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VIOLATIONS OF HUMAN RIGHTS IN SOUTH AFRICA: REPORT
OF THE AD HOC WORKING GROUP OF EXPERTS

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General introduction

Mandate and composition of the Ad Hoc Working Group of Experts

1. Since its establishment in 1967, the Ad Hoc Working Group of Experts on southern Africa has had its mandate extended and broadened through various resolutions and/or decisions of the Commission on Human Rights and the Economic and Social Council. In pursuance of its mandate, the Group has carried out various investigations into allegations of human rights violations in South Africa and Namibia and has submitted several reports on the subject to the Commission on Human Rights, the Economic and Social Council and the General Assembly at its explicit request.

2. The Group is currently composed of the following six members, serving in their personal capacity and appointed by the Commission on Human Rights: Mr. Leliel Mikuin Balanda (Zaire), Chairman/Rapporteur; Mr. Branimir Jankovic (Yugoslavia); Mr. Felix Ermacora (Austria); Mr. Humberto Diaz Casanueva (Chile), Vice-Chairman; Mr. Mulka Govinda Reddy (India) and Mr. Elly Elikunda E. Mtango (United Republic of Tanzania).

3. At its forty-third session, in resolution 1987/14, the Commission on Human Rights decided that the Ad Hoc Working Group of Experts should continue to investigate and study the policies and practices which violated human rights in South Africa and Namibia (para. 26). The Commission also requested the Group, in co-operation with the Special Committee against Apartheid and other investigatory and monitoring bodies, to continue to investigate cases of torture and ill-treatment of detainees and the deaths of detainees in South Africa (para. 27). Furthermore, the Commission requested the Group to continue to bring to the attention of the Chairman of the Commission on Human Rights, for whatever action he might deem appropriate, particularly serious violations of human rights in South Africa which might come to its attention during its studies (para. 30).

4. The Commission on Human Rights also renewed its request to the Government of South Africa to allow the Group to make on-the-spot investigations of the living conditions in prisons in South Africa and Namibia and of the treatment of prisoners in such a manner that: (a) the Group would be guaranteed free, confidential access to any prisoner, detainee, ex-prisoner, ex-detainee or any other persons; (b) the South African Government would provide a firm undertaking that any person providing evidence for such an investigation would be granted immunity from any State action arising from participation in the investigation (para. 29).

5. The Commission on Human Rights renewed that request at its forty-fourth session in resolution 1988/9, paragraph 27. In that connection, in a letter of 12 April 1988 addressed to the South African Government on behalf of the Ad Hoc Working Group of Experts, the Under-Secretary-General for Human Rights drew the attention of the South African Government to the Group's activities and invited it to co-operate with the Group in the framework of its fact-finding mission. The letter read as follows:

> "I have the honour to draw your attention to the activities of the United Nations Ad Hoc Working Group of Experts on southern Africa established under Commission on Human Rights resolution 2 (XXIII) of 6 March 1967.

"The Commission on Human Rights, in establishing the Ad Hoc Working Group of Experts, authorized it to receive communications and hear witnesses and to use modalities of procedure as it may deem appropriate.

"At its forty-fourth session, the Commission on Human Rights adopted resolutions 1988/9 and 1988/10 by which, inter alia, it renewed its request 'to the Government of South Africa to allow the Ad Hoc Working Group of Experts to make on-the-spot investigations of the living conditions in prisons in South Africa and Namibia and the treatment of prisoners ...'

"In the light of these resolutions the Ad Hoc Working Group has, once more, requested me to inquire whether Your Excellency's Government would in any way facilitate the Working Group's tasks under the provisions of the above-mentioned resolutions. The Working Group is next scheduled to meet from 27 July to 18 August 1988 and it would therefore be appreciated if any reply to this letter were received at the earliest convenient time and preferably prior to 15 May 1988."

6. The reply transmitted on 18 May 1988 by the South African Government to the Under-Secretary-General for Human Rights read as follows:

"I have the honour to acknowledge your letter G/SO 214 (47-3) of 12 April 1988 in which you drew my attention to the request of the United Nations Commission on Human Rights to the South African Government 'to allow the Ad Hoc Working Group of Experts on southern Africa to make on-the-spot investigations of the living conditions in prisons in South Africa and Namibia and the treatment of prisoners' and inquired whether my Government would in any way facilitate the Working Group's tasks.

"I have now been instructed to advise you that the South African Minister of Foreign Affairs has on previous occasions pointed out the bias of the 'Ad Hoc Working Group'. Nothing that it has said or done in the interim could possibly encourage the authorities to believe that this body had in any way deviated from its established position of prejudice and partiality. This conclusion was reinforced by the selective and biased content of its report to the forty-fourth session of the Commission on Human Rights (E/CN.4/1988/8).

"Furthermore, the competent authorities point out that, as the Commission has been advised in the past, adequate arrangements exist for the monitoring of living conditions in South African prisons. No purpose would therefore be served by further international investigation, particularly by a body such as the 'Ad Hoc Working Group' which in terms of its mandate would only look for such evidence as it could use to buttress a previously adopted conclusion.

"Finally, the Commission on Human Rights will appreciate that consideration can only be given to requests of this nature when the South African Government has all its rights of participation, not only in meetings of the Commission but in all other organs of the United Nations, fully restored. In any other circumstances they can only regard requests of this nature as irrational."

7. Further to the reply of the South African Government, the Group points out that a careful reading of the letter confirms it in its position, which has always been to seek the co-operation of the South African Government in order to stimulate a dialogue that might lead to an improvement in the human rights situation and ensure the effective enjoyment of human rights by all citizens.

8. Furthermore, at its forty-fourth session, the Commission, appalled at the evidence that children in South Africa were subjected to detention, torture and inhuman treatment, adopted resolution 1988/11 in which it requested the Ad Hoc Working Group of Experts to pay special attention to the question of detention, torture and other inhuman treatment of children in South Africa and Namibia and report to the Commission on Human Rights at its forty-fifth session. Consequently the Group deals with this question in chapter I, section H, of the present report.

9. With regard to the human rights situation in Namibia, the Commission, in resolutions 1987/8 and 1988/10, requested the members of the Group to bring to the attention of the Chairman of the Commission on Human Rights, for whatever action he might deem appropriate, particularly serious violations of human rights in Namibia which might come to its attention and to report to the Commission at its forty-fifth session on the policies and practices which violated human rights in Namibia and to submit appropriate recommendations. The Commission also reiterated its request that South Africa should allow the Group to make an on-the-spot investigation of living conditions in the prisons in Namibia and the treatment of prisoners.

10. The Economic and Social Council, for its part, adopted resolution 1988/41 concerning infringements of trade-union rights in South Africa. Having examined the relevant extract from the report (E/1988/27), the Council requested the Group to continue to study the situation and to report thereon to the Commission on Human Rights and the Economic and Social Council. In the same resolution, the Council also requested the Group to consult with the International Labour Organisation and the Special Committee against Apartheid, as well as with international and African trade-union confederations. Thus, in carrying out its mandate, the Ad Hoc Working Group of Experts held consultations and considered a large volume of documentation from the above-mentioned organizations during the fact-finding mission it undertook in July and August 1988.

Organization of work and working methods adopted by the Ad Hoc Working Group of Experts

Meetings and fact-finding mission

11. The Group, continuing the line of action it had been observing since its establishment, decided on the modalities for the fact-finding mission by taking into consideration both the mandate entrusted to it by the Commission on Human Rights and the Economic and Social Council and the special situation prevailing at that time and still prevailing in South Africa and in Namibia.

12. Given the complementary nature of the two mandates, the Group once again undertook its mission in conjunction with Mr. S. Amos Wako, Special Rapporteur on Summary or Arbitrary Executions, in order to gather on-the-spot information concerning violations of the right to life.

13. With a view to collecting as much information as possible and gathering testimony on developments since its latest interim report (E/CN.4/1988/8), the Group heard witnesses at Geneva on 27 and 28 July 1988, at Luanda from 30 July to 2 August 1988, at Harare from 3 to 8 August 1988, at Lusaka from 10 to 14 August 1988, and at Dar-es-Salaam from 15 to 18 August 1988.

14. During its meetings at Dar-es-Salaam, the Ad Hoc Working Group of Experts, in the light of information received concerning the state of health of Mr. Nelson Mandela, decided to transmit the following telegram to the Chairman of the forty-fourth session of the Commission on Human Rights, in conformity with the provisions of paragraph 28 of Commission resolution 1988/9:

> "During its meetings at Dar-es-Salaam (United Republic of Tanzania), the Ad Hoc Working Group of Experts of the Commission on Human Rights on the human rights situation in South Africa and Namibia learned with great concern of the illness of Mr. Nelson Mandela, in prison since 1962, who is currently suffering from tuberculosis. Deeply distressed by the seriousness of this illness, which might endanger his life in view of his conditions of detention and age, the Group draws your attention to this case in implementation of resolution 1988/9, paragraph 28, and asks you to intercede with the South African authorities in order to obtain his immediate and unconditional release and that of all other prisoners currently being detained because of their commitment to the struggle against apartheid."

15. Consequently, the Chairman of the Commission transmitted the following telegram to the South African Government:

> "I have learned with deep dismay and concern of the illness of Mr. Nelson Mandela, in prison since 1962, who is currently suffering from tuberculosis. At the request of the Ad Hoc Working Group of Experts of the Commission on Human Rights responsible for studying the policies and practices constituting human rights violations in South Africa and Namibia, I have the honour to appeal to you on a strictly humanitarian basis in order that Mr. Mandela may receive the best possible medical care and be released immediately and unconditionally."

At the time of the adoption of this report, the Group had not received any reaction from the South African Government.

Procedure followed in conducting the fact-finding mission

16. Following its practice and in keeping with its mandate, the Group requested co-operation from the Member States concerned, intergovernmental and non-governmental organizations, as well as human rights institutions and private individuals, in order to hear the greatest possible number of witnesses that might provide it with reliable information on the questions falling within its mandate. The procedure followed and measures taken by the Group with regard to the organization of its fact-finding mission are described below:

Relations with Governments

17. On 12 April 1988, the Under-Secretary-General for Human Rights, acting at the request and on behalf of the Chairman of the Group, sent a letter to the Ministers for Foreign Affairs of Angola, the United Republic of Tanzania,

Zambia and Zimbabwe, drawing their attention to the Group's mandate and activities and inviting their Governments to co-operate in helping it to fulfil its mandate. The Ad Hoc Working Group of Experts would like to express its deepest thanks to those Governments for the full co-operation it enjoyed.

18. As indicated in paragraph 5 above, in the letter addressed to the Government of the Republic of South Africa, the Ad Hoc Working Group of Experts drew the Government's attention to its activities and to the relevant resolutions of the Commission on Human Rights and the Economic and Social Council and asked whether the Government could in any way facilitate the Group's work in conformity with the mandate described in those resolutions in the framework of its fact-finding mission.

Relations with United Nations bodies and the specialized agencies

19. As in the past, and in accordance with the request from the Commission and the Economic and Social Council, the Group enjoyed the co-operation of the Special Committee against Apartheid and the International Labour Organisation. Nevertheless, the Group wishes to repeat its request to be kept informed of the holding of any conferences, seminars or symposia organized under the auspices of both the Special Committee against Apartheid and the United Nations Council for Namibia and of the International Labour Organisation, in order to follow the development of the situation in the region and to be in a position better to analyse the supplementary information it receives on a regular basis. A recommendation to that effect is made in chapter X containing the Group's recommendations to the Commission on Human Rights.

Relations with the Organization of African Unity (OAU)

20. The Ad Hoc Working Group of Experts addressed a letter to the Administrative Secretary-General of the OAU and to the Executive Secretary of the Co-ordinating Committee for the Liberation of Africa, informing them of its mission and inviting them to kindly co-operate with the Group in the fulfilment of its mandate.

Relations with African liberation movements, non-governmental organizations and private individuals

21. On 18 April 1988, the Under-Secretary-General for Human Rights, acting on behalf and at the request of the Ad Hoc Working Group of Experts, advised several non-governmental organizations and the main African liberation movements of the Group's mandate and invited them to transmit any information that might help it to fulfil its mandate. Furthermore, either at the proposal or request of the organizations, a large number of private individuals were invited to appear before the Group, strictly following the procedure applicable by the Group as described in the following paragraph. Others came before the Group spontaneously.

Testimony collected

22. During its fact-finding mission, the Ad Hoc Working Group of Experts held 24 meetings and heard 59 witnesses, some of whom provided information concerning both South Africa and Namibia. Besides these direct accounts, the Group had available a large volume of documentation transmitted by various

organizations and/or individuals who had not been able, for reasons beyond their control, to appear before the Group during its mission. In addition, 31 witnesses were heard at private meetings at their own request; for that reason their names do not appear in the report. The witnesses who testified at public meetings are listed below. The records of the testimony given in public session are on file with the secretariat of the Ad Hoc Working Group of Experts.

23. With respect to the situation in South Africa, 37 witnesses were heard, 28 at private meetings. The following witnesses were heard at public meetings: Mr. N. Rubin (708th meeting, Geneva); Rev. Edward Morrow (708th meeting, Geneva); Mr. Hans Hartman (709th meeting, Geneva); Mr. Aidan White (709th meeting, Geneva); Amnesty International (710th meeting, Geneva); Mr. Geoffrey Bindman (710th meeting, Geneva); Mr. Pheki Silemane (715th meeting, Harare); National Association of Democratic Lawyers (716th meeting, Harare); Mrs. Jenny de Tolly (718th meeting, Harare); Mr. Muhammed Shabazz (719th meeting, Harare); Mr. Ishmail Ibrahim (720th meeting, Harare); Lawyers for Human Rights (724th meeting, Lusaka); Mr. Buras Nhlabathi, Mr. Ituin Skhosana, Mr. Webster Seruti and Mr. Andrew Kailembo (730th meeting, Dar-es-Salaam); Mr. Mpiza Mpumuzi, Mr. Mistoricus Mudise and Mr. Ralph Mokotedi (731st meeting, Dar-es-Salaam).

24. With respect to the situation in Namibia, 13 witnesses were heard, 3 at private meetings. The following witnesses were heard at public meetings: Mr. N. Rubin (708th meeting, Geneva); Rev. Edward Morrow (708th meeting, Geneva); Rev. John Evenson (709th meeting, Geneva); Mr. Hans Hartman (709th meeting, Geneva); Mr. Petrus Shaanika (711th meeting, Luanda); Mr. Leonard Shimutwikeni (712th meeting, Luanda); Mrs. Hambeleleni Mathias (712th meeting, Luanda); Mrs. Elizabeth Ithete (712th meeting, Luanda); Mr. Petrus Angula (712th meeting, Luanda); Mr. Joseph Mbahunrwa (713th meeting, Luanda); Mr. Andrew Kailembo (730th meeting, Dar-es-Salaam).

25. In conformity with the procedure followed by the Ad Hoc Working Group of Experts since 1967, each witness, after stating his or her identity, was invited by the Chairman to take an oath or make a solemn declaration.

26. The Chairman explained to each witness the goal of the mission and the different subjects which the Group was responsible for investigating. Whenever a witness did not speak or understand one of the working languages of the United Nations, the Group used the services of interpreters, who were also required to take an oath or make a solemn declaration that they would do their best faithfully to interpret the testimony.

Other activities of the Group during its mission

27. During its visit to Angola, the Ad Hoc Working Group of Experts, on 1 August 1988, met the Attorney-General, Mr. Artero Abrea, principally to discuss the situation prevailing in Angola owing to its position in the Namibian conflict. Before that, on 30 July 1988, the Group had had a long discussion with Mr. Toivo ya Toivo, Secretary-General of the South West Africa People's Organization (SWAPO), who had mentioned that there were changes indicating a serious move towards independence for Namibia in the near future.

28. During its visit to Zambia, the Group was received by the Minister for Foreign Affairs, H.E. Mr. Luke Mwananshiku, on 10 August 1988. Commenting on the general situation in the region, the Minister stated that the problems facing the front-line States were linked to the question of Namibia. Speaking on behalf of the Group, the Chairman of the Ad Hoc Working Group of Experts replied that the Commission, through the Group, would continue to make every effort to find a solution allowing all the countries of the region fully to enjoy their rights.

29. During its visit to the United Republic of Tanzania, the Group was received on 17 August 1988 at Dar-es-Salaam by H.E. Salim A. Salim, Deputy Prime Minister and Minister of Defence. The discussions focused on the general situation in southern Africa and in particular on Namibia. On 18 August 1988, the Group was received by the Prime Minister, H.E. J.E. Warioba.

30. During its fact-finding mission, the Group held regular press conferences in the places it visited with a view to informing international public opinion, making the Group's mandate better known and giving maximum publicity to its activities and those of the United Nations.

31. The representative of the Special Committee against Apartheid, Mr. M. Mohamed, took part in the work of the Ad Hoc Working Group of Experts during its meetings at Geneva from 27 to 29 July 1988.

Basic international norms affecting the questions within the Group's competence

32. In preparing its report, the Group took into consideration the basic international norms relating to its activities. It should be pointed out that all provisions contained in these norms prohibit any form of racial discrimination.

33. In the opinion of the Ad Hoc Working Group of Experts, the Universal Declaration of Human Rights represents the United Nations General Assembly's interpretation of the expression "human rights and fundamental freedoms" appearing in the passages quoted from the Charter of the United Nations. The Group reaffirmed that the obligations incumbent on Member States under those provisions of the Charter had been broadened by the more precise statement of rules contained in the Universal Declaration. It also stated that the provisions of the Universal Declaration should be recognized as general principles of international law in view of the fact that they had been accepted by a very large number of States and international organizations.

34. Without prejudice to other provisions contained in international instruments, the Group took account of the resolutions adopted by the General Assembly at its forty-second and forty-third sessions and of resolutions adopted by the Security Council during the period under review in relation to its mandate.

35. The present report, which contains conclusions and recommendations, was prepared in conformity with the mandate entrusted to the Ad Hoc Working Group of Experts by the Commission on Human Rights and the Economic and Social Council in the above-mentioned resolutions. It is therefore based principally on the first-hand information collected by the Group in the form of oral

testimony and written communications from private individuals or organizations during the fact-finding mission it conducted from 27 July to 18 August 1988. In addition, the Group systematically studied and analysed documents of the United Nations and specialized agencies, official journals and records of parliamentary debates in South Africa, and publications, journals and reviews from various countries, as well as works dealing with questions relating to its mandate.

36. The Group then met from 3 to 13 January 1989 at the United Nations Office at Geneva to consider and adopt the present report.

General comments

37. The information collected led the *Ad Hoc* Working Group of Experts to establish the following facts regarding the human rights situation in South Africa. During the period under consideration this situation was principally characterized by (a) the extension of the state of emergency, which has continued to cause new outbreaks of violence. The extremely broad powers, including immunity following the impunity granted to the police and armed forces, have given rise to abuses of authority; (b) the persistence of massive repression against students and trade-union members; (c) the recrudescence of the policy of forced population removals, which has given rise to clashes between the inhabitants of the places to be evacuated and the police and security forces; (d) the new restrictions imposed on freedom of expression, making censorship the key element for limiting the activities of both South African journalists and foreign correspondents; (e) the growing number of arrests and detentions without trial of political prisoners and of cases of torture and ill-treatment, in particular against children.

38. Consequently, the Group is of the opinion that, despite certain indications that the South African Government would envisage reviewing its policy, discrimination remains the rule in that country, where *apartheid* is institutionalized.

39. With regard to Namibia, the *Ad Hoc* Working Group of Experts can only note the continuing illegal occupation of the Territory by South Africa, the direct consequence of which is the continuation of merciless repression and massive and flagrant violations of fundamental human rights. However, the Group takes note of recent developments and the efforts directed towards ensuring that the United Nations Plan for the Independence of Namibia is implemented in the near future, in conformity with Security Council resolution 435 (1978).

Part One

SOUTH AFRICA

I. RIGHT TO LIFE, PHYSICAL INTEGRITY AND PROTECTION FROM ARBITRARY ARREST AND DETENTION

40. During the period under consideration, the Working Group examined with care the evolution of the situation in South Africa in the light of the state of emergency, reimposed on 10 June 1988 through an announcement made by President Botha and published in the Government Gazette.

41. Once again, the Government evoked security of State as the justification for its action. In his announcement, President Botha said that he had been forced to reimpose the state of emergency to ensure that citizens could continue their life "without fear, intimidation and terror". A day earlier, the Minister of Law and Order, Mr. Adriaan Vlok, made strong accusations against anti-apartheid organizations including the African National Congress of South Africa (ANC), the Congress of South African Trade Unions (COSATU) and what he described as "almost 70 other Communist-infiltrated and manipulated trade unions".

42. As in the past two years, regulations imposed under the renewed state of emergency resulted in further curtailment of civil liberties. Individuals and groups considered to be most immediately affected included:

(a) The estimated 2,000 to 2,500 people detained under emergency regulations, including at least 200 under the age of 18 (in 1987, almost all detainees under emergency regulations were redetained before they could leave the prison);

(b) The 17 anti-apartheid organizations, including COSATU, which were subjected to restrictions on 24 February 1988 and whose numbers had incrased to 30 by the end of December 1988;

(c) The two newspapers suspended prior to the renewal of the state of emergency, New Nation and South. The restrictions on New Nation expired on 10 June 1988, while the ban on South lapsed with the end of the previous regulations.

43. The far-reaching regulations imposed under the new state of emergency included all the previous restrictions laid down in 1986 and 1987, with a number of new controls in the media emergency regulations made in terms of the 1953 Public Safety Act (see chap. III, sect. B). Under the new regulations, it is illegal to "promote the public image or esteem of an organization ... in respect of which an order under the security emergency regulations is in force". There is therefore now a ban on promoting the public esteem of the United Democratic Front (UDF), COSATU and others among the 17 organizations restricted in February 1988; 13 other organizations have been added to the list.

44. In relation to unlawful organizations (ANC and the South African Communist Party), the publication of any "speech, statement or remarks ... of a person of whom it is commonly known that he is an office-bearer or spokesman of an unlawful organization" is prohibited. The other major change affecting the general public is in the definition of a "subversive statement". At

present, it is illegal to make any statement in which members of the public are "incited or encouraged". A new section makes it illegal to incite the public "to boycott or not to take part in an election of members of a local authority or to commit any act whereby such an election is prevented, frustrated or impeded". Under the former regulations, the promotion of so-called "alternative structures" was prohibited; it remains illegal to incite people not to make payments which are due to local authorities.

45. As over the past two years, the imposition of the state of emergency has resulted in the detention of scores of individuals who remain in custody for very long periods of time without charge or trial. In most cases, detainees are also denied access to legal assistance.

46. According to information transmitted to the Working Group, an estimated 2,300 to 2,800 people were still held in terms of the emergency regulations in early June 1988.

47. In addition to arbitrary detention, detainees - many of whom are children and teenagers - are still subjected to various methods of torture and ill-treatment which often lead to psychological disturbances, trauma and sometimes death in police custody.

48. During the period under consideration, numerous allegations of violence and abuses committed by police and security forces were brought to the attention of the Working Group. Many reports emphasized the progression in acts of repression, including assassinations by vigilante groups, some of whose members, known as "special constables", were incorporated in the municipal police. Cases of disappearances reported in the course of 1988 occurred mainly while the persons concerned were in police custody, but police either denied this fact or refused to comment.

49. The Working Group noted with great concern the increasing number of death sentences commonly imposed in politically related cases, as well as for less important offences, such as robbery. In this respect, it is important to recall that South Africa has one of the highest execution rates in the world; over the past 10 years, more than 1,100 people have been executed. The overwhelming majority of them were black. By the end of November 1988, 279 people were awaiting execution in Pretoria Central Prison, where hangings are carried out on multiple gallows that can execute seven people at a time. Of those 279 people, as many as one third are estimated to have been involved in killings related to political unrest.

50. In the face of mounting repressive measures applied under the emergency regulations, the South African judiciary appears to be more and more impotent. Despite the prerogatives of judges and their freedom to interpret the legislation according to the common-law rules of interpretation, witnesses testifying before the Working Group held that "judges seem to have ruled against the freedom of the individual and to support the State".

51. As already noted in many of the Working Group's reports, individuals and groups opposing apartheid, including trade-unionists, are constant targets of Government repression. In the course of 1988, 258 opponents of apartheid faced charges of treason in eight cases.

52. Due to the lack of information and the restrictions imposed under the state of emergency, few sentences in politically related trials had been publicized. During the period January to May 1988, the Working Group became aware of cases involving 47 people. Twelve of the accused were under 21 at the time of sentencing, and eight received death sentences. These figures do not include those held without trial under emergency regulations, some of whom have been held for over a year (see annex).

53. The Working Group examined in depth the two cases known as the "Sharpeville Six case" and the "Upington case", which emerged as a result of the unrest in South Africa. the application of the doctrine of "common purpose", leading to death sentences in both cases, was presented by the witness who appeared before the Group as the most relevant issue so far, as it had created an alarming precedent in South African jurisdiction. The pressure of world public opinion was considered as crucial to the outcome of the Sharpeville case, as it had played an important role in the commutation of the sentences.

A. Right to life

54. During the second half of 1987 and early 1988, several examples were reported of killings by police; in some cases these appeared to amount to summary executions. Details related to this matter and to the right to life as a whole are enclosed in the report of the Special Rapporteur on summary or arbitrary executions to the Commission on Human Rights at its forty-fifth session (E/CN.4/1989/25).

55. The Working Group heard several testimonies and received numerous reports highlighting the excessive use of force by security forces.

56. The previous report of the Group (E/CN.4/1988/8, para. 107) referred to a marked escalation in the number of kidnappings and assassinations of anti-*apartheid* activists, both inside and outside South Africa.

57. In their oral evidence, some witnesses drew the Group's attention to the increasing number of assassinations of alleged ANC insurgents. According to the representative of the National Association of Democratic Lawyers (716th meeting), a very large number of insurgents were "shot on sight ... without a serious attempt to arrest or disarm them", as they were caught entering the country illegally.

58. In this connection, the witness further referred to the "Trojan Horse" case, an incident which occurred in the Cape on 13 October 1985, when certain alleged guerrillas were ambushed. Police hidden in the back of a truck, which was not a police truck, fired on youths who allegedly threw stones at it, killing three of them, aged 11, 16 and 21, and injuring 10 others. At the inquest, which was recently concluded, the court found that the police had acted unlawfully. However, the representative of the Ministry of Law and Order maintained at the inquest that the police were justified in shooting stone-throwers: "It was not only right, but their duty".

59. Another aspect which caused great concern among the witnesses was the assassination of ANC members abroad. According to relevant sources and reports transmitted to the Working Group throughout the period under review, ANC members have been the target of attacks and assassinations in different

parts of the world. Over the first four months of 1988, six attacks against ANC members were reported in Botswana, France, Lesotho, Mozambique, Swaziland and Zimbabwe. One example was the case of Mrs. Dulcie September, who was shot dead by unknown assassins in Paris on 29 March 1988.

60. With regard to cases of individual assassination, two witnesses (716th and 728th meetings) referred to the case of Mr. Caiphus Nyoki, a student leader from Benoni in the East Rand, and a member of UDF. Mr. Nyoki was allegedly killed in his bedroom, by a contingent of about 20 soldiers who raided his house at 2 a.m. on 23 August 1987. A private pathological examination showed two bullets in his body.

61. According to information received by the Group, on 28 April 1988 a security policeman, Sgt. A. H. Engelbrecht, of the Benoni Security Branch, identified two of his colleagues as the killers of Mr. Nyoki. Sgt. Engelbrecht was giving evidence at the terrorism trial of two close friends of Mr. Nyoki, charged with possession of land-mines and weapons. When Mr. Nyoki's house was raided in August 1987, police claimed that they had received information that there were guns and explosives at his home. According to Sgt. Engelbrecht, his two colleagues, Sgt. Stander and Sgt. Marais, shot Mr. Nyoki while he himself was outside the house.

62. Two other individual cases of assassination were widely reported in February 1988. One report indicated that a UDF militant, Mr. Linda Brakvis, aged 24, was found dead behind his house in the township of Holmoed near Welcom, Orange Free State. According to the same source, Mr. Brakvis, who was arrested on 13 December 1987, was the twentieth activist assassinated since 1978.

63. His death occurred a week after the assassination of a young black militant, Mr. Godfrey Sicelo Dhlomo, aged 18. Mr. Dhlomo was shot dead in Soweto, near Johannesburg, on 24 January 1988, shortly after being questioned by the police. In December 1987, Mr. Dhlomo's detailed account of maltreatment in detention was featured in a United States television programme entitled "Children of Apartheid". Members of his family reportedly asserted that the youth had been hiding from the police for fear of being killed in reprisal for his television appearance. The South African authorities denied the assertion.

64. Referring to informal repression, the Working Group noted in its interim report the progression in actions by vigilante groups and the incorporation of some of their members into the municipal police, known as "special constables" or "kits" (instant) constables (E/CN.4/1988/8, para. 114).

65. Reports received by the Working Group during the period under review emphasized allegations of violence and abuses committed by this police force, seen, as many witnesses indicated, as a body deliberately set up to strike fear into the various communities - particularly anti-apartheid campaigners - through acts of intimidation. Regarding the activities of these groups, the representatives of Black Sash and Amnesty International (710th and 718th meetings) attributed a great deal of responsibility for the increasing deaths to "greenflies", people who operated on behalf of the councils in black townships, and who were allegedly trained by the South African police.

66. In their evidence before the Working Group, several witnesses maintained that over the past two years vigilante groups had been active and were responsible for attacks, both urban and rural, in the Ciskei, Lebowa and KwaNdebele "homelands".

67. The representative of Kairos Working Group and Amnesty International referred to the sudden upsurge in fighting in September 1987 and the beginning of 1988, in the Pietermaritzburg area, which had become the scene of particular violence since the Zulu Inkatha movement began to fear erosion of its power-base by UDF and COSATU. The factional fighting had reportedly claimed 400 lives since early 1987.

68. According to the information received by the Working Group, the vigilantes' onslaught in the Pietermaritzburg area could be traced back to mid-1985, when Inkatha groups attacked UDF members who were co-ordinating a consumer boycott. In response, organizations formed "self-defence" structures. With "homeland" based authority in the area, Inkatha initiated an intimidatory recruitment drive in August 1987, which sparked community resistance and violent vigilante retaliation. At the end of November 1987, UDF and Inkatha issued a joint call for peace and an end to violent intimidation. However, UDF efforts to stop the violence were undermined by the detention of local and regional leaders and by the state of emergency restrictions.

69. According to Human Rights Update published by the Centre for Applied Legal Studies in July 1988, UDF made a formal application to the Minister of Law and Order to lift the restrictions imposed on 30 key UDF members in terms of the state of emergency regulations, in order to enable them to resume participation in the Pietermaritzburg peace talks.

70. On 4 March 1988, it was reported that Mr. Roger Burrows, the Progressive Federal Party (PFP) leader in Natal, had expressed his party's concern over allegations that many of the 300 constables sent to the Pietermaritzburg area had strong Inkatha links. Reports appearing later in the month revealed that at least five "kits" constables had been dismissed from the force in which they had been enrolled as part of the State's answer to the Pietermaritzburg violence. Among the five discharged because of alleged involvement in crimes was Mr. Wesni Awetha, who had been named in an urgent application requesting that he, his father and others be restrained from threatening or harassing certain township residents. It was claimed in the court papers that the young Awetha and others, armed with spears and sjamboks, had dragged Mr. Thamsi Zulu from the street to a river, where he was assaulted. Police reported later that Mr. Awetha had been arrested in connection with certain criminal activities.

71. In a related development, it was further reported that a Pietermaritzburg police public relations officer had confirmed that, unknown to the South African police at the time, some of the new "kits" constables had allegedly been involved in criminal activities before being recruited to the force. They had subsequently been discharged.

72. A report released on 7 April 1988 referred to a parliamentary reply, in which the Minister of Law and Order, Mr. Adriaan Vlok, stated that a total of 569 complaints had been lodged with the South African police referring to charges of murder, attempted murder, assault with intent to cause grieveous

bodily harm, theft, rape, malicious damage to property, culpable homicide, possession of firearms, robbery, negligent driving and drunken driving. It was reported that a file had been opened for every complaint and submitted to the Attorney General of the area command for a decision on prosecutions.

73. In this respect, the representative of Amnesty International (710th meeting) informed the Working Group of a number of applications to the courts for interim orders restraining the "war-lords" - a term used to designate the vigilante members of Inkatha - from assaulting and killing opponents. The witness claimed that, "some of those who had applied for such orders had been shot dead (on 22 January 1988) with police officers present, but no arrests had followed".

74. In this context, the witness referred to the Mbekoto group in KwaNdebele, which had attacked persons protesting against "independence". The group had been banned in 1986, but in 1987 had emerged as "kits" constables, beating and torturing with impunity. It was pointed out that court applications for restraining orders were continuing, but an immunity law passed by the KwaNdebele administration had prevented the prosecution of government personnel, and had been made retroactive to 1985-1986 to avoid the Mbekoto being prosecuted. The witness added that the same situation had prevailed in Port Elizabeth and Uitenhage in 1985, 1986 and 1987, with vigilante groups very active. The PFP had sent a file on the subject to the Ministers of Law and Order and of Justice in 1987, but there had so far been no prosecutions, although the file named the most persistent offenders in those areas.

75. Reports published at the beginning of August 1988 alleged that municipal police escorting a coca-cola delivery truck in Soweto had fired shots at Meadowlands Lamola High School pupils, killing one aged 14 and seriously wounding two others, aged 15 and 16. Police reported that the shooting was to disperse the pupils who were stoning the delivery vehicle, a version which was contested by eyewitnesses.

76. Replying to questions by the Working Group, the representative of the Centre for Applied Legal Studies (725th meeting) pointed out that in addition to black vigilantes who operated only in the area where they lived, there were also so-called death squads made up of white Afrikaners belonging to the extreme right-wing organization, Afrikaner Weerstandsbeweging (AWB), who wanted a completely separate "homeland" covering the central Johannesburg and Orange Free State areas. The witness referred to its activities, which included driving into black townships at night armed with guns and shooting anyone in sight, as well as damaging houses.

B. Detention, including conditions of detention

77. The current news black-out throughout the country and the restrictions imposed on a number of humanitarian organizations made it difficult to obtain up-to-date information on detentions. The majority of those currently in detention were held under the state of emergency regulations: they could be arrested without a warrant if they were seen as a threat to the security of the State and held for 30 days, to be extended at the discretion of the Minister.

78. The declaration of the state of emergency by the President of South Africa on 10 June 1988 (Proclamation No. R. 96, 1988) covers the entire

Republic. The Security Emergency Regulations are a redrafting of the declaration of the state of emergency by the President of South Africa on 12 June 1986 (Proclamation No. R. 108, 1986). The Group has analysed the text in chapter II, section A of its report E/CN.4/AC.22/1987/1.

79. The main alterations to the original text of Proclamation No. R.108, 1986 are the following:

(a) The Minister of Law and Order may limit the activities of any organization in any way, even totally prohibiting activities for as long as he specifies; only administrative tasks necessary for preserving its assets, book-keeping and such may not be prohibited;

(b) The Minister of Law and Order may issue an order prohibiting any person from carrying out activities or performing acts, from being at any place at all or at certain times specified in the order without the written consent of the Commissioner of Police; this order may be in force as long as the Minister deems appropriate;

(c) The Minister of Law and Order may likewise issue an order, again without prior notice or hearing any person, prohibiting persons in general or those belonging to a category of persons, to carry on an activity or perform an act specified in the order or to have with or on them or be wearing a thing likewise specified, again for as long as the Minister deems appropriate;

(d) A member of the security force is entitled to apply such force as he may deem necessary in order to ward off a danger existing in his opinion, if a person does not immediately obey his orders announced in a loud voice in each of the official languages; for the safety of the public, the maintenance of public order or the termination of the state of emergency, the person concerned may even be arrested;

(e) An arrested person can be detained for up to 30 days (or longer if the Minister so decrees);

(f) A person detained in prison in terms of the Security Emergency Regulations may be transferred to another prison if the authorities so direct.

80. According to oral information submitted to the Group at its 710th meeting, confirmed by monitoring organizations, in early June 1988 an estimated 2,300 to 2,800 people were still held under the emergency regulations. Of this number, approximately 500 had been held since 1986, including 40 detained on 12 June 1986, the day the emergency was imposed, and 215 others detained in the first month of the emergency. Many of those long-term detainees remained in detention following the renewal of the state of emergency on 10 June 1988.

81. According to figures released by the Government, 2,986 people were held for 30 days or more, under the emergency regulations, between 7 August 1987 and 24 June 1988. However, a human rights report compiled by the Centre for Applied Legal Studies at the University of the Witwatersrand, stated that those named on the list periodically tabled in Parliament did not include people detained for less than 30 days during the 1987-1988 state of emergency. Thus, based on previous experience, it could be estimated that all detentions, including those lasting less than 30 days, totalled over 5,000 in May 1988.

1. Detentions under security legislation

82. Reports received by the Working Group indicated that, in addition to detentions under the state of emergency regulations, the South African authorities continued to make extensive use of the security legislation such as section 29 of the Internal Security Act No. 74 (1982). As already mentioned in the latest report (E/CN.4/1988/8, para. 139), this Act and its equivalents in the nominally "independent homelands" permit indefinite detention incommunicado for the purposes of interrogation.

83. Some detainees were detained under section 31 of the Internal Security Act, which provides for "preventive custody" for those required to be State witnesses at a trial. An anonymous lawyer pointed out that such witnesses were often unwilling, but if they refused they were liable to three to five years' imprisonment. If they changed their testimony in court, they exposed themselves to charges of perjury. Such appeared to be the case of an anonymous witness (722nd meeting) who had allegedly been arrested immediately after the banning of the 17 organizations on 24 February 1988 (see para. 42 (b) above). The witness, who was held in solitary confinement, stated that, "the police had wanted him to be a State witness in a forthcoming trial ... they were still trying to get evidence together; they had needed someone from the student executive in order to back up their case against the entire executive which was in custody under the state of emergency regulations".

84. On 30 March 1988, police reportedly confirmed the arrest in Hillbrow of the South African Youth Congress President, Mr. Peter Mokaba, aged 29, who was said to be held under the Internal Security Act. After spending many months in detention, Mr. Mokaba had lived in hiding since the state of emergency was declared on 12 June 1986.

85. On 15 May 1988, four alleged ANC members were reportedly arrested in Broederstroom under section 29 of the Internal Security Act. Mr. Adriaan Vlok, Minister of Law and Order, claimed that they were "members of a highly specialized terror unit" and had received military training in several capitals of the world. The group reportedly included a former Johannesburg journalist as well as a former student of the University of Witwatersrand. The Weekly Mail, which disclosed this information, stated that it was in possession of the names of the four youths, three men and a British woman, but was unable to publish them.

86. According to reports recently received by the group, Mrs. Veliswa Mhlawuli was detained on 5 October 1988 in Cape Town, reportedly under section 29 of the Internal Security Act, and her whereabouts were still unknown. At the time of her arrest, Mrs. Mhlawuli was still undergoing medical treatment for injuries sustained after she lost an eye when an unidentified gunman fired at her near her home on 19 August 1988. Mrs. Mhlawuli has two children and worked in Cape Town as a journalist with Grass Roots, a community-based newspaper known for its critical views of Government policies. She was interviewed by the British Broadcasting Corporation (BBC) for a film, Suffer the Children, which was screened in Britain in early June 1988. The film contained interviews with children who alleged that they had been tortured while in detention, as well as interviews with parents, doctors, lawyers, and religious and community leaders. The reporting sources expressed their serious concern about her health and feared that she could be tortured or ill-treated.

2. Detentions under emergency regulations

87. Under the security emergency regulations (Proclamation No. R. 97, 1988) the provisions of section 3 of the emergency regulations (see E/CN.4/1988/8, para. 45) have been reinforced and any member of a "security force" is allowed to arrest without a warrant any person whose detention is, "in the opinion" of the arresting officer, necessary for the maintenance of public order or for the termination of the state of emergency. The term "security force" covers members of the South African Police, including the so-called "kits" constables, the police forces in the self-governing "homelands", South African Defence Forces (SADF) personnel, and members of the Prisons Service. Any member of the security forces also has the right to interrogate detainees.

88. Members of the security forces are empowered to detain people for an initial period of 30 days. After 30 days, a detainee can be held indefinitely at the discretion of the Minister of Law and Order. In extending the period of detention, the Minister is not obliged to hear any representation from the detainee before or after his authorization of the extension. Nor is the Minister obliged to give any reasons for his decision.

89. The representative of Amnesty International (710th meeting) pointed out that under section 3 (7) of the emergency regulations, no person other than the Minister of Law and Order or his designated agent could have access to detainees or was entitled to any official information relating to detainees. Any exceptions to this provision were granted solely at the discretion of the Minister or those acting under his authority. These aspects of the Minister's powers were confirmed in a significant Appeal Court decision in Omar v. the Minister of Law and Order, in July 1987 (see sect. F, below).

90. The witness further noted that, in practice, lawyers had, in some cases, been able to obtain permission to visit detainees from the police officers in charge of security in the district in which they were detained. None the less, in certain areas the police required prior permission from the Commissioner of Police before they could permit lawyers to visit their clients in detention. When visits were allowed, the conditions under which such consultations were conducted were subject to the provision laid down in the Prison Regulations. Interviews, for example, should take place in sight, though not within hearing, of a prison warder. Relatives of detainees usually with the assistance of lawyers or human rights organizations, had been granted twice-monthly visits, after receiving written permission from the security police responsible for the detainee's arrest. Witnesses also indicated that the police could arbitrarily withdraw those visiting privileges, apparently as a punitive measure.

91. In relation to detentions in terms of the emergency regulations, witnesses appearing before the Working Group, mostly lawyers, expressed their concern about the fact that the detainee was not charged, yet was served with a sentence. They provided examples showing that some detainees had been held for six months without trial or charge. Some were charged after their release, but were subsequently acquitted or the charges were withdrawn.

92. Referring to his personal experience, an anonymous lawyer (716th meeting) stated that, in a case involving UDF, his firm had challenged the emergency regulations on the grounds that they were *ultra vires*, unreasonable and vague. The court had ruled in favour of the applicant. However, the witness added, wherever that occurred, the Government immediately closed the loophole.

93. In regard to legal assistance, the representative of Amnesty International (710th meeting) highlighted the difficulties encountered by detainees, specially those held for politically related motives, in exercising their right to adequate legal assistance or being able to afford it. According to the witness, the extent to which detainees were permitted access to their legal representatives and family members had varied, not only as a consequence of the degree to which the security police were willing to permit visits. The resources of the family concerned and of the human rights community were crucial factors, particularly because the police did not routinely permit the release of information concerning the detention of a person or his whereabouts. The witness cited the case of Pietermaritzburg where more than 1,000 people were detained between 12 June 1987 and mid-March 1988. Allegedly, very few law firms were willing to take on the cases of the detainees. The situation in remoter rural areas could be even more difficult, with few or no law firms willing to become involved in political cases.

94. Human rights organizations have played a vital role in helping families trace detained relatives and placing them in touch with lawyers willing to act for them. However, these groups, whether organized at a national level, such as the Detainees' Parents Support Committee (DPSC), or in a very local and ad hoc manner, such as the Peoples' Advice Centres, have experienced numerous detention and restriction orders against their staff.

95. During the period under review, the following cases of detention were brought to the attention of the Working Group:

(a) A report appearing on 23 February 1988 indicated that the acting administrative secretary of the Border Council of Churches, Miss Nomvuzo Tshetu, was detained in King William's Town. Miss Tshetu was acting as administrative secretary following the detention of her predecessor, Miss Botha, who was being detained under emergency regulations;

(b) On 3 March 1988, the President of the Azanian People's Organization (now banned) and the Deputy-Director of the newly formed Azanian Co-ordinating Committee were reportedly detained in the early hours of the morning. Their detention occurred three days after the creation of the second organization, formed to co-ordinate the activities of the movement. In a related development, it was further reported that six members of Azanian National Unity, among them three members of the National Executive Council, were detained on 17 March 1988;

(c) According to the information transmitted to the Working Group, an urgent application was reportedly being brought for the release of a journalist who had been in detention for 352 days. Mr. Themba Khumalo, who worked for various overseas publications, had been detained under section 29 of the Internal Security Act and had not had access to his lawyer. According to his lawyer, Mr. Khumalo was being held despite the recommendation made for his release by the Detainees Review Board on 22 February 1988. The applicant's mother had reportedly asked the court to bring him before the court, grant him access to his lawyer, or release him;

(d) During the week from 9 to 15 September 1988, several reports indicated that at least 19 Pretoria activists were detained, bringing to

33 the total number held in an alleged pre-October election swoop. One of the 19 was Mr. Bheki Nkosi, who had been detained on 9 June 1988 under the Internal Security Act, with Mr. Mazishe Bopape, General-Secretary of the Mamelodie Civic Association, who had been missing for almost three months. Mr. Nkosi had been released six weeks earlier. According to the International Federation of Human Rights, several UDF activists and supporters had also been arrested on 27 September 1988 for the same reason.

3. Conditions of detention

96. A young witness (730th meeting) who had been detained on five occasions on charges of public violence and released for the last time in April 1987, described before the Group his own experience in several prisons, one of which was Kroonstad. He stated that the last time he was arrested he spent some time in solitary confinement and was then transferred to a cell where the walls were dark with blood. He was given only one blanket and a mat, and the cell was so wet that he could get no sleep. He told the Group that he had tried to write a letter to a lawyer on the conditions in that cell, but the authorities had found the letter and he had been tortured.

97. Referring to the food, the witness stated that it was the same in all the prisons: "soft porridge with maggots in it".

98. At the 710th meeting of the Working Group, the representative of Amnesty International referred to the inadequate bedding and food, as well as brutality suffered by detainees in Krugersdorp and the Fort Glamorgan Prison, East London, which had led the detainees to call a hunger-strike in protest. The hunger-strike referred to took place from 25 to 29 January 1988. The 47 detainees intended to draw attention to their poor detention conditions which they had detailed in a memorandum to the Commissioner of Prisons in October 1987.

99. Another hunger-strike took place from 29 January to 12 February 1988, in the Witbank Prison, in KwaNdebele, involving 25 people detained under emergency regulations. The detainees were reportedly removed from the prison for four days by the KwaNdebele police for further interrogation, but they continued to refuse food after they were returned to prison. It was further alleged that the Minister of Justice, Mr. Kobie Coetsee, refused to comment on the matter on the grounds that the KwaNdebele police, not the South African police, were involved.

100. In reply to a question by a PFP member, the Minister of National Health and Population Development reportedly stated in Parliament that 3,800 visits had been made in 1987 by State doctors for the purpose of examining detainees held in terms of the security legislation. He said action was taken on 150 occasions and provided the following break-down: 20 cases of alleged assault, 50 cases of hunger-strike, 30 cases of depression and 50 cases of "minor complaints".

4. Detention in the "homelands"

101. According to Mr. Adriaan Vlok, Minister of Law and Order, 519 people were detained during 1987 in the "independent homelands". Other sources indicated that at least 286 more people had been detained during the same period, under laws enforced there.

102. On 19 February 1988, the Bophuthatswana Minister for Foreign Affairs, Mr. Solomon Rathebe, stated that 452 persons, including 41 women, had been arrested in the week following an attempted coup. According to the Citizen of 20 February 1988, 386 of them were still in detention, 20 had been released, and 46 had been charged and were awaiting trial.

Security legislation detentions from January to June 1988

	Jan.	Feb.	Mar.	May	Jun.	Total
Ciskei National Security Act	2	-	-	2	-	4
Transkei Public Security Act	9	6	1	-	-	16
Bophuthatswana Internal Security Act	-	7 a/	-	-	-	7 b/
Venda Maintenance of Law and Order Act	-	-	-	-	-	-

a/ At least 445 other persons were detained in Bophuthatswana during February, according to a statement made by the Bophuthatswana Minister for Foreign Affairs on 19 February 1988.

b/ This figure reflects only those detainees whose names are known. The actual number of Bophuthatswana detentions for 1988 is much higher, as is admitted by official statements.

103. On 25 February 1988, Mr. A.B. Mahommed, spokesman for the Bophuthatswana Department of Foreign Affairs, stated that 165 members of the opposition Progressive People's Party (PPP) had been released without being charged. Two hundred and thirty-nine members of the Bophuthatswana defence force had appeared in court and had been remanded in custody. A further 34 people were still being held in detention.

104. According to a report released by the Citizen of 14 June 1988, Mr. Peter Soal, PFP member, stated in Parliament that he had three affidavits in his possession from people who had been detained in KwaNdabele. One of these people testified that he had only been released by police after he had signed a document stating that he did not oppose KwaNdabele independence. Mr. Soal reportedly asked if that was what the state of emergency was being used for in KwaNdabele.

5. Women in detention

105. Human Rights Update, published by the Centre for Applied Legal Studies in April 1988, indicated that since the beginning of 1988, three women were known to have been detained under security legislation; two of them were still being held. One woman detainee held under section 29 of the Internal Security Act was pregnant and another, Mrs. Daisy Matlou, aged 18, detained at Potgietersrus police station at the end of March 1988 under the same Act was five months pregnant at the time and recently gave birth while still in detention. Mrs. Nelly Mngoma, aged 26, was detained on 30 October 1987 and held at Diepkloof Prison. On 18 April 1988, she gave birth to a boy in the Johannesburg General Hospital while still in detention, but was released a week later.

106. Human Rights Update of July 1988 revealed that another woman, Mrs. Stella Kubheka from Soweto was detained on 30 April 1988 and was alleged to have been three months pregnant at the time of her detention.

107. According to the same report, the defence council in the murder trial of three Alexandra residents told the Rand Supreme Court that he would call witnesses to testify that they have been tortured and forced to make statements during their detention in 1986. It was stated that one of the witnesses was Mrs. Julia Mathebula, who had suffered a miscarriage after being tortured.

108. Referring to pregnant women in detention, the Minister of Law and Order reportedly stated that the South African police had no fixed policy with regard to the release of female detainees who were pregnant. "However, in view of the circumstances, pregnant women in detention are treated humanely and with the necessary respect". On 19 February 1988, the Minister declared that one woman approaching full-term pregnancy was being detained under the emergency regulations, but none was being detained in terms of the Internal Security Act. He added that the woman was visited every 30 minutes and attended a weekly ante natal clinic for medical examination and (if necessary) treatment.

C. Cases of torture and ill-treatment

109. During the period under review, numerous allegations of assault and torture were brought to the attention of the Working Group, which heard several pieces of evidence on the matter, and was informed of a number of affidavits and statements submitted to courts in support of applications for an interdict against the Minister of Law and Order. According to the evidence submitted to the Group, methods of torture included severe beating, suffocation, electric shocks, burning and various threats, as well as attack by police dogs.

110. The majority of witnesses who appeared before the Group and alleged that they had been subjected to torture in police custody were teenagers and young people of both sexes between the ages of 18 and 26. Some of them were under 18 at the time of their arrest in demonstrations and boycotts against black schools in South Africa in 1986 (see sect. H below).

111. A 19-year-old student who appeared before the Group at its 723rd meeting, stated that he had been arrested for his activities in a student organization on 14 January 1988, and had been subjected to torture by "suffocating tubes" despite his complaints to his interrogators that he suffered from asthma. He was held in a cell for five days with some 20 inmates and water was poured into the cell so that they could not sleep.

112. Another student aged 18 (730th meeting), who was arrested on 29 July 1986, claimed that he was severely beaten at the police station and left for one full day without food or water. The witness spent almost 20 months in detention.

113. Although the "suffocating tubes" method was believed to be replacing other methods of torture, as it leaves no scars, many witnesses affirmed that electric shock torture was still frequently used in order to extract information from detainees during interrogation.

114. Such evidence was corroborated by 16 affidavits and statements, including 10 from teenagers aged between 17 and 19, alleging torture in detention and assault at the Protea Police Station in the township of Soweto. The allegations included: application of electric shocks to the testicles and other parts of the body, suffocation and severe beatings, as well as threats to kill detainees and members of their families if they complained to prison doctors.

115. According to the information received by the Working Group in June 1988, the affidavits were submitted to the Witwatersrand Supreme Court, in support of an application brought by a 22-year-old high school student from Soweto, Mr. Abraham Molifi Rapetswa. The applicant said in an affidavit that he had been interrogated for six days, beaten and made to do lengthy exercises.

116. Most of those allegedly tortured and assaulted were school pupils, apparently rounded up during investigations into the activities of student representative councils and the Soweto Students' Congress. Repeatedly, the detainees claimed that they had signed untrue statements after being threatened, beaten up or tortured.

117. Responding to questions concerning torture by burning, an anonymous student (730th meeting) stated that the only cases of burning he had heard of were when SADF personnel had arrested people in the township. They did not always take them to the police station, but outside the township, into the veld; sometimes they threatened them with "necklace" killing. He referred to Mr. Joel Hatebe, a 20-year-old member of the Students' Congress, who had allegedly been treated in that way in or around the month of June 1987, in Tambisa township.

118. An anonymous lawyer (715th meeting) referred to another form of torture practised where the police headquarters was in a tall building, like John Vorster Square in Johannesburg, or in Durban. The witness stated that the detainee might be taken to the 25th floor for interrogation and placed in front of an open window; the interrogator would then keep on pushing a table against him, almost inviting him to jump. He referred to the case of Mr. Ahmed Timol, who had been dropped out of a window at John Vorster Square, and claimed that he personally had been subjected to such a method. The witness further pointed out that in July 1988, the Minister of Law and Order had paid out R 20,000 in settlement of claims by 47 women detainees who, two years earlier, had been stripped and assaulted in custody.

119. At its 722nd meeting, the Working Group heard the case of a 26-year-old former student who had been in and out of detention several times, and had suffered various methods of torture. He was detained for the last time in police headquarters in East London, four months before he left the country. Being a member of the South African National Students' Congress, he was interrogated on student activities. According to the witness, his interrogators had taken him from the police station to the top of a port and hung him over the edge by one foot. Afterwards, he had been repeatedly beaten with batons and sjamboks to make him testify against a UDF member, but he had refused. In January 1988, he was allegedly shown a video of the torture of others and reminded of a young student, Mr. Lungile Tabalaza, who had been thrown from the top floor of the security police headquarters in Port Elizabeth in 1977.

120. The witness's girlfriend, who was not active in politics, had been arrested and brought before a panel of the security branch. The witness had then been given 10 minutes to talk to his girlfriend, who had been beaten up by the police, in order to persuade him to speak. A police dog was brought in and the witness was allegedly told that if he refused to co-operate with the police, the dog would have sexual intercourse with the girl in front of him. The girl was stripped and handcuffed, the dog brought forward and instructed to have sex. According to the witness, this went on for one hour in front of him while the girl screamed and cried and begged them to stop.

121. The next day, the process was repeated and lasted for over an hour. He had pleaded with the police to let the girl go, because he had nothing to say, but instead he was tortured, beaten up, and his interrogators threatened to cut off his genitals. The witness further stated that on a Friday evening he had been taken to the State mortuary and left there, manacled, until Sunday afternoon, surrounded by the dead bodies and with no food or drink, no washing facilities or access to a toilet. The witness further alleged that while his girlfriend was being interrogated they had asked her what he feared most and she had said snakes. When he returned from the mortuary he had been placed in solitary confinement and a snake had been brought in. He was alone in the cell with it all night. The next day he was given some porridge and was released, but put under house arrest. He was allowed to see only two friends, unconnected with political activities and confined to the house until he left the country. Referring to other cases of torture, the witness alleged that during his detention he had seen a police dog taking a prisoner by the throat and kill him, but he did not know the man's name. This occurred in March 1988. During the same month, he allegedly saw another man suffocated to death with tear-gas and his body had not been released to his family for burial. The witness further stated that he knew of three people who had died from electrocution, also in March, but again he did not know their names.

122. On 8 August 1988, Mr. Matome Patrick Malatsi, aged 32, appeared before the Pretoria Magistrates' Court under charges of malicious damage to property. He alleged having been mauled by two dogs set on him by police in Paul Kruger Street at about midnight, and supported his allegation by exhibiting blood-stained underpants and a shirt torn in the attack. Mr. Malatsi said he had sustained facial and body injuries and was taken by the policemen to hospital for treatment.

123. According to the information transmitted to the Working Group in May 1988, two white South African riot policemen had been sentenced to death for torturing and murdering a young black, Mr. Wheanut Stuurman, aged 18, while on a township rampage in 1986. Warrant Officer Leon de Villiers, aged 36, and Constable David Goosen, aged 26, were convicted of murdering Mr. Stuurman in July 1986 at Lingellhle township, outside the Eastern Cape Province town of Cradock. It was alleged that Mr. Stuurman was one of a group of young blacks arrested at random and tortured when Warrant Officer de Villiers led a riot squad to monitor a township funeral. It was reported that the victim was critically injured before being shot in the neck and thrown into a nearby river (see also para. 228).

124. A report forwarded to the Working Group in July 1988 indicated that an alleged member of the Pan Africanist Congress of Azania (PAC), Mr. Mandla Cele, 24, told the Kliptown Magistrates' Court that he had been assaulted and interrogated by the police with such brutality that he had been forced to make a confession against his will.

125. In a related development, reports appearing at the beginning of August 1988 indicated that about 80 Soweto students had attended an identification parade at Protea Police Station to identify members of the police force who had assaulted them.

126. Affidavits submitted to the Pretoria Supreme Court in January 1988 revealed incidents of violence and torture against people detained in the "homelands" during October and November 1987. In one of the affidavits, a DPSC worker aged 33 described being given electric shocks. In another, a man of 55 alleged that policemen placed a piece of inner tube over his nose and mouth and tied it tightly behind his head; the interrogators then started questioning, beating and kicking him.

127. Commenting on other affidavits by reporters of the Sunday Star, who had witnessed violence and assault themselves while they were detained in May 1987 in the Kwaggafontein Police Station of KwaNdebele, Brigadier Lerm, the Commissioner of Police for the "homeland", allegedly stated that the assaults were "not serious" and that no policemen had been suspended because "no one was killed".

128. On 3 March 1988, a Pretoria policeman, Lt. Petrus Van Wyk, told a local magistrate that he and his colleagues had repeatedly assaulted one of the accused in the PAC trial, Mr. Mabatu Enoch Zulu, at a house where he was arrested in Bophuthatswana. The Court heard that the two policemen had been in Bophuthatswana to back up its police during an operation in the "homeland". In his evidence before the Court, the policeman reportedly admitted that the victim, Mr. Zulu, was repeatedly hit with the butt of a gun by his colleague and himself until he fell on his knees and elbows. Mr. Zulu and six other members of PAC and the Qibla Moslem movement pleaded not guilty to several security legislation related offences.

D. Deaths in detention and in police custody

129. Of the known cases of death in detention and in police custody, only a few were brought to the attention of the Working Group during the period covered by the present report.

130. However, the information received by the Group on the subject bore out the observations in its previous report to the effect that frequent cases of ill-treatment, violence and torture led to death, mostly during interrogation in police custody, in order to extract information or confessions (E/CN.4/1988/8, para. 95).

131. A parliamentary statement made on 7 April 1988 by Mr. Adriaan Vlok, Minister of Law and Order, in reply to a question by a PFP member, Mrs. Helen Suzman, indicated that 105 people died in police custody in 1987. According to Mr. Vlok's statement, 50 of them had "committed suicide", 36 died of "natural causes", 11 from "assault by fellow prisoners" and 8 as a result of "gun shot wounds sustained when attempting to escape from custody". They had been held on a variety of charges, ranging from murder to drunken driving. Mr. Vlok claimed that he was not prepared to give the detainees' names because it was not in the interest of their relatives. However, he emphasized that in none of the 41 cases in which inquests had been completed had the presiding officers laid blame on the police.

132. In his statement before the Working Group, an anonymous witness (731st meeting) referred to the death of two persons: Mr. Zogoni and Mr. Sithembele Zokwe. They were both allegedly killed by the security police in Transkei, who claimed that they had been ANC members. According to the witness, Mr. Zogoni had been killed while travelling to Umtata, and the police claimed to have found that he was carrying foreign weapons. The family maintained that he was a student and had never left the country to collect such weapons.

133. In relation to Mr. Zokwe's death, the evidence heard by the Group was corroborated by a detailed account which appeared in July 1988 in Human Rights Update of the Centre for Applied Legal Studies. According to the report, Mr. Zokwe, aged 36, was fatally shot on 12 January 1988, two hours after having been detained by the Transkei Security Police in Butterworth. He had been detained several times previously. It was alleged that the police had tried to kill him before, on at least one occasion.

134. Witnesses to Mr. Zokwe's arrest said that one of the policemen threatened to shoot him. A person who was detained with him stated that police took Mr. Zokwe to search his house at around 7 p.m. on the day of his detention. Onlookers outside the house told his lawyers that they had heard a burst of automatic gun-fire within five minutes of his being taken into the house. Mr. Zokwe's mother stated that, when she had finally entered the house, she had found the furniture broken and blood all over the floor. His lawyer was later asked to identify the bullet-riddled body at the mortuary. The official explanation of the cause of death was that he was shot dead by the police when he attempted to grab a gun from a policeman at a place where he had been taken by the police to show them an arms cache. Subsequently, two members of the Transkei Security Police were reportedly arrested and charged with murder.

135. In another case, the Group was informed of the death during arrest on 20 March 1988 of a young member of the George Youth and Civic Association. Mr. Andile Kobe, aged 22, from Sandkraal died of severe head injuries hours after allegedly being beaten for at least 30 minutes in front of eye witnesses. Witnesses, including the victim's common-law wife, have drawn up affidavits telling how they saw police in George, Southern Cape, beat and kick Mr. Kobe for "no apparent reason". After using sjamboks and boots to assault him, police allegedly dragged his unconscious body to a van which drove him to a police station on 19 March 1988. According to the allegations of the victim's common-law wife, a policeman told her that Mr. Kobe had jumped from the van and run away; the following day she was told he was in George Hospital undergoing emergency brain surgery, and an hour later she learned of his death. Southwestern District Police reportedly stated that a murder file had been opened and that "all these allegations will be thoroughly investigated".

136. Concordant reports appearing during the last week of August 1988 announced the "brain death" of Mr. Alfred Makaleng, aged 27, a UDF activist in detention since 12 August 1988. According to the reports, Mr. Makaleng had been pronounced "brain dead" on 26 August 1988, upon admission to Johannesburg Hospital. His lawyers asserted that he had been periodically treated at Pietersburg Prison and Nylstroom Hospital for the past two months for acute headaches from which, they claimed, he had not suffered previously. A post mortem by the State pathologist was postponed to 31 August 1988. At the time of the report, the Working Group had not received any further information.

137. The same reports referred to a number of inquests concerning deaths which had occurred in detention and police custody over the past three years, including that related to the death of Mr. Benedict Mashoke, whose case was referred to by the Working Group in its previous report. Mr. Mashoke, aged 20, was held under the emergency regulations at Burgersfort police station, and was found dead in his cell on 26 March 1987. Information available to the Working Group indicated that he had allegedly hanged himself with his shirt (E/CN.4/1988/8, para. 98).

138. The inquest was held in the Lydenburg Magistrates' Court in June 1988. An affidavit was presented by his mother, Mrs. Rose Moshoke, who stated that she had seen her son a few days before his death and he had told her: "... members of the security branch had been waking him up at 5 a.m. and [taking] him to the Houtkop Prison for the express purpose of torturing him there". She also told the Court of apparent signs of assault she saw on his body when she was called upon to identify him. The report of an independent pathologist confirmed abnormalities resulting from injuries to the rib cage and the crown of the head, and bruises and swelling indicating the application of force by a blunt instrument.

139. The pathologist was reportedly requested by Mr. Moshoke's family to give an independent opinion of the cause of death. His finding was of "death by hanging". However, he added that he had not been afforded the facilities for a post-mortem and had only examined the deceased externally. The Court found that no one could be blamed for the death of the detainee.

E. Capital punishment and executions

140. With regard to death sentences and executions, reports forwarded to the Group during the period under consideration as well as the evidence of several witnesses, confirmed the fact that South Africa has one of the highest hanging rates in the world. The Sunday Star of 15 May 1988 reported that in South Africa, a person was hanged every 2.2 days.

141. As regards 1988, a report transmitted to the Working Group indicated that on 5 May 1988 there were 274 persons on death row, most of whose names were not known. In this connection, an International Defence and Aid Fund report dated 14 May 1988 stated that there were currently two women awaiting execution in South Africa as a result of political activity. They were: Ms. Theresa Ramashamola (one of the Sharpeville Six) (see subsect. 3 below), who was being held in Pretoria Central Prison, and Ms. Daisy Modise, in the Bophuthatswana Central Prison. 1/

1. General

142. The representative of Black Sash (718th meeting) pointed out that over the past 10 years, more than 1,100 people had been hanged. In 1987, 164 persons were executed: 102 blacks, 53 coloureds and 9 whites.

143. The following table supplies some indications regarding executions in South Africa proper and in the so-called independent "homelands" since 1983, although the annual statistics are not entirely accurate.

Number of persons executed

Year	Number
1983	90
1984	115
1985	137
1986	121
1987	164

Source: Sheena Duncan, Sounews, vol. 14, No. 4, April 1988, pp. 3-4.

144. According to the same source, since 1976, it has not always been possible to obtain the statistics for hangings in the so-called "independent homelands", Transkei, Bophuthatswana, Venda and Ciskei, each of which has its own gallows. Thus, the actual execution rate may have been higher in some years than the figures shown above.

145. In April 1988, the Prisoners' Welfare Programme Group of Umtata stated that there were 30 prisoners on death row in the Transkei "homeland". They indicated that their research had shown that, until April 1987, 155 persons had been sentenced to death over the past 10 years since Transkei built its own gallows. Of these, 86 were hanged between April and September 1987, others were still on death row or had had their sentences commuted, and one had escaped.

146. According to a report published on 9 June 1988, the Ciskei Minister of Justice stated that five people had been executed during 1987 and that nine people were currently on death row.

147. Referring to executions in South Africa proper during the period under consideration, the Department of Justice indicated that 81 persons had been executed between 1 January and 14 July 1988. Other information made available to the Working Group revealed that, up to October 1988, 164 persons had been executed at Pretoria Central Prison.

148. According to figures released in Parliament by the Minister of Justice on 22 June 1988, the number of persons sentenced to death between 1983 and 1987 was as follows:

Year	Number
1983	182
1984	168
1985	189
1986	207
1987	248
	994

149. Among those who were not executed, some had been granted clemency and others had had their death sentences commuted to prison terms. In this connection, according to a statement made in Parliament by the Minister of Justice in March 1988, the State President had commuted 115 death sentences between 1983 and 1987.

150. In the evidence presented to the Working Group by the representative of Amnesty International (710th meeting), it was stated that, "research carried out some years ago suggested strongly that black defendants appear to stand a greater chance of receiving the death penalty than white defendants, especially where the victim is white".

151. Responding to questions related to this aspect, the witness referred to the nine whites mentioned above who had been executed in 1987, stating that they represented only a small minority of those executed. They had mostly been charged with murder, rape, robbery or housebreaking; all were non-political cases. It was pointed out that the execution of two of them for the rape and murder of two black women "attracted attention primarily because very few whites had been executed for murdering black people, and none for raping black women".

2. Death sentences in politically related cases

152. A number of witnesses appearing before the Working Group maintained that political trials were more and more likely to result in the death penalty. Since 1984, the increase had been due to politically related murders of police officers, black township councillors and alleged police informers.

153. The Group was informed of a series of executions which had taken place between 18 and 29 March 1988, involving youth activists, among them a member of the Port Elizabeth Youth Congress (PEYCO), Mr. Tsepo Letsoare, aged 23, who was executed on 18 March 1988. A second PEYCO member, Mr. Mlondolozi Gxothiwe, was also executed together with another youth, Mr. Michael Lucas, on 25 March 1988.

154. Few details were known in connection with the executions carried out on 29 March 1988: two of those executed were 19- and 21-year old youths from Zweide, Port Elizabeth, who were said to have been sentenced for a "necklacing" committed in 1985. It was also indicated that "necklacing" was often used in the South African press to refer to a death resulting from political protest, rather than to describe a method of killing. 2/

155. A report forwarded to the Working Group by the International Confederation of Free Trade Unions (ICFTU) indicated that, on 23 August 1988, the Supreme Court in Durban passed death sentences against four men, Mr. Stanford Ngubo, Mr. Johannes Buthelezi, Mr. Bethwell Sabelo and Mr. William Khuzawayo - all members of the South African Transport and General Workers Union - for the alleged murder of a bus driver during a strike in Durban in 1986. In early November 1988, the four, who are on death row in Pretoria, were refused leave to appeal against the death sentences on what many observers believe was conflicting and circumstantial evidence.

156. In her statement before the Group, the representative of Black Sash (718th meeting) observed that the focus on the death sentence had become more acute in 1988, in view of the impending hanging of several people on charges of collusion. In this respect, the witness referred to the case of the Sharpeville Six and the Upington trial of 25 persons charged with murder by association.

3. The case of the Sharpeville Six

157. The case of the persons collectively known as the "Sharpeville Six" grew out of unrest in the Vaal Triangle. The six - Theresa Ramashamola, Majalefa Sefatsa, Malebo Mokoena, Oupa Diniso, Duma Khumalo and Francis Mokhesi - were allegedly in a crowd which hacked and burned to death Mr. Jacob Dlamini, a town councillor in Sharpeville, south of Johannesburg, on 3 September 1984.

158. The six were brought to court in December 1985, convicted of murder under the principle of "common purpose", and sentenced to death, after the court held that there were no extenuating circumstances.

159. In December 1987, an appeal against conviction and sentence was dismissed by the Appeal Court which upheld the principle of "common purpose", and in February 1988, the State President refused to exercise clemency, an application for which was submitted to him in January 1988. However, lawyers were given until 18 April 1988 to apply for a reopening of the trial on account of "new evidence".

160. On 23 November 1988, after proceedings which had lasted almost six months, the Appeal Court turned down the plea by the six defendants to re-open the trial. However, shortly thereafter, President Botha decided to grant them a stay of execution and to commute their death sentences to prison terms ranging from 18 to 25 years (for details of proceedings, see sect. F, below).

161. The case was dogged by legal controversy and the judgement has been criticized on several grounds. One of the major issues, developed at length by the lawyers who appeared before the Working Group, was the principle of "common purpose".

162. In upholding that principle, the Appeal Court assumed that the conduct of none of the six had led to the death of the deceased. Nevertheless, it found that the accused had: "actively associated themselves with the mob, which was directed at killing the deceased", and therefore, they had the intention to kill. Addressing the principle of "common purpose", the witnesses pointed out that this concept had existed in the South African legal system for some time and had been used in a number of cases. Several witnesses, as well as the representatives of Amnesty International and the International Commission of Jurists (ICJ), referred to the definition of that principle in English law as part of the definition of the crime of riot.

163. Under the principle, if a crowd embarks upon a joint enterprise in which the use of violence against anyone is anticipated, all members of the crowd can be found guilty, as if each had individually carried out the act of violence. Hence, the main line of reasoning depends on common intention and common participation, or at least indirect participation in the act.

164. In relation to the Sharpeville case, witnesses emphasized that the matter under discussion was more a question of evaluation of the facts in applying that principle than the philosophy behind the principle itself. According to an anonymous lawyer (724th meeting), the controversy lay in the "standard being applied to determine to what extent the conduct of a person can actually be held to satisfy the elements of the offence". He approached three aspects

of the case, two of which constitute basic requirements in order to prove homicide: the intention to kill and the act itself. The third aspect is the unlawfulness of the offence. In reviewing each of these aspects individually, the witness concluded that the prosecution failed to place before the court evidence which clearly defined either the role of each of the accused before the commission of the offence or the link between their conduct and the death of the councillor. There was, however, specific evidence linking the accused with acts of encouragement or minor violence not directly related to the killing. The witness further stated, "the judge himself made the finding that there was no direct or even indirect evidence before the court that could implicate those people, or implicate some of those people".

165. In the light of the attention focused on the Sharpeville case all over the world, the international repercussions which would result from sending the "Sharpeville Six" to the gallows without any concrete proof of their guilt are considered to be a crucial factor in President Botha's decision to reprieve them.

4. The case of the Upington 25

166. In their statements concerning political trials, several witnesses before the Group (710th and 725th meetings) commented that the Sharpeville case had attracted much attention, with a number of organizations campaigning for the abolition of the death penalty, and that that had tended to overshadow other cases which had not been so widely publicized, even though deserving of as much attention.

167. In that connection, the same witnesses made reference to a trial involving 25 people in Upington, in the north-western Cape. The accused were part of a group which allegedly murdered a municipal policeman named "Jetta", in the township of Paballello in Upington on 13 November 1985, during the turmoil which was sweeping that impoverished community at the time. On 18 April 1988, a circuit court in Upington found the 25 people guilty of murder, and one of attempted murder. Mr. Justice Basson's findings were based on the principle of "common purpose". The 25 had no attorneys, and were represented throughout by a single pro deo counsel who was young and, in the view of a number of the witnesses, inexperienced in political-cum-criminal trials. On appeal, however, their case was taken over by a counsel led by a Namibian advocate.

168. The outcome of the Upington case so far underlines the great concern expressed by witnesses appearing before the Group in regard to the court's interpretation of the "common purpose" principle. The analysis of the interpretation of the principle of "common purpose" in relation to the Sharpeville case, and the prospect of its extension to other cases, was highlighted in the statement made by the representative of Amnesty International before the Working Group (710th meeting). The witness stated that "it spreads the net of criminal liability very widely and presents the potential prospect of many death sentences being imposed in future trials arising out of the civil unrest".

169. Other witnesses (710th, 724th and 725th meetings) stated that the Upington case had begun some two or three months after the Sharpeville judgement, which had set a precedent for other judgements.

170. The representative of Amnesty International pointed out that "the presiding judge (in the Upington case) quoted extensively from court records in the Sharpeville Six case to justify his findings".

171. Responding to questions concerning the fact that the Upington trial did not appear to have evoked the same type of outcry as the Sharpeville Six case, an anonymous witness explained that Upington was a remote area close to the Namibian border, and so could be sealed off. Very few journalists had access to that region.

172. The case will resume in February 1989, at which time evidence is to be heard in mitigation of sentence. No explanation has been given as to the reasons for the hearing to be confined to mitigation.

F. Administration of justice under the state of emergency

173. In its previous report the Working Group referred to the protection of the right of individuals, and noted that the situation of the black population had deteriorated in that respect under the pressure of the extended state of emergency (E/CN.4/1988/8, para. 126).

174. The information received by the Working Group on court proceedings during the period under consideration provided a continuing indication of the impotence of the South African judiciary in regard to emergency regulations and the increasingly repressive laws, many of which are embodied in the Internal Security Act of 1982.

175. Referring to the effect of such legislation, Mr. Anthony Mathews, a professor at the University of Natal, noted that:

> "The cumulative effect of the entire corpus of permanent security legislation in South Africa, including the provisions of the Defence Act ..., is to vest the Government indefinitely with many of the powers normally associated with martial law or crisis rule." 3/

Mr. Mathews' observation pin-pointed one of the determinating elements of the impotence of the South African judiciary, namely the extra powers which the Government has been able to arrogate to itself under the state of emergency and which "it has been able to use ... to bypass both Parliament and the courts". 4/

1. South African judiciary

176. In their comments related to the freedom of judicial action, witnesses testifying before the Working Group proceeded primarily to a detailed review of a number of security laws, mainly sections 29 to 31 of the Internal Security Act, as well as section 3 of the Renewed Emergency Regulations (see paras. 82 to 92 above).

177. Witnesses conceded that the South African judiciary was limited by the restrictive nature of these laws. However, the majority of the views expressed were critical of judges themselves, deeming that most of them did not resist, or attempt to minimize within the law, the restrictions and exclusions of their powers under the state of emergency. They emphasized that in many cases judges did have a choice and were free to interpret legislation in the light of the common-law rules of interpretation.

178. Presenting evidence related to detentions without trial under emergency regulations, an anonymous lawyer (716th meeting) pointed out that lawyers in South Africa had objected that adequate legislation already existed to protect the security of the State and that the emergency regulations did not guarantee justice; since the closure of various loopholes, the courts had to decide whether the regulations were valid or not, and they seemed to have ruled against the freedom of the individual and to support the State.

179. The question of interpretation of the law was largely developed by witnesses, most of whom referred in their evidence to the decisions of the Appellate Division regarding Omar v. the Minister of Law and Order.

180. In July 1987, the Appellate Division heard three cases Omar, Bill, and Pani v. the Minister of Law and Order, in which the audi alterem partem rule (right to a hearing and legal representation) was discussed. After 1986, the state of emergency regulations were challenged by the law courts in the Natal and Johannesburg provincial divisions and in the East and West Cape. Judges in those lower courts and in the Supreme Court gave interpretations restricting the regulations and hindering officials in their attempts to justify their actions through those regulations (E/CN.4/1988/8, para. 130).

181. According to the witnesses testifying before the Working Group, the State appealed against all those interpretations, using the Omar case, which represented an accumulation of all those appeals. The Appellate Division decided to hear all three cases at once "because they all dealt with the same point: a wide or a narrow scope for the state of emergency regulations".

182. The three cases raised two issues. The first concerned the power to arrest and detain and the Minister's power to extend a detention beyond 30 days. In this regard, a lower court had held that the right of a detainee to make representations to the Minister, his right to be heard, could not be excluded merely by inference from the regulations or by implication. Therefore, a detainee was entitled to an oral hearing to challenge the extension of his detention beyond 30 days. The second issue was whether a detainee could be denied access to legal advice. The lower court had held that although emergency regulations denied access except with the permission of the Minister, this did not exclude the fundamental human right of a detainee to be allowed access to legal advice. In a judgement with only one dissenting voice, the Appellate Division reversed the decisions of the lower courts and ruled that the regulations had to be read literally, that there could be no presumption in favour of an intention to preserve fundamental human rights. The Appellate Division upheld the power of the State President, under the 1953 Public Safety Act, to issue regulations removing any rights (however well established in common law).

183. A report in the Weekly Mail, 7-13 October 1988, revealed that other decisions had been handed down by the Appellate Division in September 1988, on two significant Natal cases. The Appellate Division overturned judicial decisions made by three judges, who had found that certain key emergency regulations were invalid. According to the report, the Appellate Division ruling (the latest brought to the attention of the Group) was met with dismay by a number of lawyers and judges. For example, in the first Natal judgement made after these Appellate Division decisions, Mr. Justice David Friedman reportedly expressed regret at the decisions which meant that he could not even consider the application before him challenging other emergency

regulations. In the same context, Mr. Hugh Cordon, professor of public law at the University of Cape Town, stated that "judicial activism and creativity had been used on occasion to further State lawlessness rather than inhibit it". Mr. Cordon further charged that the unwillingness of judges to question the Government had contributed substantially to the devaluation of the courts' contribution to the rule of law.

184. On the subject of the appointment of judges, an anonymous witness (724th meeting) stated that they were appointed on the basis of race rather than merit. This evidence was corroborated by the International Commission of Jurists' fact-finding report (see footnote 4/) which noted that the independence and influence of the judiciary "is also marred by its wholly unrepresentative character". Witnesses (710th and 724th meetings) informed the Working Group that there was only one black judge in Bophuthatswana and no non-white Supreme Court judge or prosecutor. Two black magistrates appointed in the Western Cape have allegedly resigned after being called upon to preside at political trials.

2. Criticism of the legal process

185. The Working Group heard a number of critical observations on various aspects of the legal process. One of the criticisms concerned the use of Afrikaans in court hearings, which entailed a lot of difficulties for both defendants and lawyers. In regard to lawyers, the problem was described as serious, particularly for those who had done their law studies in English. An anonymous witness (715th meeting) stated that, although English was also an official language, cases were almost always heard in Afrikaans, and invariably where the State was concerned. Responding to questions concerning this problem, the witness indicated that, in several cases, the language to be used would depend on who issued the summons. He said that if a lawyer was leading in English and his opponent in Afrikaans, the English-speaking lawyer would have to cross-examine the witnesses in Afrikaans. In criminal cases, it was the prosecutor who decided on the language after receiving the documents, and the defence had to follow suit.

186. Concerning the application of habeas corpus, an anonymous witness (724th meeting) remarked that, when whites were concerned, the principle was observed, but not in cases involving non-white defendants.

187. Other witnesses also referred to what they termed "abuses" associated with the legal process, most of which were attributed to the broad scope of the powers wielded by the security forces under the state of emergency. Interference by the security forces in the legal process was stressed with regard to the intimidation of suspects, accused persons and State witnesses, and the widespread use of torture and violence against detainees under interrogation, including children. In this regard, witnesses expressed concern about the admissibility by the court of statements and confessions allegedly extracted under duress. An anonymous lawyer (715th meeting) cited the example of a trial held in Ciskei in July 1988, involving a trade-unionist, Mr. Oscar Mpatha, in which some 14- and 15-year-old youths had been called as witnesses. The defence argued that their evidence had been extracted under torture; nevertheless, the court found the evidence admissible.

188. Another increasing trend highlighted by both witnesses and the reports forwarded to the Working Group, was the arrest and intimidation of lawyers representing persons accused of political offences, and police encouragement of violent attacks by vigilante groups against government opponents. In this regard, witnesses pointed out that lawyers were constantly fighting to obtain interdicts against police or vigilante harassment of individuals or communities, and that very often court rulings were flouted or ignored.

189. In providing a legal analysis of the Sharpeville case, witnesses appearing before the Working Group highlighted various issues inherent in penal proceedings in South Africa. In addition to the application of the principle of "common purpose" doctrine (see paras. 162, 163, 167 and 168 above), reference was made to the evidence presented to the court, the principle of "confidentiality between lawyer and client", and other facts related to the absence of jurisdiction which made it possible to reopen a trial under the South African Criminal Procedure Act.

190. As regards the first issue, the representative of Amnesty International and a number of lawyers who appeared before the Group at its 710th, 716th, 717th and 719th meetings, provided an analytical account of evidence presented to the court implicating each defendant individually. In the light of that account, witnesses observed that the following facts were a matter of argument throughout the trial:

(a) There were contradictions in the evidence given by State witnesses, who had been detained before and during the December 1985 trial;

(b) At the trial, it was alleged that confessions were extracted from both the accused and the witnesses under duress, but the trial judge rejected these allegations;

(c) With the exception of Mr. Khumalo and Mr. Mokhesi (see para. 157 above), implicated by Mr. Manete, who testified that he saw them at the scene of the crime, throwing stones at the house of the deceased, there was no other concrete evidence indicating direct participation by others in the crime itself. They were found guilty, largely because they were said to have been on the scene of the crime, together with 300 or 400 other people.

191. The second important issue was the principle of "confidentiality between lawyer and client". In the original trial, the presiding judge, Mr. Justice Human, refused to allow cross-examination of a key State witness, Mr. Manete, on the content of his statement before the 1985 trial, on the grounds that the statement was protected by lawyer-client privilege. The statement contained an allegation that the witness had been assaulted in police custody and coerced into implicating two of the accused, Mr. Duma Khumalo and Mr. Francis Mokhesi. In view of developments after clemency was refused, Mr. Manete had waived his privilege and made public statements. He had written to the State President and the Chief Justice. In his open letter to President Botha, published by The City Press on 3 July 1988, Mr. Manete reaffirmed what he had said in his statement prior to the original trial, namely that he had committed perjury and implicated two of the accused, because of police coercion. Mr. Manete's evidence was regarded as crucial as it constituted one of the most important grounds of appeal in the Appeal Court.

192. An anonymous witness stressed that the major point of the appeal had been that the judge had "erred in overruling the defence counsel's attempt to cross-examine Mr. Manete" on the content of a statement in which he admitted that he had committed perjury.

193. As previously indicated, the main purpose of reopening the trial was to permit further cross-examination of Mr. Manete's evidence. However, subsequent to that application, Justice Human ruled that he had no jurisdiction under the Criminal Procedure Act to entertain such an application, and the only remedy was to petition the State President to exercise his discretion and order the trial to be reopened. The defence lawyers lodged a petition with the Chief Justice for leave for the Appeal Court to reconsider the application. The Chief Justice set 7 September 1988 as the date for a hearing on the petition at Bloemfontein Appeal court.

194. The following details regarding the above-mentioned hearing were disclosed in reports transmitted to the Working Group. The defence lawyer, Mr. Kentridge, argued that the new evidence suggested "deliberate and fraudulent interference in the course of justice" by police, which amounted to such an irregularity. The lawyer conceded that there was no provision in South African law for the reopening of a trial, bearing in mind the general legal principle that there has to be "finality of judgement". Nevertheless, the lawyer argued that there had to be "inherent jurisdiction" of the court to take such a step when justice so required.

195. The most relevant part of the hearing was in relation to that last argument. Mr. Kentridge submitted that his team had, at the last minute, discovered a precedent for such a step: the Lesley Sikweyiya v. the State case in 1979, when an appeal hearing had been held and the condemned man had been declared innocent. Mr. Sikweyiya had been sentenced to death and an appeal refused. His subsequent petition to the Chief Justice for leave to appeal had also been refused, but 11 days after the refusal had been handed down, the petition was suddenly granted; an appeal hearing had been held and the condemned man declared innocent. Mr. Kentridge observed that there was no judgement explaining the reversal, stressing that the initial refusal of the petition had all the finality of a court judgement and that it could only have been reversed by an exercise of "inherent jurisdiction".

196. At the conclusion of the September 1988 hearing in the Sharpeville case, the judgement was reversed. On 23 November 1988, only hours after the Court of Appeal had turned down the plea by the Six to reopen the trial, President Botha had, however, announced that he would grant reprieves to all.

G. Political trials

197. During the period under consideration, the Working Group received voluminous reports dealing with completed and ongoing political trials, a general term used to designate the trials of persons implicated in political action, mass protests and community resistance.

1. General

198. The lack of public knowledge of the exact number of political detainees was attributed by active anti-apartheid groups to the Government's reluctance to disclose any information on the matter. Some of these groups charged that

the South African authorities systematically denied the existence of political detainees as part of their overall policy denying the legitimacy of any form of resistance and opposition to the apartheid system.

199. In February 1988, Government sources indicated that 309 people had been detained for "crimes against the security of the State", referring to people sentenced under special laws currently consolidated in the Internal Security Act, or those convicted of treason under common law. In other cases, reference was made to those detained under common law for offences against "good order", "public safety" and "damage to property". No indication was given as to how many were involved.

200. In May 1988, the International Defence and Aid Fund for southern Africa (IDAF) published a list containing 700 names of people sentenced to imprisonment in political trials since 1963. However, IDAF pointed out that there were probably far more than 700, as press reporting of trials was extremely uneven and fragmentary. It is common for the start of a trial to be reported, but not its conclusion, particularly in smaller and more remote towns. It has also been noted that the proportion of cases receiving some publicity is dependent on the presence or absence of monitoring groups, which have become widely established only in recent years.

201. In relation to the publication of court proceedings, the Working Group received a report on 26 August 1988, indicating that on 24 August 1988, the Minister of Justice, Mr. Kobie Coetsee, had announced that he had ordered an investigation into the way the media was reporting on civil and criminal cases and that "consideration be given to the possibility of prohibiting the publication of evidence given at a trial until the court has pronounced judgement on such evidence".

202. The list in the annex provides several indications regarding known detainees who were convicted and sentenced in politically related trials during the period from January to May 1988. It should be noted that the list does not include those who have been held in detention without trial under emergency regulations or under laws allowing detention without trial (in some cases people have been held for over a year).

203. Complementary information regarding political trials was also released in Human Rights Update, issued for the first time in October 1988 by the Rights Commission in association with the Centre for Applied Legal Studies of the University of the Witwatersrand in Johannesburg. According to this report, which covers the period from April to July 1988, 38 politically related trials were completed during the period from January to March 1988, involving 138 accused. Between April and June 1988, 25 political trials were completed involving 106 accused - amongst them, two white officers sentenced to death in May 1988 (see para. 228 below). In Transkei it was estimated that there had been 12 trials under the Transkei Public Security Act over the three-month period from 12 April to 20 June 1988. Seventy-eight political trials, including two in Umtata, Transkei, were completed between July and September 1988, involving 189 accused.

204. Most of the accused in the completed trials had faced charges of terrorism, public violence, contravention of the Internal Security Act and emergency security legislation, and "defeating the ends of justice". There were also charges of furthering the aims of ANC, publishing statements related

to the outlawed organizations, and attending illegal gatherings. Reports received by the Working Group in November 1988 indicated that 231 of the 433 above-mentioned accused had been acquitted or had the charges against them withdrawn since January 1988.

205. The following paragraphs provide details of a number of completed trials as they appeared in the reports received by the Working Group during the period under review:

(a) According to a report released by the Weekly Mail of 8-14 April 1988, 12 Witbank community activists convicted of "terrorism" had received prison sentences a week earlier for terms ranging from three to seven years. The trial, which took place in the Bethal Regional Court, centred on the massive "eruptions" resulting from school boycotts in Witbank township, in the Transvaal, in 1985. Thirty activists - members of the Witbank Parents' Education Co-ordinating Committee, the Witbank Youth Congress, or the Unemployed People's Congress - originally faced charges of terrorism, subversion, public violence and attempted murder. Twelve were convicted of terrorism, but acquitted of other charges, and a further 12 were acquitted on all counts. Six men who were discharged at the end of the State's case remained in custody in Witbank pending separate charges of murder. The State's case was that the accused had attempted to render South Africa "ungovernable" by creating "alternative structures". It was held that the organizations had acted in concert with the outlawed ANC, and that the accused were sympathizers or active supporters of ANC;

(b) On 9 May 1988, the trial of five alleged PAC members and two suspected members of the outlawed Qibla organization resumed in a Pretoria Regional Court. The State led evidence to contest an application by a suspected member of the Muslim Qibla movement who refused to testify against two accused in the PAC/Qibla trial. Mr. Aziz Abdul Kader, aged 27, who was arrested in Cape Town on 17 June 1987, was to be used as a State witness to testify against Mr. Ahmed Cassim, aged 41, and Mr. Yusuf Patel, aged 27, also alleged Qibla members. The trial in which five other alleged PAC members were also involved, began 10 months earlier. The charges against them included terrorism, attempted murder and belonging to a banned organization. The hearing continued with evidence being led by the State to determine the mental condition of Mr. Abdul Kader, who claimed that he had suffered severe mental disorder as a result of the nine weeks during which he had been held in detention.

206. According to Human Rights Update of October 1988 (see para. 203), the hearing was continuing; however, on 18 July 1988, Mr. Abdul Kader was sentenced to two years' imprisonment for refusing to testify.

207. A report transmitted to the Group in May 1988 stated that the sentences handed down on six members of Inkatha by the Pietermaritzburg Supreme Court, during the second week of May 1988, had caused controversy and concern because of their alleged leniency. The six Inkatha members pleaded guilty to murdering an elderly woman by beating and stabbing her to death. They said that they had believed she was a UDF supporter and that her sons were UDF members and were responsible for some of the violence in the district. The judge reportedly said that he had taken into account the fact that the six had lost family, friends and possessions in the violence, and that they had acted in a state of "mass psychosis". They were sentenced to imprisonment terms of

between three and seven years, but in each case, half the sentence was suspended, meaning they would serve a maximum sentence of one-and-a-half to three-and-a-half years. Members of the legal profession, including academic lawyers commented on the "alarming disparity" between sentences passed in this case and that of the Sharpeville Six, convicted on the basis of "common purpose" without extenuating circumstances.

208. On 19 May 1988, 14 Black Sash members received court summonses to appear before the Durban Regional Court on 6 June 1988, on charges of attending an illegal gathering on 26 February 1988, when they stood along a road protesting against the banning of 17 organizations, including UDF and COSATU. The notice was allegedly forwarded to Black Sash on the eve of its planned protest against apartheid at Durban City Hall, marking the organization's thirty-third anniversary. The 14 persons were further cautioned and discharged on appeal in August 1988.

2. Treason trials

209. In addition to the trials mentioned in subsection 1 above, the attention of the Working Group was drawn to eight treason trials in which 258 persons faced charges of treason.

210. In a 14-month treason trial which ended during the second week of October 1988, 7 members of the Alexandra Youth Congress (David Mafutha, 21; Piet Magango, 29; Vusi Ngwenya, 21; Arthur Vilakazi, 25; Mxolisi Zwane, 21; Andrew Mafutha, 23, and Albert Sibola, 22) received prison terms ranging from 6 to 8 years with 3 to 4 years' suspended sentence. The eighth accused, Philemon Phologong, who was 16 at the time of his arrest, received a suspended sentence. The Rand Supreme Court found that the accused had set up a "people's court" and carried out an anti-crime campaign against the will of some residents of the black township of Alexandra.

211. On 18 November 1988, 4 of the 22 accused in the Delmas treason trial - considered to be the longest political trial in South African history, dating back to October 1985 - were convicted of treason with intent to overthrow the Government of South Africa. Seven other defendants were convicted of terrorism, which, like treason, carries a maximum penalty of death, and five were acquitted. Three of the 22 accused were acquitted late in 1986 at the close of the State's case. Three others were acquitted on 17 November 1988.

212. The charges arose from riots in the Vaal Triangle on 3 September 1984, when four black councillors and a councillor's aide were murdered. According to different sources, the verdicts served as the final judicial pronouncement on the causes of the violence that had swept the country from 1984 to 1986.

213. Among those convicted of treason were three senior UDF officials, Mr. Patrick Lekota, the group's publicity secretary, Mr. Popo Simon Molefe, its national secretary, and Mr. Moss Chikane, its Transvaal Province secretary. Also convicted of treason was Rev. Thomas Manthata, a staff member of the South African Council of Churches, and a founder member of the Soweto Civic Association. Rev. Manthata was reportedly the first to be found guilty of treason by the judge in a provincial Supreme Court in Pretoria. The seven defendants convicted of terrorism were all members of the Vaal Civic Association in the Sharpeville area. The judge ruled that they had helped to

organize the rent boycott and the protest march on 3 September 1984, resulting in widespread arson and the killing of the four township councillors.

214. Many of the arguments centred on the question whether a "freedom struggle" could be distinguished from the notion of political violence. The defendants conceded that the goal of ANC was to overthrow the Government, but that their goal was "the abandonment of apartheid, the ending of white privilege and the extending of the vote to all".

215. The hearing was adjourned until 5 December 1988, to allow defence lawyers to study the judgement before leading evidence in mitigation of sentence. On 8 December 1988, the Pretoria Supreme Court sentenced the 7 defendants convicted of terrorism to 5-year prison terms, 6 of them suspended sentences. The 4 defendants facing treason charges were sentenced to prison terms ranging from 6 to 12 years.

3. "Extradition policy" in the "homelands" in regard to political trials

216. In April 1988, the Transkei authorities applied for the "extradition" of an alleged ANC member, Mr. Mzwandile Vena, 32, from Qunu district near Umtata, who had been arrested in Cape Town on 16 September 1987, to stand trial on charges of terrorism and sabotage. A hearing was held in the Wynburg Magistrates' Court, in Cape Town, during which Mr. Vena's attorneys argued that, as sabotage carried the death penalty in Transkei, their client should only be sent there if an undertaking could be given that he would not be sentenced to death if convicted. Article 5 of the "extradition agreement" between Transkei and South Africa states that "extradition" can be refused if the offence carries the death penalty in the country in which the accused will stand trial and does not carry the death penalty in the country from which the accused is to be "extradited", unless the requesting country provides an assurance that the death penalty, if imposed, will not be carried out.

217. On 17 May 1988, an official written undertaking signed by the President of the Transkei was handed in to the Wynburg Magistrates' Court. The magistrate then ordered Mr. Vena to be sent back to Transkei to stand trial. He also ordered the "extradition" to be held over for 15 days to give Mr. Vena a chance to appeal.

218. During the third week of August 1988, Mr. Vena reportedly lost his appeal with the Cape Supreme Court against the "extradition order". He subsequently faced a possible death sentence, unless the Transkei authorities honoured their undertaking not to execute him if convicted.

219. According to a statement made in the National Assembly in July 1988 by Mr. Godfrey Mothibe, the Bophuthatswana Minister of Justice, members of ANC or other prohibited organizations cannot be "extradited" from Bophuthatswana. He stated that only criminal offenders were liable to "extradition". However, during the same month, Bophuthatswana's Deputy Minister of Law and Order admitted in an affidavit that an alleged member of ANC, Mr. Tlhomelang David Maape, had been arrested by members of the Bophuthatswana Internal Intelligence Service on 6 November 1987 and had been subsequently handed over to the South African police.

4. Proceedings against the security forces

220. As previously stated, under section 15 of the renewed emergency regulations, Government officials, members of the security forces or any person acting on their behalf, are immune from civil or criminal prosecution for any act carried out "in good faith" in the exercise of their powers under the state of emergency. Thus, their actions would be considered to be done "in good faith" unless the contrary was proven in any legal proceedings which might be instituted against individuals acting on behalf of the State.

221. A court monitoring report released by the Black Sash in March 1988 referred to the option of a fine as a common feature in cases against policemen, even in those which involved serious claims of assault, culpable homicide and attempted murder. According to this report, many cases involving claims against the Minister of Law and Order were settled out of court, which meant that serious facts behind the claims were not discussed in court and so never reached the public. It was further stressed that the Minister paid costs and damages "without admitting liability and without admitting directly or indirectly the correctness of the allegations".

222. In this connection, the Working Group heard several accounts of the use of excessive force, including many killings, in crowd-control operations, with no prosecutions or disciplinary action against any policeman. One of the examples was the rent protest leading to the Sharpeville Six case in the Vaal Triangle in 1984, during which some 60 black people had been killed by the police. The second example was the Uitenhage incident of 1985, in which some 17 people were killed, many of them shot in the back, and a number of others severely injured when the police opened fire on them. An anonymous witness (710th meeting) referred to that case as an unusual one, because civil actions were brought on behalf of a number of the injured people, and the Government had paid a large sum of compensation for the actions of the police in relation to those assaults and killings. However, none of the policemen had been criminally prosecuted.

223. The trial of two South African policemen facing charges of murder and attempted murder against three blacks took place during the last week of March 1988, in the Rand Supreme Court. On 30 March 1988 in the Rand Supreme Court, Capt. Jack La Grange, 40, former head of the East Rand Murder and Robbery Squad, and Sgt. Robert van der Merwe, 30, of the Brixton Murder and Robbery Squad, were found guilty on two counts of murder and one of attempted murder. They were found guilty of murdering an import-export agent and alleged drug dealer, Mr. Bennie Ogle, outside his house on 29 September 1987. Three hours later, they shot and wounded a Soweto businessman, Mr. Ernest Milikoane, with intent to kill him. On 4 October 1987, they also gunned down another alleged drug dealer, taxi owner Mr. Peter Pillay.

224. Reports appearing on 5 May 1988 indicated that applications by Capt. La Grange and Sgt. van der Merwe for leave to appeal against their conviction and death sentences were refused. Capt. La Grange's application for a special entry to be made on the trial record was also refused. The application was made on the grounds that an irregularity had taken place, since a request by the defence counsel to obtain a psychiatric assessment of his mental state had been turned down by the court. The court's decision was reportedly based on the fact that Capt. La Grange's denial of involvement in the three crimes made it pointless to seek a psychiatric evaluation to

establish what motivated him. Other grounds put forward were two tape recordings made of a conversation between the two suspects without their knowledge. On 23 November 1988, President Botha reprieved the 2 policemen; their death sentences were commuted to 25 and 15 years' imprisonment, respectively.

225. According to a report received by the Working Group on 15 March 1988, the trial of 10 Lebowa policemen on charges of culpable homicide arising from the death in 1986 of journalist Lucky Kutumela, aged 24, while under police custody, came to an abrupt end when all were found not guilty and discharged. It was alleged that two witnesses, who were arrested together with Mr. Kutumela, were waiting outside the Potgietersrus Regional Court, but were not called in to testify. The magistrate, in acquitting the 10 policemen, cited as one of the reasons the fact that there was nobody with Mr. Kutumela when he died (see E/CN.4/1988/8, para. 96).

226. After a mass hearing at the Bophuthatswana central prison of 311 members of the Bophuthatswana security force, held on charges of high treason following an aborted coup on 10 February 1988, 17 were reportedly remanded in custody on 23 March 1988 for a further two weeks on their own recognizance.

227. On 18 April 1988, the Cape Town Supreme Court heard a case brought by the Methodist Church in Africa and 21 families from the KTC squatters' village against the Minister of Law and Order for damages amounting to R 312,000, following the police role in the almost total destruction of KTC in June 1986.

228. On 26 May 1988, two white policemen, Warrant Officer Leon de Villiers, aged 37, and Constable David Goosen, aged 27, were sentenced to death for killing a black youth, Mr. Mlungisi Stuurman, 18, who was shot and severely beaten in the black section of Cradock on 26 July 1986. The two policemen had been acquitted on one count, but convicted of murder by Grahamstown Supreme Court after several officers belonging to their 10-man riot unit testified against them. In the non-jury trial, which began in October 1987, Constable Goosen testified that he was suffering from stress brought on by repeated exposure to violence in the black townships. On 23 November 1988, the sentences of the 2 policemen were commuted respectively to prison terms of 20 and 12 years, respectively, at the same time as the Sharpeville Six (E/CN.4/1988/8, para. 64, see also para. 160 above).

H. Treatment of children and adolescents

229. In resolution 1988/11, paragraph 7, the Commission on Human Rights requested the Ad Hoc Working Group of Experts on southern Africa to pay special attention to the question of the detention, torture and other inhuman treatment of children in South Africa and Namibia and report to it at its forty-fifth session.

230. That request was made on the basis of evidence received by the Group in 1988, alleging that children in South Africa were subjected to such ill-treatment.

231. It must be recalled that, for its part, the General Assembly adopted resolution 42/124 in 1987, in which it expressed its profound outrage at the situation of children in South Africa.

232. In order to give effect to the Commission's request, the Working Group collected much information in the course of its mission of inquiry, carried out in Europe and Africa from 27 July to 18 August 1988. The Group considered that it was its duty to examine the question in the light of that information and to submit a report to the Commission in conformity with the mandate conferred upon it. Consequently, this chapter contains a study of the treatment of children in South Africa.

233. The situation of black children as they are affected by the violence prevailing in South African society under the state of emergency has attracted the particular attention of the Working Group for several years.

234. The physical and psychological strains inherent in the kind of treatment inflicted on children during their long, and sometimes repeated, detention has remained the Group's major concern.

235. Reports forwarded to the Group during the period under consideration provided information which contradicted the figures for children currently under detention disclosed by the Government.

236. According to a statement made in Parliament in February 1988 by the Minister of Law and Order, Mr. Adriaan Vlok, a total of 234 people aged 17 or under were being held in detention in South Africa (excluding the "independent homelands"). According to Mr. Vlok there were 5 aged 15, 89 aged 16 and 140 aged 17. Of those, 169 were detained in Natal.

237. However, a report of the Commission of Inquiry organized on 23 April 1988 by the Free the Children Alliance in Johannesburg (an organization with 26 affiliated groups in South Africa, which was set up by the Black Sash Association in 1987) on the situation of children detained in South Africa, revealed that approximately 2,000 children were estimated to be detained, almost 1,000 of whom have been imprisoned since the declaration of the state of emergency in June 1986. The report referred to the lack of precise information on the number of children detained under the Internal Security Act.

238. Human Rights Update of July 1988 stated that in June 1987, persons under the age of 18 had comprised 20 per cent of detainees still in detention while, by June 1988, they comprised 10 per cent, the majority being aged 16 and 17.

1. Children in detention

239. Describing the problems of detained children at a general meeting which took place in June 1988, a field worker for the Free the Children Alliance, Mr. Ian Mackenzie, stated that children were being detained daily in the Western Cape. Over 400 children were in detention, 100 of them from Pietermaritzburg alone. The above-mentioned Commission of Inquiry reportedly found that, of all children detained, only 7 per cent were ever charged, and 1.5 per cent were convicted.

240. Different sources reported that the charges varied from murder to "terrorism" and subversion, intimidation and possession of banned literature. Under the Prisons Act, detainees under 21 are classified as juveniles and, in many respects, are to be treated differently from older detainees. However, the evidence received by the Working Group suggests that their treatment did not differ in essence from that afforded to adults.

241. A number of witnesses (722nd, 730th and 731st meetings) who appeared before the Group affirmed having seen children aged 9 to 12, during their detention in Algoa Park police station in the Eastern Cape, in Kroonstad and in Modderbee prison in the East Rand. One of the witnesses alleged that, after being detained with children, he had been separated from them as the police claimed he had been inciting them. According to another witness, the children claimed that they had been arrested by the Defence Forces while playing football in the street, and charged with "terrorist activities". They had had no access to their families or to a lawyer. Following his release, the witness stated that he had informed the children's families of their whereabouts.

2. Allegations of torture and ill-treatment

242. Several reports brought to the attention of the Group since the end of 1987 deplored the alleged widespread use of torture and violence against children, which is habitually denied by the South African Government and which - according to a report drawn up by four West European law experts sent by the International Commission of Jurists - "goes unpunished, though plainly illegal under South African law".

243. On the subject of torture and ill-treatment, the Group heard the evidence of several teenagers who were 15, 16 and 17 years old at the time of their arrest and detention. In addition to solitary confinement, beating, kicking and torture by electric shocks appeared to be common practice in regard to young detainees. The following cases were brought to the attention of the Working Group:

(a) One of the witnesses (730th meeting) claimed that he was put naked into a refrigerator and placed under a bright searchlight. On another occasion, he had allegedly been put into a rubber wetsuit to which electric wires were attached and given electric shocks. The youth was arrested when he was 17 and spent more than a month in solitary confinement. Furthermore, he alleged having received no medical treatment for his injuries;

(b) A 16-year old witness (728th meeting) alleged having been arrested at the age of 15, on suspicion of setting a school on fire. He was detained from December 1987 to January 1988. In his statement, he told the Group that he was hit with a chair and a sjambok made from the tyre of a vehicle. He was also kicked with boots, and had an open wound on his hand and weals and open cuts on his back;

(c) Another witness (728th meeting), aged 17, alleged being subjected to the same treatment when he was detained at the funeral of two of his friends, who had been shot dead by police in August 1987 while taking part in a protest march against police action in their township. The witness claimed that, after spending five days in the hospital as a result of torture, he was returned to the police station where he was interrogated and subjected to electric shocks for another five days. The court discharged him in January 1988 and he has left the country;

(d) Two reports appearing in July 1988, indicated that two secondary school students, one aged 21 and the other younger, were allegedly taken at gunpoint by SADF soldiers to a freshly-dug grave in a cemetery outside Chesterville, near Durban. The boys alleged having been assaulted and forced

into the grave, where the soldiers shovelled earth over them. An SADF spokesman stated that a board of inquiry would be set up by the army to investigate the incident;

(e) Concordant reports as well as several witnesses appearing before the Working Group at its 730th meeting stressed that many teenagers had been forced to speak against their will under torture or maltreatment. Such was the case of an 18-year-old student who was interrogated about incidents in the township where he had addressed meetings and had been active in civic and student organizations. Following his arrest, he was allegedly kept locked in a police van together with a number of other students, without food or water for the whole day from 8 a.m. to 5 p.m. The witness was then beaten until he was forced to agree to the accusation;

(f) In another case, an anonymous witness (728th meeting) stated before the Working Group that during his interrogation he had been tortured, because the police wanted him to admit that he had been responsible for public violence in the township, for setting fire to councillors' shops and to schools, and inciting others to do likewise. The witness confirmed that he and his co-detainees had been partially suffocated in prison by having part of the inner tube of a tyre placed over their heads. According to the allegations, they were all stripped naked and kicked on the head "until you feel you are dying". The witness added that some of his comrades had not been able to withstand the torture and had admitted the charges. However, with the assistance of lawyers, they had told the court that their confessions had been made under duress;

(g) In his statement before the Group, an anonymous witness (725th meeting) referred to child repression in the "homelands". In the case of KwaNdabele, the witness pointed out that schoolchildren were seen as a major enemy by the police and army and were frequently attacked and detained. They were probably tortured as much as adult detainees. He referred to the case of a 12-year-old boy, who had been detained at a police station and allegedly struck 10 times with a sjambok without any attempt at interrogation;

(h) The Working Group received a number of reports referring to incidents in which children have been shot and killed by the security forces. Such grave allegations were included in a report published in the Sowetan of 25 April 1988. The report mentions, inter alia, a statement made by Mrs. Margaret O'Neil at a meeting held by the Free the Children Alliance at the Witwatersrand University, in which she stated that a 12-year-old boy had been shot dead by the security forces at a school in Soweto because "he made the mistake of running to pick up a school-book which he had left in the middle of the playground". Mrs. O'Neil also referred to an incident in which a teenage girl, alleged to be an informer, was killed by "necklacing"; her brother was shot dead by security forces four days later in front of their mother.

244. In regard to child assassination, the Group received a large volume of information concerning black factional violence in the country:

(a) Human rights organizations and groups dealing with child welfare in South Africa emphasized that violence perpetrated against children in that context could be largely attributed to the fact that the Government had failed to establish and maintain order in the areas of conflict;

(b) Two reports issued by the International Herald Tribune and The Times of 22 and 23 January 1988 respectively, expressed the South African black population's deep concern about the brutal treatment to which their children are subjected as a result of the black factional violence. According to these reports, the children who are the victims of this violence have been brutally killed, incinerated by arsonists in their homes, beheaded with pangas (machetes) or shot gangland-style with automatic weapons. It was also alleged that at night armed thugs belonging to warring factions roamed the townships ordering families to release children to take part in marches or attacks on rivals. If they refused, their children might be hacked or burnt to death;

(c) Such reports were corroborated by the evidence of a 16-year-old pupil (731st meeting) who claimed that Inkatha killed innocent people, including children, who refused to join the vigilantes. He stressed that in KwaZulu one could not get a job unless one was a member of Inkatha, and that, although few Zulus approved of Inkatha methods, they were forced to join them because they were intimidated or feared being killed.

I. Disappearances */

245. The Working Group received a number of reports of cases of disappearances under unclear circumstances. According to the information available to the Group, the majority of disappearances reported have occurred while the persons concerned were in police custody. Some of them were detained under the emergency regulations, others in terms of section 29 of the Internal Security Act, which provides for indefinite detention for interrogation purposes.

246. The Working Group heard a number of testimonies relating to the disappearance of several youths, most of whom were members of anti-apartheid groups or organizations. The witnesses indicated that no information was forthcoming from the authorities who, under the emergency regulations, were under no obligation to confirm or deny that someone was in detention.

247. An anonymous witness (727th meeting) alleged that there were cases of kidnapping by security forces and that police either denied that the person in question had been detained or refused to comment. Thus, it was extremely difficult for lawyers to trace a missing person. The witness added that, in cases when authorities invoked section 29 of the Internal Security Act, lawyers had no access to detainees at all and no legal means to check on their conditions of detention.

248. An anonymous journalist (731st meeting) appearing before the Working Group referred to the disappearance of Mr. Sipho Mtimkulu, a member of the Congress of South African Students, who had been detained following student demonstrations against Republic Day, on 1 May 1980. Mr. Mtimkulu was allegedly poisoned in detention and disappeared immediately after he attempted

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*/ The information concerning the question of disappearances was transmitted to the Chairman of the Working Group on Enforced or Involuntary Disappearances by letter of the Chairman of the Ad Hoc Working Group on Experts on Southern Africa, dated 13 January 1989.

to file a suit against the Government for ill-treatment. The witness quoted the case of another three persons, all UDF members, who had disappeared during the same year after being released from detention and had been found dead a few days later.

249. The Working Group was also informed of the disappearance in July 1987 of Mr. Andrew Mokope and Mr. Harold Sefolo, after unknown men allegedly drove them to an unknown destination. Both of them were from Mamelodi, a poor black township outside Pretoria. During the period under review, the Working Group received several reports concerning the disappearance of two other persons from the same township in June 1988: Mr. Stanza Bopape and Mr. Peter Maluleke. Mr. Bopape, aged 28, a former law student at the University of the North, was an employee of the Community Research and Information Centre, and General Secretary of the Mamelodi Civic Association. He had been detained in 1986 in terms of the emergency regulations after being accused of producing Communist Party flags that were hoisted at a mass funeral in Uitenhage in 1985 and charged with furthering the aims of ANC and the South African Communist Party. Mr. Bopape was subsequently released after charges were withdrawn; however, he was arrested again on 10 June 1988 under section 29 of the Internal Security Act and disappeared while in police custody.

250. On 4 July 1988, the South African police informed Mr. Bopape's lawyers and family that he had escaped on 12 June 1988 - two days after his arrest - while the policemen escorting him at night to another prison in Vereeniging had stopped to change a flat tyre. Mr. Bopape's lawyers claimed that police communicated with them on three occasions between 12 June and 4 July 1988, over visiting rights, and never mentioned that Mr. Bopape had escaped.

251. The Department of Law and Order has explained that prompter notification would have jeopardized a police investigation into the terrorist activities of ANC, whose guerrillas have been blamed for some recent bombings in South Africa. It did not reveal how Mr. Bopape's case was related to that of ANC.

252. Amid mounting concern over Mr. Bopape, an independent Member of Parliament for Claremont, Mr. Jan van Eck, had arranged for a meeting between Mr. Bopape's father and the Minister of Law and Order, Mr. Adriaan Vlok, to take place on 11 October 1988. Concern was also mounting for a colleague of Mr. Bopape's, Mr. Bheki Nkosi, who was detained at the same time and held with the missing person. He was released and then redetained on 7 September 1988. Mr. van Eck has appealed to the police to grant him an opportunity to speak to Mr. Nkosi and sent a telegram to Mr. Vlok on 9 September 1988, expressing concern and asking that Mr. Nkosi be seen by a private psychiatrist, as he was undergoing treatment for post-traumatic stress after his initial release. Mr. van Eck also sent a follow-up letter. Both the letter and the telegram were reportedly acknowledged by Mr. Vlok, but there has been no reply.

253. As to the disappearance of Mr. Peter Maluleke, reports received by the Working Group indicated that he had allegedly been taken away by three men early in June 1988, on the pretext that they wanted him to take measurements for ceiling fittings, the business in which he was engaged. According to Mr. van Eck the police had initially denied that Mr. Maluleke was in detention, but they had later conceded that he was being held under section 29 of the Internal Security Act.

II. APARTHEID, INCLUDING BANTUSTANIZATION AND FORCED POPULATION REMOVALS 5/

254. This chapter deals with State policy and legislation - the instrument by which the policy of apartheid is enforced - and forced population removals - a continuing manifestation of the policy of apartheid.

A. Apartheid

1. State policy

255. In its previous report, the Working Group referred to the South African Government's initiative on constitutional changes, and more specifically to two communications released by the Government in August and September 1987 concerning the National Council Bill (E/CN.4/1988/8, para. 157).

256. As previously indicated, the National Council Bill was published on 23 May 1986 as a basis for negotiation with black leaders. It was tabled in Parliament for the first time in September 1987. The main object, according to the Government, was to bring the country's 25 million disenfranchized blacks into the mainstream of national politics.

257. Late in 1987, the Government also accepted recommendations for changes in the 1950 Group Areas Act, the law which makes the racial segregation of residential areas compulsory. For the first time, a President's Council report released on 17 September 1987 proposed that willing "white" neighbourhoods be opened to non-whites and that house owners in new neighbourhoods be given the chance to make them "open". On 5 October 1987, President P. W. Botha announced in Parliament that the South African Government had agreed in principle to allow some residential areas to be "open" to all population groups and would establish a board of experts to consider applications.

258. However, the latest developments in those areas of major concern demonstrate that the momentum of the changes which followed the National Party's victory in the whites-only parliamentary elections in 1987 has slowed remarkably. In addition, these developments reconfirm a fact highlighted in the Group's previous report, namely that "official statements are often at variance with measures taken by the Government of South Africa which serve to strengthen the system of apartheid" (E/CN.4/1988/8, para. 154).

259. In February 1988, harsh restrictions were placed on Mr. Govan Mbeki, the former Chairman of the outlawed ANC, whose release was believed to be a positive step towards a possible opening for power-sharing negotiations. The Government's position in this respect was expressed in the same month by Mr. Stoffel van der Merwe, Deputy Minister of Information and Constitutional Planning, who said that the aftermath of Mr. Mbeki's release was not what the Government had expected, since he had become the "rallying point of a radical campaign". It was only then, the Deputy Minister added, that the Government put restrictions on him and "scaled back some of the rhetoric about Mr. Mandela's release and black-white negotiations".

260. On 1 July 1988, three Bills were tabled in Parliament with a view to tightening the Group Areas Act. The amendments announced by the Government were to close legal loopholes in relation to evictions. If enacted, the three Bills would give the South African authorities much-enhanced powers to

evict between 100,000 and 200,000 blacks, Coloureds and Asians now estimated to be living illegally in white zone areas of Johannesburg, Cape Town and some other large cities.

(a) General

261. On 18 March 1988, it was reported that the police raided the homes of two black families who were acting as hosts for an interracial exchange programme organized for four days (17-20 March 1988) in Mamelodi, a segregated township north-east of Pretoria. At one of the homes, police arrested an alleged black activist, Mr. Sandy Lebese, and his white guest, Mr. Murray Hofmeyer, a junior rector of the Dutch Reform Church. The sponsors of the programme stated that Mr. Lebese was still being held without charge. Allegedly, he was previously detained without charge for a year, at the start of the state of emergency on 12 June 1986. The interracial programme was described as the first attempt to break the social and psychological barriers created by apartheid through a four-day exchange arrangement. Most of the 200 participants in the exchange were reportedly whites, with little or no experience in black townships; about 35 blacks from Mamelodi were staying in the homes of whites in Pretoria. Organizers of the programme claimed that the raid, accompanied by frequent checks by the police at road-blocks, was part of a campaign of Government harassment. They said that conservative white religious groups had opposed the programme and that that had encouraged the Government to act.

262. According to a statement issued by Mr. Adriaan Vlok, Minister of Law and Order, in the House of Assembly on 10 May 1988, spouses of black policemen did not qualify for membership in the medical aid scheme of the South African police, although negotiations with the Treasury to make this possible were under way. Replying to a question from Mr. Leon de Beer from Hillbrow, Mr. Vlok said that black members of the police were however granted an allowance for medical aid purposes.

(b) Power-sharing plans

263. Addressing Parliament on 21 April 1988, President P. W. Botha reportedly gave a new shape to the Government's power-sharing plans. In an important speech attempting to clarify policy and to offer a clear reformist vision of the future, Mr. Botha dealt with three key innovations: (a) the establishment of elected regional authorities for blacks living outside their designated "homelands"; (b) the creation of a national policy-making body on which leaders of all communities or races would be represented; and (c) the appointment of people outside Parliament - or blacks - to executive authority. These changes would not supersede the existing "black homelands" - four of which were "independent" and six partly self-governing - or the locally autonomous black township councils. They would be grafted on to them. Referring to the "homelands", Mr. Botha stated that, "no one in his right mind wants to or is able to undo (them)". Indeed, he added that legislation was before Parliament to grant greater powers to the partly self-governing black "homelands".

264. Commenting on the Government's constitutional initiative and the local municipal elections, several witnesses indicated that the National Council, which is meant to serve as a forum for negotiations, has not been endorsed by black leaders. Moreover, there was strong resistance throughout the country,

especially amongst progressive groups, to both the National Council and the municipal elections, as they do not address the basic political situation.

265. An anonymous witness (719th meeting) stated that the National Council would consist of representatives of various "homelands" (self-governing "homelands") and other persons who had collaborated with the Government over the years, in an attempt to accommodate blacks in South Africa in some kind of political arrangement.

266. The same opinion was expressed in regard to the local authority elections. The representative of Black Sash (718th meeting) indicated that State strategy was to "co-opt people to sit on those local authorities, which will have the so-called control of the municipal police". While focusing on the fact that the elections were strictly based on race and that local authorities were racially defined, the witness added that the elections were seen by the State as a very important justification to the world, in that "we shall be having, on the same day, elections of every race for their local authorities".

267. Addressing the same aspect, an anonymous lawyer related the importance of the elections to what he termed a "virtual collapse" of the local government system in the black townships and the resignation of community councils. In some townships the functions of community councils had been taken over by the provincial administration. The same thing applied in the Asian and Coloured areas. He emphasized that even though the unrest in 1984 had started with rent strikes in the Vaal area, the basic reason was in fact dissatisfaction with, and opposition to, the black community councillors personally.

268. The witness deemed that the elections were crucial for the Government at the current time and for reforms in prospect. He stated that the Government had spent R 4 million on a campaign to persuade people to vote, as it wanted confidence to be restored to local authorities of all groups. If they were successful it would probably be an indication of the success of the state of emergency.

269. Responding to questions concerning the division of cities into local authorities, the representative of Black Sash (718th meeting) explained that, apart from the "homelands", each area would be divided into racially-separate local authorities, and all the people within that area would be able to vote for their local authority.

270. Subsequently, the witness referred to the representation of those local authorities in the Regional Services Council, a form of metropolitan government, created during the past four years around the metropolitan areas. Each of the local authorities - representing the white, Asian, Coloured and black communities - was to be represented in the Regional Services Council, the non-racial body which makes regional decisions and allocates regional funds.

271. However, the allocation of votes within the Regional Services Council was given on the basis of the volume services used by each local authority. In other words, the number of votes on the Regional Services Council would be determined on the basis of the economic power of the respective community.

272. The Regional Services Council would be selling services, such as water and electricity, back to the local authorities. It was evident that white areas consumed far more water and electricity. Thus, being economically dominant, whites would also dominate the Regional Services Councils.

273. As for the selection of candidates proposed for the local elections, an anonymous witness (719th meeting) explained that Asians and Coloureds had political parties which were represented in both the House of Representatives and the House of Delegates. Therefore, in their areas, political parties would put up their candidates. In the black townships, there were no political parties; independents might stand for election with no political affiliation.

274. An anonymous lawyer (716th meeting) referred in his statement to the recent emergency regulation under which it was an offence to oppose or to call for a boycott of the October 1988 elections. He expressed his concern about a special regulation which had been passed, in terms of which voters could vote by secret ballot rather than going to the polls on the day. Such a measure was viewed as a tactic to impose leaders chosen by the Government. Also, there were reports that in some cases, people had been misled into signing a voter's registration when they thought they were signing a petition.

275. Reports analysing the outcome of the October municipal elections confirmed that the results of elections to black local authorities offered little encouragement for the Government's reform policies. The voter turn-out was said to be even lower than originally estimated.

White municipal elections a/

	Vote (%) b/		Seats	
NP c/	49.0	(53.0)	100	(123)
CP/HNP	34.0	(29.6)	45	(22)
PFP/IND	17.0	(17.4)	21	(21)
TOTAL	100.0	(100.0)	166	(166)

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a/ Figures in parentheses are the position after 6 May 1987 (Bureau of Information of the South African Government).

b/ Computer projection based on 26 October 1988, if white general election held now (Research by Mr. Donald Simpson, Political Science Department, University of Potchefstroom).

c/ NP = National Party
CP/HNP = Conservative Party and Herstigte Nasionale Party.
PFP/IND = Progressive Party and Independents.

Black vote turn-out a/

	A b/	B	C
Transvaal	972 569	211 252	21.7
Orange Free State	204 147	80 508	39.4
Cape	257 799	68 214	26.5
Natal	25 426	7 454	29.3
TOTAL	1 459 941	367 428	25.2

Source: Bureau of Information of the South African Government.

a/ Total registered to vote in all wards 2,422,579.
Total eligible by age to vote 3,118,729.

b/ A = Total blacks registered to vote in contested wards
B = Total votes cast
C = B as a percentage of A (percentage turn-out).

276. According to the final figures, less than 367,428 blacks actually went to the polls. The black percentage poll in town council wards where elections took place was 25.2 per cent. Indifference in the black community was such that in 43 per cent of black wards, candidates were either unopposed or none stood at all. The black turn-out represented only 15.2 per cent of total registered voters and no more than 9.2 per cent of total voters eligible by age to vote.

277. The second fact of significance was the announcement by the Conservative Party of its intention to restore hard-line apartheid in the areas in which it came to power in local government polls. The Conservatives won control of 90 governing councils, 60 of which are in rural and mining areas in the Transvaal. The Party's strength in the Transvaal is important because the province contains 53 per cent of the total white population and accounts for 46 per cent of the seats in the House of Assembly.

278. In a meeting held on 12 November 1988, 620 Conservative town councillors voted unanimously to resegregate swimming pools, public transport facilities, libraries, parks, theatres and other amenities in towns where their predecessors had dismantled so-called "petty apartheid". Local newspapers reported that the Government was faced with a difficult choice subsequent to the decisions taken by the Conservative Party, and there has been debate over the extent to which the law allows the Conservatives to reimpose strict apartheid.

279. In a related development, it was further reported that a black boycott of white-owned stores began on 25 November 1988 in some Transvaal towns. Several businesses were reportedly moving in protest against the Conservative Party's plans to re-erect "whites only" signs in parks, libraries and other public places.

(c) Amendments to the Group Areas Act and related legislation

280. On 23 February 1988 Mr. Adriaan Vlok, Minister of Law and Order, reportedly stated, in reply to a question from Mr. Ian van der Merwe, a Progressive Federal Party (PFP) member, that in 1987 the South African police had investigated 1,243 complaints regarding offences under the Group Areas Act.

281. A report brought to the attention of the Working Group indicated that the Government's crackdown on offenders of the Group Areas Act had continued during the period under review. For example, on 25 September 1988, a Johannesburg attorney had been charged in the Johannesburg Magistrates Court with contravening the Group Areas Act by letting his house in Mayfair West - a white area - to a family of another race.

282. In a statement released in Parliament on 3 June 1988, Mr. Roelf Meyer, Deputy Minister of Constitutional Development and Planning, reportedly confirmed that the Government would go ahead with changes to the Group Areas Act during that Parliament session. In the course of the debate on the Constitutional Development and Planning budget vote, Mr. Meyer told the House of Assembly that he would present three Bills: one to allow for free settlement areas; one to provide for local government franchise in these areas; and one to "make the implementation of the Group Areas Act more effective". The statement stressed that "it remains the Government's view that, in the interest of peaceful co-existence, the group basis of South African society must be taken into account in ordering the society. Everyone's rights and interests must be protected and promoted".

283. As previously stated, three Bills were tabled in Parliament on 1 July 1988, with a view to tightening the Group Areas Act. The basic threat in the proposed amendments to the Group Areas Act consisted of the removal of legal safeguards that had existed since the Govinder case of 1982, by no longer requiring the State to make alternative accommodation available to people evicted for infringing the Group Areas Act. Introducing the new legislation, the Minister of Constitutional Development and Planning, Mr. Chris Heunis, stated that eviction orders would be mandatory on conviction, irrespective of whether there was alternative accommodation, and that special inspectors would be appointed to check on illegal occupation.

284. Details of the State v. Govinder case were given by an anonymous witness (718th meeting), who considered that it had probably contributed to the preparation of proposed amendments to the Group Areas Act. In that case, the court had declared that, although the accused was an illegal resident in a white area, he could not be evicted until the court was satisfied that he had the possibility of finding suitable accommodation in another area. The witness stressed the fact that the proposed amendment to the Group Areas Act would remove the stipulation of alternative accommodation and permit the eviction of anyone illegally residing in any given area. He stated that many people were currently illegally resident in towns but had so far been ignored.

285. One piece of legislation related to the Group Areas Act is the Free Settlement Areas Bill. It makes provision for some newly proclaimed "open" areas, or racially-mixed residential areas, but only after exhaustive research into "the necessity or desirability" of opening an area to all races has been investigated by a Free Settlement Board, yet to be established, and the final decision will rest with President Botha.

286. A report, entitled "The Greying of Johannesburg" written by Claire Pickard for the South African Institute of Race Relations, revealed that a major cause of erosion of the Group Areas Act in some white-designated suburbs was the fact that the Government simply could not stop the flow of black people in need of housing to these areas. According to the report, in some white-designated areas, such as Woodstock, Mayfair and Hillbrow, white inner city residents generally did not object to black people settling in these suburbs. However, the report conceded that black "illegals" did encounter some white resistance, "but this was limited and it declined as black settlements became established". The research contained numerous examples of attempts by the Government to prevent the influx of black people to white-designated areas, but pointed out that the Government was loath to enforce the Act. It also suggested that a concerted attempt by the Government to enforce the Act would almost certainly fail, "the spontaneous process which led to its neglect, the black housing shortage and the white accommodation surplus are likely to continue. Just as previous strategies to curb black influx failed, so will similar attempts in the future ...".

287. According to information published in March 1988, Mr. Tony Leon, Chairman of the PFP Election Committee, described the President's Council proposal to open up only selected suburbs for mixed residence as "a potential recipe for disaster". Mr. Leon pointed out that if areas such as Hillbrow and Joubert Park were declared official "grey" areas while most suburbs remain segregated, those mixed areas would become "pressure-cookers" in view of the housing shortage. In a related development, the Government was reportedly embarrassed by the Conservative Party's accusation that the Group Areas Act was not being applied in many areas and it was suspected that with some relaxation in certain selected areas, attempts would probably be made to apply the Act more strictly in others.

288. In his comments on that measure, an anonymous witness (718th meeting) shared Mr. Leon's view. He stated that people ejected from the separate group areas would tend to go to the free settlement areas which were limited and controlled. Thus, they would be prone to exploitation, as was currently the case, because landowners were charging very high rates.

289. The provisions of the Group Areas Amendment Bill include drastic increases in penalties: fines for property-owners who allow the occupation of property are to go up from R 400 to R 10,000 and maximum prison sentence from two to five years. Penalties for illegal tenants are to be increased from R 200 to R 4,000 and the maximum prison sentence from one to two years.

290. Mr. Heunis' statement (see para. 31 above) pointed out that the ambit of the new law was extended to include all illegal occupations; the Parliament had before it a third Bill proposing amendments to the Prevention of Illegal Squatting Act in order to control the influx of blacks into urban areas. The amendments were published in Cape Town on 23 June 1988. According to the Black Sash Transvaal Rural Action Committee (TRAC), the effect of the amendments would be to undo the reforms of the 1986 Abolition of Influx Control Act and introduce a system even harsher than the past laws. TRAC outlined the main effects of the proposed amendments in urban areas as follows:

(a) The courts are obliged to order the eviction of all convicted squatters and the demolition of their houses. The fact that squatters, even in a transit camp, do not have alternative accommodation no longer prevents the courts from evicting them;

(b) Established contractual relationships between a landlord and tenants will not save tenants from eviction. The landlord faces criminal prosecution if he tries to protect his contract with his tenants;

(c) The local authorities are responsible for implementing the provisions, "but where such a council fails to act, other people can be appointed and the cost of the work is then debited to the recalcitrant local authorities".

291. The Bill also contains clauses which seek to make it impossible for shack-dwellers to protect their homes by legal action in the civil courts. The clauses aim to indemnify officials empowered to remove squatters from court challenges. Farm workers are allegedly another target of the proposed amendments. Section 6 E of the Bill introduces controls that go beyond those contained in the repealed chapter 4 of the Development Trust and Land Act, which provided for the removal of blacks in white rural areas. The new Bill empowers State-appointed committees to decide that certain people are squatters and to order their eviction. TRAC pointed out that "the criterion for deciding whether a person is a squatter is whether he or she has a job, this means that the families of farm workers can be evicted, whereas in terms of the old law, they were allowed to live on farms as dependants of workers. Thus, people in rural areas who lose their jobs would become vulnerable to eviction subject to prosecution while they look for employment".

292. Under the proposed amendments, convicted squatters face maximum penalties of up to R 2,000 and one year's imprisonment. Anyone convicted of collecting rent from squatters faces a maximum penalty of R 10,000 and five years' imprisonment. An owner of a property who ignores instructions from a local authority can also be fined R 4,000 or sentenced to one year's imprisonment or both.

293. Several sources reported that under the new provisions, a local authority, with the consent of the Minister of Public Works and Land Areas, can make regulations, inter alia, with regard to the prevention of overcrowding or use of premises that, in the opinion of the local authorities, are unhealthy, unhygienic or unfit for human habitation, the limitation of the number of people in any premises, the "separation of men and women in any premises", the cleaning, lighting and ventilation of any premises, damage to premises, as well as storage of food, water supply, washing facilities and latrines.

294. Several reports issued on 25 August 1988 focused on the constitutional crisis arising from the Government's proposed legislative programme for the parliamentary session. The reports indicated that the PFP and the National Democratic Movement (NDM) walked out of the House of Assembly to join Asian and Coloured political parties in refusing to debate six Bills: the trio of group areas measures (Free Settlement Areas Bill, Local Government in Free Settlement Areas Bill, and Group Areas Amendment Bill), the Slums Bill, the Prevention of Illegal Squatting Amendment Bill and the National Roads Amendment Bill. A dispute has arisen as to whether they fall under "own affairs" or "general affairs" legislation.

295. The PFP took this step after the House decided on a government motion which effectively made the proposed legislation "own affairs", thereby side-stepping the need for debate in the other two Houses. The PFP described

the motion as an abrogation of the Constitution and said the Bills would start a new cycle of conflict and tension in the country.

296. The political parties in the House of Delegates and the House of Representatives had also decided not to debate the Bills, creating a crisis with regard to the Government's proposed legislative programme for the current session. The withdrawal from the debate was presented not as a "boycott", but rather as an attempt to promote a genuine democratic process.

297. After the motion was passed, the Minister of Information, Mr. Stoffel van der Merwe, stated that the Government had to push through the Group Areas Act Bill now, otherwise the Act "would no longer be enforceable ... This would mean scrapping the Act". At this stage, the Government will refer the measures to the National Party-dominated President's Council.

298. During the second week of September 1988, an official announcement in the Government Gazette indicated that Kleinskool, a poor mixed-race area, near Port Elizabeth, was declared Coloured. The measure was reportedly implemented at the request of the local Coloured Management Committee, controlled by the Labour Party, which invoked the Group Areas Act to enforce Afrikaaners out of the mixed-race area. The main reason behind this move was said to be the unrest in 1986. The George Civic Association of Lawaaikamp voiced disappointment, declaring that the decision would mean that the Kleinskool people would suffer the same insecurity that its people had experienced since their area had been declared a "Coloured group area". A representative of the Port Elizabeth Anti-Removals Committee condemned the move as a "callous and illogical decision", especially in the light of the Labour Party's opposition to the Group Areas Act during the August session of Parliament. The report pointed out that Afrikaaner residents who were evicted would have nowhere to move as other townships in the area were already overcrowded, and many workers would find themselves far from their places of employment.

2. Opposition to the policy of apartheid

(a) Church defiance

299. According to political analysts, most black South African anti-Government groups have been paralysed by the effective banning order of February 1988, and the Church has emerged as the new focal point of dissent.

300. On 25 February 1988, Archbishop Desmond Tutu and other South African Church leaders reportedly declared that they would continue to call for the release of detainees and the reinstatement of political organizations, as well as for negotiations "with the true leaders of our country to bring about a transfer of power from a minority to all the people".

301. On 29 February 1988, Archbishop Tutu and other religious leaders were among 150 churchmen arrested in Cape Town after attempting to march to Parliament with a petition protesting against the Government's crack-down on anti-*apartheid* organizations. The Church leaders were detained briefly at a police station. They were released on their own recognizance after being told that formal charges against them for contravention of emergency regulations were being considered. After his release, Archbishop Tutu said at a news conference that the arrested clerics represented 12 million South African Christians and could not be dismissed by the Government.

302. According to the information available to the Working Group, the confrontation between Church and State sharpened dramatically on 22 March 1988, as the South African authorities banned publication of a Roman Catholic newspaper, New Nation, for three months. Mr. Stoffel Botha, the Minister of Home Affairs, issued an order in the Government Gazette which "totally prohibited" until 10 June 1988, the production of any issue of the weekly New Nation, which is written and read mainly by blacks and has a circulation of between 50,000 and 60,000. The newspaper, whose editor, Mr. Zwelakh Sisulu, has been detained without trial since 12 December 1986, is financed by the Catholic Church. Its banning reportedly followed a letter from Mr. Botha to the publishers, the Catholic Bishops Publishing Company, stating that, after examination of three issues in 1987, he was of the opinion that they published subversive material. The action against the newspaper also followed an unsuccessful Supreme Court application by its publishers to restrain Mr. Botha from invoking the media curbs under the state of emergency.

303. Reports published at the end of March 1988 indicated that the confrontation between the Government and some Church leaders had worsened and spread to include the South African Council of Churches.

304. On 30 May 1988, a two-day gathering was reportedly organized in Johannesburg by the South African Council of Churches in order to discuss the "worsening political situation" in South Africa, and consider the formulation of non-violent strategies for fighting apartheid. The gathering was attended by some 200 clergymen and a number of leaders representing other faiths. The emergency convocation of Church leaders decided to create a committee to co-ordinate long-term campaigns and strategies. The Church Campaign Committee, agreed to at the meeting, would be a national body comprising three elected members from the congregation, three from the South African Council of Churches and three other Church leaders.

305. According to Father S'Mangaliso Mkhatshwa, former General Secretary of the Southern African Catholic Bishops Conference, the long-term effects of the convocation could be positive if the Committee appointed at the meeting succeeded in implementing plans of action. Issues which were to be taken up by the Committee included prayer, pastoral care for victims of apartheid, identification of areas of possible "non-co-operation and non-collaboration" with Government, such as the Group Areas Act and military service, intervention strategies involving national action during emergencies, theological rationale for effective action to resist apartheid, and international relations. It was also decided that regional committees were to be established to "stimulate involvement at local level".

306. On 31 August 1988, Khotso House (the "House of Peace"), the Johannesburg headquarters of the South African Council of Churches was destroyed by an explosive device. According to press reports, at least 23 people were treated for injuries and the building was rendered unusable. The blast was preceded by over 14 instances of bombing and arson against union, Church and community organizations in 1987.

307. On 1 September 1988, 10 police officers reportedly raided the headquarters of the Catholic bishops in Pretoria. On the same day, acting under emergency regulations, police confiscated 10,000 copies of the pamphlet "Standing for the trust: understanding the municipal elections" sent to the Durban ecumenical church agency, Deaconia. Police have also

confiscated 35,000 copies of a newsletter put out by the Western Province Council of Churches outlining a 29 June call for a boycott of the elections.

308. On 4 September 1988, Archbishop Desmond Tutu reportedly called for a boycott of upcoming October municipal elections, in a clear challenge to the Government's segregationist apartheid policies.

309. During the same week, other Church leaders joined Archbishop Tutu in his call for a boycott. A Weekly Mail report indicated that senior police visited Archbishop Tutu's office in Bishopcourt and took notes of his 4 September sermon as well as a videotape of the service for investigation.

310. According to reports published on 9 September 1988, a contingent of security police with a video crew forced their way into a "closed service" in the City Methodist Church being conducted by Archbishop Desmond Tutu for workers of the South African Council of Churches. The police raid followed a press conference held by Archbishop Tutu at the same place.

311. The Times of 28 September 1988 reported that, according to Mrs. Mbabane, police detained the Rev. Thomas Mbabane, a Methodist Minister, on 27 August, claiming that he had violated a ban on calls for an election boycott. Pastoral letters from the Methodist and Roman Catholic Churches urged followers to consider refusing to vote in municipal polls on 26 October.

(b) Other manifestations of opposition

312. On 9 June 1988, it was reported that Mr. Titus Mafolo, an executive member of the UDF, wrote a paper in which he stressed that "mass democratic movements" should master "the techniques of secret and underground work". Mr. Mafolo, who is one of the few members of the UDF national executive not in detention, on trial or restricted, wrote the paper in his personal capacity since the UDF was currently prohibited under emergency restrictions which prevented it or its office-bearers in their official capacities from taking part in political activities. In his paper, Mr. Mafolo said, "activists must learn to operate underground because the state of emergency will be with us for many years". He underlined the necessity for vigilance, discipline, education and training to guide the movement's work and ideological unity. Referring to the October municipal elections, he rejected arguments that bodies, such as the UDF, should participate in the elections to render them effective, to use the structures to propagate democratic views or to obtain "access to the people". According to his views, no UDF activist should stand as a candidate and approaches to the elections should be worked out "in consultation with local UDF structures".

B. Bantustanization and forced population removals

313. In order to understand how the ideologically motivated governmental policy described above works in practice, it is necessary to consider the various categories of removals.

314. In the period covered by this report, the Working Group took note of information concerning the forced removal of blacks from the areas they inhabited to other areas, including "homelands". The following paragraphs contain recent examples of such forced removals noted by the Working Group, and the resistance to this policy in the "homelands".

1. Forced removals

315. The representatives of various regional committees and associations monitoring forced removals throughout the country affirmed that, in spite of innovations in Government tactics, it remained clear that the policy and practice of removing people by force had not stopped. Several communities were still faced with uprooting and displacement, although the Government was currently using less blatant methods to coerce people into moving.

316. Several witnesses with good knowledge of the situation prevailing in the "homelands" outlined the policy of forced removals and resettlements under the categories referred to by the Working Group in its interim report, namely, under the Government's new policy of "orderly urbanization", removals under the Group Areas Act and the major Government target of incorporation into "homelands".

317. In June 1988, the Minister of Constitutional Development and Planning, Mr. Chris Heunis, told the Parliament that there was a shortage of 702,750 housing units for black people living outside the "homelands".

318. A report published by the Black Sash shows that homelessness is arguably the most serious problem in South Africa at present. More than 5 million people are suffering because they are homeless and over 1 million families do not have proper shelter.

319. Commenting on the new Bills concerning squatters, slums and group areas, an anonymous witness contended that the State had admitted a shortage of housing for blacks, with one in six without a home or living in a prohibited area, and rather than providing more land or houses for the homeless, the State was responding by issuing new regulations and laws which were "a total onslaught on the natural urbanization of a mainly black community" (see paras. 282, 283 and 291 above).

(a) Farm evictions

320. On the subject of farm evictions, witnesses appearing before the Working Group focused on the fact that, of all the categories of the population, farm workers and labour tenants would be the most affected by the aforementioned measures. They also indicated that removals in rural areas were mainly carried out with a view to consolidating the "homelands" at a later stage.

321. The ownership of land should be seen in the context of the 1980 Land Act which restricted ownership by African people to 13 per cent of the land.

322. The representative of the Association for Rural Advancement (AFRA) (718th meeting) centred his statement on the 4,500 people threatened with eviction from white-owned farms in the districts of Weenen, Vryheid, Hlobane, and Richmond in the Natal region. The witness described the farm workers' plight in Natal and the situation in other parts of South Africa could be similar. People living on the farms could be divided into two groups: farm workers, who could be evicted from farms following their dismissal, and labour tenants. Labour tenancy was a practice whereby families were permitted to settle on white farms, where they were given access to arable and grazing land in return for which they were required to work for the absentee landlords on

the commercial farms in other parts of the region. They had no share in the prosperity of the farms. Labour tenancy was outlawed by the Government in the 1960s, which resulted in the mass eviction of more than 10,000 people in three years. However, despite the ban, the system has survived in a modified form in parts of Natal. There was only a common law contract between the farmer and the workers which afforded little protection, only a guarantee of wages. None of the labour legislation which applied to industrial and commercial workers extended to farm workers.

323. In 1982, the Government had established the National Manpower Commission to look into the possibilities of extending the Labour Relations Act to farm workers. The Commission findings were completed in 1984, but had never been published, probably because of strong resistance on the part of organized white land-owners. To date, farm workers remain unprotected by the labour laws of the country.

324. There were currently 60,000 white farm owners in South Africa and that number would decrease as ownership shifted from private individuals to syndicates or large companies. The white farming communities were seen as the most aggressive proponents of apartheid ideology and, of all the private sectors in South Africa, they were considered most resistant to change, on either a class or a race basis.

325. In order to look into the plight of farmers, inter alia evictions, an attempt was made by COSATU to establish a farm workers' union. Thousands of farm workers were sacked and evicted while trying to organize. That had led to riots and police had used tear-gas and force to disperse the workers. An anonymous witness estimated that some 2 million black people currently lived on what were termed "white farms", so that the extent of removals if the proposed Prevention of Illegal Squatters Bill was passed would be vast.

326. An anonymous witness estimated that between 1948 and 1982, at least 300,000 people had been evicted from white farms in the Natal region. Although the majority of the evictions had taken place in the 1960s and early 1970s, with the massive State-sponsored removal of labour tenants in central and northern Natal, the process still continued through evictions by individual farmers invoking the above-mentioned legislation.

327. The witness added that, impatient with a slow legal process, a number of farmers had resorted to other forms of harassment to get the families to leave. Homes had been demolished and burned, cattle impounded, belongings dumped on the roadside, pets shot and family members threatened with hand-guns.

328. In the areas referred to by the same witness, he indicated that increased mechanization and the consolidation of commercial farms under fewer owners had led to a reduction in labour requirements, hence the evictions.

329. In the specific case of Weenen, 2,700 people were threatened with removal from farms which were owned by absentee landlords. Since some black families regarded the farms as their own, they had petitioned the Government to expropriate them and allow them to remain, but the Government had only offered to move them to the resettlement camp of Waaihock, near Ladysmith. Later, they had been offered a move to a temporary settlement near Weenen which the State proposed to upgrade to a township, but the families had refused.

330. In Richmond, a farmer had called the police to assist him with the evacuation of more than 80 people who had been loaded into trucks and dumped near a new black settlement called Phateni. Their houses were demolished, together with the contents, and the families were suing the farmer for damages.

331. In northern Natal, hundreds of families were facing eviction from farms in the vicinity of Vryheid and Hlobane, a coal-mining area. Families had been living on farms while the bread-winners worked in the mines. Eviction from the farms had aggravated an already acute housing problem in the area and families were being charged exorbitant rents if they wished to stay in the area; failure to pay meant instant eviction.

332. The witness next referred to the consolidation of the KwaZulu "homeland". In 1985, the Commission for Co-operation and Development released proposals for the consolidation of KwaZulu that AFRA estimated would have resulted in the removal of 241,000 people. Approximately 160,000 would have been removed from what are officially known as "black spots" */ included in the 1975 proposals and the rest from areas scheduled to be excised from KwaZulu. The Government policy towards such communities, for example Matiwaneskop and Steincoalspruit, was to ignore them and deprive them of any development. Another two "black spots" where the Government is actively moving people are Cornfields and Tembalihle, 27 km north-east of Estcourt. People were to move to a resettlement area adjoining the KwaZulu resettlement town of Wembezi, where the Government offered them schools, clinics, grazing land and rent-free accommodation. The authorities have starved the old areas of development, and promised development for the new, to force people to move. As a result, a large number of tenants have moved, but to date the majority of the land-owners have refused to move on the grounds that the money being spent on the new area could be used to "upgrade" the existing communities.

333. The witness finally referred to the removals allegedly carried out for the purpose of development and conservation which were taking place in the KwaZulu "homeland". Thousands of people in the remote and isolated north-eastern regions of KwaZulu have found their homes and landholdings threatened by South African and KwaZulu State agencies that are implementing development schemes. An example given by the witness was the ambitious irrigation scheme on land just added to KwaZulu; some 5,000 people had already been removed and, as the scheme progressed, the landholdings of some 62,000 people would be affected. Resettlement camps had been set up for them and they had been promised schools, clinics, etc., their only hope of work was in connection with the irrigation scheme, which meant poorly paid labour.

334. In the border area with Swaziland and Mozambique, KwaZulu was implementing a scheme for conservation areas and the inhabitants of those areas were being pressed to move. They were being forbidden to cut down trees or fish in Kosi Lake, electric fences had been erected on their land and there had been some physical assaults by conservation guards which had led to legal action by the families concerned. The witness believed that the South African

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*/ "Black spots" are those categories of land occupied by Africans but surrounded by white areas, usually farms. These so-called "black spots" are African freehold land which Africans were able to buy before the 1913 Act.

Government was supporting the scheme, since removal of the population and development of the area for "conservation" would create controlled buffer zones with its neighbours.

(b) Resettlement measures in urban areas

335. The question of squatting refers also to urban areas and peri-urban areas. Economic factors determine where people live, and the pressure for people to move into white areas is irresistible. People are forced off the land and the drift to the cities, where there are opportunities for work, continues but the new arrivals cannot find homes, as land is tightly controlled.

336. As already mentioned by the Working Group in its last report (E/CN.4/1988/8, paras. 205-207), within the Government's wide strategy of "orderly urbanization", Africans were authorized to settle outside the "non-independent" "homelands" subject to the availability of housing. However, local authorities or black community councils were given increasing powers to demolish legal squatters' camps and clear areas considered as "slums" and "health hazards".

337. For the last two years, 1987-1988, several communities have faced removal under the "upgrading programme" of existing townships or because they were near the expanding white residential areas.

338. On 24 June 1988 The Citizen reported that 47,617 blacks were resettled in 1987. The press report referred to a statement made by the Minister of Constitutional Development and Planning, Mr. Chris Heunis, in reply to a question by the PFP Member of Johannesburg North. Mr. Heunis stated that 435 people were moved from the Varkfontein plots at Petit in the Transvaal to Etwatwa, near Daveyton, and 517 were moved from Noordhoek in the Cape to Khayelitsha. In the eastern Cape, 46,000 were moved from Kabah Langa and Despatch, 280 from Ericadeans, 169 from Colchester, 98 from Threescombe, 111 from Fitches and 7 from Rocklands. They were all resettled in Motherwell, east of Port Elizabeth. In all cases, the move was carried out allegedly because of the health risk caused by their perilous living conditions.

339. According to an article published in The Sowetan of 8 March 1988, quoting The Developer, the KwaZulu Finance and Investment Corporation magazine, there were at least 1.7 million shack-dwellers in the greater Durban area and that figure was expected to double in the next five years. The article reportedly stated that studies by the University of Natal "have shown the compound average of increase of shack-dwellers in the area between 1936 and 1987 to be 13.6 per cent".

340. According to Mr. Gerrit Bornman, Chairman of the Central Witwatersrand Regional Services Council, an estimated 230,000 squatters were living in illegal structures in Soweto. He said that, at a conservative estimate, more than 5.5 people were living in each squatter home. One of the examples given by Mr. Bornman was the township of Alexandra, where there were an estimated 2,650 squatter structures which represented an increase of 150 per cent since 1987. An information document released in May 1988 spells out the powers which have been transferred by the Government to provincial administrators and which are listed in a draft bill amending the Prevention of Illegal Squatting Act of 1951. Emergency camps may be established or closed down by

the authorities on public or private land, building standards may be waived and only safety standards will be enforced; in certain transit camps even the health laws may be suspended if necessary.

341. In regard to peri-urban areas, reference was made by witnesses to Noordhoek in Cape Town, where about 700 people classified as squatters were forced to demolish their shacks in 1987 and were trucked out by force from their area to a resettlement camp called Khayelitsha.

342. A number of witnesses also referred to the so-called "informal settlements", some of which fall within what is called a "Coloured Labour Preferential Area", which meant that there was no black township and no area set aside for blacks, so the black residents had to establish an informal settlement to be closer to their places of work. Witnesses stated that some of these areas were in the process of "upgrading" in terms of the Government's new policy of "orderly urbanization", while others were still threatened with forced removal under the current provisions of the Prevention of Illegal Squatting Act.

343. The second largest category of removals is that under the Group Areas Act. According to official figures released in September 1988, 6,414 families (approximately 32,000 people) still faced removal under the Group Areas Act. As previously stated, the proposed amendments to the Group Areas Act and related legislation would give the State more powers of control over illegal settlements. Moreover, the representative of Lawyers for Human Rights stressed that they would polarize the situation and cause further race conflict.

344. During the period under review, Government officials also indicated that action might be taken to remove African, Coloured and Asian tenants from the city centres of Cape Town, Durban and Johannesburg in order to reverse the trend towards informal integration in these areas. The declaration of Kleinskool (near Port Elizabeth) as a Coloured area stepped up removals of mixed communities (see para. 298 above).

345. One of the areas which would be directly affected by the amendment to the Group Areas Act, if enacted, is Lawaaikamp which was declared a "Coloured Group Area" on 12 July 1987. Lawaaikamp is an informal settlement of about 2,000 people outside George in the southern Cape. It has been resisting attempts by the local municipality to remove it for two years.

346. Despite the Government's claims that recent removals were carried out "for development purposes", the representative of the National Committee against Removals affirmed that that was not true of Lawaaikamp, since the Government had systematically objected to "upgrading" it and had planned to move the community to a resettlement township called Sandkraal. The latest deadline for the removal of blacks was 31 May 1988, and the population had ignored it, declaring that they had been there for over 40 years and regarded the land as their own.

347. In the latest bid to have the community removed the municipality has applied to the Supreme Court for eviction orders on the basis that the municipality is the owner of the land; if this argument is accepted it will further erode the right of black people to own land and choose where they should live.

348. Witnesses stated that the case of Lawaaikamp was very important because, in the light of the proposed Bills, other settlement camps in the southern Cape would be affected by the outcome of the case.

(c) The situation in the townships

349. The one area of black resistance that the South African Government has been unable to break under its nation-wide state of emergency, is the rent boycott by blacks in the townships particularly in Soweto, the largest township in the country.

350. For the last two years, the Government has tried to serve summonses on those who defaulted on their rent. It has become common for council officials backed by security forces to raid houses and demand spot payment of rent in arrears. If the residents do not pay, they face eviction or confiscation of their belongings. Electricity and other services are summarily cut off.

351. Among those who were evicted in February 1988, were a sick man and his wife who were evicted from their home in Soweto despite paying part of the rent arrears. Another couple living in the same township claimed that their doors were wrenched off and seized by council officials who raided their home for non-payment of the previous week's rent.

352. The Sowetan of 12 September 1988 reported that a 71-year-old crippled and ailing pensioner, who had occupied the same house in Atteridgeville, Pretoria for almost 40 years, was evicted on 8 September 1988 for owing rent. The crippled pensioner, who slept outside her house with her nephew, stated that she had rushed to town to get money from her son after the council had cut off her electricity supply because she owed rent. She showed The Sowetan the August receipt as proof of the amount of money she has paid.

353. It was reported that between March and May 1988 a total of 70 families had been evicted from Lekoa in the Vaal Triangle township for not paying rent or service charges since 3 September 1984. The families, including pensioners, stated that their belongings were thrown into the street by a messenger of the court who was accompanied by security forces. Groups opposed to the Lekoa Town Council called on the authorities to stop the evictions and to consider the residents' demands, which included a reduction in rent to R 30 per month. At the time of adoption of its report, the Working Group had received no further information concerning this matter.

354. In another development, it was reported that the Town Council had resolved to increase water and electricity tariffs in the Vaal Triangle township subject to the approval of the director of local government.

355. According to the Weekly Mail of 13-19 May 1988, in a number of cases of eviction, the process-servers of the court failed to follow standard legal procedures. In connection with the attempts made by the Soweto Town Council to break the rent boycott, the press report referred to several statements made by the representatives of legal firms defending victims of evictions in Soweto, Tembisa and the Vaal. It also mentioned that in many cases defence lawyers had succeeded in restoring evicted families to their homes as the Council had been unable to substantiate its claims of rent in arrears or furnish "further particulars" requested by defence lawyers, in which cases eviction action did not proceed to court. According to lawyers, a number of

summonses had not been properly served on evicted families, resulting in the successful application to the courts by many families for rescission of judgement, which gave the family the chance to defend itself against eviction orders. Other evictions were allegedly carried out without the backing of a court order. For instance, 30 families had been evicted in Tembisa's Ethafeni Section since 11 May 1988 without eviction orders from the courts.

356. A report appearing in the City Press during the third week of May 1988 indicated that a Government ultimatum had been placed on local authorities (town councils) giving them until the end of June to collect rent arrears, currently estimated at R 400 million country-wide, or face possible reductions in staff, salaries and maintenance services.

357. On 31 May 1988, about 800 Diepkloof Soweto residents reportedly proposed that they pay a maximum monthly rental of R 15 and a flat rate of R 30 for both water and electricity as a way of ending the current rent crisis. The residents also agreed that all the arrears from June 1986 - when the rent boycott started in Soweto - should be written off. These proposals were made in response to those put forward by the administrator of Diepmeadow, referring to a five-year plan under which residents would pay off their arrears in instalments agreed upon with the township managers, and would be given their houses free of charge. However, the co-ordinator of the Diepmeadow Residents Committee stated that when residents first occupied those houses, it had been agreed that they would assume ownership of them after 10 years.

358. According to The Sowetan of 3 June 1988, the application to receive pension money by an elderly Soweto woman, Mrs. Anna Nkutha, 70, was allegedly turned down because her son owed rent. Mrs. Nkutha, originally from Alexandra, came to Soweto after the death of her husband in 1988 and was staying with relatives. Repeated attempts to include her in the house permit of her relatives drew a blank, as officials of the White City council offices demanded that the outstanding rent be paid first.

(d) Incorporation into "homelands"

359. Another facet of the Government's forced removals policy emerged in its plans to incorporate areas as well as populations into "homelands". An anonymous witness referred to the Government's decision in February 1985, to suspend forced removals. At that time, the incorporation of some 30 areas into "homelands" was also reviewed. Recent developments, however, prove the State's intention of carrying on with its initial plans.

360. With reference to the consolidation of the "homelands", an anonymous witness stated that "one of the pillars of apartheid policy is the creation and maintenance of 'homelands', and the régime leaves no doubt that the future of black South Africans lies in the 'homelands'".

361. Several witnesses gave evidence on the cases of Moutse, Botshabelo, Oukasie, Mangope and several other areas where removals were effected with a view to incorporating the population into "homelands".

362. According to additional information, a step was made in 1987-1988 towards imposing so-called "independence" on KwaNdabele and QwaQwa. It was illustrated by the incorporation of Ekangala in the western Transvaal into KwaNdabele in December 1987, the incorporation at the same time of Botshabelo into QwaQwa, and an attempt to incorporate Moutse into KwaNdebele.

363. An anonymous witness (720th meeting) referred to the planned "independence" of KwaNdabele considering it as a very serious issue. The decision taken by the Government in 1986 had provoked massive resistance and demonstrations against it, with about 100 persons killed and several hundred detained. The resistance was so intense that the State had postponed the so-called "independence", although it had not been dropped from the agenda.

364. The witness also referred to the Pretoria Supreme Court decision of 20 May 1988, declaring the KwaNdabele government illegal and the elections unconstitutional, since women had been denied the vote.

365. In the same context, several witnesses referred to the opposition to the incorporation of Moutse into KwaNdabele, as also reflected in the last report of the Working Group (E/CN.4/1988/8). On 21 March 1988, the incorporation of Moutse into KwaNdabele was invalidated by an Appellate Court judgement which said that the move went against the logic of the apartheid legislation. The Court ordered that the 120,000 black inhabitants of Moutse - in northern Transvaal Province - could not forcibly be made citizens of a "homeland" created for a different tribe. Following the Court ruling, the State tried to override the decision, but was forced to appoint a one-man commission to look into the future of Moutse.

366. In December 1987, the Government declared that the vast resettlement area of Botshabelo, near Bloemfontein, had been incorporated into QwaQwa, 330 km away. An anonymous witness (718th meeting) stated that the incorporation of Botshabelo was partial: administrative and executive jurisdiction was transferred to QwaQwa from the central Government, while it retained many services. This contradictory arrangement by the central and QwaQwa governments seemed to have been decided upon because the affected community of 400,000 people opposed and rejected such incorporation. The witness considered that the inability of the tiny, impoverished "homeland" to carry the second largest black township in South Africa, and the legal implications involved might have forced the authorities to that kind of "piecemeal" incorporation.

367. After the "partial incorporation" of Botshabelo had been proclaimed on 2 December 1987, an application opposing the move had been heard in court in March 1988. On 26 August 1988, the Supreme Court of Bloemfontein reportedly granted an order nullifying the incorporation of the 400,000 Botshabelo community into QwaQwa "homeland". The court said that QwaQwa and Botshabelo had undergone completely different political processes, and it concluded that the incorporation of Botshabelo into QwaQwa could not in any way promote the political development of either group.

368. On 28 April 1988, an official decree declared Oukasie an "emergency camp" under the Prevention of Illegal Squatting Act. Oukasie is a 55-year-old black township on the outskirts of the conservative white town of Brits, north-west of Pretoria. It is a "black spot", deemed to be inconveniently situated by the white authorities, as the white group area was being extended in its direction, and local residents wanted the population of Oukasie removed.

369. In 1985, the Government decided to remove the population to Lethlabile, near Bophuthatswana, probably with the intention of incorporating it into the "homeland". Between December 1985 and 1988, one third of the population of Oukasie had moved, and the remaining 8,000 were determined to stay.

370. Pointing to the Government's steady policy of overruling court decisions with which it disagreed, an anonymous witness (720th meeting) indicated to the Working Group that, in April 1986, a Supreme Court decision had forced the local authority to allocate vacant sites and plots to the residents of Oukasie, which had severely undermined the State's removal strategy in the area. However, in October 1986, the State had "disestablished" the area and declared it was no longer reserved for black occupation, thus nullifying the Court's decision. By declaring Oukasie an "emergency camp", the Government had sealed it off from outsiders, the witness charged, and it had effectively been turned into a ghetto. The authorities had set up permanent road-blocks and the superintendent was empowered under the decree to exclude everyone except residents and State officials. Rents had increased by 60 per cent, even though the township had only the most basic facilities: bucket system, outdoor taps and no electricity. Strict regulations had been applied, and if the inhabitants infringed them they would have their residence permits revoked and be obliged to leave within four weeks.

371. The same witness stressed that the new Government strategy was to force people to leave "voluntarily", replacing the former policy of simply using bulldozers to destroy a township, and lately the pressure on the inhabitants had been mounting. In February 1988, 19 leaders of the community had been detained for 3 months, and there was a constant police presence in the township to enforce the "emergency camp" regulations.

372. Responding to questions concerning the effects of removal on Oukasie people, the witness indicated that the alternative location offered to the people was 24 km away from the nearest employment, which would add considerably to their working day. However, he thought that the effect would be more profound on the unemployed. There was much unemployment in the region and the removal would mean that people could no longer take on casual jobs, as they would be too far from the town. Also, the social network which had developed to assist the unemployed, like gifts of food from neighbours would be destroyed and families would be separated. He further added that approximately 50 per cent of the township residents were unemployed and, for them, life would be a lot worse in Lethlabile.

373. The witness next referred to the case of Koster in the western Transvaal, a village of some 600 families which had been in existence for 60 years, approximately 130 km west of Johannesburg. The white population wanted the blacks to be removed to a new settlement, some 700 m up the road. With regard to the effects of removal on Koster people, the witness stated that their living conditions would deteriorate because some had built sizeable homes over many years, into which they had sunk their savings, and those homes would be destroyed. They would be living in very cramped, Government-built houses.

374. The attention of the Working Group was also drawn to other forced removals, including Tshikota, also known as Louis Trichardt, with approximately 6,000 residents. The Venda-speaking people have been moved to a place called Vleifontein, which was subsequently incorporated into Venda; the Shangaan-speaking people were moved to a place called Waterval, which is part of the "homeland" of Gazankulu, and the Pedi-speaking people were moved to a place called Seshego, 177 km away, which is part of Lebowa.

375. The Government's commitment to the "homeland" system was underlined by the transfer in 1987 of large areas of land and those who lived on it to the

administrations of the "non-independent" "homelands", and the devolution during the year of greater powers of repression. The report of the International Defence and Aid Fund published in May 1988 indicated that the measures were part of a change in the powers and status of the "non-independent" and "independent" "homelands".

376. The very limited "autonomy" of the "independent" "homelands" was further reduced during the year by measures imposed by the Government in response to financial crises within the administration of the Transkei, Bophuthatswana and Venda "homelands" - more finance was provided in return for tighter central controls.

2. Conditions in the "homelands" and resistance to the policy of apartheid

(a) Conditions in the "homelands"

377. Replying to questions related to conditions of life in the "homelands", an anonymous witness (720th meeting) pointed out that one of the problems for the residents in a "homeland" was the reluctance of the South African Government to allow industrial development. The industry was situated in the Pretoria-Johannesburg-Witwatersrand area, so that workers had to commute between three and six hours a day to their work, starting at 4 a.m. or even earlier, and returning at 8 p.m. The resources and infrastructure of a "homeland" were less than those allocated to urban areas. Rural dwellers had a long walk to fetch water, received inferior education and lower pensions. Although many families had to depend on pensions, no new pensions had been paid out in Lebowa since 1984.

378. The witness added that, in the "homelands", the police and security forces were more repressive than in South Africa proper. Their leaders had little popular support and were kept in power by the security forces. Their resources came from taxation of the local population, although the tax base was low. All "homelands" depended on the central Government which gave them vast amounts each year. They also had a major source of income in the casinos they had set up, since casinos were prohibited in South Africa proper. The witness further emphasized that citizens of the "homelands" lost their South African citizenship. It should be recalled that the Restoration of South African Citizenship Act, enacted on 1 July 1986, provided that, subject to certain stringent conditions, citizenship of South Africa was to be granted on application to certain citizens of the Transkei, Ciskei, Venda and Bophuthatswana "homelands".

379. Rev. Edward Morrow, the representative of the Namibian Chaplaincy in Europe (708th meeting), stated that, while travelling in eastern Transvaal, he had noted how people were forcibly dumped in KaNgwane, Gazankulu and Lebowa "homelands", with few opportunities for education or employment and widespread poverty. In KaNgwane, the "homeland" of members of the Swazi tribe, he had seen rows of tin toilets provided for the settlements there, residents were far from any towns and therefore far from employment opportunities; road-blocks were set up between the "homeland" and the towns, and he had seen children begging at the roadside.

380. The witness was told of police and army brutality in that region towards children boycotting the schools and it was alleged that many were killed or

injured. He referred to the demonstrations which took place in the "homelands" of KaNgwane and Lebowa and indicated that three people had taken refuge in his house after their homes had been bombed. They had subsequently been detained without trial.

381. Many witnesses, including residents of "homelands", referred extensively to the extreme poverty due to the lack of resources and unemployment in the "homelands", and to the corruption of the rulers. That was stressed by an anonymous witness in the following statement: "The areas set aside for the 'homelands' are mostly unsuitable and economically just not viable, so there is less land and people are crowded together with less access to material resources. Living conditions are very poor, and that certainly leads to starvation and disease".

382. Referring to the "administrative" removals, where communities were put under the jurisdiction or administration of a "homeland" government, the same witness stated: "There is a lot of corruption in the 'homelands' governments and they are prone to use much more repression than the central Government, because they are not sensitive to the reactions of the international community. Their interests are local, their politicians are interested in personal gain and status. There is also the fact that the communities affected find it difficult to gain access to courts or to any forum where they can protest or air their complaints and dissatisfaction".

383. On 25 July 1988, a commission of inquiry into the Transkei Department of Works and Energy recommended the extradition from Austria of former Transkei Chief, Mr. George Mantanzima, who had fled to that country earlier in the year. It was alleged that Mr. Mantanzima faced charges of corruption involving an amount of R 2 million. His whereabouts were still unknown.

384. In a related development, the Citizen of 23 August 1988 reported that the former Director of the Transkei Industries Board, Mr. Bonzani Soldati, attached to the Department of Industry, Commerce and Tourism, and Mr. Kenneth Magidigidi, a businessman, appeared in the Transkei Supreme Court on 63 counts of fraud and theft. According to the indictment, Mr. Magidigidi had collected incentive benefits on the part of eight non-existent companies, and had received inflated incentive benefits on the part of another company. The total amount involved was alleged to be at least R 1,570,549 and it was claimed that the affair had cost the Transkei government well over R 20 million. A postponement of the proceedings was turned down, and the trial was scheduled for 14 September 1988.

(b) Resistance to the policy of apartheid

385. The Working Group of Experts received a variety of evidence and communications describing the continuing violent repression of resistance in the "homelands", most prominently in KwaZulu and KwaNdebele. In the Pietermaritzburg area in Natal, where the control exercised by the "homeland" leader, Chief Buthelezi, had been eroded by growth in support for the UDF and COSATU, violence initiated by Inkatha allegedly claimed the lives of an estimated 270 people during the year, most of them members of COSATU or UDF affiliates.

386. In KwaNdabele "homeland", "scores of residents" were reported to have been detained during February 1988, in a continuing attempt by the authorities

to defeat the anti- "independence" campaign. Among those detained were four members of the Congress of Traditional Leaders of South Africa, which was launched on 22 September 1987. The Congress, affiliated to the UDF, provided an organizational voice for the opposition to "independence" being imposed on the area.

387. On 5 February 1988, Prince J. Mahlangu was served with a banning order under the emergency regulations, restricting him and his family to his home and prohibiting him from leaving the "homeland", holding press interviews, or preparing material for publication. The order was served shortly before he was due to address a meeting of thousands of people.

388. Shortly afterwards, at least four chiefs as well as "scores" of other opponents of "independence" were detained under the emergency regulations. A senior magistrate and a former school circuit inspector were among those detained. At least 15 traditional leaders allegedly fled the area after being summoned to a meeting by the authorities, who told them they would be dismissed from their positions if their opposition continued.

389. According to the information received by the Working Group, Prince James Mahlangu, Chairman of the Ndzundza Tribal Authority in KwaNdabele, was detained on 2 May 1988 under the Internal Security Act, and the police were investigating charges against him under security laws. Prince Mahlangu, known for his stand against the "independence" of KwaNdabele, applied a week earlier for the dismissal of the current "self-imposed" Executive Committee of the Ndzundza Tribal Authority, including Mr. Maguzi George Mahlangu, Chief Minister of KwaNdabele. The application was made in the Pretoria Supreme Court and was postponed sine die.

390. A Sowetan report published on 26 May 1988 stated that the Appeal Court has been asked to set aside an Act of Indemnity passed in 1986. The Lebowa Indemnity Act came at the height of large-scale uprisings in the "homelands" which were brutally suppressed by the Lebowa police. At least eight people allegedly died in police-related incidents, while thousands were injured. Hundreds of cases were brought against the police with claims estimated at over R 4 million. Reportedly, it was in response to these claims that the Lebowa Legislative Assembly passed the Act in December 1986 but made it retrospective to July 1985.

391. The Act nullified all criminal and civil action against the police or government officials as a result of the uprising. It was unsuccessfully challenged in the Pretoria Supreme Court in 1986; an appeal against the decision was heard in the Appellate Division on 23 May 1988, but judgement was reserved. In court, the counsel for the appellant, Mrs. Thimbi Makhasa, challenged the powers of the Lebowa Legislative Assembly to enact the law. The counsel also argued that the Act was ultra vires in that its application amounted to an amendment to the "homelands" constitution, an amendment which the Lebowa Legislative Assembly was not empowered to make.

392. It was later reported that the Chief Minister of the "homeland", Mr. Ramodike, had decided to terminate the services of the Minister of Public Works, Mr. Duba, with effect from 19 July 1988. Such a development followed a Supreme Court action brought by Mr. Duba to restrain a select committee of the Legislative Assembly from investigating his activities while he was Minister of Law and Order. Members of Parliament allegedly accused

Mr. Duba of recommending and effecting irregular appointments and promotions in the police department while he was fulfilling his former functions.

393. On 10 February 1988, South African army troops moved into the so-called "independent homeland" of Bophuthatswana and crushed a military coup that had overthrown the "homeland"'s president. In a statement before the Parliament, the South African President, Mr. P. W. Botha, pointed out that he ordered troops into the "homeland" because he opposed the forcible seizure of power and because Bophuthatswana officials had asked for help. A statement by "homeland" army commanders charged that the general elections held on 27 October 1987 had been fraudulent and that Mr. Mangope's administration was deeply involved in corruption. The brief coup was the second in six weeks in a "homeland", after the bloodless military coup which took place in Transkei in December 1987, allowing the successful ouster of the Prime Minister, Miss Stella Sigocau. In a related development, it was further reported that a massive police search in Bophuthatswana following the abortive coup resulted in more arrests on 15 February 1988, bringing the total number held to 374. According to the reports, Col. David Georges, the police liaison officer for the "homelands", refused to comment on allegations that most of the people arrested were members of the Progressive People's Party to whom the military "entrusted" the Government after seizing control.

394. According to a statement released by Attorney-General van Wyk on 2 March 1988, there was still no decision on the prosecution or release of 19 detainees held in Venda since May 1987. They were allegedly detained over a period from May to September 1987, and some of them had already spent nine months in solitary confinement. They were being held at various police stations under section 29 of the Maintenance of Law and Order Act. According to the security police chief, the files were submitted to the Attorney-General in November 1987 for his decision on possible prosecution. The Office of the Attorney-General stated that the files were still under study and that the detainees could appear in court at the end of June 1988. No information had been received before publication of the present report.

395. A report appearing on 19 August 1988 indicated that alleged ritual murders and widespread political disaffection have combined to plunge the tiny northern Transvaal "homeland" of Venda into its most serious crisis in nine years of "independence". For the first time, students and workers have joined forces in staging a crippling stay-away which lasted for three days and affected up to 90 per cent of industry and commerce. It was reported that the dismissal of the Justice Minister and the appointment by the "homeland" President of a commission of inquiry into the ritual murders has not cooled the ardour of the protesters, nor did the appearance of 27 people in the Thohozandou Magistrates Court on charges of incitement bring the dissent under control.

396. Venda police have mounted road-blocks and thrown cordons around government buildings. On 18 August 1988, church leaders met police officials to discuss mass detentions of students and allegations of widespread torture. The precise nature of the opposition remained ambiguous, however political observers noted that the pressure on the "homeland" administration came from disparate sources united by a complex of grievances including ritual murders, nepotism, and allegedly rife corruption among the "homelands" authorities.

III. RIGHT TO EDUCATION, FREEDOM OF EXPRESSION, FREEDOM OF MOVEMENT AND RIGHT TO HEALTH 6/

397. On 10 June 1988, the State President of the Republic of South Africa once again proclaimed a state of emergency to cover the entire Republic (Proclamation No. R.96, 1988). In the context of this state of emergency, the Educational Emergency Regulations (Proclamation R.99, 1988) and the Media Emergency Regulations (Proclamation R.99, 1988) were announced. These Proclamations on the one hand widened the means of control for the Director-General of Education and Training, and on the other imposed strict censorship and granted ample powers to the Minister of Home Affairs. The right to education and the right to freedom of expression have been severely hampered by these new emergency regulations. These rights must, therefore, be seen in the context of the emergency regulations.

398. Based on the information transmitted to the Group, the present chapter will deal successively with the right to education, the right to freedom of expression, the right to freedom of movement and the right to health.

A. Right to education

1. General

399. The previous report of the Group reflected one of the major concerns expressed by the black population in South Africa, namely the discriminatory structures of the educational system, with separate and inferior schools provided for black children (E/CN.4/1988/8, para. 239).

400. An anonymous witness (717th meeting) appearing before the Working Group stated that, "the same division appeared in education as in the rest of the social structure: white, Coloured, Asian and black, with the black South Africans being further subdivided into 21 tribes. All those divisions had their own separate education with different content, textbooks, curriculae and the mass media".

401. A written statement submitted by the same witness emphasized the racist nature, poor teaching and inadequate allocation of resources and facilities of the State educational system.

402. While white children receive a free education until the age of 16, black children still have to pay fees. In that respect, the representative of the South African Council of Churches (714th meeting) observed that, after 1976, the first four years of schooling for blacks was supposed to be compulsory but the law was not enforced and, "in any case, since education was not provided free, parents would be unable to take advantage of it even if it were enforced".

403. In a written statement, the same witness indicated a high attrition rate concerning those who could no longer afford education: in 1987, 42 per cent of the black population had access to only four years of primary education, and 24 per cent had only one year of primary education. In 1987, enrolment of 6.6 million schoolchildren had included 51 per cent black children in the first four years of secondary school, and 32 per cent white. In the final years, blacks represented only 5.7 per cent, and whites 15.7 per cent.

404. According to a report released on 22 March 1988, the overall budget figure for black education increased by only 10.28 per cent in the year - from R 1.48 billion in 1987 to R 1.64 billion. That figure reportedly hid a substantial cut in auxiliary and associated services which had been transferred to other government departments. In a related development, it was earlier reported that on 2 March 1988, the Minister of Education and Culture, Mr. Piet Clase, indicated in the House of Assembly that 58 white schools and 14 hostels were either not being used or were used for other purposes. He stated that at least 24 schools, including 19 in the Cape, were unused and that others were left to various government departments, including the South African Police and South African Defence Forces, as well as to private organizations. In its quarterly publication for 1987, the Institute for Race Relations estimated that there was a shortage of 38,641 class-rooms for African pupils in the country, including the "homelands". That meant that there was a shortage of at least 2,000 schools in the black community if one school consisted of between 15 and 20 class-rooms.

405. According to the information received by the Working Group in February 1988, hundreds of students were turned away from township schools in Port Elizabeth, Uitenhage, Grahamstown and Graaff Reinet because of lack of space. According to the Eastern Cape Education Crisis Committee and the Eastern Cape Students' Council, the crisis has arisen because schools damaged during the 1984-1986 school boycott have not been rebuilt. The two crisis committees criticized the resolutions taken by the Department of Education and Training (DAT), which provided for a limit on student numbers and a ruling that students should be accompanied by a parent in order to register. They also criticized the decision to allow school principals to set compulsory school fees.

406. On 4 March 1988, 175 children had reportedly been left stranded in Vereeniging after the former mayor of the town closed down the school on his plot and sent the two women teachers away. The closure meant no more schooling for the children, who had been attending classes in a stable offered by the mayor to the farm workers' community in 1982. Justifying his decision, the plot owner said that he closed it down because, since 1986, the children had caused damage to his property amounting to R 12,000.

407. According to the information available to the Working Group, the shortage of accommodation was accentuated by the State policy of locating black high schools in the "homelands". This was a further attempt by the State to restrict secondary school education to a small minority. In his statement before the Working Group, Rev. Edward Morrow, the representative of Namibian Chaplaincy in Europe (708th meeting), cited the case of the township of Sabie, in eastern Transvaal, pointing out that there was no high school for black children, although the high school for whites was half empty. The Coloured children had to attend a school at Middelburg, 200 miles away from home. The representative of the South African Council of Churches (714th meeting) drew the attention of the Working Group to the fact that, in the past, blacks had set up alternative structures in areas where they saw that the Government was not providing them with services; the National Education Crisis Committee (NECC) had organized alternative schools, and various street committees had maintained order in the townships. "All these had now been crushed and the leaders were in gaol, since the Government had regarded them as subversive, although their aims had been entirely peaceful."

408. With regard to the disparity in quality of the education imparted to whites and blacks in technical schools and at universities, an educationalist appearing before the Working Group (717th meeting) emphasized that almost all universities were segregated along racial lines and, further, by use of either English or Afrikaans. Over the past 10 to 12 years, English-speaking universities had been admitting up to 20 per cent black students, taking advantage of a loophole in the law. Some professors and academics believed in multiracial universities. According to his statement, possibilities for training in industrial technology were very limited for blacks: there were only about 20 qualified black engineers in South Africa, and 15 black dentists. Out of some 150,000 black children who took their final examinations at high school, only 40 per cent would pass at a level which would enable them to go on to university, and only a few of them would have studied mathematics or science, so that their choice was further limited.

409. Responding to questions related to the shortage of black lawyers in South Africa, an anonymous lawyer (724th meeting) stressed that, while there were 400 black lawyers in South Africa, there were about 8,000 white lawyers. Some 20 blacks graduated each year as lawyers, taking all universities together, whereas white graduates numbered from 80 to 100. The witness further referred to his personal experience, stating that the Bantu education had not supplied him with a sufficiently strong basis of knowledge to allow him to compete: he had needed to follow remedial programmes on his own. He also indicated that law studies were not the same for black and white students. Most law students tried to get into one of the white liberal universities. Black universities had no lecturers at all on some subjects - for example, on labour law. At the University of the North there had been one set of law reports for the whole class. As a black, the witness added, he could not establish an office in town without a permit since, being a black person, he had to live in a black township and commute to town. On the question of his education, he stated that he had approached a memorial trust for a grant, had got a job some six months after graduation, and spent two years in a black company before he was admitted as an attorney; during that time he had paid off the loan. Another witness (721st meeting) stated that her standard X in history would be equivalent to the white standard VIII. Due to such an imbalance, there was a high failure rate of black students at university as their level of understanding was much lower.

410. Another main issue due to the limited allocation of funds was inadequate teaching. At school level, the situation appears to be more critical in the Bantustans, representing 60 per cent of the whole school population. Quoting Ciskei as an example, a witness (717th meeting) stated that in 1985 and 1986, the amount per capita spent on the education of each child was R 214, and in KwaZulu, R 149. The teacher/pupil ratio in KwaZulu in primary education was 1:53 and in secondary education 1:36.

411. Besides being underqualified, most black teachers are very poorly paid. According to information received by the Working Group, 41 East Rand teachers had allegedly downed tools at the Tembisa Adult Centre on 17 May 1988, claiming that they had not been paid since January of that year.

412. On 21 May 1988, it was reported that a motion was unanimously adopted by the Committee of University Teachers Association (CUTA) stating that the Committee was disturbed by the "total deterioriation" of the service conditions of teachers at universities. CUTA said it had completely lost

confidence in the readiness and ability of the Government properly to define and handle the "already pressing and worsening financial position of the academics at universities". CUTA appealed to the authorities to improve the service conditions of university teachers so as to achieve at least parity with the rest of the public sector; this included adjustments of between 50 and 100 per cent.

2. Student protests

413. As previously indicated, the focus of student protests remains basically the State educational system. However, a report entitled "The State of Education in South Africa 1976-1988" claims that, "while the focus was educational issues, students in significant ways related their educational struggle to the broader political struggle of the black communities".

414. A number of school and university students appearing before the Working Group referred to class boycotts which hit several schools and institutions in different towns of South Africa during the period under review.

415. Grievances raised by students centred on: (a) the presence of security forces on school premises, (b) the continued detention and harassment of teachers and pupils in Coloured schools; (c) the sacking and suspension of several teachers in black schools, and (d) the fact that several hundred students had been denied readmission to black schools after their release from detention.

416. Proclamation R.131 of 13 July 1980 declared the right of any member of the police or the South African Defence Forces (SADF) to enter school premises at any time. That stipulation had been further reinforced on 10 June 1988, by Proclamation R.100 (see paras. 424, 425, 438-440 analysing Proclamations R.99 and R.100).

417. In a statement related to this matter, an anonymous witness pointed out that children had to be escorted to the gate and identify themselves each day to the soldiers. Members of SADF might enter without the permission of the principal, making arrests in class-rooms.

418. The presence of security forces units on school premises contributed to the multiplication of class and lecture boycotts at schools and institutions country-wide during the period under review.

419. On 22 February 1988, 1,700 students from the Northern Transvaal Technikon in Soshanguve were reportedly sent home by the acting Rector following a class boycott. The boycott followed an incident which occurred four days earlier when students were allegedly assaulted by members of the South African police, the security police, "Kitskonstables", and white campus controllers. Members of the Students' Representative Council claimed that at least 68 students were severely assaulted and some had to receive medical treatment; two of them were said to be in a critical condition.

420. On 22 April 1988, it was reported that thousands of pupils in a number of western Cape schools engaged in stay-aways, demonstrations, rallies and marches, clashing violently with police. Pupils reportedly set up a burning-tyre barricade, stoned police and other vehicles, and were charged by police with tear-gas and batons in a number of incidents. Instructions issued

to principals in high schools in Michells Plain indicated a hard-line response by the police. The Regional Inspector of Coloured Education stated that police would keep the schools under continuous observation.

421. Subsequently, a class boycott started in 10 high schools in Soweto and Tembisa involving thousands of pupils. The class boycott followed the arrest and detention on 25 April 1988 of Mr. Mahambi, an English and history teacher at Tembisa High School, who was suspected of involvement in May Day celebrations. A teacher at Mapetla High School in Soweto was also believed to have been detained.

422. In May-June 1988, other boycotts were sparked off in many black high schools in protest against student detentions. Several secondary schools joined the class boycotting in sympathy with their detained colleagues.

3. Assessment of the state of emergency in relation to the repressive measures against students

423. The *Ad Hoc* Working Group noted that the Government continued to use the emergency and Internal Security Act legislation to impose restrictions and inflict severe punishment on students, particularly members of student organizations considered as agitators. Under the emergency regulations, the security forces were given wide-ranging powers to detain, enter, search and seize property with immunity from prosecution.

424. As already mentioned, the State President of South Africa proclaimed the Educational Institutions Emergency Regulations (Proclamation No. R.100, 1988) on 10 June 1988.

425. The following provisions are envisaged for restricting the presence of pupils and other people on school premises and the presentation of courses and syllabuses at the schools:

(a) The Director-General of Education and Training may, for the purpose of the safety of the public, the maintenance of public order or the termination of the state of emergency, and without prior notice to any person and without hearing any person, issue orders prohibiting:

(i) The presence of pupils on school premises at certain times;

(ii) The presence of other persons on school premises at any time;

(iii) The participation of pupils in certain activities;

(iv) The use of school property for certain activities;

(v) The presentation of any course or syllabus not contemplated in section 35 of the Education Act;

(vi) The obstruction of activities at school;

(vii) The possession or displaying of any article which is liable to be identified as mentioning any organization specified in the order;

(viii) The distribution of any material on a subject specified;

and enabling the regulation or controlling of the movement or activities of pupils on any school or hostel premises (Regulation 2(1));

(b) these orders may apply to all or only specified persons or groups, to all or only specified schools or categories of schools or certain areas and can be in force for an unlimited period (Regulation 2(2));

(c) these orders shall be either made known publicly or delivered to the particular person in writing (Regulation 3(1));

(d) the maximum penalty for an offence under the Educational Institutions Emergency Regulations is a fine of R 4,000 or imprisonment for a period of up to two years (Regulation 4).

426. Following on the Education and Training Act 1979 (Act 90 of 1979), the Educational Institutions Emergency Regulations tend to widen the means of control for the Director-General of Education and Training.

427. From the human rights point of view as established under articles 19, 20, 26, paragraph 2, and 27 of the Universal Declaration of Human Rights in relation to the rule of proportionality of restrictions of human rights, the following may be observed:

(a) Limiting the courses and syllabuses at schools to those contemplated in section 35 of the Educational Act does not seem to be in conformity with the right of freedom of opinion and expression;

(b) Prohibiting the presence of persons not officially concerned in the functions or activities of a school and the participation by a pupil on any school or hostel premises in certain activities is contrary to the right to freedom of peaceful assembly and association;

(c) The above-mentioned restrictions fail to comply with the principle that education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms;

(d) Including articles such as posters in a list of restricted possessions and excluding certain persons or groups from activities seems to violate the right freely to participate in the cultural life of the community, to enjoy arts and to share in scientific advancement and its benefits, as well as the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production for the author.

428. In conclusion, it can be stated that the Educational Institutions Emergency Regulations are designed to gain control of all movements and activities within school or hostel premises in order to prevent the spreading of any information not in accordance with the intentions of the Director-General of Education and Training.

429. In its previous report, the Working Group referred to the classification made by the Detainees' Parents Support Committee (DPSC), which demonstrates that, in 1987, the scholars, students and teacher group was the second most important target of all the categories with regard to detention under

the 1986 emergency. This group represented 33 per cent of total detainees, compared with 25 per cent under the previous emergency (E/CN.4/1988/8, para. 237).

430. An anonymous teacher (717th meeting) affirmed that since 1984, over 8,000 students had been detained and that the number was likely to rise as the Government tried to maintain control.

431. At a press conference organized by the Soweto Students' Congress on 25 May 1988, a student group claimed that more than 100 students from different high schools had been detained and their homes raided by police in April 1988. According to the students who monitor the detention of pupils in the three townships of Soweto, 91 pupils were detained by police in that area in May 1988. In a related development, it was earlier reported that on 11 May 1988, six schools in the Johannesburg region had been hit by class boycotts for the previous two days, due to the death of a student who was run over by a car and the detention of a number of pupils. On 12 May 1988, the detention of pupils in Soweto was confirmed by the South African Police Press Liaison Division. According to the Weekly Mail of 13-19 May 1988, pupils it interviewed stated that the students - believed to be mostly members of the Soweto Students' Congress - were arrested at their schools, at their homes at night or in the street.

432. In their statement before the Working Group, several students aged from 18 to 21 affirmed having been arrested at least once and detained for periods ranging from 1 week to 19 months. Some of them were under 18 when arrested for the first time. The great majority were subjected to physical torture and ill-treatment during interrogation.

433. Responding to questions relating to their detention, a number of students claimed that the police resorted to other means of intimidation: a 19-year-old student, detained in January 1986, was allegedly promised money in exchange for his release, if he agreed to become an informer at school. Following his refusal, the witness was harassed until March 1988, when he had to leave the country. Another student claimed that two of his brothers had been beaten and one of them detained while the police were attempting to find the witness' whereabouts.

434. A member of a student organization, aged 20 (730th meeting), stated that after he was released he could not settle down again since he was always being followed. Thus, he had to flee the country, interrupting medical treatment for a post-detention depression, because he feared rearrest.

435. Most student detainees said that they were denied access to a lawyer during detention. For the majority of students, detention meant the end of their studies.

436. Referring to student harassment, an anonymous witness (716th meeting) stated that students who had once been detained were suspended from school or expelled. He went on to say, "when this had been brought to the attention of the Minister, he had claimed that the school 'had no space', although others had been taken in during the school year". In addition, according to information available to the Working Group, a number of Soweto students formerly detained under emergency regulations have had their Matric results withheld.

437. Two witnesses (728th and 730th sessions) referred to the assassination, in August 1987, of Mr. Caiphas Nyokya, a student at Mbuya High School in the East Rand, Transvaal. Mr. Nyokya was the president of a student organization. He was allegedly shot in his home by members of a "special branch" of the police who entered the house wearing plain clothes.

B. Right to freedom of expression

438. In addition to the declaration of the state of emergency, Proclamation No. R.99, 1988 changed the media regulations which have been in existence since 1986-1987. While the provisions concerning the presence of journalists and other kinds of reporters at the scene of unrest or of security actions, the taking of photographs on such occasions and the publishing of subversive statements remain unchanged, new provisions were enacted concerning the prohibition of the publication of certain material and of the production, importing or publishing of certain periodicals, warnings regarding systematic or repetitive publishing of subversive propaganda, the continuation or substitution of prohibited periodicals and the registration of persons conducting news agency business. Together with the media regulations of 1987 (Proclamations R.97 and R.123) and R.7 of 1988, the rules impose strict censorship and grant the authorities ample power.

439. The provisions of the new media emergency regulations are envisaged to prevent the gathering and distribution of information concerning any unrest or security action in any possible form.

440. In particular, the following points are elaborated therein:

(a) Nobody covering events for the purpose of gathering news material for the distribution or publication thereof in the Republic or elsewhere, shall, without the prior consent of the Commissioner or his delegate, be at the scene of any unrest, restricted gathering or security action or at a place from where any unrest, restricted gathering or security action is within sight (Regulation 2 (1));

(b) People at the scene at the time of the commencement of the above-mentioned actions are required to remove themselves immediately to a place where that unrest, gathering or action is out of sight (Regulation 2 (2) (a));

(c) Nothing may be published in any form concerning any security action or any kind of deployment of a security force, any restricted gathering, any action, strike or boycott by members of the public, any unlawful structures, as referred to the definition of "subversive statement", any speech, statement or remark of a person who at any time has been the subject of proceedings under the Internal Security Act (Act 74 of 1982) or the Security Emergency Regulations 1988 or an unlawful organization, concerning the circumstances of detention or release of such a person (Regulation 3 (1));

(d) The Commissioner may, for the purpose of the safety of the public, the maintenance of public order or the termination of the state of emergency, and without prior notice to any person and without hearing any person, issue an order prohibiting any publication in connection with a matter specified in the order (Regulation 3 (3) (a));

(e) For the purposes of subparagraph (d) (Regulation 3 (3) (a)), the provisions of regulations 10 (2) and (4) and 11 of the Security Emergency Regulations, 1988, shall mutatis mutandis apply (Regulation 3 (3) (b));

(f) Nothing must be published in which a blank space could be understood as a reference to the effect of these regulations (Regulation 3 (5) (a));

(g) Publication of matters specified in sub-regulation (1) is allowed in so far as particulars of such matters are disclosed by an authorized official, appear in certain official documents or in certain judicial proceedings (Regulation 3 (6) (a));

(h) Nobody is allowed to take or publish pictures in any form of unrest or security actions without the prior consent of the Commissioner or his deputy (Regulation 4);

(i) Nobody is allowed to make, publish or import into the Republic material containing subversive statements (Regulation 5);

(j) The Minister is entitled to prohibit the production, importing or publishing of periodicals contravening any of the above regulations for up to six months; this order does not affect the registration of the periodical concerned as a newspaper in terms of the Newspaper and Imprint Registration Act, 1971 (Act 63 of 1971) (Regulation 6);

(k) The Minister may issue a warning in the Government Gazette to everybody concerned in the production, importing, compilation or publishing of issues of periodicals he finds to be publishing systematically or repetitively subversive propaganda, only if that periodical has never before been the subject of a warning under any media regulation; the warning states that in the Minister's opinion the periodical is causing a threat to the safety of the public, the maintenance of public order or is causing a delay in the termination of the state of emergency (Regulation 7 (1));

(l) Publication of periodicals which have already been the subject of a warning - even under a different name - in accordance to any media regulation can be ordered to request approval of every issue before publication or the publication can be prohibited altogether; both restrictions can only be ordered for up to six months at a time (Regulation 7 (3));

(m) Before giving a warning or ordering one of the above-mentioned restrictions, the Minister has to inform the publisher or importer of impending examinations and has to give him the opportunity of submitting to him in writing representations in connection with such examination (Regulation 7 (5));

(n) If the Minister is of the opinion that the safety of the public, the maintenance of public order or the termination of the state of emergency is in danger, he may issue an order prohibiting the production of the periodical for up to two months without hearing any person or giving prior notice (Regulation 7 (9));

(o) If the Minister is of the opinion that the publication of the periodical is continued, even under a different name, or the periodical is a substitute for a periodical subject to impending restrictions, he may extend these restrictions to the new periodical without prior notice or hearing of any person (Regulation 8);

(p) If the publication is continued in contravention of the above-mentioned restrictions or the Minister is of the opinion that any publication, film or sound recording represents a threat to the Republic he may order the seizure of such publication (Regulation 9 (1) and (2));

(q) The seizure has to be carried out by members of the security force authorized for this task; this security force may enter any premises necessary to carry out the order (Regulation 9 (4));

(r) The seized material shall be dealt with at the discretion of the Minister (Regulation 9 (6));

(s) If the Minister finds it necessary for the proper administration of a provision of these regulations, he may order the publisher or importer of a periodical to supply an official of the Department of Home Affairs free of charge with one copy of each published issue within one day of its publication in the Republic (Regulation 10);

(t) Nobody is allowed to carry on a news agency business unless he is registered with the Director-General (Regulation 11 (1));

(u) The application for registration has to specify information concerning not only the applicant and the proposed periodical, but also every co-worker (Regulation 11 (2));

(v) The registration may be withdrawn without prior notice if the Minister is of the opinion that it is necessary for the safety of the public, the maintenance of public order or the termination of the state of emergency; the registration of a person whose registration has been withdrawn or who was involved in a news agency business whose registration has been withdrawn may be refused (Regulation 11 (3) and (5));

(w) The regulation does not apply to specified international news agencies (Regulation 11 (7));

(x) The maximum penalty for offences under the Media Emergency Regulations is a fine of R 20,000 or imprisonment for a period of up to 10 years (Regulation 12);

(y) No prosecution for an offence under these regulations shall be instituted except by the express direction of the Attorney-General having jurisdiction in respect of that prosecution (Regulation 13).

441. In their testimonies before the Working Group, several witnesses referred to the new and stricter measures restricting freedom of expression and imposing severe controls on the media and the free flow of information on State activities in South Africa.

442. On 24 February 1988, a new Public Safety Law had been introduced, imposing restrictions on 18 non-governmental organizations and effectively closing down 17 of them. This measure was described as the harshest and most sweeping state of emergency crack-down since groups opposing white minority rule were outlawed in 1977 after the Soweto riots. In November 1987, the Chief of the Security Police, Mr. Johann van der Merwe, signalled the possibility of such a crack-down when he said that "legal radical

organizations" such as UDF and COSATU were of more concern to the police than illegal groups such as ANC. In December 1987, a similar statement was made by Mr. Adriaan Vlok, Minister of Law and Order. While addressing South African parliamentary correspondents, Mr. Vlok stated that the serious threat to security was coming from lawful radical organizations and individuals and that the legislation in force was not adequate for the security forces to dampen the "revolutionary climate".

44 . The special decree announced by Mr. Vlok also restricted COSATU to a p ely trade-union role. The 17 banned organizations included UDF which is the umbrella for more than 200 anti-apartheid associations, the Azanian People's Organization and its youth wing, South African Youth Congress, DPSC and NECC.

444. Under Proclamation R.23, of 24 February 1988, inserting Regulations 6A and 6B in the emergency regulations, the 17 banned organizations were allowed to exist and to fulfil their administrative and bookkeeping duties. However, under Regulation 6A, the Minister of Law and Order prohibited them from carrying on or performing any activities or acts whatsoever. COSATU was also prohibited from engaging in a wide range of specified political activities. According to several witnesses, the restrictions on those organizations crushed all remaining non-violent opposition to the apartheid régime and meant an end to the possibility of peaceful dialogue between South Africans and different races.

445. Under Regulation 6B, the Minister of Law and Order served restriction orders on 13 people belonging to UDF, the Release Mandela Campaign, the Saamsten newspaper and a Methodist leader from Maritzburg. Four other people belonging to anti-apartheid organizations were released from detention and restricted under the same Regulation. According to the information transmitted to the Working Group, two of the three UDF co-Presidents, Mr. Archie Gumede and Ms. Albertina Sisulu, have been confined to their houses at night (see para. 446 below).

446. On 1 March 1988, Mr. Hendrik Coetsee, Minister of Justice, introduced legislation in Parliament which provided for the imposition of strict controls allowing the Government to regulate the flow of foreign funds to any opposition organization. The proposed legislation, the Promotion of Orderly Politics Bill, prohibited donations from abroad by any individual or group for a "political aim or object". It also provided that any person who "says or does anything" that can be construed as fomenting hostility or violence between racial groups will be liable to prosecution and two years' imprisonment upon conviction.

447. According to the information received by the Working Group, a joint Parliamentary Committee met on 27 May 1988, to investigate the Funding Bill and as a result it appears that the legislation was being shelved in favour of the Funding Disclosure Bill which would require non-profit organizations to disclose all foreign contributions and to have audited accounts. However, the proposed controls on foreign donations continued to represent a threat which could jeopardize the operations of such anti-apartheid groups as the South African Council of Churches (SACC), which depends heavily on foreign donations. The representative of SACC stated before the Working Group that, "the Council was now the only organization left unbanned which could attend to the violation of human rights, and 96.6 per cent of its funding came from

abroad", and that, "if the Bill were enacted, it would mean the death of SACC in terms of service rendered". He appealed to all external sponsors of the Council to organize opposition to that Bill.

448. On 31 March 1988, the Minister of Justice ordered the extension of the ban on all outdoor meetings (except funerals and sports gatherings). The ban has been annually renewed since 1976. As in the past two years, all indoor gatherings which advocated educational boycotts or work-stoppages or stay-aways have also been banned. The ban covers the period 1 April 1988 to 31 March 1989. Referring to this ban, an anonymous witness (715th meeting) stated that even funerals were included: "the State might say how many people should attend it, who should attend it, and even where the burial might be".

449. In his statement before the Working Group (709th meeting), Mr. Aidan White, the representative of the International Federation of Journalists (IFJ) referred to the crisis caused by censorship, pointing out that the South African Government had held foreign media responsible for the deteriorating situation in the country. Hence, the increased restrictions on the media seemed intended to ensure that no politically adverse reports on South Africa should reach the outside world.

450. In the context of the previous state of emergency, Proclamation R.7 of 15 January 1988, amended Regulation 7A of the media regulations published in Proclamation R.123 of 28 August 1987, by the insertion of new clauses. As a result of these amendments, the Minister of Home Affairs is not obliged to indicate what form of action is being considered against a publication. The Minister is also not obliged to disclose anything to a publisher or importer of a publication, except a list indicating articles, reports, photographs, etc. which the Minister is taking into account. Nor is the Minister obliged to disclose anything other than "an indication why each item is being taken into account".

451. Shortly after the application of Regulation R.7, three newspapers had been threatened with closure: the Weekly Mail, New Nation, and South. Two papers, New Nation and South, had been suspended for three months respectively on 22 March 1988 and 9 May 1988. During the same period five other newspapers had been given notice that their closure was imminent.

452. With regard to the Weekly Mail, reports appearing on 1 November 1988 pointed out that Mr. Stoffel Botha, South Africa's Minister of Home Affairs, had ordered its suspension until 28 November 1988. Referring to his decision, Mr. Botha declared that the newspaper had been closed down because it "continued with a systematic or repetitive publishing of matter which in my opinion has, or is calculated to have, the effect of causing a threat to the safety of the public or to the maintenance of public order". The Government banned the publication of the newspaper for an initial four-week period, after which its future was to be reviewed. Its publishers were given no right to appeal.

453. The far-reaching regulations imposed under the new state of emergency which took effect on 10 June 1988, included all the previous restrictions laid down in 1986 and 1987, with a number of new controls in the media emergency regulations made in terms of the 1953 Public Safety Act. Under the new regulations, newspapers may not promote the "public image or esteem" of the 17 organizations restricted in February 1988, under the previous emergency

regulations. Similarly, newspapers could not carry statements advocating boycotts of the forthcoming local government elections which were to include black people for the first time. The same restrictions affect the general public.

454. The latest proposed media legislation was to oblige news agencies and the journalists to register with the Department of Home Affairs. The first deadline for news agencies to register was 31 July 1988. There was consensus that the primary targets of the Government actions were the "alternative news agencies" and South Africans who worked for the foreign media. According to Mr. Aidan White (IFJ), "the Journalists' Register would cover more and more people to the point where the Government would have the final say in who might work as a journalist". He added that, "since the beginning of the state of emergency two years ago, the Government has attacked foreign correspondents, photographers and the 'alternative press'; now that attack is being extended to those who provide information to journalists".

455. None the less, according to media law experts, the new controls over news agencies had been poorly drafted and were so wide-ranging that probably all 40 of the liaison offices of the various sectors of the Government would fall within their ambit, including the Government's Bill of Information, the South African Police Division of Public Relations, that of the South African Prison Service, and the State Security Council. The only provision was that the information they circulated would have to be news material, which meant that any individual or organization that regularly provided material for publication to more than one outlet would fall within the new controls.

456. Under the new regulations, registration may be censored "if the Minister is of the opinion that it is necessary for the safety of the public, the maintenance of public order or the termination of the state of emergency". Registration means that the agency will no longer be able to perform its work, and the Minister has the sole discretion to refuse re-registration.

457. Several changes have also been reported as to the procedure to be followed by the Minister of Home Affairs with regard to banning a newspaper, periodical or publication. The new regulations empower him to ban for up to six months any publication which is not registered as a newspaper. Under the former regulations, the Minister could ban a regular publication if a single issue was found to be undesirable after it had been warned against publication of "subversive material". The new regulations require him to analyse two issues of the publication before banning it.

458. With regard to the regulations promulgated on 10 June 1988 in general (see para. 440 above), failure to comply with any order issued under the regulations carries a maximum penalty of R 500. In many cases the penalties are high: a maximum fine of R 20,000 or imprisonment for up to 10 years. No prosecution for an offence under the media emergency regulations may be made except on the direct orders of the Attorney-General.

459. On 28 July 1988, it was further reported that the Minister of Home Affairs and Communications, Mr. Stoffel Botha, had announced that having considered "various representations" and "due to practical considerations", it had been decided temporarily to suspend Regulation 11 of the media emergency regulations (requiring all "news agencies" to register by 31 July) pending further investigation of the matter.

460. Two witnesses expressed their concern about the increased repression of journalists (750th meeting). The representative of IFJ indicated that 21 journalists had been detained between 1980 and 1982. He referred to Mr. Swelake Sisulu, Editor of the New Nation and President of the Media Workers' Association of South Africa (MWASA), who was held for nearly two years without charge or trial. According to The Guardian of 3 December 1988, Mr. Sisulu was released on 2 December 1988 and placed under a banning order restricting his freedom of movement as well as his right to work. The order prohibited Mr. Sisulu from contributing "in any manner" to any publication whatsoever, from giving interviews and from attending meetings of more than 10 people or at which the Government was criticized.

461. Mr. Andrew Kailembo, the representative of ICFTU pointed out that a journalist was killed in August 1987. He was a member of MWASA in the northern Transvaal where he had been covering the attempts to organize agricultural workers. Mr. Kailembo also referred to a number of journalists who had been imprisoned, including Mr. Brian Bokutu (MWASA) who had been held for 700 days, Mr. Vincent Mfundinsi and Mr. Marapodi Mapalakanye, also of MWASA, and Messers. Wilson Sidni and Themba Khumalo of the Sowetan. He also indicated that other journalists had been assaulted or exiled.

462. It can be stated that implementation of the media emergency regulations effectively prevents any utterance whatsoever of discontent by means of the press and other media, in order to persuade the public that no further unrest exists within the population. From the human rights point of view, the media emergency regulations and their application are violations of the freedom of expression, the right to work, the protection of artistic production, and, in their application, the rules concerning fair trial.

C. Freedom of movement

463. Despite the repeal of pass laws two years ago, the situation of the black population in regard to freedom of movement has not improved. In urban areas, black workers are still prohibited from visiting their friends or relatives, and even from driving through such areas after their working hours or late at night. Other aspects related to the freedom of movement were dealt with in chapter II, specifically as regards the "homelands" and forced population removals. In addition, the following information was brought to the attention of the Working Group during the period under review.

464. On 18 March 1988, Mr. Govan Mbeki, the ANC leader, aged 77, who was released from prison in 1987 after 23 years in detention, was reportedly denied a passport by the South African Government. Mr. Mbeki was looking forward to seeing his exiled children in Lusaka, Harare and Botswana. No reasons were given for the refusal of the passport.

465. In his oral evidence before the Working Group, the representative of the Centre for Applied Legal Studies (725th meeting) stated that all staff members of the Centre had at some time been denied permission to travel to conferences or to speak to people inside or outside the country. He said that he himself had been arrested twice on his way to a meeting in East London and his papers had been taken away, but he still continued.

466. As previously stated (para. 445 above), several members of anti-apartheid groups were systematically subjected to banning orders restricting their movements to their local magisterial districts and confining them to their houses at night.

D. Right to health

467 In its previous reports, the Working Group expressed concern about the lac of health care and the inadequacy of the existing infrastructure, notably th insufficient number of hospitals for blacks in South Africa. The information received by the Working Group throughout the period under review reflected a deterioration of health conditions, due to poor housing, severe malnutrition among black children, especially in rural areas, and the shortage of beds, chronic overcrowding, lack of qualified medical staff and exorbitant medical fees in black hospitals.

468. The absence of pre-natal and post-natal care for black mothers is a common feature. Moreover, if assistance is provided to women giving birth, it is generally hindered by other obstacles prevalent in black hospitals. Such problems were highlighted in the statement made by a professional nurse before the Working Group (720th meeting).

469. The witness focused her statement on the shortage of beds and surgical equipment in black township hospitals which have to serve several thousands of people. She stated that because of a shortage of beds in maternity wards, mothers were discharged almost immediately after giving birth. She added that, "if one needed an ambulance at home, one might wait for three or four hours. When an ambulance was needed to take a patient home from hospital, one might wait for nearly a week, since there were only four ambulances available altogether".

470. Regarding hospitals, the same witness referred to Tembisa, the second largest township after Soweto, which had to share a hospital with Alexandra. The two townships were some 20 minutes' drive apart. Tembisa Hospital had 24 wards, whereas in Alexandra there was a clinic and a day-care centre, but if patients needed specialist treatment, they were transferred to Tembisa. The witness also referred to Baragwanath, South Africa's biggest black hospital, near Soweto, stating that some wards in the hospital were meant to house 40 patients but in fact there might be 90 patients there, so that some had to sleep on the floor.

471. According to reports appearing in April 1988, a new Community Health Centre in Soweto, completed in 1987 to alleviate chronic overcrowding at Baragwanath Hospital, was unused because of lack of funds to open it. In a related development, it was reported that the Transvaal Provincial Authorities have backed down on threats to fire 31 doctors at Baragwanath Hospital who refused to apologize for criticizing the bad conditions at the Soweto Hospital. The controversy dated back to a letter, signed by 101 Baragwanath staff members, which had appeared in the September 1987 edition of the South African Medical Journal. A second letter was published by the doctors indicating that at least 300 patients at the same hospital were without beds while more than 1,000 beds were empty at a nearby white hospital.

472. Medical care fees for blacks were said to be high in comparison with their income. In government hospitals, patients - even those who were

unemployed - were required to pay a minimum of R 5 per day. Witnesses indicated that the best facilities were to be found in the private hospitals, but the fees were exorbitant. A witness (721st meeting) referred to the case of a diabetic patient who had gone into a coma and had had to be taken to a private hospital, but he received no treatment until there was an assurance of payment.

473. The shortage of health care appeared to be accentuated in squatters' camps, where poor housing makes the conditions of individuals dwelling in these camps even worse. Describing her own shack, made of iron and zinc, a witness (721st meeting) stated that the roof did not join the walls so that when it rained there was water on the floor and she and her family had to sleep in wet blankets. As a result of these conditions, the witness indicated that there was a high rate of miscarriages, stressing that she herself had miscarried three times. With regard to medical services in squatters' camps, she further added that they had a mobile clinic which came once a week, on a Monday. There might be 200 people waiting for the clinic, which devoted a limited time to each area.

474. Some medical practices regarding family planning were criticized by two witnesses. Their criticism concerned the use of a specific drug, Depo Provera, which is allegedly injected into women who have given birth "without consulting them and with no subsequent check-ups". According to a nurse, pamphlets did not make clear the possibility of side-effects from the use of that drug, which had been banned in other countries for just that reason. She said that in obstetric hospitals the drug was routinely injected after birth because it prompted lactation, but no explanations were given. Because of the expense incurred in taking smear tests from women using birth control, such tests were not available free of charge.

475. According to information transmitted to the Working Group, the report of the Department of National Health and Population Development, which was tabled in Parliament in April 1988, concluded that there was severe malnutrition among children in rural areas. The report, which contained extracts from health surveys, sponsored by the Government found that 1.8 per cent of rural black children under the age of five were wasted, 25.4 per cent were stunted, and 8.4 per cent were below normal weight for their age. The Department only disclosed the findings for South Africa without including the so-called "independent homelands" or neighbouring States, but the pattern was believed to be similar, if not worse. A survey of pre-school children in Botshabelo had found that 15.1 per cent were underweight and 35.5 per cent showed significant growth retardation. The Department stated that among children under three, 16.8 per cent were underweight and 40.5 per cent showed retarded growth, which indicated that the denutritional status of children under three was lower than that of older children.

IV. RIGHT TO WORK AND FREEDOM OF ASSOCIATION

A. Right to work

476. Since 1967, the Ad Hoc Working Group of Experts has been entrusted with the mandate of considering allegations regarding infringements of trade-union rights in South Africa and reporting thereon to the Commission on Human Rights and the Economic and Social Council. In accordance with Economic and Social Council resolution 1988/41, the Group has continued to study that specific situation.

477. Consequently, in its various reports, the Group has submitted regular accounts of the deterioration of the conditions of black workers. Moreover, on the basis of specific allegations addressed to it during its mission of inquiry concerning detention without trial of trade-union leaders, persecution of workers because of their activities, and the many restrictions imposed, particularly under the state of emergency, the Group is of the opinion that the manner in which labour legislation is applied in South Africa continues to constitute a violation of the right to work and to freedom of association. In the present situation, freedom of association is now being infringed both through the use of state of emergency regulations and police powers and through racially based policies. The information received and evidence heard during the period under review have once again confirmed the ILO conclusion that, contrary to official statements, no further changes have been introduced by the Government. According to the Special Report of the Director-General of ILO:

> "Instead, with the growing polarization caused by the continuing siege of the black townships by the military and police forces, the all-pervading surveillance exercised by the National Security Management System, the continuation of the state of emergency supported by harsh security laws, ...
>
> Using its wide array of repressive powers, the Government has concentrated on silencing or eliminating all sources of black opposition ... the Government failed to seek realistic solutions to South Africa's socio-political problems by negotiation with recognized black leadership." 7/

478. The present chapter has been prepared in compliance with Council resolution 1988/41 and in the light of information made available to the Group during the period under consideration.

479. Reports forwarded to the Working Group throughout the year indicated that the situation with regard to labour matters in South Africa had further deteriorated, especially regarding the freedom of trade unions and the legislation under which they were permitted to function.

1. Labour legislation

480. As stated in the Special Report of the Director-General of ILO:

> "When the general debate on manpower was held during the 1987 parliamentary session, the Minister of Manpower stated that the

Government would introduce legislation to provide for the 'better ordering of the union movement' and to ensure that the 'balance of power between employers and workers was not disturbed'." 8/

481. According to information available to the Group, a draft Labour Relations Amendment Bill was published by the Government in December 1986 and was then referred to the Parliamentary Standing Committee on Manpower. The Bill was intended to amend the Labour Relations Act of 1956, which is the principal industrial relations legislation. It was tabled in Parliament on 16 May 1988, and the principles underlying the proposed legislation had been accepted at the Second Parliamentary Reading Debate on 27 May 1988. The Bill was then passed by the three Houses of Parliament, with no changes to the most contentious clauses, and enacted on 12 August 1988. The proposed amendments included:

"... the establishment of a special labour court which would consider appeals against decisions of the industrial court and consist of judges of the Supreme Court; adjustments to the definition of an 'unfair labour practice'; the addition of a definition of an 'unfair dismissal'; the simplification of procedures concerned with the establishment of conciliation boards and the widening of powers given to the industrial court; a clearer distinction between disputes concerning unfair labour practices and those concerning unfair dismissals ..." 9/

482. Mounting resistance to the Government's proposed changes was organized through a vast campaign launched by the Congress of South African Trade Unions (COSATU) on 19 February 1988. The most controversial proposals contained in the Bill, as highlighted in the COSATU campaign, were those which placed severe restrictions on labour's ability to stage legal strikes, outlawed solidarity strikes and boycotts, enabling employers to prevent legal strikes by seeking a pre-emptive legal interdict, undermined rights that unions had won over 10 years against unfair dismissals, and allowed employers to claim damages from unions for production lost during illegal walk-outs.

483. In addition, the proposed legislation would give employers the right to engage in selective re-employment of workers after a strike, a practice which is currently considered illegal, since, according to COSATU, it gives employers the opportunity to dismiss shop stewards and union activists.

484. Other remarks concerning the above-mentioned amendments appeared in an article published in the South African Labour Bulletin in which both trade unions and employers criticized the proposal to separate "unfair dismissals" from "unfair labour practices" on the grounds that disputes involving dismissal were often closely linked to, and indivisible from, underlying unfair labour practices. In addition, codification of the definition of "unfair dismissal" as well as the new definition of an "unfair labour practice" removed the flexibility of application that the industrial court exercised and prevented the evolution of labour law. 10/

485. In regard to the right to strike, it was also indicated that the amendments which curtailed the right to strike, within the conciliation procedures, over unfair dismissals and through secondary action were retrograde steps which would alter the balance of power in favour of employers. In addition, intermittent strikes on the same issue within a 15-month period were declared illegal, in order to prevent maximizing the effect of short-term strikes on production. 10/

486. Concerning the new labour appeal court, established as an arm of the Supreme Court, witnesses appearing before the Group (716th meeting) admitted that it had generally been welcomed because, "in all likelihood" it would be presided over by a judge who was conversant with labour law. However, adding another court meant even more expenses.

2. Freedom of association

487. An anonymous lawyer (716th meeting) testifying before the Group referred to the curtailment of union activities and made an exhaustive analysis of the amended labour legislation in regard to union registration and collective bargaining rights. The witness pointed out that registration conferred important benefits on trade unions, the most significant of which were entitlement to participate in the collective bargaining forums for which provision was made under the Act, and immunity from liability for industrial action lawfully called by unions under the Act.

488. He further emphasized that the industrial court had promoted collective bargaining rights inherent in the Labour Relations Act which provided for the establishment of industrial councils and ad hoc conciliation boards to chair negotiations. A written statement submitted by the witness contained various examples of judgements by which the industrial court had given specific endorsements to the principle of "majoritarianism".

489. It is well known that a basic criterion for registration is that an applicant union must be sufficiently representative of the employers in the particular sector where registration is sought. However, the new amendment prevents a trade union from claiming sole bargaining rights; it makes it unlawful, or an "unfair labour practice" on the part of a trade union to demand recognition on the basis of having recruited the majority of an employer's work-force.

490. According to the explanation provided by the same witness, the purpose of the amended Act was "to impair the bargaining status of representative trade unions and to protect and promote the interests of the minority - and often racially-exclusive - trade unions". Thus, all recognition agreements might have to be renegotiated and small unions would be created to replace the existing ones.

491. Another aspect highlighted in the ILO report was the introduction of a new group of workers who would be excluded from protection under the Act. The report indicated that university lecturers and private school teachers, among others, would be placed alongside workers in agriculture, domestic service, and State employment, as persons to whom the Act did not apply.

492. In relation to teachers, the Government's position was announced on 3 May 1988 in a statement made by the Minister of National Education, Mr. F. de Klerk. He indicated that "the Government held that teachers were members of a profession and that trade unions were not a desirable mechanism for the professions". Unionism would detract from the professionalism of teachers, and he was sure that the overwhelming majority of teachers were against the idea. His statement was made during a debate on the education budget in the House of Delegates, in reply to the Chairman of the Ministers' Council at the time, Mr. Amichaud Rajbansi, who said that some dissatisfied Indian teachers were considering forming a union.

493. The representative of ICFTU (730th meeting) drew the attention of the Working Group to the fact that exclusion of a group, such as agricultural and domestic workers, from the current labour legislation did not mean that their affiliation to a trade union was illegal. In that respect, he recalled the situation of black trade unions which were not covered by labour law until they were set up in 1973. At the time, the Industrial Conciliation Act had stipulated that blacks could only negotiate through the white unions. Nevertheless, black workers' strikes in 1973 had forced the lawful establishment of black trade unions. Subsequent to changes in labour legislation, their independent movement had been recognized by the trade unions registrar.

494. In that context, the witness indicated that COSATU and NACTU were in the process of organizing workers in the agricultural and domestic sectors. He quoted the example of the Agricultural Workers' Association, which was affiliated to NACTU, and the Domestic Workers' Union, affiliated to COSATU.

495. Referring to the public sector, an anonymous lawyer (716th meeting) pointed out that the Government feared the organization of workers in the so-called essential services, such as electricity, water and nuclear power, and therefore, refused to extend protection to them. However, that had not stopped some labour sectors from organizing themselves. The witness referred, for example, to the efforts made by the National Union of Mineworkers (NUM) to organize electricity workers. Regarding education, he indicated that teachers adhering to the Cape Teachers' Professional Association were examining the possibility of constituting themselves as a trade union and had requested affiliation to COSATU. In addition, dons on university campuses were asserting the right to association.

496. The Labour Relations Act should be seen in the context of the continuing state of emergency in South Africa. Since the beginning of the state of emergency, the emergency regulations themselves, the Criminal Procedure Act, the Internal Security Act, and the Intimidation Act, have all been used in attempts to curtail the activities of the union movement.

3. Restrictions under state of emergency regulations

497. Witnesses appearing before the Working Group stressed that there was an undeniable link between grievances and complaints on the shop-floor and those in the community. Hence, trade unions had to address the problems relating, for example, to rent and school boycotts, which spilled over into the work place.

498. On 24 February 1988, the Government promulgated a new regulation, regulation 6.A, as an amendment to the 1987 regulations. Under the new regulation, the Government imposed further restrictions on leading anti-apartheid organizations and the trade-union movement. As previously stated (chap. II and chap. III), the new measures issued in the Government Gazette allowed the Minister of Law and Order to prohibit an organization from "carrying on or performing any activities or acts whatsoever" without his prior permission.

499. In terms of the Public Safety Act of 1953, under which the emergency regulations are promulgated, actions covered by the Industrial Conciliation Act and related legislation are excluded from the ambit of the regulations.

Since it was not possible to prohibit COSATU from "any activity whatsoever", a separate order was issued prohibiting COSATU from engaging in several specific activities, which circumscribed its political role. The restrictions spelt out in detail the principal targets of the clamp-down:

"A. 'soliciting support from the public (including acts whereby appeals are made to the Government)' for:

(i) the unbanning of unlawful organizations;

(ii) the release of detainees or prisoners;

(iii) the suspension, remission, reduction or not carrying out of a sentence imposed on a person;

(iv) the abolition of local authorities.

B. the 'stirring up, by way of publicity campaigns of opposition' to:

(i) the detention of persons under the Internal Security Act or under the emergency regulations;

(ii) the system of local government;

(iii) negotiations or proposed negotiations regarding a new constitutional dispensation.

C. the 'making of calls on or encouraging or inciting the public by way of publicity campaigns' to:

(i) boycott or not to take part in local authority elections, or preventing, frustrating or impeding such an election;

(ii) observe any particular day to commemorate or celebrate:

(a) the founding of an unlawful organization or one declared affected under the Affected Organizations Act;

(b) an event in the history of such an organization which is of some importance to the organization;

(c) an incident of riot, public violence or unrest or a protest gathering or march, or an event which has occurred in the course of these;

(d) the death of a person;

(e) any particular day in honour of a prisoner.

D. 'the founding, establishing, propagating, financing, organizing, management or operation of alternative structures' (area, block or street committees).

E. 'interference, meddling with or making calls to the public to interfere or meddle in the affairs or functions of a local authority'.

F. making calls or inciting:

(i) persons doing business in the Republic to disinvest or cease doing business;

(ii) the government of another country to apply trade, economic or other punitive measures against the Republic or to sever or restrict diplomatic or other relations;

(iii) a person outside the Republic to terminate, suspend or sever affiliation or ties with persons, organizations or bodies inside the Republic.

G. organizing or holding public gatherings at which any of the matters mentioned in the order are advised, encouraged, propagated, discussed, advocated or promoted."

500. The Working Group received numerous reports and heard evidence related to the Promotion of Orderly Internal Politics Bill currently before the South African Parliament. The proposed legislation is intended to restrict organizations from receiving foreign funds for political use. It was likely that COSATU, which gets 80 per cent of its funds from abroad, would be affected by that measure.

4. Promotion of Orderly Internal Politics Bill 11/

501. In the explanatory memorandum attached to the Bill, it is stated that the Government wishes to control the financing of groups involved in activities which threaten public safety, delay the termination of the state of emergency or may foment hostility between different groups. A select committee has been set up to receive representations on the Bill as to whether legislation should be enacted for these purposes, and whether this particular Bill fulfils their aims.

502. The Bill makes it a criminal offence for organizations, persons and political parties to receive funds which they may use for certain political purposes. If the Minister of Justice is of the opinion that a person or organization is using foreign funds for "political aims", he may declare it to be "restricted". The Minister is not obliged to "hear any person" before making his decision; an organization would therefore not have the right to state its case or defend its right to receive foreign funds before the Minister declared it to be "restricted".

503. The Bill provides for a registrar to investigate and dispose of the finances of restricted organizations. Funds may be returned to organizations at the discretion of the registrar, if he is satisfied, according to the information at his disposal, that the money will not be used for political purposes. Evidence may be given to the registrar relating to the funds, but people giving evidence before him are barred from legal representation.

504. In his oral evidence before the Working Group, an anonymous lawyer (716th meeting) pointed out that the enactment of the Promotion of Orderly Internal Politics Bill would give inspectors wider powers than those they already had under existing legislation. In that regard, the witness referred to section 30 of the Fund-Raising Act, under which the Director of Fund-Raising is authorized to investigate the affairs of any organization or person "who he has reason to believe has contravened a provision of the Act, section 30 (5)". Under section 30 (6), he is also given wide powers of entry, search and seizure without warrant. This applies to other organizations as well as trade unions.

505. Similarly, section 12 of the Labour Relations Act gives the Industrial Registrar, as part of the registration process, discretionary powers to examine books and documents, conduct investigations and demand information at any given time.

506. The representative of ICFTU (730th meeting) referred to the Bill as a "legislative onslaught" on the independent black union movement, emphasizing that such a development would have serious implications for the ability of trade unions to maintain the rate of growth they had achieved to date. He further observed that the introduction of the Bill had brought no protest from foreign employers, "British, American, German or French which showed that foreign employers were not supporting the trade unions". He referred to the example of the Anglo-American Corporation who had described the Bill as "even-handed and reasonable", although such legislation was contrary to international law.

B. Situation of black workers

507. In his oral evidence before the Working Group, the representative of ILO (708th meeting) stressed the fact that black unemployment continued to rise, although the Government was able to conceal the truth by subtracting the unemployment figures for the "homelands". In addition, wage settlements continued to be below the rate of inflation so that, although wages for blacks had risen, there would be no possibility of parity with white wages for some time to come. The same applied to equality in education.

508. With regard to unemployment, the Special Report of the Director-General of ILO provided some explanations as to the Government's unsuccessful efforts to overcome the problem. One of the explanations was the continued heavy reliance on the formal sector which, at 1987-1988 growth rates, was clearly incapable of absorbing the unemployed population or of expanding to cater for the high black annual influx into the employment field.

509. Wages and training problems were underlined by an anonymous witness (725th meeting) who had worked for one and a half years at a textile mill. He told the Working Group that he had been earning R 15 per month, and worked 12 hours per day, including four hours' overtime. His salary was supposed to be increased to R 35 per month upon completion of in-company training. He further claimed that, although he had completed his training and obtained a certificate, he had never got the promised wage increase. Moreover, his complaint to the personnel manager had been met by a threat of dismissal and when he had persisted, the South African security police had been called in to arrest him. As a last resort, therefore, he had joined a trade union, whose intervention had compelled the management to increase his

wage from R 15 to R 24 per month. A few months later, as bus fares and bread prices went up, workers had sent a note to the management demanding an increase in wages. The witness was then accused of attempting to organize the workers and encourage them to join a trade union, which allegedly led to his arrest. After his release, he returned to work, but mounting pressure from the management had forced him to resign shortly afterwards.

510. Another aspect of the problem of low wages was the cost of transport. According to several witnesses (708th, 709th and 725th meetings), it should be borne in mind that blacks working in white towns have to travel very long distances in order to reach their work places. Rev. Edward Morrow noted in his statement before the Working Group that some workers might spend one third of their wages on transport. An anonymous worker affirmed that, during bus boycotts, he had been walking some 20 km, and other workers had had to walk up to 36 km per day to and from work.

511. Another point referred to in the conclusions of the ILO report was the shortcomings in the field of occupational safety and health, especially in the mining industry, where disasters involving much loss of life indicated a laxity of safety standards which was unacceptable to the international community.

512. An example of the frequent accidents occurring in mines was brought to the attention of the Working Group in March 1988. On 28 March 1988, the Doorenfontein Gold Mining Company Ltd., issued a statement reporting that 3 miners had died and 51 had been injured in a rock burst at the Doorenfontein gold-mine. Officials said that rescue teams were trying to find two other workers who were still missing after the incident.

513. In this connection, the Working Group heard the evidence of a mineworker (723rd meeting) who had worked in the mines for six years. The witness gave several examples of the harshness of black miners' conditions in terms of industrial injuries and consequent early retirement, as well as housing problems and job reservation.

514. According to the witness, the situation of the miners was the worst of all, as conditions in the mines constituted a health hazard and safety precautions were insufficient. Dusty conditions in the mines meant that most miners contracted tuberculosis; pools of stagnant water also endangered health, the high-speed "cages" or lifts caused injuries, and some miners lost fingers, hands or even their sight because of this. In that context, the witness referred to his personal experience in the Anglo-American Corporation for which he worked, emphasizing that there was no medical or health supervision whatsoever for any miners working underground.

515. With reference to other problems, the same witness substantiated his evidence by a comparison between white and black workers' conditions in daily life. Referring to accommodation, he indicated that, while white workers had decent housing where they lived with their families and had access to all sorts of benefits, black workers lived in compounds alone, without their families. Their sleeping quarters were cold but workers were only provided with two blankets. Many people developed pneumonia in winter and they lacked any kind of medical benefits. White workers were free to move, whereas the blacks needed a permit to leave the compound or to have visitors. In reply to a question concerning wages, he stated that blacks did not receive the same

wage as whites for equal work. In addition, there was no security of employment, a miner could be employed for 12 months and then dismissed. Responding to questions related to miners' qualifications, the witness referred to the discriminatory practices in regard to black workers, pointing out that, before hiring a miner, the company first checked his political activities rather than his skills. He also referred to job reservation, indicating that, if a worker learned Afrikaans, he had a better chance to become an induna, or foreman - a kind of overseer to ensure that the miners worked to the limit. As to the distribution of tasks, he stated that unskilled workers were blacks; the skilled white workers might go down the mines to lead a group and show them the area where they were to dig, but they would return to the surface leaving the foremen, who were black, to supervise the completion of that work within a specified time.

516. In regard to job reservation, an anonymous lawyer (716th meeting) observed in his statement before the Working Group that the policy of discrimination and separate development still pervaded all the various legislative enactments, and although "officially" job reservation had been removed from the statute book, in practice, it was still prevalent in the country. In that respect, he explained that the definition of a "scheduled person", which had prevented blacks from obtaining blasting and other certificates, had finally been removed from the Mines and Works Act in August 1987 and replaced by the words "competent person", thereby eliminating the last vestiges of job reservation on the grounds of race in the country. However, the witness held that, after the legislation had been amended in Parliament, accusations had been made that the Government was attempting to implement job reservation "through the back door".

517. The witness then referred to the case filed in the Industrial Court in 1988 by the South African Chemical Workers Union against Sentrachem Limited, which expressly stated that racism and racial discrimination in labour practices at a particular undertaking was prohibited. The case was a recognition dispute, involving a demand for parity in wages in all categories of work, and the court had granted the order.

C. Trade-union activities

518. In the interim report of the Working Group (E/CN.4/1988/8, para. 294), reference was made to the tremendous development of trade unions in South Africa over the last five years. The total membership of registered trade unions rose sharply in 1986, partly as a result of registration by a number of previously unregistered trade unions and also because of increases in membership among all population groups.

519. At the end of 1987, trade-union membership stood at 2,406,240. In a statement made before the Working Group, the representative of ICFTU drew attention to the fact that the trade-union growth rate in South Africa was currently the highest in the world. Trade unions represented well over 20 per cent of employed people, and the economically active population of South Africa was nearing 9.5 million. He indicated that the growth in the numbers of trade-unionists was essentially due to an increase in membership among black African workers; white membership was declining.

520. According to the Department of Manpower, in 1987 some 5,356,335 working days were lost through strikes. On 8 January 1988, the Financial Mail gave an even higher figure, claiming that there had in fact been a 900 per cent increase over 1986, when the number of days lost was slightly over 1 million.

521. In its previous report, the Working Group noted that trade unions had become very active in promoting improvement of the labour situation through a hard and determined struggle against apartheid. The Group referred to the massive strike involving 250,000 coal- and gold-miners at the beginning of August 1987, following a breakdown in the annual negotiations between NUM and the mining corporations (E/CN.4/1988/8, paras. 298 and 309).

522. The strike, which was qualified as the largest as well as one of the most significant in South African history, was an indication of the workers' determination to obtain better working conditions and the right to work. In spite of the NUM failure to obtain the 27 to 30 per cent wage increase initially demanded, the strike was considered by most observers to be a major feat of organization by a trade union which had been in existence for only five years, had limited resources, and had a membership which was spread over huge areas and originated from different countries. While the Government did not intervene publicly, reports indicated that efforts were made to break the administrative structure of NUM and impede overseas funding.

523. As in 1987, a number of "stay-aways" occurred in 1988 involving large numbers of workers in spite of the state of emergency and the restrictions imposed on trade unions by the Government on 24 February 1988. In addition, the two major federations, COSATU and NACTU, were actively trying to organize workers in the agricultural and domestic sectors who, as previously stated, were excluded from the Labour Relations Act and therefore had little protection as employees.

524. In this regard, a report appearing on 4 March 1988 indicated that the National Union of Farm Workers (NUFW) had been formed for the first time in South African labour history. NUFW, which had become a NACTU affiliate, called on all other unions organizing on farms to disband and join it "in accordance with the principle of one union, one industry". On 18 April 1988, about 100 NUFW members at Impala Farm near Magaliesburg reportedly went on strike over wages and recognition of their union. The workers had also listed grievances involving alleged assaults and intimidation by the farm owner. Negotiations with their farm management began in October 1987, but no recognition settlement was reached. Management subsequently disputed the membership of the union at the farm, despite the fact that it represented 19 per cent of the work-force. The Union's General Secretary has allegedly been denied access to the farm since the strike started on 18 April 1988.

525. In response to the Government's clamp-down on 17 anti-apartheid organizations on 24 February 1988 and the restrictions curtailing COSATU activities, a report issued on 11 March 1988 revealed that three of the affected groups had filed legal claims on 10 March 1988 calling the measures vague and unlawful. A Johannesburg lawyer, Mr. Peter Harris, stated that his firm had filed application in the Cape Town Supreme Court on behalf of the 650,000-member COSATU and DPSC. The third application was filed for UDF, the country's largest opposition movement, which claimed to represent about 2.5 million people. In his statement, Mr. Harris said, "we will argue

that the new restrictions comprise so fundamental an inroad into the ordinary rights of citizens, that they could never have been contemplated by Parliament".

526. On 18 March 1988, a strike was staged in the Mercedes Benz factories, after a dispute over an hour's wage. The strike, which started the previous day in the paint shop, spread rapidly through the factory; the union claimed that the entire work-force of about 3,000 was on strike, while management said that only 1,000 were involved. A representative of the National Union of Metal Workers of South Africa stated that employees slowed down after they reached the target of 66 cars per shift, while the company accused the group of stopping work early. The employees were clocked out early and lost an hour's wage. The company also accused the shop-stewards of not using the correct grievance procedure and said that the union was not prepared to alter its demands or allow its members back to work until their demands were met. Negotiations were reported to be continuing.

527. On 9 April 1988, the dispute between the Commercial, Catering and Allied Workers' Union (CCAWUSA) and Pietersburg wholesalers reportedly took a new turn when the union filed papers in the Industrial Court applying for the reinstatement of 69 dismissed workers. The dispute started when workers downed tools and demanded that the company recognize the union, stop dismissals and open wage talks with the union. The applicants alleged that the respondent also violated the basic minimum wage level set by the Department of Manpower, forced workers to work overtime without pay, used racist swear words in dealings with the workers, assaulted workers and refused to discuss workers' grievances with their representatives. The applicants have asked for the appointment of a conciliation court or immediate and unconditional reinstatement of the workers.

528. On 16 May 1988, COSATU called for a three-day national peaceful protest, from 6 to 8 June 1988, against restrictions imposed on it and the banning of the 18 anti-apartheid organizations. During a conference at the University of Witwatersrand, attended by 1,500 delegates of the organization, a number of resolutions were adopted, in terms of which the participants committed themselves to "a concerted programme of action against the restrictions and the controversial Labour Relations Amendment Bill, and to struggle for the basic human rights of their members in every sphere as reflected in their policy resolutions". It was further reported that NACTU also resolved to organize protest action against the Bill between 6 and 10 June 1988. In another development, thousands of demonstrations were held by organized workers, and representatives of unions affiliated to COSATU stated that the protests were held in accordance with the Confederation's decision at its recent Congress to mount lunch-time demonstrations every Tuesday against the new legislation and the banning of the 18 anti-apartheid organizations.

529. On 20 May 1988, it was reported that about 2,500 workers in two factories belonging to the Amalgamated Beverage Industries Plants (ABI) went on strike in the mid-Rand, Pretoria, Devland and Durban plants. They were reportedly protesting against a new distribution system introduced in the Durban plant, which would result in a number of redundancies. According to a representative of the Food and Allied Workers Union, the company had warned workers on 19 May 1988 to return to work or face legal action. The company allegedly undertook to withdraw action if the strikers resumed duty.

530. On 24 May 1988, it was reported that NUM had reached a deadlock with the De Beers Diamond Company over wage increases. A NUM official stated that the union had rejected a 9 per cent pay offer from the company in favour of workers' demands for a wage increase of 40 per cent across the board. Among other demands presented by NUM were: a 40-hour week, danger pay and improved service increases, "stand-by" allowances and production bonuses. The company allegedly refused to address all workers' demands other than wage increases. Meanwhile, NUM and the East Rand Gold and Uranium Company (ERGU) resumed wage negotiations. The union demanded 30 per cent wage increases and improved working conditions, while the company was offering, among other things, a 12 per cent rise. In this respect, the NUM representative stated that the ERGU wage proposals seemed to be in line with the wage freeze announced by the Government, and that the company had also asked workers to take a wage cut.

531. According to a report appearing on 20 July 1988, a six-week strike involving 1,170 furniture workers came to an end after the Associated Furniture Company Ltd., accepted that the 300 furniture workers dismissed on 20 April 1988, should be taken to arbitration, a proposal which had earlier been rejected by the management. The two parties agreed to an "interim disciplinary procedure" while negotiations continued. The agreement also included a clause promising "no victimization of either strikers or non-strikers". It was also agreed that a case involving four workers whose dismissal sparked off the strike would not be pursued by the union; "the individual workers will be entitled to pursue the case if they wish". In another development, it was reported that upon a persistent request from the Paper, Printing, Wood and Allied Workers' Union, the company agreed to approach the police regarding the detention of eight workers on 8 July 1988, in terms of the emergency regulations. The union strongly condemned the detention of its members, and pointed out that the workers were on a legal strike and had not been charged with any offence.

532. Several sources 12/ and witnesses (708th meeting) reported in July 1988 on the COSATU decision to lodge a complaint over the Labour Bill with the International Labour Office.

533. On 8 August 1988, a settlement was reportedly reached between Gallo Ltd., and CCAWUSA in their wage increase dispute, ending a three-week strike by 180 of their employees. Under the joint agreement, employees would receive a R 120 per month across the board increase backdated to 1 April 1988. The company also agreed to pay a Christmas bonus for 1988 equivalent to three weeks' wages.

534. Reports released between July and September 1988 gave wide coverage to the wage dispute opposing the Steel Engineering and Industries Federation (SEIFSA) and the International Metalworkers Federation (IMF). Up to 30,000 Transvaal metalworkers were allegedly involved in the dispute, which was termed the biggest industrial action to erupt this year (1988).

535. According to information released by IMF, about 25,000 members from four of its unions, working in six metal companies, were engaged in disruptive strike action which started during the second week of August 1988 and lasted for 15 days, following the failure of negotiations to resolve the wage dispute. Four thousand others staged a strike over a separate wage dispute, in four Metal Box plants across the country. Although an agreement was finally reached between the two parties on 18 August 1988, the unions

reportedly failed to obtain an increased wage offer from the employers. The IMF unions demanded, among other things, an average wage increase of 23 per cent and a minimum hourly rate of R 3.21, while SEIFSA offered an average 17.4 per cent increase and a minimum rate of R 3.02 per hour. On the other hand, the agreement provided for a number of undertakings, including: (a) elimination of racial anomalies in wages paid to more skilled categories of workers within five years; (b) submission of allegations of racial discrimination to an independent panel of arbitrators; (c) granting of May Day and 16 June as paid holidays in exchange for any other public holiday; (d) acceptance of the National Union of Metalworkers of South Africa (NUMSA) as a representative of the majority of black workers in the industry and negotiation with the union as such; (e) allowing IMF unions to collect membership fees by automatic deduction from wage cheques paid to members at all plants where they are recognized by employers; and (f) support of the South African Consultative Committee on Labour Affairs if this group of employer associations calls on its members not to implement the contentious clauses of the Labour Relations Amendment Act.

D. Action against trade-union movements

536. The growing membership of trade unions and the incidence of strikes which has accompanied it, and which has extended to the public service sector, has considerably increased the Government's concern over the political implications of trade-union activities.

537. Referring to these activities, the ILO report pointed out that:

> "... the emerging trade-union movement has become a major force that increasingly confronts the Government on a wide variety of issues which, if not all of an essentially industrial character, do concern the social, economic and political development of the black population." 13/

538. In addition to the escalating industrial action, several observers confirmed that the mounting pressure from the conservative white elements, who made a major impact on the whites-only elections in May 1987, had contributed to accelerating the Government's decision to impose drastic measures on trade unions since the beginning of 1988. In addition, as was indicated in section A above, the South African Government retracted some of the rights and privileges permitted under existing labour legislation.

539. In its previous report, the Working Group referred extensively to the widespread arrests and detention of trade-unionists, including leaders, officials, and members, under the state of emergency powers, for an initial period of 30 days (formerly 14 days). Many trade-unionists have also been held incommunicado for months without being charged under the Internal Security Act, mainly sections 28 and 29.

540. In his oral evidence before the Working Group, the representative of ICFTU indicated that the number of detained trade-unionists in proportion to the total number of detainees in 1987 was nearly six times higher than during the previous year. At the beginning of 1988, 24 per cent of those detained were trade-unionists, whereas in 1986, they represented only 4 per cent of the total (E/CN.4/1988/8, para. 317, see also tables under chap. I, sect. B of the present report).

541. The witness referred to a seven-week legal strike organized in the Transvaal by the Paper, Printing, Wood and Allied Workers' Union, as a result of which the following members had been detained: Zachariah Modise, Patrick Kaglane, Godfrey Puuo, Stamford Gumbi, Sidney Makoba, Alex Ndaba, Samuel Machebela, Robert Imbatha, Thole Shabalala, Michael Mashepa and Elias Mapasa Njere.

542. In addition to mass arrests under security legislation, many trade-unionists were served with restriction orders under the regulations issued in February 1988, and further reconfirmed with the renewal of the state of emergency in June 1988. Others suffered severe harassment, had their houses raided by the police, or were forced to resign from their jobs as a result of their engagement in union activities.

543. A report issued on 24 September 1988 referred to a proclamation published in the Government Gazette, which empowered the State to place individuals under house arrest or area restrictions, simply by publishing a notice to that effect. This meant that people might be banned without their knowledge.

544. According to the same report, restriction orders have so far been served on seven senior COSATU officials who were to take part in a conference in Cape Town (see para. ... below), barring them from leaving the magisterial districts in which they lived and forcing them to remain inside their homes at night until 3 October 1988. 14/

545. On 5 October 1988, two other members of COSATU were placed under restrictions. Mr. David Nkone, an organizer with the Chemical Industrial Union, and Mr. Elias Nongo, of CCAWUSA, faced charges under emergency regulations and were reportedly released on bail of R 2,000 each. Their trial was scheduled for December 1988.

546. In relation to the daily harassment of unionists, the Working Group heard the evidence of a nurse (720th meeting) who was allegedly forced to resign from her hospital job following the detention of her fiancé, who was taking part in trade-union activities. The witness affirmed that shortly after her fiancé was detained, she had been called to see the matron and told to resign. She refused, and was subsequently informed that she had only been working under a temporary contract which had expired, and therefore she had to leave.

547. According to a report published on 9 June 1988, police raided the Hillbrow flat of a Weekly Mail reporter, Mr. Thami Mkhwanazi, a former Robben Island detainee, who had been elected the previous week as an executive of the Association of Democratic Journalists. Mrs. Mkhwanazi was allegedly questioned about her husband's work, the massive "stay-away" which had taken place from 6 to 10 June 1988 and the whereabouts of various activists. Police refused to comment on the incident, on the grounds that "visiting of premises and seizing of property were regarded as routine police duties".

548. In a similar context, the representative of ICFTU (730th meeting) informed the Working Group that, as a result of a "smear" campaign carried out by the South African security forces against the Post and Telecommunications Workers Association (POTWA), the following POTWA shop-stewards were arrested on 4 July 1988: Elias Mosokuntu, Jonathon Longwane and Mandla Mashilangu. In addition, the Association's offices were broken into by the police on 16 July 1988.

549. Apart from detentions, violent attacks and harassment, the witness also informed the Working Group of workers' dismissals as a result of industrial action. He pointed out that mass dismissals and deportation of workers to the so-called black "homelands" had increased dramatically in 1987, and cited the example of the strike which had taken place in March 1987, involving 16,000 railway workers, and which had lasted for several months.

550. It should also be recalled that the strike which hit the mining industry in August 1987 also resulted in the dismissal of some 46,000 workers, most of whom were forced to return to their so-called "homelands".

551. According to a report received by the Working Group on 9 June 1988, 15/ 500 members of the Transport and General Workers' Union were dismissed for failing to report for work during the three-day "peaceful protest" called by COSATU and NACTU from 6 to 10 June 1988 (see para. 528 above). A trade-union official said that similar dismissals had led to a strike by more than 200 bus drivers employed by Sizanani KwaZulu Transport in the Pietermaritzburg area. They were protesting against the dismissal of their colleagues, although they had not taken part in the three-day protest for fear of attacks which had accompanied similar action in 1987. It was further reported that the strike was called off after the bus company reinstated all the workers dismissed after the "stay-away". On 13 June 1988, a spokesman for NACTU estimated that more than 3,000 workers lost their jobs as a result of the protest. It was also reported that the dismissal of workers had led to the temporary closure of three liquor enterprises in Soweto. According to the NACTU report, 2.5 million workers participated in the "stay-away".

552. Witnesses appearing before the Working Group reiterated their concern about the increase in the number of trade-unionists standing trial in various South African courts. In this connection, the representative of ICFTU (730th meeting) referred to three NUM shop-stewards, Mr. Solomon Nengurati, Mr. Tjelubaya Mgedezi and Mr. Tsiets Tsehalane, who have been sentenced to death in a trial related to offences committed during the 1987 mineworkers' strike.

553. According to the information received by the Working Group, 22 OK Bazaars warehouse workers reportedly filed an appeal in the Rand Supreme Court against their three-year prison sentence following their participation in a seven-second demonstration on 6 January 1987. Workers intended to stage a sit-in at the canteen of the Konti Montanta warehouse, but the warehouse gate was locked. When a car filled with replacement labour drew up at the gate, strikers surrounded it and beat on it with their hands. Seven seconds later the gate was reopened and admitted the vehicle. After the incident, 75 workers, all members of CCAWUSA, were detained but released shortly afterwards. Subsequently, 35 people were rearrested and charged with public violence: 22 were convicted and received a three-year prison sentence.

554. Referring to the Government's drastic action against trade-union movements, an anonymous lawyer drew the attention of the Working Group to the fact that, in addition to the emergency regulations under which no gatherings were allowed in public, and the Internal Security Act in terms of which outdoor gatherings were banned, other legislation, such as the Trespass Act, tended to impede normal trade-union activities. The witness pointed out that there was no right to picket in South Africa, and even under the unfair labour

practice jurisdiction, the industrial court had not been prepared to grant protection to striking workers who were picketing. He further stressed that, in any event, since picketing tended to take place outside the confines of a particular work place, picketers had been subjected to the Trespass Act.

555. In that connection, the Working Group received a report in May 1988, indicating that about 80 rural labourers from two farms in the Magaliesburg area had been charged with trespassing on property owned by Impala Nurseries after being dismissed in April 1988 for staging a wage strike. Mr. Thaka Molestane, General-Secretary of the NUFW, stated that 82 union members on the farm had been charged with trespassing and summonsed to appear in the Krugersdorp Magistrates' Court on 19 May 1988. The Supreme Court hearing was postponed until 18 May 1988, and the union given until 23 May 1988 to file papers stating why the order should not be granted. The labourers and their families were allowed to remain on the farm in the interim and undertook not to disrupt the working of the farm.

556. With reference to illegal gatherings, the Working Group was informed of the banning of a meeting organized by NACTU in Johannesburg, and a two-day conference planned by COSATU in Cape Town. The two meetings were due to take place respectively on 17 March and 23 September 1988. The Government declared the meetings illegal under the state of emergency regulations.

557. On the question of freedom of expression, an anonymous journalist (717th meeting), who was a member of the Media Workers Association of South Africa, stated before the Working Group that, in order to avoid censorship, trade unions had their own spokesmen and pamphlets. Therefore, the Government had ordered various organizations to submit their publications for approval prior to their release. Some had resisted and the proposed regulations permitting the Minister of Information to order registration had been suspended. However, in regard to newspapers, advanced computer technology meant that police headquarters could monitor and censor texts at will.

E. Sanctions and disinvestment in South Africa

558. Several witnesses appearing before the Working Group referred to economic sanctions as a corner-stone in the programme of action against apartheid. In particular, the representative of ICFTU pointed out that the ILO Conference Committee on Apartheid needed the support of the Governments of the industrialized countries and stressed that, in fact, South Africa was able to hold out because of their continuing support.

559. In this regard, reference was made inter alia to the position of the United Kingdom vis-à-vis the application of economic sanctions to South Africa. The witness pointed out that the British Government claimed that economic sanctions would have harmful effects upon the black population, although that population had made it clear that they were in favour of sanctions. He added that the British Government's opposition to disinvestment in South Africa was actually due to its intention to protect the interests of 200,000 workers in the 374 British companies investing in that country. In regard to multinational corporations active in South Africa, the witness pointed out that the "main culprits" were the United Kingdom, with 374 companies, the United States of America, with 164 companies, and Japan - whose investment was increasing - with 103 companies. There were currently 1,267 companies involved in all.

560. Replying to questions related to this issue, the witness confirmed that a monitoring unit of ICFTU was watching the actions of those companies which claimed to have withdrawn from South Africa, but which had only transferred their operations to the "homelands". ICFTU, according to the witness, publicized one such case in Belgium and the company's lawyers were allegedly threatening to take the case to court.

561. With reference to the European Code of Conduct, several witnesses (725th and 730th meetings) appearing before the Working Group held that in practice the Code did not exert pressure to bring about an end to apartheid, but rather continued to be applied in many cases more as a reason for not introducing sanctions or disinvestment policies. They indicated that, if a company refused to recognize the black union movement, it should be refused credit guarantees or export licences. Witnesses indicated that among the EEC countries, only two (Belgium and Denmark) were prepared to apply such measures.

562. In this connection, reference was made to the dismissal of 1,000 workers by the British Tyre and Rubber Company in South Africa in the course of 1988, because they wanted to join a trade union. It was further reported that the workers were still unemployed and that the international trade-union movement was trying to provide relief assistance.

563. In concluding his statement before the Working Group, the representative of ICFTU (730th meeting) referred to the latest report of the ILO Conference Committee on Apartheid, stressing that legislation prevalent in the industrialized countries circumvented to a large extent the co-operation between labour unions in those countries, and unions in South Africa. He cited the example of the Federal Republic of Germany, whose transport union had decided to boycott or refuse to load or unload South African goods, and had subsequently been threatened by the Government on the grounds that its action was illegal under the law of the Federal Republic of Germany.

564. A witness stated (723rd meeting) that foreign investments in South African industry might contribute to the welfare of the State, but made no contribution whatsoever to the welfare of workers, in particular black workers. He concluded that sanctions would by no means harm the living conditions of black workers. Other witnesses also expressed the same view.

Part Two

NAMIBIA

Introduction

565. As an investigatory body instructed by the Commission on Human Rights since 1967 to monitor the situation in Namibia, the Ad Hoc Working Group of Experts has, in the exercise of its mandate, followed the political development of Namibia and the situation concerning human rights. In this context, the Group has described in its previous reports the illegal procedure by which South Africa continues to extend its authority over Namibia.

566. In reviewing the political situation in the territory, the Group has recalled the position taken by the international community and in particular by the Security Council, which has condemned South Africa for having installed a so-called interim government in Windhoek and has declared this action to be contrary to the provisions of Security Council resolutions, in particular resolutions 435 (1978) and 439 (1978).

567. In addition, the Group has recalled that the Government of South Africa had extended the application of South African legislation to Namibian territory, and, in particular, had taken repressive measures against the South-West Africa People's Organization (SWAPO), and its sympathizers, and against representatives of the churches in Namibia. Such measures, far from dissuading the Namibian people from continuing the struggle for political change, have strengthened popular resistance to colonial domination in Namibia.

568. The main events of the period under review were the efforts to find a peaceful solution to the Namibian conflict. These efforts took concrete form in quadripartite negotiations aimed at bringing about a peaceful solution to the problems of Angola and Namibia, involving the holding of free and orderly national elections on the basis of universal suffrage under United Nations supervision as a prelude to internationally recognized independence for Namibia.

569. The Ad Hoc Working Group took note of the terms of the agreement reached in New York on 13 July 1988, under which the Governments of Angola, Cuba and South Africa, through the mediation of the United States of America, recognized the need to co-operate with the Secretary-General of the United Nations in order to ensure the independence of Namibia, and at the same time to refrain from any action which might impede the implementation of Security Council resolution 435 (1978).

570. On 22 December 1988, an agreement concerning the withdrawal of Cuban troops from Angola, as a prerequisite for the process of Namibian independence, was signed by the representatives of the Governments of Angola, Cuba and South Africa. Once this agreement is ratified, the process of independence for Namibia, today illegally administered by South Africa, can begin in February 1989 and should be completed in early 1990 with the entry into office of a new Government and elections which should be held in November 1989.

571. However, while remaining hopeful that the efforts made to implement the United Nations plan for the independence of Namibia will be successful, the

Ad Hoc Working Group of Experts wishes to draw the attention of the Commission on Human Rights to the current situation in the field of human rights.

572. In the present report, the Group has focused in particular on aspects of certain measures which have given rise to flagrant violations of human rights, notably the introduction of security measures to control entry into six northern districts of Namibia, which require non-resident civilians to obtain permits from the police. At the same time, the Group has received information attesting to the further escalation of attacks against the civilian populations of the front-line States, increased intimidation of SWAPO members and sympathizers, as well as other persons, and the continued detention of Namibians in custody in very poor conditions. In general, repressive practices and police brutality towards the Namibian population have taken the form of arrests, assaults and torture of civilians, mostly by members of the "Koevoet".

573. Apart from human-rights violations affecting individuals, the present report analyses other manifestations of policies and practices prevalent in Namibia, in particular those relating to the right to work, the right to health and the right to freedom of expression.

574. In the light of available information during the period under review, the Ad Hoc Working Group of Experts draws the attention of the Commission on Human Rights to cases of persons suspected of being guilty of the crime of apartheid or of a serious violation of human rights in Namibia.

Comments on the present situation in Namibia

575. In submitting this report for the Commission's consideration, the Ad Hoc Working Group of Experts wishes to draw its attention to a number of provisions still in force in Namibia which reflect the alarming reality currently prevailing in this territory in the area of human rights. As already indicated, while it is hopeful that the negotiations currently under way will lead to a peaceful settlement of the Namibian question, the Group feels bound, under its mandate, to submit to the Commission information concerning policies and practices violating human rights in Namibia, so as to enable it to take adequate measures that will contribute to the restoration of fundamental human rights in this region.

576. Accordingly, the Group considers it appropriate once again to outline the existing provisions in Namibia which clearly contradict the statement by the South African authorities that racial discrimination in Namibia has ended. In this respect, the Government of South Africa has frequently referred to its so-called Abolishment of Racial Discrimination (Urban Areas and Public Amenities) Act of 1979.

577. It will be recalled that since 1964 the Government of South Africa has been gradually introducing the "homelands" policy in Namibia, which involves grouping Namibians along tribal and ethnic lines in arid regions of the country under the Odendaal plan. Several South African laws have since been applied to Namibia specifically with a view to implementation of the plan.

578. In this regard, the Ad Hoc Working Group of Experts has noted the following acts:

(a) The Development of Self-Government for Native Nations in South-West Africa Act of 1968, which contains provisions allowing each "homeland" to set up a legislative council and an executive council with legislative powers limited to certain domestic affairs;

(b) The South-West Africa Affairs Act No. 25 of 1969, under which the local white legislative council was given wider powers over the territory;

(c) Proclamation AG.8 of 1980, which allowed the establishment of a so-called "ethnic" or second-tier administration that divides Namibia into 10 zones on a racial basis. It should be noted, in this respect, that the effect of the division advocated in the Odendaal plan had been to fragment the Namibian population, confining 84 per cent to 10 "homelands" covering 40 per cent of the land in desert areas. As a consequence, the majority black population in Namibia has difficulty in providing for its most elementary needs and thus depends on the employment opportunities offered by the white population in Namibia.

579. At the same time, under pressure from the international community, the Government of South Africa has promulgated a number of legislative provisions through which it has attempted, unsuccessfully, to persuade the international community that efforts were being made to establish a legislative and executive authority in Namibia. By the South-West African legislative and establishment Proclamation 101.R of 1985, the South African Government claimed to be giving legislative and executive authority to the "interim government", while at the same time retaining all its powers in the territory, including foreign affairs and defence.

580. In addition, as the Group has already noted in its previous reports, a Bill of fundamental rights and objectives was enacted as an amendment to Proclamation 101.R, guaranteeing the right to freedom of association, freedom of assembly and expression, the right to a fair trial, equality before the law, habeas corpus, and recognition of the illegality of torture and ill-treatment. However, as the Group has already pointed out in its previous reports, it has been informed of several cases reflecting systematic violations of these same provisions.

581. As the Director-General of the International Labour Office indicates in his 1988 report to the International Labour Conference 16/ "... the Government of South Africa ... demonstrated that it would not permit any development in Namibia which would harm its own interests there and clearly endeavoured to bring about a situation in which resolution 435 [(1978)] would be regarded as obsolete. But it failed in that respect as the United Nations Security Council injected new momentum into the application of the resolution. In the meantime the condition of the people deteriorated further".

582. In the light of information compiled during its most recent fact-finding mission, and taking account of additional information received during the period under review, the Ad Hoc Working Group of Experts considers that the situation has deteriorated rather than improved, although recent political developments raise hopes that this situation will in future conform with the general principles of human rights.

583. In chapter I of this report, the Group first analyses violations of human rights affecting individuals. This chapter contains an analysis of the

situation in Namibia during the period under review, with particular reference to violations of the right to life and physical integrity, atrocities committed by the "Koevoet", deaths of detainees, torture and ill-treatment of Namibians, recent cases of detention and political trials. Chapter II, entitled "Right to work and freedom of association", describes the working conditions of the active population in Namibia and discriminatory practices with regard to employment and the exercise of trade-union rights. Chapter III analyses information concerning the right to education, health and freedom of expression, chapter IV assesses the situation of refugees, and lastly, chapter V refers to a number of cases of persons suspected of being guilty of the crime of _apartheid_ or of a serious violation of human rights in Namibia.

V. VIOLATIONS OF HUMAN RIGHTS AFFECTING INDIVIDUALS

A. Capital punishment

584. As indicated in the previous reports of the Ad Hoc Working Group of Experts, the various South African security laws prescribing the death penalty have been illegally made applicable in Namibia. No new law limiting or extending the sphere of application of the death penalty has been made applicable in Namibia during the period under review.

585. In addition, since the South African Government does not publish separate statistics on executions of Namibian prisoners sentenced to death, no death sentence has been brought to the knowledge of the group during the period under review.

B. Violations of the right to life and physical integrity

586. During the period under review, the Ad Hoc Working Group of Experts once again gathered testimony and information on atrocities committed during operations in Namibia by the "Koevoet", a special police counter-insurgency unit, on certain cases of disappearances, on cases of torture and ill-treatment of black Namibians, on a number of recent cases of detention, and on cases of deaths of detainees.

1. Summary of relevant legislation

587. The Security Districts Proclamation, 1977, or Proclamation AG.9 as it is commonly known, is in effect in northern Namibia and has placed 80 per cent of the population under a state of emergency. The Act confers very extensive powers on the authorities, permitting them for example to detain any person for interrogation for a period of 30 days without charge or access to legal counsel. Several testimonies show that, in the enforcement of this legislation, the police and security forces are subjecting Namibians to various forms of torture and ill-treatment, such as electric shocks, prolonged deprivation of sleep, hanging by the arms and legs, and burns.

588. According to consistent reports, the right to physical integrity is one of the least respected human rights in Namibia. It would appear that violations of this right are common in enforcing Proclamation AG.9 in particular. In addition, under the Detention for the Prevention of Political Violence and Intimidation Proclamation, 1978, the authorities have the power to detain indefinitely any person they believe presents a threat, hindrance or obstruction to the "peaceful and orderly constitutional development" of Namibia, or is likely to promote political violence and intimidation.

589. This arsenal of repressive legislation also includes other acts, already mentioned by the Group in its previous report, such as: (a) the Intimidation Act, which is designed to counter election boycotts; (b) the Demonstrations in or near Court Buildings Prohibition Act, aimed at banning demonstrations during political trials; and (c) the Protection of Information Act, which restricts the flow of information on the activities of the police, the armed forces and government organs. Mention should also be made of restrictions on freedom of movement in Namibia resulting from the curfew which has been in force since 1981 in the northern part of the country, and also from the Security Districts Proclamation AG.28 of 1985, under which the six zones in

the northern part of Namibia declared "security districts" cannot be entered without police authorization. The zones concerned are Ovamboland, Kavangoland, East Caprivi, East Hereroland, Kakololand and Bushmanland. According to testimony received "Koevoet" paramilitary squads are particularly active in these zones, committing multiple atrocities against anyone travelling without authorization. There are consistent reports of burnings and summary executions. According to further reports, despite the fact that the system of travel permits was abolished in November 1987, other measures restricting freedom of movement have been introduced, such as the establishment of a curfew in Ovamboland.

590. According to testimony received by the Group, the Protection of Fundamental Rights Act, 1988, was promulgated by the Administrator-General in August 1988 to counter boycott movements in various schools in the territory. The main provisions of this Act are reproduced below:

"1. In this Act, unless the context otherwise indicates, 'educational institution' means any school or institution established, registered or recognized by or under any law and at which education is provided to children or other persons, and includes any university, technicon or college established by or under any law; and

'the State' includes any representative authority established under the provisions of the Representative Authorities Proclamation, 1980 (Proclamation AG.8 of 1980), and any board or body established or constituted by or under any law.

"2. (1) Any person who, without any lawful reason, in any manner whatsoever, uses or publishes any language or does any act or thing with intent to induce or to persuade any other person or persons in general -

(a) (i) to impede, interrupt or stop in any manner the functions or activities of or at any educational institution;

(ii) to abstain, temporarily or permanently, from attending any class or lecture at any educational institution where such person is admitted as a pupil or student or from participating in any other lawful activity at such educational institution;

(iii) to obstruct or to attempt to obstruct, in any manner, any other person admitted as a pupil or student to any educational institution from attending any class or lecture at such educational institution or from participating in any other lawful activity at such educational institution;

(b) (i) to stay away, temporarily or permanently, from his place of employment, or to refuse to perform or refrain from performing his duties;

(ii) to obstruct or to attempt to obstruct, in any manner, any other person from attending his place of employment or from performing his duties;

(c) (i) to abstain from making use of or receiving any public service, of whatever nature, rendered by the State or any person, whether to him in particular or persons generally, and which he normally makes use of or receives or may make use of or receive;

(ii) to obstruct or abstain any other person from making use of or from receiving any of the public services referred to in subparagraph (i);

(d) to boycott any undertaking or industry or undertakings or industries generally or to impede or interrupt in any manner the business ordinarily carried on by any undertaking or industry, or not to make use thereof,

shall be guilty of an offence and liable on conviction to a fine not exceeding R20,000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

(2) The provisions of subsection (1)(b) and (d) shall not apply in relation to anything that any employers' organization or trade-union registered under the Wage and Industrial Conciliation Ordinance, 1952 (Ordinance 35 of 1952) may lawfully do or not do under that Ordinance, as the case may be.

(3) If, in any prosecution in terms of subsection (1), it is proved that any person has done any act or acts constituting an offence in accordance with the provisions of that subsection, it shall be deemed to have been done by him without lawful reason, unless the contrary is proved.

"3. Any person who, by himself or by any other person, directly or indirectly, makes use or threatens to make use of any violence, force or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, upon or against, or does or threatens to do anything to the detriment of, any other person, or his next of kin, on account of such other person

(a) attending or having attended any class or lecture at any educational institution where he is admitted as a pupil or student or, participating or having participated in any other activity at such educational institution;

(b) calling on or having called on any undertaking or industry to transact any business of whatever nature or for any other lawful purpose;

(c) making use or having made use of any public service referred to in paragraph (c) or subsection (1) of section 2;

(d) attending or having attended his place of employment in order to perform his ordinary duties; or

(e) intending

(i) to attend any class or lecture at any educational institution where he is admitted as a pupil or student or, to particpate in any other activity at such educational institution;

(ii) to call on any undertaking or industry to transact any business of whatever nature or for any other purpose;

(iii) to make use of any public service referred to in paragraph (c) of subsection (1) or section 2; or

(iv) to attend his place of employment in order to perform his ordinary duties,

shall be guilty of an offence and be liable on conviction to the penalties provided by subsection (1) or section 2 of this Act.

"4. (1) For the purposes of this Act, any police official or any peace officer as defined in the Criminal Procedure Act, 1977 (Act 51 of 1977) and any member of the South African Defence Force shall have the right, subject to the provisions of subsections (2) and (3) of this section, to enter and search any premises and to search, arrest and detain in custody any person.

(2) The provisions of the Crimninal Procedure Act, 1977 (Act 51 of 1977), in relation to the entering and searching of premises or the search, arrest and detention in custody of persons, shall mutatis mutandis apply to any entering or searching of premises and any search, arrest or detention in custody of persons under subsection (1) of this section.

(3) In the application of the provisions of the Criminal Procedure Act, 1977 (Act 51 of 1977), in accordance with subsection (2) of this section, any reference in the said Criminal Procedure Act, 1977, to a peace officer shall be construed as including a reference to any member of the South African Defence Force."

591. The Group is of the opinion that the provisions of this law are designed to hinder student activities.

2. Analysis of testimony and information received

(a) Atrocities committed by the "Koevoet"

592. During the period under review the Ad Hoc Working Group of Experts once again gathered testimony and received detailed information on atrocities committed against the civilian population in Namibia. Among the cases most frequently mentioned, the Group particularly noted cases of arbitrary executions of civilians by counter-insurgency units. Such cases often involved persons suspected of being SWAPO sympathizers. Others concerned the killing of civilians, arbitrary raids and the destruction of houses, detention

and torture of individuals, and rapes of women during raids carried out mainly at night. Several consistent testimonies blame such atrocities on "Koevoet" units, particularly in the security zones.

593. In his statement to the Ad Hoc Working Group of Experts, Reverend John Evanson (709th meeting) referred to the case of Mr. Nekundi, aged 74, who lived in a remote part of western Ovamboland and was reportedly run down and killed by a military vehicle which also destroyed his home. According to reports received, these reprisals were carried out by the security forces after the loss of one of their vehicles, which had reportedly been blown up by a mine laid by SWAPO members near Mr. Nekundi's home. The same witness also mentioned several cases of girls being raped, particularly schoolgirls. For example, Miss Aina Tuukondgele, aged 15, a pupil at Oshakati secondary school, told the witness that in June 1988 she and some room-mates of hers had been raped by four armed "Koevoet" members.

594. This kind of information is corroborated by press sources.

595. According to press reports, in particular in the Weekly Mail of 9-15 September 1988, other cases of rape by members of the "Koevoet" occurred during the period under review. In September 1988, for example, Mrs. Sarah Nhenda, the mother of two young children, was reportedly raped in the presence of her children by members of the security forces. When asked whether she had lodged a complaint with the police, the victim replied that she preferred to keep quiet for fear of being subjected to the same treatment again if the "Koevoet" men discovered that she had lodged a complaint. Several similar cases were brought to the Group's attention by various witnesses, in particular the representative of the Kairos Working Group (709th meeting) and other witnesses who appeared before the Group at its 712th and 723rd meetings. Some of these witnesses told the Group that "Koevoet" units often represented themselves as SWAPO militants. Such cases would appear to have occurred particularly in the northern part of the country during curfew hours between 7 p.m. and 7 a.m.

596. A written statement submitted to the Group by the Kairos Working Group refers to the following incidents which reflect the scale of atrocities by units of this branch of the security forces in Namibia:

(a) In February 1988, a man aged 74 is reported to have been killed by a vehicle identified as belonging to a "Koevoet" unit in the district of Ongandjera (see para. 593);

(b) Mrs. Loini Shooga, aged 62, from the village of Onandgila near Ongandjera, had to have her right arm amputated after having been badly beaten by members of the South African defence forces. This incident was confirmed by an article in the Weekly Mail of 9-15 September 1988.

(b) Missing persons */

597. As regards missing persons in Namibia, the Ad Hoc Working Group of Experts received information that the persons listed below, reportedly arrested between 1978 and 1987, may be described as "missing", since their families have been unable to obtain information concerning their whereabouts and are almost fully convinced that they have been killed in prison:

List of persons reported "missing" - 1978-1987

Identity	Date of detention	Place of residence
Ndeifeka ERASTUS	18 September 1978	Nakayale
Rufus AMUKUHU	18 September 1978	Nakayale
Mutumbulwa AMUKUHU	September 1978	Kakayale
Festus NAKAWA	October 1978	Ontananga
Johannes NAKAWA	31 May 1979	Onipa
Matia ASHIPEMBE	June 1979	Oshakati
Toivo SHIILONGO	5 May 1980	Okahao
Marcellinus IIPINGE	4 October 1980	Okatanga
Modestus IIPINGE	4 October 1980	Okatanga
Andreas KASHIKOLA	27 November 1980	Elombe
Teofilus MATEUS	27 November 1980	Elombe
Mateus JESAYA	27 November 1980	Elombe
Filemon Kasita IIKELA	19 January 1981	Oniipa
Kristof Iiyambo SHIKONGO	10 February 1981	Ekamba
Simeon Johannes NEHOYA	June 1981	Onyaanya
Amutenya Johannes ASHIPALA	29 June 1985	Okatana
Markus PAULUS	4 September 1985	Oniipa
Ruben EDMUND	28 November 1986	Eendobe
Natanael SHIKONGO	13 March 1987	Oniipa
Abner SHIKESHO	3 July 1987	Onimwandi
Stefanus NGHIFIWKA	22 July 1987	Engela
Immanuel HATUTALE	1 August 1987	Engela
Johanna KAYAMBU	1 August 1987	Engela
Afunde NGHIYOLWA	4 September 1987	Oshikuku
Matheus HANDJABA	8 October 1987	Engela
Erastus HAIKALI	October 1987	Engela
Simon AMWIIBI	December 1987	Onankali

598. The Ad Hoc Working Group of Experts has previously received information concerning disappearances and describing the circumstances or features of these cases (E/CN.4/1985/8, paras. 458-460). In the case of the above-mentioned disappearances, although the identity of the persons has been clearly established, as well as the date of their detention, the representative of the Namibia Communications Centre informed the Group that his organization had the feeling that the persons described as "missing" had been executed.

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*/ The information concerning the question of disappearances was transmitted to the Chairman of the Working Group on Enforced or Involuntary Disappearances by letter of the Chairman of the Ad Hoc Working Group of Experts on Southern Africa, dated 13 January 1989.

(c) Cases of torture and ill-treatment

599. The Ad Hoc Working Group of Experts noted in its previous reports that South African laws providing for long periods of detention and imprisonment for "political offences", as well as legislation covering detainees, had been made applicable to Namibia and were still being applied there. In addition, many laws and emergency proclamations, notably Proclamation AG.9, were drafted specially for Namibia and implemented chiefly by the Administrator-General on behalf of the South African authorities.

600. During the period under review, the Group's attention was drawn to a number of cases of torture and ill-treatment of black Namibians, which included the use of electric shocks, hanging by the arms and legs, deprivation of sleep for long periods, beatings of the genitals and burns. According to information transmitted to the Group, the perpetrators of such acts either go unpunished or, if found guilty, have the lightest sentences imposed on them. According to a report concerning Namibia submitted to the Committee on the Elimination of Racial Discrimination (CERD/C/153/Add.1, para. 39), soldiers convicted of assault had been fined a mere $US 2.50 each. The case involved a 15-year-old boy from northern Namibia who had reportedly suffered severe burns after members of the South African defence forces had held his face against the exhaust pipe of an army truck, in an attempt to extract information from him. The soldiers reportedly stated that such tactics had proved effective when they had sought information from the civilian population.

601. Father Joseph Mdahuurwa, a priest from Okahandja (southern Namibia) stated that he had been blindfolded and beaten and received electric shocks to his genitals for having refused to admit that two visitors to his home were SWAPO members. He told the Group that he had been detained for three weeks in an extremely small windowless cell in total darkness, with no water, and had not been allowed to read or see anyone from the outside.

602. An anonymous witness told the Group that he had knowledge of the arrest in Tsumeb of a number of schoolboys aged between 13 and 15 who had reportedly been tortured.

(d) Recent cases of detention

603. In the light of information received during the period under review, the Ad Hoc Working Group of Experts notes once again that detentions without trial of persons suspected of opposition are still occurring, pursuant to the provisions of Proclamation AG.9 of 1977, which authorizes any member of the security forces in the zones designated as "security districts" to arrest any suspect without a warrant and to hold him incommunicado without charge for 30 days in any place "deemed appropriate". It should furthermore be pointed out that, apart from detentions under the Internal Security Act of 1950 and the Terrorism Act of 1957, the Detention for the Prevention of Political Violence and Intimidation Proclamation of 1978 grants the authorities the powers described in paragraph 588 above.

604. According to consistent testimony communicated to the Group, the number of detentions rose during the period under review, as shown by the cases described below. It should be noted, however, that during the same period a number of prisoners were released.

605. According to information made available to the Group, the following persons have been detained in Namibia for political reasons during the period under review:

List of persons detained in Namibia for political reasons

Name	Occupation	Place of origin	Date of detention
Erasmus HENDJABA (Catholic)	Pupil at Eengendjo secondary school	Omungwelume	20 April 1988
Nason IILEKA		Tshandi	14 July 1988
Gideon Nghishitendi KAMHULU	Businessman	Ogongo	14 January 1988
Johannes KOMEYA		Ogongo	19 January 1988
Elia LUCAS			19 January 1988
Matteus MUDJANIMA	Engine driver	Windhoek	22 July 1987
Mwahafa Elia MUKAME		Ohausholo	January 1988
Shipandeni MUPOLO, (Lutheran)		Onyaanya	19 January 1988
Johannes NEKONGO	Worker		19 January 1988
Henry NGHEDE		Windhoek	29 January 1988
Paulus NGHIPUNYA		Ohausholo	January 1988
Simon NGHIPUNYA (Lutheran)		Eenhana	19 January 1988
Silvanus PETRUS	Shop assistant	Iipumbu	23 March 1988
Daniel David SHANNIKA		Okahao	11 April 1988
Jesaya SHEEFENI		Onheleiwa	25 March 1988
Paulus SHILULE	Teacher at Omulukila primary school		20 January 1988
Armas SHINANA	Employee at Oshela secondary school		13 April 1988
Sheetekela SHININGENI		Windhoek	19 July 1988
Haitwa PIKAMENI	Pupil at Eengendjo secondary school	Omungwelume	20 April 1988
Aaron HAULOFU	Pupil at Eengendjo secondary school	Omungwelume	20 April 1988

606. Information from the United Nations Council for Namibia reveals that the following persons were also detained during 1988: Reverend Jackie Basson, a Roman Catholic priest in Windhoek, in charge of youth activities; Mr. Abner Shilongo, a teacher and member of the National Union of Namibian Workers (NUNW); Mr. Ignatius Shemweneni, a member of the Namibian National Students Organization (NANSO) established in 1984; "Chief" Enkama, a NUNW official; Mr. John Liebengerg, a member of the editorial board of the newspaper The Namibian; Mr. Jeremiah Nambinga, a young anti-apartheid activist; and Mr. Oswald Shivute, Secretary to the head of the Ovambo "homeland".

607. In addition to the cases previously mentioned, the Ad Hoc Working Group of Experts was informed of a number of acts of intimidation affecting the right to freedom of expression. Thus, in June 1988, Mrs. Gwen Lister, editor of the newspaper The Namibian, was arrested on a charge of having disclosed information about a new bill giving the police broader powers to suppress any action or arrest any person in the interests of law and order. Lastly, as indicated in chapter III, section A, relating to education, during the period under review several hundred students and schoolchildren were arrested and detained in custody because of their opposition to the installation of barracks near their colleges and schools.

(e) Deaths of detainees

608. During the period under review, one case of death in detention was brought to the Group's attention: The victim was Mr. Ignatius Nambondi, a primary school teacher aged 29, who had been employed at the Roman Catholic mission in Oshikuku. According to consistent statements by witnesses who appeared before the Group and from other sources, Mr. Nambondi died in his cell at Oshakati prison on 24 February 1988 after having been arrested and detained on 9 February 1988 under Proclamation AG.9. According to the information received, the victim had been very severely beaten by members of the "Koevoet" before being transferred to the prison. According to police statements, however, he hanged himself in his cell on 24 February 1988. At the request of the deceased's family, an autopsy is said to have been held at Cape Town on 1 March 1988 in the presence of Professor Schwart representing the family. At the time of adoption of the report, the Group did not know the findings of the autopsy or the date on which an investigation into this particular case might begin.

609. According to consistent information, Mr. P.W. Botha, President of South Africa, intervened personally to halt the trial, in Windhoek, of six South African soldiers accused of murder. They were alleged to have stabbed Mr. Emanuel Shefidi during a peaceful demonstration in Windhoek in 1986. The soldiers included the following four senior officers: Col. G.H. Vorster, of the South-West African defence forces at Windhoek, Col. W.H. Welgemoud, commander of 101 Batallion at Ontangua in northern Namibia, Cdr. A.G. Botes, of the South-West African defence forces and Lt. A.G. Pinsloo of 101 Batallion. The President ended the trial by invoking section 103 ter of Defence Act No. 44 of 1957, which provides that the State President, through his Minister of Justice, may at any stage of the trial withdraw from the jurisdiction of the courts and terminate legal proceedings against any person who committed an act deemed by the Minister to have been committed in good faith, in connection with the prevention or suppression of terrorism in an operational area. The deceased's daughter lodged an appeal on the grounds

that an attack against a peaceful and lawful demonstration could not be construed as intended to suppress terrorism in an operational area. This is the second time that President Botha has intervened in such a manner in a case before the Supreme Court of Namibia. In 1986, he terminated the trial of four members of the South African forces charged with the murder of Mr. Frans Vapota, aged 48, father of five children, whom they had allegedly assaulted and beaten to death on 28 November 1985 near Ohjangwena in northern Namibia. 17/

(f) Other violations of the right to life

610. During the period under review, the Ad Hoc Working Group of Experts was informed of the following incidents during which loss of life occurred:

(a) In late September 1988, two children were reported to have been killed and two others seriously injured after handling a bomb which they had found near their home. The incident occurred in the town of Ongwediva in Ovamboland;

(b) Three members of the same family, including a three-year-old child, were reported to have been killed by a bomb which exploded in their home 16 kilometres from the town of Oshakati. According to statements by villagers, this was a rocket fired by the army while it was bombarding the outskirts. According to further reports, it would appear that the army officers admitted responsibility and offered three coffins by way of compensation. An inquiry is reported to have been opened, but no additional information was available to the Group at the time of adoption of its report.

VI. RIGHT TO WORK AND FREEDOM OF ASSOCIATION

611. When examining developments in the area of work and freedom of association in its previous report (E/CN.4/1988/8), the Group made the following two observations: on the one hand, working conditions had remained virtually unchanged and had been characterized mainly by poverty, high unemployment, further segregation, and inequality of job opportunities and wages; on the other hand, despite the repressive measures taken against trade unions by both employers and the security forces, the trade-union movement had made considerable progress.

612. The combination of these two factors means that the present economic situation, which is one of a war economy, fails to meet the legitimate aspirations of blacks, who account for more than 93 per cent of the total population of Namibia.

613. According to available statistics, the country has considerable natural resources and has an economically active population of approximately 500,000, most of whom come from the north of the country and work on short-term contracts for migrants. The main sectors of activity are agriculture, public services and mining. With regard to the demographic composition of the population, a 1986 census gave the following figures for the various ethnic groups:

Namibia: Composition of the population, 1986

Population group	Number	Percentage of total
Owambos	587 000	49.7
Kavangos	110 000	9.3
Hereros	89 000	7.5
Damaras	89 000	7.5
Whites	78 000	6.6
Namas	57 000	4.8
Metis	48 000	4.1
Caprivians	44 000	3.7
Bushmen	34 000	2.9
Rehoboth Basters	29 000	2.5
Others	15 000	1.0
Total	1 180 000	100.0 a/

a/ Sic: In fact 99.6 rounded to 100.

614. According to United Nations estimates, the active population by sector is as follows:

Namibia: Composition of the active population, 1986

Sector	Number of workers
Commercial agriculture	56 500
Mining	20 000
Fishing	7 500
Manufacturing industries	28 500
Services	148 000
Public administration	40 200
Total	300 700

615. Consistent information brought to the Group's attention indicates that the labour situation remains unchanged or, if anything, has worsened. According to information received by the Group in 1988, no developments are likely to improve the plight of the population, either in terms of the working conditions of black Namibians or as regards freedom of association.

A. Situation of black workers

616. In his 1988 annual report 18/, the Director-General of the International Labour Office noted that under the transitional Government in Namibia "the basic problems of the territory have remained virtually unchanged: the widespread poverty; the large-scale unemployment; the inadequate black education and training systems; the absence of adequate industrial relations systems; the divisory nature of the administration, which impedes national development; the exploitation of the economy by outside influences; the presence and repressive actions of the South African forces; and the continuing war in the north of the country".

617. Apart from the very high rate of unemployment which mainly affects black Namibians, there is a clear-cut division of work between whites and blacks. Well-paid specialized supervisory, administrative and technical posts, go mostly to whites, with blacks performing work requiring few or no qualifications. Because of the conditions of employment and the high rate of unemployment, the wages of black Namibian workers are still extremely low. Although it remains difficult to obtain reliable statistical estimates, the situation can be evaluated using the above data.

618. According to some surveys referred to in the report of the International Labour Office, most Namibians live below the poverty line. In 1987, for example, the minimum subsistence income for a black family of six persons in Windhoek was estimated at 174 rand a month. However, average actual family income was 98 rand a month, which means that 86 per cent of black workers in Windhoek and their families were living below that threshold, a large proportion of them receiving only 80 rand a month. In the far less developed northern part of the country, this proportion was 99 per cent.

619. In evidence given at the Group's 708th meeting, the representative of the International Labour Office, referring to the situation of migrant workers in

the large cities, said that the system of recruitment of migrants continued to be applied despite the fact that such recruitment, which brought very large numbers of workers from isolated regions to the cities to live in inhuman conditions, had officially been abandoned in 1978. The witness added that these migrants were generally lodged in deplorable conditions in hostels controlled by the local authorities. He mentioned, for example, the particularly insanitary hostel in Windhoek known as the "Katatura Hostel", which provided appalling accommodation for hundreds of immigrants. Furthermore, despite the fact that official control on entries has been stopped as such and blacks in Namibia are theoretically permitted to move freely between areas outside the war zone, in practice the same strict controls as in South Africa are still applied. There are therefore two obstacles to employment: the difficulty of obtaining accommodation and the recruitment contracts made between employers and local heads or other agents.

620. At its 730th meeting, the representative of the International Confederation of Free Trade Unions confirmed these economic developments, and referred to the situation of trade unions and the repression they were continuing to suffer. He stated that in April 1988, during a visit to Namibia, the President of South Africa had ordered the interim government to find some means of ending worker agitation and crush support for SWAPO. The President is accordingly reported to have increased the powers of the Administrator-General in Namibia, giving him the right of veto in order to enhance the power of the whites.

621. As regards strikes in Namibia, an anonymous witness stated that during a strike by Namibian workers on 22 July 1988, the police had systematically raided houses, beating any person they found and destroying everything in their path. During this strike in sympathy with the school boycott in Windhoek, the witness said that he had himself been arrested and accused of having organized the boycott. He had managed to obtain his release by stating that he had been under treatment for a chronic illness; he had nevertheless been very severely beaten before being released.

622. According to consistent reports, during the period under review, low wages were the main cause of at least three strikes in the building and food sectors. Thus, in late February 1988, workers employed by Nico Bouers Contractors, a building company in Windhoek, went on strike in support of their demand for a wage increase. Following the dismissal of 15 workers by the employer, 21 other workers were reported to have gone on strike in sympathy.

623. In April 1988, 36 workers were reportedly dismissed from the Danken Bricks company near Breakwater.

624. In May 1988, 230 workers were reported to have gone on strike at the Hartlief Meat Factory in Windhoek. The workers, all members of the Namibian Food and Allied Workers' Union (NAFAWU), rejected the wage increase offered by the management on the grounds that it was too low.

625. In connection with sympathy strikes by workers and trade unions, the Group received the following information:

(a) On 6 June 1988, Mr. Samuel Ankama, a journalist and member of the National Union of Namibian Workers (NUNW), was severely beaten by police

during a demonstration by schoolchildren at Katutura. The police did not allow him to receive medical treatment despite his serious injuries;

(b) On 15 June 1988, two trade-union representatives were arrested near Swakopmund for no apparent reason, although the police reportedly confiscated 500 copies of the Namibian Worker, a NUNW publication. The two men were apparently released without charge two days later. On the day of their release, however, the Deputy Secretary-General of NAPAWU, Mr. MacDonald Katlabathi, was arrested under Proclamation AG.9. According to further information received, the three men were charged with violating article 3 of the Act of 1985 relating to the residence of certain persons in Namibia. It will be recalled that under the provisions of this Act non-Namibians are required to be in possession of a permit to reside in the country for up to 30 days, unless they have received special exemption. The Group had received no further information on these cases by the time it adopted its report.

626. Another specific aspect of the condition of black workers in Namibia was described to the Group, namely, the situation of black women. As the Group has already stated in earlier reports, the situation of black women continues to give rise to the most serious concern. Apart from the fact that, as women, they are employed in lowly cleaning or household jobs and do not enjoy even strictly minimum standards as regards working conditions and social security, they are unable to work under contract or to leave their "homelands". They are thus strictly forbidden to accompany their husbands when the latter secure a contract of employment in another part of the country.

B. Trade unions and freedom of association

627. The right to establish trade unions and, in general, to join trade unions is not recognized by the South African authorities. Wage and Industrial Conciliation Ordinance No. 35 of 1952 forbids Africans to establish or join unions or to strike. It will be recalled, however, that in 1978 an Act amending the above-mentioned Ordinance was promulgated to enable blacks to establish and join their own unions. This new Act contains several restrictive provisions of a political nature, *inter alia*, forbidding approved unions to participate in or join a political party of any kind. Subsequently, in 1985 a further Act amending the law on wage and industrial conciliation forbade sections of South African unions to engage in activities in Namibia. It also forbade any person not resident in Namibia to recommend, encourage or promote the establishment of unions, to attend or speak at meetings to consider the establishment of unions, or to perform the functions of trade unionists.

628. Despite all these restrictions, however, Namibian workers are intensifying their struggle and are organizing, in particular through increasingly widespread strikes during the period under review, especially in the mining sector. Encouraged somewhat by the mobilization of workers by the NUNW, a union sponsored by SWAPO which developed during the 1970s, three other unions have been established: the Namibian Food and Allied Workers' Union (NFAWU), the Metal and Allied Namibian Workers' Union (MANWU) and the Namibian Public Workers' Union (NAPWU).

629. According to consistent reports, despite the strict bans on strikes by black workers in Namibia, the number of such strikes has steadily increased during the period under review, thereby reactivating the trade-union movement in Namibia.

VII. OTHER MANIFESTATIONS OF POLICIES AND PRACTICES WHICH CONSTITUTE A VIOLATION OF HUMAN RIGHTS

630. Apart from violations of human rights affecting individuals and the right to work and the right to freedom of association, the present chapter outlines other manifestations of policies and practices which, in the opinion of the Ad Hoc Working Group of Experts, constitute a violation of human rights in Namibia. In the light of the reports received during the period under review, the Group refers in this chapter to (a) the education system, (b) the state of health of the Namibian population, and (c) the right to freedom of expression.

A. Right to education

631. In its most recent report (E/CN.4/1988/8) the Group noted that general education policy had always been to structure the sector around the ideology of apartheid by allocating different resources to the education of whites and blacks. The Group also observed that education was always separate and not compulsory for blacks, that discrimination in education was apparent from the resources devoted to education for the different races, and that the growing dissatisfaction with the Namibian education system was manifesting itself in continual conflicts in schools and other educational institutions. According to information reaching the Group during the period under review, repression of students by the security forces increased because of the school boycotts in protest against the installation of military barracks near schools and against the presence of soldiers in schools. All in all, the Group did not note any improvement in the situation; on the contrary, the situation deteriorated.

632. This analysis is confirmed by ILO, which, in its 1988 report, 19/ notes that:

> "Schooling was frequently disrupted by the inability of some local administrations to pay teachers, which led to the closure of 14 schools; in other areas schools have been closed and education centralised in order to prevent pupils from demonstrating their support of SWAPO, or because of raids by troops in Owambo on schools sponsored by churches."

633. It is in the war zones, particularly in northern Namibia, that education was most seriously disrupted during the period under review. Several consistent reports refer to the destruction of many schools by the security forces in retaliation for support by the population for SWAPO or following school boycotts by pupils protesting against the installation of military zones near their schools or at the poor quality of teaching.

634. Among the legislation relating to the education system currently in force, the following should be noted: Educational Ordinance No. 21 of 1975, as amended by Educational Ordinance No. 3 of 1978, which created enormous differences between whites and blacks as regards educational establishments and equipment, teacher training, teachers' salaries, the number of pupils per teacher, and the sums spent each year per pupil. In this connection, according to information received by the Group, the education budget simply perpetuates discrimination between education for blacks and education for whites. One thousand one hundred and sixty five rand is reportedly spent on each white pupil, as compared with 318 rand on each black pupil; moreover, some three quarters of teachers in black schools have not completed their secondary education and one fifth have not even advanced beyond level eight,

i.e. three years of secondary education. In the ILO report already referred to, it is estimated that 60 per cent of the black population are illiterate and that only two thirds of blacks who leave primary school are literate. There is no university covering the whole of the territory, only a few technical institutions. Consequently, Namibians wishing to enter higher education are obliged to attend tribal schools in South Africa.

635. The Group was informed that pupils at Windhoek Academy had gone on strike to secure the replacement of Afrikaans by English as the language of tuition. According to consistent reports, on 3 June 1988 more than 40 primary and secondary schools took part in a school boycott in northern Namibia. These boycotts subsequently spread to the central regions, including the capital Windhoek and the town of Tsumeb. Some 35,000 pupils participating in these boycotts were demanding the dismantling of the South African military bases currently installed in the vicinity of schools. According to testimony received, the purpose of the installation of such bases near schools is not only physically to intimidate black pupils but to try, through propaganda, to mask the real purposes of the South African authorities. The proximity of the schools is said to act as a deterrent to any action by SWAPO against the military bases. This information was confirmed at the Group's hearings at its 708th, 709th, 711th and 712th meetings.

636. Although it is particularly difficult to obtain reliable information from Namibia, the Group received the following information 20/ concerning school boycotts during the period under review:

(a) On 17 March 1988, approximately 700 pupils from Ponhofi secondary school protested against the installation of a "Koevoet" base near Ohjangwena;

(b) During May and June 1988, the boycott was reported to have spread to other schools in the north of the country and to have been supported by teachers, pupils' parents and trade unions, among others.

637. In an effort to crush these demonstrations, the authorities are adopting increasingly repressive measures, arresting and ill-treating students and dispersing them, frequently by means of tear-gas and rubber bullets. Owing to reporting restrictions in the war zones in northern Namibia, it is becoming increasingly difficult to obtain information on the situation.

B. Right to health

638. As the Group has already observed in earlier reports, the health situation in Namibia is directly related to implementation of the principles of the *apartheid* policy imposed by the South African authorities, principles which are characterized by flagrant inequalities. Reports received by the Group during the period under review indicate that the health infrastructure for blacks is, to say the least, rudimentary at the best of times and, in several regions of the country, non-existent.

639. In his statement to the Group at its 711th meeting, Mr. Petrus Shaanika, aged 19, a student from Olutai, said that in an emergency, where an ambulance was needed to take a sick person to hospital, black Namibians were made to pay the cost of the journey first. He further stated that patients were obliged to pay 5 rand to be admitted to hospital. Hospitals for whites were situated

in the south of the country, with the result that the majority of black Namibians living in the north were unable to use the infrastructure provided for whites. As has been already mentioned, medical care is free for whites but not for blacks. According to consistent reports on the particular situation in northern Namibia, owing to the curfew which has been in effect for eight years or so, there are more and more cases where deaths occur at night, when it is not possible to take sick persons to hospital.

C. Right to freedom of expression

640. During the period under review, the Ad Hoc Working Group of Experts was informed of measures taken to curb press freedom, particularly in relation to military operations in northern Namibia by the South African defence forces.

641. According to consistent reports, pursuant to the Defence Act, which relates to the dissemination of information liable to give rise to apprehension or discouragement, there were more and more situations in which, quite obviously, the right to freedom of expression was being increasingly curbed. As the Group has already mentioned in previous reports, a number of journalists have been arrested by the security police for having disseminated information which, in the opinion of the security forces, was not suitable for public attention. By way of illustration, the Group would cite the case of Mrs. Gwen Lister, an editor with the weekly newspaper The Namibian, who was arrested by the police on 17 June 1988 and detained for four days for having written an article containing information on the new powers which had reportedly been granted to the police under the emergency legislation. Mrs. Lister was detained under Proclamation AG.9 of 1977, which permits detention for up to 30 days without trial. According to further reports, she was released on 21 June 1988 and charged under the Protection of Information Act. 21/

VIII. SITUATION OF REFUGEES

642. Reports received by the *Ad Hoc* Working Group of Experts in the course of its most recent fact-finding mission in July-August 1988 indicate that a number of factors have given rise to the flow of Namibian refugees out of Namibia during the period under review. The following three factors were mentioned: eviction from land, permanent state of war, and repression. The combination of these three factors has prompted a large number of Namibians to leave and seek refuge in the countries bordering Namibia, in particular Angola and Zambia.

643. According to estimates by the Office of the United Nations High Commissioner for Refugees (UNHCR), there are at present 70,000 to 80,000 Namibian refugees in Angola, Zambia and other front-line States.

644. UNHCR is providing humanitarian assistance to approximately 69,000 Namibians in Angola, 7,500 in Zambia, and 500 in the United Republic of Tanzania and Botswana. This assistance mainly comprises health services, agricultural projects to make Namibians self-sufficient, and study and vocational training programmes.

645. On 12 August 1988, on the occasion of its visit to the refugee transit camp in Makeni, Lusaka, the Group heard testimony by refugees from Namibia who confirmed the difficult living conditions with which they had been confronted in their country. The main reason mentioned for their departure was precisely the war situation, together with daily acts of repression.

IX. INFORMATION CONCERNING PERSONS SUSPECTED OF BEING GUILTY OF THE CRIME OF APARTHEID OR OF A SERIOUS VIOLATION OF HUMAN RIGHTS

646. In previous reports, the *Ad Hoc* Working Group of Experts reproduced information concerning persons who, in its opinion, were suspected of being guilty of the crime of *apartheid* or of a serious violation of human rights in Namibia (E/CN.4/1985/8, para. 513; E/CN.4/1986/9, para. 416, and E/CN.4/1988/8, para. 416). In this connection, it would be recalled that a list was prepared pursuant to a request made in 1977 by the Commission on Human Rights, in resolution 6 A (XXXIII), for the purpose of instituting an inquiry in respect of any person suspected of being guilty in Namibia of the crime of *apartheid* or of a serious violation of human rights, under the terms of article II of the International Convention on the Suppression and Punishment of the Crime of *Apartheid*.

647. During the period under review, the Group did not receive sufficient information to enable it to determine the responsibilities of persons suspected of being guilty of the crime of *apartheid*.

Part Three

X. CONCLUSIONS AND RECOMMENDATIONS

A. South Africa

1. Conclusions

648. The evidence made available to the Ad Hoc Working Group of Experts on southern Africa confirms once again that apartheid continues to be an utterly repulsive and detestable system, a deep affront to human dignity and a violation of basic human rights. Apartheid, therefore, poses a great challenge to mankind to stand up more promptly and effectively against the injustice and inhumanity meted out to millions of innocent men, women and children in South Africa.

649. Apartheid poses a threat extending beyond the frontiers of South Africa and undermines the economic and social development of the front-line States which, in turn, interferes with the prosperity of the whole of southern Africa. The destabilization and the destruction of crops and property caused by the Government of South Africa have resulted in great loss of human life and development potential in the region.

650. The South African Government is facing an unprecedented crisis of legitimacy manifested by the unbroken will and determination of the people to resist, inter alia, through organizations of churches, workers, schoolchildren and parents, and all other anti-apartheid groups.

651. South Africa has yet again resorted to the most brutal measures, using sweeping powers under various repressive laws and numerous proclamations under the state of emergency, which has been successively extended since it was first proclaimed in June 1986. During the period under consideration, the authorities have made particularly wide use of Proclamations R.97 to R.100, which greatly increase the powers of the Minister for Law and Order, the police and security forces, the Minister of the Interior, as well as those of the Minister of Information and the Director-General of Education and Training.

652. The emergency regulations and other apartheid legislation have undermined the administration of justice and the independence of the judiciary. Judges are unable to maintain the rule of law and protect human rights and individual freedoms. The law is considered an oppressive mechanism by the majority of citizens. Its capacity to provide redress and protection for South African citizens has been eroded severely by emergency legislation and the inability or unwillingness of the police and other State agencies to investigate and prosecute offences committed by persons associated with the South African administration against whom proceedings are opened.

653. Torture and other forms of inhuman and degrading treatment of children and young people have continued unabated during the period under review.

654. News reporting about the reality of South Africa and the apartheid system is being distorted by censorship and other media restrictions, as well as by official South African propaganda and disinformation campaigns.

655. The Ad Hoc Working Group of Experts is convinced that the South African Government commits atrocities under the apartheid system, including assaults, kidnappings, assassinations and various measures of intimidation and repression. Such practices could rightly be considered as a form of State terrorism.

656. Despite the prosperous economic situation in South Africa, black workers are still subjected to low wages, poor working conditions, high unemployment and a cynical application of various apartheid regulations, resulting in deprivation of the majority in that country of its citizenship, its land, and access to schooling, job opportunities, social security benefits and housing.

657. Trade-union rights to organize and bargain effectively in full freedom have been curtailed by various measures under the state of emergency. They have been subjected to further threats under the Labour Relations Bill and the Promotion of Orderly Internal Politics Bill.

658. During the period under consideration, the Ad Hoc Working Group has noted several incidents of terrorist attacks on trade-union leaders and premises, in which no investigation has been made by the police.

659. With regard to the impact of the policies and practices of apartheid on the family life of the black population, the Group noted no improvement. On the contrary, black workers, being obliged to seek employment in the urban centres where they live on their own in very insanitary and unhealthy conditions, have continued to be separated from their homes. The same applies to black workers who have brought their families to the urban centres.

660. In view of the South African Government's failure to abandon its policy of apartheid, its aggression against neighbouring States and its intransigence in the face of international pressure, and the further confrontation between blacks and whites in South Africa, the Ad Hoc Working Group of Experts considers that more determined action by the international community is urgently needed to compel the Government of South Africa to abandon its disastrous policy.

661. The Ad Hoc Working Group of Experts is convinced that the overwhelming majority of black South Africans consider economic, diplomatic and other sanctions to be the most effective form of pressure for bringing about a reversal of the apartheid policy. The view that sanctions are opposed by blacks and that such sanctions may hurt them is divorced from reality.

662. In order to seek a peaceful solution to the South African crisis, the South African Government must talk to the genuine representatives of the black majority. Meaningful negotiations can only take place when the state of emergency is lifted, Nelson Mandela and all other political prisoners have been freed, and anti-apartheid movements are no longer banned.

663. With regard to the commutation of the sentences of the "Sharpeville Six", the Group welcomes the results achieved through the efforts made at the individual level by certain Governments and by the international community as a whole.

664. The "homelands" system, which has met with the censure of the international community, is still being consolidated, inter alia, through the incorporation of new areas and new populations in the "homelands". Contrary to the South African authorities' claim, the populations are forced to leave their place of residence. In the meantime, repression in the "homelands" is being intensified and, in general, has escaped detailed scrutiny by the international community.

665. The Ad Hoc Working Group notes with concern that the intention to relax the application of the Group Areas Act announced by the State President in 1987 has been decisively reversed, through the Group Areas Amendment Bill tabled in Parliament in July 1988. The Bill would remove existing safeguards against eviction, such as the requirement for the Court to ascertain availability of alternative accommodation before ordering eviction on account of an infringement of the Group Areas Act. Eviction and demolition of houses would be made mandatory upon conviction for illegal squatting. Under the new Bill, drastic increases of penalties for illegal tenants and their landlords could be imposed and special inspectors could be appointed to check on illegal occupation of any kind. Another bill was introduced at the same time, to control the influx of blacks in urban areas. The effect of the amendment would be to undo the reforms of the Abolition of Influx Control Act of 1986 and to introduce a system even harsher than the previously repealed legislation.

2. Recommendations

666. The Commission on Human Rights should go beyond repeated condemnations of apartheid and act as a catalyst for more effective international action aimed at bringing the apartheid system to an end and securing the establishment of a free, non-racial society in South Africa. To this end, an appeal should be made to the Security Council to impose effective sanctions and bring other appropriate means of pressure to bear on the Government of South Africa.

667. Given the importance of the problems raised by the "homelands" policy, the Commission on Human Rights should request:

(a) Governments to continue to withhold recognition of the "homelands";

(b) Firms and individuals to refrain from economic or other relations with the "homelands";

(c) Governments, firms and individuals to refrain from any initiatives which would confer any kind of legitimacy on the "homelands".

668. The Commission should urge Member States to act immediately, either individually or collectively, and to share their experiences concerning the struggle against apartheid in South Africa with other Governments.

669. Member States, intergovernmental and non-governmental organizations should be encouraged to give all necessary assistance to the victims of apartheid.

670. It is recognized that the mobilization of public opinion at the national, regional and international levels is of crucial importance to a successful campaign against apartheid. The Commission on Human Rights should therefore take all necessary measures to publicize more constantly and as widely as possible both the evils of apartheid and any action that may be taken for its eradication.

671. Non-governmental organizations and other human rights institutions have an important role to play in public information, mobilization and formulation of action against apartheid. In this context, the Commission on Human Rights should request the intergovernmental and non-governmental organizations to continue their assistance to the victims of apartheid.

672. The Commission on Human Rights should reiterate the appeal to the Government of South Africa to commute the sentences imposed on all prisoners facing execution for their anti-apartheid activities. A similar appeal could also be launched by the institutions of the United Nations system.

673. The need to explore the possibilities for promoting a negotiated solution to the South African problem should continue to be a fundamental objective of the Commission on Human Rights. All forms of persuasion should be used to convince South Africa that the alternative to negotiations can only be appalling chaos, bloodshed and destruction. To this end, the Ad Hoc Group of Experts recommends that the Commission should invite its Chairman to do his utmost to play a more active role in efforts to make the international community more aware of the important consequences of the policy and practice of apartheid.

674. The Ad Hoc Working Group of Experts requests the Commission on Human Rights to authorize its future reports to be given more formal consideration by the General Assembly so as to make States and the entire international community more aware of the consequences of the odious apartheid system.

675. It is recommended that the mandate of the Ad Hoc Working Group of Experts should be extended. As in the past, the Commission should appeal to South Africa to co-operate with the Group and authorize it to visit its territory in order to examine the human rights situation in that country on the spot.

676. The Commission should again request the Secretary-General of the United Nations to renew the invitation already addressed to all Member States, in accordance with its resolutions 1983/9 and 1984/5, to submit their views and comments on the interim study on the international penal tribunal (E/CN.4/1426).

677. The Commission should once more invite the Special Committee against Apartheid to strengthen its co-operation with the Ad hoc Working Group of Experts, particularly by regularly transmitting to it any information which might help it to carry out its mandate.

B. Namibia

1. Conclusions

678. The conclusion on 22 December 1988 of the Tripartite Agreement on Namibia holds out the hope that Namibia will be freed from foreign occupation. This Agreement is a very important element for the exercise by all Namibians of their right to self-determination. It should nevertheless be noted that the agreement does not contain any specific provisions on human rights, whose protection must be ensured by a constructive policy involving all parties concerned. Since 1967, the Ad Hoc Working Group has followed developments in the human rights situation in Namibia and has regularly transmitted reports thereon to the Commission on Human Rights, which has endorsed all of the recommendations formulated by the Working Group in its reports. However, the Working Group cannot but note the fact that none of its recommendations has been followed by the South African Government.

679. In the light of new developments, the review of the situation in Namibia during the period under consideration has enabled the Working Group to draw the following conclusions:

(a) The human rights situation in Namibia is characterized throughout the Territory by a policy of racial discrimination and the brutality of the police and other security forces. Despite official statements on the abolition of the policy of apartheid, this policy is still applicable de facto in Namibia. For example, a state of emergency is in force in the northern part of the country, and its implementation has led to massive and systematic violations of human rights and humanitarian law. The racial policy is decided on and implemented by Namibian legislative and administrative bodies. Emergency legislation is applied by the police, the security bodies and the courts. The damage in the northern part of Namibia and the number of civilian victims are the direct and visible results of this policy. The conflict has spread beyond Namibia's borders, mainly to Angola and Zambia, where the civilian population has suffered loss of human life and considerable damage to property. Responsibility for all these acts lies with the South African Government;

(b) The Ad Hoc Working Group of Experts has identified the following human rights violations during the period 1987-1988:

(i) Various South African security acts providing for the death penalty have been unlawfully made applicable in Namibia. However, no new act restricting or broadening the scope of the death penalty has been made applicable in Namibia during the period under review;

(ii) Atrocities continue to be committed by "Koevoet";

(iii) Cases of deaths in detention have been reported;

(iv) During the period under consideration, a number of persons were reported missing after having been arrested;

(v) Hundreds of persons have been imprisoned for political reasons;

(vi) Political trials have been held in which several members of SWAPO have been sentenced to lengthy prison terms;

(vii) The living conditions of black Namibians are still very precarious because of disparities in all areas between the white population and the black population, following the policy of separation of the black population on an ethnic basis;

(viii) Trade-union activities are directly under the supervision of the Administrator-General, who is appointed by the South African Government;

(ix) Several trade-unionists have been arrested under the South African Terrorism Act;

(x) During the period under review, the Working Group has been informed of many attacks on schools and churches, as well as on several clergymen, in particular by the "Koevoet";

(xi) In schools, the quality of instruction continues to deteriorate and the amount spent on education for blacks is still much smaller than that spent on education for whites;

(xii) With regard to employment, there have been no reports of improvement in the population's situation as far as work or freedom of association are concerned, despite the abolition of checks on entries into the Territory and of the system of migrant workers;

(xiii) In terms of health, there are shortages throughout the hospital infrastructure in general and the situation has worsened instead of improving during the period under review.

2. Recommendations

680. In view of the above-mentioned conclusions and in the light of developments in the political situation in Namibia, the *Ad Hoc* Working Group of Experts would like to submit the following recommendations to the Commission on Human Rights:

(a) That the Commission should urge the United Nations to uphold its position with regard to the agreed plan for the independence of Namibia, in accordance with Security Council resolution 435 (1978), and that it should continue to remain vigilant in order to ensure that South Africa's illegal occupation of Namibia is brought to an end;

(b) That the Commission, prior to the electoral process scheduled for Namibia as of the beginning of the implementation of Security Council resolution 435 (1978) on 1 April 1989, in accordance with the Agreement of 22 December 1988, should demand the repeal of the provisions of Proclamation AG.8 of 1985, which has been extended to Namibia, as well as of the Intimidation Act, the Demonstrations In or Near Court Buildings Prohibition Act and the Protection of Information Act; that it should also demand the repeal of Proclamation AG.8 of 1980, which provides for the division of Namibia into 10 areas along ethnic lines; and finally, that it

should demand the repeal of Proclamation AG.9 of 1977, which was amended in 1985 and establishes security districts, and that the Commission should no longer take account of the opinion of the Van Dyk Commission set up in September 1983.

681. In general, the Commission should take the following decisions:

(a) An amnesty must be proclaimed, prior to the elections, for all Namibian political prisoners now in detention in Namibia and South Africa;

(b) An assessment of property damage must be carried out by the United Nations Council for Namibia so that repairs may be envisaged by the South African Government as soon as possible;

(c) The Working Group should be authorized by the Commission on Human Rights to undertake a mission to Namibia in July-August 1989 in order to follow developments in the human rights situation in the Territory and to report thereon to the General Assembly at its forty-fourth session and to the Commission at its forty-sixth session;

682. The Ad Hoc Working Group of Experts requests the Commission on Human Rights to address an urgent appeal to Member States and humanitarian organizations for increased aid and assistance to Namibian refugees, particularly to reduce the burden on the front-line States, which have been making commendable efforts in that regard despite their own economic difficulties.

683. The Commission should once again invite the United Nations Council for Namibia or any other body dealing with the situation in that country to strengthen their co-operation with the Ad Hoc Working Group of Experts, particularly by regularly transmitting to it any information which might help it to carry out its mandate.

Notes

1/ Human Rights Update, Centre for Applied Legal Studies, University of Witwatersrand (July 1988).

2/ Focus, No. 76, International Defence and Aid Fund (May-June 1988).

3/ Anthony Mathews, Freedom, State security and the rule of law (Cape Town and Johannesburg, Juta, 1986), p. 194.

4/ International Commission of Jurists, South Africa and the rule of law, Ed. G. Bindman (London and New York, Pinter Publishers, 1988), p. 88.

5/ Chapter II is based in part on information drawn from:

Christian Science Monitor, 2 to 8 September 1988;
The Citizen, 24 February; 18, 29 March; 5, 11, 27 May; 4 June; 16, 19, 23, 26, 27 August; 26 September 1988;
Financial Mail, 19 February; 24 June 1988;
Focus, No. 75, International Defence and Aid Fund, March-April 1988;
The Guardian, 22, 23, 29 April; 23 September; 12, 14 November 1988;
Herald Tribune, 11, 18, 23 February; 19 to 20, 30 March; 30 October; 12 to 13 November; 1 December 1988;
Le Monde, 11 February; 29 April; 2 June 1988;
Sowetan, 10, 16, 18 February; 2, 3, 8, 10, 24, 30 March; 2, 5, 16, 20, 23, 26 May; 1, 3, 9 June; 19, 25 July; 4, 19 August; 12, 13 September 1988;
The Times, 11 February; 22 April; 28 September; 3 November 1988;
The Weekly Mail, 29 April to 4 May, 13 to 19 May; 3 to 9, 10 to 16 June; 8 to 14, 15 to 21 July; 19 to 25 August; 26 August to 1 September; 2 to 8, 9 to 15 September; 14 to 20 October 1988.

6/ Chapter III is based in part on information drawn from:

Christian Science Monitor, 18 to 24 January; 29 February to 6 March, 7 to 13 March 1988;
The Citizen, 2 March; 2, 20, 27, 28 May; 1, 10 September 1988;
The Guardian, 13, 25, 26 February; 19 March; 16 April; 2 November 1988;
Herald Tribune, 9 to 10 January; 25 February; 1, 2, 12, 13, 14 March; 11 May 1988;
Le Monde, 25 February; 3, 15, 31 March; 3 November 1988;
Sowetan, 24, 25, 26 February; 3, 4, 14, 22, 23, 24 March; 7, 29 April; 2, 10, 11, 17, 20, 21, 23 May; 14 July; 22 August; 12 September; 14 October 1988;
The Times, 3 December 1987; 25, 26 February; 23 March; 22 April; 2 November 1988;
The Weekly Mail, 18 to 24 March; 15 to 21 April; 13 to 19 May; 27 May to 2 June; 15 to 21 July; 29 July to 4 August; 9 to 15 September; 7 to 13, 14 to 20 October 1988;

7/ International Labour Office, Special Report of the Director-General on the Application of the Declaration concerning the Policy of Apartheid in South Africa (Geneva, ILO, 1988), p. 3.

8/ Ibid., pp. 24-25.

9/ Ibid., p. 24.

10/ Ibid., p. 25.

11/ See Human Rights Update, Centre for Applied Legal Studies, University of Witwatersrand, April 1988.

12/ For example, New Nation, 14-20 July 1988.

13/ International Labour Office, Special Report of the Director-General on the Application of the Declaration concerning the Policy of Apartheid in South Africa (Geneva, ILO, 1988), p. 17.

14/ The Times, 24 September 1988.

15/ Sowetan, 9, 14 June 1988.

16/ Special Report of the Director-General on the Application of the Declaration concerning the Policy of Apartheid in South Africa, ILO, Geneva, 1988, p. 76.

17/ Focus on Political Repression in Southern Africa, No. 76, May-June 1988, Namibia Communications Centre, document submitted to the Ad Hoc Working Group of Experts at its 709th meeting in Geneva by Reverend John Evanson, Director of the Centre.

18/ Special Report of the Director-General on the Application of the Declaration concerning the Policy of Apartheid in South Africa, ILO Geneva, 1988, p. 72.

19/ Ibid., p. 82.

20/ International Defence and Aid Fund, Focus, No. 77, July-August 1988.

21/ Focus, No. 78, September-October 1988; Namibia Communications Centre, London, 1988.

Annex 1

LIST OF KNOWN POLITICAL DETAINEES IN SOUTH AFRICA:
JANUARY TO MAY 1988

Name	Date	Place	Charge	Sentence
Cyril AFRIKA	05.01.88	Athlone	Public violence	18 months
David Happy HLOPHE	18.01.88	Durban	Hiding grenades	2 years
Samuel HLONGWANE	27.01.88	Pretoria	Attempted murder	10 years
Thembinkosi ADONISI*	02.02.88	Grahamstown	Murder	10 years
Andrew BROWN	11.02.88	Wynberg	Public violence	1 year
Mncedisi Stuart MCITEKA	11.02.88	Cape Town	Assistance to ANC	3 years
Sipho Nhlanhla MAPHUMULO	12.02.88	Durban	Terrorism	8 years
Boy-Boy Michael DICK*	mid Feb.	Unknown	Murder	14 years
Colin NDEVU	18.02.88	Humansdorp	Terrorism	14 years
Walter NONGENA	18.02.88	Humansdorp	Terrorism	9 years
Vuyo NONGENA*	18.02.88	Humansdorp	Terrorism	2 years
Matthew DRAGHOENDER	19.02.88	East London	Intimidation	2 years
Gilindoda GXEKWA	22.02.88	Port Elizabeth	Murder	death
Vuyani Petrus JACOBS*	02.03.88	Port Elizabeth	Murder	death
Xolani Moses STUURMAN	02.03.88	Port Elizabeth	Murder	death
Mthetheli LUCAS	02.03.88	Grahamstown	Murder	death
Tazamile MOOI	02.03.88	Grahamstown	Murder	death
Gilindoda GXEKWA	02.03.88	Grahamstown	Murder	death
Tembile MATANA	02.03.88	Grahamstown	Public violence	3 years
Sipho NXELE	02.03.88	Grahamstown	Public violence	3 years
Philip KINIKINI	02.03.88	Grahamstown	Public violence	2 years & 6 months

Name	Date	Place	Charge	Sentence
Morris MICHAEL*	02.03.88	Grahamstown	Public violence	2 years
Njamana KNIKINI*	02.03.88	Grahamstown	Public violence	1 year & 6 months
Fumanekile BOYCE*	02.03.88	Grahamstown	Public violence	1 year & 6 months
Charles MADETSHOWANE	March 88	Klerksdorp	Sabotage	5 years
Moegamat Abdol SAMAAI*	March 88	Wynberg	Public violence	1 year
Mkeli Sabebo WILLIAMS	11.03.88	Kenton-on-sea	Terrorism	12 years
Milton Bayi JOYI	11.03.88	Kenton-on-sea	Terrorism	12 years
Tamsanga Forcus DUMA	11.03.88	Kenton-on-sea	Terrorism	5 years & 6 months
Thembinkosi NKOSI*	30.03.88	Pietermaritzburg	Terrorism	16 years
Thuso TSHIKA	30.03.88	Pietermaritzburg	Terrorism	15 years
Mtsunzi SITHOLE	30.03.88	Pietermaritzburg	Terrorism	9 years
Clement ZULU	03.04.88	Bethal	Terrorism	7 years
Jerry LENTSOANE	03.04.88	Bethal	Terrorism	7 years
Abram SEBOPELA	03.04.88	Bethal	Terrorism	7 years
Sipho SIBOZA	03.04.88	Bethal	Terrorism	7 years
Vusi KHOZA	03.04.88	Bethal	Terrorism	7 years
Peter MNISI	03.04.88	Bethal	Terrorism	7 years
Bennet NKOSI	03.04.88	Bethal	Terrorism	4 years
Mpini MOSES	03.04.88	Bethal	Terrorism	4 years
David MALOMA	03.04.88	Bethal	Terrorism	4 years
Lazalurus CHIWAYO*	03.04.88	Bethal	Terrorism	4 years
Stanley PHANLAMOHLAKE*	03.04.88	Bethal	Terrorism	3 years

Name	Date	Place	Charge	Sentence
Gloria TWALA*	03.04.88	Bethal	Terrorism	1 year
Gordon WEBSTER	02.05.88	Pietermaritz-burg	Terrorism	25 years
Mththeleli Zephania MNCUBE	04.05.88	Messina	Murder	death
Mzondeleli Euclid NONDULA	04.05.88	Messina	Murder	death

Source: International Defence and Aid Fund for Southern Africa, Report on political prisoners in South Africa, 14 May 1988.

*/ Under 21 at the time of sentencing.