Chapter One

Dealing With the Legacy of the Past—Transitional Justice in South Africa

1. The Apartheid Conflict

Practically since the first Europeans settled in South Africa in the late 17th century, the native African population was disadvantaged and discriminated against.\(^1\) Control over political instruments, the economy, natural resources and the majority of the land was reserved to whites. After the National Party (hereinafter NP), a predominantly Afrikaner\(^2\) nationalist party, won the elections in 1948, the situation was aggravated further as the state of racial segregation and economic exploitation was institutionalised into law.\(^3\) Black and coloured South Africans had

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\(^{1}\) If not stated otherwise, the general historical information contained in this subchapter derives from R. Davenport and C. Saunders *South Africa* (2000) and *TRC Report*, vol. 1, chap. 2; vol. 3, pages 12–33. See on the discrimination and human rights violations on racial grounds which occurred before 1948: *TRC Report*, vol. 1, pages 25–28.

\(^{2}\) The *Afrikaner* population descends from an amalgamation of the earliest European settlers, mainly coming from the Netherlands, Germany and France.

\(^{3}\) Racial segregation and discrimination was based on a range of acts, mainly the Population Registration Act of 1950, which provided for the classification of each South African according to four racial categories and the duty to carry a pass of racial identification; the Group Areas Act, which partitioned the whole country into zones for exclusive inhabitation by one of the racial groups and which provided for the eviction of millions of black and coloured South Africans from their land and property and the forced removal into townships and poor *bantustan* homelands; the Prohibition of Mixed Marriages Act of 1949; and the 1950 Immorality Amendment Act, which prohibited not only inter-racial marriages but all forms of sexual contacts between the
practically no political or economic rights, yet were simultaneously exploited as cheap labourers, a practice which was vital for the thriving economy. Officially independent states were created on minimal and poor parts of the country which were intended to serve as homelands for the respective African ethnic groups. This racist system of so-called *apartheid* became a guiding principle of South African government politics for the following decades.

Inevitably, resistance grew to white supremacy and apartheid. An opposition organisation, which in 1923 became the African National Congress (hereinafter ANC), formed in 1912. In 1959 the other major opposition movement, the Pan Africanist Congress (hereinafter PAC), was established. The opposition was faced with an intransigent commitment to apartheid and white supremacy. Peaceful political protest was greatly obstructed by the authorities. The opposition movement therefore resorted to militant means of protest. In 1961 the ANC formed its armed wing, *uMkhonto weSizwe* (hereinafter MK) which attacked the security forces and directed acts of sabotage at important state facilities.


*UMkhonto weSizwe* means “spear of the nation”.

* Interview with Jan Wagener in Pretoria (May 8, 2006). The perceptions within security police are illustrated in H.D. Stadler *The other side of the story* (1997).