sup> *Vide* Chap. IV, para. 83, *supra*.

erection of hostels in conjunction with such schools<sup>1</sup>. In the case of community schools, the Administration has undertaken to subsidize school boards for the erection of hostels in their areas<sup>2</sup>.

- (f) Moreover, as already pointed out, Respondent is endeavouring to improve the educational facilities for non-Whites who are employed on European farms by encouraging farmers to establish farm schools which are subsidized by the Administration, and has already succeeded in doing so to a certain extent<sup>3</sup>. As was also pointed out above<sup>3</sup>, the Administration has agreed to grant long-term loans to mission societies to enable them to erect hostels for farm children, and, furthermore, to subsidize the missions in respect of the provisions of board and lodging at such hostels. The missions may erect such hostels on farms, in the Reserves, or in Native residential areas in towns in the Police Zone. As has also been stated above, the Rhenish Mission has already indicated its desire and preparedness to erect hostels at 22 places where it has schools, and it is hoped that this new system will progressively alleviate the position in regard to the schooling of Native children on European farms.
- (g) In regard to the statement by the 1958 Commission of Inquiry into Non-European Education, as quoted by Applicants in paragraph 166 of the Memorials<sup>4</sup>, Respondent admits that it was, at the time when the statement was made, the policy not to allow school hostels in Native locations in urban areas. The said policy was part of Respondent's general policy to avoid arrangements, which could tend or contribute towards an undue increase in the numbers of Native residents in urban areas. Because of the slow progress of the system of farm schools for Native children, as recommended by the said Commission, Respondent has since decided to permit the establishment of school hostels in Native residential areas in urban centres<sup>5</sup>.
- (h) It will be evident from the above that by merely comparing figures without considering any attendant facts and conditions which serve to present a balanced picture, Applicants must necessarily arrive at erroneous conclusions.

#### 14. Paragraph 167<sup>6</sup>.

- (a) The Neudamm Agricultural College is not entirely "above the level of the high school", for students who have passed Standard VIII can be enrolled. Otherwise the paragraph is admitted. This College provides facilities for 32 European students<sup>7</sup>.

It is specially designed to cater for the farming needs of the White group which, at present relative stages of development, differ from those of the Native groups. In view particularly of the small number of Natives that have thus far reached the Standard VIII educational

<sup>1</sup> *Vide* Chap. V, para. 48, *supra*.

<sup>2</sup> *Ibid.*, para. 70.

<sup>3</sup> *Ibid.*, para. 13.

<sup>4</sup> I, pp. 154-155.

<sup>5</sup> *Vide* Chap. V, para. 13, *supra*.

<sup>6</sup> I, p. 155.

<sup>7</sup> *Vide* Chap. VII, para. 36, *supra*.

level<sup>1</sup>, it follows that a similar school in the Territory for those interested in agriculture would at the present stage be too far advanced to be practicable<sup>2</sup>. Respondent, however, realizes fully the need for the teaching of elementary farming methods at a more primary level to rural Native children generally, and particularly to those children who are likely to go back to the land and to those who may, as teachers or otherwise, later be called upon to take an active part in rural development projects.

It is, *inter alia*, for these reasons that a more pronounced agricultural bias is being given to primary education in Native areas, and that agriculture is taught as a subject in secondary classes<sup>3</sup>. In future it will probably have to be considered whether there should not be adopted a system such as operates in South Africa, where each major Bantu group either already has, or will soon be provided with, its own institutions for more advanced agricultural training—e.g., at Fort Cox in the Ciskei, Tsolo in the Transkei, and Arabie in the Northern Transvaal—and where specific instruction is given in regard to the types and methods of farming practised in each particular area. Native students of South West Africa who have passed Standards VIII, IX or X may enrol at agricultural schools for Bantu in South Africa, and the Administration is prepared to grant financial assistance to all suitable applicants who wish to receive training at such institutions<sup>4</sup>.

- (b) Although separate industrial schools for Natives were established in the Territory, such schools had to be closed for lack of support<sup>5</sup>.

Industrial courses of a type which are considered necessary for the development of the Territory are, however, offered to Native students at the Augustineum<sup>6</sup>. Since 1956 three-year training courses have been offered at this institution in carpentry, tailoring and masonry. The training is entirely free, and students receive free board and lodging. The numbers of those who enrol for the various courses are disappointingly small, and since 1961, e.g., not a single student has enrolled for the masonry course<sup>6</sup>.

As has already been stated<sup>7</sup> the Administration intends to institute vocational training sections in conjunction with the teacher training schools in Ovamboland.

- (c) The small number of students in South West Africa, European and non-European, who are interested in advanced vocational training does not at present justify the establishment of institutions in the Territory for such training.

Facilities for such training are, however, readily available in South Africa, and Europeans and non-Europeans who wish to take courses in South Africa are granted financial assistance in the form of loans and bursaries<sup>8</sup>.

<sup>1</sup> *Vide* Chap. V, paras. 45, 47, 51 and 56, *supra*.

<sup>2</sup> *Vide* also sub-para. (b), *infra*, as to the lack of support for other technical courses offered to Natives.

<sup>3</sup> *Vide* Chap. VI, para. 1, *supra*.

<sup>4</sup> *Ibid.*, para. 5.

<sup>5</sup> *Ibid.*, para. 2.

<sup>6</sup> *Ibid.*, para. 3.

<sup>7</sup> *Ibid.*, para. 4.

<sup>8</sup> *Ibid.*, paras. 5<sup>a</sup> and 24, and Chap. VII, para. 42, *supra*.

15. *Paragraph 168*<sup>1</sup>.

- (a) Applicants' statement that Natives may receive training as teachers at only two training schools within the Territory is not correct.

Within the Police Zone there are two institutions for the training of teachers, namely a government institution, the Augustineum at Okahandja, and a Roman Catholic training school at Doebra. In the northern territories outside the Police Zone there are also two training institutions, namely at Onguedira and Ongandjera in Ovamboland<sup>2</sup>.

- (b) These training schools are at present sufficient to cater for all Native students who wish to be trained as teachers. In fact many more students can be accommodated at these institutions than attend them at present, despite all the special encouragements offered<sup>3</sup>.

No teacher-training schools are provided for the White group in the Territory. This is so because the numbers involved do not justify the establishment of such institutions in the Territory<sup>4</sup>. Europeans who wish to become teachers can avail themselves of training facilities in South Africa.

16. *Paragraph 169*<sup>1</sup>.

- (a) In so far as this paragraph may create the impression that nothing is being done in the Territory to introduce non-European women—in contrast with European women—into the nursing profession, it is not correct.

As stated in Chapter VI above<sup>5</sup>, there were no facilities for the training of *general* nurses, European or non-European, in the Territory until 1960, when a training school for European general nurses was established at the Windhoek State Hospital.

Even before that date a scheme was introduced for the training of non-European girls as *auxiliary* nurses in the Police Zone, and since 1959 training schools for such nurses have been established at the state hospitals of Windhoek, Grootfontein, Otjiwarongo, Gobabis, Walvis Bay, Keetmanshoop and Luderitz<sup>6</sup>.

At present there are 64 non-European student nurses in training as *auxiliary* nurses in the Police Zone<sup>6</sup>.

- (b) In the northern territories outside the Police Zone *auxiliary* nurses have been trained at the Finnish Mission Hospital at Onandjokwe for more than 30 years. This hospital was approved as a training school for auxiliary nurses by the Nursing Council in 1961, and at present there are 27 pupil auxiliary nurses in training at this centre. The hospital at Runtu in the Okavango has also applied for recognition as a training school for auxiliary nurses<sup>5</sup>.

<sup>1</sup> I, p. 155.

<sup>2</sup> *Vide* Chap. V, para. 22, and Chap. VI, para. 4, *supra*.

<sup>3</sup> *Vide* e.g., Chap. V, para. 29, *supra*.

<sup>4</sup> *Vide* Chap. VII, para. 41, *supra*.

<sup>5</sup> *Vide* Chap. VI, para. 6, *supra*.

<sup>6</sup> *Ibid.*, para. 10.

- (c) Facilities and opportunities for the training of non-European auxiliary nurses in the Territory are ample, and even more will be created when the new state hospital at Okatana in Ovamboland which is now in the course of construction, is completed <sup>1</sup>.
- (d) With regard to the training of *general* nurses, it has already been stated that the Administration is keen on offering such training in the Territory to non-European girls <sup>2</sup>. There are, however, as yet too few non-European girls with the necessary scholastic qualifications (at least Standard VIII) who are interested in nursing to justify the establishment of such a training scheme <sup>3</sup>.

Until such a scheme can be introduced in the Territory, non-European girls from South West Africa who have the necessary qualifications and are desirous of being trained as general nurses can enrol for training courses in South Africa. Since 1958 approximately 12 Coloured girls from South West Africa have proceeded to South Africa for training as nurses. Two Herero girls have completed the nurses' training course in South Africa, and at present two others are following a nurses' course in South Africa <sup>2</sup>.

17. Paragraphs 170 to 176 <sup>4</sup>.

- (a) Respondent denies the allegation that the facilities and opportunities available in South Africa to Natives or Coloured persons for training as nurses are limited.

Facilities and opportunities in South Africa for the training of nurses, whether Native, Coloured or European, are more than adequate <sup>5</sup>.

- (b) It is true the Nursing Act, 1957 (Act No. 69 of 1957) contains provisions, *inter alia*, as set forth in paragraphs 171 to 176 of the Memorials, and that the Act is applicable in South West Africa. Respondent, however, denies Applicants' charges that Natives and Coloured persons can enter the nursing profession "only on a plane maintained and stigmatized as inferior", or that there is a "scheme to confine them to a status of publicly proclaimed inferiority".
- (c) The Act gives effect to Respondent's policy of providing, as far as is practicable, separate hospitalization and health services for the different population groups. As natural corollaries, the separate training of the different groups in the nursing profession <sup>6</sup>, and the enrolment of the groups in separate registers <sup>7</sup>, were in practice found to be in the best interests of each of the groups concerned.
- (d) The training of non-European nurses is in no way inferior to that of European nurses. The training is the same. All those in training study the same syllabuses and take the same examinations, both for registration and for enrolment in terms of the Nursing Act. The only difference is that the period of training for Native nurses is six months longer than for European and Coloured nurses <sup>6</sup>.

<sup>1</sup> *Vide* Chap. VI, para. 8.

<sup>2</sup> *Ibid.*, para. 9.

<sup>3</sup> *Ibid.*, paras. 6 and 9.

<sup>4</sup> *I*, pp. 155-156.

<sup>5</sup> *Vide* Chap. VI, paras. 13-14, *supra*.

<sup>6</sup> *Ibid.*, para. 17.

<sup>7</sup> *Ibid.*, paras. 18-19.

Experience has shown that Native students need more time to adapt themselves, and the first six months of their course is devoted largely to this purpose. The extra period of training for Native trainees was introduced for their benefit, and treatment on a par with trainees of the other groups would in this respect be to their detriment <sup>1</sup>.

There is no difference in the types of posts which European and non-European nurses can hold. Non-Europeans in South Africa occupy, e.g., the posts of matrons of hospitals.

- (e) It is true that, in terms of the Nursing Act, non-European nurses have lesser rights in the *control* of the nursing profession than European nurses, but this is no "publicly proclaimed inferiority" in the sense that non-European nurses are held in less esteem than European nurses. On the contrary, the purpose of the arrangement is that it is to be temporary and transitional only, so as to permit non-European nurses to develop towards self-control of their own professional organizations in due course <sup>2</sup>. Such separate professional organizations are intended to be established for the non-White groups as soon as they have reached the stage where they can assume control thereof <sup>3</sup>.

Meanwhile the non-European groups play an effective part in the profession by means of their advisory boards and committees, and under the guidance of experienced European members of the Council and Board of the Association they are steadily gaining greater experience and developing a greater sense of responsibility and independence. These arrangements accordingly provide an effective training-ground for non-European nurses to take complete charge of the nursing of their own people, and of the management and control of their own respective branches of the profession—far more so than would have been the case in circumstances of their participation, as minority groups, in one integrated professional organization <sup>4</sup>.

18. *Paragraph 177* <sup>5</sup>.

- (a) It is correct that there are no facilities in the Territory for higher education for any of the population groups. The demand therefor has never been such as to justify the establishment of such institutions <sup>6</sup>.

It is also correct that the Administration grants financial assistance in the form of loans and bursaries (grants) to enable students from the Territory to pursue their studies in South Africa <sup>7</sup>.

The particulars given by the Applicants for the years 1953-1954 and 1954-1955 are not correct. In 1953, 44 students received loans or bursaries (30 in respect of education courses, and 14 in respect of

<sup>1</sup> *Vide* Chap. VI, para 17.

<sup>2</sup> *Ibid.*, paras. 18-19.

<sup>3</sup> *Ibid.*, paras. 17-19.

<sup>4</sup> *Ibid.*, para. 18.

<sup>5</sup> I, p. 157.

<sup>6</sup> *Vide* Chap. VI, para. 21, *supra*.

<sup>7</sup> *Ibid.*, paras. 24-25.

other courses); in 1954, 33 students received such aid (20 in respect of education courses, and 13 in respect of other courses).

Although most recipients of aid take teaching courses, the position is that applicants can take whatever course they wish if it has the approval of the Administration. Aid is not limited to any particular course, save where bursaries are made available specially for teaching courses<sup>1</sup>.

- (b) It is true that no non-European students have as yet won any of the merit bursaries referred to above.

It is only as from 1957 that Coloured students have attained Standard X certificates in South West Africa, thereby becoming eligible for such bursaries. Since then study loans have been granted to 39 Coloured Standard X students to follow teaching courses in South Africa. One Standard X student was granted a loan to take a medical course in South Africa. At the end of 1961 five applications for aid were received by the Administration from Coloured persons, and four were granted. Two are matriculants taking a B.Comm. course at the University College of the Western Cape in South Africa.

- (c) As far as Natives are concerned, it was only at the end of 1960 that the first students wrote the Standard X examination<sup>2</sup>. Three Natives have thus far applied for and been granted loans for further study<sup>3</sup>. There is no limit to the number of loans that may be granted, and the Administration would welcome more applications by Native students.

As has been stated<sup>4</sup>, provision has now been made for bursaries specially for Natives.

- (d) It is only because of the fairly recent establishment of high-school courses, and the small number of non-European students that have completed such courses, that relatively few loans have thus far been applied for by non-European matriculants. In time there will no doubt be more non-White applicants for loans and bursaries.

#### 19. Paragraphs 178 and 179<sup>5</sup>.

- (a) In South Africa there are separate facilities for higher education for each of the population groups—Bantu, Coloured, Indian and European.
- (b) Higher-education facilities for Natives of South West Africa are available at the following institutions in South Africa:
- (i) The University College of Fort Hare, at Fort Hare, Cape Province.
  - (ii) The University College of the North, Turfloop, Pietersburg, Transvaal.
  - (iii) The University College of Zululand, Ngoye, Natal.
  - (iv) The Medical School for non-Europeans of the University of Natal.

All four institutions are residential institutions.

<sup>1</sup> *Vide* Chap. VI, para. 25.

<sup>2</sup> *Vide* Chap. V, para. 47, *supra*.

<sup>3</sup> *Vide* Chap. VI, para. 24, *supra*.

<sup>4</sup> *Ibid.*, para. 25.

<sup>5</sup> I, p. 157.

Native students can also enrol at the University of South Africa, which is not a residential university, but conducts all its teaching—save for vacation courses—by means of correspondence. With the consent of the Minister of Bantu Education, Natives may also enrol at European universities in South Africa <sup>1</sup>.

- (c) There are several universities for Europeans in South Africa, and a separate university college for Coloured students at Bellville, near Cape Town <sup>2</sup>. Coloured students can also enrol at the University of South Africa <sup>1</sup> and at the Medical School for non-Europeans at the University of Natal <sup>1</sup>. With the permission of the responsible Minister, Coloured students may also enrol at European universities.
- (d) Respondent has dealt with the reason for the legislation in accordance with which separate facilities for the higher education of the different population groups are provided in South Africa <sup>3</sup>. Respondent considers that its policy is in the best interests of each of the population groups, that it is educationally sound and in keeping with the present trend in other States in Africa to "Africanize" education for the African <sup>4</sup>.
- (e) The facilities for higher education for Natives in South Africa compare favourably with those in other African territories <sup>1</sup>. The standard of work done at the non-European university colleges is in no way inferior to that of European universities <sup>1</sup>.
- (f) With regard to Applicants' allegations, it is not appreciated why the existence of European universities should represent a "significant opportunity" for European students, while the existence of similar institutions for Coloured and Native students should be styled "a reminder of opportunities denied" to non-European students, even though non-European students formerly attended some of the European universities. The circumstances in which this practice arose, and its temporary nature, have been fully explained <sup>5</sup>.

Why Applicants speak of "only two limited exceptions" in paragraph 178 is not understood, when the true facts are as set out in sub-paragraphs (b) and (c) above.

The statement regarding the University of South Africa in the last sentence of paragraph 178 is misleading. All students of the University of South Africa take their courses by way of correspondence. Vacation courses are also held, and the same lectures are given to all students—non-White and White—who attend them.

Finally, it is not understood why the University College at Fort Hare should be called the "only . . . university of any sort" to the exclusion of the others mentioned above.

## 20. Paragraph 180 <sup>6</sup>.

- (a) The matter raised by Applicants in this paragraph of the Memorials must be viewed against the background of South African history of

<sup>1</sup> *Vide* Chap. VI, para. 23, *supra*.

<sup>2</sup> *Ibid.*, para. 38.

<sup>3</sup> *Ibid.*, paras. 34-36.

<sup>4</sup> *Vide* Chap. IV, paras. 54-59, and Chap. VI, paras. 39-42, *supra*.

<sup>5</sup> *Ibid.*, paras. 29-34.

<sup>6</sup> I, pp. 157-158.

social and economic conditions, past and present, and of certain basic considerations which contribute towards the motivation of Respondent's policy of the separate development of the European and Bantu population groups of the country.

In view of the consideration already given to these matters in earlier parts of this Counter-Memorial, Respondent does not propose to deal with them in detail again, but will make brief reference only to certain aspects which are relevant to the issue raised by Applicants.

- (b) It is Respondent's belief that the interests of the European and Native groups can best be served, and that peaceful co-existence between them can best be secured, by a policy which provides for their separate development, the goal aimed at being a situation where the Bantu groups will have self-government and, eventually, full independence in their own homelands, and where economic relations between these homelands and the White areas will be such as to amount to a position of economic interdependence.

In the process of advancement towards this goal, measures have been and are constantly being taken to develop the Bantu areas, and it is Respondent's belief that the Bantu themselves should play an active part in this development. In this process of development Respondent, through its Departments of Bantu Administration and Bantu Education, employs and trains Bantu who can contribute to the development of their areas and to the advancement of their own people.

- (c) A fact of which Respondent must, and does, take cognizance, is that there has, throughout South Africa's history, been social separation between the White and Bantu groups; that the members of each group prefer to associate with members of their own group; and that certain kinds of close contact between members of the two groups, particularly in the more intimate spheres, tend to create friction.
- (d) The aforementioned factors, accentuated in all probability in the case of the European group by the fact that they have for a long time occupied a position of guardianship and leadership over the Bantu groups, also in the economic field, have limited relationships between Europeans and Bantu largely to those of tutors and employers, on the one hand, and pupils and employees, on the other, and have, furthermore, as at the present stages of development of the respective groups, resulted in the factual situation that many Europeans, in all probability the vast majority, are not prepared to serve in positions where Bantu are placed in a position of authority over them.
- (e) A further important facet of the aforementioned factors is that a Bantu who qualifies himself for a profession in which he will, because of the stage of advancement of his own group, have to depend for his livelihood on the services of European employees, or on European patronage, runs a grave risk of total frustration.
- (f) The matters referred to in sub-paragraphs (c), (d) and (e) above are social phenomena which exist as facts, independently of any governmental policy, legislation or administrative practices—as indeed they manifest themselves, to a greater or lesser extent, in mixed or plural communities throughout the world. Depending upon

the exact circumstances of a particular situation, the phenomena may partake of the nature of group preferences, group self-protection group assertiveness, group conceptions of differences in social and cultural level, or sometimes simply group prejudices. Whatever their exact nature or causes, and whatever the moral rights or wrongs pertaining to them in particular situations, there can be no denial that such group reactions exist as facts of which due cognizance must needs be taken by any realistic government.

- (g) In more recent times policies have been devised in various parts of the world with the specific ideal, to which Respondent wholeheartedly subscribes, of eradicating, avoiding or reducing to a minimum all undesirable aspects and manifestations of such group reactions, such as unfair discrimination, domination of one group by another, and the like. The problem does not lie with the ideal, but with practical means of achieving it in the diverse conditions existing in various plural communities; and frequently an important aspect of the problem is to find a just and proper balance between legitimate but competing or conflicting aspirations of various groups. Whereas policies aiming at a solution of the problem are in some countries proceeding in the direction of attempts at forced integration, with or without qualifications. Respondent is, for reasons explained earlier, fully convinced that such policies cannot possibly achieve a just and fair solution either in South Africa or in South West Africa, and that a solution is to be sought on the basis of separate development as set out, *inter alia*, in sub-paragraph (b) above.
- (h) An important motivating factor in regard to this policy has always been the advantage which it involves for educated and more advanced members of the Bantu groups, in that they can step into higher grades of employment specially intended for them in planned and positive programmes for advancement of their own peoples—*vis-à-vis* the large measure of friction, negation and frustration that must inevitably arise for them, independently of any government policy or legislation, from attempts at free competition with members of the White population group in the higher strata of the economic, social and professional life of that group.

As a counter-part to the factor just mentioned, the policy of separate development takes due cognizance of the fact that its application is at present passing through a stage of transition, and aims at doing so with a minimum of group friction and the negative consequences that could result therefrom. The transition is from the earlier genre, mentioned in sub-paragraph (d) above, of White guardianship and leadership in every sphere of a partially integrated economy to equality of opportunity for members of the non-White groups in the form of leadership in largely separated, though mutually interdependent, economies of their own groups. With a view especially to securing the maximum support from all the groups for this transition, Respondent has found it best, as a matter of practical policy, to respect the unwillingness of members of the White group to serve in positions of subservience to members of the Bantu groups, but at the same time to create compensatory opportunities for higher employment of members of the lastmentioned groups through acceleration, as far as practicable, of the development of their own homelands and economies.

- (i) A realistic approach to the problems of the transitional stage is, in Respondent's view, to train Bantu for occupations and professions which, at the present stage of developments, offer them avenues of employment and future advancement, and to avoid creating a situation where Bantu qualify for professions in which they will find themselves dependent on White patronage, which might not be forthcoming, or in which either Respondent or other potential employers will not be able to make use of their services in a field where they will, of necessity, have to be placed in positions of authority over European employees or assistants.
- (j) The considerations mentioned above have been a subject of continual and repeated political debate in South Africa over a considerable number of years, and the speech of the Minister of Bantu Education in Parliament<sup>1</sup>, referred to by Applicants, is to be read with this factor in mind. The Minister knew that his audience was aware of the implications of relevant aspects of the policy of separate development, as explained above.
- (k) The Minister referred to applications by Bantu students to follow engineering courses at European universities, and he pointed out that Bantu engineers could, in existing circumstances, only expect to be employed by the Department of Bantu Administration and Development, but that, since such employment would entail their being placed in positions of authority over European engineering assistants, there being no qualified Bantu in the country who could fill the role of such assistants, it was essential, as the initial step, first to establish a base of Bantu engineering assistants.
- (l) The Minister accordingly outlined the steps that would be taken to create facilities for the training of Bantu engineering assistants. He stated that such facilities would be created at Bantu university colleges and that students could, in the meantime, take a suitable B.Sc. course, on which the Department would advise them, thereby avoiding a loss of study time. He said, further, that as assistants became available, engineering courses would also be introduced at Bantu university colleges, and indicated that due recognition would be accorded to the practical experience and knowledge gained by engineering assistants if they wished to take such engineering courses. His statement in this regard is recorded as follows:
- "Once they have been trained as assistants and have begun to gain experience, then we could, as soon as there are sufficient assistants for us to employ engineers also, also institute a course for them and then it is a shorter period of training for them thereafter, having regard to the practical knowledge and background they will have had<sup>1</sup>."
- (m) Applicants' formulation tends to create the impression that the Minister stated that the engineering profession would be completely, and permanently, closed to the Bantu, and that they should accordingly content themselves with becoming assistants to European engineers. This is not correct. The Minister dealt with what was a new and, in the circumstances, difficult situation where Bantu were beginning to show an interest in the engineering profession, and he spoke of practical steps that would have to be taken before

<sup>1</sup> *Vide U. of S.A., Parl. Deb., House of Assembly, Vol. 105 (1960), Col. 7872.*

engineering courses could be instituted for Bantu students. Applicants limit their remarks to what the Minister said about engineering assistants, and fail to mention that he also said that engineering courses would be introduced for Bantu students, as cited above.

- (n) There is no reason to suggest, as Applicants appear to do, that the Minister's concern about "frustrated people" was not genuine. The Minister made it clear that he was dealing with what was a new development, and said, *inter alia*:

"... I am not prepared to help to keep people at a university for six, seven and eight years at a great cost and then let them come out of it, without there being a livelihood for them. I do not want frustrated people in our colleges. I want the person who comes out of it to be in a position to render service to his own people. That is why I do not want us to start building the house from the chimney downwards as regards this development. We must build up from the foundations<sup>1</sup>."

- (o) At the beginning of 1961 a three-year course in "drawing and drafting" was instituted at several Bantu secondary technical schools. The first candidates will complete this course, which is at Junior Certificate level, at the end of 1963, and will then be offered posts as engineering assistants by the Department of Bantu Administration and Development. They will then receive practical in-service training, and will furthermore periodically follow "sandwich" courses at a technical school until they become fully qualified engineering assistants.

Steps are also being taken to introduce a Senior Certificate Technical Course at some of the senior technical schools as from January 1965. Students who complete this course will be fully qualified engineering assistants, and will, in addition, be granted matriculation exemption with the necessary subjects to follow a degree course in engineering.

21. Paragraph 181 (*wrongly printed as 151*)<sup>2</sup>.

The Minister's statement, referred to in paragraph 20 above, in no way supports the alleged complaint of Senior Headman (also referred to as "Chief") Hosea Kutako. There is, in fact, no relation between the two things. It is difficult to know what Applicants, or Mr. Kutako, conceive the "so-called Bantu education system" to be, but it is sufficient to say that any allegation that any educational system in South Africa has as its objective "to teach the non-Europeans from childhood that they are inferior to the Europeans" is completely unfounded. Similarly any allegation that any educational system in South Africa or in the Territory has such an objective is untrue and probably born of motives which have no relation to education.

What have been introduced in the Native schools in South West Africa, are syllabuses based on those used in Bantu schools in South Africa but adapted to local conditions<sup>3</sup>. The syllabuses, founded on sound educational principles, are better adapted to the needs of those

<sup>1</sup> *Vide U. of S.A., Parl. Deb., House of Assembly, Vol. 105 (1960), Col. 7872.*

<sup>2</sup> *I, p. 158.*

<sup>3</sup> *Vide Chap. IV, paras. 23-30, supra.*

whom it is sought to teach than those previously used, and the system of community schools<sup>1</sup> offers Native parents the opportunity of playing an active part in the promotion of the education of their children.

22. *Paragraph 182*<sup>2</sup>.

- (a) The allegations in this paragraph are not correct. Particulars of the salaries and allowances paid to European teachers as determined from time to time are set out in Chapter VII<sup>3</sup>, and those paid to Native teachers, in Chapter V<sup>4</sup>. Respondent admits, however, that the salaries and allowances for European teachers are higher than those for non-European teachers.

If Applicants' contention is that all teachers should be paid the same salaries, it would not be a valid contention. Circumstances and factors relating to the determination of salaries and allowances of teachers in the different groups are dealt with in the following paragraphs.

- (b) In the first place, the qualifications demanded in the case of European teachers are generally higher than in the case of non-European teachers<sup>5</sup>, and it stands to reason that teachers with higher qualifications should command better salaries.
- (c) The range of economic alternatives open to prospective teachers is also, in conjunction with the qualifications aspect, an important factor in the determination of salaries.

For persons with the qualifications of the European teachers there are many alternative employment opportunities, not only in the Territory itself, but also in South Africa. The salaries of these teachers must, therefore, always bear a reasonable relationship to salaries paid in the other spheres of employment which are open to them.

In South West Africa the position is that the Territory has never been able to produce the teachers it needs. Salary scales for European teachers in the Territory are the same as those applicable to teachers of equal status in South Africa, but in order to attract teachers from South Africa to the Territory, it has been found necessary to pay a special allowance to them<sup>6</sup>.

The aforementioned considerations do not apply to nearly the same extent in the case of Native teachers in the Territory. For reasons previously given<sup>7</sup>, the shortage of qualified Native teachers cannot be alleviated by recruiting teachers from South Africa. The problem is rather one of inducing a sufficient number in the Territory to obtain even the lowest qualifications necessary for teaching purposes. There has in the past been little competition for the services of such persons on comparable salary bases, and the determi-

<sup>1</sup> *Vide* Chap. IV, paras. 35-41, 43.

<sup>2</sup> I, p. 158.

<sup>3</sup> *Vide* Chap. VII, paras. 30-33, *supra*.

<sup>4</sup> *Vide* Chap. V, paras. 72-77, *supra*.

<sup>5</sup> *Vide* Chap. VII, paras. 30-31, 39, *supra*, compared with Chap. V, paras. 73-74, *supra*.

<sup>6</sup> *Vide* Chap. VII, para. 33, *supra*.

<sup>7</sup> *Vide* Chap. V, para. 23, *supra*.

nation of their salaries has rather been dependent on the considerations mentioned below.

- (d) A teacher's salary should, in Respondent's view, bear a relationship to the normal income of other members of his group, otherwise he might become separated or estranged from them as a result of an artificial financial barrier <sup>1</sup>.

The Native groups are in general still much less developed in the economic sphere than Europeans, and their whole structure of income and of cost of living is generally lower. In this regard it may be pointed out that in the payment of regional allowances to Native teachers in the Police Zone, consideration is given to the fact that cost of living in the Police Zone is higher than in the northern territories <sup>2</sup>.

These factors result in a situation that salaries paid to Native teachers are lower than those paid to European teachers, even where qualifications may be comparable.

- (e) That the above is a natural outcome of social and economic considerations in African circumstances, appears from the fact that similar differences are to be found between the salaries of Native and European teachers also in other African territories <sup>3</sup>.
- (f) The situation is naturally not a static one, and is subject to continual adaptation and change, as will appear from the account already given of increases and alterations from time to time in salary scales and allowances <sup>4</sup>. The opening up of a number of competing avenues of higher employment through progress made in the policy of separate development, as recounted in other portions of this Counter-Memorial, coupled with the teacher shortage in regard to Native education, must naturally tend to increase the basis of remuneration of Native teachers. With continued social and economic progress on the part of the Native population groups, the gap between salaries for Native and European teachers must in the ordinary course be narrowed and, eventually, disappear. It could, however, do incalculable harm to anticipate this process by singling out Native teachers for payment to them of salaries which would produce a complete economic imbalance between them and virtually all other members of their communities.

### 23. Paragraph 183 <sup>5</sup>.

It is correct that in South West Africa there was a general increase of R220 (£110) in the salary scales of European teachers in 1955-1956. This applied to all European teachers, and not only to those teaching in Native schools.

The allegation that—

“ . . . there was made available for ‘Non-European’ teachers only the possibility of an additional increment of £15 for men (£12 for women)

<sup>1</sup> Vide Chap. IV, para. 72, *supra*.

<sup>2</sup> Vide Chap. V, para. 76, *supra*.

<sup>3</sup> Vide Chap. IV, para. 73, *supra*.

<sup>4</sup> Vide Chap. V, paras. 73-78, *supra*.

<sup>5</sup> I, p. 158.

per annum for each of three years making a maximum possible aggregate increase of £45",

is correct only in so far as Native teachers were concerned—it did not apply to Coloured teachers<sup>1</sup>. The payment of the additional increments was made subject to recommendation by the Director of Education.

Applicants are apparently unaware of the fact that adjustments of the salary scales of the various groups are not necessarily made at the same time. So, for example, new salary scales for Native teachers came into operation in 1961<sup>2</sup> without any change in the then-existing scales for European teachers<sup>3</sup>. There was no intention to raise the salary scales for Natives in 1955-1956, as was the case with European teachers. The additional increments for Native teachers were merely intended to augment the salaries of those teachers who had already reached their maximum salary.

24. Paragraphs 184 and 185<sup>4</sup>.

- (a) In these paragraphs the Applicants give certain figures of expenditures in South West Africa on European and Native education respectively during the years 1953-1954 to 1955-1956, and also make calculations of *per capita* expenditure for the year 1954-1955. The allegation is made that these figures and calculations show a "fantastic discrepancy", and apparently judging by their summary in paragraph 186<sup>4</sup> and their "Legal Conclusions"<sup>5</sup>, it is the Applicants' contention that the figures justify an inference of unfair discrimination against the Native population of the Territory.

Respondent denies the correctness of the figures given by the Applicants, and of the *per capita* calculations made. It is admitted, however, that amounts spent on Native education have at all times been substantially less than the amounts spent on European education, but it is denied that this fact justifies any inference of unfair discrimination against the Native population, and Respondent says that although there has been differentiation, there has in fact been no unfair discrimination.

- (b) Particulars of amounts spent by the Administration on Native and European education during various years have already been given, and in this regard the honourable Court is referred to the information contained in Chapters V<sup>6</sup> and VII<sup>7</sup> above.

It is Respondent's submission that, in the light of the circumstances which have prevailed and still prevail in the Territory, a comparison between the two things—expenditure on European education and expenditure on Native education—cannot *per se* be indicative of unfair discrimination against the Native groups.

Conditions which have governed, and still govern, European and

<sup>1</sup> *Vide G.N.* No. 81 of 1955 (S.W.A.), 1 Apr. 1955, in *Laws of South West Africa 1955*, Vol. XXXIV, pp. 796-798.

<sup>2</sup> *Vide* Chap. V, para. 74, *supra*.

<sup>3</sup> *Vide* also tables in Chap. V, para. 73, and Chap. VII, para. 30, *supra*.

<sup>4</sup> I, p. 159.

<sup>5</sup> As in para. 190 at p. 162 of the Memorials.

<sup>6</sup> *Vide* Chap. V, paras. 79-81, 95 (*Caprivi*), *supra*.

<sup>7</sup> *Vide* Chap. VII, para. 35, *supra*.

Native education, have been, and are, vastly dissimilar, and all comparisons based on mere differences in expenditure must inevitably be invalid in the context of charges as made by the Applicants. The same considerations apply, though to a lesser extent, to Native education in the Police Zone as compared with Native education in the areas beyond it. There is no indication that Applicants have in any way taken account of the different conditions.

- (c) The question of expenditure on education of each of the population groups must, in the first place, be considered in the light of the social and economic status and levels of development of each of the groups, and their respective educational needs.

Respondent refers in this regard to what has already been stated <sup>1</sup> concerning the differences in these respects between the various groups.

The various factors and conditions which inhibited the introduction and development of education in the case of the Native groups <sup>2</sup>, rendered it almost inevitable that expenditure on education in the Territory should have begun on a basis of substantial excess on the side of European education over that of Native education.

With the progressive extension of education to the Native groups, increasingly larger sums have, however, been spent on Native education, and with the continued social and economic advancement of the Native peoples of the Territory, the difference in expenditure on Native and European education must, in the course of time, of necessity disappear.

At present there are still factors which, as in the past, render the education of European children relatively more expensive than that of Native children. These factors are referred to in the paragraphs below.

- (d) As stated in paragraph 22 above, the salary scales of European teachers are higher, and, being better qualified, European teachers are therefore placed in higher categories of their salary scales.

The average European primary-school teacher employed by the Administration generally spends about six years more at training institutions than the average Native primary school teacher.

In the whole of the Police Zone, for example, there are only 29 Native teachers in a category higher than the lowest. The lowest teacher's certificate obtainable by a Native student is at the end of a two-year course after Standard VI. Many Native teachers are paid salaries on the basis that they have obtained the minimum qualifications required when in actual fact they have not done so <sup>3</sup>.

- (e) The expenses per pupil in the higher standards are higher than in the lower standards because of higher qualified and better salaried teachers, and higher cost of equipment, materials, etc., and there are many more European pupils in the upper primary and secondary classes than there are Native pupils. In 1960, for example, there were 4,597 European pupils in Standards V-X in government schools (i.e., excluding private schools) as against 795 Native students in the same standards in the whole of the Territory. In Standards VII-X

<sup>1</sup> *Vide* Chap. IV, paras. 63-74, *supra*.

<sup>2</sup> *Vide* Chap. V, paras. 3-30, *supra*.

<sup>3</sup> *Ibid.*, para. 74.

- the comparative figures in 1960 were: Europeans 2,151, Natives 111.
- (f) The Permanent Mandates Commission, it may be pointed out, also compared expenditures on European education with expenditures on Native education, but it did more than that. It also considered actions taken by Mandatories in the light of the general problems with which a particular territory was faced and of the progress made in regard to similar problems in other territories similarly situated. By doing so, it is submitted, the Commission was able to maintain a more balanced view and a better sense of perspective than would otherwise have been possible.

In this regard it may be apposite to quote from the minutes of the said Commission. In 1933 Mlle Dannevig, the Member entrusted by the Commission with the study of Native education, was recorded to have stated that she—

“... appreciated the efforts of the Administration to maintain the standard of education in spite of financial difficulties. Expenditure had been cut down, she noted, less than in other fields, and native education less than European education. She also noted the excellent work done by teachers in spite of adverse circumstances. She thought that the average expenditure per scholar—Europeans £21 6s. 10d. and natives £2 15s. 7d. . . .—being comparatively high accounted for this good result <sup>1</sup>.”

The minutes for the year 1937 contain the following:

“Mlle Dannevig noted from the first statistical table (page 34 of the report) and the budget estimates (page 13) that there had been a steady increase in expenditure on education during the past few years. The amounts spent on the education of native and coloured people were comparatively small, only about 10% of the total (£13,805 out of a total of £127,691) and the estimate for native education for 1936/37 was reduced, while that for European was increased. At the same time, the cost of education per pupil was very high as compared with the expenditure in other territories, and was said to be £22 os. 10d. per head for Europeans, £4 19s. 3d. for coloured children and £2 13s. 7d. for native children <sup>2</sup>.”

And in 1939 she stated that she “fully appreciated, of course, that schools for European children must cost considerably more in proportion <sup>3</sup>.”

- (g) In regard to expenditure on Native education it should be borne in mind that the sums mentioned in the respective tables <sup>4</sup> do not include moneys spent from Native Reserve or tribal funds, nor amounts spent by the various missions concerned. This is of particular importance in the case of mission schools in the northern territories. In 1959-1960, for example, the Administration's contribution by way of subsidies to schools in the northern territories was R82,590 (£41,295), whereas the amounts spent by the Finnish and Roman Catholic Missions alone totalled R127,490 (£63,745). As already stated, the taking over of the lower primary schools of the Finnish Mission in

<sup>1</sup> *P.M.C., Min.*, XXIII, p. 93.

<sup>2</sup> *Ibid.*, XXXI, p. 128.

<sup>3</sup> *Ibid.*, XXXVI, p. 38.

<sup>4</sup> *Vide* Chap. V, paras. 79-80, 95 (Caprivi), *supra*.

Ovamboland in 1961 led to an immediate and substantial increase in the Administration's expenditure, and as more schools are taken over increasingly larger amounts will become involved<sup>1</sup>.

Furthermore, included in the amounts given as spent on education<sup>2</sup> are items such as hostel fees, study loans, book moneys, examination fees, etc., which are either wholly or in part recoverable from parents and which are more substantial in the case of European education. In 1960-1961, for example, the total amount recovered by the Administration in respect of such items was R365,562 (£182,781) in the case of European education as against R13,508 (£6,754) in respect of Native and Coloured education.

(h) Of particular significance is the fact that increasingly larger amounts have been and are being spent on Native as well as Coloured education. In 1934-1935, for example, the expenditure on non-European (i.e., Native and Coloured) education amounted to about 11.9 per cent. of the total amount spent on education in the Territory. In 1962-1963, taking into account moneys recovered in respect of items such as those mentioned in sub-paragraph (g) above, the expenditure on non-European education amounted to 25.6 per cent. of the total amount spent on education.

The expenditure on Native education will inevitably increase as emoluments increase; as more Native schools are established; as Native teachers obtain qualifications which command higher salaries; as the economies of the Native groups develop and expand; and as more students proceed to the higher primary and secondary standards.

### 25. Paragraph 186<sup>3</sup>.

It is denied that the Native population in South West Africa "suffers" under a "burden of negation, frustration and unfair discrimination", or that there is a denial of educational opportunities to Native children. It is likewise denied that there is any policy or practice, deliberate or otherwise, to "restrict and shape the education of the young so as to perpetuate the denial of possibilities for self-improvement". There is no denial of possibilities for self-improvement, and there is no policy to relegate the Native population "to a status of imposed inferiority".

On the contrary, as Respondent has shown, the Native groups are being provided with opportunities for self-development and self-realization, and despite the many difficulties involved, progress in this field is being made in an ever-increasing measure.

Respondent's task is in essence one of advising, encouraging and assisting the various groups by providing facilities consistent with their needs and guiding them towards self-help. Whether, and to what extent, the groups make use of the opportunities offered rests largely with themselves. They will, however, continue to receive sympathetic assistance and guidance from Respondent.

The allegations contained in sub-paragraphs (1) to (7) of paragraph 186 are a repetition, in summarized form, of the Applicants' allegations

<sup>1</sup> *Vide* Chap. V, para. 80.

<sup>2</sup> *Ibid.*, paras. 79-80, and Chap. VII, para. 35, *supra*.

<sup>3</sup> I, pp. 159-161.

in paragraphs 159-185 of the Memorials, and save for what is said below, Respondent does not wish to repeat its answers to the various allegations.

(a) *Sub-paragraph (1), and Applicants' Legal Conclusion (iv) (a) at pages 165-166.*

While it is admitted that a smaller percentage of Native children attend school, it is denied that such percentage represents merely "a small fraction" compared with the percentage of European children who attend school. In 1960 about 39.8 per cent. of Native children of school-going age attended school and in 1961 the percentage was about 44<sup>1</sup>. It is unrealistic to compare European with Native attendance figures, as will be readily appreciated by all those whose task it has been to extend education to underdeveloped communities in Africa. To see the matter in proper perspective, reference should be made to school attendances in other parts of Africa, and to the difficulties which have confronted educational authorities in those parts in regard to teacher training. The honourable Court is referred to what has been said in Chapter V above<sup>2</sup>.

(b) *Sub-paragraph (2), and Applicants' Legal Conclusion (iv) (b) at page 166.*

The honourable Court's attention is invited to what has been said in (a) immediately above. The Applicants' allegations are greatly exaggerated in so far as they relate to availability of education, as a reference to Chapter V above will show. Without going into any detail, it is stated that, although comparatively few schools have classes beyond Standard III, the only conditions for establishing an upper primary class at a school are a minimum of five pupils (ten in Ovamboland), and the availability of a teacher. Full use is not made of existing facilities for secondary school education. All teacher training is free, and every effort is made to train as many teachers as possible. In this regard also, full use is not made of the opportunities offered.

(c) *Sub-paragraph (3), and Applicants' Legal Conclusion (iv) (c) at page 166.*

It is true that there is only one high school (i.e., with classes up to Standard X), but it is also true, as indicated in paragraph 9 above, that the facilities provided at that school are more than sufficient to meet the present demand for high school education for Natives in the Territory, and are not fully utilized.

(d) *Sub-paragraph (4), and Applicants' Legal Conclusion (iv) (d) at page 166.*

Ample facilities are available for the training of Native teachers in the Territory. There are no such facilities for the training of European or Coloured teachers. Higher education is not provided for any of the groups in the Territory because the demand does not justify it. Industrial schools that were established for Natives had to be closed for lack of support. Industrial courses have since 1956 been offered to Native students at the Augustineum, but these are poorly supported.

<sup>1</sup> *Vide* Chap. V, paras. 57-58, 88 (Caprivi), *supra*.

<sup>2</sup> *Ibid.*, paras. 31-32, 59-60.

(e) *Sub-paragraph (5), and Applicants' Legal Conclusion (iv) (e) at page 166.*

There are ample facilities in South Africa for higher and vocational education for Natives. It is not true to say that such facilities are only "theoretically" available. And it is wholly untrue to say that the pursuit of education is discouraged by the South African Government.

That the pursuit of education in general by Natives is not discouraged by Respondent, appears abundantly from the record.

To spend large sums of money on the education of the non-European groups—as has been and is being done—would indeed be a curious way of discouraging the pursuit of education. Similarly, efforts which have resulted in having as at 1961, approximately 44 per cent. of Native children of school-age at school—a percentage which is higher than that obtained in either of the Applicant States—surely disprove any suggestion that the pursuit of education is discouraged.

As far as opportunities for higher education in South Africa are concerned, the facts given above<sup>1</sup> regarding loans and bursaries for Native students from the Territory again refute the allegation of discouragement.

(f) *Sub-paragraph (6), and Applicants' Legal Conclusion (iv) (f) at page 166.*

Applicants' formulation suggests that Natives can be technically or vocationally trained for no professions save those of teachers, nurses and engineering assistants. This is not so. Students of all groups are generally free to take any higher education courses they wish, and nothing prevents them from doing so.

The allegations made by Applicants in regard to teachers, nurses and engineering assistants are not correct, as will appear from what has already been said.

Respondent has shown that historical and economic reasons exist for the fact that Europeans earn more than Natives, and that this is a matter which is subject to fluctuation and change, also in accordance with ordinary economic principles which will tend to increase Natives' salaries as progress is made in the all-round economic and social advancement of the Native groups.

Respondent denies that it imposes "a publicly proclaimed inferiority of status" upon Natives who enter the occupations referred to by Applicants, or at all.

(g) *Sub-paragraph (7), and Applicants' Legal Conclusion (iv) (g) at page 166.*

It is admitted that less has been spent on Native education than on European education, but the Applicants show a complete lack of appreciation of the various factors which have played and still play a part in this regard. Respondent does not wish to repeat here what has already been said, but wishes to emphasize that it was natural and almost inevitable that education for the European group in South West Africa should have started off on an advanced basis, while education for the Native groups was at the inception of the Mandate at an infant stage;

<sup>1</sup> *Vide* Chap. VI, paras. 24-25, *supra*.

that various factors, inherent in the stages of the relative development of the various groups, have almost inevitably rendered education for European children more expensive than for Native children, even on a proportionate basis; that expenditure on Native education has shown a marked upward trend in recent years; and that progress has been made not only in overcoming the impediments and retarding factors regarding Native education, but also in a broader sense in the advancement of the Native groups on all fronts, material, moral and social. The important factor at the present stage of development is therefore not the existence of a difference of expenditure in a particular year or years, but the upward trend in expenditure on, and the advancement of, Native education.

(h) *Sub-paragraph (8).*

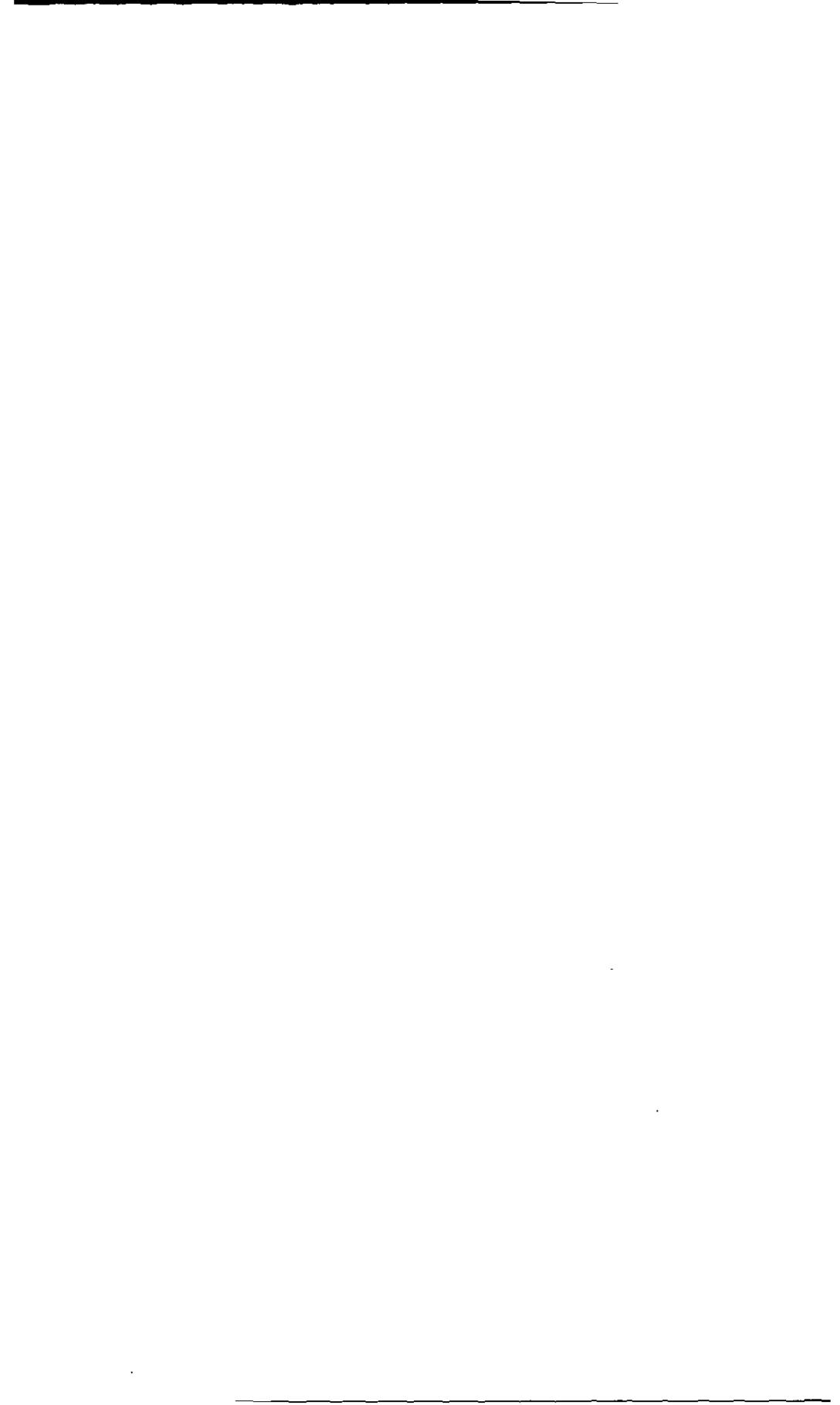
A reference to what has been said in the preceding chapters will show that the allegations in this sub-paragraph are without any foundation of fact.

It will appear from what has been said that Respondent is following a policy in the Territory which accords the highest recognition to the identity and cultural heritage of each of the Native groups, and that its policy endeavours, as far as possible, to provide for the particular needs of all the groups. To achieve this object, every endeavour has been made to enable the children of each of the groups to be educated separately in their own language and by their own teachers. This in itself is a vast undertaking but, in Respondent's view, a necessary one. Syllabuses have been designed to fit the cultural and historical background of all the Native groups, and parent communities in these groups have been given an active share in the education of their children. These essential foundations having now been well laid, the groups themselves are being afforded every opportunity to co-operate in their own development to the highest level they can attain.

It is therefore not true to say that Respondent has failed to use the possibilities of education to promote the well-being, the social progress and the development of the Native population, or that it has deliberately restricted opportunities for the education of Native children, or that it has removed opportunities for any significant advancement of the Native population<sup>1</sup>. On the contrary, the vast and difficult task of Native education has reached a stage of progress which not only compares well with that in comparable African territories, but promises healthy and accelerated further growth. Opportunities for Native education are becoming increasingly favourable; and, in conjunction with the political and economic aspects of Respondent's policies dealt with earlier in this Counter-Memorial, the system of education is providing positively, and, in Respondent's view, in the best possible manner, for substantial and orderly "improvement in the well-being, social progress and development" of the Native population of the Territory.

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<sup>1</sup> Respondent has dealt above with the Applicants' specific allegations regarding Native teachers and engineering assistants, and it is not intended to repeat what has been said before.



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