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A Delicate Balance: The Effectiveness of Apartheid Reforms in the Struggle for the Future of South Africa

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A Delicate Balance: The Effectiveness of Apartheid Reforms in the Struggle for the Future of South Africa

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I. INTRODUCTION

Apartheid has been denounced as a crime against humanity¹ and as a threat to international peace and security.² In September 1989, White South Africans elected F. W. de Klerk, a National Party leader, State President.³ During his campaign, de Klerk emphasized negotia-

1. In 1966, the United Nations General Assembly condemned apartheid as a crime against humanity. Winston Nagan, *Economic Sanctions, U.S. Foreign Policy, International Law and the Anti-Apartheid Act of 1986*, 4 FLA. INT'L L.J. 85, 133 (1988). In 1987, the General Assembly passed Resolution 42/23C, entitled "Comprehensive and mandatory sanctions against the racist regime of South Africa," which reaffirmed that apartheid is a crime against humanity. *Resolutions on the Policies of Apartheid of the Government of South Africa Adopted by the United Nations General Assembly in 1987: A Commentary*, 4 U.N. Centre Against Apartheid at 3, U.N. Doc. 88-11335 (1988). See also 1 U.N. Centre Against Apartheid at 3, U.N. Doc. 88-06644 (1988); *International Convention on the Suppression and Punishment of the Crime of Apartheid*, art. 1, G.A. Res. 3068, 28 U.N. GAOR, Supp. No. 30, at 75, U.N. Doc. A/9030 (1973).

2. 4 U.N. Centre Against Apartheid, *supra* note 1, at 3; Statement by Peter Florin, President of the General Assembly, *International Community Calls for a Renewed Effort to Abolish Racial Discrimination and Apartheid*, in 5 U.N. Centre Against Apartheid at 4, U.N. Doc. 88-11238 (1988).

Ironically, one justification for apartheid was to prevent the friction and conflict which would inevitably result from contact between the races. Thus, the races were to be separated in the social, political, and economic spheres. See HERMAN GILIOME & LAWRENCE SCHLEMMER, FROM APARTHEID TO NATION BUILDING 53-54 (1989). In a 1948 Pamphlet, the National Party called apartheid "the only 'guarantee for racial peace.'" *Id.* at 35. Furthermore, a prominent apartheid thinker, N.J.J. Olivier, wrote: "[T]hat such a policy, which aims at forestalling the racial conflict that is inherent in the present situation by removing the root cause of the problem — the intermixture of races — can be justified on Christian, ethical and scientific ground is clear." *Id.* at 54. See also Gary R. Lowe, *The Communications Challenge of a Post-Apartheid South Africa: The Intercultural Agenda*, 11 INT'L J. INTERCULTURAL REL. 265, 268 (1987)(calling this a perverse rationale).

3. F. W. de Klerk was elected State President on September 6, 1989, and sworn in on September 20th. *The National Party's Trial of Strength*, 34 AFR. REP. 5, 20 (1989). See also *infra* note 45 and accompanying text.

tion as the only way to bring peace and stability to South Africa.⁴ By February 1990, de Klerk was claiming that South Africa was "irrevocably on the road to drastic change."⁵

At the opening session of Parliament on February 2, 1990, de Klerk unveiled his reform program.⁶ Even before this program was announced, the world was skeptical.⁷ Promises of reform were nothing new⁸ but, given the crisis situation⁹ brought on by internal¹⁰ and exter-

4. At the time de Klerk first assumed the presidency, the movement toward negotiations was seen as a "survival instinct." Bill Schiller, *F.W. Brings Cautious Hope for Reform*, 36 *WORLD PRESS REV.* 11, 30 (1989). See also 56 *VITAL SPEECHES OF THE DAY* 10, 290 (1990)(reproducing de Klerk's speech to Parliament on February 2, 1990, in which he stated that a negotiated understanding was the only way to ensure lasting peace) [hereinafter *SPEECHES*].

5. *SPEECHES*, *supra* note 4, at 290. de Klerk said this in a speech delivered to the Second Session of the Ninth Parliament of the Republic of South Africa on February 2, 1990, "Normalizing the Political Process in South Africa: The Time for Negotiation Has Arrived." *Id.* See also Pauline H. Baker, *South Africa on the Move*, 89 *CURRENT HISTORY* 198 (1990).

6. This speech is reproduced in *SPEECHES*, *supra* note 4, at 290-95. See *infra* note 53 and accompanying text.

7. See, e.g., *de Klerk's Chance*, *THE ECONOMIST*, Jan. 27, 1990, at 16 (questioning whether de Klerk is an "expedient trimmer or genuine reformer"); PETER L. BERGER & BOBBY GODSELL, *A FUTURE SOUTH AFRICA: VISIONS, STRATEGIES, AND REALITIES* 46, 55 (1988)(asserting that pessimism is understandable given government's halting reforms); Nagan, *supra* note 1, at 135 (discussing Botha's "reforms"); Heribert Adam & Kogila Moodley, *Negotiations About What in South Africa*, 27 *J. MODERN AFR. STUD.* 3, 367 (1989)(reporting widespread skepticism that conditions for negotiations do not yet exist in South Africa).

8. The government's past reform strategy has been described as "an attempt by those in power to contain challenges to the existing power relations" and, more specifically, as mobilizing bias in favor of existing relations. BERGER & GODSELL, *supra* note 7, at 131-32 (discussing South Africa's past response to demands for reform); JOHN D. BREWER, *CAN SOUTH AFRICA SURVIVE?* 282 (1989)(asserting reform as disguising continuation of White power). P.W. Botha, de Klerk's predecessor, is often characterized as a "previous would-be reformer" for the constitutional "changes" he made in 1983. *de Klerk's Throw*, *THE ECONOMIST*, Feb. 10, 1990, at 11 (describing the Coloured and Indian Chambers introduced in Parliament as "impotent"). Botha's so-called "Rubicon speech" is also criticized as leading to economic sanctions because it "dashed hopes of change." *South Africa: Preparing for Son of Rubicon*, *THE ECONOMIST*, Jan. 27, 1990, at 42.

In an address to Parliament in 1986, Botha referred to potential reforms in education, documentation requirements, and government in the provinces. Kirsten S. Brubeck, *Recognition of the African National Congress and the Apartheid Government: A Proposal for the United States*, 13 *HASTINGS INT'L & COMP. L. REV.* 315, 323 n.52 (1990), citing Address by State President P.W. Botha at the opening of the third session of the eighth Parliament of the Republic of South Africa (Jan. 31, 1986), reprinted in 14 *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD*, South Africa Supp. 9, at 12-14 (A. Blaustein & G. Flanz, eds. 1984). Furthermore, Botha's "reforms" were rejected by the United Nations Commission on Human Rights. See *id.* at 323-24.

9. See, e.g., Duncan Innes & Stephen Gelb, *Towards a Democratic Economy in South Africa*, 9 *THIRD WORLD Q.* 545 (1987); BERGER & GODSELL, *supra* note 7, at 8, 31; BREWER,

nal¹¹ pressures, there was some hope that the apartheid regime might finally come to an end.¹² Since de Klerk took office, he has instituted reforms which represent progress if not drastic change.¹³ However, the effectiveness of these reforms must be measured by the goals and reactions of the various factions within South Africa¹⁴ and of the international community.¹⁵

supra note 8, at 312, 336-37 (describing crisis as a theme which represents the reality of South Africa).

10. Internal pressures include: the continuing violence in the townships; activism of opposition groups such as the African National Congress; and mobilization of the masses in the form of trade unions as well as stay aways, strikes, and consumer boycotts. See BERGER & GODSELL, *supra* note 7, at 15-17. For a detailed discussion of resistance forces in South Africa, see *id.*, at 125-63.

11. External pressures include the imposition of diplomatic and economic sanctions as well as sport boycotts. See, e.g., *id.* at 17-19; COMPREHENSIVE ANTI APARTHEID ACT OF 1986, 22 U.S.C. §§ 5001-5017 (Supp. 1989) [hereinafter ACT]. The purpose of the Act is to help bring an end to apartheid and bring about reforms in the South African government which will lead to the establishment of a nonracial democracy. *Id.* §§ 5002, 5011(a). The Act bans new investment, except in firms owned by Blacks. *Id.* § 5060. The Act also bans the importation of Krugerrands, military articles (arms, ammunition, and military vehicles), and products from parastatal organizations (articles grown, produced, manufactured, and marketed but excluding strategic minerals). *Id.* §§ 5033, 5051. Furthermore, exportation of computer technology to governmental entities (including military, police, security agencies) and air transportation with South Africa are proscribed. *Id.* §§ 5054, 5056. See also BREWER, *supra* note 8, at 266-71 (discussing influence of Western values as external norms).

12. See, e.g., Steven V. Roberts, Jim Jones & Susan V. Lawrence, *The Beginning of the End of Apartheid?*, U.S. NEWS & WORLD REP., Oct. 30, 1989, at 55; *de Klerk's Chance*, *supra* note 7; Scott MacLeod, *At the Crossroads; Nelson Mandela May Soon Be Free, But is South Africa Ready — or Able — to Take the Road to a Nonracial Democratic Society?*, TIME, Feb. 5, 1990, at 26; Bruce W. Nelan, *At Least Half a Loaf*, TIME, Feb. 12, 1990, at 41; Scott MacLeod, *The Pilgrim's Slow Progress*, TIME, Oct. 1, 1990, at 66.

13. Even before his February 2, 1990 speech, de Klerk released eight political prisoners, allowed mass demonstrations in celebration, desegregated beaches, and created four mixed residential zones. Baker, *supra* note 5, at 197; *de Klerk's Rubicon*, 35 AFR. REP. 1, 14 (1990). Since February, de Klerk has also released Nelson Mandela and other political prisoners, desegregated hospitals and beaches; unbanned opposition groups such as the African National Congress; and repealed the Separate Amenities Act, which segregated public facilities. Christopher S. Wren, *Rumblings on the Right*, N.Y. TIMES, Oct. 7, 1990, § 6 (Magazine), at 32.

14. For a summary of the various factions, see Michael Clough, *South Africa: A Land Losing Hope*, SAN FRANCISCO CHRON., Oct. 10, 1990, at D1 (discussing the spectrum of South African politics from the radical left Pan Africanist Congress to the ultra right Afrikaner Resistance Movement).

15. Economic sanctions have been imposed by the United States, see ACT, *supra* note 11, as well as the United Nations and other countries. See, e.g., BERGER & GODSELL, *supra* note 7, at 240-166; BREWER, *supra* note 8, at 57-81 (discussing European Community sanctions); U.N. Docs., *supra* note 1, Nos. 88-11335, 88-06644, A19030.

This article will first discuss the history of apartheid in South Africa leading up to the reforms instituted by de Klerk. Then, the effectiveness of these reforms will be analyzed in the South African and international contexts and, more particularly, in the wake of the repeal of one of the pillars of apartheid. Finally, this article will consider how truly effective reform may be achieved.

II. BACKGROUND

Present-day South Africa cannot be understood without tracing the history of apartheid and of the struggle against it. First, however, one must know what the world means by "apartheid."¹⁶ While supporters describe apartheid innocuously as separate development,¹⁷ others have described it as institutionalized racism¹⁸ and as "the cradle-to-grave system that regulates daily life according to skin color."¹⁹ Furthermore, while the rise to power of the National Party in 1948 is generally considered the beginning of apartheid,²⁰ the attitudes and structures on which it is based date back to pre-industrial South Africa.²¹

A. *The Beginnings of Apartheid*

Apartheid means apartness in Afrikaans.²² In South Africa, this apartness means separation of the races.²³ Developing frontier com-

16. Apartheid may be one of the few political terms known throughout the world. GILIOME & SCHLEMMER, *supra* note 2, at 40.

17. See RICHARD E. SINCERE, *THE POLITICS OF SENTIMENT: CHURCHES AND FOREIGN INVESTMENT IN SOUTH AFRICA* 4 (1984); MFANYA DONALD TRYMAN & ZUBERI I. MWAMBA, *APARTHEID SOUTH AFRICA AND AMERICAN FOREIGN POLICY* 36 (1987); Lowe, *supra* note 2, at 268.

18. *S. Africa Abolishes 1953 Law Segregating Public Amenities*, L.A. TIMES, Oct. 15, 1990, at 1, col. 2 [hereinafter *S. Africa Abolishes*].

19. *Id.* Perhaps no other term has provoked such passionate description. For example, commentators have called it the "psychological bedrock of racism," Cecil Abrahams, *Gordimer's Totality*, CHI. TRIB., Oct. 14, 1990, at 3 (book review) and a system that has "run like a sewer through the conscience of the world," Lowe, *supra* note 2, at 269, quoting Andre Brink. After the Soweto uprising in 1976, the United Nations General Assembly called the South African government an "illegitimate, minority, racist regime." Nagan, *supra* note 1, at 134. Furthermore, it has been said that "the literature on apartheid is so extensive today that no single person could study all of it in the span of a lifetime." GILIOME & SCHLEMMER, *supra* note 2, at iv.

20. TRYMAN & MWAMBA, *supra* note 17, at 37.

21. GILIOME & SCHLEMMER, *supra* note 2, at 1. South African society was divided along racial lines even at the beginning of the eighteenth century. *Id.* at 2.

22. *Id.* at 40.

23. TRYMAN & MWAMBA, *supra* note 17, at 36; SINCERE, *supra* note 17, at 4-5 (discussing separate development as grand apartheid, versus petty apartheid, which is simple segregation).

munities rejected the mixing of races based primarily on a perceived threat to the political order rather than on a claim of biological superiority.²⁴ However, at the turn of the nineteenth century, the line was between European settlers and indigenous Africans.²⁵

This segregation policy took two forms. The first was preservation of White²⁶ domination and privilege by subordinating Blacks in labor and in political, educational and social spheres.²⁷ In this form, Whites sought to keep Blacks below or inferior.²⁸ The second form was trusteeship or guardianship, which was based on protecting native African

24. GILIOMEE & SCHLEMMER, *supra* note 2, at 3. Thus, even at this early date, discrimination along racial lines to the point of subjugation of non-Whites was seen as necessary to protect White power. *See id.* at 1-4; *see also* SINCERE, *supra* note 17, at 4 (describing frontier wars in which Whites killed Blacks and Blacks killed Whites). With the Population Registration Act of 1950, however, South Africans came to be divided into four categories: White, Coloured, Indian, and Black. *See infra* notes 45-48 and accompanying texts. Some commentators have suggested that South African society may be evaluated in terms of a "Darwinian struggle for racial groups." *See* BREWER, *supra* note 8, at 284. One author applies Kuhn's theory of paradigm shift to South Africa. DICKSON A. MUNGAZI, *THE STRUGGLE FOR SOCIAL CHANGE IN SOUTH AFRICA: VISIONS OF LIBERTY* (1989).

This, however, does not mean that Blacks were not seen as inferior. *See, e.g., id.* at 33 (quoting Paul Kruger, President of the Boer Republic of Transvaal, 1883-1900, asserting that Blacks belong to an inferior class and severity is required to control them); GILIOMEE & SCHLEMMER, *supra* note 2, at 57 (quoting National Party view that Blacks are different, not inferior).

25. GILIOMEE & SCHLEMMER, *supra* note 2, at 1-4.

26. Throughout this article the terms "Whites" and "Blacks" will be used to describe South Africans. "Whites" refers to Afrikaners and other whites. While the non-White groups include Blacks (Africans), Indians and "Coloureds," i.e. those of mixed racial background, the literature on South Africa inevitably discusses the "White" minority and the "Black" majority. The use of the term "Blacks" in this article is not intended to minimize the discrimination suffered by the other non-White groups but rather to recognize that, as the majority, Blacks are seen as more of a threat than are other non-Whites. Perhaps because of their numbers, Indians and Coloureds are in some cases not treated as harshly by the apartheid system as are Blacks. For example, Blacks have no voting rights, while Indians and Coloureds each have a chamber in Parliament. *See infra* note 40 and accompanying text. To the extent that they are discriminated against, one would expect an alignment of Indians and Coloureds with Blacks. To this extent, the term Blacks includes all non-White racial groups. Unfortunately, one cannot write about South Africa without reference to the racial classifications on which the apartheid system is based. The main elements of the apartheid system reflect this. GILIOMEE & SCHLEMMER, *supra* note 2, at 64.

27. For a discussion of the need for a cheap labor supply of Blacks and political control through land distribution, political policy, and socioeconomic policy, see GILIOMEE & SCHLEMMER, *supra* note 2, at 33-46.

28. *Id.* at 4. Some commentators have referred to this as "horizontal" separation, which means that the races were divided such that Whites were above Blacks, as opposed to vertical separation, which means that the races were along side each other. *See, e.g., id.* at 56; BREWER, *supra* note 8, at 293-94.

culture by separating the races.²⁹ In this way, White European domination was justified as being in the native Africans' best interests.³⁰ While some may truly have wanted to protect the indigenous groups,³¹ this paternalistic separation became a justification for White control.³²

As South Africa began to become more industrialized, White business and culture came to depend on Black labor.³³ The rift between White and Black standards of living was such that a first world/third world dichotomy emerged.³⁴ In this way, justifications for exclusionary policies and White fears of Black rule were reinforced. White control was necessary to maintain the "superior" White culture's standards, which were higher than the "unsophisticated" Blacks', and should not be considered exploitation.³⁵ After all, Whites were willing to accept that Blacks could have their own culture, as long as it was separate.³⁶

B. *The Apartheid Regime*

Thus, by the time the National Party came to power in 1948, segregationist policies were firmly entrenched.³⁷ In fact, some of the legislation associated with "apartheid" was passed in the period be-

29. See BREWER, *supra* note 8, at 293-94; BERGER & GODSELL, *supra* note 7, at 42; GILIOREE & SCHLEMMER, *supra* note 2, at 4.

30. MUNGAZI, *supra* note 24, at 47.

31. GILIOREE & SCHLEMMER, *supra* note 2, at 4. Supporters of the trustee/guardianship form included missionaries and frontier administrators in the 1820s and 1830s. *Id.* They saw this form as a way to prevent incursion by White settlers into the tradition, culture, and land of the Africans, especially the Xhosa. *Id.*

32. In fact, by the 1950s, White guardianship was part of the program of eventual Black autonomy in the reserves or homelands, which were areas set aside by Whites in which Blacks were to live and govern themselves. BERGER & GODSELL, *supra* note 7, at 43. Furthermore, White domination was justified as serving the interest of Africans' own development. MUNGAZI, *supra* note 24, at 47.

33. See MUNGAZI, *supra* note 24, at 33-46; BREWER, *supra* note 8, at 286, 288, 290; GILIOREE & SCHLEMMER, *supra* note 2, at 6-14; Christopher S. Wren, *How Far Will de Klerk Go?*, N.Y. TIMES, Nov. 19, 1989, § 6 (Magazine), at 42.

34. BERGER & GODSELL, *supra* note 7, at 42-43 (discussing how sociopolitical dominance perpetuates privilege and interdependence).

35. *Id.* at 35, 42-43; MUNGAZI, *supra* note 24, at 47. For a discussion of this in the modern context, see BERGER & GODSELL, *supra* note 7, at 26-27, 80.

36. This is reflected today in ideas of separating the races territorially. See, e.g., BERGER & GODSELL, *supra* note 7, at 80. See also *id.* at 12-13; SINCERE, *supra* note 17, at 5; GILIOREE & SCHLEMMER, *supra* note 2, at 56 (discussing apartheid as vertical parallel groups).

37. GILIOREE & SCHLEMMER, *supra* note 2, at 31, 41; BREWER, *supra* note 8, at 292 (characterizing apartheid as intensifying previous "ethnic social engineering").

tween 1910, when South Africa became self-governing,³⁸ and 1948. Of particular importance to White control were the 1913 and 1936 Land Acts, which prohibited Blacks from owning land in eighty-seven percent of South Africa.³⁹ Furthermore, Black political power was also effectively eliminated by removing Blacks from the common voters rolls in 1936.⁴⁰

The Land Acts, along with the Group Areas Act (1950), the Population Registration Act (1950), and the Separate Amenities Act (1953) are the "pillars"⁴¹ of the National Party's apartheid regime. The Group Areas Act instituted a system of community segregation by which the government decides who can own or occupy both residential and business premises.⁴² Under this Act, the government can remove entire Black communities⁴³ to designated areas in townships or homelands

38. SINCERE, *supra* note 17, at 4. Examples of legislation include the 1913 and 1936 Land Acts, see TRYMAN & MWAMBA, *supra* note 17, at 38, GILIOME & SCHLEMMER, *supra* note 2, at 147-48, and the 1923 Native Urban Areas Act, which established influx control as Group Areas Act did later, see GILIOME & SCHLEMMER, *supra* note 2, at 66.

39. See Peter Hawthorne, *Dressing Apartheid in Nationalistic Clothes*, TIME, Aug. 13, 1990, at 7; Christopher S. Wren, *de Klerk, Addressing Blacks, Speaks of a New Constitution*, N.Y. TIMES, June 28, 1990, at A22; N.Y. TIMES, Aug. 15, 1990, at 19; *Tribal Leaders Back South African Land Reform Plan*, REUTERS, Oct. 2, 1990; *Angry White Farmers Tell de Klerk to Scrap Land Reforms*, REUTERS, Oct. 5, 1990 (reporting that government announced plans to repeal legislation in 1991); see also MUNGAZI, *supra* note 24, at 37, 39-40; GILIOME & SCHLEMMER, *supra* note 2, at 14-15, 28-29 (discussing Acts as basis of migrant labor system).

40. Roger Omond, *South Africa's Post-Apartheid Constitution*, 9 THIRD WORLD Q. 622, 627 (1990). Individuals classified as Coloureds were removed from the common voters rolls in 1956. *Id.*

Today, South Africa has a tricameral parliament consisting of White, Indian, and Coloured chambers. Patrick Laurence, *The National Party's Trial of Strength*, 34 AFR. REP. 20 (Sept.-Oct. 1989). By their voting records in terms of percentages voting, however, Indians and Coloureds have shown that they reject this system. *Id.* (stating that only 23 percent of Coloured and 22 percent of Indian registered voters participated in the 1989 elections). See also *de Klerk's Throw*, *supra* note 8, at 11 (describing the Coloured and Indian Chambers as "Impotent").

41. See, e.g., Schiller, *supra* note 4, at 30, 31; *de Klerk's Chance*, *supra* note 12; John Battersby, *S. Africa Drops Pillar of Apartheid*, CHRISTIAN SCI. MONITOR, Oct. 15, 1990, at 4; *A Slight Global Warming*, DAILY TELEGRAPH, Oct. 17, 1990, at 19; Christopher S. Wren, *A South Africa Color Bar Falls Quietly*, N.Y. TIMES, Oct. 16, 1990, at A3.

42. See, e.g., GILIOME & SCHLEMMER, *supra* note 2, at 87-92; TRYMAN & MWAMBA, *supra* note 17, at 39; *Squeeze Apartheid, Not Mr. de Klerk*, N.Y. TIMES, June 28, 1990, at A24; Chris McGreal, *Lashing Back By the Pool; Whites Are Finding Ways Round Anti-Segregation Laws*, THE INDEPENDENT, Oct. 14, 1990, at 12.

43. GILIOME & SCHLEMMER, *supra* note 2, at 36. However, mostly Coloureds and Indians were affected because the previous Urban Areas Act had allowed removal of Blacks. *Id.* at 89-90.

and can prevent Black access to restaurants, clubs, and movie theaters in White areas.⁴⁴

Another pillar is the Population Registration Act, which requires that each individual be classified at birth as belonging to a certain racial group.⁴⁵ The White National Party claimed that classification was merely for statistical purposes and was not a stigma.⁴⁶ However, classification is difficult in practice because of the extent to which racial intermixing has occurred despite laws prohibiting it.⁴⁷ In fact, this Act has been called the strongest pillar of the apartheid system due to the extent to which one's race determines one's rights in South Africa.⁴⁸

The Separate Amenities Act, which provided for segregation of public facilities,⁴⁹ contributed to the pervasive effect of racial classification. Separate hospitals, beaches, buses, trains, libraries, swimming pools, restrooms, graveyards, elevators, and parks were provided for Blacks and Whites.⁵⁰ Furthermore, the Act provided for separate entrances to facilities such as post offices, railroad stations, and police

44. *Id.* at 87.

45. *See id.* at 53; TRYMAN & MWAMBA, *supra* note 17, at 38-39; *A Dismantler's Guide to Apartheid*, THE ECONOMIST, Feb. 10, 1990, at 38; Micheal P. Shea, *Pretoria's Reforms Take Sting Out of New Sanctions Drive*, CONG. Q., Feb. 10, 1990, at 406; Gavin Bell, *South Africa Abolishes Apartheid in Health Care*, THE TIMES, May 17, 1990, at 2. While originally the Act provided classifications of White, Coloured, and Native, today there are four groups: White, Coloured, Indian, and Black. *See supra* note 26.

46. GILIOME & SCHLEMMER, *supra* note 2, at 83, 85.

47. *Id.* at 84. In some cases, classification has resulted in members of family being classified in different groups. *Id.*

48. *See id.* at 84-86; TRYMAN & MWAMBA, *supra* note 17, at 38-39; *A Slight Global Warming*, *supra* note 41; GILIOME & SCHLEMMER, *supra* note 2, at 83 (describing Act as the basis of the whole policy of apartheid). Moreover, despite the present government policy of reform, President de Klerk has stated that this Act will not be amended until a new constitution is negotiated. *South Africa; The Tryst at Tuynhuis*, THE ECONOMIST, Apr. 28, 1990, at 50; Bell, *supra* note 45, at 2.

49. *See supra* note 42 and accompanying text. *See also* GILIOME & SCHLEMMER, *supra* note 2, at 87; Scott Kraft, *After 37 Years, South Africa Ends an Apartheid Law*, L.A. TIMES, Oct. 16, 1990, at 7; Howard Witt, *S. Africa "Whites Only" Law Expires*, CHI. TRIB., Oct. 16, 1990, at 3; Wren, *supra* note 41, at 3. The South African Parliament voted in June 1990, to repeal this Act, though the repeal did not go into effect until October 15, 1990, in order to provide time for adjustment. *Id.*

50. GILIOME & SCHLEMMER, *supra* note 2, at 87-88; Battersby, *supra* note 41, at 4; *S. Africa Abolishes*, *supra* note 18; Kraft, *supra* note 49, at 7; *Reform Loopholes*, SAN FRANCISCO CHRON., Oct. 17, 1990, at 20. Separate legislation segregated public schools at primary, secondary, and university levels. GILIOME & SCHLEMMER, *supra* note 2, at 94-96; Wilmot G. James, *Apartheid, the University, and Change in South Africa*, ACADEME 20-23 (May-June 1990).

stations.⁵¹ Unlike most apartheid legislation, this Act was not justified on the basis of benefitting Blacks by allowing them to develop separately.⁵²

III. ANALYSIS

Since de Klerk's election, the future of these pillars of apartheid has been drawn into question. On February 2, 1990, de Klerk announced a reform program and lifted some restrictions on anti-apartheid organizations, the political activities of certain individuals, and the media.⁵³ Then, on February 11, 1990, former African National Congress leader Nelson Mandela was released after 27 years in prison.⁵⁴ To many, Mandela is the living symbol of the long struggle against apartheid, and his release signalled the beginning of the dismantling of apartheid and the transition to Black majority rule.⁵⁵ Since then, the world has watched Mandela and de Klerk to see if this time apartheid would be dismantled. The effectiveness of de Klerk's reforms,⁵⁶ however, depends on whether they do more than adapt apartheid to modern society.⁵⁷

51. GILIOME & SCHLEMMER, *supra* note 2, at 88.

52. *Id.* at 34-35, 87. See also, *supra* notes 22-26 and accompanying texts.

53. SPEECHES, *supra* note 4, at 290-95. The organizations de Klerk unbanned include: the African National Congress (ANC), the South African Communist Party; the Pan Africanist Congress (PAC); the United Democratic Front, an umbrella group of anti-apartheid organizations; and the Congress of South African Trade Unions (COSATU). *Id.* Of the 374 individuals, most had been imprisoned and released conditionally. *Id.* de Klerk also suspended executions of prisoners and promised to release individuals imprisoned based on membership in the organizations he unbanned. *Id.* Regarding media restrictions, de Klerk stated that "visual material pertaining to scenes of unrest" would still be controlled. *Id.* at 293-94.

54. Mandela's "walk to freedom" was broadcast live on international television. *Mandela Release: The Beginning of the End of Apartheid?*, 35 AFR. REP. 4, 5 (Mar.-Apr. 1990). For a discussion of Mandela's speech and the meaning of his release, see *id.* at 4-6; John Carlin, *Mandela Unbound: Imagining the South African Future*, THE NEW REPUBLIC, Mar. 12, 1990, at 14.

55. *Id.*

56. These reforms include: releasing political prisoners, including ANC peers of Nelson Mandela; condoning mass demonstrations and celebrations; and returning society to civilian hands by dismantling the state security management system set up by his predecessor, P.W. Botha. See Baker, *supra* note 5, at 198. In terms of legislation, reforms include desegregation of beaches and hospitals and repeal of the Separate Amenities Act of 1953. Wren, *supra* note 13. Most recently, de Klerk has also lifted the state of emergency which was originally declared in June 1986 and, until recently, was still in effect in just the Natal province. See, e.g., *de Klerk Lifts Natal Emergency*, L.A. TIMES, Oct. 18, 1990, at 2; *South Africa Lifts Emergency in Natal*, WASH. POST, Oct. 19, 1990, at A25; *de Klerk Lifts Emergency Rule in Natal Province*, N.Y. TIMES, Oct. 19, 1990, at 3.

57. See, e.g., U.N. Doc. 88-11238, *supra* note 1, at 2, 4; Nagan, *supra* note 1, at 91 (discussing adaption versus change).

In attempting to achieve irreversible⁵⁸ change, de Klerk must balance the demands of Blacks⁵⁹ and of the international community⁶⁰ against White fears⁶¹ and opposition.⁶² In making progress toward negotiations⁶³ regarding a new constitution,⁶⁴ de Klerk must meet certain conditions. One set of conditions is imposed by the African National Congress (ANC),⁶⁵ while another is imposed by the international community through the United Nations.⁶⁶ The ANC's five preconditions for negotiations are that de Klerk 1) release political prisoners and allow the unconditional return of anti-apartheid exiles; 2) remove

58. "Irreversible" is the key word used by many people inside and outside South Africa to describe what types of changes must be made before negotiations may take place and before international sanctions may be lifted. See, e.g., Brendan Boyle, *Mandela and de Klerk Could Share Power Within Weeks*, REUTERS, July 4, 1990; *South Africa; Soft Centres*, THE ECONOMIST, July 21, 1990, at 39; William MacLean, *de Klerk Visits Madagascar as Reward for South African Reform*, REUTERS, Aug. 14, 1990; *de Klerk's Peace Push Gives the West a Tricky Choice*, BUS. WK., Aug. 20, 1990, at 49.

59. Though the demands are made primarily by the African National Congress through Nelson Mandela, other Black groups such as the Inkatha movement under Chief Buthelezi, trade union federations, and umbrella groups such as the United Democratic Front have also become involved. For a detailed history of the role of trade unions, see *South African Black Trade Unions as an Emerging Working-Class Movement*, 27 J. MOD. AFR. STUD. 383-400 (1989) [hereinafter *Black Trade Unions*]. For a general discussion of Black groups, see BERGER & GODSELL, *supra* note 7, at 125-63.

60. These demands include the conditions for negotiations imposed by the United Nations, see *infra* notes 66-68 and accompanying texts, and the conditions for lifting sanctions imposed by the United States. *Black Trade Unions*, *supra* note 59, at 383-400. For a general discussion of Black groups, see BERGER & GODSELL, *supra* note 7, at 125-63.

61. White fears of losing their privileges and lifestyle have resulted in accusations that de Klerk is selling them out and betraying them to the ANC. See, e.g., *Mandela: White Privileges Impede Accord With Blacks*, CHI. TRIB., May 7, 1990, at 5; *de Klerk Opens Ruling Party to All Races*, L.A. TIMES, Sept. 1, 1990, at 1; *The Week Ahead: Durban; Conservative Last Stand?*, L.A. TIMES, Oct. 16, 1990, at 1.

One basis of white fears has always been their position as a minority group in the population. At present, it is estimated that there are 5 million Whites to 27-28 million Blacks. See *de Klerk Lifts ANC Ban*, U.P., Feb. 2, 1990; *At the Crossroads*, TIME, Feb. 5, 1990, at 26; *The Pilgrim's Slow Progress*, TIME, Oct. 1, 1990, at 66; Wren, *supra* note 13.

62. Currently, the main White opposition forces are the neo-Nazi African Resistance Movement (AWB) and the Conservative Party. For an article detailing the background and attitudes of these two groups, see Wren, *supra* note 13.

63. All of ANC's preconditions for negotiations have not been met. For a list of the preconditions, see *infra* note 65. de Klerk has unbanned many organizations, released some prisoners, lifted the state of emergency, and reasserted civilian authority. See *supra* notes 13, 53, 56.

64. Since his speech of February 2, 1990, de Klerk has stated that his goal is a "totally new and just constitutional dispensation." See SPEECHES, *supra* note 4, at 290.

65. See *infra* note 67 and accompanying text.

66. See *South Africa; The Clock Ticks*, THE ECONOMIST, June 16, 1990, at 46; *Opening the Gates*, 34 AFR. REP. 23, 26 (Nov.-Dec. 1989).

bans and restrictions imposed on organizations for their anti-apartheid activities; 3) end all political trials and executions; 4) remove government soldiers from the Black townships; and 5) lift the state of emergency, including the repeal of security legislation directed at suppression of political activity.⁶⁷ The United Nation's conditions duplicate the ANC conditions and add two further conditions: 1) the elimination of apartheid laws, and 2) the end of military activities in neighboring countries.⁶⁸

Furthermore, de Klerk is attempting to remove South Africa's international "pariah"⁶⁹ status and at the same time build internal stability in the face of recent violence.⁷⁰ The primary reason for international sanctions against South Africa is the exclusion of Blacks, as the majority group in the country, from participation in government and the denial of individual rights based on race.⁷¹ Because of this structure, the apartheid regime is considered by many to be a violation of the right to self-determination within the meaning of the United Nations Charter.⁷² Thus, de Klerk has accepted that some form of representative democracy⁷³ is necessary in order to restore the South African government's credibility. However, the demands of Whites and of Blacks regarding how such a democracy should be constituted must be balanced.

One source of the continuing outbreaks of violence in South Africa is the struggle between the political groups, Black and White, which have a stake in the outcome of negotiations regarding a new Constitution.⁷⁴ In terms of White demands, the apartheid system has created

67. U.N. Doc. 88-11335, *supra* note 1, at 2; U.N. Doc. 88-11238, *supra* note 1, at 5. These conditions were adopted in GAOR Resolution 42/23A, entitled "International solidarity with the liberation struggle in South Africa." *Id.*

68. *Id.*

69. *See, e.g.*, BREWER, *supra* note 8, at 83; Battersby, *supra* note 41. *See also supra* note 15 and accompanying text. Besides being subject to international sanctions, South Africa also has not been allowed to take its seat in the United Nations General Assembly since 1974. Brubeck, *supra*, note 8, at 326.

70. The sources of recent violence include right-wing Whites opposed to reform and factional fighting in Natal between Zulu members of the Inkatha movement and the ANC. *See* Clough, *supra* note 14 which also summarizes the main South African political groups.

71. *See, e.g.*, Brubeck, *supra* note 8, at 323-26.

72. *Id.* at 325-26. The United Nations, by refusing to accept the credentials of the South African delegation representatives, has ceased to recognize the National Party government as the de facto government of South Africa. *Id.* at 327-28.

73. *See, e.g.*, de Klerk's Chance, *supra* note 41.

74. Clough, *supra* note 70 and accompanying text. According to Clough, those who stand to lose include: Blacks who accepted roles in the independent homelands and other apartheid

vested interests that Whites want protected.⁷⁵ de Klerk originally proposed a system of group rights, which would allow Blacks and Whites to each control their own affairs, and spoke of sharing power with Blacks.⁷⁶ However, de Klerk has recently retreated⁷⁷ from this National Party position which was criticized as merely preserving White privilege and power.⁷⁸

During his visit to the United States in September 1990,⁷⁹ de Klerk promised a universal franchise with votes of equal value.⁸⁰ Furthermore, in opening National Party membership to all races,⁸¹ de Klerk paved the way for alliances with Black political groups.⁸² Thus, even with "one-person, one-vote," the National Party could retain a role in a coalition government.⁸³ As represented by the ANC,⁸⁴ Black demands include equal rights and opportunities,⁸⁵ including one-person, one-

institutions; Black leaders, such as Inkatha head Mangosuthu Buthelezi, who are not associated with the ANC and may be excluded from negotiations, and right-wing Whites, such as the Conservative Party and the militant Afrikaner Resistance Movement. *Id.*

75. See, e.g., *A Climate for Sanctions?*, 34 AFR. REP. 27, 28 (Nov.-Dec. 1989) (discussing government strategy and ANC views).

76. See, e.g., *id.* at 28; 34 AFR. REP. 5, *supra* note 3, at 22; MacLeod, *supra* note 12, at 26; *The Reverend Smangaliso Mkhathswa: A Theologian of the People*, 35 AFR. REP. 17, 20 (July-Aug. 1990).

77. See *infra* notes 79-80 and accompanying texts.

78. See, e.g., Richard Stengel, *Cautious Architect of a Cloudy Future; Faced with the Challenge of Bringing Racial Harmony to His Country, State President F.W. de Klerk Seeks a Middle Path that will Satisfy Blacks Without Alienating Whites*, TIME, Feb. 5, 1990, at 32.

79. Paul Bedard, *S. Africa Progress Pleases Bush*, WASH. TIMES, Sept. 25, 1990, at A1. de Klerk was the first South African President to visit the United States since 1948. *Id.*

80. *Id.*

81. Before October 19, 1990, membership was restricted to Whites only. John Carlin, *Afrikaners Cheer as They Go Non-Racial*, THE INDEPENDENT, Oct. 20, 1990, at 11; *Race Restrictions End*, NEWSDAY, Oct. 20, 1990, at 8; Peter Taylor, *South African Ruling Party Opens Door to All Races*, THE DAILY TELEGRAPH, Oct. 20, 1990, at 10.

82. Carlin, *supra* note 81.

83. *Id.*; Taylor, *supra* note 81.

84. Two other Black opposition groups, the Pan-Africanist Congress (PAC) and the Azanian People's Organization (AZAPO), have thus far rejected de Klerk's invitation to come to the negotiating table and have criticized the ANC for making too many concessions. See, e.g., *Black-Consciousness Group Shuns South African Talks Process*, U.P., Oct. 3, 1990. Nelson Mandela has recently agreed to meet with Chief Buthelezi, leader of the Zulu Inkatha movement, after refusing to meet with Buthelezi as a political leader but only as head of one of the "homelands" set up under apartheid. Christopher S. Wren, *Mandela to Meet Zulu on Equal Terms*, N.Y. TIMES, Oct. 23, 1990, at A3; *ANC Proposes Mandela Talk With Buthelezi*, L.A. TIMES, Oct. 24, 1990, at A6.

85. THE FREEDOM CHARTER OF SOUTH AFRICA, *reprinted* in U.N. Centre Against Apartheid pub. 1979. This Charter was originally adopted by the ANC in 1955. *Id.*

vote.⁸⁶ Thus, if de Klerk follows through with accepting one-person, one-vote,⁸⁷ a major difficulty in negotiating the new Constitution will be solved.⁸⁸

However, the effectiveness of de Klerk's reforms must also be measured against White opposition activity. Even the Conservative Party, which previously claimed that it would oppose reform and de Klerk by means of the ballot,⁸⁹ has admitted that it may resort to violence.⁹⁰ Moreover, one obstacle to the effectiveness of reforms has become apparent with the repeal of the Separate Amenities Act, effective October 15, 1990.⁹¹

In response to the repeal, Conservative Party-controlled town councils have closed facilities,⁹² sold them to private companies,⁹³ restricted use to residents,⁹⁴ or charged exorbitant user fees to non-residents.⁹⁵ In this way, towns have found loopholes which, at least for now,⁹⁶ allow them to continue to discriminate. Such responses show how deeply entrenched the apartheid system is in South Africa. Though de Klerk may continue to repeal apartheid legislation, reforms will not be truly effective until underlying attitudes and structures begin to change.

86. See, e.g., Clough, *supra* note 70.

87. The ANC has recently asserted that, according to de Klerk, a Whites-only referendum will be held to approve or veto any new constitution. See *ANC Radio Comment on de Klerk's Proposal for Whites-Only Referendum*, BRITISH BROADCASTING CORP., Oct. 23, 1990, at ME/0902/B/1.

88. The ANC had consistently stated that nothing less than one-person, one-vote in a multi-racial democracy will be accepted. *Id.* See also Clough, *supra* note 70.

89. See, e.g., Wren, *supra* note 13. The Conservative Party has consistently called for new elections or a referendum because it believes most Whites oppose de Klerk and his reforms. *Id.*

90. *Id.* Andries Treurnicht, the Conservative Party leader, has stated that the inclusion of other races in a referendum on a new Constitution could lead to violence. *Id.*

91. The repeal went into effect on October 15, 1990. See *supra* notes 49-52 and accompanying texts.

92. Kraft, *supra* note 49; Witt, *supra* note 49; Wren, *supra* note 41; Battersby, *supra* note 41.

93. With the repeal of the Act, private facilities can still discriminate. *Id.*

94. *S. Africa Abolishes*, *supra* note 18; Battersby, *supra* note 41. Under Group Areas, Blacks are prohibited from becoming residents of most White cities and towns. *Id.* However, de Klerk has promised Group Areas will be repealed next year. *Id.*

95. See *supra* note 91; see also *S. Africa Abolishes*, *supra* note 18. The annual fee of \$200 which non-residents of all-White Bethel must pay to use the public library is the equivalent of several months salary for most Blacks, whom Group Areas forces to live in another township. Kraft, *supra* note 49; Wren, *supra* note 41.

96. See *S. Africa Abolishes*, *supra* note 18. The government has warned town councils not to attempt such circumvention of reforms. Furthermore, the government claims excluded Blacks will be able to enforce their rights in court. *Id.* In response, the ANC has threatened Black consumer boycotts. *Id.*

IV. CONCLUSION

Perhaps the main obstacle to effective reform in South Africa today is the historical lack of interaction between Whites and Blacks.⁹⁷ Since the repeal of Separate Amenities, the ANC has encouraged Blacks to exercise their new access rights⁹⁸ and has appealed to Whites to accept Black use of facilities.⁹⁹ White fears that their communities are threatened, however, stem from the apartheid philosophy of separateness in order to ensure White survival and to allow each racial group to attain its own maximum development.¹⁰⁰ Thus, though de Klerk may chip away at de jure apartheid, he must also deal with de facto apartheid.

A 1948 National Party Pamphlet put it this way: "The right of the non-European to exist and to develop is acknowledged, but apart from and under the guidance of the European."¹⁰¹ A White resort manager recently stated that while he would admit Blacks who paid to enter, "that doesn't mean I have to eat . . . and drink with them. That's the way I was brought up."¹⁰² While the labels may change, the attitude remains the same though perhaps less pervasive. One can only hope that the next generation will be brought up differently and that some members of the present generation will not be afraid to see that they are wrong.

Kimberlee Ann Scalia

97. The apartheid system was designed to keep the races separate. *See supra* notes 21-26 and accompanying texts. For an article discussing the lack of contact and communication between Blacks and Whites, see Lowe, *supra* note 2, at 265.

98. *See Kraft, supra* note 49.

99. *S. Africa Abolishes, supra* note 18.

100. *See, e.g., GILMEE & SCHLEMMER, supra* note 2, at 53-54, describing this as one of the tenets of apartheid.

101. *Id.* at 96.

102. Battersby, *supra* note 41.