**The Sustainability and Endurance of a Rule of Law Governed Democracy in South Africa Challenged by an Enlightened Approach to Socio- Cultural Ethnic Diversity and the Embrace of an Economic System that Provides for a More Just Distribution of the Economic Patrimony of the Nation**

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**Introduction**

This paper is part of a joint project which is concerned with the anticipation of social stability or the anticipation of social disintegration which might threaten the continued viability of the South African state. This part of the paper focuses on two important questions that touch on the sustainability and endurance of the new state. First, South Africa has inherited a social process of considerable diversity. This diversity deflects factors of cultural tradition, ethnicity, complex patterns of economic, social and cultural stratification and the challenge of the state is to secure the architecture of the social process that secures a balanced interest of the diverse sectors of the society in understanding their own specific needs and interest and at the same time, recognizing that those needs of interest are in part dependent upon the viability and success of the state itself.

This aspect of the paper has a specific focus on the position of the first nation of South Africa, the Khoisan and the extent to which the government of South Africa, informed by its new constitution is still unable to overcome the deprecation of the essential identity of the Khoisan. Moreover, the unwillingness to recognize Khoisan first nation status has implications that reflect the legacy of the apartheid system and its ideas of ethnic isolation, exploitation and repression under the authority of white supremacy. The central problem here is that the new ANC government sees the problem of justice as reparations as pertaining virtually exclusively to the NGUNI groups of South Africa. The implicit recognition here is that black South Africans with NGUNI heritage are the only first nation of Aboriginal people of South Africa and are entitled to some restorative justice, but the Khoisan remain an invisible group and receive no governmental efforts at providing real restoration for over two centuries of genocide, repression and expropriation.

The second part of the paper focuses on the political economy of post-apartheid South Africa. Here it may be seen that historically a great deal of attention was focused upon the political and constitutional choices that would inform post-liberation South Africa. Not much thought was given to what a post-apartheid economy might look like. In this regard, the ANC chose a conservative economic future. That future they gambled would rely on the new normal and global economic affairs. This new normal comes under the title of “economic neo-liberalism.” The consequences of economic neo-liberalism both in the world community and in South Africa has reflected an inexorable march to radicalize economic relations in South Africa and global society. It has also accentuated the level of unemployment creating a labor crisis in South Africa as employment opportunities vanish. This may as well be seen as an economic order that is unsustainable and may threaten the future survivability of the South African state.

**Part I**

**The First Nation Status of the Khoisan and the Stability of the Public Order of South Africa**

This study is commenced over twenty years after South Africa attained its liberation from the repression and racism of the apartheid era of governance. Twenty years after the adoption of the new constitution, South Africa has indeed survived, but it has been a rocky and uneven process of social evolution and economic achievement. South African development, notwithstanding the new constitution, inherited a form of social, cultural, political, and economic division that constituted the legacy of apartheid. It is important for us to understand this legacy, how much of it continues to endure, and how much can we moderate it by enlightened public policy intervention?

In 1652, three ships owned by the Dutch East India Company arrived in Table Bay, led by the company official, Jan van Riebeeck. His orders from the company were not to establish a process of colonization, but to establish a company presence to supply company shipping from Europe to Asia and Asia to Europe. When van Riebeeck arrived, the Cape was occupied by an indigenous population of Khoi Khoi and Khoisan people. The Khoi spoke in a dialect of clicks, as did the San. This made communication extremely difficult. In essence, what van Riebeeck needed mostly was to supply ships going to Asia was meat and vegetables. It is fair to assume that all the land, including the land proximate to the company headquarters, was land used and possessed by the indigenous occupiers.

Van Riebeeck established a large garden near his headquarters, which essentially possessed native land but which was uncontested. Obtaining meat was more complicated. The Khoikhoi were largely a herding culture with sheep, goas and cattle. The San were hunter-gatherers. The company had to barter with the Khoikhoi for meat. Some Khoi leaders discovered that the meat exchanged for metals and other trinkets was not necessarily a good deal. Van Riebeeck found the Khoi too clever to exploit. Van Riebeeck decided to permit company servants to establish themselves as free citizens with farm holdings on certain parts of Khoi land, issued under the authority of the company.

Since title, in the European sense, meant the right to exclude others from possessing or using what is detailed within the title, this difference in cultural perspectives about property was an initial source of friction between the company operatives and the indigenous people. In direct and indirect ways, a white settlement expanded and resulted in the displacement of the indigenous inhabitants of the Cape.

From the perspective of the San, since white settlers’ livestock was occupying their traditional lands, they proceeded to take for consumption the livestock of the settlers. The settlers responded with violence and, at one point, the company declared the San to be vermin, giving settlers the right to exterminate them. This led to almost two centuries of conflict. The greatest disaster to affect the Khoikhoi was the white settlers’ introduction of Small Pox, which killed a huge segment of the Khoikhoi population. The violence of the settlers led to the migration of the San to the North and West and migration of the Khoikhoi as well. During this period of dislocation, there was considerable intermarriage between the San and the Khoikhoi so that these peoples are comfortable with the designation ‘Khoisan.’ Some of the San attempted to assimilate their economics according to the practices of herding livestock, some of the Khoi supplemented their diets with the hunter-gatherer mode of economic expression.

One of the most important facts of this period of economic dislocation for the Khoisan was that the breakdown of their economic system forced some of them into servitude with the white settlers in order to survive. It should be noted parenthetically that in 1662, white settlement comprised 134 officials, 35 free Burghers, 15 women and 22 children. These numbers indicate an acute shortage of women among the settlers. Living in close proximity with these settlers, who continuously faced a shortage of women, there was considerable interracial sex and sometimes marriage. The consequence of the starved libido of the white settlers led to the emergence of a sub-group of the Khoisan, which the white politicians later defined as ‘Cape Coloureds.’ The Khoisan, providing convenient sexual outlets for the whites, also provided an amplitude of servitude to soften their lifestyle. Since sex produced offspring, the offspring fell into the culture of servitude. To the extent that there were political implications the emergence of the mixed race population and the Khoisan, social practice and law ensured discriminatory treatment and the status of permanent inferiority of the (Cape Coloured) Khoisan population group. It should also be added that the colonists brought over political prisoners from Batavia who were in servitude or enslaved. Since the Asians came with a coherent religion and a sense of identity, they too were impelled to procreate and sometimes marry into the Khoisan culture. Hence a subgroup of the Cape Coloureds represent the Cape Malays who were treated as inferior as the rest of the Khoisan and the Cape Coloureds. It is worth noting that the slaves from Batavia were scholars, religious and political leaders and artisans. These slaves exchanged important artisan skills with the Khoisan people.

The history of South Africa has little interesting to say about the relationship between the Khoisan peoples and the Dutch Burghers of the seventeenth and eighteenth centuries. The consequence of this has been to imply that the Khoisan and the complex patterns of human reproduction across racial and ethnic lines has no intrinsic historic value. It is of course convenient to have the Khoisan disappear historically to deny an identity for the mixed Khoisan races and at the same time diminish the role of sexual license that the Dutch inflicted on the Khoisan. In short, sex extinguished the Khoisan and the product of those relations, a shameful expression of settler sexuality simply meant that these unfortunate products of history do not count as historically interesting or important. What has been shown by Shula Marks in a remarkable study, *Khoisan Resistance to the Dutch in the 17th and 18th Centuries*, demonstrates that in fact the Khoi resisted Dutch in every decade of the eighteenth century. The so-called ‘Bushman Wars,’ were a response to their land expropriation by the Boers. What is even more interesting was the interpenetration of violence, sex, trade and exploitation meant that the Khoisan adopted the language of the antagonists. While the Khoisan language does survive, it is not as universally spoken as the Afrikaans language. The Khoisan migrated to various parts of southern Africa and established independent republics.[[1]](#footnote-1) These republics were later absorbed by the British Empire. The complex relationship of the Khoisan to the white authorities reflected the considerable skills the Khoisan had developed in the arts of horsemanship and the use of firearms. The Khoisan/Coloureds had a visible presence in the South African armed forces during the first and second World Wars.

**The Position of the Khoisan in the Broader Context of South African History**

The great trek, which was a consequence of a large part of the Afrikaner settler community moving north and east in the direction of the Orange Free State, the Natal, resulted in two Boer republics, the Free State and the Transvaal. The movement of the Boers provided some space for the Khoisan and their mixed relatives, who in the Cape were given the franchise in the 1850s, the right to vote. The Boer War resulted in a defeat of the Boers and a great scandal of imperial atrocity victimizing the Boers. It is possible that the shameful conduct of the British Empire resulted in the creation of a union of South Africa, which including the Boer provinces and Boer leaders. It is by no means clear that this olive branch from the empire was one that was universally embraced by the Africana population. This population maintained their strong presence of nationalistic chauvinism and later a partiality to European fascism. In any event, in the 1930s, they were able remove the Cape Blacks from the common voters’ role and, in the 1950s, they succeeded in removing the Cape Coloureds from the common voters’ role. This sealed the fate of English speakers and moderate Afrikaners. It cemented rule by the extremist nationalists who then proceeded to reproduce the political and economic culture of apartheid, beginning in 1948. The party sustained its ideological purity with the support of a number of secret societies, the most prominent of which was the Broederbond. The Broederbond also supplied it with an ideological justification, which they called “Christian Nationalism.”

The real ideological architect of the radical right-wing apartheid state was Hendrik Verwoerd. Verwoerd explained apartheid as a form of separate development. In an odd version of Hegelian philosophy, he explained that each ethnic group was rewired to follow is own Volksgeist and apartheid was the government’s mechanism, for introducing the historically determined dynamic of groups evolving according to their Volksgeist. The apartheid state initiated its changes by declaring interracial sex to be criminal under Immorality Act. It also declared that mixed marriages were forbidden and those entered into such marriages would be criminally liable. To sort out the question of who was appropriately in bed with whom, they also enacted the Population Registration Act, which required South Africans to acquire an identity card and, in cases of doubt, to appear before a panel of racial experts to determine their racial pedigree. At the level of local communities, there was the notion of ordinary apartheid. For example, the Group Areas Act determined where one could live and own property so that there were such things as ‘coloured group areas’, ‘Indian group areas’ and ‘black group areas’ in addition to ‘white group areas’.

It should be noted that a lions shares of the urban areas were designated as exclusively for whites, and non-white who owned property in these areas found themselves essentially expropriated. In effect, the Group Areas Act provided real property gifts for poor whites and the white speculators all at the expense of the non-white population. What is important here is that since groups were defined ethnically and confined geographically, it made interethnic communication difficult and tended to isolate communities. The apartheid rules also embraced separate education, including higher education, job reservations, to prevent the emergence of an artisan class of non-whites. The other scheme of apartheid, called ‘Grand Apartheid’ took certain homelands and declared black populations to be citizens of those homelands and therefore persons with no citizenship rights in South Africa. This resulted in the removal of vast numbers of blacks to the ‘dumping grounds,’ especially in the Eastern Cape.

The apartheid state, with its rigorous policies of both discrimination and segregation as well as the repression of the cultural and political perspectives of the discriminated classes, in fact created realities among all population groups that are still to be understood, and whose legacies continue. Specifically, with regard to the Khoisan (coloured community) that community faced rigorous governmental supervision to ensure that its contacts with other community groups would be kept to a minimum. Rigorous racial segregation of housing arrangements made it difficult to establish communication lines with other parts of the population and to collaborate on strategies of resistance. Even in the sphere of sporting arrangements white sport was privileged and was mandated to keep a presence that remained purely white. On the other hand, the discriminated communities worked tirelessly to establish sporting links between so-called Coloureds, so-called Malays, so-called Indians, and so-called Africans. For example, a soccer league was formed to unite all the segregated parts of the community in an organization called the Eastern Province Soccer Federation, which arranged matches between teams from the oppressed classes. This spread to cricket and rugby. Although the state did everything possible to frustrate and prevent these competitions from being held.

It was an initiative of a former NEUM official to spearhead an international sports boycott of white South Africa because of the apartheid policies. Khoi official Dennis Brutus formed the South African Non-racial Olympic Committee, which played a major role in having segregated white South Africa expelled from the Olympic Games. Dennis Brutus and Winston Nagan continued the campaign from abroad and had Rhodesia removed from the Olympic Games. These activities led to exclusions from world soccer, world table tennis, and later world cricket. These types of activities were an indication of the insistence on the part of Khoisan activists that there must be a commitment to a no-racial South Africa in every sphere. The fact that Khoisan leaders advanced a non-racial agenda did not make them less African, less Khoisan, or less South African. The central point being, the fact that one could be a so-called Khoisan or ‘Zulu’ or Indian or African does not diminish one’s birth right and identity or the embrace of the idea of universal dignity. The liberation struggle of South Africa had many heroes and they were represented in every sector of South African society, including the entire bend of the rainbow.

In this part of the paper we have tried to provide a description and justification of why it is a betrayal of the basic values that drove the people of South Africa to get rid of the chauvinism of apartheid and find a place for people of all the complex backgrounds of South Africa and to provide the people of South Africa with the space to evolve those identities in progressive direction without relinquishing their cultural and spiritual heritage.

**The Historical Position of the First Nation Khoisan-Cape Coloureds and Its Contribution to a Non-Racial South Africa**

The two indigenous first nation groups in South Africa were the Khoi Khoi and the Khoisan. The Khoi Khoi were essentially pastoral farmers with livestock. Living alongside the Khoi Khoi were the Khoisan. The Khoisan were hunter gatherers. They lived a relatively complementary existence, and when the settler population began to squeeze the Khoi Khoi out of their traditional lands, the Khoi Khoi were aided by the San and developed hunter gatherer skills as well. At some point in this history of location, the San developed some of the skills of pastoral farming. The terms Khoi Khoi and Khoisan are the terms used by these communities to describe themselves. Since the settlers found the click oriented Khoi and San languages impossible to absorb, they gave them names that were descriptive of the psychologically dominant white settlers. The Khoi Khoi were always referred to as the ‘Hottentots,’ and the San were referred to as the ‘Bushmen.’ Both these terms invariably carried a cultural understanding that suggested a depreciated status of these communities.

A part of the tension that emerged between the Khoi Khoi and the settlers emerged from Khoi translators who spent time in other Dutch colonies and who learned that the deals with the Khoi Khoi involving trading for meat and other products, were a rotten deal. This led to the Khoi having a distrust of the settlers, a matter which angered the settlers and which made trading difficult. The response of the settlers was to create a free burger population and appropriate by force, land along the river close to the company fort. The appropriation of Khoi land further exacerbated Khoi settler relations. On the other hand, the company provided titles to land occupied in other parts of southern Africa by the Khoi. This led to almost 200 years of conflict and war between the Khoi Khoi and the white settlers.

The San became the targets of settler expansion when the settlers settled in lands that they traditionally hunted and gathered plants from. The San in turn appropriated the cattle of the settlers as compensation for what had been stolen from them. Eventually the idea that these communities had the temerity to confront the settlers led the company to declare that both the Khoi Khoi and the Khoisan were vermin and the settlers had the right to exterminate them wherever they could find them.

The Khoi Khoi and Khoisan migrated to avoid the settlers but very early on in settler colonization, the settlers brought with them small pox. The disease wiped out a huge proportion of the Khoi Khoi population. Decimated by disease, their loss of traditional lands, and the ability to survive economically, the weakened Khoi were essentially fighting a war of land dispossession that they could not win. Notwithstanding, the sophisticated Khoi Khoi developed admirable military skills and many of them could ride and shoot on horseback. The policy which involved the extermination of the Khoi Khoi and the Khoisan meant that frequently the men were killed and the women were taken into servitude with their children by the white burgers. The importance of the women to the free Burghers was that under the control of the burghers, the women could be freely used for sexual gratification. Many of the Khoi Khoi were simply enslaved and the sexual connections produced more slaves who were part Khoi and part settler. Apparently, the free Burghers approached Khoi women from the perspective of sexual license giving rise to a population of mixed white Khoi who in a modern age had an identity ascribed to them called Cape Coloured. The population losses and accelerated migration as well as the servitude experienced by the Khoi and their descendants, essentially meant that they had no history of existence in the history books written by the settlers. The common understanding was that the Khoi Khoi and the Khoisan had disappeared from the pages of history.

The next phase of the history of the Khoi Khoi and the Khoisan is therefore subsumed under the history of an ascribed or imposed identity by the white colonists to the mixed race population centered mainly in the Cape.

In the latter part of the nineteenth century the grandson of slaves and the legendary Khoi leader Dr. Abdurahman became a legendry leader in the fight for coloured, civil and political rights. Abdurahman’s parents were Cape Malays who were artisans and reasonably affluent. Abdurahman was sent to Glasgow for medical training. Upon his return he became a champion of Khoi-coloured rights and the only Khoi to sit on the city council and the provincial council. In later years, Abdurahman was influential in an organization known as the African People’s Organization. What Abdurahman tried to do was to quietly repudiate the tainted label Cape Coloured and create an organization in which all of the oppressed in South African who designate themselves as South Africans, unfortunately, while the symbol of African unity was proclaimed, it did not have an effect on political mobilization on the ground. The Khoi-Coloureds were enthusiastic but black politics had yet to evolve to appreciate the nature of the pathway to freedom.

The role of Dr. Abdurahman in the evolution of the strategies to confront white supremacy was important in the sense that he devoted his life challenging every conceivable way the framework of discriminatory law and practice which specifically targeted the so-called Khoi- Coloureds of the Cape. The strategy was to work within the system of authority and control as it existed. Within this framework, Abdurahman held political positions in the city council and the provincial administration. He additionally found space in the issue of elevating the position of the Khoi-Coloureds by committing himself to vigorously support good educational opportunities for the Khoi-Coloureds. It is obvious that Abdurahman’s position made him popular. In addition, the Cape had a limited franchise for Khoi-Coloureds and he went to England to lobby for the voting rights of Khoi-Coloureds and Africans in the Cape and their inclusion in the Union Constitution.

Abdurahman died in 1940. In the meanwhile, his efforts to encourage the education of the Coloureds resulted in the establishment of a number of prestigious high schools in the Cape. From these beginnings there emerged an intellectual class that saw his workings within the system as somewhat tepid. Additionally, the development of a cadre of coloured and African teachers led to the creation of a teacher’s forum concerned with developing a better form of governance for South Africa and a focus on strategies to accentuate change. This resulted in the establishment of the Teachers League of South Africa and from these roots there emerged in 1943, the creation of the Non-European Unity Movement. The Unity Movement emerged with an impressive 10 point program of political demand and aspiration. They also focused on a strategy of non-cooperation and so far as possible, the boycott of segregationists institutions and policies of the authorities. It should be noted that while this seemed to be a different emphasis than Abdurahman, the idea of organizing politically on non-ethnic lines was a critical element of inheritance in effect reinforcing the symbology of the African people’s organization.

The strength of the NEUM was also its Achilles heel. The Unity movement generated a powerful group of Khoi-coloured intellectuals. Indeed, this was such a self-confident group that its self-reliance made it less partial to ties with other leaders in South Africa who they thought were intellectually weak. The intellectual leaders of the NEUM did not provide us with a clear dogmatic form of a political alternative. They were convinced that organization on ethnic lines was a political trap for future action. The NEUM was fueled by the workers party of South Africa which was a largely Trotskyists organization. The program of the NEUM could have been construed in terms of a social democratic emphasis or a more doctrinal Trotskyists perspective. The Trotskyists emphasis seemed to emerge as a direct emphasis on anti-Stalinists socialism and its criticism of the commentern. In effect, this made the NEUM an anti-Communist branch of the social democratic movement. It should also be mentioned that in the mid-1930s the government led an initiative to remove Africans from the common voter’s role. This gave an impetus to the African branch of the NEUM. It should be noted in this context that Isaac B. Tabata the leading Trotskyists ideologue focused on the unity of all oppressed people and the organization along economic stratification lines. In 1935, he was instrumental in establishing the All African Convention (AAC).

Tabata also had a focus on the African People’s Democratic Union of South Africa (APDUSA). APDUSA had a student branch, SOYA (Society of Young Africans). Tabata and Kies shared the political perspective that the aggressive amplification of ethnic identities to the oppressed people of South Africa, was a tactic of divide and rule, and ethnic identifications tended to weaken the struggle which was essentially a struggle between the “haves” and “have nots.” Tabata’s effort was to stress a class analysis on the basic that economic interests would unify the oppressed people of South Africa. Tabata unfortunately, left South Africa for exile and the promise of African unity of the oppressed diminished.

The objective shared of both the AAC and the NEUM was unity of the oppressed people. The two prominent leaders of these organizations were Tabata and the Khoi intellectual, Ben Kies. The two organizations split and Tabata was forced into exile. In May 1943, Kies gave a major address dissecting the strategic objectives of the state in the maintenance of white supremacy. Kies explained that the white authorities used race as a symbol to cement the division of working class interests. According to Kies, the fundamental class issue of owner and worker is blotted out by the crusade: white against non-white.

According to Kies:

“All of them, intellectual, worker or peasant, from the Prime Minister down to the most illiterate poor white, they live off the segregation of the nonwhites, they perpetuate that segregation in their own interests and they swagger through the land, glorying in the possession of a white skin, their passport to South African Democracy. So completely have the whites, as a group, been taken in by this racial fraud that they gladly gave their lives to fight Fascism abroad and they spend their lives to implement it at home; the white working class even has its own Labour Party segregation scheme, which cannot be distinguished from that of the rulers. In their utter folly they have allowed themselves to be segregated from us, and they are siding with the Lords of Empire who will turn on them tomorrow, after they have finished dealing with the various sections of the segregated nonwhites.”[[2]](#footnote-2)

He continued:

“The control of the non-whites in South Africa represents another devious strategy designed to impose the state’s view of identity onto diverse segments of non-European population. Kies maintained that the success of white supremacy did not only rest on the modern monopoly of the coercion of the state. It was successful because it was able to enslave the minds of the non-whites. In effect, white culture was literally preempting the process of how people formed their concepts of self and identity.”

According to Kies:[[3]](#footnote-3)

“The bitter truth is that white South Africa still dominates because it has been able to enslave the mind, the ideas of the non-European. It is a known historical fact that in any society, the prevailing ideas, manners and customs of even the oppressed section, are the ideas, manners and customs of the ruling class.

South Africa is no exception. Segregation is the prevailing idea of the South African ruling class and it has created segregationists in our own ranks. So, we can distinguish the three main causes of our defeats:

(1) The segregationist outlook of the non-Europeans.

(2) The segregationist political organisations and efforts of the Non-Europeans;

(3) The segregationist and reformist leadership.”

Kies provides us with important insights into the staying power of white supremacy and the complicity of the non-whites in their own depreciated status. Kies captures the psychology of race impacted by racial dominance in the following words:

“…in this country, one still has to speak of African oppressed, Coloured oppressed and Indian oppressed sufficient evidence of the sad fact that the slaves have taken over the segregationist ideology of their master. The white minority looks upon the African as a "raw kaffir," and such he has been to the majority of Coloureds and Indians. The white minority looks upon the Coloured man as a "bastard Hottentot" and such he has been to most of the Africans and Indians. The white minority looks upon the Indian as a "bloody coolie," and such he has been to most Africans and Coloureds. The African is told that he is superior because he is "pure blooded" and he has believed this. The Coloured man is told that he is superior because the "blood of the white man" flows in his veins and he has believed this. The Indian has been told that he is superior because he belongs to a great nation with a mighty culture and he has believed this.”

Kies added:

“Yet neither the Coloured nor the African has been as big a segregationist as the Indian. He is an inverted white man. He fights bitterly against the British Herrenvolk in India, but he has looked upon himself as the chosen race amongst the non-Europeans of South Africa. There has been some intercourse between Coloured and African, but nothing to speak of between Coloured and Indian, and less than nothing between Indian and African. The chief cause of this has been the Indian merchant class, because, like all capitalists, they worry only about ways and means of gaining greater and immediate profits. They still have the most feudal family system of all the non-Europeans; they still have a feudal attitude towards women; they are feudal in almost everything except their attitude towards race. In this they are as modern as the Nazis. Under the cloak of race, religion and Oriental culture, they have perpetuated the segregation idea.”

Since the time that Kies wrote these words, South Africa moved dramatically in the direction of the most ambitious form of ethnic social engineering on earth. This came to be known as apartheid. What is important here is that the categories that Kies was talking about as sociological categories, became legislatively enshrined under the innovations of the law of apartheid. It will be seen that the state authorities embarked upon an aggressive policy of racial division engineered by legislation and administrative practice. Political leadership in the Cape of the so-called Khoi-Coloureds was a repudiation of the idea of imposed and artificial identities. As the state implemented policies of ethnic division, the NEUM launched a program called Anti-Cad. The state’s policy was to cement the identity imposed on the so-called Coloureds and the Khoisan, while at the same time cementing white identity under the label “Swart Gevaar.” The Swart Gevaaar ideology was in turn supported by the emergence of so-called Christian nationalism.

From a psychological and religious point of view, the existence of a sub-mongrelized mixed race of inferiors, was a testament to the sinful, sexual, predatory behavior of the ancestors of the Afrikaners. They needed an ideology as well of atonement. That came in the form of the cornerstone legislation of apartheid. Since sex had represented the original sin of the Afrikaner, and the product of that sin was the so-called Cape Coloured, it was important that they strike the blow for Afrikaner morality by prohibiting sexual relations across the racial lines. To do this everyone had to be registered according to an imposed ethnic identity. This ethnic identity then served as a tool to punish sexual immorality across the color line. In this strange way, the Afrikaner sought forgiveness for being the inheritors of sinful, sexual predatory behavior and justified the product of their sin as destined, armed with identity cards to second class social and political status, and further justified the petty brutality of overt and vulgar racist targeting and racial hate.

The cornerstone of this initiative was the Population Registration Act, then the state supplemented this with the legislated Immorality Act which criminalized sex across the color line and the Prohibition of Mixed Marriages Act to eliminate inter-racial procreation.

**The Khoisan-So-Called Coloured Identity and Apartheid**

What we have not mentioned is the position of the so-called Coloured and the Khoisan. The Khoisan people suffered the extinction of economic patrimony and community cohesion and later extermination (genocide). The Khoisan survivors were radically redistributed in South Africa partly to avoid the extermination policies of the settlers. As their lands were stolen, the basis of their economic survival was also expropriated. This resulted in many Khoi being absorbed into elements of servitude indentured later and slavery with the settler overlords. Some were simply there as a matter of economic dominance, others were enslaved. This element of cultural dominance also confronted the gender factor of a shortage of white women for the settlers. It therefore became culturally permissible to utilize Khoi and San women as sexual objects and when they became pregnant the children would fall into the servitude of the parent. Thus, there emerged a mixed Khoi and settler community and those who were fortunate to migrate into the cities, essentially formed a Khoi-mixed race community which the whites conveniently called Coloureds. Later, Coloured became legislatively mandated to include all the surviving Khoisan people. It should be added that there was also inter-marriage and sexual intercourse between Nguni slaves as well as the slaves and political exiles from the Dutch East Indies. Indeed, today a sub-group of the so-called Cape Coloureds are the so-called Cape Malays.

The position of the Khoi as such was conveniently forgotten on the basis that the Khoi and the San no longer existed. However, Khoi and San culture continue to survive in the margins of the urban areas as well as rural areas and farms although they were economically depressed and terribly exploited. It was convenient to simply wipe the Khoisan off of the map of historical memory because it tended to validate the occupancy and possession of their lands by the white settlers. It will be recalled that among the justifications given by the government for the privileged position of the whites with respect to land was the idea that there were no first nations that could challenge the occupancy rights claimed by the white settlers. In short, since the Khoisan had been extinguished culturally from South African history, the settlers could assume that the land that they now occupied was terra nullius. It should be parenthetically noted, that this was meant to give a degree of legitimacy to the position of white occupancy of South Africa. This claim in fact asserted the white right to own South Africa because the whites were there first. This in fact, was a preemptive strike against a possible Nguni claim that Nguni migrating south and west had a claim to be a first nation of South Africa because of their migration they were the first populations to present themselves.

An important assumption, not often volubly expressed in black political circles, is that South Africa belongs to the Nguni black nations of South Africa. In short, the Coloureds, the Indians and the whites have a tenuous claim to South African patrimony because the blacks were in South Africa first. They are the true first nations. It is obvious that the Khoisan who settled in South Africa for thousands of years, simply by the evidence of anthropology and archeology are clearly the population group with an unrivaled claim to first nation status. It should be noted that the New South African Constitution does not give them that status and all subsequent efforts of reform have sought to avoid the granting of first nation status to the Khoisan although they are entitled to first nation status by virtue of history and the status of modern international law. The South African Constitution mentions the importance of language rights for some segments of the Khoisan population but there are not given recognition as a people or indeed, a first nation community. Subsequent legislation has done everything possible to avoid the recognition of the Khoisan as a people let alone a people with first nation history.

In the Appendix to this chapter, we have included a short article detailing the timeline which affirms that the Khoisan-Coloureds are a first nation of South Africa.

The conquest of the Khoisan completely undermined the political and cultural organization of the community. The Khoisan were now to subsist culturally, as foragers. The combination of genocide and economic expropriation compelled the abandonment of traditional lands although abandonment was frequently resisted. In South Africa the Khoisan vanished from history and were replaced by the evolution of the Khoisan and the mixed race community into what the colonial authorities called “Cape Coloureds.” This of course was an imposed identity.

According to Special Rappateur, Martin Cobo, the following is his assessment:

“The Cradle of Humankind has not only scientifically and archeologically proven to be in Africa but it is significant to note that South Africa continues to play a pivotal role as host of the Maropeng (Sterkfontein Caves) which contains the discovery of 2.3 million year old fossil Australopithecus Africanus (nickname Mrs. Ples), found in 1947 by Robert Broom and John T. Robinson. Sterkfontein Caves produced more than a third of every hominid fossils, the sagacity of humanity is all formed on the continent and South Africa could be regarded as the gateway into civilization, a country with celebrated struggle credentials and insidious contradictions.”[[4]](#footnote-4)

The important conclusion here is that the seeds of humanity were preserved in Southern Africa among the Khoi Khoi and the Khoisan. It was these groups that migrated and populated the earth. Indeed, it could be urged that the entire population of the earth carries the genetic inheritance of the Khoi Khoi and San.

The South African Constitution in particular, Section 7.2 stipulates a broad avenue for the protection of political and civil rights:

The South African Constitution at section 7(2) provides that the state must respect, protect, promote and fulfill the rights in the Bill of Rights. As a constitutional democracy, South Africa’s values are underpinned by considerations of human dignity, the achievement of equality, and the advancement of human rights and freedoms; non-racialism and non-sexism, supremacy of the Constitution and the rule of law; and a multi-party democracy to ensure a government that is accountable, responsive and transparent. Further, the Bill of Rights binds the Legislature, the Executive, the Judiciary and all organs of state.

Unfortunately, the Constitution does not recognize the Khoisan as an indigenous first nation. This essentially means that customary rights including land rights are not enjoyed to the same extent as the broad provisions of the Constitution indicate. The kind of rights implicated here are the rights to cultural development, the development of natural resources, the importance of internal community self-determination, and the competence of self-identification, matters that are essentially absent from the corpus of the law. With regard to land and indigenous culture, it would be important to note that the concept of entitlement to land in an indigenous community does not involve the commodification of the land. This is because indigenous culture cannot conceive of land as a commodity such as the purchase and sale of Coca Cola. In indigenous culture therefore land is not a commodity aspect of the group, it is the basis of the group itself. Without access and occupancy of land, the community cannot survive.

The governments approach to negotiating concerning culture and land rights has in effect been an exercise of obfuscation and frustration. Khoisan advocacy groups have called on the government and the courts to stop “All negotiations and engagements with the Indigenous First Nation of South Africa structures including the National Khoi and San Council (NKSC), the Rural Development and Land Reform Reference Groups and all active facilitations, until an all-inclusive National and Provincial consultation has been completed, where the nation will identify authentic leaders to lead the process. It is our considered opinion that the Executive National Assembly, Parliament, Ministries of Land Reform including Arts and Culture, Cooperative Governance and Traditional Affairs and the National Council of Provinces failed to satisfy its obligation to facilitate coherent and measured public (Khoi-San) participation in accordance with section 72(1)(a) of the Constitution.”

The central question is why the ANC decided to omit the recognition of the Khoisan-Coloured community as an authentic first nation of South Africa. From the perspective of the white establishment the obliteration of the Khoi from historic memory justified not only their expropriation, but probably satisfied a deeper level of anxiety. The settlers placed a premium on whiteness. That was their most valuable commodity. They therefore considered any race that was mixed as indicating an adulterated form of humanity: a non-self-other. The paradox is that the very same non-self-other contained a blood line that had a component of the self. This represented the sexual depravity of the settlers and thus the evidence of a mixed race stood as a sentinel indicating the moral delinquency of the supremacy of the white race. Now the critical question is why did the ANC go to such great lengths to prevent the recognition of the Khoisan as a first nation? The answer seems to be that Nguni culture in general frowns upon mixed race people. It is the pure Nguni who are the superior race. The mixed race non-whites are impure and therefore inferior. In fact, from Nguni point of view, the Khoisan and the Coloureds are non-self-others. Additionally, to recognize the Khoisan as a first nation would carry the political implication that the black constituency cannot assert any claim to a racial priority over South Africa. This may imply that notwithstanding liberalization and nationalism, black identifications still carry an archaic sense of black purity and superiority. It would therefore seem important that rather than avoid the question it should be directly confronted in the interest of everyone.

One of the important issues concerning the evolution and identity of the Khoisan-Coloured perspectives is the fact that they were the most alert to the manipulation of race ethnicity as a form of social control. Dr. Abdurahman was the first mixed race leader who challenged the idea of ethnic division when he launched the African People’s Organization in the latter part of the 19th Century. At this time, there was no ANC and when the ANC established itself in 1912, it established itself across ethnic black lines. The evolution of the Congress movement maintained the ethnic architecture put in place by the Afrikaner nationalists. Thus, there was the South African Indian Congress, the South African Coloured Peoples Congress, the Congress of Democrats (whites), and the ANC (black). It was only in the 1990s that the Congress movement moved beyond the racial categories.

On the other hand, in the late 1930s and the early 1940s, Tabata and Kies aggressively promoted a unity of all the oppressed people regardless of race. It will be obvious that the Khoisan and the Coloureds were split in two different directions. The more rural were more close to traditional Khoisan culture and the urbanized Khoisan-Coloureds came under the influence of the small Khoisan- Coloured and black intelligencia, largely teachers who promoted issues of modernization, advanced constitutional thinking and progressive ideas about human solidarity. The current ANC position is that to qualify as a first nation in the group one has to be frozen in a cake of impermeable identity. Hardly anyone in the leadership of the ANC would find great joy in being re-tribalized and indeed, modernized and packed off into nomadic herding or making a living out of scavenging for roots and wild animals. This does not mean that they are not African and South African. It should be rendered that it was the intelligencia that arose out of the so-called Khoisan community that articulated the idea of a universal South African identity for all without disparaging localized practices and customs compatible with equal rights and human dignity. It is therefore a clear mandate on the ANC government if it is true to its Freedom Charter and if it believes in the universalization of human dignity that it recognize (1) the dignity of the first nation of South Africa, the Khoisan, (2) that it recognize their valiant struggle for freedom in resisting enslavement and genocide for over 200 years, (3) that it recognize that its intellectuals were the first to understand the implications of divide and rule segregation, and in many ways therefore shadowed the pathway to a progressive dispensation for all the people of South Africa.

**The Khoisan and its Position in the Context of Contemporary International Law**

Modern international law has been a leading force in the effort to protect the community integrity of indigenous nations on a worldwide basis. Initial efforts emerged through the International Labour Organization, which produced an important covenant to secure a strong legal foundation for the principle of international responsibility for the basic rights of indigenous communities. It should be remembered that the ANC government of South Africa has not endorsed the ILO position. It should be noted that the international system was a major ally of the ANC and it was the efforts in part of the general assembly which laid the foundation for the principle that apartheid was a crime against humanity. The UN following the initiatives of the ILO and guided by the Universal Declaration of Human Rights, on September 17, 2006, adopted the Declaration on the Rights of Indigenous People. This instrument is one of the most important adopted by the international community through the UN directly concerned with the promotion and protection of the fundamental rights of indigenous people (350 million) globally. We regret that we were not a full participant in these proceedings. On the other hand, we owe a great debt of gratitude to many individuals, groups and UN institutions that were able to persevere for over 25 years and finally produce this document, which is the great victory for the indigenous people worldwide and in particular, the indigenous peoples of Southern Africa.

It is therefore appropriate that in this communication we first thank the Secretary General of the United Nations, the entire Human Rights Council and the Permanent Forum on the Rights of Indigenous People. At the international level the UN and the specialized agencies under its jurisdiction acted with competence, determination and a faith in high principle, which resulted in this momentous development for human rights.

We also recognize the tremendous effort made by indigenous communities and nations and their supporters worldwide. When one considers 25 years of continuous political action, the frustrations and the costs of such representation and the enormous sacrifices that indigenous communities must make simply to participate as spectators and informal lobbyists, we realize the enormity of the achievement. We salute our brothers and sisters internationally who made the Declaration become a reality.

We also recognize that the government of the Republic of South Africa recorded its vote in support of the Declaration. We are gratified that the government of the country has expressed itself publicly, openly before the entire world community by recording its vote in favor of the adoption of the Declaration. As an international matter, a sovereign state acting unilaterally in expressing its intentions in a serious manner is presumed to act in accord with the principle of good faith with regard to the expression of its intention and commitments. We therefore expect a new age of enlightenment regarding the rights of indigenous people in South Africa.

The South African Constitution specifically stipulates that international law shall be applied in the interpretation of its laws and Constitution. Thus in South Africa there is already a constitutional mandate to respect and honor those components of the Declaration that according to preexisting law and practice, are simply an expression of prior human rights law. We therefore commend the government for this practical commitment to the realization of internationally codified human rights standards for the indigenous nations of South Africa. In short, South Africa’s good faith commitment to the Declaration establishes itself a national binding obligation to respect, honor, promote and advance the object and purposes of the Declaration.

It is submitted that the Declaration will have an important influence on the processes of human rights and good governance under the regime of the African Union. Thus, the Declaration will have important continental effects for the development of humane governance and human dignity for all indigenous communities in Africa.

The people of South Africa have been on the receiving end of racism and exploitation for 300 years or more such as South Africa’s First Nations. First Nations were a critical part of bringing the full weight of international law to challenge the legality of apartheid. This was because South Africa applied apartheid to South West Africa (now Namibia) which was an international mandate territory. Thus, it was that in the Namibia case of 1971, the struggle of First Nations and their allies in Namibia facilitated the establishment by the World Court of the principle that the Universal Declaration of Human Rights was a part of positive international law and applied to protect the discriminated populations of Namibia.

The recognition of these First Nation human rights are not something separate from the broader struggle for freedom but this Declaration focuses on the critical status of 350 million indigenous people worldwide, many millions of them live in Africa and multi-millions in Southern Africa. These communities and nations have faced genocide, policies of cultural extermination and vicious discrimination, repression and exploitation. It will be recalled that not only were the Khoisan the first nation of South Africa to be brutalized under banner of white supremacy, but they fought a courageous battle for some 300 years leading the fight against racism at all levels from the local to the global.

The Declaration is a triumph of the human spirit. Indigenous peoples often had to carry the brunt of the most brutal policies of exploitation, expropriation and repression. They have been able to survive this onslaught on a global basis. In South Africa in particular, with the adoption of the Declaration achieved a critical milestone in the recognition of their personhood, of their community integrity and of their cultural identity and right to autonomy and self-determination. This in part explains salience of the Declaration for the people of South Africa.

Although the struggle of First Nations worldwide has been a tragic and unremitting veil of tears, First Nations today live, survive and have the capacity and the political will to establish their identity and to be on the frontiers of enhancing the global consciousness of human rights for all. The rest of the world has learned great lessons from the struggle, advocacy, courage and resistance of First Nations. Theirs has been a struggle from the beginning for nothing short of individual and community dignity. The struggle will doubtless continue. There is an enormous amount of unfinished business, here in South Africa, in Africa and in all parts of the world, we as brothers and sisters in other First Nations fight for their economic patrimony, their political integrity, their cultural identity and their right to full equality. The Khoisan have been a leading force historically in the fight for universalizing the principle of human dignity.

What does the Declaration on the Rights of Indigenous People mean for the struggle of First Nations of Africa, Latin America, Europe and Asia? The Declaration was an immense struggle to secure its adoption and to secure the broadest possible framework of declared human rights for indigenous people on a worldwide basis. Consider that the drafting and adoption of the Universal Declaration of Human Rights took only a few years from negotiation to adoption in 1948. The Indigenous Peoples Declaration that was an extrapolation and a deepening commitment to the human rights already codified in the Universal Declaration and the International Bill of Rights took over 25 years.

Why did it take so long? Why was the struggle to undermine or delay its adoption so tenaciously pursued? Two facts stand out as obvious. Indigenous peoples, First Nations have suffered so much repression that they represent the economically and politically marginalized groups on earth. Those who spoke for them often spoke with a duplicitous intent or were ineffective in providing for the basic protections that vulnerable people need if they are not to be exploited. Strong states can adopt human rights provisions for themselves but those stakes may not be so altruistic when the special human rights problems confronting vulnerable communities inside the state have to be secured.

Second, indigenous communities have historically faced another huge problem. Notwithstanding their political and cultural repression, they were and are the owners of vast tracks of material resources (land, minerals, and farms) as well as intellectual property in the form of traditional knowledge. Many communities have kept their environments from being destroyed by the forces of modernization and greed. Thus, the indigenous people of the world have played a massive role in preserving the world's biodiversity, which is one of the most precious and critical human resources central to humanities future. Political and economic marginalization has thus had to confront powerful national and global interests interested in stealing the patrimony of many indigenous communities around the world.

South Africans well know the scandalous practices of biopiracy. The Declaration provides a universal consensus about the empowerment of indigenous nations, about respect for their identity, personhood and nationhood. It seeks to provide a much clearer normative standard for the protection and support of cultural diversity, and the protection of the economic patrimony from unscrupulous practices of theft and expropriation.

Because of these important stakes from the point of view of the exploited and the exploiter, it is not surprising that the Declaration covered almost 25 years of difficult negotiations. Critical to these negotiations was a continuous effort to undermine or not to recognize the rights of First Nations to land, economic resources, cultural identity, tradition and the inherent and universal right to development. One of the strategies of those opposed to the adoption of the Declaration was delay, delay, delay, delay. Indigenous groups and international non-governmental organizations do not have the resources and unlimited budgets of states to continue expensive negotiations indefinitely.

To have overcome these obstacles underlines the importance of activism and commitment on the part of First Nations; it underlines the critical role of the UN, its commitment to principle, its commitment to a robust defense of the keynote values of the UN Charter and equally, the importance of the UN Human Rights Council.

The impatience with the long and protracted negotiations concerning the draft Declaration resulted in the Shuar Nation of Ecuador using the draft Declaration, Ecuadorian Constitutional law and Shuar indigenous law to draft and adopt the Shuar Bill of Fundamental Rights inspired by the text and direction of the draft Declaration. The idea behind this was that the draft Declaration or even a finally adopted declaration must mean something operationally on the ground for the protection and promotion of indigenous peoples interests both within the community and within the larger state structure within which the indigenous community exists.

The Shuar also considered the fact that law is to not only be found in sterile textbooks and inaccessible law libraries. It is also found in the living law of the community and the community itself must assume its critical role as a stakeholder in shaping the living law and the formal law in the direction of the common good of the people. The Khoisan Nation of Southern Africa are also in the process of developing our living law within the overarching framework of our new Constitution in South Africa, the African concepts of human rights, and the international law of human rights particularly as it targets the promotion and protection of indigenous values and interests. The Khoisan will thus their own law a part of the dynamic living law of the Khoisan peoples and share this with fellow indigenous communities across Africa and the globe.

According to the President of the General Assembly Sheikha Haya Rashed Al Khalifa, the Declaration was described as an instrument whose "importance... for indigenous peoples and... the human rights agenda cannot be underestimated." She also pointed out that indigenous peoples still face "marginalization, extreme poverty and other human rights violations. They are often dragged into conflicts and land disputes that threaten their very life and survival; and suffer from a lack of healthcare and education."

The Chairperson of the UN Permanent Forum on Indigenous Issues, Dr. Victoria Tauli-Corpuz stated as follows: "This day will forever etched in our memories as a significant gain in our peoples long struggle for our rights as distinct peoples and cultures." She added, "For us, the correct way to interpret the Declaration is to read it in its entirety or in a holistic manner and relate it to existing international law." The statement of Randall Gonzalez (Costa Rica) captures a critical sense of the momentous of the United Nations General Assembly adopting the Declaration.

We quote the summary of his remarks: “Today marks the end of a long process towards recognition of the fundamental rights of indigenous people. Still, it is only the beginning of efforts to remedy so many years of injustice. The debt to indigenous brothers and sisters must be settled, not only through the implementation of the Declaration but with assistance in such areas as poverty alleviation, improved education and wider access to decision making processes." This latter statement captures some of the most urgent tasks confronting our communities in Southern Africa as well.

One point of important concern for the indigenous peoples of Southern Africa, and Africa in general is the fact that a last minute effort was made led by the African states to postpone debate on the draft resolution because they felt they needed further consultations. This motion to delay was accepted in the Third Committee on November 28 by a vote of 82 to 67. The motion was seen as a transparent final effort to weaken and indeed to undermine the critical and important work of the Human Rights Council.

We regard this as singularly unfortunate because if there is one continent that needs to embrace human rights culture and deepen its impact in the communities and on the ground, it is the beloved Africa. Some indigenous leaders such as Chief Fontane of Canada indicated that indigenous peoples were in fact shocked and outraged at this last minute maneuver. Indeed, there was even criticism of the commitment to principle in the Human Rights Council itself. This of course demonstrates what a critical struggle this is at every level of political and legal concern. It is a continuing warning that even the provisions in the Declaration could be undermined if those provisions are not understood, not embraced and not taken seriously by the critical stakeholders themselves namely, the 350 million indigenous people worldwide and their allies.

**The Legal and Political Status of the United Nations Declaration on the Rights of Indigenous People**

This instrument is a resolution of the General Assembly and it comes in the form of a Declaration. Legally with a few limited exceptions, a resolution of the UN General Assembly is not a legally binding instrument establishing positive legal obligations on states that participated in and voted for a resolution.

 Some UN General Assembly resolutions come in the form of a Declaration. Perhaps the most famous of these Declarations is the Universal Declaration of Human Rights (UDHR). When this document was adopted, it was understood that it was not a legally binding instrument as such. It however, was meant to have strong moral force and was meant to be a commitment on the part of a state voting for it that was undertaken with due seriousness and a commitment to the sovereign expression of good faith in the public representation of its commitments.

The status of the Declaration on Human Rights raised an important question namely that human rights are a part of the purposes and principles of the International Constitution, namely the UN Charter. Thus, an interpretive question arose about whether the UDHR actually had some legal qualities imposing a kind of international soft law on states parties because the Universal Declaration was simply an extrapolation and clarification of pre-existing constitutional principles and textual language involving human rights in the UN Charter.

The adoption and coming into force of the International Covenant on Civil and Political Rights; Social, Cultural and Economic Rights were viewed as a very concrete further legal clarification of the rights and values established in the UN Charter and the UDHR.

These four international instruments which included the UDHR are now commonly referred to as the International Bill of Rights.

A further clarification of this matter of the status of a UNGA Declaration came in the Namibia case in the International Court of Justice in 1971. It will be recalled that indigenous communities in Namibia experienced high levels of repression, with notorious so-called terrorists’ trials which often targeted indigenous and other leaders in Namibia (prior South West Africa). In this case the International Court of Justice determined that by 1971 the UDHR had now achieved the status independently of customary international law.

Thus, we come to the question of the status of the Declaration regarding indigenous communities. Certain governments such as Australia, New Zealand, US, and Canada have voted against the Declaration and maintained that in any event a Declaration is a resolution of the UNGA and carries no binding obligation on states. The answer to this is that the Declaration on Indigenous Peoples Rights is in fact an authoritative gloss or extrapolation of the human rights provisions in the UN Charter itself. The UN Charter is binding on all members of the UN. Thus, the Declaration is not completely bereft of a certain juridical quality that should be honored by states who are parties to the UN system.

In addition, the Declaration is an authoritative extrapolation and a targeted prescription and application of all the rights that are already established as positive international law in the International Bill of Rights.

Furthermore, the Declaration or most of it is an extrapolation of all of the principles and values found in the UDHR. Thus, if the UDHR has an independent status as customary international law, then it will be illogical to hold that provisions and values codified in the Declaration on indigenous rights are not customary international law. To do so would in effect mean that the Declaration would be used to undermine the UDHR and the preexisting legal expectations that it has developed in the 50 years since it has been adopted.

Finally, when a state votes on a matter as serious as a declaration involving fundamental human rights, it must be assumed that when a state votes in this regard it is making a serious commitment to either fully honors the expectations in the instrument. Perhaps more modestly, to minimally do nothing that will in any way that undermines or detracts from those principles. This standard is expressed in the fundamental principle, which makes the UN Charter the International Constitution whose members are sovereign states. That principle is that when a sovereign expresses itself seriously and publicly, there is a good faith obligation imposed on that sovereign by customary international law and by the law of the UN Charter that the sovereign may be held to its own representations upon which the rest of the international community has a right to rely.

This principle is sometimes expressed as a good faith obligation to cooperate to fully achieve the purposes and the principles for which the UN Charter was created. At the very minimum this would mean that the municipal law of a state which falls within the powers of the Executive in foreign affairs is bound to respect and honor its own representations made in good faith to the world community and to its own people.

From the above summary, it therefore is clear that the Declaration on Indigenous Rights does have a certain or juridical character in international law. Its precise prescription and application in particular cases or contexts requires a degree of activism, advocacy, political and legal skill to fully utilize this instrument as a critical development of national, continental and global human rights expectations.

The Declaration makes clear in its Preamble that the structure and content has been guided by the UN Charter and "the good faith" commitment to honor the fulfillment of obligations assumed by states in accordance with the Charter. The main principles include the strengthening of equality of rights of indigenous people, strengthening of the respect for diversity, which includes "the richness of civilizations and cultures" which is the common heritage of human kind.

The Preamble recognizes the ubiquity of discrimination and the critical need to enhance respect for indigenous people at every level of society. It refers to the historic injustices of colonialism and by implication post-colonial practices. It further recognizes the interrelationship of all fundamental rights and values, which are critically interdependent and holistic. Thus, it recognizes "the need to respect and promote inherent rights... which derive from political economic and social structures.... cultures, spiritual traditions, history and philosophies... especially... rights to... lands, territories and resources."

Among the critically important rights recognized are those which stipulate (Article 20) indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

The document stresses the right to development (Article 23) which specifically stipulates that indigenous peoples have the right to determine and develop priorities and strategies for exercising the right to development. Another critical prescription clarifies the economic patrimony that indigenous communities have over traditional knowledge, which in effect carries the imprimatur of intellectual property and therefore an item of economic value in the current state of global economic practices. For example, Article 24 holds that indigenous peoples have the rights to their traditional medicines.

They also have rights to maintain their health practices including the conservation of their vital medicinal plants, animals and minerals. This is a matter, which is currently on the agenda of the World Intellectual Property Organization as well as the process dealing with the clarification of Article 8j of the Convention on Biodiversity (see also Article 20 of the Declaration). Finally, the Declaration goes a long way to clarifying rights to land, territories and resources traditionally owned by indigenous nations. Article 26 for example stipulates that indigenous peoples have the right to the lands, territories, and resources, which they have traditionally owned, occupied, otherwise used, or acquired. There is the recognition of land rights by traditional ownership or occupation and an obligation on the part of states to protect those titles respecting the legal traditions and customs of indigenous law.

Article 45 recognizes the possibility that sometimes an instrument such as this may be misrepresented to indigenous communities who may have only heard but not seen the document or have not received a copy in their native language. Article 45 states "nothing in this Declaration may be construed as diminishing or extinguishing the rights of indigenous peoples which they now hold or might acquire in the future."

Finally, the question is always how we interpret words in instances of particular prescription and application. Article 46.3 provides us with explicit guidelines "The provision set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect of human rights, equality, non-discrimination, good governance and good faith."

The First Nation indigenous nations of Southern Africa commend the activist indigenous communities worldwide for their role in securing the adoption of this milestone Declaration which clarifies and makes explicit the most critical and fundamental rights of all indigenous nations worldwide. They also commend the United Nations Secretariat, the Human Rights Council and the Permanent Forum for the leadership role it has taken in the development and adoption of this historically critical development regarding indigenous communities in particular.

In a larger sense, this instrument is also a marker for defining a new level of human rights consciousness on a global basis. That consciousness will not be enhanced effectively unless the critical stakeholders themselves are actively involved in making the Declaration the fundamental human rights law and expectation on the ground in our own communities, villages and towns.

They must also be active in developing coalitions to ensure that the states themselves and our government in particular, does not involve itself in hypocritical noises loudly proclaiming its commitment to human rights and dignity and then permitting it to be undermined in the operations and practices of policy on the ground. Speaking on behalf of the indigenous nations of Southern Africa, the Khoisan have committed themselves to the fullest implementation of this Declaration. They also have committed themselves to joining in alliance with other groups and interests in using the Declaration to uplift the human rights consciousness in southern Africa and in the larger world community to a higher level of achievement consistent with the promise of the keynote principles and values of the UN Charter itself. It is therefore obvious that South Africa cannot repudiate its vote before the world community. The Declaration is a matter of international hard law, by rational interpretation of the UN Charter and UN values. It is this UN Charter that provided critical global support for the ANC’s fight against apartheid as well. The Khoisan therefore have a right to rely on the legal efficacy of the Declaration and its application to their status in South Africa.

**The Law and Practice of Apartheid**

The legislative and other innovations indicated above were consolidated by the creation of an authoritarian police state, which institutionalized imprisonment without cause and the widespread use of torture practices to eliminate the political opposition and to sustain the momentum of the apartheid state. The state also organized death squads to eliminate opponents. There were two broad components to the Apartheid state. First, the territorial division of South Africa was largely framed by the Native’s Land Act 1913, which expropriated the traditional lands of black South Africans, leaving patches, which evolved into black homelands. These homelands were given their own pseudo-constitutions and the illusion of a form of sovereignty controlled and regulated by a small class of black sellouts. These homelands were now given the status of tribal sovereignty and blacks living outside of the homelands were removed to these homelands in large-scale acts of population removal. The destinations of these removed South Africans were described as ‘the dumping grounds.’ In theory, these removed blacks had minimal rights exercised only in the Bantustans. This was essentially known as a form of Grand Apartheid.

The other aspect of apartheid also extremely brutal and cruel was described as ‘Petty Apartheid.’ This form of apartheid governed the rest of the populations outside of the tribal homelands. In these areas, blacks were confined to so-called ‘locations,’ which were exclusively for black occupation. Blacks living in these areas had to carry a pass giving them a legal right to be there and an indication that they had paid taxes. If you did not have a pass, you could be removed and placed in one of the dumping grounds. In these black locations the lucky ones served as a labor force supplementing industrial manufacturing, and servicing white homes as domestic servants, gardeners, farm workers, etc. However, these occupations were often tenuous and forced removals were frequent and efficient. Additionally, many occupations were completely closed to blacks in terms of the Job Reservation Act.

The South Africans of Indian descent and South Africans of mixed descent, Khoi, Asian, Dutch and Black, loosely called the ‘Coloureds’ were confined under the Group Areas Act to specific areas for residents chosen by the white government. These non-white citizens of South Africa were forced to digest an apartheid condition aspect of education, including higher education. The state created a form of ‘Bantu education’ for the Blacks, ‘Coloured education’ for the Coloureds, and ‘Indian education’ for the Indians. The whited enjoyed their own privileged form of education at all levels. In terms of the objectives of the ethicized education, the government sought to confine opportunities in such a way as to reduce intellectual, scientific, and technological capability. As one minister put it, “it would be a waste to teach the Blacks mathematics when their aspirations should be to serve as garden boys.” At the apex of this system were the innovations in higher education. In terms of the extension of the University Education Act, separate universities were created for Coloured and Indians, and multiple differentiation in universities for blacks with different ethnic backgrounds. These universities were staffed by academics committed to the values of apartheid.

This short summary simply raises the question of the intentional suppression of opportunity freedoms and capability freedoms, the suppression of which entrenched and accelerated state condition, poverty and deprivation. In this sense, the struggle against the apartheid state was essentially a political, juridical and economic struggle. When the ANC negotiated the transfer of power in South Africa, it produced through this process an advanced and highly admired new constitutional dispensation. In this sense, the constitution enhanced the civil and political rights of the suppressed class. However, we should have a clearer picture of what apartheid entailed. Apartheid represented a systematic pattern of domination and subjugation which was sustained by the full scale utilization of an ultra-modern police state. Therefore, the constitution on paper would have important challenges in changing the political and legal culture. Much has been achieved in this sphere. However, freedom is tarnished when we recognize that the necessitous human beings who were dramatically economically suppressed do no experience a defensible measure of freedom to experience the fuller benefits of citizenship.

**Contemporary Problems of the Status of the Khoisan in Post-Apartheid South Africa**

1. The first and most obvious problem of the status of the Khoisan today in South Africa is that they had their identity extinguished at the altar of white rule by the creation of a category of human beings with an imposed identity of coloured or cape-coloured. This means that their entire history of heroic struggle against racism and oppression is extinguished. Sometimes the Khoi leadership at the intellectual and political level is designed amorphously as coloured activism or coloured leadership. Since there is not a distinctive history of the coloured that shows that the coloured are both biologically and culturally as well as politically, the product of the evolution of Khoi culture, this label seems to justify their exclusion from full citizenship benefits in the new South Africa. The one point that is completely obscured is this: from the time that we have historical records, the Khoi have always been highly intelligent, perceptive and unwilling to be exploited. This generated resentment among the settlers that the Khoi were too clever to be trusted. The Khoisan understood what land expropriation and theft meant and they fought intermittent wars for 200 years to save their community and their economic entitlements. After the convenient creation of an imposed identity, “coloured,” the Khoi remained an active and resisting force against discrimination and oppression. They indeed were the leaders of the initial efforts in the Cape by the Khoisan leader Abdurahman to resist discrimination, to insist on educational and employment opportunities and to demand a political voice. It was Khoi leadership that generated the first notion of an African people’s organization for all of South Africa.

The Khoi generated impressive intellectual leadership in the educational community (the Teacher’s League of South Africa). This gave rise to a new and more aggressive stance challenging white supremacy. This continuation of their resistance led to the establishment of the non-European Union movement. This movement looked to the unity of all oppressed people in South Africa and this leadership did not diminish Khoi identity, it expanded it in progressive directions. Khoi leaders like Kies provided a brilliant analysis of the importance of critical thinking in resisting the struggle against white supremacy and the 10-point program they produced was the first articulation of the idea of nonracist social democratic future for South Africa. It should be noted that this Khoi initiative was indirectly embraced by the framers of the new South African constitution. The central point here is that these fundamental ideas emerged from a political struggle spanning over three centuries of Khoi resistance. Finally in this regard we draw attention to the progressive leadership of other Khoi activists. Dennis Brutus, a Khoi activist from the Eastern Cape, launched the campaign against global racism in sporting bodies. He and fellow Khoi, Winston Nagan, campaigned to have South Africa and Rhodesia expelled from the Olympic Games. Their initiative led to action in such areas as football, ping pong, rugby and cricket. Brutus and Nagan were the activists that inspired the creation of the comprehensive anti-apartheid act of South Africa, which imposed sanctions on the apartheid regime. This does not mean that these Khoi activists lost their essential identity as Khoi in promoting the virtues of a society without racist or other forms of discrimination.

1. It is therefore critical that the Khoisan not be extinguished by the imposed label of coloured and be punished for the progressive views of some of their activists in leading the international campaign against apartheid. Neither should they be ignored for the role they have played in seeking to expose the racist use of ethnic identity as a tool of “divide and rule.” Finally, they should not be disparaged because they saw the vital importance of the creation of the Rainbow Nation in which all are treated with equal respect, as indicated early on in the 10-Point Program.
2. When the constitution was drafted it sought to bring sensitivity to the diversity of the population in terms of economic, traditional and cultural stratification. Unfortunately, the cultural extinction of the concept of Khoisan has made it an uphill struggle to secure recognition, not only for traditional leadership but also recognition for their longstanding struggle against imperialistic rule.
3. It is a reasonable demand that the Khoi traditional leadership and culture, as well as the Khoi progressives and intellectuals, be given space for the development of forms of cultural and economic progress in light of the new constitution. This has not happened. The Traditional Affairs Bill appears to be inadequate and unsatisfactory. The parliament must rectify this. One of the ministers of the government believes that carving out space for Khoisan leadership competence will, in effect, be a claim to sovereignty and cessation. Regrettably, the minister is quite ignorant about the nature of modern constitutionalism.
4. Although there a multitude of Khoisan languages, the government acknowledges only three Khoisan languages even as it does not recognize the Khoisan as a first nation.
5. Section 25(7) of the constitution provides for reparations with regard to rights in land, dispossessed on June 19, 1913, the Native’s Land Act. This cutoff date excludes the expropriation and theft of the Khoi land that began in 1652 and continued to 1913. President Zuma has begrudgingly indicated that the state may consider the land rights that were stolen prior to the 1913 cutoff date. So far, no action. On the brighter side, the case involving the Richtersveld community did in restitution via a decision of the Constitutional Court. The court determined that the loss of their land was due to racial discrimination. The massive expropriation of Khoi land has left a sizable portion of the people as an impoverished lumpen proletariat. There are many models connected to the human right to development that could be adapted to speed up the delivery of economic justice. Justice delayed is justice denied.
6. The government’s affirmative action framework excludes the Khoisan because their historic marginalization is made invisible by the ascription of the apartheid label, “coloured.” A better understanding of the historic role of the Khoi and the price they have paid in the struggle for freedom should provide them with expeditious access to affirmative action opportunities.
7. The Khoi Khoi still carry the legacy of cultural, economic, social and political deprivation, in part a residue of the apartheid era. If the government wishes to be true to the principles of liberation that it proclaimed, it should act to rectify this historic injustice as soon as possible.
8. The Khoisan have a legal right under South African constitutional law and international constitutional law, based on the UN Charter, to have their status and identity as a First Nation of South Africa recognized. Recognition is long overdue and represents a form of legal delinquency.

**Conclusion to Part I**

South Africa as earlier indicated, is a nation of incredible and complex diversity. Diversity comes in many different elements, traditional, socio-cultural, economic, the legacy of its complex history of racial injustice and its challenge to consolidate a regime that promises universal justice for all citizens regardless of race, color or creed. Notwithstanding, the euphoria of national liberation the ideals expressed in its widely praised constitution are not necessarily a description of the reality of the system of public order in place. That system of public order has many elements from its most recent past that have to be resolved. The fundamental tension in South Africa today is the promise to fulfill the ideas of human dignity on a universal basis and the practical reality that the social and political economic process has not demonstrated the determination of the ruling party to show a dynamic form of leadership initiative in bridging the gap between the ideals of the system and what it delivers in practice. The apartheid system was a radical and aggressive system of imposing a system of beliefs and practices that reinforced the ideas of separation and institutionalization of unhealthy patterns of identity in which the demographic distribution of people reinforced often expressed a parochial sense of the essential identification of the “I” and the “We.” At the same time this pattern of identification accepted almost automatically the concept of a non-I and a non-We. In short, the pattern of identifications in society reflects an acute awareness of differences indicating understanding of the position of the non-self-other. These patterns of identification tend to be reinforced and exaggerated by issues such as the inability of the leadership to understand the complexity and the resilience of identifications based on narrow concepts of the “I” and the “We.” We have used in this study the position of the Khoisan-Coloureds. The only real claimants to the position of first nation status in South Africa. Yet, the history of white rule and the history of black rule have conspired to extinguish the Khoisan-Coloureds not only as a non-self-other, but a non-existent non-self. The historic position in the context of white conquest and domination is easy to understand. The position of the ANC is quite simply a mystery. The unwillingness of the ruling party to acknowledge the Khoisan-Coloureds as an existential group virtually culturally extinguishes them and destroys their claim to human dignity. The only explanation that makes sense is the dismal conclusion that the ANC cannot shed itself of ethnic, parochial beliefs which undermines the foundation of its fight to liberate South Africa. In short, the acts and omissions of the leadership represent a repudiation of the foundational values of the struggle for the liberation for the people of South Africa. The idea that there will be compensatory justice for the economic losses of the victims of imperial supremacy with a cutoff date at the deprivations that occurred after 1913 is an embarrassing disgrace. The Khoisan fought valiantly for 200 years facing threat of extermination, the fact of bonded servitude and enslavement, that many Khoisan intellectuals were in the vanguard of the struggle to ensure that racism would not be used to deflect from the real struggle for dignity is a major and unacknowledged contribution to the freedom of South Africa. Worse than this, the creeping racism is a disease that could be vastly divisive and radically undermine the future of the South African state. The challenge is clear that the ANC must repudiate the racist policies that sustain the repression of the Khoisan-Coloured people. The future history of the survivability of South Africa must rest on a celebration of its rich cultural diversity and its conscious willingness to universalize the value of mutual reciprocal respect based on human dignity for all. If it compromises on these principles, its continued viability as a state will be questioned.

P**art II**

**The Challenge of the Economic Transformation of South Africa**

When Nelson Mandela led the negotiations dealing with the transformation of South Africa, there was considerable agreement on the juridical and political dimensions of the challenge. However, the question of what kind of economic order would emerge from these negotiations did not generate as much public interest. It was assumed that the new normal of global economic order, the political and economic ideology of Neoliberalism, would fill the void and produce stability out of the context that was still transitional and fragile. South Africa therefore virtually by default embraced the economics of contemporary neoliberalism. It should be remembered that neoliberalism challenged the idea of a new economic order fueled by the development of the Bill of Rights in the economic and social sphere. We can summarize the effects of neoliberalism in aggregate terms in the context of South Africa over the past 20 years.

The South African economic stem is today considered to be one of the most radically unequal in the world. Economic development in South Africa has not been able to restrain the emergence of vast sectors of unemployment. Radical inequality and the radical expansion of unemployment are not sustainable in the long run and South Africa would have to search for an economic theory consistent with wise use of its material resources and its human capital. We therefore provide a brief outline of new economic theory ideas that come an as alternative to South Africa’s neoliberalism.

The idea of human-centered development implies that the normative priority given to economic development should have a specific focus on human beings directly and not on abstractions such as the glorification of state sovereignty, the deification of private property or the exclusion of human interests from the vast aggregates of global capital accumulation. In a broad sense, this implies that there is a normative global imperative that requires the acknowledgment and adoption of a human right to development. This is contested; not only is the human rights side of it contested, but the notion of development itself is not unchallenged. At the back of an economic theory concerning the human right to development is the centrality to that theory of the vital importance of human capital. An economic theory that does not acknowledge the salience of human capital for rational and efficient economic development is a theory that is misguided and dangerous.

A realistic look at the social process of humanity will disclose that human beings are energized to interact with each other in pursuit of desired needs and values. In this enterprise virtually every human being is a repository of energized enterprise. This energy is the generator of fundamental value important to the self and important to non-self-others. For economic theory to ignore or avoid the human energized potentials as economically meaningless is extremely myopic. Consider the following:

“Society is a teeming ocean of human energies and capacities, unorganized but latent with unlimited productive potential. The organization of social energies and capacities converts social potential into Social Capital. Each member of society is a microcosm of human potential—an unorganized reservoir of energies, aspirations, and capacities. The organization of the energies and capacities of each member of society converts human potential into Human Capital. The formed Individual is the summit of social evolution where Human Capital and Social Capital intersect and become infinitely productive. The Individual is a product of the past evolution of society who internalizes its accumulated knowledge and capacities, attunes himself to the emerging aspirations and potentials of society, and applies his energies at critical points for personal accomplishment and collective progress. Thus, we find repeatedly in history that one individual can change the world.”

**The American Experience with Neoliberalism**

Economic neoliberalism has important socio-economic consequences: it is the expansion of radical economic inequality as well as the extension of sustained levels of unemployment. At the same time neoliberalism has generated unprecedented levels of economic growth but the benefits have been concentrated on the upper one percent of the population. Although optimistic neoliberal theoreticians maintain that the vast wealth at the top will result in a trickle down of benefits to those at the bottom there is still no evidence to support this form of optimism. According to Stiglitz, the following is the evidence of neoliberalism’s legacy of radical inequality and unemployment in the United States. He tells us that one percent of the American population takes one quarter of the United States’ income. One percent of the American population controls forty percent of the nation’s wealth. One percent of the American population has seen their incomes rise by over eighteen percent.

The central political question is whether this kind of outcome is desirable and in the national interest of the United States. If this is desirable, is there a sound reason to justify it? There have been marginal economic theories, which suggest that the one percent who have benefited so mightily are simply better than the rest of the nation. Many people whom we consider talented and who have made enormous contributions and inventions to modern society have not necessarily benefited from this. The financial wizards who almost destroyed the United States’ economy were in fact rewarded with performance bonuses. Although to their credit, they saw the irony in this and changed the label to retention bonuses. Meanwhile, those at the bottom of the economic ladder were not candidates for any form of retention. They were candidates for pink slips. One of the assumptions of neoliberal economists is that if there exists a bigger economic pie there will be more to go around. Unfortunately, the arithmetic is the other way around. The bigger the pie, the less the American citizens share in its bounty. It would seem that American economic growth is essentially a growth that is downwards in the direction of inequality. This means there exists an exponential growth in lost opportunity for the American people. The extinction of opportunity for the people is a major social and economic loss because the success and the genius of American civilization has been its belief in human capacity and the critical importance of human resources for national prosperity. This means that when we depreciate human resources we are attacking the recipe, which was at the heart of American genius. There is of course enough blame here for everyone.

The recent election in the United States indicates a radical alienation of the working and lower classes who receive only economic deficits. It has been argued that the Brexit vote reflected a similar level of alienation from the British working class who had not experienced any trickle down benefits.

The most notorious fact about the American economy as indicated, is that for decades we have experienced an inexorable drive to move the overwhelming majority of American citizens to the bottom of the economic system. In short, the expansion of inequality has been an extraordinary fact of the politically inspired economic policies of the republican right wing.

One of the assumptions of right wing republicans is that if we have a bigger economic pie there will be more to go around. Unfortunately, the arithmetic is the other way around. The bigger the pie, the less the American citizens share in its bounty. It would seem that our economic growth is essentially a growth that is downwards in the direction of inequality. This means we have an exponential growth in lost opportunity for the American people.

The extinction of opportunity for our people is a major social and economic loss because the success and the genius of American civilization has been its belief in human capacity and the critical importance of human resources for national prosperity. This means that when we depreciate human resources we are attacking the recipe which was at the heart of American genius. There is of course enough blame here for everyone. However, I think most of the blame must lie with the republocrats. They have historically been the most frenetic defenders of economic monopoly. Additionally, they have been successful in hijacking rational tax policy debate. No new taxes means that the weaker members of the body politic still pay while the special interests which fund the plutocrats, the well-healed financial oligarchs prevail with outrageous tax holidays. Indeed, a recent survey about the fairness of the tax system showed only twelve percent believing it was fair and eighty eight percent believing it was unfair.

The consequence of these outrageous benefits to those who already have an excess of resources is that they also promote the idea that national investment in education and human resources, investment in technical innovation and sound infrastructure are a waste of “scarce” resources. Their version of appropriate national incentives is driven by an intense desire to gut investment in the future based on basic research and the central importance of our transportation and infrastructure system. Essentially, plutocratic policies have hugely empowered the financial oligarchs while undermining the participation of the overwhelming majority of citizen stakeholders in the process. They promote no version of a national common interest and see only the vista of narrow special plutocratic interests.

For the plutocrats, greed is king. They attack labor unions, promote the replacement of labor with technology and export jobs abroad because foreign labor is cheap. American labor is a liability. It is too expensive for the oligarchs. Hence, their mantra about jobs is "send jobs abroad." The rule of government in seeking to moderate the concentration of wealth and power in the few was well expressed by the political genius of the last century, Ronald Reagan. The government is the problem, is the enemy because it is the critical restraint on the unfettered power of economic oligarchs. Now at present the agenda appears to be clearer: do what we need to do to keep our wealth and get more of it. Demonize the government as a moderator between extremism and the people; extinguish the opposition such as the labor unions and the independent media and most critical of all, no taxes on the rich.

**Neoliberalism in South Africa**

The ANC fought a major war of national liberation to free the South African people from the tyranny of apartheid. Essentially, there were two major forms of apartheid, political and legal apartheid, and the political economy of apartheid. When Nelson Mandela negotiated with Mr. De Kleck on the transformation of South Africa, the ANC side stepped its agenda for socialising major industries and moved in the direction of a full embrace of the political economy of neoliberalism. Like United States the benefits of neoliberalism in South Africa flow in the direction of the conspicuous classes however notwithstanding some efforts of poverty alleviation the economics numbers indicate strong evidence of radical inequality and unemployment.

Negotiating the transformation of South Africa from an apartheid state to a rule of law governed state was one of the most significant achievements of Mandela and the ANC. However, the economic foundations of the new rule of law defined state were still a matter that was left unresolved. In negotiating the economic transformation of South Africa, Mandela made a number of neoliberal compromises on the grounds that the new government was constrained by the concerns of economic stability. With the hindsight of history, critics now are concerned that it was the neoliberal deals made by Mandela and the ANC that was the real cause of economic instability that South Africa experienced. We list below some of the factors which dramatically impacted upon the stability of the South African economy:

• The repayment of a $25 billion dollar apartheid era foreign debt- This payment denied the government the funds needed to meet the basic needs of apartheid’s victims. The repayment was required by the law of state succession. However, it is by no means settled that the extension of credit for the purpose of advancing and defending apartheid, deemed to be a crime against humanity, should not fall with those who made such investments.

• Allocating to the South African Reserve Bank formal independence- This resulted in the insulation of the bank’s officials from democratic responsibility. It also led to high interest rates and the deregulation of exchange controls.

• In 1993 South Africa borrowed $850 million dollars from the IMF- This loan imposed persistent tough conditions, including scrapping of import surcharges, which protected local industry, state spending cuts, lower public sector salaries, and a decrease in wages across the board.

• The reappointment of Derek Keys, apartheid’s banker, to the reserve bank

• Joining the WTO on adverse terms

• Loss of labor intensive jobs

• Lowering corporate taxes from 48 percent to 29 percent

• Maintaining racial and corporate privileges

• Privatizing parts of the state, for example, Telkom

• Backing policy which led to sustained outflows of the rich to overseas accounts- This led to a persistent current account deficit.

• The failure of the neoliberal macroeconomic policy, “GEAR”

• Elevating the right to property over other constitutional prescriptions

• Permitting South Africa’s ten largest companies to move their headquarters and listings abroad- This results in a permanent balance of payments deficits.

• The neoliberal financialization of the South African economy- The financialization led to the fastest rising speculative real-estate bubble on earth (1997-2008). This has earned the ANC the label of talking left and walking right

• Unemployment spikes from 16 percent in 1994 to 26 percent in 1998- Radical inequality has also been accelerated.

Political economist and Professor Patrick Bond suggests the following short-term anti-neoliberal measures to improve the economic scene: According to Bond the talking left and walking right policy of the ANC is an economic mess.

“Forced corporate repatriation is one issue. Others include lowering interest rates and, to stop capital flight, re-imposing tougher exchange controls (as the Chinese did last week to slow outflows).

Then a genuine industrial policy could substitute for imports, rebalance the economy and prioritize labour-intensive ecological sustainability. Lower interest rates would also increase policy space to raise state social spending and reorient infrastructure to meet unmet basic needs.

But to adopt such obvious reforms would require radical economic transformation led by an honest government, not just rhetoric from a duplicitous, exhausted-nationalist regime. And most important, it would require a powerful democratic movement from below.”

**Empirical Indicators in the South African Economic Landscape**

*Figure 3.1 South African inequality in comparative perspective*



*Figure 3.2a The changing structure of the South African economy by sectors*



*Figure 3.2 b The breakdown of the South African economy (1994-2006)*

 

*Figure 3.3 South Africa’s household debt and savings rates*

 

*Table 3.1 Unemployment levels*

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3.1 The triple challenge of South Africa: poverty, inequality and unemployment

Despite the ‘good news’ rhetoric of the ANC, that deviously emphasizes that South Africa is better country than it was many years ago, the triple challenge casts doubt on this good news. It was going to be easy if the empirics were in support but the body of evidence is contrary. Poverty, inequality and unemployment has persisted in the face of the neoliberal economic transformation. For instance, figures 3.2a and 3.2b shows the shift of the South African economy towards an economy driven by the services sector. The bulk of the transformation was in the finance sector which grew from 16 percent to 22.2 percent of the GDP and in general this proves that the South African economy embraced the strong drive towards internationalization which gave capital many exit options. The shrinking of the primary and secondary sectors is evident in the downward trends in figure 3.2a and this had negative consequences of the much feared reality of aborted or premature deindustrialization. With declining agricultural, mining and other primary activities, the prospects of low skilled and semi-skilled mass employment, the hope for the neoliberal ideas, became less promising

Table 3.1 compares the unemployment rate in 1994, when apartheid ended and in 2014, twenty years after apartheid. The narrow unemployment measurement, the one that only includes those who have actively looked for a job recently, worsened from 22 percent to 25 percent meaning that it has become more difficult recently to find a job than in 1994. The broad unemployment measure, that which include those who no longer look for jobs, has remained unchanged for the twenty years, resiliently remaining at 35 percent. While these are national measures, it is intuitive in South Africa that the story is sadder if we consider these figures by racial distribution. The implications of more and more unemployed people is that the poverty increases and becomes a trap for many South Africans, especially blacks. Debt has plagued many households because of inadequacy incomes. Figure 3.3 shows a sharp rise in household debt from 2002 onwards and this directly affected the savings rate which shows a significant decline over the same period. With high levels of debt and no significant savings, the prospects of escaping poverty are very high.

With no employment and increasing poverty, South Africa has remained one of the most unequal states in the world. This is true even when compared to other developing countries such as the ones featured in figure 3.1. The proponents of a neoliberal approach often emphasize that there has been an increase in black business owners, partly causing within black group inequality, through the affirmative action policies of the ANC. This however has failed to take away the fact that the wealth and income distribution have remained strongly biased in favor of the white majority. It is also becoming clear that without radical policies, the inequality will not be reduced in the face of the current slow economic growth.

The current vision of the ANC government, the national development plan, is still cast in a very neoliberal sense with a very minimal role of the state. The problem is that the markets are given the task, despite having failed miserably, to solve the triple challenge of poverty, unemployment and inequality. Thus despite the left rhetoric from the ANC the vision 2030, the national development plan, continues to reassert the continuation of the neoliberal approach which will further entrench the current problems faced by those in lower income deciles.

3.2 The adequacy of economic measurements that reinforce neoliberalism and reinforce economic deprivation

The concept of GDP has monopolized the economic field and among the practitioners it is the single most powerful number that can tell almost everything one needs to know about a nation. It has been widely considered that GDP neglects many important factors such as human wellbeing, social relations and natural resources. In its essence the GDP is misleading because it assumes that anything that does not involve a formal transaction based on money is not important. The convergence on the universal acceptance of GDP as a key measure has persisted and entrenched the role of economists as arbiters of what countries should do to achieve a growth in GDP. Yet it is not the GDP alone. Other measures such as poverty line are derived from such mechanistic and deterministic evaluations in the economic field. Once one nations change the way it calculates the GDP or poverty measures, it is possible that they can become suddenly rich in a “look, we no longer poor” fashion. Poverty lines have been rightly criticized as well for assuming that once one’s income become more that than a predetermined amount, the person is no longer poor.

Hazel Henderson argued, based on global polls across 12 countries, that more than two-thirds of the people interviewed regard economic measurements such as GDP to be inadequate for measuring national progress. This is in line with recent developments in Europe, the OECD and the EU where the ‘beyond GDP’ movements have begun to gain importance as other measures such as happiness and subjective wellbeing are considered to compliment the GDP. This move is important because it limits the hegemony of GDP and also limit the power of credit rating agencies who have in past considered few metric measures such as GDP and its prospect to plunge the whole country into junk status. The limitation of this kind of ‘technocratic capture’, immunized from democratic processes, is important because human life is not centered merely on few economic indicators and people should be given a right to choose what they want to trade off. An interesting case is the recent death of the Cuban president Fidel Castro who has generated critical sentiments and praises. The truth is that while the technocrats such as the credit rating agencies might have regarded Cuba as a ‘terrible communist one-part state’ deserving junk status, life expectancy of Cuba tells a different story given the relative success of Cuban health care system. The current life expectancy in Cuba is at 78.55 compared to the United States’ 79, an interesting comparison between a high income world leader and a ‘damned communist country.’

The problem of the economic measurements is that they push ideological currents beneath most of the economic debates. The idea of growth first and distribution later is a case in point that has perpetuated the trickle down neoliberal systems. In the face of poverty and low economic growth, the inescapable route is to push for economic growth first while those in poverty continue in misery. The problem is that the so called ‘economic growth’ has been very rare that while the few rich people are enriching themselves behind ‘growing the economy’ mantra, there seems to be no hope what so ever for the poor.

4. Neoliberalism and state capture in South Africa: The Guptas and Zuma

According to the Executive Members Ethics Act of 1988 , all executive members, including the president, must according to section 2 (a) i) at all times act in good faith and in the best interest of good governance and ii) meet all obligations imposed on them by law that prohibit members from:

• Undertaking any other paid work

• Acting in a way that is inconsistent with their office

• Expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interest

• Use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person

• Act in a way that may compromise the credibility or integrity of their office or of the government.

President Zuma, amidst many reports about his relationship to the Gupta family, had to be investigated by the public protector, Thuli Madonsela. The state capture report highlights the complicated and degree of the neoliberal system in South Africa. Capitalists have a strong grip on the state and this is complicity or directly as the Gupta case demonstrated. Complicity, business have a control on media and repudiate anything that seems to go against the status neoliberalism system. The case of the Guptas only became more ‘dirty’ than the usual South African case where the state is held at ransom by capital if it dares challenge the current state of affairs. This does not exonerate the president for allowing one family to be strictly interwoven with his son’s and his own private interest. The extent to which it developed was worrisome because the Gupters had a stronger hand in the appointment of key ministers and head of parastatals such as Eskom’s Brien Molefe. Amongst many complaints, the opposition was very strong in implicating the president with the state capture.

5. South African Airways, Zuma, and the Gupta plutocrats

On the apparent suggestion of the Guptas, Zuma appointed his girlfriend to head South African Airways. She was apparently given instructions to run the airline down. At a point just before extinction, the airline would be sold to the Guptas for a pittance. They would remake the airline and position it at its highest commercial point of value. Then they would sell it. These points come from the South African press recently.

6. The Nkandla Scandal

It was determined in the executive office that Zuma’s home in Nkandla was to be provided with significant security upgrades. These upgrades turned out to be a kind of Mercedes Benz of presidential luxury home life. Zuma claimed that he did not order the luxuries. The courts ruled that he should nevertheless reimburse the government. So far he has refused to do so. Under South African law, a well-established doctrine, is the principle “Unjust Enrichment”. The person who is unjustly enriched must disgorge the measure of his unjust enrichment. South African law does not favour Zuma, he has chosen to ignore the law.

The Democratic Alliance (DA), as a key political party driving the state capture allegations, went an extra mile in going through the state capture report and summarized the key facts implicating the president. The major ones are:

• President Zuma improperly and in violation of the Executive Ethics Code, allowed members of the Gupta family and his son, Duduzane Zuma, to be involved in the process of removal and appointment of the Minister of Finance in December 2015;

• Deputy Minister Jonas was offered a job by the Gupta family in exchange for extending favours to their family business;

• That between the period 2 August 2015 and 22 March 2016, Eskom CEO Brain Molefe has called Mr. Ajay Gupta a total of 44 times and Mr Ajay Gupta has called Mr Molefe a total of 14 times;

• President Zuma improperly and in violation of the Executive Ethics Code used his position or information entrusted to him to enrich himself and businesses owned by the Gupta family and his son to be given preferential treatment in the award of state contracts, business financing and trading licenses;

The State Capture Law of South Africa is a law that could benefit the United States since Donald Trump, the president elect, has appointed a team of plutocrats bent on capturing the political economy of the United States.

7. Unemployment, radical inequality and human rights

The central issue for conventional neoliberalism appears to be that unemployment is a necessary byproduct of generating higher profits in the commercial sector; it is natural and inevitable. What is ignored is that unemployment radically undermines the capacity of human beings to be energized and contribute to economic prosperity. What unemployment does is that it extinguishes opportunity freedoms and without opportunity freedoms, no capability freedoms can be exercised, thus guaranteeing a wastage of human energy. There are innumerable theories that show that unemployment can be eliminated by wise judicious policymaking with a concern for the full utilization of human capital. Unemployment is neither inevitable nor necessary.

If we conceptualize the right to employment and labor as encapsulated in the value of skill, it is possible to briefly map the way in which skill is a base of power for securing other articulate human rights values. For example, skill in terms of access to power is a base that is critical to the shaping and sharing of power. In this sense, skill is a critical value for protecting human rights interests tied up with the exercise of political power. Similarly, skill is an important base to acquire wealth and related economic values and is therefore critical for economic justice. Skill is also a base for access to education and enlightenment which is central to human development. Skill is also a base for access to health and wellbeing as well as to the institutions of social rectitude. Thus, employment rights including access and performance influence every other human rights value. Similarly, every other human rights value will influence the shaping and the sharing of labor and skill values. With this in mind, we examine the problem of full employment as a human right. It may be at the outset, better to see this in terms of the political will and articulate ideology of the state and state responsibility. From this perspective it is self-evident that governments routinely intervene in matters that directly affect the economic status of the individual. Such interventions may well influence both quantity of employment opportunities available as well as the nature of these opportunities.

Some obvious examples of governmental policy influencing these issues are its role in setting interest rates, its approach to budget deficits, the expansive or restrictive nature of its import and export policy, its tax policies, its military expenditure, its immigration policies, its approach to industrial development, its investment in the society, its licensing policies, its environmental regulations, and a good deal more. One illustration of the way in which an ostensibly neutral tax policy could influence employment patterns is the regulation that provides incentives for capital investment in the form of depreciation while providing disincentives to employment in the payroll tax. This suggests a partiality to investing in technology rather than labor. To the extent that employment is one of the most important mechanisms for the allocation of purchasing power to the individual, the right to employment may be seen as the critical foundation of economic democracy. If society cannot assure the survival of all citizens through employment access, it may be that the state has a special obligation to provide employment opportunities for all. In short, the right to employment is not a privilege, it is a right. To the extent that economic survival is critically sustained by employment it could be argued that the right to employment has the character of a fundamental human right. The critical question then is: How strategically should the state act to secure this fundamental right to economic survival? The International Commission on Peace and Food provided a report to the UN on this matter in 1994. Its principal point was that there had to be a universal affirmation of and commitment to, the delivery of fundamental economic rights to all. According to the International Commission there should be an approach which recognizes:

“.. [t]he right of every citizen to employment is the essential basis and the most effective strategy for generating the necessary political will to provide jobs for all. What is needed is not another job generation program, but a change in social values that will accelerate the natural and inevitable evolution of society, from one in which labor is regarded as a dispensable resource to one based on full human rights and the enormous productive potential of the human being. The type and magnitude of change needed today is comparable to that embodied in President Roosevelt’s New Deal for the American people during the Great Depression at a time when 25 percent of the work force was unemployed, to the Indian Government’s decision to launch the Green Revolution in the mid-1960s to achieve self-sufficiency in food grains at a time when the country was highly dependent on imported food to stave off famine, and to Mikhail Gorbachev’s initiatives late in the 1980s to end the Cold War and transform Soviet society.”

There are many skeptics in political circles as well as academic and scientific circles who genuinely believe that full employment is simply an unfeasible policy. It is very possible that this outlook has a corrosive effect which initiates this discourse with an assumption of futility. Thus, a critical part of initiating this dialogue is the assumption that a full employment society is a realistic prediction if there is a plausible and wide-spread acceptance of the necessity of this in economic terms as well as the importance of this commitment in juridical and moral terms. In this sense, more may be required to fully explore all the ramifications of the notion of employment itself. This could include not simply the market value of labor but other components of labor that deal with the very nature of human development. An approach is suggested in the Human Development Report of 1990 which stresses that a significant element of the dynamic of employment is embedded in the “capability approach.” This approach suggests that economic measures of labor value are insufficient. For example, a measure like the GDP may unintentionally distort our view of the critical value of employment to individual and social well-being. It may be that the notion of employment seen through the lens of capability would emphasize the production and distribution of freedom as a better indication of human value.

According to the Human Development Report, “the basic objective of development is to create an enabling environment for people to enjoy long healthy and creative lives. This may appear to be simple truth but it is often forgotten in the immediate concern with accumulation of commodities and financial wealth.” Central to the capability approach is the insight that social and economic arrangements should have as a key objective the expansion of human capability. This includes the freedom to defend and enhance valuable activity. Central therefore to the stress on capability is the expansion of human freedom in the aggregate in the economic sector. It also permits a clearer link to the fundamental human rights standards which are now the foundation of modern social organization. In short, what is central then to human rights approach to employment is the recognition of “opportunity freedom” (capability) and “process freedom.” These freedoms are then cornerstones of the dynamic of employment both in terms of the conditions of access and performance.

The challenge that a focused human rights approach generates is that it compels a discourse about the values which implicate human rights and are part of the culture of labor, skill and employment. This carries a further implication that these values must in turn provide compelling normative guidance for a newer approach to the problem of a commitment to full employment. It may be assumed that the current flavor of dominant economic policy is one that either tolerates or may even tacitly encourage unemployment as an economically efficient mechanism for stabilizing the market, and the dominant business values of self-interest behind it. This means that we must generate a change in the discourse of our values and then look toward a process of those changes being reflected in a wide framework of decision making at all levels for the promotion of full employment. This view is also taken by the International Commission as follows:

“We must recognize that the present status and functioning of our economies is the result of specific choices that have been made in the past, based on priorities and values that were relevant or dominant at the time, but which we certainly are not obliged to live with indefinitely, and, in fact, are continuously in the process of discarding in favor of new values and priorities. The rapid adoption of environmentally-friendly policies around the world is positive proof of how quickly the rules, even economic rules, can change when there is a concerted will for a breakthrough.”

Recently, the South African Economic and Social Upliftment Institute developed some proposals to radically infuse human capital with economic dynamism. They believe this is one strategy that will radically reduce poverty and generate great economic equality. The theme of their innovations is based on Nelson Mandela’s Trafalgar’s Square speech in 2005 reading for a campaign to end poverty in the developing world. The institute calls for the creation of a national community economic empowerment cooperative (CEEC). The CEEC will have the following shareholders or beneficiaries:

1. Every citizen of South Africa will be allocated 25 CEEC shares simply by virtue of being a citizen

2. Every very poor citizen shall be entitled to an additional 25 or more CEEC shares based on the degree of their poverty

3. Every person with a disability shall be entitled to 25 additional CEEC shares or more, depending on the scope of the disability

4. Every citizen, who by service is a role model for social improvement, will receive additional CEEC shares according to the scope of contribution

5. Citizens who suffered seriously from apartheid will receive shares as reparations

The report also indicates how the CEEC process will work and how it will be funded. It gives a prognosis on the accretion of values of CEEC shares from five to thirty years. This approach will make ordinary citizens stockholders with interests in major corporate enterprises and will facilitate management and related economic skills for self-improvement.

The critical choice for South Africa if it wishes to sustain itself as a rainbow nation with justice, equality and decency for all, means that we must reject neoliberalism and embrace a much more thought through and defensible process to radically alleviate the poverty dimension of its inheritance from apartheid. In this paper we have suggested some possibilities.

**Conclusion to Part II**

South Africa made a monumental error in negotiating the transfer of power from the Nationalist Party to the ANC. It opted for the embrace of the economic foundations for the future of South Africa insufficiently distanced from the political economy of Apartheid. What the Mandela government adopted was the economic philosophy and method known as “economic Neoliberalism.” As applied to the United States, it has resulted in a depreciation, economically speaking, of the working class and the middle class. It has provided unjustifiable benefits to the rich and the super-rich so that criticisms of the US are that it is experiencing the emergence of plutocratic government. Other studies, globally, see the same trend, namely accelerating inequality and expanding unemployment. South Africa represents one of the worst cases of the downside of economic neoliberalism. With expanding and unsustainable levels of unemployment and inequality, the time is long overdue when the state has to consider an alternative theory and method to produce a sustainable level of human-centered economic development. There are alternative models that have emerged from respectable think tanks such as the Club of Rome and the World Academy of Art and Science. The World Academy has been aggressively pursuing an economic theory and method based on the centrality of human capital. If human capital is the cornerstone for rational economic development, it is because its focus is on giving a priority to the development of opportunity freedoms and capability freedoms as the most effective method of unleashing human potentials for the production and distribution of wealth. There are other intermediate steps to alleviate poverty as indicated in this paper, but in South Africa the economic theory it uses will lead to a crisis, social unrest and the possibility of social forces destabilizing the state in the future.

**Appendix**

**If any people have a historical claim to this land, it’s so-called Coloureds.**

**In the early 1600s this land was not called South Africa, but Ethiopia.**

**By Dr. Cyril A. Hromnik**

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The land issue is very hot in present-day South Africa. Who is historically entitled to hold and possess the land is hotly debated and contested.

Looking at the problem from the position of the various human populations of this country, the largest number of the landless people are the so-called Black or African people, who claim to be indigenous thereby holding the highest claim to the land.

At the same time, the largest portion of the cultivable land is in the hands of the European or so-called Whites, who were actually the second most recent arrivals in this land south of the !Gari-ab and the third north of the same, but by them called the Orange River.

This situation, looked at from the perspective of recent  times of one or even two hundred years, seems to call for comprehensive redistribution of all land in this country and its main beneficiaries should be the Black people: be they the Xhosa, the Zulu, the Swati, the Ndebele or the Sotho-Tswana.

These peoples are called Africans and the land of the continent called Africa should logically belong  to or at least be worked by the Africans.

Hardly anybody seem to be aware that the name Africa and Africans is very recent and of the British colonial coinage, borrowed from the small Roman Africa in northern Libya.

Few, however, seems to feel  the need to consider the landlessness and the claims of the so-called Coloured people, whose ancestral claim to this land is much, much older.

It is postulated that the simplest remedy would be to redistribute the land among those calling themselves Africans, who are landless in the highest numbers and justice will prevail. In this thinking, history, which is by-and-large unknown and ignored, plays no meaningful role. Again, few seem to realise that should such redistribution take place on mass scale, the productive land would by-and-large end up in the hands of those, who have the shortest historical claim to it  and possibly  be the least qualfied to work it effectively.  But...

As late as the early 1600s this land was not called South Africa, not even Africa, but Ethiopia and the Ocean that washed its shores was called Ethiopian Ocean or Hottentot Sea. That’s how this land was known to the early Indian goldseekers and Indian and Middle Eastern mariners and traders for some 2500 years before the arrival of the Portuguese in the late 1490s.

A Portuguese book by João dos Santos, written in the 1590s and published in Portugal in 1606, called this land *Ethiopia Oriental*. Who then were the Ethiopians who lived in this land in the preceding centuries and millenia and where is their progeny now?

   That progeny is still with us and should be known not as “Hottentots”, which is a  European corruption, but as “Otentottu”, meaning Mixed People - mixed because their ancestral Kung (Bushman) mothers (presently misnamed San which means naked) cohabitating with the ancient prospectors, traders and sailors from across the Indian Ocean,  produced these mixed “Otentottu” people who from birth acquired their religious belief in one Red God confirming their identity as “Quena” - the Red People. From their Indian ancestors, the Otentottu/Quena became the original indigenous cultivators of this southern Ethiopian land and enriched their diet by planting introduced crops such as millet, yams, various fruits and vegetables.

From their ancestors they also inherited the Zebu-type humped cattle of India, the Asian fat-tail sheep, which enriched their diet by providing milk, butter and a steady supply of good meat. Indian Ridgeback dogs helped them to guard their herds.

Over the centuries the Otentottu/Quena people multiplied and spread from the Limpopo in the North to the ***Camissa*** **Stream** (***//ammi-î-sa***in the local Quena dialect**)**at the foot of the Table Mountain, which they called ***Khû!gais*(*/Hû!gais*)**, meaning Great Storm Rocks,  in their Quena language. Their  occupation and ownership of this huge land of southern Ethiopia (now South Africa) is attested by the Quena names attached to more than 95% of  some 1500 streams and rivers in this large territory.

Some 1000 to 1200 years  after the first Asian arrivals, caravans engendered by the Indian Ocean trade and gold mining (stretching from Ashantiland in West Ethiopia -- now West Africa  to MaShonaland and Komatiland in south-east), moved throughout the region accompanied by black porters **hired** in West  Ethiopia  who were called “Bantu” in the Indian languages. Using the Indian Zebu-type riding cattle, useful in carrying burdens and covering long distances allowed for the earliest Quena/Otentottu settlements in the extensive area called “Quenaku” - the land of the Quena, worshippers of the Red God. Even as late as 1835, the Matabele (Ndebele) then  recently arrived on the Highveld still referred to the Vaal, the second largest river in  Quenaku land, by the name Kena (Quena) River.

This history makes it clear that, if any people of South Africa have a historical claim to this land; it is the so-called Coloured  people who are the descendents of the Quena/Otentottu, as well as their Mixed or Coloured progeny. All the other groups – the Bantu-speakers, the Europeans and modern Indians -- are newcomers with very shallow roots in the soil of Quenaku. Regardless of their origin, it is imperative that those with the knowledge, ability and capital resources should cultivate the fertile land to stave off the specter of starvation in Quenaku - alias South Africa.

This is the important issue rather than simplistic calls for “land rights” regardless of productive responsibility and usage.  Otherwise, hunger is not far from the gates of Quenaku alias South Africa

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Historian/Researcher

Rondebosch

1. Griqualand East was founded by Waterboer. With the discovery of diamonds it was extinguished. Griquiland West was established by Adam Kok. Kokstad was his capitol and still survives. But it too was absorbed into the empire. [↑](#footnote-ref-1)
2. The Background of Segregation, B. M. Kies, address delivered to the National Anti-C.A.D Conference, May 29, 1943. [↑](#footnote-ref-2)
3. See Kies, note 1. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)