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VIOLATIONS OF HUMAN RIGHTS IN SOUTHERN AFRICA

REPORT OF THE AD HOC WORKING GROUP OF EXPERTS PREPARED IN ACCORDANCE. WITH COMMISSION ON HUMAN RIGHTS RESOLUTIONS 1983/9, 1983/10, 1984/4 AND 1984/5 AND ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1984/42

# CONTENTS

		Paragraphs	Page
INTR	ODUCTION	1 - 45	1
A.	Mandate and composition of the Ad Hoc Working Group of Experts	1 - 9	1
в.	Organization of work and working methods adopted by the Ad Hoc Working Group of Experts	10 - 36	2
	1. Meetings and mission of inquiry	10 - 12	2
	2. Procedure followed in conducting the inquiry	13 - 36	3
C.	Basic international standards relevant to the matters falling within the mandate of the Group	37 - 40	8
D.	General observations	41 - 45	9
Part	one: South Africa	46 - 431	12
Chapt	REMOVALS AND ESTABLISHMENT OF "HOMELANDS"		12
Intro	oduction	46 - 59	12
Α.	Removals	60 - 90	14
	1. Mogopa	62 - 63	14
	2. Driefontein, Daggakraal, KwaNgema	64 - 72	15
	3. Glenmore	73	16
	4. Other "black spot" removals	74 - 77	16
	5. Crossroads, Langa, Nyanga and Guguletu	78 - 82	17
	6. Huhudi	83 .	17
	7. Other urban relocations	84 - 90	18
В.	Influx control	91 - 98	19
C.	Legislation	99 - 112	21
	1. Aliens and Immigration Laws Amendment Act, 1984	100 - 105	21
	2. Matrimonial Property Bill, 1984	106 - 107	22
	3. Proposed amendments to the Mixed Marriages Act of 1949 and Section 16 of the Immorality Act of 1957	108	23

			Paragraphs	Page
	4.	Prohibition of Political Interference Act	109	23
	5.	Local Government Bills	110 - 112	23
Chap	ter I	I: INFORMATION ON THE RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON	113 - 215	25
Intr	oduct:	ion	113 - 218	25
Α.	The	Internal Security Act	119 - 167	26
	1.	Political trials	134 - 142	28
	2.	Detentions	143 - 155	30
	3.	Banning	156 - 163	32
	4.	Listing of persons	164 - 167	34
В.	The	Criminal Procedure Act, 1977, section 50	168 - 171	34
c.	Tort	ure and ill-treatment	172 - 176	35
D.	Othe	r restrictive legislation	177 - 186	36
	1.	The Police Act	177 - 183	36
	2.	The Prisons Act of South Africa	184	37
	<sup>1</sup> 3•	The Protection of Information Act	185	37
	4.	The Demonstrations in or near Court Buildings Act of 1980	186	37
E.	Cour	t actions against the police	187	37
F.	Pris	on conditions	188 - 202	39
	1.	Women prisoners	188 - 190	39
	2.	Other prison experiences	191 - 193	40
	3.	Television monitoring of detainees	194 - 196	40
	4.	Barberton Prison	197 - 202	41
G.	Hoex	ter Commission	203 - 212	42
H.	Othe	r information	213 - 215	45
	1.	Executions	- 213	45
	0	Political appaginations	214 - 215	45

			Paragraphs	Page
Char	oter III	THE RIGHT TO WORK AND TO FREEDOM OF ASSOCIATION, INCLUDING THE SITUATION OF BLACK WORKERS	216 - 348	46
Intr	oductio	n	216 - 221	46
Α.	Trade	unions	222 - 234	47
	1. U	naffiliated unions	228	48
11	2. N	ational Union of Mineworkers (NUM)	229 - 232	49
	3. U	nity moves	233 - 234	50
В.	Develo	pments in trade union activity	235 - 248	50
	1. 0	ccupational health	235 - 240	50
	2. 0	ccupational safety	241 - 246	51
	3. 0	ther developments	247 - 248	53
C.	Indust	rial disputes and industrial action	249 - 286	54
	1. A	ction by the National Union of Mineworkers (NUM)	249 - 255	54
	2. S	trikes	256 - 273	55
	3. A	ction by the Industrial Court	274 - 286	58
D.	Condit	ions of workers and trade unions	287 - 313	60
	1. F	reedom of association	287 - 291	60
	2. S	ituation in the "homelands"	292 - 307	62
	•	ermanent urban rights in the light of the Rikhoto udgement	308	65
	4. U	nemployment Insurance Fund	309 - 312	65
	5. W	Orkmen's Compensation Fund	313	66
E.	Employ	ers	314 - 329	66 .
	1. M	lanufacturing	317	67
	2. M	lining	318	67
	3. 0	ther sectors	319 - 321	67
	4. Т	he European Economic Community Code of Conduct	322 <b>-</b> 327	68

			Paragraphs	Page
	5.	Sullivan Principles governing United States companies in South Africa	328 <b>-</b> 329	69
	6.	General comments	330 <b>-</b> 334	69
F.	Legi	slation governing conditions of workers	335 <b>-</b> 348	70
	1.	Conditions of Employment Act, 1983, re-enacting inter alia the 1964 and 1941 Acts	335	70
	2.	Conditions of Employment (South African Transport Services) Act, 1983		70
	3.	The Manpower Training Amendment Act, 1983	338	71
	4.	Machinery and Occupational Safety Act, No. 6 of 1983	339 <b>-</b> 344	71
	5.	The Labour Relations Amendment Bill	345 <b>-</b> 348	72
Chap	ter I	THE RIGHT TO EDUCATION INCLUDING THE SITUATION OF STUDENT MOVEMENTS	349 - 388	74
Intr	oducti	on	349 <b>-</b> 352	74
Α.	Unres	st in schools	353 <b>-</b> 364	74
В.	Unres	st in colleges and universities	365 <b>-</b> 373	77
C.	Compu	alsory education	374 <b>-</b> 375	78
D.	Illit	eracy and the drop-out rate	376 <b>-</b> 377	79
E.	Educa	tion policy	378 <b>-</b> 385	79
F.	Gener	al remarks	386 <b>-</b> 388	81
Chap	ter V:	OTHER ASPECTS OF APARTHEID	389 <b>-</b> 430	82
Α.	The C	Church against apartheid	389 <b>-</b> 407	82
В.	Unite	d Democratic Front (UDF)	408 - 414	86
C.	Women	under apartheid	415 - 421	88
D.	Chila	ren under apartheid	422 - 424	89
E.	Child	ren in prisons	425	89
F.	Freed	om of expression	426 - 430	90

				Paragraphs	Page
Part	two:	Nam	ibia	431 - 513	91
Intr	oduct	ion .		431 - 446	91
l.	Effo	rts t	o secure a peaceful settlement	433 - 442	92
2.			ation of Namibia and attacks against ing States	443 - 446	94
I.	VIOL	ATION	S OF HUMAN RIGHTS AFFECTING INDIVIDUALS	447 - 491	94
	Α.	Capi	tal punishment	447 ~ 450	94
		1.	Relevant legislation	447 - 448	94
		2.	Summary of evidence and information received	449 - 450	95
	В.	Viol	ations of the right to life	451 - 468	95
		1.	Atrocities committed by Koevoet	457	95
	٠	2.	Cases of disappearances	458 <b>-</b> 460	96
		3.	Cases of persons captured at Kassinga in May 1978 and imprisoned at Hardap Dam camp, near Mariental	461 - 468	97
	С.		ure and ill-treatment of political prisoners captured freedom fighters	469 - 491	98
		1.	Relevant legislation	469 - 474	98
		2.	Summary of evidence and information received	475 - 491	100
II.	RIGH	T TO	WORK AND FREEDOM OF ASSOCIATION	492 - 497	105
III.			IFESTATIONS OF POLICIES AND PRACTICES WHICH E A VIOLATION OF HUMAN RIGHTS	498 <b>-</b> 510	105
	Α.	Righ	t to education	498 - 500	105
	В.	Righ	t to health	501 - 502	106
	C.	Righ	t to freedom of expression	503 - 507	106
	D.		of chemical defoliants and toxic gases by army	508 - 510	106
IV.	GUIL	TY OF	ON CONCERNING PERSONS SUSPECTED OF BEING THE CRIME OF APARTHEID OR OF A SERIOUS OF HUMAN RIGHTS	511 - 513	107

		Paragraphs	Page
Part three:	Conclusions and recommendations	514	108
Part four:	Adoption of the report	515	115

#### Annexes

- I. Note from the Government of Madagascar concerning the draft Convention on the Establishment of an International Penal Tribunal for the Suppression and Punishment of the Crime of <u>Apartheid</u> and Other International Crimes
- II. Remarks by the Chairman of the  $\underline{\mathsf{Ad}}$  Hoc Working Group of Experts at the conclusions of the Group's visit to Luanda, Angola
- III. Statement made by H.E. Mr. Kenneth Kaunda, President of the Republic of Zambia on 16 August 1984
  - IV. Deaths of people in detention under Security Laws
    - V. List of political trials
  - VI. List of persons held in preventive detention
- VII. Provisions of Section 29 of the Internal Security Act, No. 74 of 1982
- VIII. Selection of photographs transmitted to the Working Group by the Government of Angola in the course of its visit to Luanda from 9 to 11 August 1984
  - IX. Map entitled: "South Africa: A Land Divided" (published by Black Sash in 1982, compiled by Ethel Walt) 1984 Revision

#### INTRODUCTION

# A. Mandate and composition of the Ad Hoc Working Group of Experts

- l. Since its establishment, the Ad Hoc Working Group of Experts on southern Africa has had its mandate extended and enlarged by various resolutions and/or decisions of the Commission on Human Rights and the Economic and Social Council. In pursuance of its mandate, the Ad Hoc Working Group of Experts has conducted various inquiries into allegations of human rights violations in South Africa and Namibia and has submitted a number of reports on the matter to the Commission on Human Rights, the Economic and Social Council and the General Assembly at its express request.
- 2. At its thirty-ninth session, the Commission on Human Rights adopted resolution 1983/9 of 18 February 1983, by which it decided that the Ad Hoc Working Group of Experts should continue to study the policies and practices which violate human rights in South Africa and Namibia, bearing in mind the effects of apartheid on black women and children and the Group's conclusion that the "criminal effects of apartheid amount to a policy bordering on genocide" (paragraph 14). In this connection, the Ad Hoc Working Group of Experts has decided to deal with this particular issue in a separate report contained in document E/CN.4/1985/14.
- 3. In the same resolution (paragraph 19) the Commission on Human Rights authorized the Ad Hoc Working Group to organize in 1984 a seminar to consider the most effective means of reinforcing the Commission's efforts to eliminate apartheid, racism and racial discrimination. In this connection, the process of consultations embarked on by the Ad Hoc Working Group in 1984 is continuing with a view to the organization of such a seminar in 1985.
- Under the same resolution, as well as resolution 1984/5 of 28 February 1984, the Commission again requested the Secretary-General to renew his invitation to all States Members of the United Nations to submit their views and comments on the interim study on the international penal tribunal (E/CN.4/1426), to enable the Ad Hoc Working Group to continue its study and to submit a report to the Commission at its forty-first session. In this connection, it should be recalled that, pursuant to the request made by the Commission in its resolution 1983/9, the Ad Hoc Working Group of Experts included in the progress report submitted to the Commission in 1984 (E/CN.4/1984/8, paras. 503-521) a summary of observations received by that time from States parties to the International Convention on the Suppression and Punishment of the Crime of Apartheid and other States Members of the United Nations concerning the draft statute of an international penal tribunal as set forth in document E/CN.4/1426. At the time of the adoption of its report, the Working Group had received replies from the governments of Madagascar and Liberia. The text of the reply from the Government of Madagascar is annexed to the present report. The Government of Liberia stated that it had transmitted the document to the competent authorities for consideration
- 5. In its resolution 1984/4 of 28 February 1984, the Commission on Human Rights further decided to request the Ad Hoc Working Group of Experts to continue to institute inquiries in respect of any person who may have committed the crime of apartheid or a serious violation of human rights in Namibia and to submit its recommendations on the results of such inquiries to the attention of the Commission at its forty-first session.

- 6. At the same time, by its resolution 1984/5, the Commission renewed its request to South Africa to allow the Ad Hoc Working Group of Experts to make on-the-spot investigations of the living conditions in the prisons in South Africa and Namibia and the treatment of prisoners. In this connection, it should be recalled that the Government of the Republic of South Africa had indicated its refusal to co-operate with the Ad Hoc Working Group of Experts, referring in particular to what it alleged to be the Group's bias and the pointlessness of such an inquiry in view of the fact that similar investigations had already been conducted both by members of the South African Parliament and by representatives of the International Committee of the Red Cross (see report of the Ad Hoc Working Group of Experts, E/CN.4/1984/8, paras. 6-7).
- 7. On 24 May 1984, the Economic and Social Council adopted resolution 1984/42 on allegations of infringements of trade union rights in the Republic of South Africa. After taking note of the extract from the progress report of the Ad Hoc Working Group of Experts containing information regarding the trade union situation in South Africa, the Council requested the Ad Hoc Working Group of Experts to continue to study the situation and to report thereon to the Commission on Human Rights and the Council. This question is accordingly dealt with in chapter III of the present report by the Ad Hoc Working Group of Experts. On 23 November 1984 a letter was sent to interested organizations drawing their attention to the need to co-ordinate their activities, as they had been invited to do by the Economic and Social Council.
- 8. The present report, which contains conclusions and recommendations, was prepared in accordance with the mandate conferred on the Ad Hoc Working Group of Experts by the Commission on Human Rights and the Eonomic and Social Council in the above-mentioned resolutions. It is based mainly on firsthand information in the form of oral testimony and written communications from individuals or interested organizations which the Ad Hoc Working Group of Experts gathered during its mission of inquiry from 2 to 30 August 1984. In addition, the Group engaged in a systematic search and analysis of documents of the United Nations and the specialized agencies, of official gazettes and records of relevant discussions, publications, newspapers and magazines from various countries, as well as of works dealing with matters relevant to its mandate.
- 9. Set up in 1967 under Commission on Human Rights resolution 2 (XXIII), the Ad Hoc Working Group of Experts is presently composed of the following six members acting in their personal capacity and appointed by the Commission on Human Rights: Mr. Annan Arkyin Cato (Ghana), Chairman/Rapporteur; Mr. Branimar Janković (Yugoslavia), Vice-Chairman; Mr. Felix Ermacora (Austria); Mr. Humberto Díaz-Casanueva (Chile); Mr. Mulka Govinda Reddy (India); and Mr. Mikuin Leliel Balanda (Zaire).
- B. Organization of work and working methods adopted by the Ad Hoc Working Group of Experts

# 1. Meetings and mission of inquiry

10. Following practice and in accordance with its mandate, the Group established the arrangements for its mission of inquiry to Europe and Africa at a series of meetings held at the United Nations Office at Geneva from 3 to 11 January 1984.

- 11. With a view to gathering information and collecting evidence on developments which had occurred since its previous report in the areas within its competence, the Group heard witnesses in London from 2 to 7 August 1984, in Luanda from 9 to 11 August 1984, in Lusaka from 14 to 21 August 1984, in Dar-es-Salaam on 23 and 24 August 1984 and in Geneva on 29 August 1984.
- 12. The Group subsequently met at the United Nations Office at Geneva from 3 to 14 January 1984 to consider and adopt the present report.

#### 2. Procedure followed in conducting the inquiry

13. As in the past, the Ad Hoc Working Group of Experts sought co-operation from the Member States concerned and from interested organizations and individuals in order to hear the greatest possible number of witnesses able to provide it with reliable information on questions within its mandate. The procedure followed and the steps taken by the Group in organizing its mission of inquiry are described below:

## (a) Relations with Governments of Member States

- 14. On 6 April 1984, the Assistant 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 the United Kingdom, Angola, Zambia, Zimbabwe \*/ and the United Republic of Tanzania, drawing their attention to the mandate and activities of the Group and inviting their Governments to co-operate with it in the fulfilment of its mandate. The Ad Hoc Working Group of Experts in its visit to the United Kingdom, Angola, Zambia and United Republic of Tanzania received the full co-operation of the governments concerned in fulfilling its mandate.
- 15. On 12 April 1984, the Assistant Secretary-General for Human Rights, acting at the request and on behalf of the Group, sent a letter to the Minister for Foreign Affairs of South Africa drawing his attention to the Group's activities and to resolutions 1984/4 and 1984/5, by which the Commission on Human Rights had reiterated its request to South Africa to allow the Ad Hoc Working Group of Experts to make on-the-spot investigations of the living conditions in the prisons in South Africa and Namibia and the treatment of prisoners. In this connection, the letter inquired as to whether the Government could in some way facilitate the discharge of the Group's mandate, as set out in the aforementioned resolutions. The reply transmitted by the South African Government on 11 January 1985, to the Assistant Secretary-General for Human Rights, Centre for Human Rights is reproduced below.

"I have the honour to refer to your letter No. G/SO 214(47) of 12 April 1984 enquiring whether the South African Government could facilitate the task of the Ad Hoc Working Group of Experts on southern Africa.

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 could possibly serve as encouragement for believing that the Group has departed from its established position of prejudice and partiality.

<sup>\*/</sup> Because of logistic difficulties, the Group was unable to visit Harare, Zimbabwe, as it had planned to do.

The latest report of the Group (document E/CN.4/1984/8) is a typical example of the careless use of statistical information, selected presumably to buttress the conclusion the Group intended reaching. Two examples in the section dealing with the right to education will suffice to illustrate this point. In paragraph 327 of the report it is stated that 'only 16 Whites out of 1,000 had not progressed further than primary school level but 247 Asians, 590 Coloureds and 840 Blacks were in that category! An examination of these figures suggests that the group, or its source, had included all children, i.e. not only those who had progressed beyond the primary school level but those still at primary school or even pre-school children in obtaining the total for Blacks but omitted these latter two categories of children in respect of the other population groups. Using the Group's own basis of comparison, therefore, the figures based on the 1980 census which is the most recent, would read: Whites 307, Asians 588, Coloureds 752 and Blacks (including the National States) 856. South Africa has at no stage attempted to deny that a historical differentiation does exist and that every effort is being made to reduce it, but it sees no purpose other than that of polemics, in the Working Group's misrepresentation.

Similarly, in paragraph 325 the Working Group states that the Minister of Education and Training had cut down the number of authorizations issued to enable Blacks to study at White universities, from 1,183 in 1982 to 783 in 1983. Here the Group appears to have confused, perhaps wilfully, two different sets of figures, viz Ministerial authorizations and inscriptions. Ministerial authorizations to study at White universities are given for the duration of any given course at the beginning of that course. They therefore vary according to the number of applications received each year. Inscriptions on the other hand indicate the number of students at University in a given year. The inscription figures for 1982 and 1983 were 1,183 and 1.457 respectively, indicating an increase, not as implied by the Committee, a decrease in the number of Black students actively following courses at White Universities. The fact that 18,178 Black students are studying at the various Black Universities in South Africa and a further 12,680 at the fully integrated University of South Africa is of course conveniently ignored by the Group in its report.

The same selective bias can be observed in section II on human rights affecting individuals. Here a single example will suffice. In paragraph 196 Mrs. Helen Suzman, M.P., is quoted on hearsay evidence as having written a letter which indicated that the prison to which Nelson Mandela had been transferred could be regarded as infinitely worse than Robben Island. While it is correct that Mrs. Suzman did draw attention to areas in which comparison between Pollsmoor and Robben Island favoured the latter, there were others such as for example food where Pollsmoor was superior. Moreover she made it clear that the prisoner was in good health and that the reports which had been circulated about his conditions of detention were exaggerated. The Group it would seem chose either to suppress this fact or did not think it necessary to examine the full text of Mrs. Suzman's letter.

It is not necessary to go through the report in detail to highlight other discrepancies. The foregoing is sufficient to describe the Group's bias which it amply demonstrated during last year's debate by seizing on the South African statement that the International Committee of the Red Cross

paid regular visits to South African prisons and that its reports and recommendations were taken into consideration in the administration of prisons throughout the country. South Africa views the attempt of the Chairman of the Group to assail the independence and impartiality of such a well respected body as the International Committee of the Red Cross as an uncalled for insinuation underlining the in-built bias of the Group. In the light of the foregoing the South African Government does not see that any purpose would be served by further independent, international investigation for it is clear that the Working Group would look only for such evidence which it could use to support a previously adopted conclusion.

In the circumstances I have been instructed to inform you that the South African Government is unable to extend co-operation to the Group."

16. In reproducing the text of the South African Ambassador's letter, the Working Group wishes to observe that the undated letter was brought to the Group's attention on the last day of the Group's meeting in January 1985. By that time the Group had already adopted its current report. For this reason and also because the Ambassador's letter raised a number of issues of substance affecting the mandate of the Working Group, the Group felt that it needed time to examine the Ambassador's letter carefully and to submit to the Commission on Human Rights such analysis of it and observations as may be appropriate.

# (b) Relations with the Organization of African Unity

- 17. In a letter dated 12 April 1984, the Assistant Secretary-General for Human Rights, acting on behalf of the Group, informed the General Secretariat of the Organization of African Unity of the Group's mission of inquiry in Europe and Africa and invited OAU to co-operate with the Group, as in the past, for the purpose of fulfilling its mandate.
- 18. On the same date, a similar letter was sent to the Executive Secretary of the Co-ordinating Committee for the Liberation of Africa advising him of the Group's desire to hold consultations at the Committee's headquarters at the beginning of the Group's visit to Dar-es-Salaam (United Republic of Tanzania). On 23 August 1984, the Ad Hoc Working Group of Experts and the Executive Secretary of the Co-ordinating Committee at Dar-es-Salaam held talks on the situation in South Africa and Namibia.
- (c) Relations with the United Nations Organs and Specialized Agencies
- 19. As in the past, the Committee has benefited from the full co-operation of the Special Committee against Apartheid (see para. 36) as well as the International Labour Office (see Chapter III).
- (d) Relations with African liberation movements, individuals and non-governmental organizations
- 20. On 12 April 1984, the Assistant Secretary-General for Human Rights, acting on behalf and at the request of the Ad Hoc Working Group of Experts, drew the Group's mandate to the attention of various non-governmental organizations dealing with questions relating to human rights in South Africa and Namibia and also a number of African liberation movements which had already co-operated with the Group during previous missions of inquiry.

#### (e) Testimony gathered

- 21. During its mission of inquiry, the Ad Hoc Working Group of Experts heard 47 witnesses, some of whom provided information both on South Africa and on Namibia. Three witnesses were heard in private at their own request; for this reason their names do not appear in this report. There follows a list of witnesses who made statements at public meetings. The records of the testimony heard at public meetings are kept in the files of the secretariat of the Ad Hoc Working Group of Experts.
- 22. Forty-three witnesses were heard on the situation in South Africa, including two at private meetings. The witnesses heard at public meetings were: Mrs. Lucia Otto (611th meeting, London); Mr. Philip Malcolm Smart (612th meeting, London); Mr. Michael Terry (612th meeting, London); Mr. Ian David Kitson (613th meeting, London); Miss Frene Ginwala (613th meeting, London); Mr. Mathe Diseko (613th meeting, London); Miss Jean Middleton (614th meeting, London); Mr. Michael Dingake (614th meeting, London); Miss Heather Carol Garner (614th meeting, London); Mr. Cedric Mayson (614th meeting, London); Mr. Marius Schoon (615th meeting, London); Mr. Zolile Hamilton Keke (615th meeting, London); Mr. Titus Ngungaa Mbaeva (617th meeting, Luanda); Mr. Matheus Makau Mulondo (617th meeting, Luanda); Mr. Thomas Festus Amkwelele (617th meeting, Luanda); Mr. Lubhelu Vabaza (618th meeting, Luanda); Miss Thandiswa Nkopane (618th meeting, Luanda); Miss Dikeledi Mokoena (619th meeting, Luanda); Miss Thobekile Hlengwa (619th meeting, Luanda); Miss Seipati Molefe (620th meeting, Luanda); Mr. Albie Saloojee (620th meeting, Luanda); Mr. Mtutuzeli Zinto (620th meeting, Luanda); Mr. Sydney Molifi (623rd meeting, Lusaka); Mr. Bonisile Norushe (623rd meeting, Lusaka); Mr. Madume Tshikane (623rd meeting, Lusaka); Mr. Meluin Lesie Mbao (624th meeting, Lusaka); Mr. Autar K. Koul (624th meeting, Lusaka); Rev. Demetris Palos (625th meeting, Lusaka); Mrs. Agatha Booi (626th meeting, Lusaka); Detainee's Parents Support Committee (627th and 628th meetings, Lusaka); Mr. Auret Dennis van Heerden (627th and 628th meetings, Lusaka); Mr. Johnson Philip Mlambo (629th meeting, Dar-es-Salaam), Mr. Andrew M. Kailembo (630th meeting, Dar-es-Salaam); Mr. Solomon Kotane (630th meeting, Dar-es-Salaam); Mrs. Lindelwa Jabavu (630th meeting, Dar-es-Salaam); Mr. Wantu Zenzile (630th meeting, Dar-es-Salaam); Mr. Alun Patrick Samuels (631st meeting, Dar-es-Salaam); Mr. Mongameli Jabavu (631st meeting, Dar-es-Salaam); Mr. John Masuku (631st meeting, Dar-es-Salaam); Mr. Waters Toboti (631st meeting, Dar-es-Salaam); Mr. Ntsikelelo Ngoma (632nd meeting, Dar-es-Salaam); Mr. David E. De Beer (633rd meeting, Geneva); Mr. William Ratteree (633rd meeting, Geneva).
- 23. Eleven witnesses were heard on the situation in Namibia, including nine at public meetings. They were: Miss Barabara Konig (611th meeting, London); Mr. Philip Malcolm Smart (612th meeting, London); Mr. Jacob Hannai (613th meeting, London); Mr. Titus Ngungaa Mbaeva (617th meeting, Luanda); Mr. Matheus Majau Mulondo (617th meeting, Luanda); Mr. Thomas Festus Amkwelele (617th meeting, Luanda); Mr. Herman Toivo ja Toivo (621st meeting, Lusaka); Mr. Meluin Leslie Mbao (624th meeting, Lusaka); and Mr. Alun Patrick Samuels (631st meeting, Dar-es-Salaam).
- 24. In accordance with the Group's established procedure, since 1967 every witness first stated his name, age, occupation and address and was then invited by the Chairman of the Group to take an oath or make a solemn declaration. 1

- 25. The Chairman explained to each witness the purpose of the mission and the various subjects which the Group was responsible for investigating. Whenever a witness did not speak or understand any of the Organization's working languages, the Group used the services of interpreters, who were also required to take an oath or solemnly declare that they would do their best to interpret witnesses' statements accurately.
- 26. In addition to oral testimony, the Group received a large number of written statements relating to various subjects coming within its mandate.

# (f) Other activities of the Group during its mission

- 27. The Ad Hoc Working Group of Experts met and exchanged views with a number of leading personalities and senior officials of the Governments of the United Kingdom, Angola, Zambia and the United Republic of Tanzania.
- 28. On 2 August 1984, the Group visited the Foreign and Commonwealth Office in London, where it had talks with Mr. Malcolm Rifkind, Minister of State for African Affairs. The exchange of views concerned the situation both in South Africa and in Namibia.
- 29. During its stay in London, the Group attended showings of two films made available to it by the services of the International Defence and Aid Fund: "Africa's Last Colony" and "Witness against Apartheid Aggression".
- 30. During its visit to Angola, the Ad Hoc Working Group of Experts held talks on 11 August 1984 with Mr. Veñancio de Moura, Deputy Minister for Foreign Affairs, mainly about the present situation of Angola as a result of its strategic position in the Namibian conflict. The text of the closing remarks of the Chairman of the Working Group is annexed to this report (see annex II).
- 31. On 11 August 1984, the Group viewed a film showing the extent of the destruction caused by South African bombing between 1978 and 1984 in the province of Cunene, southern Angola, and more particularly at Xangongo, Culerai, Evale Ondjiva and Mupa. On this occasion, the Group was given photographs, some of which are reproduced in the present report (see annex VIII).
- 32. During its visit to Lusaka, the Group had the privilege to be received by H.E. Mr. Kenneth Kaunda, President of the Republic of Zambia, on 16 August 1984. The full text of the President's address is annexed to the present report (see annex III).
- 33. In addition, on 14 August 1984, the Group was received at Lusaka (Zambia) by H.E. Mr. Lameck Goma, Minister for Foreign Affairs. The Minister stated that no progress had been made by South Africa towards eliminating apartheid and racial discrimination. Furthermore, little or no change had taken place with respect to South African threats against the security and sovereignty of Mozambique and Angola despite the agreements signed between South Africa and Mozambique on the one hand and South Africa and Angola on the other. With regard to the Namibian problem, the Minister said that a resolution of that problem could be facilitated through negotiations in which South Africa should be involved. For that reason Zambia felt that direct contacts between the South West Africa People's Organization (SWAPO) and South Africa would therefore be appropriate. The

Minister also stated that for reasons of geography some African countries including Zambia could not avoid dealing with South Africa. However it was the strong view of the Government of Zambia that the rest of the international community should isolate South Africa because of that country's policies of apartheid and racial discrimination. Moreover, the sole purpose of the so-called constitutional reforms was to strengthen apartheid.

- 34. On 23 August 1984, during its visit to Tanzania, the Group held talks in Dar-es-Salaam with H.E. Mr. Paul M. Rupia, Principal Secretary of the Ministry of Foreign Affairs, on the general situation in southern Africa and on Namibia in particular.
- 35. During its mission of inquiry, the Group held regular press conferences in the places it visited in order to inform international public opinion, make the Group better known and give the maximum publicity, in suitable form, to its activities.
- 36. Mr. Bhaskar Kumar Mitra (India), representative of the Special Committee against Apartheid, took part in the work of the Ad Hoc Working Group of Experts when it met in London from 2 to 7 August 1984.
- C. Basic international standards relevant to the matters falling within the mandate of the Group
- 37. In preparing its report the Group took account of the basic international standards relating to its activities. It should be noted that all the provisions embodied in these standards prohibit any form of racial discrimination.
- 38. In the opinion of the Working Group the Universal Declaration of Human Rights provides the United Nations General Assembly's interpretation of what is meant by "human rights and fundamental freedoms" in the texts quoted from the Charter of the United Nations. The group reaffirms that the obligations imposed by those texts upon States Members of the United Nations have therefore been extended to the more precise provisions of the Universal Declaration. The group also reaffirms that the provisions of the Universal Declaration should be recognized as general principles of international law by dint of their widespread acceptance by States and international organizations.
- 39. In particular, the Group took into account the international standards embodied in the following instruments:

The Charter of the United Nations;

The International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 A (XX) of 21 December 1965;

The International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200 A (XXI) of 16 December 1966;

The International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200 A (XXI) of 16 December 1966;

The relevant provisions of the four Geneva Conventions of 12 August 1949, which were analysed in document E/CN.4/1020, paras. 40, 41, 45, 46;

The 1984 Convention on the Prevention and Punishment of the Crime of Genocide (in particular, articles I to IV), adopted by General Assembly resolution 260 A (III) of 9 December 1948;

The 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (articles I and II);

The principles set forth in article 6 of the Charter of the International Military Tribunal of Nuremberg, reaffirmed in General Assembly resolution 96 (I);

The International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by General Assembly resolution 3068 (XXVIII) of 30 November 1973:

The 1951 Convention relating to the Status of Refugees;

The Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council in resolution 663 C (XXIV) of 31 July 1957;

The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in resolution 3452 (XXX) of 9 December 1975;

General Assembly resolution 2674 (XXV) and subsequent resolutions on respect for human rights in armed conflicts;

General Assembly resolution 1803 (XVII) on the permanent sovereignty of peoples over their natural resources;

ILO Convention No. 105 concerning the Abolition of Forced Labour;

ILO Convention No. 111 concerning Discrimination in respect of Employment and Occupation;

The UNESCO Convention against Discrimination in Education.

40. Without prejudice to other provisions, the Group bore in mind the resolutions adopted by the General Assembly at its thirty-eighth and thirty-ninth sessions, as well as those adopted by the Security Council during the period under review.

#### D. General observations

41. The information collected prompts the following observations by the Ad Hoc Working Group of Experts regarding the situation in South Africa and Namibia: The main features of the situation in the Republic of South Africa during the period under review Were: (a) The so-called constitutional reforms and the often violent reactions which they evoked among the population have been analysed as being likely to strengthen the ideology of apartheid; (b) the persistent massive repression of protests and demonstrations by the public, students and trade unionists, particularly during the period before and after the so-called constitutional reforms; (c) the reactions evoked by the agreements between South Africa and Angola and South Africa and Mozambique; (d) the growing

number of arrests and detentions without trial of various political prisoners, as well as allegations of torture both in South Africa and in Namibia; (e) the continuation of the policy of forced removals of populations; and, lastly, (f) a new and disturbing development in the form of harassment practised against activists by unknown persons.

- 42. The Ad Hoc Working Group is of the opinion that despite a tendency towards ideological modification of the South African Government's policy as the Reverend Demetris Palos noted apartheid rested on five major pillars. Firstly, there was the 1948 Population Registration Act, whereby any individual born in South Africa was classified from birth, as white, Coloured, Asian or black, so that his entire existence thenceforth depended on that classification. The only reference to the blacks in the so-called constitutional reforms was the provision that their affairs would be administered by the President, which in practice meant that everything would be done by decree. As regards modalities, the blacks had no freedom; only the whites could move about freely, while Coloureds and Asians had a measure of freedom, but with restrictions on their place of residence. The second pillar was constituted by the 1913 and 1936 Land Acts concerning landed property, under which Africans were entitled respectively to 6 per cent and later to 13.6 per cent of the land, but in clearly defined sectors, the better economic sectors being reserved for the whites. The third pillar was the 1950 Group Areas Act, designed to establish segregation between the four races by assigning them different places of residence, so that people of one race could spend their entire lives without ever coming into contact with the other races. The fourth pillar was established by the 1970 Homeland Citizenship Act, which also made for segregation since it provided for the separation of blacks according to tribe, language and tradition. Blacks were thereby considered as citizens of one of the so-called independent homelands and, at the same time, became foreigners in South Africa. Lastly, the fifth pillar, which has consolidated the system already established by the 1945 Urban Areas Act and its various amendments, is constituted by the recent Orderly Movement and Settlement of Black Persons Bill, which was withdrawn following criticism but whose main provisions were later incorporated in the Aliens Bill, 1984 (see chapter I, paragraphs 100 to 105).
- 43. With regard to the agreements signed with South Africa separately by Angola and Mozambique, without in any way challenging the sovereignty of States, the Ad Hoc Working Group of Experts feels that it must draw attention to the effects of such agreements on the future of the African liberation movements. The Group is of the opinion that apartheid has always had an aggressive and destabilizing aspect designed to reduce the capacity of the front-line countries to provide the necessary aid and assistance to the liberation movements in southern Africa.
- 44. With regard to Namibia, the Ad Hoc Working Group of Experts can only note the continuing illegal occupation of the Territory by South Africa and the ruthless repression and flagrant violations of fundamental human rights which are its direct consequence. One disturbing phenomenon in Namibia is the continuing large-scale practice of detention without trial, as well as the use of torture against political prisoners.

45. In the following paragraphs, the Group submits its report in accordance with the mandate established by the Commission on Human Rights and the Economic and Social Council. In the part relating to South Africa, chapter I deals with the "Bantu homelands" policy and forced removals of population; chapter II describes the various violations of human rights affecting individuals; chapter III concerns the denial of the right to work and freedom of association; and chapters IV and V deal with the right to education and the right to freedom of expression, respectively. Part Two, relating to Namibia, analyses the situation in that Territory, taking account of the specific characteristics of the problem.

#### Part one: South Africa

CHAPTER I: APARTHEID, INCLUDING BANTUSTANIZATION, FORCED REMOVALS
AND ESTABLISHMENT OF "HOMELANDS"

# Introduction \*/

- 46. This chapter deals with the following main issues: removals, the classic manifestation of the policy of apartheid; legislation, the instrument by which the policy is institutionalized; and the United Democratic Front (UDF) as a major force that has emerged to oppose the policy of apartheid. 2/
- 47. In previous reports the Ad Hoc Group of Experts drew attention to the question of citizenship as one of the obstacles to free determination of political status by black Africans. In this connection it was noted that this principle, embodied in the 1970 Black Homeland Citizenship Act, applied to all blacks, regardless of where they were born, even if they had always lived in white areas. An anonymous witness (625th meeting) testifying before the Working Group said that of the 22 million blacks, over 12 million were already in the homelands, with the result that over half the black population of South Africa was currently within the borders of the homelands. In the process, they had "lost their South African citizenship, they have lost their claims and share in the wealth of their country". Citizens of Transkei, Bophuthatswana, Venda and Ciskei had lost the right to work or live in South Africa. The National Party was ardently pursuing a policy whose logical conclusion in the words of Connie Mulder, then Minister of Bantu Administration (1978), "is the day when there would be no black man with South African citizenship".
- 48. Basically, to implement and maintain separate development or apartheid, black people have to be moved out of white areas into areas divided into 10 ethnic groups. According to the Surplus Peoples Project, 3.5 million people have, in fact, been moved under this policy: about 3 million of them are black African people; 600,000 are of the coloured and Indian groups who have been moved primarily under the Group Areas Act. A further 2 million are currently under threat of removal under various acts.
- 49. John Dugard, Professor of Law at the University of Witwatersrand, describes the problem in his paper entitled The Denationalization of Black South Africans A Question for the International Court of Justice?, John Dugard says "discrimination on grounds of race is giving way to discrimination on grounds of nationality as millions of black South Africans are deprived of their South African nationality by legislative fiat and allocated, in its place, the nationality of some unrecognized mini-State carved out of the body of South Africa".
- 50. According to the Working Group Kairos, five top Dutch lawyers have taken up the issue of the denationalized black South Africans and have asked their Government through the Minister for Foreign Affairs to take the initiative at the United Nations and urge the International Court of Justice to give an advisory opinion on the question of how the forced denationalization relates to

<sup>\*/</sup> This section is based in part on information from the South African Council of Churches (SACC) and the South African Catholic Bishops Conference (SACBC), Relocation: the Churches report on Forced removals, (Randburg, 1984); The World Council of Churches, One World, No. 95, May 1984; Black Sash, South Africa: A land divided (edited by Ethel Walt, printed by Pacific Press; Working Group Kairos, "Violations of human rights in South Africa: 1983-1984" and the Rand Daily Mail of 13 November 1984.

international law. The lawyers believe that an advisory opinion of the International Court of Justice could be an effective contribution to the struggle against apartheid and could form the basis for further steps by the United Nations or by individual States.

- 51. The "homelands" constitute 13 per cent of the entire land area of South Africa, where 22 million black South Africans will gradually be foreigners in the land of their birth; and from the "homelands" they may migrate or commute to South Africa as their labour is demanded.
- 52. In the 1980s there was a new emphasis on the manner in which people were moved. The age of "no more forced removals" was however soon followed in the words of Dr. Piet Koornhof, Minister of Co-operation and Development by the age of "no more forced removals where practicable and possible". 3/
- 53. In justifying the "massive cruelty" of relocation the National Party has, since it came to power in 1948, presented "an ideological prop" for apartheid that of preserving the identity of the Afrikaner people. 4/
- 54. A discussion of how this "ideologically motivated" policy works in practice must of necessity take into account the various categories of removals.
- 55. 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. In Natal alone there are over 200 such "black spots" still under the threat of removal. The "aim of the Government is to remove the inhabitants from these areas to the Bantustans or territories planned for later incorporation into them". 5/
- 56. Urban removals. Squatter camps or informal settlements, near the major towns "have periodically been eliminated by the authorities". Sometimes the residents are moved away from the cities, in other cases the African townships are simply incorporated into a Bantustan by redrawing the boundaries. In this instance, there is no physical removal of people, but the township residents lose their section 10 rights to live within a white urban area (see also paras. 93 to 98). Such towns handed over to the Bantustan authorities include Inlazi, KwaMashu and Ntuzuna in the Durban area, Mdantsane near East London, Madadeni and Osizweni near Newcastle, Esikhawini at Richard's Bay and Ga-Rankuwa and Mobopane near Pretoria.
- 57. Farm removals. According to a report of the South African Council of Churches and the South African Catholic Bishops Conference, hundreds of thousands of African people have been removed from white-owned farm land as a result of the abolition of sharecropping, "labour tenancy" and "registered squatter systems. The mechanization of farming and the growth of agribusiness have drastically reduced the need for farm labourers". The African victims of this shift unable because of pass laws to move to the cities are prime targets for relocation and have in fact formed a large proportion of such removals.
- 58. The Pass Laws and Influx Control. The pass laws are used, among other things, to move those who are not required out of the urban areas. Pass law "offenders" are dealt with by aid centres and courts which may send them to bantustans or direct them through labour bureaux into employment outside the urban areas. 6/

59. Other removals have been effected in pursuit of bantustan consolidation, infrastructural demands, border adjustments and strategic considerations. The following paragraphs give examples of removals which fall under the categories outlined above.

# A. Removals \*/

- 60. In the context of forced removals, the Working Group took note of the 1984 edition of a map entitled "South Africa: A Land Divided" (published by Black Sash in 1982, compiled by Ethel Walt), a copy of which is reproduced as annex IX to this report. The map illustrates forced removals and relocation of blacks to "homelands" from areas in which they live.
- 61. In the period covered by this report, the Working Group took note of information concerning the forced removals of blacks from the areas they inhabited to other areas, including "homelands". The following paragraphs contain examples of such forced removals noted by the Working Group.

#### 1. Mogopa

- 62. The Working Group received much information on the forced removal of the Bakwena from the area of Mogopa situated 190 kilometres west of Johannesburg in the western Transvaal. It may be recalled that the Working Group referred to this matter in its interim report (E/CN.4/1984/8, paras. 116-119). The removal from Mogopa took place over a period of time and was carried out in a variety of ways. For example in 1978 a new headman, Jacob More, was appointed by the Government; by 1981 he was deposed by villagers who accused him of corruption, but the action was not recognized by the Government. Ferhaps because of this support Mr. More became amenable to a Government proposal that the tribe be moved to the "homeland" of Bophuthatswana. In June 1981, Mr. More led 182 families (about 40 per cent) from Mogopa to Pachsdraai in Bophuthatswana. Following their departure Government bulldozers knocked down homes as well as churches, clinics and schools. The remaining 300 families in the village refused to go to Bophuthatswana for they claimed that they "have a settled and prosperous life in Mogopa".
- 63. On 18 November 1983, the local magistrate, J. de Villiers, arrived in the village and read a presidential decree ordering them off the land under the terms of the 1927 Black Administration Act and giving them 10 days to move. Despite threats and the arrival of official trucks to take them away, they did not move. They sought a Supreme Court order preventing their removal, but the request was turned down. In the early hours of the morning of 14 February 1984 the 300 families were forcibly removed.

<sup>\*/</sup> This section is based in part on information from The Guardian of 11 February, 15, 19 and 20 June and 6 July 1984; The Star of 13, 20 and 27 February, 4 and 18 June and 16 and 26 July 1984; the Rand Daily Mail of 10, 11, 15, 21 and 24 February, 12, 13, 14, 16, 20, 21, 22, 26, 29 and 30 June and 2, 3, 4, 5, 6, 10, 11, 12 and 14 July 1984; The Citizen of 11 and 16 February, 12, 20, 21, 25, 27, 28 and 29 June and 3, 4, 5, 12 and 14 July 1984; The Times of 11 and 16 February and 13 July 1984; the International Herald Tribune of 21 June and 6 July 1984 and Khayelitsha: New home - old story, produced by the Surplus Peoples Project, Western Cape, March 1984.

#### 2. Driefontein, Daggakraal, KwaNgema

- 64. Other "black spots" like the case of the forced removal of the Bakwene from Mogopa to Bophuthatswana have been the subject of similar measures. Among those whose resistance to removal continues to be publicized is the population of Driefontein, "a black spot" 320 kilometres south-east of Johannesburg, threatened with removal to "land due for incorporation into KaNgwane and KwaZulu". The community, which numbers about 7,000 people, lives on land purchased by the Native Farmers' Association of Africa Limited in 1912.
- 65. Of the estimated 7,000 inhabitants of Driefontein, 300 own land, and small portions are leased to tenants who cultivate it. However, only those who own 40 hectares or more will be allowed to claim land of equal agricultural and pastoral value when they are relocated, the rest will join "the very large numbers of people who have been deprived of access to land through relocation".
- 66. More than two years ago the people were told that they would have to move, partly because their land was officially designated as a "black spot", and partly because the Government wished to build a new dam on the Assegaai River, to be known as the Heyshope Dam. The dam was expected to cover a maximum of 30 per cent of the Driefontein properties.
- 67. The people of Driefontein made repeated pleas to the Government to be allowed to remain on their land. Their leader, Saul Mkhize, addressed frequent requests to Ministers for reconsideration of the notice to move, but to no avail. On 2 April 1983, while addressing an "essentially peaceful" meeting to protest against the Government's plan to remove the community, Mr. Mkhize was shot dead by a young white policeman, Constable J.A. Nienaber. Mr. Mkhize's "responsible and constructive leadership" had impressed many people and organizations that had taken a considerable interest in the fate of the Driefontein population, and his death drew "strong" and "bitter condemnation of the Government and its policy of forced removals".
- 68. The communities of Daggakraal and KwaNgema, which are near Driefontein, have also "continued to oppose the removal planned for them". "We would rather die than move", Mr. David Twala, spokesman for the Daggakraal Council of Twelve, said.
- 69. In October 1983, the 300 families of KwaNgema "a fertile beautiful black spot" in the eastern Transvaal were reported to have refused to move. They said that the Government had used the building of the Heyshope dam on an adjoining farm as a pretext to move them from land they had occupied since 1904 when it was given to Stuurman Ngema, the head of the family, for his role in the Anglo-Boer war. The Chairman of the Ngema Committee, Mr. Moses Ngema, said that residents had never been officially told why they were to be moved. On the other hand, the residents of Lochiel in the eastern Transvaal were told, in May 1983, that they would be moved to Eerstehoekdorp, KwaNdebele, to make way for families from Daggakraal and Driefontein.
- 70. In the removal of Driefontein, Daggakraal and KwaNgeme the Working Group discerns yet again the social and economic consequences of such an exercise. For not only will physical structures be destroyed, but family ties, friendships, community spirit and the local economy will be broken. In line with <a href="mailto:apartheid">apartheid</a> policies the communities will be broken up and the people resettled in different parts of the country, according to the language they speak: people who speak Zulu will be sent to Natal and put on land due to become part of the KwaZulu bantustan, while those who speak Swazi are to be put in the KaNgwane bantustan and the Sotho-speaking people sent to QwaQwa.

- 71. A report quotes sources in KaNgwane as saying that "there are growing fears that South Africa's new designs are to over-populate a small portion of the KaNgwane homeland on the northern and western borders of the Kingdom of Swaziland and then pressurize Swaziland into taking the territory with the people in it, or alternatively to force the Chief Councillor of the KaNgwane Legislative Assembly, Chief Enos Mabuza, to accept independence". By ceding KaNgwane to Swaziland the South African Government would accomplish its primary goal of making another 800,000 blacks "aliens" in South Africa.
- 72. The South African Government has taken similar measures to use "Ingwavuma as bait for Chief Gatsha Buthelezi to accept independence from the Republic". Chief Buthelezi spearheaded resistance in 1982 to Mr. Botha's plans to transfer Ingwavuma, which is part of KwaZulu, to Swaziland. He temporarily "blocked" the proposed transfer when the Appeal Court upheld KwaZulu's "contention that a proclamation excising Ingwavuma from KwaZulu was invalid". Excision of Ingwavuma was "the first step to ceding it to Swaziland".

## 3. Glenmore

73. Yet another instance of forced removal is provided by 600 families at the Glenmore resettlement camp who were said to be about to be moved against their will for the second time, this time to Ciskei. This disclosure was made by Dr. Piet Koornhof, then Minister of Co-operation and Development, who also said "the people would be moved to Peddie as soon as arrangements between the Ciskei and South African Governments had been concluded". The purported reason behind the removal was that "the Ciskei Government wishes to expand an irrigation scheme in the area and the people are quite simply in the way". Glenmore while being part of the Ciskei when "independence" was gained in December 1981, has nevertheless been "an anomaly" in that it has been administered by the South African Government. The Glenmore camp was set up in 1979 when 500 families from Klipfontein Farm, the Colchester and Goega areas and from Grahamstown were moved to Glenmore.

### 4. Other "black spot" removals

- 74. Mathopestad in the western Transvaal is a fertile area whose inhabitants have held the title deeds to the land since 1910. The Government plan is to move the 2,000 inhabitants to Onderstpoort near Sun City in Bophuthatswana. Mrs. Helen Suzman (PFP), who has consistently criticized the Government policy of removals, said that, on visiting the proposed relocation site, she found no compensatory land of any value but simply "a stony hillside".
- 75. Motlatla is a "black spot" 40 kilometres from Mogopa, where 250 families of the Bafokeng tribe are to be moved to Delareyville in the western Transvaal. Motlatla has been under threat of removal since 1973.
- 76. Machakaneng is land which was bought in 1904 and which is jointly owned by 16 families. In 1983 the tenants were removed to a resettlement camp called Hartebeesfontein. Now the landowners have been told they are to be moved.
- 77. The residents of Mgwali signed a petition opposing their removal from "their fertile" location to the "inferior town" of Frankfort, near King Williams Town in the Ciskei.

## 5. Crossroads, Langa, Nyanga and Guguletu

- 78. Another large group of removals from white urban areas is that of squatters or people who live in the hundreds of informal settlements on the edges of South African cities. The Working Group learnt that at least half a million of such blacks were under threat of removal both from the squatter camps of KTC and Crossroads and from the legal townships of Guguletu, Langa and Nyanga. 7/ Despite widespread protests the South African Government confirmed its plans to move "all of Cape Town's blacks into a new 'barren area' called Khayelitsha" 40 kilometres away from the centre. Cape Town is the only major urban area in which blacks are in a minority and the State has made it very clear that it intends to keep it that way. 8/
- 79. The decision to relocate these people into one "city" (Khayelitsha) has distinct advantages for the authorities; it will eliminate the squatter camps which have attracted a lot of international criticism, it will allow for a much more efficient form of control over black movement within the western Cape and over the movement, to that area, of people from Ciskei and Transkei seeking work, and, since the area is adjacent to the installations of the South African Defence Force, any civil unrest will be easily controlled. This development is also important in so far as it is a further manifestation of the Government's determination to demarcate much more clearly the areas (both homelands and townships) where blacks are to be allowed to work and to reside according to the needs of the economy and the requirements of internal security. 9/
- 80. Today's pattern of settlement was set almost 10 years ago when the old shanty towns of Unibel and Modderdan were destroyed and Crossroads came to dominate the map. Since then housing shortages in the townships and migration from Transkei and Ciskei have swelled the camps of KTC, Crossroads and Nyanga Bush.
- 81. The story of Crossroads, Nyanga and Guguletu in many ways illustrates dramatically the way in which people, caught up in a viscious circle of rural poverty and hunger, drfit to urban areas, get arrested in pass raids, suffer police harassment and deportation and inevitably return to the cities either as migrants or "illegal workers".  $\underline{10}$ /
- 82. First on the list of removals are the squatter camps of KTC and Crossroads. Crossroads alone, at the end of 1983, had an estimated population of 45,572 of whom 30,000 were "illegals". It is feared that these 30,000 black residents will face "deportation to their official homelands of Ciskei and Transkei", because the Government insists that only "legal" Africans of the western Cape will be resettled in Khayelitsha. Next on the Government's programme is the relocation of the residents of Nyanga, Langa and Guguletu.

## 6. Huhudi

83. Another case of urban relocation is that of Huhudi, a black township near Vryburg, in the northern Cape. The residents of Huhudi continue to live with the fear that their closely-knit community will be broken up. In 1968 it was decided to resettle all Huhudi people at Pudimoe, 55 kilometres away in Bophuthatswana, and only retain Huhudi on "a hostel basis", but in 1981, a concession was made "to allow families with proper dwellings to remain, and those without adequate housing would be housed 'voluntarily' in Pudimoe". The Huhudi Civic Association (HUCA) said it had received a letter from the Department of Co-operation in which it was stated that "the Government was considering reversing the 1981 decision". It said that a northern

Cape Development Board report had shown that "it may be economically more feasible to move all Huhudi residents to Pudimoe". The Minister of Co-operation and Development, Dr. Piet Koornhof, in a letter addressed to Mr. Brian Bramford, the Opposition Chief Whip, said discussions would continue with all parties involved in the Northern Cape township including the Huhudi Community Council on 31 August 1984, and no final decision would be made until after the discussions.

### 7. Other urban relocations

- 84. According to the Minister of Co-operation and Development, 902 families of the Hopewell Farm in the Pietermaritzburg area were to be moved to Golubie Farm, and 1,233 persons from the Danhouter Emergency Camp to Flint Farm near Newcastle.
- 85. On 16 November 1983 the 3,000 residents of Embhuleni village were issued with "notices to remove from <u>Badplaas</u>" on or before 11 January 1984. The notice stated that they would be relocated in Eerstehoek, Tjakastad or Honinklip. These are resettlement camps in KaNgwane, 30 kilometres from Badplaas.
- 86. Leandra is yet another urban black township under threat of removal. It has a population of almost 18,000 people who have been given notice to move to KwaNdebele.
- 87. Bethal has been the scene of numerous individual evictions over the past months. Families have been evicted one by one rather than en masse. The Administration Board "justifies" the evictions on the grounds that the people evicted are "illegal". However "it appears that many of those under the threat of eviction have lived in and around Bethal for generations".
- 88. Moutse in the North Eastern Transvaal is a large area with a population of about 100,000 people. The area was part of Lebowa until 1980 when it was excised from Lebowa so that it could be handed over to KwaNdebele as part of the independence deal. Since then the people of Moutse have fought this excision and the planned incorporation into KwaNdebele. Their refusal to accept incorporation has led to a protracted negotiation between Lebowa, the South African Government and KwaNdebele. The Lebowa residents want a referendum to be held to decide the issue. KwaNdebele has refused this proposition and the South African Government has shunned responsibility by insisting that it is up to Lebowa and KwaNdebele to resolve the issue. This resistance to incorporation is said to have wide and popular support.
- 89. In Natal, more than 600,000 people live under the threat of removal. Among those facing imminent removal are 100,000 people in the <u>Ladysmith</u> district. In Steincoalsspruit, the tenants were removed in 1978 to Ekavukeni about 60 kilometres from Ladysmith; now the landowners face removal to the same place.
- 90. In the Cape Province, some 12,858 residents of <u>Duncan Village</u>, near East London, face removal to Mdantsane in the "Ciskei".

# B. Influx control \*/

91. The Working Group noted the increase in pass law convictions in 1983. These figures are given in the table shown below:

Pass law convictions :	in main ι	ırban ar	eas
	1981	1982	1983
Pretoria	6 996	7 666	13 976
Johannesburg	20 265	29 940	37 562
Durban	509	259	2 532
East London	1 480	1 487	1 654
Port Elizabeth	42	272	867
Cape Peninsula	10 178	9 393	3 209
Bloemfontein	4 178	5 639	3 651
West Rand	13 480	17 086	23 180
East Rand	18 048	26 966	55 454
Total	75 176	98 708	142 085

Sources: Debates 24.5.83; S 6.3.84; DD 15.2.84; RDM 5.3.84. The figures are based on those given by the Minister of Co-operation and Development in Parliament.

92. The steady tightening of the system of pass laws has been a consequence of the implementation of a policy fashioned out of the recommendations of the Riekert Commission which was appointed after the uprising of 1976. The Government, faced with an "increasingly militant and increasingly large urban black population", has concentrated on measures which make it more difficult for blacks from outside the "white" areas to enter those areas. Riekert also recommended that the implementation of the pass laws should be shifted away from the "street", where the police carried it out, to places of employment and accommodation. It was against the background of these measures and of the Government's determination to "circumvent" the provisions of the Black (Urban Areas) Act that Mr. Rikhoto challenged the Government's 1968 rule that migrant workers, "because they are obliged to renew their contracts every year, have broken their term of service and are thus not eligible for permanent residence rights" under section 10 (1) (b) of the Blacks (Urban Areas) Consolidation Act, No. 25 of 1945.

<sup>\*/</sup> This section is based in part on information from the South African Institute of Race Relations, Survey of Race Relations in South Africa, 1983 (Johannesburg, 1984); Focus, No. 51, March-April 1984; International Labour Office, Special Report of the Director-General on the Application of the Declaration concerning the Policy of Apartheid in South Africa (Geneva, 1984); and the testimony of Rev. Demetris Palos, South African Council of Churches, 625th meeting, 20 August 1984.

- 93. Section 10 provides that migrants who have worked continuously for one employer for 10 years or for a number of employers for 15 years are eligible for such rights. In June 1983, the Appellate Division (AD) of the Supreme Court upheld the Transvaal Court's interpretation that "continuity of service was not broken by temporary absence due to illness or injury or by occasional departures for some legitimate purpose unconnected with a change of work" and that Mr. Rikhoto was entitled to live permanently in the city with his family.
- 94. Coupled with the Komani ruling (under which Mrs. Komani won the right to live with her husband and children in an urban area), the Rikhoto judgement appeared to pave the way for many migrant workers to gain the right to live permanently outside the bantustans and to have their families with them. It was generally believed that 143,000 out of 800,000 migrant workers would benefit immediately and about 30,000 a year thereafter. 11/
- 95. In August 1983, Parliament amended the pass laws in a way that effectively neutralized the Rikhoto and Komani judgements. Under the Laws on Co-operation and Development Amendment Act, a man qualifying for residential rights, as did Mr. Rikhoto, "must obtain official approval for any accommodation he obtains in the urban area". The Act was also amended to specify the type of "approved" accommodation "such approved accommodation may be a house owned by the parent under 99-year leasehold or rented or otherwise occupied by him, or married quarters provided by the employer". But given "the shortage of accommodation and the fact that the State directly controls the building of houses in black townships", it is "inevitable that the accommodation factor will become a vital element in controlling the extent of black movement into urban areas". The waiting list for houses outside the homelands was estimated in 1982 to contain 168,000 names; 50,000 to 60,000 new houses a year were required to eliminate the waiting list. The maximum ever achieved was in 1979/1980 when 10,000 houses were built.
- 96. A further proviso was that the family of a contract worker who succeeded in getting "approved" family housing could live with him, provided that they could prove they were already living with him before 20 August 1983, the day the amendment became effective. Commenting on these developments the Black Sash said that "it will be almost impossible for workers to bring their families into towns; only those who were living in the towns before the amendment of the law can escape the provisions". They further noted that, with the control of accommodation effectively in the hands of the authorities, the housing factor was the most important weapon in the armoury of influx control.
- 97. A further challenge to the influx control system occurred in June 1983, when a judgement in the Natal Supreme Court called into question the application of section 12 of the Blacks (Urban Areas) Consolidation Act, under which people considered to be "idle" could be forced out of urban areas. Mr. Justice Didcott set aside a finding of a Port Shepstone Black Affairs Commissioner, who, finding that Ms Beauty Duna was "idle", had committed her to "a work colony for two years, suspended on certain conditions". In his judgement, Mr. Justice Didcott described the "idle" legislation as drastic and added that the law's business was first and foremost to protect the liberties of the individual. The judge found that the interpretation of the act had been consistently incorrect and that whether a person was "idle" or not did not depend on the definition of idleness in the Act but on "considerations of common sense guided by notions of fairness". 12/
- 98. In February 1984, the Minister of Co-operation and Development announced that 24,688 blacks had qualified for residential rights. He failed to add, however, that most would continue to live in urban areas as single men because

of the obstacles created for their families by the Government's amendment to the legislation as described above. He also failed to explain why only such a small number had qualified.

## C. Legislation \*/

99. During the reporting period, the Working Group noted developments in legislation which had implications for the black population in South Africa. Within days of announcing figures which showed that convictions under the pass laws had increased (see table in paragraph 91), the Government introduced a bill in May 1983 which was passed in June 1984 and became the Aliens and Immigration Laws Amendment Act.

# 1. Aliens and Immigration Laws Amendment Act, 1984

- 100. The Act embodies some of the powers proposed in the Orderly Movement and Settlement of Black Persons Bill which, in the face of widespread protest, was referred to a Parliamentary Select Committee. The Act is seen as "tightening up immigration laws". Its heavy penalties and tighter restrictions will have the most severe effects on Africans from those Bantustans on which "independence" has been imposed. In law, all those people declared by the Government to be citizens of these Bantustans are aliens. 13/ It provides for naturalized citizenship for aliens between the ages of 15 and 25 who have been permanent residents of the Republic for more than five years. In terms of the Act, such people have the option not to acquire such citizenship on the understanding that they would then lose their permanent residence rights.
- 101. Automatic citizenship would come into effect six months after commencement of the Act for those then under the age of 24 years and six months who were granted permanent residence permits before 19 April 1978, and six months after their fifteenth birthday for people granted permanent residence who were not yet 15 when the Act commenced .
- 102. The provisions of the Act also extend to aliens granted permanent residence after the cut-off date of two years before commencement of the five-year period laid down in the Act, if they were younger than 25 when the Act commenced, and six months after they turned 15, if they were younger when the Act commenced. Those not wishing to become citizens, or parents not wishing their children to become citizens, would have to make a declaration to this effect in the case of minors after they turned 15 and before the date on which they would become naturalized.
- 103. Although the Deputy Minister of Internal Affairs, Mr. Piet Badenhorst, denied press reports asserting that the Bill was aimed at "tightening influx control involving blacks from the 'homelands'" leaders from different walks of life have expressed concern. Mrs. Helen Suzman (PFP) said that no matter how sincere the Government may be in its intentions, there would come a time when

<sup>\*/</sup> This section is based in part on information from the Rand Daily Mail of 6, 15, 16, 19 and 20 June and 4, 7, 9 and 11 July 1984; The Citizen of 6, 12, 15, 16 and 19 June and 4, 5, 10, 11 and 12 July 1984; The Star of 11 June, 9 and 16 July 1984 and the International Herald Tribune of 11 July 1984.

"the bill was used in a crisis as an additional weapon in the influx control armoury". Mrs. Suzman cited the Admission of Persons to the Republic Act which was passed in 1978, without opposition, as an example of legislation governing aliens and yet used in the 1981 Nyanga squatter crisis "to deport 3,600 blacks who were squatting in the Western Cape to Transkei and Ciskei en masse without recourse to the courts". Its use to remove squatters had not been envisaged in 1978 and yet it has been used to denationalize at least 8,250,000 South Africans since its enactment.

- 104. There "are other flaws" in the Bill which would be detrimental to the citizens from the "homelands". The absence of protection in the case of those who had lost their South African citizenship involuntarily when their homelands became independent, and the maximum penalty laid down for the employment of an "illegal alien" R 5,000 which was the same as the fine for employing an illegal black under the Orderly Movement of Black Persons Bill were such examples.
- 105. The South African Government maintains that it is not its intention to use this amended legislation against the citizens of independent homelands, but some reports indicate that the Government has gone to great lengths to deprive blacks of their South African citizenship, for example in the case of the Shangaan people.

## 2. Matrimonial Property Bill, 1984

- 106. The Working Group noted the publication in the first week of June 1984 of the Matrimonial Property Bill which contained proposals that "will change South Africa's marriage laws". Leading women's organizations, while welcoming the proposals, felt that the Bill did not go far enough and would not meet "all expectations of the women in this country". Mrs. Helen Suzman, PFP member, said that the Bill was indeed the first real and important advance, since the Matrimonial Affairs Act of 1953, to try to remove the legal disabilities of married women; but "a very unfortunate aspect of the Bill was that it totally omitted the subject of black marriages". She said that "married black women still had the worst of both worlds they were married out of community of property but with the marital power included". Mrs. Suzman said that she would move amendments to the Bill whereby black women "would also have recourse to certain of its provisions, especially the abolition of the marital power clause".
- 107. A PFP elected member, Mr. Nic Olivier, said that he was sorry that the legal position of black women had not yet been cleared up. A black woman, he said, "can within a single lifetime move from her traditional role as perpetual minor to urbanized participant in the labour market and competitive society". He warned that the "growing number of black girls at schools and universities would intensify the problems surrounding traditional and legal marriages". For this reason, at least, he argued, the Government "needed to adjust this change to minimize the gap between the law and reality". In elaborating his argument he cited as an example of this inconsistency the situation in which a widow loses claim for her husband's house and the introduction of the 99-year leasehold system. He also pointed to the need to look at the traditional union and legal marriage, adding that "while everyone was free to enter into a Western-type marriage, it was archaic that a black adult city woman had to obtain her paternal guardian's permission to marry while a minor white girl could do so without such a marriage being automatically void".

# Proposed amendments to the Mixed Marriage Act of 1949 and Section 16 of the Immorality Act of 1957

108. A parliamentary Select Committee, which was appointed to consider amending the Mixed Marriages Act of 1949, and section 16 of the Immorality Act of 1957, is reported to have asked that its terms of reference be widened to enable it to consider the desirability of repealing the two laws "frequently called pillars The Committee's terms of reference were "to inquire into and of apartheid". report on the necessity, the possibility and the desirability of amending the two measures without prejudicing the fundamental objectives with which they were enacted and the principles contained in other existing laws which may be directly or indirectly connected with the Act and the said section 16". The Chairman of the Committee, Deputy Minister of Internal Affairs, Mr. Piet Badenhorst, presenting the report to Parliament said "the combating of immorality is the duty of the community as a whole. Any provision of law in this regard should apply to all persons, irrespective of race or colour. two measures are not capable of being amended in order to bring about an improvement. It is, in fact, the retention or repeal of the measure which is at issue." It was widely reported that major churches, medical and legal professions, academics and others told the Committee that there was no way of improving the two laws which could not be "justified on scriptural or other grounds". Parliament was reported "to have given the go ahead" for the Committee to consider the repeal of the two laws but "with due regard to continued ordering of communities".

## 4. Prohibition of Political Interference Act

109. The South African Minister of Internal Affairs, Mr. F.W. de Klerk, announced on 5 July 1984 that a Select Committee of Parliament would investigate the Prohibition of Political Interference Act and related legislation "with a view to its possible amendment or scrapping". The Act, which prohibits interference in the political affairs of one population group by members of another, came into being in 1968. It effectively brought an end to multiracial parties and the Liberal Party opted to disband rather than comply with the provisions of the Act. However, 16 years later it was almost "inevitable" that the Electoral Act be reviewed and brought into line with the spirit of the principles of the new Constitution.

## 5. Local Government Bills

110. The South African Government came under a "barrage" of attacks from its opposition benches as the long-awaited "trilogy of local government Bills was tabled". The three Bills which deal with local government under the new Constitution are: The Promotion of Local Government Affairs Amendment Bill; the Local Government Bodies Franchise Bill and the Regional Services Councils Bill. The first two Bills set out the criteria for determining the degree of autonomy to be granted to local authorities and provide for uniform franchise qualifications for voters at local government level, the third Bill provides for the establishment of bodies for the joint provision of services on local authority authority level. In terms of the Promotion of Local Government Affairs Amendment Bill, the Minister of Constitutional Development and Planning is authorized to promulgate criteria to determine the viability and potential degree of autonomy for communities at local government level. The Bill provides for Provincial Administrators to act in accordance with directives of the Minister in classifying, establishing or dissolving local authorities or altering their areas of jurisdiction. The local Government Bodies Franchise Bill deals with the provision of uniform franchise qualifications for Whites, Coloured people and Indians in the election of local authorities. Voters must be South African

citizens over the age of 18, and must have a registered address within the area controlled by the body. The franchise in respect of local authority elections is granted to parliamentary voters and owners of immovable property in the area of a local government body. Those who qualify in both respects are allowed more than one vote. Companies, trusts and statutory bodies are also entitled to vote in terms of the Bill. Statutory bodies not linked to any specific population group have a vote for every local government authority in whose area the body owns qualifying property. The Bill also provides that the executors, trustees or directors of deceased estates or trusts in which property is owned may vote on behalf of the estate or trust.

- lll. The Regional Services Council Bill which has been referred to the Select Committee on the Constitution enables White, Coloured and Indian local authorities to form joint bodies to provide community services such as electricity provision or road-building. These services would be made available to the Black community on contract.
- 112. The opposition PFP which attacked the "trilogy of Bills" said the government had once again "failed to display the insight and courage needed to move effectively and clearly away from apartheid". The Bills cast future local government in the very restrictive, rejected and hazardous mould of "apartheid". The PFP maintained that the exclusion of Blacks from the regional services councils system was a fundamental flaw. Mrs. Suzman, (PFP) said this could lead to situations where "a Black city like Soweto, which was much larger than Johannesburg itself, could end up making a far greater contribution to the Joint body while it still had no say".

CHAPTER II: INFORMATION ON THE RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON

#### Introduction

- 113. The present turmoil in South Africa is said to be the most intense since the Soweto uprising in 1976. Black townships across South Africa erupted in rioting in August and September 1984 in the wake of complaints about detention of black leaders, increases in rents and transport fares and conditions in black schools (see chap. IV). 14/ Reports reaching the Working Group at the time of the preparation of its report estimated that 100 opponents of racial segregation had been detained by "the white-minority Government". A spokesman for the Detainees' Parents Support Committee said that the total was the highest since 1977 when several thousand people were held after riots which swept the country in 1976 killed more than 500 people. 15/
- 114. The Government of South Africa, in an effort to stem the wave of discontent and the outrage of the 22 million blacks whose mood is said to be the worst since the Soweto riots by 1976 has had to resort more and more to arbitrary arrest and detention of leaders and activists of mass organizations. 16/
- 115. According to information supplied to the Working Group, the Detainees' Parents Support Committee said that of the more than 1,000 people have been detained this year (1984). As of the time of preparing this report of these over 200 were still being held. In a summary of detentions and arrests dated 31 October 1984, the Detainees' Parents Support Committee said "police action through the courts is intensifying and a stream of trials is expected in the coming months from the over 1,000 arrests".
- 116. As the Group has pointed out in its previous reports the South African authorities command wide legal powers to detain those they consider to be "their foes without charging them or bringing them to trial". 17/ The most prominent of those detained in the recent past have been leading figures of the United Democratic Front (UDF) an alliance of anti-apartheid groups that claims 400,000 active supporters (see chap. V, paras. 408-414). Most persons detained are blacks. Among those still being detained are two political fugitives who took refuge in the British Consulate in Durban on 13 September 1984.
- 117. In this chapter it is proposed to illustrate some of the ways in which the policy of apartheid has continued to violate the most basic rights of the black population of South Africa and of those among other racial groups who continue to strive to bring about an end to that policy. These rights are the right to life, the right to freedom from arbitrary arrest and detention and to freedom from torture or cruel, inhuman or degrading treatment or punishment.
- 118. The following paragraphs are intended to illustrate the manner in which these security laws are, in fact, furthering the application and consolidation of the policy of apartheid.

# A. The Internal Security Act \*/

- 119. Under the Internal Security Act the authorities have the power to detain a person without going through the courts and to bypass the normal processes of law. 18/
- 120. The Working Group received detailed information on the application of legislation, such as the Internal Security Act (No. 74 of 1982), resulting in the prolonged detention of persons whose ill-treatment, and in several instances death, was alleged before the Working Group. Annex IV gives an up-to-date list of deaths in detention of which the Working Group is aware.
- 121. In this context the Working Group recalls the tragic death in detention of Steve Biko in 1977 while a detainee under Section 6 of the Terrorism Act. The Working Group also recalls the "crack-down" of 19 October 1977, in which 18 organizations, 3 newspapers and 7 prominent citizens were banned and 47 black leaders were detained under the Internal Security Act. These events and the publicity which surrounded them led to a new questioning of the security laws and culminated in 1979 in the appointment of the Rabie Commission of inquiry "to examine the adequacy, fairness and efficacy of security legislation".
- 122. The report of the Commission was tabled in Parliament in February 1982; its recommendations became law in July 1982 with the enactment of the <u>Internal</u> Security Act of 1982.
- 123. Learned analysis of the Rabie report was "extremely critical". The general view of the Act was that it streamlined and tightened up security legislation and did little, if anything, to improve the lot of detainees. In short, it was considered that the Act should not be seen as a progressive reform of security legislation, but rather as a more finely tuned instrument in the hands of the police.
- 124. The Centre for Applied Legal Studies of the University of the Witwatersrand in its publication Report on the Rabie report: an examination of security legislation in South Africa examines the factual background to the present security situation and makes certain points on political factors and forces which have given rise to "the present security laws" "and which continue to make such laws necessary". The report asserts that it is "impossible to consider the

<sup>\*/</sup> Sections A and B are based in part on information from The Star, 28 November 1983, 27 March 1984, 13 September 1984; International Herald Tribune, 7 and 8 November 1984 and The Guardian, 8 November 1984; as well as from International Defence and Aid Fund for Southern Africa (IDAF), A Review of Developments, 9 March 1984; Focus, IDAF, No. 53, July/August 1984; Detainees' Parents Support Committee, Summary of reports and submission; South African Institute of Race Relations, Survey of Race Relations in South Africa - 1983 (Johannesburg, 1984); Amnesty International Report - 1984; Detainees' Parents Support Committee, Preventive Detention - Tool of Repression.

security threat facing South Africa without having regard to the basic social, political and economic grievances of the black community. Until these are resolved there can be no peace ... however efficient and harsh the system of security enforcement".

- 125. Section 28 of the Internal Security Act gives the Minister of Law and Order the power to order the detention of a person virtually indefinitely without trial or even the hope of a trial. The case of Abel Dube who has been in Diepkloof prison outside Johannesburg for a period of over two years illustrates the dangers inherent in this law and the likelihood of its abuse. Abel Dube, according to an article in the Star entitled "Jail term with no time-limit - and no court hearing", has never been accused of any crime, never been given the opportunity to establish his innocence, and is still detained in prison. He is the victim of section 28 (1) of the Internal Security Act - the preventive detention clause - not because of what he has done but because of what he may do in the future. In the words of this section "the Minister may ... direct that the ... person be detained in ... prison, ... if in his opinion there is reason to apprehend that a particular person will commit an offence" which endangers the security of the State. Section 28 was used in March 1984 to detian four Cradock Community leaders: Matthew Goniwe, Mbulelo Goniwe, Fort Calata and Madoda Jacob. It was used again in August 1984 just prior to the tricameral elections to detain "18 opponents of the elections".
- 126. In a recent test case judgement handed down in the Rand Supreme Court in September 1984, Mr. Justice C.S. Margo ordered that a detainee under section 28 of the Internal Security Act "be entitled to confidential consultations with his attorney ...". The application was brought by Mrs. Hilda Mokoena on behalf of her husband Aubrey Mokoena, General Secretary of the Release Mandela Campaign and a prominent member of the United Democratic Front who was detained in August 1984. Mrs. Mokoena asked that her husband be entitled to consult his attorney, Mrs. Priscilla Jana, within sight but not within hearing of prison officials. The respondents were the Commissioner of Prisons and the officer commanding Diepkloof Prison. The applicant's counsel argued that "the provisions of the Internal Security Act did not mean that the detainee did not have the right to confidentiality".
- 127. The judge found that "consultations between attorney and client were confidential a fundamental principle of law". Detainees "could not be denied this" he said. Justice Margo explained that it was his duty "to interpret statutory provisions, not the broad public considerations. If it is necessary to prevent confidential consultations, that is a matter for the legislature". The ruling was heralded as "unprecedented" and likely to have "far-reaching implications for hundreds of other political detainees".
- 128. The Detainees' Parents Support Committee believes that section 29 of the Internal Security Act constitutes "the gravest incursion into the human rights" of detainees. Their submission is that it is detainees who are held under this provision of the Act who are the "greatest victims of maltreatment" and that it is under this Section of the Act that "most deaths in detention occur".
- 129. Under this section any police officer of the rank of lieutenant-colonel and above, can order the detention of a person for an indefinite period for the purposes of interrogation. Detainees under section 29 are held incommunicado. "There is no time-limit on the period of detention. They have no right or access to a lawyer to their family or to a private doctor." 19/

- 130. Section 30 of the Internal Security Act gives the Attorney-General powers "to prohibit the release [of detainees] on bail or on warning". This section is allegedly "invoked" on almost every occasion that "a former detainee appears in court in a trial relating to a security matter. In enabling the Attorney-General to bypass the courts this section removes discretion from the courts in the matter of granting bail and effectively "continues the detention of the prisoner, albeit under slightly relaxed awaiting-trial conditions".
- 131. On 5 August 1983, a Soweto social worker, a Mohlakeng civic leader and a Mursieville priest were arrested by security police. Three days later the three - Mrs. Amanda Kwadi, Mr. George Moilwa and the Rev. Samuel Tsele appeared in court charged with furthering the aims of the banned African National Congress. In this trial the argument that the powers vested in the Attorney-General by section 30 of the Internal Security Act should be curbed was "amply demonstrated". The State alleged in the trial that, by making arrangements for the celebration of Women's Day in 1982, they had carried out activities in the direct or indirect interests of the African National Congress. The Attorney-General exercised his power to refuse the three accused bail. The trial began after they had spent three months in gaol without charges. The accused were never called upon to give evidence in their defence. The prosecution did not ask for a conviction and all three accused were acquitted. They had spent over three months in gaol on the instructions of "a very senior civil servant". In the view of the Working Group, this constitutes an illustration of the manner in which the law is invoked to further the implementation of the policy of apartheid in that it effectively separates opponents of this policy from their immediate political and social environment.
- 132. Section 31 of the Internal Security Act gives the Attorney-General the power to order the detention of a person and to hold him or her as a potential State witness in a trial until the trial ends, or for six months if the trial has not yet started. According to information available to the Working Group, some of the longest-serving detainees are those held as potential witnesses. For instance, in April 1983, a 17-year-old school girl, Cynthia Ntshingwa, was released after 11 months in solitary confinement without having been called to give evidence in the trial of Mr. Joe Thloloe and eight others for which reason she had allegedly been held. 20/ In a Parliamentary answer on 30 March 1983 the Minister of Law and Order stated that 10 people were detained as potential witnesses under section 31. All 10 had been detained for longer than three months: two for 119 days, four for 132 days, four for 168 days. 21/
  - 133. Under section 50 of the Internal Security Act, any police officer of the rank of warrant officer and above can detain a person for 48 hours. This can be extended to 14 days on application to a magistrate. The purpose of this section is described as "action to combat state of unrest". The section seems to be rarely used but in fact many detentions are reported without reference to legal detail.

## 1. Political trials

134. Information available to the Working Group revealed an increase in the number of political trials which took place in the period under review. A list of these trials which is provided by the Detainees' Parents Support Committee is annexed to the report (see Annex V).

- 135. At the 61lth meeting the Working Group heard evidence on political trials from Mrs. Lucia Otto of the International Defence and Aid Fund for Southern Africa. Mrs. Otto referred in particular to the case of Mr. Benjamin Malesela Moloise.
- 136. Moloise was found guilty in the Pretoria Supreme Court of murdering a security policeman Detective Warrant Officer Philipus Selepe on 7 November 1982. He was sentenced to death on 6 June 1983. Moloise pleaded not guilty and denied throughout the trial that he had killed Selepe. He said that statements he had made to the police and before a magistrate had been made out of fear. By November 1983 Moloise had made two appeals to the Supreme Court and to the Chief Justice, both of which failed. His lawyers prepared additional information for an appeal to the State President, based partly on his psychological and sociological state. It was reported that "he has over the years suffered from clinical depression and that this had greatly intensified following the execution of Marcus Motaung" one of the Moroka three with whom he had grown up and whom he had known for a long time. Following the failure of the two appeals ANC issued a statement claiming responsibility for the killing of Selepe, categorically stating that Moloise was not involved and alleging that the security police had failed to apprehend those responsible for the killing and had used Moloise as a scapegoat.
- 137. Moloise and Selepe had both been called as State witnesses in the trial of the three ANC combatants who were subsequently sentenced to death. While Moloise refused to answer questions in court, Selepe gave evidence for the State and was amongst those praised by a judge of the Supreme Court for the part he played in the arrest and conviction of the three ANC combatants.
- 138. The three men Mosololi, Mogoerane and Mataung were hanged on 9 June 1983, three days after Moloise was sentenced. Vigils and meetings protesting the hangings were held across South Africa. Sorrow, anger and support for the three and their actions were given clear expression. Following the hangings, meetings and demonstrations took place throughout South Africa and elsewhere. As the protests continued to gain momentum the Government issued an order banning meetings to protest the hangings for a week, and the quoting of statements made by the three executed men was made illegal when their names were included in a list of people, published on 1 July 1983, who may not be quoted.
- 139. In June 1983, the Government issued new regulations governing hangings. The Government announced that henceforth the names of the people to be executed would not be announced. It would therefore be impossible to find out if and when Moloise was going to be executed.
- 140. The witness also pointed out the secrecy with which these trials were being carried out. She explained that most State witnesses were not named in the press, and that their evidence was given in camera. She also explained that, while the press was allowed to report details of evidence, it was not allowed to divulge the identity of such witnesses. This was in fact another attempt by the authorities to isolate the State witnesses from the community.
- 141. Mrs. Otto, who gave evidence on behalf of IDAF, concluded by impressing on the Working Group the increased secrecy surrounding every aspect of political repression in South Africa; increasing secrecy about detentions, increasing use of in camera proceedings in trials, and increasing secrecy surrounding hangings.

### Comments on political trials

142. The Working Group records several noteworthy features which emerged during these trials.

Actions previously regarded as offences under the Terrorism and Internal Security Acts, for example, active membership of ANC, were regarded as high treason (e.g. Niehaus and Lourens).

The use of symbols (for example colours, slogans and songs) which might be construed as indicating support for ANC was considered as an offence under the Internal Security Act and the accused were given severe sentences (e.g. Genu, Moloi, Mashego, Ntshiwa and Radebe).

The severity of sentences increased. Explaining this, judicial officers said that heavy sentences were a deterrent and that the interests of society far outweighed the personal considerations of any individuals. Sentences for high treason varied from 12 years to life imprisonment. For participation in non-violent activities of ANC, sentences varied from one and a half to seven years and for possession of banned literature from suspended sentences of six months and fines to two and a half years' imprisonment.

Potential State witnesses were held in detention for long periods and released only after they had given evidence. In some instances after initially being detained under section 29 (1) and subsequently held under section 31 (1) of the Internal Security Act, detainees were not called as witnesses (see para. 132 above).

Potential accused were sometimes held in detention, charged and then held as prisoners awaiting trial for long-periods. In the case of Mr. Thloloe and eight others, the accused were held for eight months in detention and then as prisoners awaiting trial. The Rev. Cedric Mayson who appeared before the Working Group at its 614th meeting, was detained in November 1981, was charged in March 1982 but remained in custody as a prisoner awaiting trial until March 1983.

Parts of many security trials were held in camera at the request of either the State or State witnesses who expressed fear that their lives would be endangered.

### 2. Detentions

143. On the basis of information gathered, the Working Group has discerned five main target groups in the use of detentions: scholars; students and academics; trade-unionists and workers; community leaders and church workers; and journalists. In 1983 these groups together accounted for 58 per cent of detainees, and in the first eight months of 1984 they made up 75 per cent of the total detained. An anonymous witness (627th and 628th meetings) testifying before the Working Group said that it was clear from the figures that the security laws were directed primarily against legitimate opponents and critics of the apartheid system, and that the security laws were being used to suppress normal protest and dissent against unsatisfactory social and political conditions such as poor living conditions, poor education and lack of political rights. Such opponents of the system were withdrawn from society and subjected to intimidation to make them cease their political activity.

### (a) Summary analysis of detentions carried out from 1 January to August 1984

- 144. In the period January-March the greatest number of detentions (66) occurred in Transvaal. Ciskei also had quite a high number of detentions (24). The major target groups were community and political workers (69). 22/
- 145. In April the area with the highest number of detentions was the Eastern Cape (Cradock and Graaff-Rinet); the main target groups were scholars and teachers (related to school boycotts, see also chap. IV, paras. 356 and 370 to 372). By far the largest group up to April were community and political workers, protesting against rent increases, transport cost increases, removals, new constitutional proposals. 23/
- 146. In May the number of detentions for 1984 more than doubled (286) mainly owing to the detention of 137 students of the University of Transkei on 22 May 1984. The target group of scholars, students and teachers surpassed that of community and political workers.  $\underline{24}$ /
- 147. In June the most intense security police activity was in Soweto and the Reef where 22 of the reported 25 arrests for the month took place. Identifiable targets were trade-unionists (6) and community workers (4).
- 148. By the end of June, therefore, 321 detentions had already been reported, Transkei accounting for 46 per cent and the Transvaal for 34 per cent of the total. The two highest target groups were students (53 per cent) and community workers (26 per cent), so far 36 per cent of these detainees have been released without charge and 46 per cent have been charged and acquitted. The number in detention in June was comparatively low (34). 25/
- 149. In early July the Minister of Law and Order informed Parliament that 70 persons were still detained under section 29 of the Internal Security Act. Detainees' Parents Support Committee figures at the time could account for only 30, and the Committee challenged the Minister to reveal the names of the other 40, which he declined to do. Since then the Detainees' Parents Support Committee has discovered the names of a substantial number of additional persons detained during June but there were still 24 whose names and other details were unknown.
- 150. In June and July, Transvaal (Soweto in particular) bore the brunt of detentions; Natal also had a large share. The main identifiable targets were community workers and trade-unionists.  $\underline{26}$ /
- 151. The very high number of detentions during August was largely associated with the opposition to the tricameral elections, with the Transvaal and Natal areas being the focus of attention and Cape Town registering its first detention in 1984. There was also a resurgence of security police activity in the Ciskei.
- 152. Predictably the two target groups which suffered most heavily were community and political workers and scholars and students.
- 153. A high proportion of detentions were short term, leading either to release within 48 hours or to charging in court. Many of those detained in August were still in detention at the end of August, 18 of them in preventive detention under section 29 of the Internal Security Act, which effectively removes political opponents without the use of the courts. (See paras. 128-129 above.)

- 154. The total number of detentions for the first eight months of 1984 already far exceeds the total for the whole of 1983 (453). 27/
- 155. A list of persons who are being held in preventive detention under the Internal Security Act since it came into effect on 2 July 1982, is contained in Annex VI.

### 3. Banning

156. Under the Internal Security Act the Minister can restrict individuals in the following ways: under section 19, a person may be placed under house arrest; under section 20, a person may be banned from attending meetings which has the effect of isolating a person both socially and politically; under section 21 a banned person is required to report to a specified police station at specified periodic intervals; and under section 18 a person may be prohibited from membership of certian organizations and public bodies.

#### (a) Banning of persons

- 157. There are currently 11 persons serving banning orders (see list below). Prior to July 1983 the figure stood at about 70 and in July 1981 it was in the region of 170. The decline in recent years of the Government's use of banning orders followed a review of bans in July 1983. The review did not affect those people, all black South Africans, who are subjected to various forms of banishment to the bantustans under laws other than the Internal Security Act.
- 158. Notable among those still affected by the banning orders is Mrs. Winnie Mandela. In August 1984, Mrs. Mandela began the second year of a five-year banning order which keeps her in the "small remote" town of Brandfort in the Orange Free State. Her first detention case was in 1958. Since then "Winnie Mandela's life has consisted of an almost unbroken series of banning orders, house arrests and suspended sentences interspersed with short periods in prison". Since 1977, a succession of banning orders has confined her to Brandfort, 215 miles from her home in Soweto.

#### List of persons currently serving banning orders

Names	Place	Banning expiry date
ARENSTEIN, Rowley Israel	Durban-Westridge	30/6/1988
CASSIEM, Achmad	Cape Town (Wynberg)	31/3/1986
ISSEL, John James	Cape Town (Athlone)	31/7/1986
MADLINGOZI, Maxwell Khululekile	Port Elizabeth (Kwazakhele)	31/3/1986
MAKANDA, Dumile Dennis	Port Elizabeth (Kwazakhele)	31/3/1986
MANDELA, Nomzano Winnie	Brandfort	30/6/1986 (see para. 158)
MKHIZE, Florence Grace	Durban (Lamontville)	30/6/1985
NATHANIEL, Immanuel Gotlieb	Walvis Bay	30/6/1986

TATSA, Mordecai Mothibe

Soweto

31/8/1986

TSEDU, Mathatha Godfrey

Seshego

30/6/1986

DUBE, Abel

Messina

#### (b) Banning of gatherings

- 159. A magistrate or the Minister of Law and Order can ban certain gatherings under section 46 of the Internal Security Act. The Working Group heard from an anonymous witness (627th and 628th meetings) that this section had been invoked frequently in recent times to prevent attendance at the funerals of political people or victims of police action lest such gatherings should be used as vehicles for political expression or mobilization. For instance, restrictions under this section were placed on the funeral of Clifford Brown of ANC who died in a shoot-out with police on 13 May. The magisterial order stipulated amongst other things that the service should not be of a political nature and that the procession should proceed by motor transport only, and "avoid the township of Duncan village".
- 160. The funeral of Vusumuzi Meshak Msani was banned by the Verulan magistrate from taking place on Saturday, 18 August 1984. The conditions imposed were that the funeral should take place on Tuesday, 21 August between 10 a.m. and 2 p.m., that the body be conveyed by the shortest route by mechanically driven vehicle only, that there be no procession on foot and that the service should not take the form of a political gathering. All meetings of UDF and its affiliates (14 in all) were banned in the East London area for the weekend of 28/29 July 1984 because the acting magistrate had "reason to apprehend that the public peace would be seriously endangered by the gatherings". All gatherings of more than five people in the area of Mdantsane township were banned for the period 1-6 October 1984 under the Ciskei National Security Act. This period coincides with the anniversary of the death of a number of Mdantsane residents shot by Ciskei police during the bus boycott. There is currently a general ban in effect in the Ciskei on all gatherings of more than 20 persons.
- 161. Under section 4 of the Internal Security Act, the Minister of Law and Order can declare certain organizations unlawful. The African National Congress (ANC), the Pan-Africanist Congress of Azania (PAC) and the South African Communist Party (SACP) are all declared unlawful organizations in terms of the Act. Membership of these organizations or any actions to further their aims are punishable under these security laws.

#### (c) Banning of publications

- 162. The Minister of Law and Order may, under section 5 of the Internal Security Act, ban certain publications or periodicals if he deems them prejudicial to the security of the State and/or likely to promote the spread of communism. For the year July 1982-June 1983, over 1,800 publications were submitted to the Publications Control Board. Over 75 per cent of the publications submitted were classified as possibly prejudicial to the security of the State and in the event the Board banned over half of the items submitted.
- 163. In this connection an anonymous witness (627th meeting) singled out for special mention the banning of Joe Tholoe and others for possession of banned books. Tholoe subsequently won an appeal against his sentence of two and a half years. In recent months, there have been several trials for possession of

banned publications (see summary of trials 1983 and 1984). This would seem to suggest that the authorities see such charges as an easy and more defensible way of neutralizing political activists.

### 4. Listing of persons

- 164. Government Gazette No. 9276 of 29 June 1984 lists the names of persons who may not be quoted, according to the provisions of section 56 (1) (p) of the Internal Security Act of 1982, contravention of which carries a prison sentence of up to three years. The persons who may not be quoted are:
  - (a) Persons under banning orders (sections 19 (1) (a) and 20);
    - (b) Persons convicted of security offences listed in section 16 (1) (b);
    - (c) Persons now or previously in preventive detention under section 28;
- (d) Persons whose names are entered on lists maintained in terms of sections 16 (6) (a) and 23 (1).
- 165. The number of persons in these categories are:
  - (a) 11;
  - (b) 18:
  - (c) 6:
  - (d) 165.
- 166. The total number is 200. Of these 25 are in South African prisons; 33 are resident in South Africa; 123 are living abroad in exile and 19 are deceased.
- 167. In addition there are a further 250 persons approximately, who may not be quoted until 9 June 1987. These persons appeared on a list under the former Internal Security Act of 1950 and their names will only come off the list five years after the new Act of 1982 came into effect, provided that they are not re-entered on the new list in the meantime.

### B. The Criminal Procedure Act, 1977, section 50

168. The Detainees' Parents Support Committee reported a tendency for the security police to invoke section 50 of the Criminal Procedure Act, No. 51 of 1977. This has a number of implications. According to the Detainees' Parents Support Committee the use of section 50 of the Criminal Procedure Act obscures the true extent of repression, since such detentions are not included in statistics of detentions under the "security" laws. The short period of detention provided for under the Act (48 hours) may lead to an intensification of the interrogation procedure. The "code of conduct" entitled Directions regarding the detention of persons in terms of section 29 of the Internal Security Act announced in 1982 in response to protests about assault of detainees during interrogation does not apply to "non-security" laws.

- 169. The Working Group cites the case of Mr. Paris Malatji as an illustration of the manner in which this law is applied. Paris Malatji died on 30 May 1983. At the time of his death he was being held under the Criminal Procedure Act according to the police. A controversy arose because it was held that the Act had been applied to what was in fact a political detention. A security policeman Mr. Harm van As was accused and convicted of the death of Mr. Malatji, At Mr. van As' trial it was revealed that Mr. Malatji had in fact been detained and interrogated as though he were a security detainee.
- 170. Public discussion and concern focused on the fact that Malatji's interrogation under the Criminal Procedure Act was not regulated by the "code of conduct" introduced in December 1982 for interrogation under security legislation. When Malatji was shot dead at Protea Police Station, the day after his arrest, he was alone in a room being interrogated by van As. The code requires the presence in the room of at least two policemen during interrogation. Another regulation forbids security policemen to be armed during interrogation, but van As was armed.
- 171. Following Mr. van As' trial, a member of the Lawyers for Human Rights Group, commenting on the treatment of Mr. Malatji, pointed out that under section 50 suspects could make statements but could not be interrogated. According to this source, interrogation under section 50 was unlawful. 28/

### C. Torture and ill-treatment \*/

- 172. The Working Group has continued to receive information regarding torture and ill-treatment of detainees. Information available to the Group revealed a wide range of instances of torture. The information implicated scores of security police and a number of the police involved were commissioned officers up to the rank of major. Places of torture included police stations at all major centres in South Africa. Among those more commonly cited in the more serious allegations were Protea (Soweto); Sanlam Building (Port Elizabeth); John Vorster Square and Benoni Police Station.
- 173. Allegations pointed to numerous instances of prolonged and intensive interrogation, sometimes by successive teams of interrogators and sometimes for periods extending over several days.
- 174. Mr. Van Heerden, one such victim of torture, told the Working Group (627th and 628th meetings) that during his detention he had been subjected to various forms of torture. Consequently he had sued 10 security policemen (see paras. 182 and 183). In his testimony, Mr. Van Heerden stated that he had been left standing for very long periods with his right wrist handcuffed to his left ankle. He was suffocated with a wet tight-fitting canvas bag, electric shocks were applied to his arms, feet, ankles and to his spine. He had been beaten and assaulted on his genitals. He pointed out to the Group that such torture was designed to break and exhaust detainees into compliance with the interrogators suggestions and into admission of guilt.

 $<sup>\</sup>star$ / This section is based in part on information heard by the Ad Hoc Working Group of Experts at its 627th and 628th meetings and on information supplied by the Detainees' Parents Support Committee.

- 175. The Working Group also heard evidence of torture from representatives of the Detainees' Parents Support Committee (627th and 628th meetings). The Group was informed of the Committee's findings into 76 instances of torture. The findings revealed methods of torture relating to physical and psychological abuse. In most cases the following physical abuses were prevalent: deprivation of sleep; deprivation of food and drink; deprivation of toilet facilities; enforced standing and arduous physical exercises; exposure to cold; beating; suffocation and electric shocks.
- 176. The findings also showed that the use of psychological abuse ranged from subtle forms such as isolation and humiliation to the more direct forms of intimidation and threats of death. The short term and long term effects of solitary confinement were found to be particularly detrimental to the health of detainees.
  - D. Other restrictive legislation (With powers of restriction though not necessarily always of detention) \*/

### 1. The Police Act

- 177. Section 32 of the Police Act provides that "any civil action against the State or any person in respect of anything done in pursuance of this Act shall be commenced within six months after the course of action has arisen".
- 178. During its hearings the Working Group found that it was not unusual for security detainees to allege that they had been tortured while in detention. The Working Group also learnt from testimonies by such detainees that the Supreme Court was powerless to act on claims of ill-treatment because of the strict requirements of the Police Act. Most of the cases were barred under the six-month time-limit which was absolute.
- 179. Until recently detainees held for more than six months faced a seemingly insuperable obstacle in suing the security police for unlawful assault. If the assault occurred during the early period of detention, a detainee deprived of access to a lawyer was unable to comply with the strict time-limit laid down in the Police Act.
- 180. This was precisely the problem faced by former Soweto student leader Mr. Sechaba Montsisi. Mr. Montsisi was held in detention under section 6 of the Terrorism Act (now replaced by section 29 of the Internal Security Act). In an action against the security police, he alleged that while in detention he was twice assaulted by the police. He was not released until more than six months after the alleged assaults. He was therefore unable to institute action within the period prescribed by the Police Act.

<sup>\*/</sup> This section is based in part on articles from The Star, 23 April, 29 May and 4 August 1984; Rand Daily Mail, 21 February, 14 March, 17 April and 29 September; The Times, 23 February 1984; The Citizen, 2 October 1984 and the Internal Security Act No. 74 of 1982.

- 181. The Appelate Division of the Supreme Court ruled that it was impossible for Mr. Montsisi to comply with the time requirement since he had been held incommunicado during that period. In the circumstances the Court held that the time-limits did not apply for the period during which he was held. 29/
- 182. In a similar case, former president of the National Union of South African Students (NUSAS), Mr. Auret van Heerden, of Johannesburg, sued 10 security policemen who had dealt with him while he was in detention. Mr. van Heerden, who was detained for 289 days from 24 September 1981 to 9 July 1982, told the Working Group that he was claiming R 113,000 damages from the 10 security policemen for "the torture, the assaults, the pain and the suffering, the humiliation" he had suffered at Benoni police station on the nights of 18 and 19 November 1981.
- 183. The hearing ended on 18 April 1984 after nine weeks. On Friday, 28 September 1984 in the Pretoria Supreme Court, Mr. Justice C.F. Eloff awarded Mr. van Heerden R 5,000 damages against six security policemen who were held responsible for his torture at Benoni police station. However, the award was "declared invalid because the action was instituted after the expiry of the prescribed time laid down in the Police Act".

### 2. The Prisons Act of South Africa

184. A section of this Act prohibits the publication of information relating to prison conditions unless all reasonable steps have been taken to verify the information that is contained therein or permission has been obtained from the relevant authority — i.e., the Prison Department, or the Minister of Justice. In the past the courts have upheld the prosecution's view that "reasonable steps must include having the concurrence of prison authorities to the allegations".

### 3. The Protection of Information Act

185. The police are increasingly making use of section 4 of the Protection of Information Act to prevent the publication of names and identities of security detainees and make "detainee support work very difficult". The Act levies a fine of R 10,000 or 10 years' imprisonment for breaking this law.

### 4. The Demonstrations in or near Court Buildings Act of 1980

186. This Act prohibits any demonstrations in or near court buildings, and has been used to prosecute some individuals who sang songs in support of two detainees who were making their first court appearance.

### E. Court actions against the police

187. The following is a summary of the legal action taken against members of the police force:

STATE vs. SERGEANT JAN HARM VAN AS (SECURITY POLICE)

Accused of murder of detainee PARIS MALATJI by shooting through the head during interrogation in Protea Police Station, Soweto.

Convicted of culpable homicide and sentenced to 10 years. (see paras. 169-171)

DEAN T. FARISANI )
REV. N.P. PHASWANA VS. VENDA NATIONAL FORCE (VNF)
REV. M.P. PHOSIWA )

The three ministers sued VNF for assault and torture during their detention in 1981/1982. They received an out-of-court settlement of R 13,500.

#### STATE vs. CONSTABLE JOHANNES NIENABER

Accused of murder of SAUL MKHIZE, leader of Driefontein community opposing resettlement, by firing with shotgun. Trial still in progress at 31 March 1984.

#### STATE vs. FOUR POLICEMEN OF DIRKIESDORP POLICE STATION

Accused of the murder of THEMBA MANANA and attempted murder of ABSALOM MANANA. Three accused have pleaded guilty to assault and the use of electric shock, and the State pathologist has testified that the death of Themba Manana was probably due to electrocution. This is not a political trial, but it is significant for the admitted use by the police of electric shock apparatus in conjunction with hooding. Trial still in progress at 31 March 1984.

CRETA NCAPAI

ALVERTINA SISULU

AMANDA KWADI

AMANDA KWADI

Sued for unlawful arrest while attending a memorial service on 13 June 1983. Arrests ruled unlawful on 7 July 1984 and the Minister ordered to pay each claimant R 500 damages plus costs.

#### LAWRENCE NTIKINCA vs. TRANSKEI POLICE

Suing for R 20,000 for alleged assault by Transkei Security Police during detention in November 1982. Trial date still to be set.

### AURET VAN HEERDEN vs. 10 SECURITY POLICEMEN

A. van Heerden suing the Security Policemen for R 113,000 for alleged assault and torture during his detention and interrogation in 1981/1982. Nine weeks' court proceedings completed on 18 April. Judgement (see paras. 182-183).

### BARBARA HOGAN vs. PRISON AUTHORITIES

Suing for alleged cruel and inhuman treatment, and deprivation of certain prison rights. Trial date (originally 20 August 1984): postponed indefinitely.

### ABE AND MARGARET MALATJI vs. MINISTER OF LAW AND ORDER

Suing for less of support and funeral expenses amounting to R 51,600 as a result of the killing of their son Paris Malatji by Security Policeman J.H. van As. Trial date still to be set.

#### DANTEL SECHABA MONTSISI vs. MINISTER OF LAW AND ORDER

Suing for alleged assault and torture during detention and interrogation in 1977/1978. Trial date still to be set.

### NINE MCWALI RESIDENTS vs. CISKEI GOVERNMENT AND POLICE

Suing for R 92,500 compensation for alleged abduction, unlawful arrest and imprisonment, and assault. Trial date still to be set.

#### SABELO NGANI AND BAFANA MKEFA vs. CISKEI GOVERNMENT

Suing for R 3,000 for alleged unlawful detention of 38 days after publishing a newspaper article on Ciskei upheavals. Trial date still to be set.

#### ANDREW MOKONE vs. MINISTER OF LAW AND ORDER

Suing for alleged torture during interrogation by the Zeerust Police. Trial date (originally 14 May 1984); postponed to 1985.

### F. Prison conditions

### 1. Women prisoners \*/

188. Details of conditions endured by women political prisoners recently came to light following disclosures by Dorothy Nyembe, who was released in March 1984 after serving 15 years, and after an application by Barbara Hogan for an order compelling prison officials to meet "certain requirements for her imprisonment". Dorothy Nyembe alleged that newspapers, which are permitted for male political prisoners, were denied to the women prisoners in the prison, believed to be the Pretoria Central Prison, where she was held during the last years of her sentence. In the earlier part of her imprisonment — at the Barberton Prison she was not allowed any visits from her family and her letters did not get through to her at first because they were not written in English.

189. Barbara Hogan, who has been serving a 10-year sentence for high treason since October 1982, brought an application before the Rand Supreme Court in April 1984, in an attempt to have certain aspects of her imprisonment improved.

190. In the affidavit Hogan said she was often denied exercise and was told it was a privilege and not a right. She said she was kept alone in a cell surrounded by empty cells and this had affected her emotionally. She claimed that apart from being kept in isolation, certain of her letters and visits had been withheld. She said that, unless her position were improved, she might not survive the nine years she still had to serve. In summary she declared "it is my conclusion that I am being subjected to cruel and inhuman treatment. I am totally in the hands of the prison authorities in respect of every facet of my life". This information was corroborated by Mrs. Jean Middleton a witness who testified to the Working Group (614th meeting).

<sup>\*/</sup> This section is based in part on information from the Rand Daily Mail, 6 April 1984 and Focus, IDAF, No. 53, July/August 1984.

### 2. Other prison experiences

191. David Kitson (613th meeting) told the Working Group that he had been released in May 1984 after serving all but a few months of his 20-year sentence. He spoke of the attitudes of prison warders, which he said had changed with a change in the type of man recruited. He explained that many young men opted for prison service for four years as it exempted them from military service. Such prison officials were as a rule more lenient. It had been found that female political prisoners were worse treated than males (see also paras. 188-190 above). Women prisoners were few in number and in the remote prisons there were fewer facilities for them. He pointed out that women warders tended to treat prisoners more harshly. Kitson asked the Working Group to campaign for better prison conditions for women.

192. Referring to his experience in prison, David Kitson (613th meeting) talked about the grading of prisoners (A, B, C or D) and the corresponding privileges thus confirming the observations of the Working Group in its previous reports. Political prisoners were all graded D which meant that they could only write and receive one letter in six months, and receive one visit in six months. Other prisoners could be promoted through the grades, but political prisoners could only be "A" prisoners for the last six months of their sentence. He said that the system had been relaxed after many complaints and by the time he was released he could write up to 40 letters a year with a maximum of five a month and was entitled to a maximum of 30 visits a year of 45 minutes each with a maximum of five a month. He had noted a deterioration of those conditions lately: Carl Niehmans had been graded "D" and Barbara Hogan too.

193. He described the stress experienced by those "life" prisoners who had been given no release date, like Denis Goldberg who had served 21 years but who still had no release date given to him, and prisoners with life sentences including those from the Rivonia trial and the Mkwayi trial. He urged the Group to continue to press for their release. He said that prison regulations were more strictly applied to political prisoners: their incoming and outgoing mail was censored twice while many of their would-be visitors were denied access.

### 3. Television monitoring of detainees \*/

194. According to information available to the Working Group a new surveillance system - closed circuit television - has been installed in a number of cells at John Vorster Square to monitor security detainees.

195. The surveillance system was first suggested in May 1983 by the Minister of Law and Order, Mr. Louis Le Grange, as a new security measure aimed at preventing "suicides in detention cells". This followed the death in detention of trade-unionist, Dr. Neil Agett.

<sup>\*/</sup> This section is based in part on information from the Rand Daily Mail, 27, 28 June 1984 and The Star, 2 July 1984.

196. This new system of surveillance provoked an outcry from a number of organizations and individuals, including the Detainees' Parents Support Committee and Amnesty International (612th meeting). The Detainees' Parents Support Committee and other human rights organizations have long condemned South Africa's entire system of detention without trial as a severe infringement of the most basic of civil rights. Similar sentiments have been expressed regarding the use of closed circuit cell television - albeit on a trial basis - which is considered an infringement of the right to privacy.

### 4. Barberton Prison \*/

197. Barberton comprises five prisons, two of which are situated on the prison site in town and three on the prison farm about seven kilometres from Barberton.

198. According to the <u>Rand Daily Mail</u>, figures made available by the Prisons Department on 2 May 1984 at its request revealed that "there have been some 21 violent deaths at Barberton Prison over three years":

Nine prisoners died after being assaulted by fellow prisoners while three died after being assaulted by prison warders and of heat fatigue;

Four prisoners died in Barberton Prison in 1980, two after being assaulted by fellow prisoners, one committed suicide and one died in an accident;

Five prisoners were fatally wounded during escape bids, while one prisoner was killed in a rearrest attempt after he tried to escape;

One prisoner was fatally wounded during an attack on a prison official;

One prisoner committed suicide and another died in an accident.

199. The Prisons Department recorded no deaths in 1981 and none "so far this year". A spokesman for the Department said it had requested that the South African Police investigate every incidence of unnatural death. "Investigations of violent deaths had, in each case, resulted in post-mortems or criminal proceedings". The spokesman said that "all incidences at Barberton Prison were still being scrutinized". Several members of the Prisons Department were serving gaol sentences which resulted from criminal court proceedings against them.

200. The former acting head of the Barberton Prison, Lieutenant Johannes Niemand, 48, was found guilty of common assault and fined R 900 or 360 days in gaol, after a trial that took place in February 1984. A Nelspruit magistrate, Mr. W. de Vos sentenced Lieutenant Niemand to a further two years' imprisonment suspended for four years. Niemand faced charges of "assault with intent to do grievous bodily

<sup>\*/</sup> This section is based in part on information from the Rand Daily Mail, 3 and 17 May 1984, The Citizen, 17 May 1984, The Guardian, 17 May 1984 and The Times, 18 May 1984, as well as Amnesty International Report - 1984 and the South African Institute of Race Relations, Survey of Race Relations in South Africa - 1983 (Johannesburg, 1984).

harm or alternatively inciting others to commit a similar offence, as well as interfering with the course of justice". The trial of Lieutenant Niemand was a sequal to the "marathon heat exhaustion trial of 1983" in which six warders under Lieutenant Niemand's command were given gaol sentences ranging from one to eight years for their part in what a Supreme Court judge described as "an orgy of assaults".

201. After the trial the Government established a commission of inquiry into prison conditions at Barberton. The Commission was headed by a regional court magistrate, Mr. J.A. van Dam. The Commission highlighted the incidents at the Barberton prison farm in 1982 and 1983, in which a number of prisoners died as a result of one form of assault or another.

202. The Commission recommended a reduction in the prison population, better training of warders, improved prisoners' medical services, and more facilities for prisoners. The report observed that "no comprehensive examination of the country's penal system and its consequences had been undertaken since the Lansdowne Commission in 1947" and recommended the establishment of a permanent co-ordinating council on prisons to act as an advisory body on a broad spectrum of prison issues.

### G. Hoexter Commission \*/

203. The Working Group took note of the information dealing with the fifth and final report of the Hoexter Commission. The Commission, under the chairmanship of Mr. Justice Gustaw Hoexter, had been set up in November 1979, to inquire into the structure and the functioning of the courts. In its report, the Commission deemed it necessary to go beyond its terms of reference to denounce the gross overcrowding in South Africa's prisons which, it said, "were packed with large numbers of people, overwhelmingly black, who should not be in custody at all".

204. In particular the Commission drew attention to "the hordes of blacks" who were in prison as a result of influx control, and said that "judged by civilized standards these people are not real malefactors. They are the needy victims of a social system that controls the influx of people from the rural areas by penal sanction". The reason for this "unstemmable influx" the report says "is poverty". (See Chap. I, paras. 91 to 98.)

205. The Commission was referring to "those blacks who violate the so-called pass laws". Pass law offenders are prosecuted in special commissioners' courts which are separate from the rest of the judicial system. This area of special courts for blacks "at present under the control of the Minister of Co-operation and Development" was one of the areas investigated by the Commission. The Commission was asked to investigate whether such courts, hitherto under the Minister of Co-operation and Development, should be brought under the responsibility of the Minister of Justice. The report said that, in contrast to the view of the Department of Co-operation and Development, the general view of others who had

<sup>\*/</sup> This section is based in part on information from the Rand Daily Mail, 7 March 1984, 6, 10, 13 and 14 April 1984; The Times, 7 April 1984; The Guardian, 6 April 1984; The Citizen, 6 and 7 April 1984; The Star, 9 April 1984.

made representations — and particularly of blacks — was that there should be a single hierarchy of courts for all, irrespective of race. The Commission recommended that these courts should be abolished and that, with the exception of courts for chiefs and headmen, there should in future be the same courts for blacks and whites.

206. Among its more glaring criticisms was the denunciation of the overcrowding of prisons by "black technical offenders". The Commission established that in June 1983, 267,995 of the 560,334 people in prison were prisoners awaiting trial as compared with 282,000 sentenced prisoners. The report noted that South Africa had one of the biggest prison populations in the world - "about 100.000" at any given time - and that prisons were full to overflowing. The Commission felt that the overcrowded prisons were a dismal social phenomenon closely linked to the whole system of justice. The cramming of prisons with bread-winners who were there for technical offences had a twofold psychological effect on the largest population group. In the first place it bred in many blacks - especially those who had actually suffered the shame and indignation of imprisonment for minor offences - "contempt for the administration of justice in general and the criminal courts in particular". In the second place, the result was that, contrary to sound social norms, the serving of a prison sentence was no longer regarded as a stigma by many black inhabitants of the country and so imprisonment for the commission of crime was consequently losing "its power as a deterrent". A permicious consequence of the overcrowding of the prisons was "its frustrating effect" on the execution of sentences of imprisonment imposed by the courts. An immediate and inevitable result of overcrowded prisons was that convicted persons on whom a long term of imprisonment had been imposed were released prematurely because prison accommodation was limited rather than because they deserved to be released on parole.

207. Although an inquiry into the problems of South African prisons was beyond "the scope of the Commission's terms of reference", ... "evidence heard by the Commission brought to light a state of affairs in our prisons that cannot simply be allowed to drag on".

208. In a series of other recommendations and criticisms the Commission proposed in its report that magistrates should no longer be employees of the State. The identification of magistrates with the State had given rise to severe criticism of lower courts, and the fact that magistrates performed certain executive functions, such as those referred to in the Internal Security Act, "was totally incompatible with the judicial nature of their office". The Commission cited evidence — as had been stated by Professor John Dugard of the University of the Witwatersrand — that security trials tended only "to be assigned to certain judges deemed likely to bring in a verdict desired by the Government". The Commission emphasized that "confidence in the law is a fragile plant and that the absolute prerequisite for independent unbiased administration of justice is the independence of judicial offices". The report recommended that in future judges should not be appointed by the Cabinet alone.

209. The Commission also found that many blacks identified the judicial system with the Government and regarded the court as an instrument used by the executive "to subjugate the black man by restricting his freedom of movement, by limiting his opportunities for work and by dislocating his family life".

- 210. The Commission said it was confronted with alarming evidence that in some divisions of the Supreme Court there "were not enough competent advocates and that the level of experience of State advocates was disquietingly low as a result of increasing resignations within the ranks of that professional group".
- 211. The report of the Commission was tabled in Parliament on 5 April 1984 and discussed during a special debate. In detailing the Government's response to the report, the Minister of Justice, Mr. Coetsee said that "some of the recommendations were acceptable in principle". The Government's response to the report included:

Acceptance in principle that black commissioners' courts should be administered by the Department of Justice;

Consideration of the recommendation that a family court be established (a draft bill in this regard would be published soon);

Concern about overcrowded prisons. In an apparent attempt to counter the finding by the Commission that many of the prisoners were technical criminals gaoled for pass law or related offences, Mr. Coetsee said "a survey on 15 March 1984 showed that so-called control offenders comprise only 7.09 per cent of the total prison population".

212. However, Mrs. Helen Suzman, a Progressive Federal Party (PFP) spokesman on black affairs and prisons, said that she could not accept the 7.09 per cent figure of influx control offenders. She said "that about 52 per cent of prisoners were gaoled for four months or less". She explained that her disbelief was based on annual reports from the Department of Justice. She added that the Hoexter Commission, "just like the Smit and Fagan commissions in 1940 and 1948, had questioned the need for the pass laws". Mrs. Suzman said that the commissioners! courts "had become symbols of discrimination and oppression". Mrs. Joyce Harris of the Black Sash, which deals extensively with influx control, said that she would be extremely surprised if the 7.9 per cent figure was correct. The Viljoen Commission had found that if prosecutions for transgressions of the influx control laws and curfew regulations were to end, there would be a considerable reduction in the numbers of prisoners awaiting trial. It found the number of short-term prisoners "far too high". It quoted Mr. Justice Ogilvie Thompson as saying: "this is in appreciable measure attributable to the composition of our population and the number of infringements of the criminal law associated with so-called pass offenders and breaches of what are sometimes generically designated curfew regulations". Professor John Dugard, head of the Centre for Applied Legal Studies, is quoted as saying that "at least one third of all blacks who appear in courts appear in the commissioners' courts commonly known as pass courts".

### H. Other information

### 1. Executions \*/

213. According to reports, 14 men were hanged at the Pretoria Prison in August, bringing the total number of people who have been executed this year to 76. A total of 178 people, the overwhelming majority of them black, remain on death row awaiting the outcome of appeals or pleas to the State President for clemency.

### 2. Political assassinations

214. An anonymous witness (627th and 628th meeting) gave the following information about political assassinations of opponents of <u>apartheid</u> both inside and outside South Africa:

### (a) In South Africa

Richard Turner, lecturer in political science, University of Natal, in Durban (1978);

Griffiths Mxenge, political activist (1981 or 1982);

Norman Maryapots, in Soweto;

Brian Mazibuko, in Tembisa.

### (b) External assassinations

John Dube, ANC, in Zambia (1974);

Joe Gcabi, ANC, in Zimbabwe (1981);

Petrus and Jabu Nzima, ANC, in Swaziland (1982);

Ruth First, South African Communist Party (SACP) and ANC, in Maputo, (August 1982);

Jeannette Schoon, in Lubango, Angola (1984).

215. The witness also gave information about Siphiwa Mtinkulu of the Congress of South African Students (COSAS) and Justus Ngidi of ANC, both of whom were known to be missing.

<sup>\*/</sup> This section is based in part on information from The Citizen, 22 August 1984; The Times, 23 August 1984; The Star, 27 August 1984.

CHAPTER III. THE RIGHT TO WORK AND TO FREEDOM OF ASSOCIATION, INCLUDING THE SITUATION OF BLACK WORKERS

#### TNTRODUCTION

- 216. The Working Group has reviewed in its previous reports developments in South Africa concerning the right to work and to freedom of association, including the situation of trade unions formed by black workers. The Working Group is of the opinion that such developments, as have taken place, cannot but be seen in the context of the political developments that have taken place in South Africa during the review period. The constitutional reforms gave partial political representation to the mixed race Coloureds and South Africans of Indian extraction in a tricameral parliamentary system, but the country's 73 per cent black majority were not enfranchised. Pass laws and influx controls were tightened with the introduction of the Aliens and Immigration Laws Amendment Act whose effect though seemingly colour-blind is "to control" the movement of blacks from the 'independent' bantustans and to denationalize a whole multitude of black people. In the face of all these stresses and strains black workers have had to organize themselves better and black trade unions have found themselves in the vanguard of black emancipation.
- 217. However, the growth both in stature and size of worker organizations has been an uphill and often hard and bitter struggle. The sharp increase and expansion of black trade union membership has been met with a determination by the regime to impose a framework of institutional controls, to limit the extent to which unions may participate in broader issues and in particular the extent to which they can play a part in the mobilization of political resistance.
- 218. Where unions and workers have challenged or ignored the establishment and where their actions have gone beyond the narrow sphere to which the Government wishes to confine them, then repression has set in and has been most severe at certain times.
- 219. The patterns of State repression of trade unions has shown how it is directed at specific aspects of the growing strength and organization of black workers. A determination to institutionalize their bargaining power and prevent it from playing a part in the political process has at most times shaped both its direction and intensity. Police intervention in strikes has become a regular feature under apartheid and has been at its strongest when strikes were seen to threaten the establishment of new institutions and unions which have most clearly aligned themselves with the mobilization of political resistance have been the principal targets.
- 220. Concurrently with these developments, other factors emerged relating to the employers in the various sectors of the economy; similarly the Code of Conduct of the European Economic Community and the Sullivan Principles as regards United States companies operating in South Africa were the subject of further developments.
- 221. It is against this background that the following paragraphs propose to discuss the situation of black workers in South Africa.

# A. Trade unions \*/

222. There are four major federations of trade unions in South Africa. Two of these, the Council of Unions of South Africa (CUSA) and the Federation of South African Trade Unions (FOSATU), consist of affiliates of the emerging and predominantly black unions. The others the Trade Union Council of South Africa (TUCSA) and the South African Confederation of Labour (SACLA), both represent older established unions. In addition to the Unions affiliated to these federations there are some 150 other unions which are unaffiliated.

223. Fifty-four unions, representing 446,000 workers are affiliates of the Trade Union Council of South Africa (TUCSA). Membership is racially mixed and in some unions black membership increased significantly as a result of the closed-shop agreements. TUCSA's membership increased from 430,675 in 1982 to 453,906 in 1983. Hostility towards the emerging unions continued to be shown by TUCSA's leadership. Dr. Annan Scheepers, TUCSA's 1982/1983 president claimed that the emerging unions were behind many illegal strikes and she urged that illegal strikers be prosecuted (almost all strikes by blacks are technically illegal). In 1983 a leading affiliate of TUCSA, the South African Boilerworkers' Society with 54,000 members together with two smaller unions withdrew from the Council in protest at the ambivalence of TUCSA policy. Whilst purporting to represent black workers TUCSA failed to take a stand on the exclusion of blacks in the new constitutional arrangements of the Nationalist Party Government. The South African Boilerworkers' Society called for a political structure which would move away from ethnically and racially based practices. The second reason for the withdrawal was the defeat of the Boilerworkers' Society's motion calling on the Government to amend the Labour Relations Act so that workers could be free to join a union of their choice.

224. Twelve unions, representing 126,000 white workers, mainly in the nationalized industries, public service and mining sectors are affiliated to the South African Confederation of Labour (SACLA). At the 1983 annual conference of the Mine Workers Union (MWU) - a major affiliate of SACLA - its president, claimed that the increasing number of strikes had vindicated a prediction by the MWU that "the recognition of black trade unions would bring problems for South Africa". The then Minister of Mineral and Energy Affairs, Mr. Piet du Plessis, opening the MWU Conference stated that there was a need to adapt to new realities but that the Government would not force changes on white miners.

225. Nine unions representing 106,000 members are affiliated to the Federation of South African Trade Unions (FOSATU).

<sup>\*/</sup> This section is based in part on information drawn from testimonies heard by the Ad Hoc Working Group of Experts and from the Rand Daily Mail, 6 March, 1984; The Citizen, 14 July 1984; International Labour Office, Special Report of the Director General on the Application of the Policy of Apartheid in South Africa, (Geneva, 1984); and South African Institute of Race Relations, Survey of Race Relations in South Africa - 1983 (Johannesburg, 1984).

226. FOSATU has been described as strictly multiracial, and that it expelled one of its leading members Calvin Nkabinda, General Secretary of the Engineering and Allied Workers' Union who was allegedly racist. FOSATUS's main affiliates are: (a) National Allied and Automobile Workers' Association (NAAWU) - over 12,000 workers; (b) Metal and Allied Workers' Union (MAWU) - 30,000 members and (c) National Union of Textile Workers - about 13,000 members. In the face of the challenges to the emergent unions posed by redundancies FOSATU settled for strengthening its basic organization instead of rapid recruitment of new membership in an uncertain economic climate. This included the merging of certain unions on an industry basis. In this way, it was reported, FOSATU hoped to be in a stronger position to develop when the economy improved.

227. Twelve unions, with 148,000 members are affiliated to the Council of Unions of South Africa (CUSA), with predominantly black membership in manufacturing, mining and service industries. It accepts registration under Government regulations, but has a pro-black consciousness philosophy. Its fastest growing affiliate has been the National Union of Mineworkers which began recruiting in October 1982 and whose membership had grown to 70.000 at the time of writing (see also paras.229-232). CUSA released statements on a number of issues, it condemned the influx control measure - the Orderly Movement and Settlement of Black Persons Bill - and in June 1983 warmed the Minister of Co-operation and Development that the labour movement would take action if the Rikhoto judgement was not implemented. In February 1983 it strongly condemned the demolition of shacks in Orlando East, Soweto, pointing out that the housing shortage in Soweto was no fault of the shack dwellers in that there had been no serious attempt on the part of the Government to provide adequate housing for the black workers of the country. It also endorsed the call of the Soweto Anti-Community Councils Committee to residents to boycott the town council elections in Soweto in December 1983, rejecting councils as in conflict with its belief in a common citizenship in an undivided land.

### 1. Unaffiliated unions

228. Approximately 150 unions representing 550,000 workers, are unaffiliated and include both registered and unregistered trade unions, of varying racial composition, some local, some regional and others national in organization and functioning in most sectors of the economy:

The African Food and Canning Workers' Union and the Food and Canning Workers' Union had a signed up membership as at March 1983 of 18,000. At their national conference, delegates confirmed their support for the trade union unity move and declared that while they supported the UDF they would not join it. These unions established their own health clinic, believed to be the first in Africa to have been started by trade unions.

The Motor Assemblers' and Component Workers' Union (MACWUSA) has vowed to remain unregistered as long as the Group Areas Act, the Separate Amenities Act and influx control regulations remain on the statute book.

The South African Allied Workers Union has had the fastest growth, mainly in East London. It claims a signed up membership of 130,000 with 70,000 paid up. In the period under review, SAAWU faced continuing harassment from both the Ciskei and the South African authorities. Twelve officials were detained, some repeatedly, and members in Mdantasane township were intimidated by Ciskei police. The attack on SAAWU culminated

in its banning by the Ciskei authorities in 1983. SAAWU strongly rejected the allegations made by the president of Ciskei that its aims were subversive. At its annual congress in September 1983 SAAWU called on the Government to stop using workers' pension fund contributions to fund the South African Defence Force and the war on the border; resolved that a memorandum should be sent to the International Labour Organisation (ILO) and the United Nations urging them to take strong action against the Ciskei authorities and that influx control laws should be abolished. SAAWU continued to support moves to unify the emerging trade union movement.

The Media Workers Association of South Africa (MWASA) representing black workers in the newspaper industry rejected the new constitutional arrangements at its annual congress. It declared that the Government's policies propagated a system which frustrated all efforts designed to achieve the equality of all citizens in South Africa. Its President, Mr. Zwelakhe Sisulu, accused the Government and its "bantustant satellites" of embarking on a programme against the labour movement in the country.

### 2. National Union of Mineworkers (NUM)

229. In the mining area, the emergence in 1983 of the National Union of Mineworkers (NUM), was a notable success for black unionism. Following the crushing of the African Mineworkers' Union in 1946 after large-scale strikes in the gold mines, the 600,000-700,000 black miners in this "crucial sector of the economy" remained unorganized. Housed in compounds from which union officials were banned, and subject to the rapid turnover of migrant labour, they could not be organized. In 1983 the Chamber of Mines allowed the second largest black union federation, the Council of Unions of South Africa (CUSA) to establish the NUM.

230. Of the 428,000 blacks working in gold mines and 56,000 working in coal mines, the NUM claims a membership of 70,000 (of which about 15,000 are fully paid up) and a recruitment rate of 5,000 a month. So far the union has won recognition in eight gold mines and five collieries. NUM's growth has been far more rapid than had been expected. NUM has also been a lot more vocal and militant than was envisaged (see pars. 249-254). Its growth has been fuelled by two main factors: pay and health and safety. Though the differentials between black and white miners' pay narrowed from 20:1 at the start of the 1970s to about 5.5:1 to date black wages are still extremely low. The lowest paid receive just over R 100 a month plus food and board. A survey last year concluded that a 40 per cent increase would be needed to bring those at the bottom of the scale to subsistence standards of living. Average black miners wages of about R 286 a month compare to R 1,601 for whites.

231. According to information received by the Working Group, a further narrowing of the gap between black and white pay is largely dependent on blacks moving into more skilled jobs - a prospect resisted by the conservative white mineworkers' union led by Arrie Paulus.

232. The NUM is not the only union trying to organize black miners. The Metal and Allied Workers' Union now employs a full-time organizer on the mines, the Black Allied Miners' Construction Workers' Union, is becoming more active, especially through the black consciousness movement — the Anzania People's Organization — with which it is affiliated and at DeBeer's Kimberley diamond mines the Federated Mining Union, allied to the South African Boilermakers' Society, is stepping up its organization.

### 3. Unity moves

233. A new federation of independent black unions representing more than 300,000 workers was to be launched in September 1984. The Federation would constitute the largest mainly black union body the country has seen in at least 50 years and could emerge as a formidable rival to the Trade Union Council of South Africa. The announcement of the formation of the new federation followed a meeting later in 1984 in Johannesburg which "broke a deadlock between older, bigger unions who have now decided to join the federation and newer unions with links to community groups". The older unions - which between them represent the vast majority of unionized black workers and are active in most key sectors of the economy - were working out details of the new federation. Unions which have committed themselves to the new body are: the Federation of South African Trade Unions, the Council of Unions of South Africa, the Food and Canning Workers Union, The General Workers Union, the Cape Town Municipal Employees Association and the Commercial Catering and Allied Workers Union.

234. Commenting on the creation of a new Federation of Independent Black Unions, Mr. Gordon Young of the Southern African Labour and Development Research Unit at the University of Cape Town said that this was "the most exciting development on the labour front". In his analysis of South African trade unions Mr. Gordon Young concludes that "white miners face the choice of uniting with black mineworkers or going down with all flags flying". The analysis forms the preface of a new comprehensive directory of trade unions by SALDRU. The 420-page directory lists 194 registered unions and 46 unregistered unions as well as 18 union federations.

## B. Developments in trade union activity \*/

### 1. Occupational health

235. The past two years have not only been marked by the significant growth in membership of black trade unions but also by the new initiatives taken by them. Emerging trade unions have steadfastly directed their energies to the problems in occupational safety and health - an area which does not appear to have attracted any significant attention from established unions in the past. This interest and activity can be attributed to the fact that members of emerging unions, being in the lowest employment grades, are the most exposed to industrial hazards and account for the vast majority of reported industrial injuries.

236. With regard to workers' health emerging unions are of the opinion that "most doctors ... don't know much about occupational hazards and most factory managers are not concerned". In 1976 the Erasmus Commission exposed the full extent of South Africa's "neglect of occupational health", pointing out that a great many factories would be forced to close down if overseas health standards were applied. The Commission had also expressed its concern that industrial diseases should be the subject of action and concern by employers and the State

<sup>\*/</sup> This section is based in part on information drawn from The Star, 21 May 1984; Rand Daily Mail, 21, 24 and 27 July 1984; Le Monde, 28 July 1984; International Labour Office, Special Report of the Director General ...; and Survey of Race Relations in South Africa - 1983.

before it become "an area of operation for pressure groups". In February 1984 - seven years after the Erasmus report - and for the first time in South Africa, draft legislation (the Medicine Bill) was introduced in Parliament, providing umbrella protection for the health of all workers. According to Dr. G. Cherholster, head of Industrial Health in the Department of Health, "the legislation should be seen as the first step in the complete revamp of the legal system of the health and safety protection for workers, apart from those already covered by the Mines and Works Act".

- 237. But a Labour Bulletin commenting on the legislation recently stated that "probably the most glaring defect in the Medicine Bill is the absence of a clause on the rights of employees". For although provision is made for the appointment of an Advisory Committee on Occupational Medicine with Employer, State, Medical and Worker representatives, workers have been excluded from involvement in the formation of health policy on the shop floor. The "onus rests with the management" to promote the health and safety of the work force. But given the history of "employer neglect" the "emergent union movement ... is not prepared to leave occupational health in management's court". A major hazard for black miners and process workers exists in the asbestos mines owned by the General Mining Corporation, in particular the mining of blue asbestos. Statistics on the effect of asbestos dust on workers engaged in this type of mining in South Africa are not disclosed as are details of the sales destination of asbestos. Paradoxically, the growing rejection of the use of asbestos in finished products because of its effect on health has caused a reduction in activity in South African asbestos mines.
- 238. Owing to the alarming number of black workers said to be dying every year from the effects of asbestos dust, the National Medical and Dental Association (NAMDA) has called for a commission of inquiry into continuing environmental exposure to asbestos and for urgent action to protect workers exposed "to the deadly substance" in their jobs.
- 239. In 1981 the National Union of Textile Workers embarked on a campaign to to root out "byssinosis" (a lung disease resulting from the inhalation of cotton dust) in black textile workers and as a direct result of their efforts, a Hammasdale worker, Mr. John Hleler and two Mooi River textile workers received compensation. They were the first black workers to be compensated for the "scheduled disease" in South Africa.
- 240. Industrial relations consulstants say that in the absence of legislation, emergent unions have been quick to include health and safety issues while negotiating recognition and procedural agreements with companies, making health a collective bargaining issue.

### 2. Occupational safety

241. The emerging unions have also addressed themselves to the problems of occupational safety. The National Union of Mineworkers (NUM) played and has continued to play an active and public role in matters regarding mine safety. A series of mining disasters resulting in substantial loss of life occurred in 1983, the largest single loss of life being at the Hlobane coal mine, where 68 workers died - the mine is owned by the Iron and Steel Corporation (ISCOR), the State-owned steel industry. The disaster did provoke a sharp reaction from the National Union of Mineworkers which questioned and criticized the safety

standards at the mine and demanded that the union represent the workers at an immediate inquiry; in addition, the union called for a brief work stoppage by mineworkers in memory of the workers who had died in the disaster. The union was initially prevented from attending the official investigation into the disaster; its representatives were accepted only after protests to the Government Mining Engineer - this was the first time that black representatives attended such an inquiry. At a subsequent joint inquiry and inquest the Iron and Steel Corporation was found guilty of negligence in the general safety standards at the mine. It was held that this negligence had contributed to the explosion, the immediate cause being the failure of a white miner (who died in the explosion) to test properly for gas, whose presence had already been reported but had been ignored by the management. The subsequent fine of R 400 imposed on the owners of the Hlobane mine was condemned by the National Union of Mineworkers as "ridiculously low".

- 242. The National Union of Mineworkers was represented during the inquiry by three international experts. One of them, Mr. H. Eisner, a British expert on mine safety, later stated that fatalities in South African coal mines were six times higher than in Britain and 1.6 times higher than in the United States but that because of the manner in which South African statistics are compiled, they created a "misleadingly wrong impression". Whereas in other mining countries, such statistics differentiated deep mining from open-cast mining, in South Africa they were treated together and fatality and injury rates in the former were thus made to appear lower than was the case. Moreover, while 9.8 per cent of South African accidents were officially attributed to "the inherent dangers in the work or to misadventure" only 1.5 per cent were attributed to "management responsibility".
- 243. A month after the Hlobane coal mine disaster, the National Union of Mineworkers intervened at the Anglo-American Corporation gold mine at Vaal Reefs where a fire had killed 10 black workers. In November 1983 another six African miners were killed underground at Anglo-American's Western Deep Levels mine. The National Union of Mineworkers undertook investigations into allegations that blasting had taken place while the six were still underground.
- 244. At its second national congress in December 1983, the National Union of Mineworkers resolved that it would demand a seat on all the Chamber's safety committees; would demand to be represented on the safety committee headed by the Government engineer; would call on the Chamber to negotiate safety agreements with the Union, failing which the Union would inform all members to refuse to work in unsafe places. It was further noted by the congress that many accidents resulted from breach of mine-safety regulations by mine management who were concerned only with production and who paid little attention to safety.
- 245. In another safety-related issue black mine workers at the West Driefontein mine, owned by the Goldfields Company, refused to work in an area which they considered unsafe. On 17 September 1983, 17 workers were dismissed. The National Union of Mineworkers claimed that two days later one worker who had originally refused to go underground but had subsequently returned to work under threat of losing his job was injured in a rockfall. The National Union of Mineworkers then submitted a request to the Industrial Court for temporary reinstatement of the 17 men pending settlement of the union's dispute with the company over the dismissal. The National Union of Mineworkers also applied to

the Government Mining Engineer for an urgent inquiry into the safety of the area concerned, under section 5 (4) of the Mines and Workers Act. This was the first occasion for an emerging union to invoke this law - apparently rarely used - which permits workers' representatives to call for an official investigation when they consider conditions to be unsafe.

246. The inquiry dismissed the National Union of Mineworkers' request. But the National Union of Mineworkers did win its case at the Industrial Court, which ordered the reinstatement of the 17 men and the payment of wages lost since their dismissal (see also para.344).

### 3. Other developments

247. Another development in labour relations came from the initiative taken by the rapidly developing (black) Commercial Catering and Allied Workers' Union (CCAWUSA) which successfully negotiated a "maternity agreement" with a major supermarket chain in June 1983. The agreement which set a precedent for women in employment generally, ensures that expectant mothers will be re-employed after confinement at any time up to one year from the commencement of maternity leave. This agreement in effect converts absence from work due to childbirth from unemployment (most black women in this situation are not re-employed) to leave.

248. Another initiative displayed by three unions in the metal industry - the Metal and Allied Workers' Union (MAWU), the General Workers' Union and the Chemical Workers' Industrial Union, concerned the Metal Industry Pension Fund. The three unions requested union majority representation on the Board by the largest unions in the industry. The proposal was not accepted by the employers who insisted on continued equal representation by both parties. But it was agreed that the 10 largest unions in the industry would now provide the workers' representatives on the Board. This became the first occasion for blacks to gain direct representation over pension matters, and the first time for black participation in the control of a large fund of public money. Black unions expressed the hope that, with this development, the Fund's investments might benefit the black community. But this was unlikely since by South African law 50 per cent of such funds must be invested in Government stock. Another initiative shown by several emerging unions, in an area previously ignored by the established unions (whose members did not experience large-scale redundancy) was the negotiation of redundancy agreements. These agreements generally provide for advance warning and compensatory payments for the workers involved.

# C. Industrial disputes and industrial action $^{*/}$

### 1. Action by the National Union of Mineworkers (NUM)

- 249. The period under review was a significant one for the mining industry in that a union representing African workers was involved in wage negotiations for the first time. This followed the emergence of the NUM (see also paras. 229 to 232). The agreement signed between the parties enabled the Union to participate directly in wage negotiations with the Chamber of Mines. Hitherto black miners' wages had been determined by inter-company decisions. Although NUM's membership represented a relatively small percentage of the black labour force in mining, it did nevertheless negotiate wages for the industry as a whole.
- 250. The Working Group took note of the various reports that dealt with the "first major dispute" between the Chamber of Mines and the National Union of Mineworkers. NUM which, at this point, represents a membership of 70,000 and a black mine work-force representation of close to 550,000, demanded a 25 per cent across the board increase for gold and mineworkers. But the Chamber announced increases at the collieries averaging 14.1 per cent for surface employees and 13.4 per cent for underground employees.
- 251. On the surface this dispute seemed to mark a turning point, a "sign that labour relations on the mines are moving into line with the manufacturing industry". On the other hand, labour observers seriously doubted that "the mould of employer-employee relations that has marked the mining industry for a century had been entirely broken, yet". This mould had been fashioned by the "specific conditions and history of most black mineworkers", who are forced to live as bachelors in the proximity of mine compounds and as migrant workers have to leave their families at home in the rural areas of South Africa.
- 252. In the course of the negotiations, NUM did warn that labour unrest would result if the Chamber went ahead to impose wage increases unilaterally. None the less the Chamber announced that the increases would go ahead. At the height of the dispute, labour observers expressed the opinion that widespread industrial unrest in South Africa's key economic sector was not to be ruled out. NUM, for its part, was committed to exhausting all legal channels before taking strike action.

<sup>\*/</sup> This section is based in part on information drawn from the Rand Daily Mail, 24 January, 1984, 10, 20, 27 April 1984, 22, 29 June 1984, 17, 20, 25 July 1984, 2, 8, 9, 16, 18, 28, 29, 30 August 1984, 18, 29 September 1984, 26 November, 1984; The Citizen, 21 June 1984; The Times, 5 and 19 June 1984; Le Monde, 20 January 1984; The Guardian, 2 August 1984; UDF and others, Repression in a time of reform: A look at events in the Transvaal since 1984, Johannesburg, November 1984; Survey of Race Relations in South Africa - 1983; Copy of a letter to the International Confederation of Free Trade Unions from the Secretary-General, Trade Unions Congress, London; Copy of a memorandum of the Metal and Allied Workers' Union (MAWU) of South Africa.

253. In addition to involvement in questions of wages NUM has also continued to demand an end to racial discrimination in the Chamber's mines, annual paternity leave for married migrants to enable them to see their families, equal pay for African mine workers doing work legally reserved for white miners, extension of the white miners' pension fund to Africans, protection for workers if new technology were introduced and a change in the leave system and hours of work.

254. The negotiations between NUM and the Chamber of Mines ended in a deadlock and NUM called a strike on 19 November 1984. In a last minute effort to avert the strike, the Chamber conceded a 2.3 per cent increase in a leave scheme. A strike was however called. Of the 80,000 mine workers in eight mines — seven of them belonging to Anglo-American — 64,000 were reported to have joined in the strike. While only eight mines were involved in the dispute, workers were reported to have gone on strike at other mines as well; the strikes had serious consequences.

255. The Working Group noted the following incidents which took place at the different mines:

At the Anglo-American Welkom Division, 250 workers were injured - some seriously - during a short work stoppage on 18 September 1984. Many workers claimed that they had been sleeping in their rooms or dashing to their rooms for safety when they were attacked by the police.

At the Durban Deep Roodepoort Mine, lll workers were reported hurt when police were called in during a strike. NUM claimed that the number of those injured was much higher and that workers had been forced to return to work at gun point. Eighty of the workers who defied the return-to-work ultimatum were dismissed and five were charged under the Internal Security Act.

At the West Rand Consolidated Mine, on the night of 21 September 1984, three workers were killed by police and another 190 injured - five seriously - when police were called on the basis of a rumour that a strike was scheduled to take place.

At Western Areas Mine, management claimed that seven miners were killed after police fired teargas and rubber bullets at striking miners on 18 September 1984. But the miners claimed that as many as 10 died and 500 were injured.

At the Elsburg Gold Mine East Rand, 25 mine workers were injured when police fired rubber bullets at a group of 500 miners. According to NUM General Secretary, Cyril Ramaphosa, police attacked and inflicted injuries on workers — at Anglo-American's Western Holdings Division — who had gathered peacefully to consider the Chamber's revised offer.

#### 2. Strikes

256. The number of strikes in 1983 totalled 336, of which 101 were over wage demands. A sharp increase in strikes occurred in December 1983 when 104 strikes were held. The total number of workers involved in all the strikes was 64,469.

- 257. According to figures published in the annual report of the Federation of South African Trade Unions (FOSATU) unions affiliated to FOSATU were involved in 124 strikes in 1983 as many as in 1982. This contradicted government strike figures which showed a marked drop in strikes in 1983. FOSATU reported major successes in protecting workers against retrenchment through both strike and court actions.
- 258. A report of the <u>Sowetan</u> revealed that for the first five months of 1984 there were 160 strikes involving 37,754 workers. A trade unionist, Mr. Bonisile Norushe (623rd meeting) told the Working Group that there were already five times as many workers on strike this year as there were in 1983. Some of the strikes which took place during the period under review are discussed below.
- 259. The year 1983 marked the occasion of the first legal strike by black workers in South Africa since 1976 and only the second in history. The National Union of Textile Workers followed the procedure laid down by the Labour Relations Act and the strike took the form of an overtime ban. As part of the agreement which settled the dispute, the Company Natal Thread, undertook to avoid the selective discharge or re-engagement of any workers involved in future legal strikes.
- 260. In November 1983 tension was reported to be threatening the Olifantsfontein industrial area outside Pretoria following the dismissal of 350 striking workers at Cullinan Industrial Porcelain (CIP) a firm in the same area. The workers were dismissed after demanding that management negotiate wages with them. Workers at three other plants, Cullinan Refractories, Johnson Tile and Armitage Shanks, all of which belong to the Building Construction and Allied Workers Union (BCAWU), backed the dismissed workers, demanded their reinstatement and asked their managements to intervene at CIP. The striking workers staged demonstrations through Olifantsfontein in which police intervened and arrested over 100 workers. The Chairman of Cullinan Holdings' Electrical Division said in a statement that over 260 workers were rehired and that about 100 others were replaced. However, a worker spokesman said that most strikers were not taken back.
- 261. Hundreds of OK Bazaars workers went on strike on 23 January 1984 protesting against the dismissal of about 180 workers who had ignored a management ultimatum to end a three-day strike over the dismissal of a colleague. At the same time 2,000 workers, most of them members of the Food Beverage and Allied Workers' Union, were reported to have begun a strike at Coca-Cola Bottling Company in Johannesburg over wage demands.
- 262. The Sweet, Food and Allied Workers' Union (SFAWU) which is affiliated to the Federation of South African Trade Unions was reported to have declared a formal wage dispute with Imbali Brewery, a company owned by the KwaZulu Development Corporation (KDC). This was "the first time a union used machinery in labour law to declare a dispute with a company owned by a homeland development corporation". Worker rights embodied in labour law do not apply in the "homelands". A statement issued by the Union said the union had been able to declare a dispute with the company because, "although it was owned by the KwaZulu Development Corporation (KDC) the town where it is sited, is not part of KwaZulu". Workers had rejected the company offer of R180 as a starting wage

- and were demanding a minimum wage of R300 a month. The Union's General Secretary, Mr. Jay Naidoo also announced that the SFAWU had declared a wage dispute with Tongaat Milling at its Estcourt plant. He said that the SFAWU was demanding a "living wage" of "R376 a month". Workers had rejected a company offer to raise the minimum of R195 by 12.8 per cent.
- 263. On 26 April 1984 about 400 workers at the Dunlop Industrial Products plant in Benoni went on strike after the company and the Chemical Workers Industrial Union failed to reach agreement on wages. The Chemical Workers' Industrial Union demanded a rise in minimum wages of 35c an hour effective May 1984 but the company had offered an 18c rise effective 1 June 1984. The strike came at a time when Dunlop and the Metal and Allied Workers' Union another union of the Federation of South African Trade Unions (FOSATU) were in a continuing dispute over wages at the company's Durban tyre plant.
- 264. About 390 workers, members of the National Union of Mineworkers at the UCAR mine near Brits in Bophuthatswana, went on strike in protest against the Industrial Conciliation Bill introduced by the Bophuthatswana authorities.
- 265. Other strike actions were reported in other areas. At the Tongaat Oil Products Durban plant more than 300 workers were dismissed following their refusal to go back to work. The strike was in support of demands to allow workers to draw money from the company pension fund.
- 266. More than 1,700 workers members of the Black Electronics and Electronical Workers Union went on strike in August 1984 demanding a 50 per cent wage increase.
- 267. At the Goodhope Concrete Pipes in Maritzburg some 100 workers went on strike demanding a wage increase. More than 170 workers at the Consolidated Woolwashing and Processing Mills in Pinetown went on strike on 17 July 1984 in support of wage increases.
- 268. At Simba-Quix's Isando plant about 400 workers were dismissed in August 1984 after striking.
- 269. A four-week dispute between Dunlop SA Ltd. and the Metal and Allied Workers' Union of South Africa (MAWU) was reported to have ended on 17 September 1984. The dispute is said to have ended "when the company offered the workers unconditional reinstatement without any loss of service benefits". About 1,400 Dunlop workers had gone on strike following the suspension by management of three shop stewards. Management alleged that the stewards had breached an agreement but the union denied the allegation.
- 270. Dunlop SA Ltd. is a subsidiary of the British-based company, Dunlop Holdings PLC. The Metal and Allied Workers Union of South Africa (MAWU) accused Dunlop SA of being "the most racist and anti-union employer in southern Africa". 30/ The Union called on the parent company to intervene in the dispute as required by the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy that "Multinational enterprises should endeavour to provide stable employment for their employees and should observe freely-negotiated obligations concerning employment stability and social security. In view of the flexibility which multinational enterprises may have they should strive to assume a leading role in promoting security of employment particularly in countries where discontinuation of operation is likely to accentuate long-term employment".

- 271. In defence of the workers' case, MAWU stated that the unemployment level was well over 2 million, which constitutes 20 per cent of the economically active population in South Africa and invoked the E.E.C. Code of Conduct for Companies with subsidiaries, branches or representation in South Africa which requires that: "employers should make it their concern to alleviate as much as possible the effects of the existing system (migrant labour) ... and should assume a special responsibility as regards the pay and conditions of employment of their Black African Employees".
- 272. MAWU stated that an inspection of wage rates of comparable firms in South Africa such as Firestone and General Tyres revealed that Dunlop's basic rates were far inferior, for example the minimum wages at their Ladysmith and Durban sports operations were R76 per week and R74 per week respectively and were some 40 per cent lower than comparable minima of the other multinationals.
- 273. MAWU requested through the Trades Union Congress that a complaint be made against Dunlop under the International Labour Organisation Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy but ILO advised the TUC that the South African company was not covered by the Declaration since South Africa was not a member of ILO. However, the British Government, as the home Government of Dunlop, has an obligation under clause 12 of the Tripartite Declaration to promote good social practice by Dunlop as a British-based multinational. TUC had planned to take up the case of Dunlop in South Africa with the British Government when the tyre company in South Africa offered the workers "a more reasonable deal".

### 3. Action by the Industrial Court

- 274. The Industrial Court was established following recommendations by the Wiehahn Commission that a Court be established to hear cases concerning alleged "irregular and undesirable labour practices and to consider questions of collective and individual rights". The Wiehahn Commission also provided guidance for the Court on the fundamental rights of Conventional labour law. Thus, the Government in accepting these recommendations gave the Industrial Court the jurisdiction to determine "unfair labour practices".
- 275. In the period under review the role of the Court was further enhanced as the jurisdiction of the Court took on an increasingly important role in settling disputes and the Court made a number of precedent setting decisions as reflected in this section. Recourse to the Court has increased progressively, with 15 cases in 1980, 30 cases in 1981, 41 cases in 1982 and 168 cases in 1983. It would appear that the jurisdiction of the Court has received a wide acceptability in that the emerging trade unions have been greatly encouraged to make greater use of it.
- 276. In the dispute between South African Society of Journalists (SASJ) and newspaper managements, the Court ordered the employers to return temporarily to the conciliation board. It ruled that in certain circumstances employers could be ordered to bargain in "good faith" with a representative trade union.
- 277. The obligation on employers to recognize representative unions was taken a step further when the Court ordered Fodens (SA) to start negotiations with the United African Motor and Allied Workers Union with a view to signing a recognition agreement. While in the SASJ case the effect was to order an employer to bargain in "good faith" where there had been a long-standing relationship, the Fodens Judgement suggests that such bargaining should take

place even where there has been no relationship in the past. In the latter case the Court also ordered the company to use a mediator (nominated by the Court) if negotiations broke down, and to pay three retrenched workers from the date of their dismissal to the date their contracts ended. The company was further instructed not to victimize union members and not to interfere with the freedom of association of workers. The Court also ruled that it was unfair labour practice to call a worker a "boy" or a "kaffir".

- 278. In another decision, the Court supported the principle of representation by a majority union when it ordered a Frame Group textile company not to recognize the Textile Workers' Industrial Union (TWIU) a TUCSA affiliate and not to grant it facilities in preference to the FOSATU affiliated to the National Union of Textile Workers.
- 279. In another case, NUTW took the Brantex company to court, charging that it had committed an unfair labour practice by altering the conditions of work of its employees without negotiating with a representative union, retrenching 15 employees without prior negotiations with the union, and bringing in a "sweetheart" union. The matter was settled in court with the company agreeing to pay R 40,000 to its employees (the largest award won to date in a labour case in South Africa), reinstate those retrenched, pay arrears and recognize and negotiate with whichever union won an election to be held within two weeks of the settlement.
- 280. The risks for employers who fire employees without adhering to equitable dismissal procedures were highlighted by a number of judgements under section 43 of the Labour Relations Act ordering firms to reinstate dismissed workers.
- 281. In January 1983 the Court ordered Stoba (Elandsfontein) to reinstate 51 dismissed workers on terms and conditions no less favourable than they had enjoyed prior to their dismissal. The action was brought by MAWU. The order was precedent-setting in that previously it had proved extremely difficult for unions to win cases in which they alleged that the dismissal of workers was due to union activities and therefore constituted victimization on the part of employers. However, the matter was not pursued further in the courts, when the parties reached a final and amicable settlement.
- 282. It was reported that the Industrial Court ordered African Cables "to temporarily reinstate 324 workers fired in a dispute in January 1984". Labour lawyers described the decision - "the biggest reinstatement ever ordered by the court" - as a key advance for workers' rights. The dispute which had led to the dismissals occurred in early January 1984 when the company, which had been working a four-day week told workers they would have to work on Fridays. The dispute went before the Industrial Court and counsel for the workers alleged that African Cables "acted unfairly by requiring workers to sign a form setting out new work conditions or face dismissal". Because the forms set out new conditions, workers by refusing to sign were not refusing to honour their existing contracts but to agree to new ones. Work contracts were commercial agreements, and employers therefore had to have a commercial reason for ending them and it was argued that "no such reasons existed in the dispute". It was also alleged that management "acted unfairly by not consulting workers about the change and not granting them an appeal against their sacking". A total of 327 workers - all of whom belong to the Engineering and Allied Workers' Union requested reinstatement from the Court but three were not reinstated.

283. However, not all judgements went in favour of workers. The Media Workers' Association of South Africa (MWASA) lost a case against The Star in which it attempted to win reinstatement under section 43 for 162 of 209 workers dismissed during a strike in 1983.

284. The National Union of Textile Workers (NUTW) launched an appeal in the Supreme Court against "a key industrial court decision, upholding the right of an official industrial council to bar unions which are not members of the council from having union dues deducted by employers. The action by the union was confirmed by Mr. John Copelyn, acting general secretary of the National Union of Textile Workers. This decision was given in a case brought by the NUTW against the Cape Textile Industry's industrial council. "A clause in the Council's agreement prevents the deduction of money from workers' pay by employers except for purposes laid down by it". NUTW had appealed to the Industrial Court, arguing that the clause in the agreement was meant to protect the workers from employers who deducted money from their pay against their will - and that this could not apply where workers had joined voluntarily. The Council on the other hand argued that the clause was specifically designed to protect the unions which belonged to it. The refusal by the Court to overrule the ban was "a blow not only to NUTW but also to other emerging unions as many industrial councils have imposed similar bans on 'stop orders' to unions who resist joining councils". "Stop orders" are regarded by many unions "as an important source of financial stability".

285. Commenting on unions' use of the courts, a FOSATU spokesman said that legal action was one range of strategies that unions had adopted to gain and ensure worker rights.

286. A Conference on Labour Law in Durban concluded that "factory conflict" would grow and that the State would lose its remaining credibility in the eyes of black workers if the Government's Industrial Court was prevented from playing an active role in labour disputes. The pleas to preserve the Court's role came amid growing fears that the Government was preparing to initiate moves to curb the Court's powers. Mr. Nicolas Haysom of Witwatersrand University said that contracts of employment placed employers in a position of domination and that bodies like the Court could play a key role in redressing that situation.

# D. Conditions of workers and trade unions \*

#### 1. Freedom of association

287. The Working Group noted the various methods employed to harass trade unions. These included the banning of meetings, police raids on homes and offices of

<sup>\*/</sup> This section is based in part on information drawn from the Rand Daily Mail, 14 December 1983, 31 March 1984, 10 April 1984, 20 April 1984; The Star, 3 January 1984, 12 March 1984; The Guardian, 26 January 1984; Testimonies heard by the Ad Hoc Working Group of Experts during its 623rd and 630th meetings; Report of the Detainees' Parents Support Committee, 16 November 1984; Report on violations of human rights in South Africa: 1983-1984 by Working Group Kairos; International Labour Office, Special Report of the Director General ...; Survey of Race Relations - 1983.

unionists and the detention of officials. Mr. Kailembo of the International Confederation of Free Trade Unions (ICFTU) gave evidence to this effect (630th meeting). Forty-nine trade unionists were detained in 1984. As at November 1984 the following were still in detention, held under section 29 of the Internal Security Act. \*/

<u>Date</u>	Name	Organization	Place
10/ 6/84 10/ 6/84 14/ 6/84 24/ 9/84 24/ 9/84 3/10/84 3/10/84 3/10/84 30/10/84 8/11/84 9/11/84 9/11/84 14/11/84	NDUNA, Xolani MAPHELA, Zanemvula NKOSI, Moses Duma QAKU, Ntsikelelo XINTOLO, Andile KAU, Jerry LEHOKO, Isaac Kgetsi MALELA, Glen HLUBI, Johnson MAYEKISO, Moses NONHLANTANE, Themba DLAMINI, Chris SOLO, Bangalizwe CAMAY, Prioshaw DLALISA, Jethro	CWIU member FWAWU member CCAWUSA shop steward AFCWU official SAAWU official NAAWU Nat. Exec. CMMAWOSA member CMMAWOSA member OVGWU organizer MAWU Tvl. organizer MGWUSA member FOSATU President NUTW organizer CUSA Gen. Secretary TGWU Branch Chairman	Daveyton Daveyton Johannesburg Queenstown Queenstown Kempton Park Katlehong Katlehong Vereeniging Germiston Johannesburg Springs East Rand Johannesburg Johannesburg

288. The offices of the General Workers' Union were burgled on several occasions. No money was taken but various union documents were stolen. On one such occasion a car, later identified as a police vehicle, was seen near by. Other incidents include harassment of the staff at trade union offices under the Group Areas Act. In one such case three black trade unions were evicted from their Pretoria office premises — the South African Allied Workers Union, the National General Workers Union, the General Workers Union of South Africa and a community newspaper because "they did not have permits in terms of the Group Areas Act and because members annoyed tenants in the office block".

289. In addition to the harassment of trade unions as illustrated above, trade union organization and consultation has been seriously impeded by the restrictive effects of the ban imposed in 1976 under the Riotous Assemblies Act. The case of Mr. Skeg Sikakane of the Council of Unions of South Africa (CUSA) was one such example. Mr. Kailembo of the ICFTU (630th meeting) told the Working Group that Mr. Sikakane was arrested on 23 February 1984 on his way to negotiate at a factory following a lock-out of workers who had joined the union. Mr. Sikakane was actually arrested under the Riotous Assemblies Act but charged under the Internal Security Act. Mr. Kailembo said that 26 others were detained on the same charge. Police have also made considerable use of the Intimidation Act. Although the Act embodies certain features of the Riotous Assemblies Act its scope is far greater when it comes to action against workers. It has been used to curb strikes and to disrupt trade union recruitment and certain trade union leaders have called for its repeal.

<sup>\*/</sup> The provisions of Section 29 of the Internal Security Act are contained in Annex VII.

290. The South African police have been openly involved in the pressures brought on trade unions. The Ciskeian authorities, however, have been brutal and uncompromising in their attitude towards trade unions. Several examples occurred of co-operation between the two authorities, with trade unionists being arrested by the South African police before being handed over to the Ciskeian authorities. The bus boycott by workers who are "citizens" of Ciskei but live in the "homeland" and work in East London which is in "white" South Africa is a classic example of the pressure exerted by the authorities on trade unions because of their alleged role in the boycott.

Mr. Bonisile Norushe (623rd meeting) told the Working Group that he himself had witnessed the harassment and torture of trade unionists and workers who were involved in the bus boycott. Mr. Norushe said that he himself had been subjected to repeated arrests. He was arrested in 1976, in July and in August 1982.

291. The South African Allied Workers Union (SAAWU) was a major target for the harsh measures by the Ciskeian authorities; it will be recalled that SAAWU had from the outset opposed Ciskeian "independence". The union has a signed-up membership of 130,000 and 70,000 paid-up membership; this, and its tenacity, solidarity and successes rendered SAAWU an element that could not be ignored by either the Ciskei or the South African authorities. Since the formation of SAAWU its President, Thozamile Gweta, has been detained repeatedly by either the Ciskeian or South African authorities. Other SAAWU leaders like Siza Njekelana, Vice-President and Sam Kikine, General Secretary, have also been detained on several occasions. In addition many of SAAWU's rank and file membership have also been detained. Although SAAWU has borne the brunt of Ciskei repression, other unions have also been affected as described in the following paragraphs.

### 2. Situation of workers in the "homelands"

292. In 1983 during a question and answer session in Parliament, the Minister of Co-operation and Development in answering a question from the opposition on unemployment in each of the five "self-governing homelands", Lebowa, Kangwane, KwaNdebele, KwaZulu and Qwa Qwa, illustrated the divisory effects on labour and social matters of the "homeland" system and the manner in which the Government of South Africa had abandoned responsibility for people whom it now, refers to as citizens of another "State". In his reply the Minister stated that "labour is a function which has been transferred to the governments of the national States and consequently the Department of Co-operation and Development was not in a position to furnish statistics as requested". The Minister's reply related to "self-governing homelands" not to "independent States" (Bophuthatswana, Transkei, Ciskei and Venda) which are regarded as even more independent of South Africa and as exercising full control over their own labour affairs and labour forces. This division has also affected the availability of statistical information.

293. According to a special report of the International Labour Organisation on the application of the "Declaration concerning the policy of Apartheid in South Africa", the position concerning the application of South African law, including labour law in the "homelands", has become confused, complex and barely comprehensible. The validity of South African law varies with the status of the "homeland" and the date on which that status was reached. The application or non-application of South African labour law is no longer clear even to local lawyers and the position of trade unions and their members is equally confused - invariably and rather regrettably the ability to function has to a large extent continued to depend on the individual policies of "homeland" leaders.

- 294. It is against this background that the Working Group has reviewed developments which affect black workers within the border of the "homelands".
- 295. The majority of the people in the "homelands" are unemployed or work in "white" South Africa commuting daily across the borders.
- 296. The Transkei is said to have designed a project to create 12,000 jobs over three years with a total of R 18 million in aid from Pretoria. Pretoria however tried to make the aid conditional upon the acceptance by the Transkei of the deportation of "illegal" Transkeians from the squatter areas of the western Cape. The Transkeian authorities did eventually agree to receive 1,000 people for every 4,000 jobs created. Researchers at the University of Transkei estimated that at least 120,000 people had left the Transkei "illegally" to search for work in the white areas of the Republic. Transkei officials estimated that 20,000 people were looking for work in the "homeland" itself.
- 297. In Ciskei, the Minister of Manpower claimed that his department had placed about 25,000 workers in employment in South Africa.
- 298. In other "homelands" the situation was not better, the continuation of the drought had a devastating effect. The Gazankulu Government estimated that more than half its population of 500,000 would need food aid in order to survive the winter.
- 299. Lebowa estimated that 400,000 would need feeding. For Kangwane, its 11,000 peasant farmers faced the winter season without any crops. By May 1983, stock deaths in the Ciskei and Transkei had reached 60,000.
- 300. In the period under review, the limited industrial development in the "homelands" made no significant inroads into unemployment problems. The Corporation for Economic Development (CED) was reported active in the "homelands" through the canvassing of industrialists, the evaluation and financing of projects and the establishment of industrial infrastructure. Industrial activity through CED loans had as at 31 March 1982, created cumulative totals of 17,731 and 5,221 employment opportunities in Bophuthatswana and the Ciskei.
- 301. A study by University of Cape Town economics student Mr. Stephen Devereux suggests that while real black wages rose enormously over the past decade, most blacks may be worse off now. He found that rising wages were offset by rising unemployment and hardship among those excluded from education and employment opportunities especially in the "homelands".
- 302. A leader of the opposition, Dr. Frederik van Zyl Slabbert accused the Government of creating "bureaucratic disaster areas" which were draining the country financially. The percentage increases in wealth production and aspects of the quality of life in the "homelands" were among the lowest in the world. Statistics provided by the Working Group Kairos in its report on the violations of human rights in South Africa 1983-1984 indicated that although the number of people living below the Poverty Datum line had dropped from 99 per cent to 81 per cent, the number of people in absolute terms living below the PDL had increased from 4,100,000 to 8,900,100. The number of destitute people in the "homelands" had also increased from 250,000 in 1960 to 1,400,300 in 1980.

303. According to a major study on subsistence levels, done by Management and Development Studies (Transkei) more than 70 per cent of the rural population in Transkei live below the Household Subsistence Level (HSL) and 40 per cent earn one-third or less of the HSL. More than 30 per cent of urban households in the territory also live below the HSL, which means that they do not meet the minimum income requirements for survival in the short term (high rent and transport costs).

304. The grim living conditions of workers in the "homelands" are exacerbated by the determination of the "homeland" leaderships to impose a framework of institutional controls on workers organizations. The bantustan administrations are amongst the main instruments of the <u>apartheid</u> regime which are used to control and contain the growing number of unemployed workers and to provide a supply of cheap migrant or contract labour. They are also used to administer and control the growing number of commuters who are made to live inside the bantustan boundaries and travel each day to work in the factories and offices located outside the bantustans.

305. In the field of labour the tendency has been for "homelands" to adopt legislation modelled on the old South African Labour Relations Regulation Act. In Bophuthatswana new labour legislation was introduced - the Industrial Conciliation Bill will outlaw all South African based trade unions from operating in Bophuthatswana. Its apparent intention, as seen by labour analysts, is to isolate Bophuthatswana workers from those in South Africa. The majority of the labour force resident in Bophuthatswana, work either as migrants or as commuters in "white" South Africa. Many of them belong to trade unions which are based in South Africa and which because of the new legislation will have no legal status in Bophuthatswana. These unions will therefore not be able to represent the full range of interests of their members. Mr. Cronje, Minister of Labour in Bophuthatswana, made it clear in a press statement that Bophuthatswana intended to prevent the emerging South African unions from exercising influences there which would in any way challenge the "independence" of the "homeland". According to information available to the Working Group three emerging black unions - including NUM, some of whose members are employed in Bophuthatswana - took action in January 1984 over a wage grievance and protested against this new legislation. Thereafter, they were formally told by the Bophuthatswana authorities to cease their operations.

306. In Ciskei, the situation of trade unions deteriorated in 1983, with the bus boycott of 1983 in which they were involved. In 1983 a substantial increase (11 per cent) in bus fares (the bus company is partly owned by the Ciskei Government) was rejected by workers travelling daily from the territory to East London where the majority are employed. The workers, in giving effect to their rejection of the increase, boycotted the buses. A long and brutal attack on the workers by the "homeland" authorities then ensued in order to force them to use the buses rather than trains and taxis. In the course of the sustained attacks, many workers were killed, injured and imprisoned and a football stadium, into which many people were herded together, became the scene of atrocities by the Ciskeian authorities. The authorities also attacked the South African Allied Workers' Union (SAAWU) arresting and detaining some of its leaders. SAAWU was eventually banned. The banning of SAAWU and the role of the South African police and the Ciskei police and their co-operation in the harassment of the union's leadership attracted widespread protests, particularly

from international trade union movements. Many of the protests were lodged with the Government of South Africa which was charged with complicity because of its role in arresting union officials and then handing them over to the Ciskei. This was seen as an attempt to camouflage South Africa's complicity in the brutalities against workers.

307. The trade union situation in Transkei remains obscure with no indication that the attitude of the "homeland" administration has changed from that expressed by the President three years ago, namely that trade unions were undesirable and even harmful. There have been no indications of the attitude of the Venda authorities towards trade unions. But both have enacted their own labour laws.

### 3. Permanent urban rights in the light of the Rikhoto Judgement

308. About 300 workers at a Mooi River plant (Mooi River Textiles) were reported to have "won permanent city rights in terms of the Rikhoto judgement". This followed a campaign by their union, the National Union of Textile Workers, which is affiliated to the Federation of South African Trade Unions (FOSATU). According to the FOSATU Worker News this was "the largest single group of workers to be given (city) rights since emerging unions together with the Black Sash, began urging workers to apply for these rights". However the newspaper noted that a recent change to the law meant "that they cannot live with their families". It said that a key benefit was the fact that "they cannot be sent back to the 'homelands' if they lost their jobs". However according to FOSATU Workers News "it is becoming increasingly difficult to workers sent to townships when they lose their jobs to return to the cities to work". And in the wake of the problems faced by retrenched workers with the administration boards, the union was now including "a clause in the retrenchment procedures it negotiates with employers which says the company must inform its local administration board that it intends taking the workers back".

#### 4. Unemployment Insurance Fund

- 309. The Director-General of Manpower announced in July 1984 that migrant workers whose employers refuse to review their contracts or end them by dismissal, will now have these facts recorded on their Unemployment Insurance Fund (UIF). This development is exclusively directed at workers from the so-called independent "homelands" whose UIF is paid into separate unemployment funds in their "homelands".
- 310. The administration of the Unemployment Insurance Fund has been of great concern to trade unions and workers in South Africa especially those from the so-called independent "homelands". The position of many workers relative to the fund was changed by an amendment to the Unemployment Insurance Act of 1982.
- 311. The Act provided for migrants and daily commuters from "independent States" to contribute to the South African Fund, such contributions would then be passed, according to the citizenship of the workers, to the fund operated by his "homeland". The practical effect of this is to separate migrants and daily commuters from citizens of the same "homelands" with residential rights in South Africa (who will contribute to the South African fund and receive benefits in "white" South Africa).

312. Bophuthatswana had already established a fund before the 1982 amending Act and Transkei, Ciskei and Venda did so shortly afterwards. But following new discussions it was decided that Transkei, Ciskei and Venda would set up funds with administrative and technical assistance from South Africa since separate funds for each were not likely to be viable. The creation of these funds by the "homelands" met strong criticism from several emerging unions based in the Eastern Cape with substantial membership from Ciskei and Transkei. The unions pointed out that attitudes of "homeland" Governments towards trade unions and their members was such as to undermine the treatment of workers by the administrations of the new funds and that contributions paid into the South African fund prior to the creation of the "homeland" funds should be repaid to workers; in addition, the union pointed out that administration in the "homelands" was so inefficient that workers would experience considerable difficulties and delays in obtaining unemployment benefits. The unions' concerns were addressed to the Minister of Manpower but no response was received from him.

#### 5. Workmen's Compensation Fund

313. A similar situation existed with the workmen's compensation fund. Black workers in South Africa were said to experience considerable delays in obtaining payments from this fund and because of poor communication between the fund and workers many payments were unclaimed. As was the case with the Unemployment Insurance Fund, workers are separated under workmen's compensation procedures. Citizens of "homelands" with residential rights in "white" South Africa and those who work as migrants or daily commuters remain under the South African fund, but those who work inside a "homeland" are no longer protected in terms of compensation for occupational injury or diseases unless the "homeland" establishes its own Workmen's Compensation Fund. Bophuthatswana and Ciskei are reported to have set up their own funds.

# E. Employers\*

314. The employer situation both from the public sector and the private sector has profound implications for labour and social affairs. In the private sector the fundamental question is to what extent are the conglomerates concerned prepared to use their considerable power to influence the Government to put an end to apartheid with its labour features such as the "homelands" system and influx control; to what extent are they prepared to advocate black political, economic and social emancipation, to what extent will they use their influence over employers' organizations and thus over industrial councils in which wages and conditions of employment are fixed.

315. Another development - on the political scene - for employers during the review period was the creation of the tricameral parliament in which Coloureds and Indians were given a limited political role. While several organizations such as the major employers' organization of the Federated Chamber of Industries (FCI) had pledged industry's support for the constitutional changes,

<sup>\*/</sup> This section is based in part on information drawn from Newsweek, 3 December 1984; International Labour Office, Special Report of the Director General ...; Survey of Race Relations - 1983; The Guardian, 19 November 1984, 14 December 1984; International Herald Tribune, 14 December 1984; 9 January 1985.

the recent crack-down on the unionists stirred protests from South Africa's conservative business community. The country's three major business organizations - the Afrikaans Chamber of Commerce, the Federated Chamber of Industries and the Association of South African Chamber of Commerce - issued a joint statement (in November 1984) warning that the detention of trade union leaders threatened what was already a very delicate balance between industry and labour.

316. More recently, on 7 January 1985, five leading South African business groups - the Federated Chamber of Industries, the South African Chamber of Mines, the Association of Chambers of Commerce, the Afrikaanse Handlesinstitute and the Black National African Chamber of Commerce called for new legislation that would assure meaningful political participation for blacks. The business leaders made six demands for dismantling apartheid: meaningful political participation for blacks; an end to restrictions on black businessmen so that they can own shops and conduct trade anywhere in the country; an end to forced resettlements and universal citizenship; strengthening of the black trade union movement; restricting the power of the police to detain people without charges and fair administration of justice by the country's courts. They also strongly expressed their belief that the Government was doing too little and moving too slowly to resolve the country's problems.

#### 1. Manufacturing

317. South Africa's biggest employer as at June 1983 was the manufacturing industry encompassing almost 1.4 million employees. Of these there were 747,800 blacks and 316,100 whites, with average monthly wages of R 360 for the former and R 1,429 for the latter. In the same period the chemical industry employed 57,300 black people with an average monthly wage of R 414; white workers were 36,000 with an average monthly pay of R 1,401. The clothing industry is another employer of a substantial number of blacks. There are no statistics available for the period under review but information available to the Working Group revealed that the clothing industry was hard hit by recession and there were a lot of retrenched black workers. The food industry had also reported a high percentage of black workers. The metal industry, which employs a substantial number of blacks, was embroiled in labour disputes whose major cause was retrenchments. Figures given by the National Association of Automobile Manufacturers of South Africa showed that 23,708 blacks were employed in the industry.

#### 2. Mining

318. In 1982 the mining industry employed 424,539 blacks in the gold mines and 95,516 in the coal mines. The white mineworkers employed in the same gold mines in the same year were 48,389 and 14,977 in the coal mines. Average monthly wages in 1982 for gold mineworkers were R 252 for the blacks and R 1,377 for whites and for the coal mines R 265 for blacks and R 1,431 for whites.

#### 3. Other sectors

319. In the construction industry figures at June 1983 showed an employment rate of 295,800 blacks and 50,100 whites. Monthly average wages were R 297 for blacks and R 1,493 for whites.

- 320. The commercial agricultural sector was estimated to be employing 1.2 million people.
- 321. In the public sector, the Central Government employed as at June 1983 a total of 147,314 blacks and 142,419 whites. The average monthly wages were R 328 for blacks and 1,036 for whites. The Police Force, Defence Force, Local Authorities, the South African Transport Services (SATS) were the other public sector employers of blacks.

#### 4. The European Economic Community Code of Conduct

- 322. According to the ILO Special Report on the application of the policy of apartheid in South Africa, the Government of the United Kingdom announced in March 1983 the publication of an analysis of the performance of British Companies under the Code of Conduct adopted by the 10 member States of the European Economic Community.
- 323. The analysis examined <u>inter alia</u> the performance of 130 companies which owned 50 per cent or more of the equity of South African companies and which employed 20 or more black workers. Of these, 99 companies were shown to deal with in-house liaison or consultative committees, whilst 12 had recognized independent black trade unions, 9 reported informal dealings with black trade unions and 38 stated a willingness to recognize such unions with or without conditions.
- 324. Of the 130 companies, 39 employed migrant workers a total of 10,000 or 7.5 per cent of the total labour force employed by British companies, among the 39, some reported the use of measures to alleviate the effects of migrant work. The 130 companies employed 134,000 black workers, of which 132,000 were paid above the lower datum line and 2,000 (2 per cent) below the lower datum line.
- 325. With regard to the principle of equal pay for equal work and equality of opportunity, 108 companies accepted the principles involved, 9 expressed qualified acceptance and 13 did not accept or did not respond. The analysis added that the need for improved training of blacks was increasingly recognized and reports showed a greater commitment in that respect.
- 326. Companies reported a wide range of fringe benefits 117 reported pensions schemes, 112 reported insurance and related schemes. On desegregation of the workplace and workplace facilities, some progress had been made but some companies were experiencing some problems due to constraints of law and government policy in some cases and to customs, attitudes and practice in other cases.
- 327. In a statement issued in April 1983 the Foreign Ministers of the European Economic Community stated that in many cases European companies were failing to apply the Code of Conduct, and that further progress was clearly needed and that companies should continue their efforts.

# 5. Sullivan Principles governing United States companies in South Africa

328. The Seventh Report of the Signatory Companies to the Sullivan Principles was published in October 1983. Of the 280 United States Companies in South Africa, 120 were signatories to the Principles, which list four areas of the employment field in South Africa in which performance should be improved: non-segregation of employees; equal and fair employment practices for all employees; equal pay for equal or comparable work; initiation and development of training programmes for all non-whites to prepare them for supervisory, administrative, clerical and technical jobs. In a comment on the Seventh Report, the New York Post observed that the vital impetus of the Principles had begun to fade and the next moves were difficult to identify; few United States executives had so far been willing to speak out on apartheid. In the newspaper's opinion, while the European Code was more stringent, it lacked the "monitoring teeth" of the Sullivan Principles.

329. A Professor of Law at Stanford Law School and a specialist in South African labour matters, Professor W.B. Gould commenting on the Export Administration Bill - which was to be amended to make adherence to the Sullivan Principles compulsory for United States companies operating in South Africa and to establish a monitoring process by the State Department - said that one difficulty with the Sullivan Principles was that they did not focus sufficiently on black trade union activity, they were primarily concerned with petty apartheid.

#### 6. General comments

330. In an amplification of the Sullivan Principles in late 1984, about 120 American companies agreed to take a political stand against <u>apartheid</u> for the first time. The companies which have extensive operations and investments in South Africa hitherto had confined themselves to corporate matters such as equal wages for white and black workers.

331. The new rules of operation adopted by the companies on 12 December 1984 directly challenge South Africa's racial laws. Among other things, the companies will seek the end to all apartheid laws; encourage and support the location of black businesses in urban areas of the country; influence other companies in South Africa to support equal rights for all workers and support the mobility of black workers to seek employment opportunities wherever they exist and provide integrated housing near to the workplace. The companies involved account for more than two-thirds of the United States companies' employees in South Africa, which exceed 120,000. They include International Business Machines Corp., Ford Motor Co., Du Pont Co., General Electric Co., Citicorp and General Motors Corp. The move to amplify the Sullivan Code comes at a time when demonstrators in Washington and other American cities have begun a major campaign urging the United States Government to apply pressure and sanctions against South Africa.

332. The position of the International Confederation of Free Trade Unions (ICFTU) (630th meeting) regarding these codes - the Sullivan, EEC and Canadian - is that they will remain ineffective until they incorporate a sanction clause providing for (a) scrutiny of company reports by a committee of trade unionists, employers and government representatives; (b) refusal of credit guarantees or export licences to any company refusing to recognize black trade unions.

333. At its 630th meeting the Working Group also heard from Mr. Kailembo that the ICFTU was anxious that foreign companies should recognize black trade unions. He stated that with white immigration on the increase the ICFTU had appealed to European Trade Unions to counter this increase because it was jeopardizing black jobs in South Africa.

334. In a recent development the Church of England is reported to have sold its £4.4 million holding in Carnation, the United States dairy products company because the Church Commissions were dissatisfied over wage rates of the company's South African workers. Although the Commissioners have a policy of not investing in companies with significant links with South Africa, they maintain that a policy of "positive engagement" in a small number of companies enables them to maintain an economic and moral presence for the benefit of black employees. The Church decided to dispose of their holding because, although Carnation was a signatory of the Sullivan Principles, a proportion of its employees continue to be paid below the recommended level, and the Commissioners say they had been unable to obtain satisfactory assurances about the future from the senior management of Carnation in South Africa.

# F. Legislation governing conditions of workers\*

# 1. Conditions of Employment Act, 1983, re-enacting inter-alia the 1964 and 1941 Acts

335. This Act re-enacted those aspects of the Shops and Offices Act, 1964 and the Factories, Machinery and Building Work Act, 1941, which provided for minimum conditions for employees. Although the scope of this Act is somewhat larger than that of the two repealed Acts, a number of categories of workers are not covered. In particular, agricultural and domestic workers, civil servants and employees (in mining) covered by the Mines and Works Act, 1956 and by the Manpower Training Act, 1981, for the most part apprentices. Among its other features, the Act removes the limitations placed on the employment of women by the Factories, Machinery and Building Work Act. It enables women to be employed at night without prior official approval and to work overtime to a greater extent than was possible before on a voluntary rather than a compulsory basis.

# 2. Conditions of Employment (South African Transport Services) Act, 1983

336. The Act is exclusively concerned with the State-owned and largest employer in South Africa, the South African Transport Services (SATS). The purpose of the Act is to establish conditions of employment. However, a report of ILO on the policy of apartheid in South Africa draws attention to other issues that characterize the Act. Such issues are entrenched although hidden racism, SATS' refusal to recognize independent unions, the refusal to legitimize strike action. Racial discrimination, according to the same report, is cloaked in the Act which confers permanent and temporary SATS appointments to South African citizens, thus grading at least 150,000 black workers from the so-called "homelands" as casuals or regulars. This situation precludes employment

<sup>\*/</sup> This section is based in part on information drawn from the International Labour Office, Special Report of the Director General ...; Survey of Race Relations - 1983; Rand Daily Mail, 1 February 1984; 3 May 1984, 6 June 1984; The Citizen, 1 May 1984.

security, job advancement and in effect represents a return to legislated job reservation by the South African Government. According to the report, the degree of white protectionism and of discrimination against blacks is illustrated by the fact that of 1,647 apprentices indentured by South African Railways (part of SATS) in 1982, 1,640 were white, 4 were African and only 3 were black. The Act permits only staff allocations recognized by the Minister of Transport Affairs to function within SATS' own conciliation machinery - this has the practical effect of curtailing freedom of allocation by restricting freedom of choice of trade unions to those approved by the Minister. The new Act also prohibits employees or other parties from initiating or taking part in strike action.

337. Soon after the parliamentary debate on the Act, SATS announced retrenchments due to the economic recession. Because of redundancies, shift arrangements had to be changed to avoid "mixed working" and some senior posts temporarily occupied by blacks reverted to whites. In 1982, more than 21,000 jobs had been abolished which had been held by people "of all racial groups", but SATS emphasized that no Coloured Asian or black employees had been retrenched. A parliamentary opposition spokesman explained that retrenchments had not affected staff because no Coloured, Asian or African employees were permanent.

#### 3. The Manpower Training Amendment Act, 1983

338. The Act gives the Minister of Manpower the power to make financial grants to the eight training centres established under the Manpower Training Act. These centres were required to be self-supporting under the original Act. In explaining the purpose of the Act, the Minister of Manpower inferred that the funding system under the original Act was inadequate because of the declining use of the centres by employers. The centres are primarily designed for "black low-level training".

## 4. Machinery and Occupational Safety Act, No. 6 of 1983-

339. This Act repealed the Factories, Machinery and Building Work Act, 1941, and the Shops and Offices Act, 1964. The Act covers all workers except those in mining; the protective features relating to machinery cover agricultural workers.

340. Among its provisions are the establishment of an Advisory Council on Occupational Safety to advise the Minister of Manpower; the introduction of safety representatives and safety committees where two or more safety representatives have been appointed in a work place. The Act empowers the Minister to make special safety regulations for different categories of employees using any method of differentiation, provided it is not based on race or colour.

341. In the parliamentary debate on the new Machinery and Occupational Safety Act, it was revealed that industrial injuries and accidents accounted for an expenditure of up to R 400 million each year; 335,000 industrial accidents occurred annually. An average of about 162 workers were injured every hour of an eight-hour working day. Of the daily accident rate 10 were fatal and 125 resulted in permanent disablement. As black workers provide the major manpower element in the industry they also account by far for the largest component of all fatalities and injuries.

342. Following the enactment of the new law, the Department of Manpower issued draft regulations on safety matters that attracted protests from employers. The emerging trade unions spoke out strongly against employer-nominated representatives. The exclusion of elected worker representatives was of particular importance, in view of the growing involvement of the emerging unions in questions of occupational safety and health. The unions saw in the employer-nominated safety committees a possible means of bypassing negotiations on safety matters with trade unions.

343. The protests led to consultations between the major employers' organizations and the Director-General of Manpower. As a result of these consultations the composition of the new Advisory Council on Occupational Safety became known; its Chairman is the head of the Department's Occupational Safety Division and it includes five government and four private sector representatives. Although blacks form 75 per cent of the labour force "there is no black representation". On the other hand, two white trade unionists, one from the Confederation of Labour (SACOL) and one from the Trade Union Council of South Africa (TUCSA) are members of the Advisory Council.

344. In July 1983 an explosion occurred at the AECI (ICI) Company's Salsolberg plant in which two workers were killed. The black labour force of 350 workers withdrew their labour for several days refusing to return until an investigation had been carried out and the plant declared to be safe. The information available to the Working Group indicated that in spite of a high accident rate very few prosecutions for contravening the Machinery and Occupational Safety Act or even the old Factories Machinery and Building Work Act had taken place. Experts warned that South Africa lagged behind other countries regarding safety measures. An expert on occupational safety and health matters, Mr. B. Castleman, on a visit to South Africa had expressed considerable criticism of safety arrangements in South Africa. In his opinion, workers were offered very little protection and their safety and health were at risk. He described safety and health standards generally as "primitive" and the new Act as vague, "lagging decades behind protection offered to workers in the West", and leaving the whole issue to employers. The Act had been introduced without consultation with black employees. A major defect was the fact that inspectors had to visit a factory several times before taking action, giving employers ample time "to cover their tracks". The maximum penalty under the Act was a fine of R 4,000 or two years' imprisonment or both (see also paras. 241 to 246).

#### 5. The Labour Relations Amendment Bill

345. In February 1984 the South African Government published the Labour Relations Amendment Bill. The bill if passed will render recognition agreements between trade unions and employers unenforceable in the courts, including the Industrial Court, if the unions concerned fail to supply the State with information required under the Labour Relations Act. The bill, among other things, requires that employers' organizations and trade unions supply detailed constitutional membership and regular financial information on a regular basis to the Department of Manpower. The purpose of the bill, as seen by labour analysts, is an effort by the Government to tighten control over trade unions, the effects of which will be felt more by emerging trade unions as a big number of them operate outside the Industrial Council system. It is clearly designed to ensure that the Government receives more regular and detailed information concerning trade union activity to give the Government a measure of control over

agreements and obtain information on the funding of emerging unions, particularly by overseas sources. The bill could, according to labour experts, drastically affect the enforcement of recognition agreements between emerging unions and employers and curb the development of new unions.

346. Another feature of the bill which affects emerging unions is the transfer of appeals for exemption from industrial council agreements from the Industrial Court to the Minister of Manpower. Demand for such an extension is said to have increased with the development of "border" industries and small businesses and holds considerable implications for black wages.

347. The bill has been referred to a Parliamentary Select Committee following criticism from a number of unregistered unions. A large number of interested organizations, including the Federated Chamber of Industries are reported to have urged the Select Committee to ask the Government not to proceed with the bill.

348. Meanwhile a report of the National Manpower Commission (NMC) released on 30 April 1984 by the Minister of Manpower recommended that the Labour Relations Act should be changed to provide for the establishment of workers' councils. The procedural and operational emphasis, as recommended by NMC, was to eliminate State intervention. With regard to registration of trade unions, the Commission's recommendation that unions be forced to obtain certificates from the Government certifying their compliance with certain minimum requirements was qualified by a minority report of four members of NMC. The minority report put the case for a new registration system for trade unions whereby the requirement for government certificates was not compulsory. The four members of NMC who signed the minority report felt that to implement the new registration system as recommended by NMC would lead to charges that the State wanted to "control and crush black unions".

E/CN.4/1985/8 . page 74

CHAPTER IV: THE RIGHT TO EDUCATION INCLUDING THE SITUATION OF STUDENT MOVEMENTS \*/

#### Introduction

- 349. During the period under review the Working Group noted that the major developments in the field of education were the massive unrest in the schools and other institutions resulting from the deterioration in the system and level of black education.
- 350. In a wave of fresh protest against the <u>apartheid</u> education system, schools, colleges and university campuses throughout South Africa virtually came to a standstill. Over 645,000 black students walked out of their classrooms and lecture halls in one of the highest education boycotts in the country's history. Their action followed a joint call from the Congress of South African Students (COSAS) and the Azanian Student Organization (AZASO) for a boycott of the new tricameral parliament at the end of August 1984.
- 351. The roots of the current school unrest go back to the 1953 Bantu Education Act and to the ideology of separate development. Under the Bantu Education Act policies were designed to suit the ideological purposes of the Nationalist Party. No attempt was made to consult black opinion and control remained strictly in the hands of a white Government.
- 352. It may be recalled that on 16 June 1976, thousands of schoolchildren protesting at the quality of their education marched on Orlando Stadium where they intended holding a mass meeting to discuss their grievances. The schoolchildren never reached their destination and in the months that followed hundreds of them died in confrontations with the police. Eight years have passed since the tragic events of 16 June. The Black Sash Organization which actively participated in the commemoration of the anniversary of the 1976 student unrest said that "the courage and sacrifice of the students who suffered during the unrest of 16 June 1976 and the subsequent months seem to have been in vain". Eight years ago the students were protesting about Bantu Education and in particular the use of Afrikaans as a medium of instruction. The sore point was attended to, but the "basic cancer of Bantu education remains". It is the resentment against this inferior education that has recently manifested itself again all over the country.

#### A. Unrest in schools

353. The announcement by the Department of Education and Training (DET) of the 1983 matriculation examination results focused attention on the quality of black education, fuelled the rage of students and precipitated further protests. Only

<sup>\*/</sup> This chapter is based in part on information drawn from The Star of 13 May 1983, 24 November 1983, 16 January 1984, 3 February 1984, 23 April 1984, 18 June 1984; the Rand Daily Mail of 13 December 1983, 1, 12, 16, 17, 22, 26, 30 and 31 May 1984, 5 September 1984; The Citizen of 25 February 1984, 28 April 1984; The Times of 14 February 1984; Le Monde of 15 February 1984; The Guardian of 17 and 30 May 1984; the International Herald Tribune of 13 December 1984; the Anti-Apartheid News, November 1984; Focus, IDAF, No. 53, July/August 1984; No. 54, September/October 1984; No. 55, November/December 1984; South African Institute of Race Relations, Survey of Race Relations in South Africa - 1983 (Johannesburg, 1984).

50 per cent of black candidates achieved a pass, a fall of 26 per cent in the five years since 1977. In addition, less than 9,000 of the 75,000 candidates qualified for university entrance. Critics of the results, whilst castigating the inferior education available to blacks, charged the Government with deliberately restricting the number of students qualified for further education. The excessively high failure rate coupled with grievances over such things like age restrictions accentuated discontent, so much so that a Candidates Crisis Committee was formed to investigate the possibility of legal action against the Department of Education and Training over the results.

- 354. These issues and others were taken up by pupils at schools in townships in and around Pretoria from January 1984 onwards. The first action was taken in defence of 90 pupils at Saulsville secondary school who were refused readmittance following disturbances at the school in 1983. A boycott was declared which spread to other schools and before long police were called in. They suppressed the student manifestation by force: on 13 February 1984 Emma Sathekge a 15-year-old Form I pupil at the D.H. Peta School in Atteridgeville (a black township near Pretoria) was killed by a police vehicle as teargas was used to disperse the students. The boycott was a reaction by students to a regulation which limited the ages at which pupils can be admitted to the last four class levels of secondary school.
- 355. A number of pupils were arrested in Pretoria in the early stages of the boycott and were brought to trial. The boycotts continued intermittently until May when the Department of National Education issued an ultimatum to students. Many students did indicate their willingness to return to school but were afraid to do so because of the heavy police presence. On 15 May 1984 many of the schools in Pretoria were closed for the rest of the school year and more arrests were made at the same time.
- 356. Cradock in the Eastern Cape was the scene of another sustained boycott in the first half of 1984. This protest in Cradock was sparked off by the dismissal of acting headmaster Mathew Goniwe. Mathew Goniwe a former Robben Island inmate was dismissed after refusing a transfer. His transfer was interpreted as punishment and victimization for his role as chairman of the Cradock Residents Association (CRA) in opposing rent increases in 1983. Victimization of politicized teachers has been a frequent cause of complaint within Coloured, Indian as well as black education systems. The people of Cradock Residents Association and the Cradock Youth Association (CYA) rejected Goniwe's dismissal. They stated that for educational reasons the town could not afford to lose one of its few graduate teachers. The boycott remained firm throughout the term and when schools were due to re-open on 27 March 1984 the Government intervened directly in the dispute.
- 357. An initial temporary ban on 23 March 1984 against meetings organized by CRA and CYA was superseded by a three-month ban on all public meetings of a political nature which was invoked on 31 March 1984. Tension was further heightened when on 30 March four activists including Mathew Goniwe were placed under preventive detention (see chap. II). Having outlawed all political activity the police moved in to enforce the ruling using teargas on more than one occasion to disperse crowds. A youth of 17 was knifed to death in one incident and by the middle of May 75 people had been arrested, many of them youngsters of between 13 and 17 all of them charged with public violence. In addition to these boycotts, schools were affected elsewhere, particularly in Soweto and Graaf-Reinet where a number of arrests and detentions were made.
- 358. During and following the week of the elections the boycott of schools spread further to most areas raising as a consequence a number of educational and

community issues. Student action was indeed spurred on by the general uprising against apartheid institutions which followed the elections in many black townships. A number of schools were closed indefinitely while others had classes suspended for a certain period. By early September over 120,000 pupils were boycotting classes in the Vaal Triangle area alone. In each case police intervened using teargas, whips, dogs and rubber bullets and on a number of occasions live ammunition.

359. On 14 August 1984 boycotting students at Mabopane East Technikon were given an ultimatum to return to classes or vacate the premises within 15 minutes - the police moved in to enforce the order using sjamboks and batons. About 16 students were arrested and three injured students were admitted into hospital where one died the same night.

At Mamelodi East's Rethabile Secondary School, on Monday 3 September 1984, a group of youths allegedly stoned the school and ordered the students to leave their classrooms. Police came and allegedly beat up pupils in classrooms after dispersing the stone throwers. Scores of injured students were treated at Mamelodi Day Hospital.

At Minerva High School in Alexandra, riot police moved in when prefects and the headmaster barricaded themselves into an office to escape students who were angered by the headmaster's refusal to listen to their demands. Police stormed the school with teargas and dogs.

In Thabong Welkom, students at Teto High School protested against the refusal of the school authorities to allow an SRC, while condemning excessive corporal punishment, bad teaching and poor facilities. When the school authorities refused to discuss problems with them, students who boycotted classes were suspended. On the day the suspension was lifted, students returned to school but continued to pursue their demands. They decided to resume the boycott. As they were leaving the school compound, students alleged that police waiting outside began to beat them. The next day the boycott continued and the students planned a meeting to discuss the situation. Students alleged that police arrived at the meeting and violence erupted throughout the township. At least 18 students were injured and one student, Papiki Loape, was shot dead. At his funeral one week later, police fired teargas at mourners carrying his coffin through the streets.

- 360. Starting early in the year 1984 school and college boycotts spread from small towns to industrial centres in all South Africa's four provinces. The boycotts were met with police and army "brutality", the closure of schools and suspension of classes, mass detentions of both students and staff, assaults, shooting and death in some instances.
- 361. Students maintained that they were not prepared to accept "the racist and discriminatory conditions under which they are expected to learn".
- 362. Although students at different schools have formulated demands peculiar to their own circumstances, there have been common themes. These include:

An end to excessive corporal punishment;
An end to sexual harassment of female students;
The abolition of age limit regulations;
Free textbooks for all students:

An increase in the number of qualified teachers, the great majority of whom are underqualified in the black schools;

An end to unreasonable suspensions and expulsions of students and teachers;

An end to intervention in school affairs by the Department of Education and Training (DET) through the use of the police, security police and army.

- 363. Students also wanted the school prefect system scrapped and asked that it be replaced by a student elected council. The Government has conceded the students their demand for SRC's with a condition that students councils implement constitutions drawn up by the Department of Education and Training.
- 364. After three years of protests and boycotts the education authorities have also said that they would do away with the age-limit requirements. Age-limit restrictions, as they have existed so far, prevent students over the age of 20 from being admitted to matriculation courses, those over 18 from standard 8 and those over 15 from standard 5. Black students have found themselves being forced from schools because of their ages. Black students are generally older than their white counterparts for various reasons. Many black parents for example cannot afford to send their children to school at the usual starting age, while other students may have to leave school for temporary periods to supplement family incomes through paid work. With regard to corporal punishment, students claimed that while official regulations stipulate a daily maximum of four strokes per male pupil, in practice students have been subjected to physical violence and assault far beyond the bounds of correction. A survey by the Health Workers Association for example found that nine children were receiving treatment every day in Soweto clinics for injuries suffered as a result of corporal punishment.

#### B. Unrest in colleges and universities

- 365. Several universities and colleges were also affected in particular by the conflict between students and bantustan authorities.
- 366. On election day for Coloured voters, 22 August 1984 all 11 Coloured teacher training colleges were boycotted. Thousands of Indian and black students also boycotted classes and all the major universities Fort Hare, Western Cape, Durban-Westville, Cape Town, Witwatersrand, Rhodes, Natal, Turfloop and the Medical University of South Africa, were either fully or partially boycotted. At the University of the Western Cape, 400 staff members are also said to have stopped work in protest. Eighteen Rhodes University students were detained under the Internal Security Act and 29 students of the University of the Witwatersrand were detained and later released. On 27 August 1984, police raided the University of the Western Cape, firing teargas and rubber bullets and arrested 11 students.
- 367. Protests and boycotts continued in a number of higher education institutions after the elections. The issues taken up by the students became more general but related, in the main, to the sentiments aroused by the establishment of the new Parliament.
- 368. On 4 September 1984 more than 3,600 students at the University of the North (Turfloop) defied an ultimatum to leave the campus after a boycott of lectures. Students resolved to remain on the campus until they were forcibly removed or the campus officially closed. The students demanded the total eradication of the system of black education and called on other students to stage boycotts until the demands were met.

- 369. On 30 May 1984, at the University of Witwatersrand, about 1,500 students "boycotted classes and marched around the campus singing and chanting freedom songs, as part of a day of solidarity with boycotting students country-wide". Students who took part in the celebrations carried placards which read "Reject Gutter Education" and "No to High Failure Rates, Sexual Harassment and Corporal Punishment". Outside the offices of the Department of Education and Training in Pretoria, members of COSAS, AZASO and the National Union of South African Students are reported to have taken part in a demonstration in which they "stood for 30 minutes holding similar placards". President of the National Union of South African Students, Ms. Kate Philip, said that the boycott and demonstration were proof that the non-racial students' movement was a growing one. She called students to join "this non-racial democratic movement so we can destroy racist education once and for all".
- 370. Unrest at the University of the Transkei erupted into violence in May 1984 following security action on the campus. The "unexplained detention" of four students including three members of the Students: Representative Council (SRC) prompted a boycott of lectures by more than 1,000 of the 2,500 students. When a call to resume lectures on 15 May was ignored, police staged a baton charge on students and six lecturers who had barricaded themselves into the university's library. Several students were injured, others were arrested and six lecturers were deported from the Transkei. Subsequently, emergency regulations were invoked imposing a dusk to dawn curfew on the university.
- 371. From 29 May 1984 the University Council suspended all lectures until 10 July, following an emergency meeting of the Council. The Council agreed to appoint a commission of inquiry to investigate the troubles at the University Campus, key features of which had been the boycott of lectures in protest against the internment of more than 100 students, the suspension of at least 14 students and the deportation of the 6 lecturers. The students had also accused the university administrators of refusing to discuss the problems of the repeated detention and interrogation of students by Transkei's security police.
- 372. Boycotts continued after the university was reopened in July with students demanding the reinstatement of the six expelled lecturers and the resignation of the principal. The boycott was called off on 8 August 1984 but resumed on 21 August 1984 in protest against the elections to the new Parliament. On 23 August two more lecturers and their families were expelled from the Transkei area. To fill the posts of the expelled lecturers part-time lecturers from the University of South Africa were brought in. At the end of August hundreds of boycotting students were detained by police.
- 373. The Working Group has since been informed by Amnesty International that on 21 September 1984, 248 students of the University of Transkei were released after one month's detention without charge. Amnesty said that the students had been held at police camps all over Transkei and denied access to their families and lawyers during their period of detention. The Group was further informed that during the detention of the students in September, students who had remained at the University continued to boycott lectures and by order of the Ministry of Education, all full-time students have now been expelled from the University and told to apply for re-admission for the next academic year.

#### C. Compulsory education

374. Early in 1981 the Government introduced compulsory education for blacks. This requires that school attendance should be compulsory for six years and that education (either formal or non-formal) should be compulsory for nine years provided it is introduced as and when the parent communities agree.

375. An education report discussing compulsory education for blacks concludes that while compulsory education was an important step towards equal education for all, it was regarded by some as "merely entrenching an inferior system of education". When the system was introduced three years ago, some 85,000 children were involved and it is now said that the number is increasing at a rate of about 2,500 pupils a year. But the report adds that "no matter how encouraging these numbers ... they account for no more than 6.8 per cent of the total number of black pupils in South Africa". Critics of the Department of Education and Training (DET) accuse it of "trying to push an inferior gutter education down the throats of the children by encouraging compulsory education". President of the National Education Union of South Africa, Mr. Curtis Nkondo commenting on this said that if education is to be compulsory the people for whom it is meant must have a say in what they are taught. Education as it is at present, he said, "is a form of indoctrination being stamped on our children in an authoritarian manner". Mr. Nkondo said that the continued school boycotts were eloquent proof of black children's rejection of the education system.

#### D. Illiteracy and the drop-out rate

376. A report by the Research Institute for Education Planning at the University of the Orange Free State showed that 156,558 black pupils left school in 1982 without having passed Sub A and were therefore illiterate. In the same year, 192,380 left school, semi-literate, having gone as far as between Sub A and Standard 2. A total of 310,309 pupils left school literate, having obtained education between Standard 3 and Standard 10.

377. Dr. Marius Barnard, the official opposition spokesman on health suggested that the high drop-out rate among black pupils was due to malnutrition. He cited estimates that 2.9 million children under the age of 15 in South Africa and the "independent homelands" suffered from malnutrition and that approximately one third of all school-going black children showed some signs of malnutrition. Research, he said, had shown that children with a history of protein energy malnutrition had a failure rate twice as high as a control group among their school equals. Dr. Barnard suggested that school-feeding schemes should be introduced on a national basis to overcome malnutrition thereby decreasing the high drop-out rate among black pupils.

#### E. Education policy

378. The Working Group took note of a government White Paper released in November 1983. The White Paper set out proposals on the organization of education under the reformed Constitution.

379. The White Paper rejected two key recommendations of the De Lange Commission (itself a government appointed body which was set up after the 1976 and 1980 school unrest in black schools). The Commission on concluding its investigation in 1981 had advised the Government to establish a single ministry of education and to waive the Group Areas Act to allow empty schools built for one racial group to be used by any other group in need of facilities especially for children from overcrowded black schools. Under the new Constitution there are five separate ministers in control of education: one for each of the racial groups represented in the tricameral Parliament plus one in charge of general educational matters and one in control of black education.

380. The White Paper also proposed that a central teachers' registration body be set up with a teachers' Advisory Council for each racial group. Education under the new constitutional arrangements will remain segregated along racial lines. Critics in South Africa attacked the White Paper as a totally inadequate.

response to the crisis in black education. The African Teachers' Association of South Africa (ATASA) rejected the restructuring of education into five ministries and strongly recommended a single ministry of education decentralized only on a geographical basis.

- 381. Other critics of the White Paper pointed out that its principles were fully consistent with the <u>apartheid</u> principles of the new Constitution. This is borne out by a statement of Mr. Piet Clase, a National Party member, to the effect that "this education plan should be seen as an integral part of the new Constitution because it confirms the government policy of equal education for all, in their mother tongue, and the principle of self-determination for each population group with regard to their own education".
- 382. Many others who criticized the White Paper were particularly disturbed by the perpetuation of apartheid in education. Dr. Franz Auerbach one-time President of the South African Institute of Race Relations, said that equal opportunities and standards in education could not be reached with South Africa's existing social economic and political framework. A member of the opposition PFP, Mr. Ken Andrew described the Paper as "a grave disappointment and totally inadequate". He said that provision was made for numerous councils and advisory councils, but that it failed to address the real issues. "Rigid Apartheid", a gross under-utilization of facilities, inequal opportunities and wasteful duplication remain distinctive features of education in South Africa, he argued. Mr. Ishmael Mkhaleba, Publicity Secretary of the Azanian People's Organization (AZAPO) said that the White Paper would not improve black education, as the basic problem was not lack of money or facilities but the motive behind the education system. Black education he said, was used as a tool by the Government to serve apartheid. The President of the National Education Union of South Africa (NEUSA) claimed that the system laid down in the White Paper entrenched apartheid and provided no significant solution to the crisis in black education, and that the emphasis on technical education satisfied the demands of industry in that it provided a cheap and ready supply of skilled and semiskilled labour.
- 383. The Working Group in its interim report (E/CN.4/1984/8), took note of the Quota Act, 1983, which repealed the University Act of 1959. The Quota Act continued to draw a lot of criticism especially from representatives of English speaking universities who maintained that the system would force universities "to perform the Government's dirty work of turning away academically acceptable black students". It is not yet known how the new system would change the racial balance at universities because of the lack of statistics. However, academics predict that the number of blacks at white universities will continue to grow, but not faster than during the era of the permit system of the University Act, 1959. At a special meeting on 27 April 1984, the Council of the University of Potchefstroom was reported "unable to arrive at a final decision regarding the opening of the university to a quota of students of other racial groups". A statement by the Council said that the matter had been referred to its policy committee for further investigation. The Working Group continues to follow developments in regard to the implementation of this law; it would appear that the severe unrest that characterized educational institutions of all levels during 1984 deflected attention from the implementation of the Quota Act.
- 384. It is estimated that to bring primary and secondary education for black pupils up to par with that for white pupils in 10 years, would require an increase in public expenditure on education of between 15 and 30 per cent of the total budget. South Africa's Ambassador to the United States of America, writing in the Washington Post, claimed that a dramatic upgrading of black education had

occurred. From 1970 to 1980 the number of black high school students increased from 105,000 to 550,000 and blacks' share of total personal income rose from 25 to 40 per cent while the white share dropped from 75 to 60 per cent. Unlike other government programmes, the education budget was not curtailed in the most recent budgetary provisions. In 1983-1984 for the first time, the proportion for education exceeded that for defence.

385. The Minister of Education and Training, Mr. Barend du Plessis, told the first meeting of the Advisory Council of State Universities that "black students receiving tertiary education had increased sixfold in the past twenty years". Giving a breakdown, the Minister said that 20 years ago, 6,000 black students received tertiary education. This, he said represented about one out of every 2,000. In 1982 he said that the figure was 36,000 which was about one out of every 500. In his statement Mr. du Plessis said that there had been a considerable increase in the number of black pupils at primary schools in the late 1960s and early 1970s and since then the educational demand had spilled over to the secondary schools. The next step he went on to say, would inevitably be "a vast increase in demand for places at universities and technical colleges".

#### F. General remarks

386. According to the Anti-Apartheid Movement, these developments did not come about because of political pressure on the Government, but rather because of the realization that equal opportunity for all racial groups was economically expedient. It is the contention of such organizations that for South Africa to survive as an internationally competitive capitalist economy it needs a more efficient and skilled working class. This indeed follows wide global trends, where increasing mechanization, high technology and capital intensive investment are seen as essential prerequisites for survival. The assurance of the South African Minister of National Education, to Parliament that the Government was committed to equal education as soon as possible would seem to give credence to those contentions. The Minister said that better education resulted in greater productivity, higher earnings and profits and hence more income from taxation. But Bishop Desmond Tutu in his Nobel lecture on 11 December 1984 had this to say about education in South Africa "Apartheid, he said, has spawned education ensuring that the Government spends only about one tenth on one black child per annum for education for what it spends on a white child. It is education that is decidedly separate and unequal".

387. The Working Group is of the view that full educational reform must be accompanied by total political reform. Students have not seen any promise of such reform. A student leader explained that students see their problems in the larger context of the entire system. He described their plight in these words: Every day when they leave school they face problems outside - the trains and buses home are late and overcrowded or the fares have gone up again; when they get home they are hungry but there is no food because wages are too low and general sales taxes and rents have gone up. Police use teargas on them at school and pester people for passes outside the school.

388. More and more students, therefore, are throwing their weight behind their own organizations and bodies which will represent their interests. In their determination to realize their objectives, student organizations have affiliated themselves to organizations such as the United Democratic Front in whose growth they see inspiration for all opponents of <u>apartheid</u>.

#### CHAPTER V: OTHER ASPECTS OF APARTHEID

# A. The Church against apartheid \*/

- 389. Opposition to <u>apartheid</u> crosses racial and denominational lines. Many black, white and coloured church leaders contend that they have a moral obligation to oppose the government's racial policies. <u>Apartheid</u> and white domination have been described by the Christian Churches as a "heresy" and a contradiction to the teachings of the gospel of Jesus Christ.
- 390. Other religious groupings including the Muslim Judicial Council, the Southern African Catholic Bishops' Conference, the Black Reformed Churches and the Hindus have all declared their stand against the further entrenchment of the system of <u>apartheid</u> through the tricomeme parliament constituted along racial lines.
- 391. The Working Group at its 625th meeting heard a statement from Rev. Demetris Palos, for the South African Council of Churches. The South African Council of Churches claims a nominal membership and representation of member churches and observer members of some 16 million South Africans. According to the Rev. Palos, approximately 80 per cent of the members of the Constituent Churches were black. The Churches members of the Council were all committed to non-racialism, to integration and church unity. While there were practical problems in relation to that commitment Rev. Palos said that the Churches have taken a position by declaring apartheid "a heresy". He said that the Churches have been committed against apartheid since its inception and adoption as the official policy in 1948. In South Africa there were about 3,000 different denominations and therefore one could not speak of one dominant church; these denominations de facto fall into three groups: some denominations claimed to be non-political; others have traditionally given ideological and theological motivation to apartheid; a third group is of churches belonging to the South African Council of Churches. Many churchmen including Church field workers were victims of banning orders and of other laws of the country. Some were expelled and others detained.
- 392. A recent example of this persecution is provided by the case of Father Smangaliso Mkhatshwa, a Roman Catholic priest. Father Mkhatshwa was detained without trial in the Ciskei from October 1983 to March 1984; he was eventually charged but was acquitted in court. There have been other incidents in Venda, as for instance the case of a Lutheran pastor who died while in police hands.

<sup>\*/</sup> This section is based in part on information drawn from Relocations, the Churches' report on forced removals published by the South African Council of Churches and the Southern Africa Catholic Bishops' Conference, 1984; Ecunews, News Service of the South African Conference of Churches, September/October 1984; Testimony from Rev. Palos (625th meeting); Testimony for the Working Group Kairos, 633rd meeting; The Observer, 9 December 1984; Newsweek, 3, 24 December 1984; The Guardian, 17 November 1984, 7 December 1984 and The Times, 7 December 1984.

- 393. The acrimony between the Church and State in South Africa goes several years back. After the Pretoria government banned multiracial worship in 1966, the Anglican Archbishop of Cape Town hung a notice outside St. George's Cathedral proclaiming "This Church is open to all races at all times". Efforts by the Government to silence the clerics go as far back as the early 1970s, when clergymen such as C.F. Beyers Naude, a white Dutch Reformed Minister, David Russell, a white Anglican priest, and Theo Kotze, the white director of Cape Town's Christian Institute openly criticized the Government. Then following the Soweto rebellion in 1976, the three men as well as other clerics were banned by the Government and effectively silenced.
- 394. Among today's church leading figures is Dr. Allan Boesak, President of the World Alliance of Reformed Churches who in that capacity leads 70 million Christians around the world. At the Conference of the World Alliance of Reformed Churches in Ottawa, in 1982, Boesak successfully led the movement to have the Alliance condemn apartheid as a "heresy" and to suspend the membership of South Africa's white Dutch Reformed churches.
- 395. In an interview with an Australian newspaper, the Sydney Morning Herald, the Rev. Boesak accused the police of committing "the most unbelievable atrocities and called the country's army one of the most sophisticated murder machines in history"; he also accused Pretoria of supporting what was described as "the fascist Afrikaner resistance movement". The Government ordered an investigation to see if Rev. Boesak had violated the Police Act which outlaws such criticism. The investigation had not been concluded at the time of the completion of this report.
- 396. In an exchange with the Minister of Law and Order, who accused Rev. Boesak of lying about the behaviour of the Police, Rev. Boesak was reported to have stated that it was the Minister who was wrong: "the one question the minister does not address is why it was necessary for the police to move into the townships in the first place". Rev. Boesak was not sentenced in the fight against apartheid since the controversy broke out. In a subsequent statement, for example, he said that most people who have suffered under the SADF, either in Namibia or in the townships will agree that it is a question of being subjected to legalized terror. Rev. Boesak is popular with younger South Africans, and is a leading force behind the growing influence of the UDF. Under his guidance as Patron, the UDF has taken on a key role in the campaign against the Government's policies. "Pray for the downfall of this Government" he told a congregation recently "because there are only two alternatives left in South Africa prayer and civil disobedience".
- 397. Another leading Church figure is the 1984 Nobel Peace Prize winner Bishop Desmond Tutu, of the Anglican Church. In Oslo, Norway, recently, receiving his Nobel Peace Prize Bishop Tutu reaffirmed his faith that his crusade for human rights would succeed and he warned the Government that as long as it practised apartheid, it could only reap what it had sown. "There is no peace in southern Africa" the Bishop said, "because there is no justice". Bishop Tutu has also advocated tougher action by the Church against its pro-apartheid members. "The Church must declare that anyone who believes in and practises apartheid will be excommunicated". He has said "You can't be a Christian and at the same time be a perpetrator of apartheid".

- 398. In November 1984, the Government of South Africa attacked yet another leading Church figure in the person of the Most Reverend Dennis Hurley, Archbishop of Durban and president of the Southern African Catholic Bishops' Conference. The Government of South Africa charged Archbishop Hurley with violating the Police Act for saying that the security police's Koevoet counter-insurgency unit had committed atrocities against blacks in Namibia. The Archbishop faces trial in February 1985 for these remarks.
- 399. On 6 December 1984, the Catholic Church in southern Africa issued a powerful and well-documented denunciation of police conduct in countering unrest in African townships around Johannesburg since August. The 38-page report covering the period from August to November 1984, is based on affidavits and statements from between 40 and 50 people who had suffered from or been witnesses of police brutality. The report says that a kind of war is developing between the police and the people. And Archbishop Hurley who released the report said that instead of being guardians of law and order the police were promoters of unrest and disturbance. He also said that he was satisfied that in the overwhelming majority of cases police attack had been unprovoked.
- 400. The report accused the police of the indiscriminate use of firearms, birdshot, rubber bullets and teargas, assaults and beatings, damage to property and callous or insensitive conduct. It also referred to particularly provocative conduct at funerals of people killed by police who it says, harboured the belief they were "at war" with the residents. The report said that irregular police activity had caused a legacy of bitterness and resentment.
- 401. The Bishops' Report concluded that "it saw no hope of reaching a reasonable settlement embracing everybody in South Africa and an end to the continually smouldering unrest unless all its causes and aggravations are honestly faced". According to one report, this was the most scathing criticism yet of police action in the townships, and was "bound to result in strong reaction from the authorities".
- 402. Until Rev. Boesak's recent criticism of the police he had few serious run-ins with the Government. But if he is charged with and convicted of violating the Police Act, Boesak could face up to five years in prison. Other reprisals have been threatened by the authorities, the Government has already said that it intends to prohibit foreign donations to the SACC and to make it a crime to advocate as both Bishop Tutu and Rev. Boesak have done the withdrawal of foreign investment from South Africa.
- 403. In November 1984 the police raided the headquarters of the SACC, and confiscated literature, films and photographs and said that they were investigating charges of high treason against the Council. A State-appointed judicial inquiry known as the Eloff Commission, concluded early in 1984 that the councils support for the goals of such opposition groups as the banned ANC was "causing considerable harm". The Commission was criticized by the Church because it did not have even a single theologian represented and relied entirely on laws and policies of the <u>apartheid</u> regime. In the final analysis its recommendations could have the over-all effect of compelling not only the SACC but any other religious organizations opposed to <u>apartheid</u> to stay away from the struggle against racism.

404. The Working Group has noted several instances in which the Church has called on all Christians to do whatever they can to stop the policy and practice of forced removals. It has pledged to resist forced removals and to support those who do not wish to be compulsorily relocated or who have suffered because of forced removals; and demanded that the Government cancel immediately any further plans for removals or relocations. In its detailed report on forced removals the Church urged the Government to appoint an independent commission to plan firstly for a rapid rate of urbanization and the termination of influx control and secondly for the acquisition of land outside the Bantustans for the purpose of settling those who have been rendered landless and who are without any other means of survival. The Church has committed itself to restoring the land owned by churches to its original fruitfulness and to make it available for the settlement of people who have been dispossessed and to planning the best way in which to redirect church resources from the wealthy urban centres to meet the needs of the poor in impoverished rural communities.

405. The Executive Committee of the South African Council of Churches met in an emergency meeting on 6 September 1984 to consider the crisis situation in the Vaal Triangle and on the East Rand. Members of the Committee visited and interviewed victims of violence and relatives of those who had died in the disturbances. In the light of evidence received the Committee:

- "- recorded its shock and anger at the irresponsible and uncontrolled actions of some members of the South African police;
- expressed its distress and concern regarding the manner in which the Government refuses to admit publicly the root causes of the unrest, which can only increase unless genuine grievances are heard and dealt with in a manner which recognizes the human dignity and rights of all South Africans;
- expressed its solidarity with the tenants, workmen, students and parents in their struggle for justice and a participatory society;
- called on the Government to consult with the acknowledged leaders of the communities and the students concerned and to release all people arrested or detained during the recent elections.
- pledged itself to pray and strive for a society in which the rights and responsibilities of all South Africans are recognized, which the council believes to be the only permanent answer to the recurring unrest which has become endemic in South Africa ever since 16 June 1976".

406. At the Seventh Lutheran World Federation Assembly in Budapest, Hungary, (22 July - 5 August 1984), the Assembly suspended the white Lutheran Churches in South Africa and Namibia. These churches are the Evangelical Lutheran Church in southern Africa (Cape Church) and the German Evangelical Lutheran Church in South West Africa (Namibia).

407. The General Assembly of the United Congregational Church of South Africa (UCCSA) is reported to have taken a hard line against ministers of the church participating in the tricameral parliament or in "homeland" governments. The report states that this could lead to the expulsion within a year of three of the senior church ministers, including the Rev. Allan Hendrickse leader of the Labour Party and leader of the Party in the Coloured Chamber of the new Parliament. He is also a cabinet minister in charge of general affairs. The

decision of the UCCSA would also affect the Rev. Andrew Julies and the Rev. Alwyn Goosen who are also members of the Labour Party in parliament. In its resolutions the Assembly explained that because the church rejected the <u>apartheid</u> philosophy and policy as unbiblical and a sin, <u>apartheid</u> structures such as the new Parliament or "homelands" were to be condemned on the same basis. The recommendations of the Assembly will be submitted to its executive in March 1985.

# B. <u>United Democratic Front</u> (UDF)\*/

408. In January 1983, a steering committee was set up to establish the United Democratic Front (UDF) following a call by Dr. Allan Boesak, President of the World Alliance of Reformed Churches, "for progressive forces to unite in resistance to the Government's constitutional plans". On 20 August 1983, UDF was launched nationally. Between January and August 1983, regional UDF organizations had been set up in the Cape, Transvaal and Natal with branches in several towns and cities. With the national launching of UDF a national, legal organization to co-ordinate legal opposition to apartheid was born. The birth of UDF was heralded and widely acclaimed as a development of major significance in South Africa. 31/

409. The United Democratic Front claims some 645 affiliates and 2 million supporters from every part of the country and every sector of resistance. They come from community/civic bodies, trade unions, sporting and cultural bodies, youth and women's organizations. At a press conference in August 1983, the national interim executive of UDF emphasized that, while it articulated the viewpoint of a broad section of people, it accepted that "the burden of exploitation and discrimination fell on the working class. The main thrust of the organization should therefore be towards the participation of the working people."

410. The patrons elected by the UDF conference included Mr. Hassan Howa, Mr. Nelson Mandela, Ms Hela Joseph, Mr. Frances Baard, Mr. Dennis Goldberg, Mrs. Martha Mahlangu (mother of Solomon Mahlangu), Mr. Johnny Issel, Dr. Beyers Naude and Father Smangaliso Mkhatshwa. The elected presidents were Mr. Archie Gumede, a prominent activist during the 1950s and Chairman of the Release Mandela Committee, Ms Albertina Sisulu and Mr. Oscar Mpetha. Mr. Popo Molefe, a member of the Soweto Committee of Ten, was elected National Secretary. Other elected office bearers had been involved in such organizations as the South African Students' Organization (SASO), the Black People's Convention and the Natal Indian Congress.

411. The Declaration of the United Democratic Front, adopted at the launching conference, stated as its aim the creation of a united democratic South Africa,

<sup>\*/</sup> This section is based in part on information from the South African Institute of Race Relations, Survey of Race Relations in South Africa - 1983 (Johannesburg, 1984); Focus, No. 49, November-December 1983; The Star of 22 and 29 August 1983; the Rand Daily Mail of 22 August 1983; The Citizen of 13 August 1983; the Financial Times of 24 October 1984 and the Detainees' Parents Support Committee Special Interim Report on Detentions: Statistics as at 16 November 1984.

free of bantustans and group areas and based on the will of the people. The conference rejected the Koornhof Bills (the Orderly Movement and Settlement of Black Persons Bill, the Black Communities Development Bill and the Black Local Authorities Bill - the last two of which are now law) "as seeking to deprive African people of their birthright. The conference claimed that in the present "apartheid State" there would be no end to the unequal distribution of land, wealth and resources. The conference alleged that the Government would co-opt "false leaders" within the black community to control the people through the tricameral Parliament and community councils and that repression would continue, unequal education, low wages and attacks on trade unions would persist, while urban dwellers would be divided from rural people and the employed from the unemployed, and the homelands policy would be strengthened.

412. The growth in the status and the popular appeal of UDF, the degree of support for it and the open manifestation of that support are of particular significance in the light of the intense repression of recent years which resulted in detentions, political trials and bannings. Within the context of its broad goals, UDF said that the immediate, principal focus of its activities would be to mobilize against the regime's constitutional proposals. In this the United Democratic Front succeeded in organizing a "successful boycott of the Coloured and Indian elections". UDF is "now campaigning for the Government to abandon apartheid and sit down with the black and Coloured communities to work out a unitary South Africa before the existing system is overwhelmed by violence". 32/ However, negotiating an end to white political and economic hegemony is not on the Government's agenda. Instead, the Government has hinted at a possible ban on UDF or the arrest of its most prominent activitists. 33/

413. Indeed there is evidence that the Government has harassed a number of individuals associated with UDF. People distributing UDF leaflets have been arrested on a number of occasions. On the eve of the Cape Town rally, police seized 40,000 copies of the UDF Newsletter which were later returned after threat of legal action. 34/ On 21 August 1984, a number of UDF officials were arrested and have been held under section 28 of the Internal Security Act. They include Mr. Lekota ("Terror"), National Publicity Secretary, Mr. Essop Jassat, Patron, Mr. Aubrey Mokoena, member of the National and Transvaal Executives, Mr. Curtis Mkondo, Vice-President of Transvaal, and Mr. R.A.M. Saloojee, Vice-President. On 2 October 1984, four more UDF officials were arrested and are now held under section 28 of the Internal Security Act; they are: Mr. Popo Molefe, General Secretary, Mr. Mewa Ramgobin, Treasurer, Mr. George Sewpersadh, member of the National and Natal Executives, and Mr. Murphison Morobe, Organizer, Transvaal. In addition, the President of UDF, Mr. Archie Gumede, who is in the British Consulate in Durban, has been served with a section 28 order. According to the Detainees' Parents Support Committee (DPSC), numerous members, supporters and affiliates have been detained in many parts of the country.

414. Anti-Apartheid News, in an article entitled "Sharpeville 84 - The People Rise Up" makes reference to Government harassment of UDF. "In a last-ditch effort to stop the stay-at-home, the South African Government swooped on UDF and other black leaders on the eve of the poll. Nearly 300 people were arrested and kept in preventive detention. It was to no avail. The mobilization embarked on by UDF many months before bore its fruit".

# C. Women under apartheid \*/ \*\*/

- 415. The African National Congress declared 1984 as the Year of the Women "not simply in tribute to women's resistance but to mobilize them more effectively into the South African liberation struggle".
- 416. Inside South Africa women are reported to be "making a tremendous impact". They have mobilized into organizations which give them a platform from which to air their grievances. They are in the forefront of the campaigns being waged across the length and breadth of South Africa by organizations like the UDF. They have played their part in resisting forced removals, in condemning the injustices and inequalities of the new constitution.
- 417. Among those women whose resilience and courage have inspired thousands of others both inside South Africa and in exile are women like Dorothy Nyembe who was released on completion of a 15-year prison term for assisting the armed struggle and who strengthened by her experiences of repression is now once again active inside South Africa through the Natal Women's Organization. Others like Helen Joseph, despite her age 80 years old have continued to be active in the struggle against apartheid.
- 418. Black women in South Africa are confronted with a daily struggle for survival. The <u>apartheid</u> system means that families are forced to live apart. Scratching a living out of the arid bantustans is virtually impossible, the men therefore are forced to seek jobs in the so-called white areas. They send money home when they can and return home to see their families at best for a few weeks a year. <u>Apartheid</u> thus places immense strain on the family unit and as a result many women find themselves as the sole supporters of their families.
- 419. The majority of women who are forced into the wage sector have to take menial jobs as unskilled or semi-skilled workers. There are few black women who qualify for professional jobs because of lack of education opportunities and the denial of apprenticeships and the very little opportunity of receiving artisanal training. Instead black women find work in the agricultural sector, in textiles canning and processing sectors or as domestic servants. In the Western Cape, black women are in an even more hopeless situation - because this is a so-called Coloured Preference Area - it is almost impossible for black women to obtain employment in industry or other alternative industry they are left to accept jobs in the lowest paid sector of domestic employment. Domestic workers are not covered by minimum wage laws and have no social security or unemployment benefits. Moreover by being employed in separate workplaces, black domestic women workers are isolated from one another, the fact that often their status is illegal leaves them very much at the mercy and goodwill of their employers and the lack of any kind of job security makes it very difficult for them to organize and improve their working conditions.

<sup>\*/</sup> This section is based in part on information drawn from Anti-Apartheid News, November 1984; Testimony from the ICFTU (630th meeting); Report on Women and Children under Apartheid, 17-19 October 1984; Statement on Women and Children under Apartheid, presented by Joyce Sifuba, PAC.

<sup>\*\*/</sup> See also the report of the Ad Hoc Working Group of Experts on the question of apartheid and genocide contained in document E/CN.4/1985/14.

- 420. Joyce Sifuba Chief Co-ordination of Women's Affairs of the Pan Africanist Congress of Azania told a Seminar on Women and Children under Apartheid that black women come the lowest in the industrial production. Estimates were 50 per cent in the service sector, 18.6 per cent in agriculture, 12.8 per cent in factory production. In the professional category black women constituted 11 per cent and were mainly in the nursing and teaching professions.
- 421. The South African Government tries hard to keep black women from entering urban areas for fear of establishing stable urban black communities which would eventually demand permanent residence rights. Even if a husband and wife work for the same employers they cannot live together. Those who seek work in white areas or who simply want to be near their husbands are faced with the constant threat of being repatriated to the bantustans. Of those three million or so blacks expelled from urban areas most of them have been women.

## D. <u>Children under apartheid \*/</u>

- 422. The Working Group heard from the Rev. Palos that the extents of infant mortality in the "homelands" could not be determined since statistics of deaths due to malnutrition and related diseases were not available. However, a doctor of one missionary hospital had estimated that 386 children per thousand were dying of malnutrition and related diseases; of the survivors, 100-200 per thousand would have suffered brain damage. In addition the fact that parents are obliged to leave their children behind in looking for work and survival causes widespread emotional, physical and psychological problems.
- 423. A film shown in South Africa a few years ago called "The last grave at Dimbaza" depicted a situation in the drought-stricken Bantustan of the Ciskei of graves of children lying side by side and showed that not less than five children were buried every day. They were the victims of the diseases which commonly affect children in the bantustans malnutrition, kwashiokor, beri-beri, gastro-enteritis and hunger.
- 424. The Seminar on Women and Children held at Geneva (17-19 October 1984) called on the WHO to look into the condition of women and children in the rural areas as current priorities in South Africa do not accord much to rural areas in South Africa.

#### E. Children in prisons

425. In June 1984, the Minister of Justice, Mr. Coetzee, disclosed in parliament that the youngest sentenced prisoner at 19 March 1984 was aged 13-years - a coloured boy. Of the 367 boys and 36 girls in prison and below the age of 18 years, four were classified as white. In 1983, 3,415 children and infants had either gone to prison with their mothers or were born in prison. Of these 11 were white.

<sup>\*/</sup> This section is based in part on information drawn from a testimony from Rev. Demetris Palos (625th meeting); Report and statement from the Seminar on Women and Children under Apartheid, 17-19 October 1984.

## F. Freedom of Expression \*/

- 426. Two journalists of the <u>Rand Daily Mail</u> were subpoenaed to testify about statements made to them by black political activists. No charges were brought against the two reporters, Miss Jeanette Minnie and Mr. Anton Haber, who were due to appear again in the same court on 30 November 1984.
- 427. Two other journalists, Mr. Eay, Mr. Gahan Watte of the <u>Sunday Express</u> have also been subpoenaed in the case of Miss Minnie and Mr. Haber; their subpoenas were served under section 205 of the <u>Criminal Procedure Act</u>, under which anyone refusing to answer questions from the police can be brought before a magistrate.
- 428. Messages of protest were sent to Mr. P.W. Botha the South African State President by the Director of the International Press Institute and the General Secretary of the National Union of Journalists. Mrs. Helen Suzman PFP's Chief spokesperson on law and order attacked the use of section 205 to compel journalists to disclose their sources of information or to reveal further information given to them in the course of their work. She said the use of section 205 was a crippling blow to the concept of press freedom.
- 429. The State is reported to have withdrawn charges against Allister Sparks, former editor of the Johannesburg Rand Daily Mail and now a freelance correspondent for a number of foreign publications including the Observer of London and the Washington Post. Sparks was accused of violating censorship laws under the Internal Security Act and the Police Act. The charges arose out of articles he had published in foreign newspapers which quoted a banned person and made allegedly false claims about the security police. Whereas banned persons may not be quoted under the country's press laws "they are routinely quoted in publications that appear overseas".
- 430. The South African State President Mr. P.W. Botha told Parliament in November that parliament should recommend imposing statutory controls on the press because of what he called "the sensationalism of some irresponsible papers in this country". Mr. Botha castigated journalists and said the time had come to look again at the recommendations of the Stayn Commission on inquiry into the mass media. The Commission recommended in 1982 the compulsory registration of all journalists on a central roll, from which they could be removed for "improper conduct" and they will be barred from executing their profession. The proposals were shelved after the controversy that they gave rise to in South Africa and abroad.

<sup>\*/</sup> This section is based in part on information drawn from The Times, 19, 22 November 1984; International Herald Tribune, 21, 30 November 1983; Le Monde, 22 November 1983.

#### Part two - Namibia

#### Introduction

431. In its most recent report, the Ad Hoc Group of Experts described the efforts made by the United Nations to implement a peaceful settlement through negotiations involving all parties concerned. It also referred to a number of measures taken by the South African authorities to impose an internal settlement in Namibia, in particular the establishment of a State Council on 18 July 1983 by proclamation of the Administrator-General on behalf of the South African authorities (Proclamation AG.14 concerning the establishment of a State Council for South West Africa). The setting up of such a body was considered to be such as to impose an "internal settlement" in Namibia, and would appear to jeopardize the implementation of Security Council resolution 435 (1978) which reads as follows:

#### The Security Council,

Recalling its resolutions 385 (1976) of 30 January 1976 and 431 (1978) and 432 (1978) of 27 July 1978,

Having considered the report of the Secretary-General submitted pursuant to paragraph 2 of resolution 431 (1978) and his explanatory statement made in the Security Council on 29 September 1978 (S/12869),

Taking note of the relevant communications from the Government of South Africa to the Secretary-General,

Taking note also of the letter dated 8 Septemebr 1978 from the President of the South West Africa People's Organization to the Secretary-General,

Reaffirming the legal responsibility of the United Nations over Namibia,

- 1. Approves the report of the Secretary-General on the implementation of the proposal for a settlement of the Namibian situation and his explanatory statement;
- 2. Reiterates that its objective is the withdrawal of South Africa's illegal administration from Namibia and the transfer of power to the people of Namibia with the assistance of the United Nations in accordance with Security Council resolution 385 (1976);
- 3. Decides to establish under its authority a United Nations Transition Assistance Group in accordance with the above-mentioned report of the Secretary-General for a period of up to 12 months in order to assist his Special Representative to carry out the mandate conferred upon him by the Security Council in paragraph 1 of its resolution 431 (1978), namely, to ensure the early independence of Namibia through free elections under the supervision and control of the United Nations;
- 4. Welcomes the preparedness of the South West Africa People's Organization to co-operate in the implementation of the Secretary-General's report, including its expressed readiness to sign and observe the cease-fire provisions as manifested in the letter from its President of 8 September 1978;

- 5. <u>Calls upon</u> South Africa forthwith to co-operate with the Secretary-General in the implementation of the present resolution;
- 6. Declares that all unilateral measures taken by the illegal administration in Namibia in relation to the electoral process, including unilateral registration of voters, or transfer of power, in contravention of resolutions 385 (1976), 431 (1978) and the present resolution, are null and void;
- 7. Requests the Secretary-General to report to the Security Council not later than 23 October 1978 on the implementation of the present resolution.
- 432. During the period under review, among the most significant developments considered by the Ad Hoc Working Group of Experts, mention should be made of the escalation of attacks by South Africa on civilians and refugee centres in Angola, despite the agreements concluded by South Africa and Angola (see also para. 441), the continued arrest and widespread intimidation of members and supporters of SWAPO and of other persons, and the continued detention in bad conditions of captured Namibians.

#### 1. Efforts to secure a peaceful settlement

- 433. It should be recalled that the  $\underline{\text{Ad Hoc}}$  Working Group of Experts referred in its previous report (E/CN.4/1984/8, para. 365) to a report submitted by the Secretary-General on Namibia (S/15943) in accordance with Security Council resolution 532 (1983).
- 434. During the consideration of the Secretary-General's report, a number of speakers urged the Security Council to set a time-frame for the implementation of resolution 435 (1978). In that connection, during the discussion, the representative of the Republic of South Africa recognized that the two issues outstanding, namely the choice of the electoral system and the problem concerning the composition of the United Nations Transition Assistance Group for Namibia (UNTAG), had been settled. He also said that it would be "futile for the Security Council to attempt to set any deadlines or time-frames for implementation until the matter of the Cuban presence in Angola had been resolved, and it should be understood that South Africa would not accept any such deadlines" (S/PV.2481, p. 71).
- 435. Consequently, on 28 October 1983, the Security Council adopted resolution 539 (1983) on the question of Namibia, in which it expressed indignation that South Africa had obstructed the implementation of resolution 435 (1978), rejected South Africa's insistence on linking the independence of Namibia to irrelevant and extraneous issues, took note that the consultations undertaken by the Secretary-General had confirmed that all the outstanding issues relevant to resolution 435 (1978) had been resolved, and, lastly, requested the Secretary-General to report to it on the implementation of resolution 539 (1983) not later than 31 December 1983. The Security Council also decided to meet as soon as possible following the Secretary-General's report for the purpose of reviewing progress in the implementation of resolution 435 (1978).
- 436. Pursuant to that resolution, the Secretary-General transmitted a supplementary report, dated 29 September 1983 (S/16237), in which he informed the Security Council that his discussions with the representatives of the Government of South Africa had produced no positive development concerning the implementation of the United Nations plan for the independence of Namibia.

- 437. For its part, the General Assembly at its thirty-eighth session adopted resolutions 38/36 A and B, in which it reaffirmed the inalienable right of the Namibian people to self-determination, freedom and national independence, and firmly rejected the attempts to modify the United Nations plan and establish a linkage between the question of Namibia and presence of Cuban forces in Angola.
- 438. Attention should also be drawn to a number of reactions from intergovernmental institutions with particular reference to the Namibian question.
- 439. The question of the implementation of the United Nations plan for the independence of Namibia was one of the main topics considered by the Council of Ministers of the Organization of African Unity at its fortieth ordinary session, held in Addis Ababa from 27 February to 5 March 1984. As a result, a resolution was adopted reaffirming that resolution 435 (1978) remained the only basis for negotiations for the solution of the Namibian problem and welcoming Security Council resolution 539 (1983) (see paragraph 435 above) in which the Council stated clearly its opposition to the linkage established between this question and the presence of Cuban troops in Angola.
- 440. In the same context, at the Commonwealth Heads of Government Meeting, held from 23 to 30 November 1983 at New Delhi, the final communiqué rejected the idea of "linkage" (see para. 374 of E/CN.4/1984/8). Lastly, in the Final Communiqué of the fourth Islamic Summit Conference, held from 16 to 19 January 1984 at Casablanca, the Islamic Conference reaffirmed its support for the people of Namibia in their struggle.
- 441. A number of reports on the period in question referred to the willingness of SWAPO to enter into direct negotiations with South Africa, and SWAPO's acceptance of proposals concerning disengagement of South African forces from Namibia within a period of 30 days. The then Prime Minister Mr. Botha, said in this connection that negotiations with SWAPO were possible, but they should be conducted by the Administrator-General of South Africa in Namibia, who would lead a delegation of the territory's political parties. In addition to the question of "disengagement", two other developments should be noted: (1) the talks between South Africa and Angola; (2) the negotiations between South Africa and the leaders of SWAPO. regard to the talks between South Africa and Angola, it was pointed out that those contacts had taken place under the auspices of the United States of America through the establishment of an intergovernmental commission entrusted with the task of observing the disengagement of the South African forces. The agreement for supervising a permanent cease-fire on the frontier between Angola and Namibia was reported to have been concluded at Lusaka (Zambia) by South African and Angolan delegations. 35/
- 442. The conclusion of that agreement had been regarded as a stage which made for optimistic hopes of a settlement of the Namibian question. According to various reports, the peace plan provided for the following stages: (1) the 1,000 to 1,500 troops of the South African forces still estimated to be in southern Angola would be withdrawn once the Angolan Government announced that the conditions had been met for the departure of Cuban troops from Angola; (2) the South African Government, in its turn, would announce that, since the Cubans were "in the process of leaving", it would begin to implement Security Council resolution 435 (1978) and reduce its troop strength in Namibia; (3) the United States of America would establish diplomatic relations with Angola; (4) United Nations special peacekeeping forces would then be dispatched to Namibia to supervise a cease-fire between the South African troops and the members of SWAPO and, subsequently, to oversee the elections with a view to the formation of an independent constituent assembly, in accordance with Security Council resolution 435 (1978). It should, however, be noted that in commenting on these reports, a spokesman of the South African Ministry for Foreign Affairs reportedly said that the facts, as presented, did not faithfully reflect South African views on the question. 36/

# 2. Militarization of Namibia and attacks against neighbouring States

- 443. In its previous report (E/CN.4/1984/8), the Ad Hoc Working Group of Experts referred to the large-scale South African military presence throughout the territory of Namibia, particularly in the north. The Group also reported that repression took the form of systematic attacks on civilians to prevent them from helping SWAPO, with those attacks leading to massacres, disappearances, detentions and deaths in detention. The total South African Defence Force (SADF) troop strength in Namibia is still estimated at 100,000. During its visit to Luanda, the Ad Hoc Working Group saw films showing the extent of the destruction caused by the bombings (see para. 31).
- 444. According to information brought to the Group's attention, on 28 March 1984 the Government of South Africa announced a 21.4 per cent increase in military expenditure for 1984. That increase in allocations for defence and security clearly reflected South Africa's intention to continue its illegal occupation of Namibia and aggression against the Namibian people and the Front-Line countries. Discussing the consequences of the increase in military expenditure, the Rand Daily Mail said on 2 February 1984 that the war being waged by South Africa in Namibia cost at least R2 million a day and more than 75 lives a year. Moreover, its political, diplomatic and social cost to South Africa was enormous. At the domestic level, the political cost was the same as the "Viet Nam syndrome", in the sense that South Africans were increasingly questioning the presence of their army in Namibia.
- 445. During the period under review, the Ad Hoc Working Group of Experts was informed of the persistent large-scale attacks launched against Angola by the South African forces stationed in Namibia. These raids, termed "hot pursuit" operations or "pre-emtive strikes" are reported to have increased considerably in scale and frequency during the past four years.
- 446. In addition to the violations of human rights affecting individuals and the right to work and freedom of association, the present report considers 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 some information available during the period under review, the Ad Hoc Working Group of Experts, also examines the right to education, the state of health of the population, the right to freedom of expression, and the use of chemical defoliants and toxic gases by the army.
  - I. VIOLATIONS OF HUMAN RIGHTS AFFECTING INDIVIDUALS
  - A. Capital punishment
  - 1. Relevant legislation
- 447. As described in previous reports of the Ad Hoc Working Group of Experts, the various South African laws providing for the death penalty have been made applicable to Namibia. The Terrorism Act, No. 83 of 1967, which prescribes the death penalty for a wide range of "terrorist activities", the Sabotage Act (General Law Amendment Act No. 76 of 1962) and the Internal Security Act, 1982 (formerly known as the Suppression of Communism Act), as amended in 1976, are used in Namibia to the exclusion of all other legislation in this sphere (E/CN.4/1270, para. 296).

448. No new additional legislation has been made applicable to Namibia during the period under review to reduce or extend the circumstances in which the death sentence may be applied.

#### 2. Summary of evidence and information received

- 449. As the Ad Hoc Working Group of Experts has pointed out, the South African Government publishes no separate figures on executions of convicted Namibian prisoners. However, as the Group also noted in previous reports, relatively few captured SWAPO guerrillas have actually been tried for taking part in guerrilla activities.
- 450. During the period under review, however, the Group was informed of the execution of two brothers who had been convicted of murder. Another case was also brought to its attention in early 1984. A memebr of "Koevoet" (the special counter-insurgency police unit), Mr. Jonas Paulus, aged 23, was sentenced to death on 6 December 1983. In September 1983, the Windhoek Supreme Court had found him guilty of the following offences: one murder, three attempted murders, one rape and four armed robberies with aggravating circumstances. Another member of Koevoet, Mr. Paulus Matheus, aged 22, was also sentenced on 6 December 1983 to 12 years' imprisonment. This was apparently the first time that a member of Koevoet had been found guilty of a serious offence. All the acts in question were committed on 2 January 1983, when the two men went to several Ovambo villages. 37/

#### B. Violations of the right to life

- 451. During the period under consideration, the Ad Hoc Working Group of Experts once more received evidence and information relating to:
- (a) Atrocities committed during operations carried out in Namibia by Koevoet, the special counter-insurgency police unit;
  - (b) Cases of disappearances;
- (c) The situation of persons captured at Kassinga in May 1978 and imprisoned at Hardap Dam camp, near Mariental.

#### 1. Atrocities committed by Koevoet

- 452. According to concordant testimony by several persons, massacres continue to be carried out by Koevoet units, particularly in the Ovambo and Kavango zones. In his testimony before the Group (612th meeting), Mr. Malcolm Smart, Amnesty International representative, noted that it was very difficult to determine exactly how many persons had been detained for political reasons, particularly since several security agencies were operating in northern Namibia, where most detentions occurred. He stated that those agencies included the security police, the Koevoet paramilitary police unit and the South West Africa Territory Force and that the Koevoet units maintained separate camps and bases throughout the north where detainees could be held at any time in conditions approaching total secrecy, without access to legal counsel, contact with their families or any means of appeal against their imprisonment without trial or redress.
- 453. In a statement delivered to the International Conference in Solidarity with the Front-Line States and for National Liberation and Peace in Southern Africa held in Lisbon from 25 to 27 March 1983, Mr. Sam Nujoma, the President of SWAPO,

said that Koevoet was "nothing else but a death squad trained for the singular purpose of murdering Namibian people". In this connection, other convergent sources describe Koevoet as a killing machine which uses highly skilled interrogators and "extermination experts", several of whom were present during court proceedings 38/ (see para. 450 above).

- 454. The Group has received other information concerning two victims of the atrocities committed by Koevoet in Namibia. The information relates to the deaths in detention of Mr. Jonah Hamukwaya and Mr. Kudiumu Katanga. The Group drew the Commission's attention to these two cases in its previous report (E/CN.4/1984/8, paras. 416-417). The responsibility of Koevoet members was recognized in both cases, even though the penalties imposed were not commensurate with the acts committed.
- 455. With regard to the case of Mr. Jonah Hamukwaya, who died in prison at Rundu (Kavango) on 18 November 1982, it is now known that he was arrested by members of Koevoet. The Koevoet personnel who had him in custody said that he had fallen down a flight of steps, thus suffering the injuries that caused his death. In 1983 during the proceedings, the magistrate warned three Koevoet members that they might be prosecuted in connection with Mr. Hamukwaya's death, but, in the end, although the magistrate ruled that the death was a direct result of "an unlawful act or omission", he held that those responsible could not be adequately identified. Thus, no member of Koevoet was prosecuted for Mr. Hamukwaya's death and it seems unlikely that any further action will be taken in that case.
- 456. Koevoet members were also involved in the second case, namely, that of the death of Mr. Katanga. His death lead not to an inquest, but to the prosecution of four Koevoet members. The evidence disclosed during the trial was that Mr. Katanga had been apprehended by Koevoet members and forced to run in front of their military vehicle for several miles in very hot weather. While he was running, he was assaulted and he eventually collapsed from exhaustion and died. The Koevoet members were charged, not with murder, but with culpable homicide, which is of course a lesser offence.
- 457. Another particularly horrifying case was brought to the attention of the Ad Hoc Working Group of experts by Mr. Smart (612th meeting) and confirmed by other sources: that of Mr. Ndana Kapitango, aged 63, who, during questioning by two members of the security forces, was hung over a fire and beaten very severely. As a result of such treatment, one of his arms had to be amputated. According to information made available to the Group, it was disclosed that the two soldiers who had taken part in such atrocities had been fined and cautioned. 39/

### 2. <u>Cases of disappearances</u>

458. With regard to the specific question of disappearances in Namibia, the Ad Hoc Working Group of Experts has received information that confirms what was stated in its most recent report (E/CN.4/1984/8). According to concordant sources of information, the Council of the Bar Association sent the Van Dyk Commission of Inquiry a detailed note in which it referred to security laws applied in Namibian territory and confirmed that some of the persons being held by the security police in Namibia had disappeared without a trace. In that connection, it referred to the arbitrary and unjustifiable application of the security laws which was so dramatically exemplified by the disappearance of a civilian, Mr. Johannes Kakuva. According to the Council, the security police never

ordered a genuine inquiry into the causes of the disappearance. The Council also stated that Koevoet had killed civilians without conducting any investigations and that the civilian population lived in fear of the police and the armed forces.

- 459. In this connection, Mr. Malcolm Smart (612th meeting) stated that the court had rejected the account given by the security police of the disappearance of Mr. Kakuva. It had received evidence that the security police had not investigated the disappearance properly when complaints had first been made. He also stated that, as far as he knew, the officer in charge of Mr. Kakuva's interrogation was still on active duty with the security police in Namibia. He had not been prosecuted, or suspended, or disciplined in any other way. An appeal against the court's ruling was being brought by the South African Government. According to certain sources, moreover, Judge Van Dyk, the President of the Commission of Inquiry, stated, during a press conference held on 25 May 1984 that the complaints were all being investigated and were on the whole, justified and that he hoped that the inquiry would be completed by late 1984 and that he would be able to submit his report in mid-1985. 40/ In this connection, the Government of the Republic of South Africa indicated in a note dated 23 November 1984 that no decision had yet been taken by the Appeal Court.
- 460. It should be noted that, in resolution 38/36 A, the General Assembly demanded that South Africa should account for all "disappeared" Namibians and release any who were still alive, and declared that South Africa would be liable for damages to compensate the victims, their families and the future lawful Government of an independent Namibia for the losses sustained.
  - 3. Case of persons captured at Kassinga in May 1978 and imprisoned at Hardap Dam camp, near Mariental
- 461. The  $\underline{\text{Ad Hoc}}$  Working Group of experts has referred to the situation of persons captured at Kassinga in previous reports (E/CN.4/1485, paras. 410-426; E/CN.4/1983/10, paras. 581-582). In its most recent report (E/CN.4/1984/8), the Group described an ICRC visit to the Mariental camp, where the ICRC delegation met 140 persons detained under Proclamation AG.9 of the Administrator-General, as well as a further 14 Angolan prisoners of war.
- 462. According to other information on the situation of these detainees, some were apparently released as a result of considerable international pressure.
- 463. Mr. Jacob Hannai (613th meeting) told the Group that 54 Kassinga prisoners had been released during the period under review.
- 464. With regard to this case, the Ad Hoc Working Group of Experts feels duty bound to draw the Commission's attention to developments which occurred during the period under review. It has received information indicating that, during a hearing before the Windhoek Supreme Court, one of the most impressive teams of lawyers in South West Africa accused the State President and the Minister of Justice of having acted unlawfully by refusing to allow the court to rule on the application for release made by 37 prisoners who were being held under the security laws in Mariental camp. The defence claimed that the 37 persons had been detained for over a year, without any warrant, before the South West African Security Act was amended in order to make their detention legal. Proclamation AG.9 was thus amended in 1979 to empower the Administrator-General to extend the prison terms of detainees. According to the same sources, the hearing at which the application for the release of the 37 prisoners was to be submitted was prohibited by the

Minister of Justice, Mr. Kobie Coetsee, who stated on 17 April 1984 that it could not be held "because it was not in the national interest". In that connection, the Minister explained that, under article 103 ter of the Defence Act, proceedings involving members of the South African Defence Force could be suspended if the latter had acted "in good faith" in order to prevent or suppress terrorism in an operational zone. However, according to the same sources, Mr. Sidney Kentridge, the applicants' lawyer, held that the decree prohibiting the trial from continuing was null and void on the grounds that it anticipated an event which had not yet taken place, whereas the Act in question referred specifically to acts which had been committed. He stated that, since the prisoners' first year of detention had been unlawful and unauthorized, the same was true of their subsequent five years of detention.

- 465. The international and national press got onto the case, which aroused indignation on the part of influential circles abroad. The trial financed by a group of American jurists, the Lawyers' Committee for Civil Rights Under Law, was followed with a great deal of attention.
- 466. According to the latest information, however 31 of the 37 Mariental prisoners were suddenly released on 27 April 1984, but the Windhoek Supreme Court has not yet made a ruling on the cases of those who are still in detention. 41/
- 467. In this regard, the South African Government stated, in a note dated 23 November 1984, that the persons detained in the Mariental military camp had all been released, except for one, Mr. Petrus Haimbondi, born on 13 May 1955 at Enjandra, Ovamboland. Mr. Haimbondi is still being detained under Proclamation AG.26.
- 468. An anonymous witness, describing his experience as a missionary in Namibia up until 1983, told the Ad Hoc Working Group of Experts that he and the main churches - particularly those in the indigenous area of Namibia - had always protested, both in the name of the victims of the People's Liberation Army of Namibia and in the name of the victims of the South African forces, for they could not agree that combatants should assume the right to decide who was to live and who was to die. Since he had lived among the inhabitants of the war zone, he wished to specify that the South African Defence Force and the South African police forces had committed many more atrocities than had the freedom fighters. He also said that practically everyone who was arrested, even those who were innocent, were beaten up or tortured by means of electric shocks to force them to confess to reveal information. Referring to one particular occasion, he said that he had heard gunfire near his mission and had later counted 1,571 empty shell cases left at the site where the shooting had taken place. The South African soldiers had machine-gunned civilians simply because they thought that a member of SWAPO might be present. The dead included two children who had just happened to be there.
  - C. Torture and ill-treatment of political prisoners and captured freedom fighters

#### 1. Relevant legislation

469. The Ad Hoc Working Group of Experts noted in previous reports that South African laws providing for long periods of detention and imprisonment for "political offences", as well as legislation covering detainees, have been made applicable to Namibia and are still applied (see E/CN.4/1020/Add.1, para. 9; E/CN.4/1311, paras. 371-376). These include the Prisons Act, No. 8 of 1959,

and the General Law Amendment Acts, Nos. 76 of 1962, 101 of 1969 and 94 of 1974; Act No. 76 was applied to Namibia with retroactive effect in 1966 but has since been largely superseded in usage by the Terrorism Act, No. 83 of 1967. The great majority of Namibian political prisoners now serving sentences have been convicted under the Terrorism Act. The provisions of the Riotous Assemblies Act of 1956 were applied for the first time in Namibia in 1976 under the Internal Security Act of 1976, which provides for indefinite preventive detention and the banning of any persons deemed likely to endanger the maintenance of public order. These laws taken together thus give the South African authorities in Namibia a wide range of repressive measures.

- 470. In addition, a number of laws and emergency proclamations specifically designed for use in Namibia and enacted mainly by the Administrator-General on behalf of the South African authorities are still in force. These include the Security Districts Proclamation, AG.9 of 1 November 1977, which replaced the emergency measures in force in northern Namibia since the contract workers' strike of 1971-1972; Proclamation R17 of February 1972 covering Ovamboland; its successor, R89 of May 1976 covering Ovamboland, Kavangoland and East Caprivi; Proclamation AG.26 of 18 April 1978, Provision for the Detention of Persons in order to prevent Political Violence and Intimidation; Proclamation AG.50 of July 1978, which amended Undesirables Removal Proclamation No. 50 of 1920 so as to transfer the power to expel such persons to the Administrator-General (see E/CN.4/1311, E/CN.4/1365, E/CN.4/1429 and E/CN.4/1984/10). In recent years, the security forces have increasingly used the two proclamations introduced specifically to provide for detention without trial, AG.9 and AG.26, to arrest and detain large numbers of SWAPO supporters, while the Terrorism Act has been used less frequently. Under Proclamation AG.26, the Administrator-General has unqualified powers to detain any persons whose actions are felt to "promote violence or intimidation" indefinitely, without charge and without recourse to lawyers or to the courts. Initially, the police were not empowered to interrogate detainees under the Proclamation, but, in May 1979, powers of interrogation were introduced through an amendment authorizing the justice of the peace to conduct interrogations. While from time to time figures are issued by the South African authorities for the numbers of detainees held under Proclamation AG.26, they are never revealed for detainees held under Proclamation AG.9.
- 471. Of particular note is a clause of Proclamation AG.9 which protects any government or public official (including the police) and any member of the armed forces against prosecution for injuries inflicted through actions taken under the Proclamation. This reinforces the South African Indemnity Act, No. 13 of 1977, which indemnifies the State or its servants against civil or criminal proceedings in connection with the prevention or suppression of civil disorder and which has been made applicable to Namibia. Proclamation AG.9 was extended on 10 May 1979 when the magisterial districts of Windhoek, Tsumeb, Outjo, Okahandja, Otjiwarongo and Grootfontein were all declared security districts. Since certain section of Proclamation AG.9 have been extended to other parts of north-western Namibia, over 80 per cent of Namibia's population is now subject to de facto martial law.
- 472. In an earlier report (E/CN.4/1983/10), the Ad Hoc Working Group of Experts gave further details on an amendment to Security Districts Proclamation AG.9 which requires any person in a security district who gives medical attention to persons wounded in "suspicious circumstances" to report the matter without delay to the security forces. The amendment is contained in Act AG.161, adopted on 13 October 1980.

- 473. During the period under review, the Ad Hoc Working Group of Experts received information concerning the judgement handed down by the Windhoek Supreme Court on 2 April 1984 with regard to the application of Proclamation AG.9. The families of three men who were detained in 1983, one of whom was a Lutheran Church pastor in the Kavango area, went to the Supreme Court to seek an order to prohibit the security police from assaulting the detainees, as had been alleged, or from holding them in solitary confinement. The lawyers for the three persons also requested that they should be examined by a doctor of their own choice and that they should be able to receive visits. The statements by the three detainees, Pastor Ausiku, Mr. Gideon Nestor and Mr. Severinus Siteketa, painted a particularly disturbing picture of detention conditions and the interrogation methods used by the security police. The Supreme Court's judgement revealed. inter alia, that the three detainees had been held in solitary confinement and denied any opportunity to exercise in the open air during their period in custody and that they had been subjected to electric-shock treatment. Such methods were commonly known as the "third degree" and were not authorized by any law in the territory, since the courts of justice were supposed to take every necessary measure to prevent such situations from occurring. In the case in question, the Supreme Court stated that persons detained under Proclamation AG.9 were entitled to cells of a reasonable size and to decent hygienic conditions and that they should not be held in solitary confinement.
- 474. Referring to that judgement, Mr. Malcolm Smart (612th meeting) stated that one promising aspect, in a sense, of the situation in Namibia was that there had been some more significant efforts through the courts to bring cases to light.
  - 2. Summary of evidence and information received
- 475. The information received by the  $\underline{\text{Ad Hoc}}$  Working Group of Experts on the subject is analysed as follows:
  - (a) deaths of detainees;
  - (b) cases of detention;
  - (c) other forms of persecution of the population.
  - (a) Deaths of detainees
- 476. In his testimony to the Ad Hoc Working Group of Experts at its 612th meeting, Mr. Malcolm Smart analysed the situation in Namibia, contrasting it with the position in South Africa. In response to international and local concern about the high rate of deaths among political detainees, certain requirements had been introduced in South Africa, for example, there should be medical examination of detainees as soon as possible after arrest, they should have regular visits by a medical officer and a magistrate, there should be an inspectorate of detainees which looks into the living conditions in the prisons, and so on. That did not mean, he said, that the requirements were satisfactory or had proved adequate in South Africa, but it should be noted that they did not even exist in Namibia, something which gave reason to fear that the risks to detainees in that territory were even greater and more acute than in South Africa itself. He also noted the difficulty of finding out the number of detainees in Namibia. In contrast to the situation in South Africa itself, where on occasion the Minister of Justice issued some statistics on detainees in response to parliamentary questions, in Namibia there were no such figures. He added that there was some evidence to suggest that the security authorities in Namibia were negligent of detainees'

interests and basic human rights to such an extent that they did not maintain comprehensive records relating to the identity of detainees, the duration of their custody, their place of detention, etc. In fact, there was a virtual absence of safeguards against torture or ill-treatment of untried political detainees in Namibia.

477. The Ad Hoc Working Group of Experts was once again informed that, in many cases, deaths in detention had been learned about long after the incidents had occurred. In this connection, two cases were drawn to the attention of the Ad Hoc Working Group of Experts. Firstly, it is alleged that only in 1984 did the Administrator-General admit that Mr. Elogo Gedhard had died on security police premises in Ovamboland after his arrest in August 1981. In response to a letter from Mr. Gedhard's wife demanding an inquiry in November 1983, the Administrator-General reportedly stated that an investigation conducted by the Oshakati Court had found that no one could be held liable for Mr. Gedhard's death. In the second case, Leonard Kamati, a young student aged 18, was found dead on the Angola-Namibia border six days after his arrest by Koevoet on 21 December 1982. In evidence given to the Tsumeb Court, a police officer stated that, under questioning, Mr. Kamati confessed that he had acted as a guide for members of SWAPO. However, he rejected the allegations of the victim's father attributing responsibility to the security police forces. 42/

478. With regard to the other two cases of deaths (Mr. Jonah Hamukwaya and Mr. Kaduno Katanga) already brought to the attention of the Ad Hoc Working Group of Experts (E/CN.4/1984/8 and paras. 455-456 above), according to information received, inquiries have failed to produce satisfactory results to date. In his testimony to the Ad Hoc Working Group of Experts, Mr. Smart, whose analysis of the two cases concurs with that of other sources, stated that, during the inquest into the circumstances of Mr. Hamukwaya's death on 18 November 1982, the court, although recognizing that the death had resulted from "an unlawful act or omission" on the part of Koevoet personnel, held that those responsible could not adequately be identified. 43/

479. On the other hand, as already indicated, the results of the investigation into the circumstances of Mr. Katanga's death and the responsibilities arising therefrom resulted in the prosecution of four members of Koevoet. The evidence showed that Mr. Katanga had been apprehended by Koevoet members and forced to run in fromt of their vehicle for several miles when the temperature was very high, until he collapsed and died. The Koevoet personnel concerned were charged with culpable homicide: two were acquitted and two others convicted on an assault charge, and fined. During the proceedings, it is not clear whether one pertinent fact came out, namely that Mr. Katanga was a deaf mute and could not therefore respond to the policemen's orders. 44/

#### (b) Cases of detention

.30. During the period under review, the Ad Hoc Working Group of Experts was informed in particular of the release of 15 Namibian political prisoners who had been serving lengthy prison sentences at Robben Island since 1968. These 15 prisoners were released in May 1984 after being transferred to the central prison at Windhoek. According to the South African Department of Justice, there are now only 21 Namibians still held in South African gaols - 20 at the Robben Island prison and one person, Eliaser Tudaheleni, at the central prison in Pretoria.

- 481. In a statement to the Ad Hoc Working Group of Experts, Mr. Herman Toivo Ja Toivo, founder member of SWAPO, released on 1 March 1984, reported on his experience in Robben Island prison where he served almost 16 years of a 20 year prison sentence. He explained that the prison was reserved specially for black male political prisoners and that the regime there was designed to humiliate them. They were subjected to very harsh conditions, and warders frequently set police dogs on them. Prison food was appalling, and discrimination was applied to the blacks, since coloured and Indian prisoners received bread, coffee and tea, whereas African prisoners had only porridge. At mid-day, all prisoners were given either boiled or crushed mealies. The work was very hard, either in a stone quarry or in a lime quarry. For a time there had been a quota system, with every prisoner being forced to complete his quota for the day or be punished, but that system had not applied in his section of the prison, where only a few detainees had been housed.
- 482. Mr. Toivo Ja Toivo described the classification of prisoners into "A", "B", "C" and "D" categories and pointed out the dangers inherent in category "A". In that category, a prisoner had the most privileges: he could write and receive more letters, have more visits and also buy certain groceries. However, in order to retain those privileges, category "A" prisoners were obliged to co-operate with the prison staff. The International Committee of the Red Cross had helped political prisoners and had brought pressure to bear on the prison authorities to introduce changes in the system. The witness added that, by the time of his release, a number of improvements had been made. ICRC had undertaken to pay for spectacles and dentures for the prisoners under an agreement with the South African authorities. In 1982, however, the agreement had been abrogated and the prisoners had been told that, in future, they would have to pay for such items themselves. The prisoners had then taken the matter to court, alleging breach of contract with ICRC. Up to the time of his release, the authorities had opposed any request of that kind. Lastly, he said that, in 1979-1980, the prison authorities had also promised ICRC that they would introduce a general diet for all prisoners throughout South African gaols, but up to the time of his release, that promise had not been kept.
- 483. According to information available to the Working Group, Mr. Toivo Ja Toivo was elected by SWAPO as its Secretary-General soon after his release.
- 484. Mr. Jacob Hannai (613th meeting), Deputy Chief Representative of SWAPO in western Europe, after confirming the statements made by Mr. Toivo Ja Toivo, said he wished to inform the Ad Hoc Working Group of Experts of a particularly serious incident on 10 July 1984 at Onanjokwe hospital, on the occasion of a routine visit by South African soldiers looking for SWAPO members. While three officers were being escorted round the hospital by a doctor, the other three had been seen to dig a hole outside the maternity ward and bury something. After their departure, the police had been called in, the hole had been investigated and explosives had been found and defused. According to the witness, the South African Defence Force had denied all responsibility in that affair.
- 485. During its mission of inquiry, the <u>Ad Hoc</u> Working Group of experts heard three particularly alarming statements testifying to prison conditions in Namibia. These statements were made by Mr. Titus Ngungaa Mbaeva (617th meeting). Mr. Matheus Makau Mulondo (617th meeting) and Mr. Thomas Festus Amkwele (617th meeting). The latter two persons were subjected to particularly atrocious and degrading treatment. Mr. Mulondo was arrested on 19 June 1976 and taken in a truck to the Ombundu military base, where he was shackled to a wall and made to drink salty water; the police then put a hood over him and pushed his head

repeatedly into a bowl of water and applied electric shocks to his entire body. His right leg was cut with a knife. The Ad Hoc Working Group of Experts was able to verify that he bore a scar at that point. In addition, he was kept standing and awake for 15 days, so that his legs swelled. Among his torturers, the witness mentioned Captain Debnar, Captain Botha, Captain Nel, Captain Coffee and Jackson Nekondo. The witness stated that he knew some of those policemen and had been able to identify others by hearing the names used between themselves. Mr. Amkwele, who was arrested in April 1978, said that he had been interrogated every day. He had been suspended upside down and then made to stand holding up a chair for nearly 24 hours. He was taken into the bush and made to dig a grave; he was told to lie in it and was partly buried. Among the police officers present, the witness recognized Captain Coffee, Captain Nel, Captain Botha and Joseph Angula. The witness stated that he had been accused of terrorism and kept in solitary confinement under the AG-6 ordinance, which permits detention without trial.

#### (c) Other forms of persecution of the population

486. During the period under review, the Ad Hoc Working Group of Experts received information on cases of attempts at forcible induction in the army. Erick Binga, aged 21, a member of SWAPO, was called up to serve in the South West Africa Territory Force in an Infantry Battalion based in Walvis Bay. His father, Eduard Binga, asked the Windhoek Supreme Court to declare his son's conscription null and void. According to testimony gathered by the Ad Hoc Working Group, it is a unique case in Namibia's history, contesting the application of South African legislation in Namibia. It is one of the strongest challenges to South Africa's legitimacy in Namibia since the ruling of the International Court of Justice in 1971. According to testimony by Mrs. Barbara Konig, who appeared before the Ad Hoc Working Group of Experts at its 611th meeting, if the case had succeeded it would have set a precedent.

487. Before going on to discuss this extremely important case, it should be pointed out that, in October 1980, the President of the Republic of South Africa issued a proclamation, No. 198, which extended the provisions of the South African Defence Act to black Namibians between the ages of 16 and 25, who could thus be called up for the armed forces. Previous to that, only white Namibians were conscripted into the South West Africa Territory Force, which is in effect an arm of the South African Defence Force and under its control.

488. As to the case itself, in November 1982 Mr. Erick Binga had been called up for military service in the South West Africa Territory Force from January 1983 to January 1985. He was due to join the Second South African Infantry Battalion, for military training in Walvis Bay. After he had made several attempts to gain exemption from military duty and failed, he applied to the Windhoek Supreme Court for a declaratory order to have his call-up papers invalidated. He cited the South African Administrator-General in Namibia, the South African Minister of Defence and the Military Exemption Board as respondents. He gave several grounds for his appeal. First, he stated that he was a member of SWAPO, which he had joined in 1977, and he produced his membership card for the Court. He asserted in this regard that the objectives of the South African Defence Force and the South West Africa Territory Force were identical and that the laws passed by South Africa regarding Namibia were essentially in the interests of South Africa and not in the interests of Namibia. Hence, he added, it was impossible for him to identify himself with the struggle against SWAPO, and he could not fight against an organization which he was convinced was engaged in a just war. His other argument was that South Africa's imposition of laws in Namibia was a totally illegitimate exercise of power. His application was

supported by a sworn statement by his father, Eduard Binga, who also underlined his support for SWAPO and stated that his oldest son had left Namibia in 1978 and, in all likelihood, had joined the armed wing of SWAPO, the People's Liberation Army of Namibia. It was unacceptable that the younger son would have to fight his older brother in the South West Africa Territory Force. At the Windhoek Supreme Court hearing opened on 7 February 1984, Mr. Farlam, counsel for Mr. Binga, based his arguments on two premises. His principal submission was that South Africa's competence to legislate for Namibia had ended with the revocation in 1966, under United Nations General Assembly resolution 2145 (XXI), ratified by the United Nations Security Council, of the League of Nations Mandate. Secondly, if the Court was to rule that the Mandate none the less still applied, article 4 of the Mandate itself prohibited the introduction of military service for black Namibians by South Africa. Under the terms of the article, "The military training of the natives, otherwise than for purposes of internal police and the local defence of the territory, shall be prohibited ...". 45/ Mr. Farlam inferred that the word "natives", as used in the Mandate, clearly meant the indigenous population. It was all too clear that military service by the indigenous population of Namibia would not be confined to local defence. Moreover, since Mr. Binga had been called up to train in Walvis Bay (an area which South Africa illegally laid claim to) the conscription was in clear definace of article 4 of the Mandate.

- 489. Counsel for the Exemption Board argued that the applicant had failed to show adequate cause why the Mandate should be assumed to be invalidated and stressed that the Court was not in any case in a position to pass judgement on acts of the South African Parliament on the terms of the Mandate. As to the claim that the United Nations had terminated the Mandate in 1966, the judge referred to the negotiations for a Namibian settlement under Security Council resolution 435 (1978), and found that the Security Council clearly deemed the co-operation of South Africa necessary for a settlement of the Namibian situation and was anxious for South Africa to retain its authority pending a settlement. In the circumstances, he found that the Republic of South Africa had acted within the bounds of its authority. Accordingly, on 21 June 1984, the Windhoek Supreme Court rejected Mr. Binga's application and declared the costs payable by him. 46/
- 490. Mrs. Barbara Konig, representing the International Defence and Aid Fund for Southern Africa, stated in this connection that the case not only challenged the legitimacy of Mr. Binga's call-up, but if it had succeeded it would have affected thousands of black Namibians conscripted into the South West Africa Territory Force since January 1981. Moreover, it would have had a profound effect on virtually all the laws passed by South Africa in Namibia since the Mandate was terminated in 1966.
- 491. In the course of its mission of inquiry, the Ad Hoc Working Group of Experts again heard testimony from a soldier who deserted from the South African Defence Force, in March 1983. Mr. Alun Patrick Samuels (631st meeting) said that he was both a conscientious objector and a deserter because of his convictions and also because of the atrocities he had witnessed during his eight months spent in military service. He gave as an example a Namibian who had been used by the South African Defence Force as a tracker and had been suspected of being a spy. The man, he said, had been tied to the front of an army vehicle, which was then driven through the bush until the man was torn to pieces. Lastly, the witness said that the South African Defence Force in Namibia engaged in such atrocities precisely because no disciplinary measures were taken against the personnel.

## II. RIGHT TO WORK AND FREEDOM OF ASSOCIATION

- 492. In its previous reports, the Ad Hoc Working Group of Experts examined labour policy in Namibia, including the system of recruitment of migrant workers, the denial of trade union rights and disparities in the wages of the black and the white workers.
- 493. The situation is still the same and, if anything, has deteriorated. Since the report submitted by the Ad Hoc Working Group of Experts in 1984, nothing has occurred to indicate any improvement whatsoever in the fate of the population, whether in labour matters or in freedom of association.
- 494. In his 1984 annual report, the Director-General of ILO notes that the end of influx control and the migrant labour system, which controlled the movement of black workers from the countryside into the towns, has not brought significant change. Whilst workers may move about as individuals, their ability to remain in an urban area is governed by their ability to get a job and a place to live, both of which are in extremely short supply. For example, in Khomasdal, a black township near Windhoek, an average of 13 people were living in the small houses there; some houses were found to be occupied by 35 people.  $\underline{47}/$
- 495. According to some estimates, Namibia's gross domestic product in 1982 was R1.5 billion for a population of 1.1 million inhabitants, the majority of whom were living in the "traditional" areas (the official term for the "homelands" or "Bantustans").
- 496. In these conditions, it is clearly very difficult to form trade unions, something which adds to the problem already facing union organizers of large distances between places of work and the presence of security police and the occupying defence force personnel.
- 497. In Namibia the law expressly forbids Africans from going on strike, yet a number of strikes did break out in the course of the period under review. In particular, a strike took place at the Tsumeb Mining Company, where the entire 600-strong workforce walked out in protest at a new work regulation. The management called in the police and rejected the workers' demands. Another strike was also reported at the Rossing uranium mine. 48/
  - III. OTHER MANIFESTATIONS OF POLICIES AND PRACTICES WHICH CONSTITUTE A VIOLATION OF HUMAN RIGHTS

### A. Right to education

- 498. As the Group has already pointed out in many reports, the general policy has been to regulate the pattern of education in conformity with the ideology of apartheid, with separate provision for white, African and coloured education. Clearly, as noted in a report by the United Naitons Council for Namibia (A/AC.131/130), the system of "Bantu" education imposed by South Africa in Namibia is designed to perpetuate white supremacy. There are still differences in school facilities, classroom practices, teacher-training programmes, teachers' salaries, teacher-pupil ratios and in the amount of money spent annually on each pupil.
- 499. This analysis of the situation is confirmed by ILO, which notes in the 1984 report that the education system under the Department of National Education, which functions through the ethnic local authorities, is similar in many ways to the "Bantu" education system in South Africa itself. In 1983, three-quarters of

matriculants were white and, of the non-whites who did matriculate, only 30 qualified to enter university. There is no university in Namibia and those who do qualify must apply to the racially segregated universities in South Africa. 49/

500. As to the annual expenditure per pupil on the whites compared with the blacks, it is apparent from the statistical data in a recent study on the educational system in Namibia that R232 are earmarked each year for each black, R300 for each coloured and R1,210 for each white pupil.  $\underline{50}$ / The same study, pointing out that Namibia does not have a unviersity, notes from official statistics that in 1978 there were 2,268 whites, 157 coloureds and 98 blacks from Namibia pursuing studies in universities in South Africa.

## B. Right to health

- 501. During the period under review, little information was recieved by the Ad Hoe Working Group of Experts on the state of health of the population of Namibia.
- 502. However, the latest special report by the Director-General of the International Labour Office points out that, in the medical field, the continuing grave shortage of hospitals, clinics and personnel has further compounded the already inadequate services.

#### C. Right to freedom of expression

- 503. In its most recent report, the Ad Hoc Working Group drew the attention of the Commission on Human Rights to two particular cases involving the right to freedom of expression. One was the case of Mrs. Gwen Lister, a correspondent for the Windhoek Observer, who had been arrested and questioned for several hours by security police at Johannesburg airport in April 1983. The second case concerned a raid by the police on the offices of the Windhoek Observer in May 1983.
- 504. With reference to the case of Mrs. Gwen Lister, the Group was informed that she was released after an acquittal by the regional court of Kempton Park on  $7~\mathrm{May}$ .
- 505. As to the <u>Windhoek Observer</u>, the Group was informed that all issues of the newspaper were banned under the Publications Act at the beginning of August 1984. The authority concerned based its action on an issue of 4 August 1984, which allegedly spread propaganda in favour of SWAPO, against which "the Republic is engaged in a military conflict". 51/
- 506. The International Federation of Journalists informed the Newspaper Guild of the United States and Canada and also the National Union of Journalists in the United Kingdom, which then sent letters protesting against the ban on the newspaper and demanding that it be withdrawn forthwith.
- 507. The Group also received information concerning an incident outside the Lenasia Civic Centre on 29 August 1984, after a charge by the police during the elections. Some journalists covering the elections are said to have been beaten up by the police. 52/

#### D. Use of chemical defoliants and toxic gases by the army

508. According to information received by the Ad Hoc Working Group of Experts, chemical defoliants are said to have been used by the army in the Kovango and

Ovambo regions in counter-insurgency reprisals. This large-scale operation seems to have started in October 1983 to impede SWAPO guerrilla ambushes against vehicles belong to the security forces. 53/

- 509. Moreover, in early January 1984, South African forces are said to have used 30 planes to drop bombs containing toxic gas which killed an unidentified number of people in Cuvelai. 54/
- 510. In early January 1984, South African forces reportedly brought in 30 planes and dropped bombs containing a toxic gas that caused an unspecified number of casualties in Cuvelai. 55/
  - IV. INFORMATION CONCERNING PERSONS SUSPECTED OF BEING GUILTY OF THE CRIME OF APARTHEID OR OF A SERIOUS VIOLATION OF HUMAN RIGHTS
- 511. On the basis of supplementary information, the  $\underline{\text{Ad Hoc}}$  Working Group of Experts lists below a few cases in addition to those already mentioned in its previous reports, and particularly its most recent (E/CN.4/1984/8, paras. 464-469).
- 512. It should be recalled that this list is 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.
- 513. Accordingly, pursuant to resolution 1984/5 of the Commission on Human Rights, the Ad Hoc Working Group of Experts considers that the persons mentioned below are suspected of being guilty of the crime of apartheid or a serious violation of human rights under the terms of articles II and III of the International Convention on the Suppression and Punishment of the Crime of Apartheid.
- Case No. 1 Members of Koevoet responsible for torture, the acknowledged cause of the death on 19 November 1982 of Mr. Jonah Hamukwaya and Mr. Katanga (paras. 455-456).
- Case No. 2 Captain Debnar, Captain Botha, Captain Nel, Captain Coffee and Jackson Nekondo, responsible for ill-treatment inflicted on Mr. Mulondo (para. 485).
- Case No. 3 Captain Coffee, Captain Nel, Captain Botha and Joseph Angula, responsible for ill-treatment inflicted on Mr. Amkwele (para. 485).

## Part three: Conclusions and recommendations

514. The Ad Hoc Working Group of Experts adopted the following conclusions and recommendations.

#### A. South Africa

On the basis of the testimony received by the Ad Hoc Working Group of Experts and the information obtained from various reliable sources, apartheid continues to be cruel and criminal and, during the period covered by the present report, its effects on black men, women and children have worsened and have acquired inhuman and pernicious proportions.

The institutionalization of the <u>apartheid</u> system is continuing with the evident intention, on the part of the <u>South African Government</u>, of denying blacks the enjoyment of human rights and fundamental freedoms and threatening their existence as a human community.

#### 1. Conclusions

- (1) The removal of the black population to "homelands" has become steady and systematic and legislation has been strengthened and a removal policy institutionalized for this purpose. As a result, more than half the black population confined to the "homelands" have lost their South African citizenship, their rights, their lands and their share of the country's wealth, as well as being the victims of incessant persecution.
- (2) The "citizens" of Transkei, Bophuthatswana, Venda and Ciskei have lost the right to work or reside in South Africa. The intention of the South African authorities is to make the country a white preserve, turning the blacks into "foreigners" and banishing them to the poorest and most barren 13 per cent of South Africa's total land area.
- (3) Annex IX to the present report includes a map illustrating the forced removal of blacks from the areas where they live to other areas in the "homelands". Communities previously living in beautiful, fertile "black spots" have been expelled, and have suffered disintegration and poverty as a result of their transfer to barren lands.
- (4) The system of pass laws in urban areas has increasingly restricted the movement of the black population, and the number of offences has risen. The law has been changed to permit the imposition of heavy penalties and greater restrictions on Africans from bantustans, on which a completely fictitious "independence" has been imposed without regard for the principle of self-determination, making the blacks "foreigners" who are deprived in their own country.
- (5) The Working Group has noted that protest and resistance have found expression through the United Democratic Front (UDF), a multiracial organization committed to a South Africa which is united, democratic and free from apartheid and racial tendencies.
- (6) The Internal Security Act remains pernicious to the extent that it enables South African authorities to detain a person indefinitely, without going through the courts and without observing the normal legal procedures. Under section 29 of this Act, prisoners held incommunicado for indefinite periods are subjected to ill-treatment; some of them die in prison as a result of severe maltreatment. Under other sections of the Act, detentions are extremely arbitrary. Out of about 453 blacks detained only 30 have been brought to trial.

- (7) Also under the Internal Security Act, more meetings have been prohibited, some organizations have been declared illegal, publications have been banned and various proceedings have been brought for possession of prohibited publications. Under this Act, a variety of restrictions can be imposed on individuals. Thus, blacks are being subjected to increasingly harsh oppression in the name of State security and public order.
- (8) During trials described in the report, acts previously regarded as misdemeanours, such as being an active member of ANC, are now held to constitute "high treason". The severity of sentences has been increased. Prisoners are mostly students, teachers, workers, political leaders and community leaders.
- (9) Among persons subjected to internal banishment, particular mention should be made of the case of Mrs. Winnie Mandela, who has been placed under banning orders since 1977 in a small, remote town.
- (10) Attention should be drawn to section 50 of the Criminal Procedure Act, under which arrests under the security laws are not included in the statistics concerning detentions. In the report, mention is made of the case of the death of a person detained under this Act. Other restrictive laws such as the Police Act or the Prisons Act should also be cited. All this legislation proves that the South African authorities are set on enforcing repressive measures with the utmost severity, taking care that they should not become public knowledge.
- (11) There have been more revelations concerning the tortures which are applied, particularly in centres of detention, and the different types of torture, both physical and psychological.
- (12) The Group has also obtained additional information concerning the condition of women prisoners and the ill-treatment to which they are subjected.
- (13) The practice inside prisons is aimed at humuliating prisoners of conscience. In regard to food conditions, discipline within the prison, lodging and privileges, the black inmates are discriminated against.
- (14) The Working Group has learnt that television monitoring of detainees has been introduced in at least one prison. The Group considers this phenomenon as an infringement of the right to privacy as well as a powerful means of psychological pressure.
- (15) While noting the increase in the formation of black trade unions, the Working Group has also noted that the freedom of the unions to function is severely restricted, in particular their attempt to obtain improved working conditions for their members has been met with repression on the part of the authorities.
- (16) Strikes have increased, as have dismissals of workers, leading to solidarity strikes. This growing combativeness on the part of black workers has given rise to bloody confrontations with the police, resulting in a number of deaths and injuries in some mines. Indeed, to counter the action of the black trade unions, various methods, such as raids, arrests, restrictions and bans, have been employed.

- (17) The situation of black workers in the "homelands" or so-called "independent States" is desperate; unemployment is compounded by the fact that living conditions are among the lowest and worst in the world. The administrative authorities in those regions are used to implement apartheid, persecute trade unions, rob the blacks of any legal status and ensure their isolation.
- (18) The results of the Hoexter Commission's inquiries are extremely interesting. The Commission agreed with the blacks that the courts are used by the Executive "to subjugate the black man by restricting his freedom of movement, by limiting his opportunities for work and by dislocating his family life".
- (19) The information obtained concerning political assassinations, both inside and outside South Africa, of opponents of the <u>apartheid</u> regime causes considerable indignation and emotion.
- (20) During the period covered by the present report, one of the largest student protest movements against the black education system took place. This massive protest was directed against Bantu education, which derives from the 1953 Act a racist, discriminatory law that is one of the bases of the apartheid system and denies study and training facilities to black children and youths, permits corporal punishment, maintains antiquated curricula and unskilled teaching staff, and enables students and teachers to be suspended and expelled without any justification. The student demonstrations were brutally repressed by police and soldiers, schools were closed and there were mass arrests. However, the students, children and youths, demonstrated their determination to struggle for freedom and justice and for a better education not subject to the apartheid system.
- (21) According to information received by the Group, 2.9 million children under the age of 15 in South Africa and the so-called "independent homelands" have dropped out of school because of malnutrition, and a third of the children attending school are also suffering from malnutrition.
- (22) In a government White Paper of November 1983, which has come in for considerable criticism, the system of black education is viewed as an instrument for perpetuating and intensifying apartheid, and fails to offer any solution for the improvement of black education.
- (23) On receiving the Nobel Prize, Bishop Tutu said that <u>apartheid</u> has spawned a system under which the Government spends 10 times less on the education of a black child than on that of a white child.
- (24) The vigorous reaction of the various Churches to <u>apartheid</u> is an important and significant development.
- (25) The Ad Hoc Working Group ventures to draw the Commission's attention to the emergency meeting of the Executive Committee of the South African Council of Churches held on 6 September 1984 concerning events in Vaal Triangle and East Rand, where violence led to persons being killed and injured. The Committee expressed its shock and anger at the action of the police, its concern at the Government's refusal to admit the root causes of the conflict, and its solidarity with the victims and those arrested. The Committee also pledged itself to pray and strive for recognition of the rights and responsibilities of all South Africans.

- (26) Another important factor is the mobilization and resistance of women against <u>apartheid</u>, which causes them so much suffering. They are resisting and condemning the injustices and inequalities of the "new Constitution". The situation of women in South Africa continues to be terribly difficult.
- (27) The situation of black children presents a frightening picture of malnutrition and child mortality. Of every 1,000 children, 386 die of malnutrition or related diseases while, among those who survive, 100 to 200 per thousand suffer brain damage. In 1983, 3,415 children went to prison with their mothers or were born in prison.

## 2. Recommendations

- (1) World public opinion should be better informed and international campaigns should be initiated to demonstrate the growing seriousness of <u>apartheid</u> and show that the so-called "reforms" introduced by the South African authorities to give the impression that matters are improving are a sham. The Working Group recommends therefore that its mandate should be renewed to enable it to continue to investigate violations of human rights in South Africa and Namibia and thus assist the Commission on Human Rights in formulating appropriate measures to eliminate <u>apartheid</u>.
- (2) Publicity should be given to the strong protest and resistance movements of students, workers, intellectuals, churches, women and other groups, and to their efforts to combat apartheid.
- (3) In view of the brutal process of denationalization, the fact that blacks are stripped of their South African nationality and made into "foreigners", and the privations which that entails, consideration should be given to the possibility of requesting the International Court of Justice to give an advisory opinion on deprivation of citizenship, in the light of international law.
- (4) The Commission may wish to renew its authorization to the Working Group in resolution 1983/9, paragraph 19, to organize a seminar during the period covered by the Group's new mandate to consider the most effective means of reinforcing the Commission's efforts to eliminate apartheid, racism and racial discrimination.
- (5) The relevant United Nations bodies should be asked to give close attention to recent events in the student field and demonstrations against Bantu education, to child malnutrition, to the situation and struggle of women and to the disintegration of the family, especially as a result of the forced removals to arid, stony areas.
- (6) While continuing to press for improvements in education on behalf of black children and youths and to fight for the repeal of the Bantu Education Act, the Ad Hoc Working Group considers that genuine educational reform is required, together with political and socio-economic reforms and the complete elimination of apartheid.
- (7) The Commission on Human Rights should take steps to make the public more aware of the new physiognomy of South Africa (see annex IX), which is becoming a white stronghold surrounded by "homelands" or so-called independent territories into which blacks stricken by poverty and ignorance are crammed.
- (8) The  $\frac{\text{Ad Hoc}}{\text{Working Group}}$ , while recognizing all that ILO has done in the field of workers' rights under the  $\frac{\text{apartheid}}{\text{more}}$  regime, would like to recommend that the Commission suggest that ILO should be requested to carry out an in-depth study of the growth of black trade unions, to denounce the repression

and violence used against them, and in particular to study the current situation of workers and their families in the bantustans and so-called "independent States".

(9) The Commission should renew its request to all States Members which have not yet done so to submit their views and comments on the interim study on the international penal tribunal (E/CN.4/1426).

## B. Namibia

## 1. Conclusions

During the period under consideration, the  $\underline{\text{Ad Hoc}}$  Working Group of Experts reached the following conclusions in the light of an analysis of the over-all situation and developments in Namibia:

- (1) Efforts were made both by United Nations bodies and by States with a view to arriving at a peaceful and satisfactory settlement of the Namibian question. Reference can be made to the mission carried out by the Secretary-General in accordance with Security Council resolution 532 (1983). In view of the refusal of the South African Government to implement Security Council resolution 435 (1978) concerning the political future of Namibia, the Security Council adopted resolution 539 (1983) on 28 October 1983. In this resolution, the Council rejects South Africa's insistence on linking the independence of Namibia to irrelevant and extraneous issues such as the withdrawal of Cuban forces from Angola. By its resolutions 38/36 A and B, the General Assembly reaffirmed the inalienable right of the people of Namibia to self-determination, freedom and national independence; it also refused to establish a linkage between the plan for the independence of Namibia and the presence of Cuban forces in Angola. The Organization of African Unity (OAU) and the Conference of Heads of Governments of Commonwealth Countries, which met at New Delhi from 23 to 30 November 1983, fully support the United Nations plan for Namibia. With regard to the efforts made by States to arrive at a peaceful settlement of the Namibian question, attention should also be given to the agreement concluded at Lusaka between the Angolan and South African Governments. Under the terms of this agreement, South Africa undertakes to withdraw its forces occupying Angolan territory and to establish a permanent cease-fire on the border between Angola and Namibia. SWAPO has also shown its willingness to enter into direct negotiations with the South African authorities.
- (2) Despite the commitments undertaken, in particular vis-à-vis Angola, the South African Government has not withdrawn its forces of occupation from Angola and has committed acts of aggression against certain neighbouring States, in particular destroying industrial, school and hospital complexes. It has also intensified the militarization of Namibia, where a commando unit has been established which is distinguishing itself through actions directed against both the civilian population and captured SWAPO fighters and SWAPO militants. This unit is the special anti-insurrectional police unit known as "Koevoet".
- (3) As far as human rights violations affecting individuals are concerned, the Working Group has been informed of cases of executions by members of "Koevoet" of persons convicted of murder. It is known that South Africa has extended to and applied in Namibia its various laws providing for capital punishment (Law No. 83 of 1967 on the Terrorism Act, Sabotage Act, General Law Amendment Act, No. 76 of 1962, Internal Security Act of 1982). Indeed, evidence gathered reveals that members of "Koevoet" are guilty of several massacres, in particular in the Ovambo and Kavango regions. Cases of deaths of detainees, torture and

other atrocities involving the responsibility of "Koevoet" units have also been reported, but the penalties imposed on those responsible for some of those acts are derisory in relation to the gravity of the acts committed.

- (4) Cases of disappearances for which members of "Koevoet" are responsible have also been reported to the Group. After many complaints had been made, most of which were not acted upon, a commission of inquiry was set up in order to investigate allegations made against the security police or the South African Defence Force.
- (5) With regard to the prisoners captured at Kassinga in May 1978 and detained at Hardap Dam Camp, on whom the Group has already reported (E/CN.4/1485; E/CN.4/1983/10; E/CN.4/1984/8), 31 of the 37 prisoners were freed in November 1984 after a scandalous trial before the Supreme Court at Windhoek. This trial was financed by a group of American jurists belonging to the Lawyers' Committee for Civil Rights under Law. National and international public opinion has voiced its indignation at the retroactive application of proclamation AG 9 to the Kassinga prisoners by the South African Minister of Justice.
- (6) The Group also noted cases of torture and ill-treatment inflicted on political prisoners and captured freedom-fighters. This aspect is revealed in particular in the sentence handed down on 2 April 1984 by the Supreme Court at Windhoek. In this judgement, it was found that detainees were prevented from exercising in the open air and that they were subjected to electric shocks. No law authorizes such practices.
- (7) Certain cases of deaths of detainees who had been subjected to acts of brutality by the "Koevoet" were officially reported much later, once again demonstrating that those responsible for these acts either went unpunished because they apparently could not be reliably identified or were simply sentenced to fines. Some witnesses gave the names of torturers they had been able to identify; these names will be included on the appropriate list which the Group is to prepare as requested.
- (8) The Group also wishes to point out that, in May 1984, 15 Namibian political prisoners held at Robben Island since 1968 were freed; prominent among whom was Mr. Herman Toivo ja Toivo, founder member of SWAPO who served almost 16 years in the maximum security prison of Robben Island.
- (9) No improvement was seen in the employment policy in Namibia, including the system of recruitment of migrant workers. On the contrary, the situation has deteriorated; no improvement in the population's situation in respect of work or in respect of freedom of association was reported, despite the abolition of entry controls and the migrant labour system.
- (10) The Group noted that, despite the law prohibiting the right to strike for African workers, several strikes occurred, in particular at the Tsumeb Mining Company and the Rossing uranium mine.
- (11) South Africa has continued to apply its discriminatory system of so-called Bantu education, based on skin colour, in Namibia.
- (12) As far as health is concerned, it appears from the latest report by the Director-General of ILO that there is a shortage of hospitals, first-aid clinics and medical personnel, compounding the shortcomings of the existing services.

- (13) The Group has also noted cases of violation of freedom of expression; in particular, during the bogus elections of August 1984, bans were imposed on some press organs or their members.
- (14) Finally, the Group draws attention to the fact that the South African army of occupation has used chemical defoliants and toxic gas in the Ovambo and Kovango regions in reprisal for the ambush of security force vehicles by SWAPO "rebel forces". Furthermore, SWAPO positions have been bombed, in particular in Cuvelai, with bombs containing toxic gas.

#### 2. Recommendations

In view of the above conclusions, the Ad Hoc Working Group of Experts wishes to submit the following recommendations to the Commission on Human Rights:

- (1) That the Commission encourage United Nations bodies in general, and the General Assembly and Security Council in particular, to maintain their position with regard to the plan drawn up for the independence of Namibia, in conformity with resolution 435 (1978), 532 (1983) and 539 (1983) as well as other relevant texts in this regard, that it call on Member States and the international community to support the efforts deployed to that end, with a view to achieving a peaceful but rapid settlement of the Namibian question; that it again express its concern at the presence of South African military and paramilitary forces in Angola, despite the agreement recently concluded with the Angolan Government; and consequently, call on South Africa to withdraw those forces without delay or other conditions.
- (2) That the Commission also express regret at the intensification of the militarization of Namibia and call on the South African Government to put an end to it and in particular to refrain from its harassment of the civilian population and captured SWAPO freedom-fighters through the "Koevoet" units.
- (3) That the Commission request the Ad hoc Working Group of Experts on southern Africa to continue to study human rights violations concerning individuals and violations involving restrictions on the right to work and the freedom of association, as well as other manifestations of policies and practices constituting human rights violations, in particular as regards capital punishment, death in detention, the right to education and to health care and the situation of political prisoners and of captured freedom-fighters, and to report thereon to the Commission on Human Rights; and that in this connection, the Group should continue to establish the responsibility of the authors of such acts, in order to include their names on the list which it has been requested to draw up under General Assembly resolution 33/103 and Commission resolution 12 (XXXV).
- (4) That the Commission urge the South African Government to release all political prisoners and to apply to them the provisions of the 1949 Geneva Convention relative to the Treatment of Prisoners of War.
- (5) That the Commission strongly condemn the use of toxic gas by the South African army against the Namibian population and SWAPO, the sole legitimate representative of the Namibian people.

## Part four: Adoption of the report

515. The present report has been approved and signed on 14 January 1985 by the members of the Ad Hoc Working Group of Experts, namely:

Mr. Annan Arkyin Cato Chairman-Rapporteur

Mr. Branimir Janković Vice-Chairman

Mr. Mikuin Leliel Balanda

Mr. Humberto Díaz-Casanueva

Mr. Felix Ermacora

Mr. Mulka Govinda Reddy

#### NOTES

1/ The oath and the solemn declaration read as follows:

"I swear to tell the truth, the whole truth, and nothing but the truth".

"I solemnly declare, in all honour and conscience, that I will tell the truth, the whole truth, and nothing but the truth".

- 2/ The UDF which was established in January 1983 for progressive forces to unite in resistance to the Government's constitutional plans is discussed in detail in Chapter V, paragraphs 408 to 414.
  - 3/ Hansard, col. 840, 11 February 1983.
  - 4/ World Council of Churches, One World, No. 95, May 1984.
  - 5/ Ibid.
  - 6/ IDAF, Removals and Apartheid, No. 5, July 1982.
  - 7/ Testimony of Working Group Kairos, 633rd meeting.
- 8/ Khayelitsha: New home old story, produced by the Surplus Peoples Project, Western Cape, March 1984.
- 9/ International Labour Office, Special Report of the Director-General on the Application of the Declaration concerning the Policy of Apartheid in South Africa (Geneva, 1984).
  - 10/ The Star, 21 July 1984.
  - 11/ Rand Daily Mail, 23 June 1984.
- 12/ South African Institute on Race Relations, Survey of Race Relations in South Africa 1983 (Johannesburg, 1984).
  - 13/ Focus, No. 52, May-June 1984.
  - 14/ Anti-Apartheid News, October 1984.
  - 15/ The Guardian, 8 November 1984.
  - 16/ Newsweek, 5 November 1984.
  - 17/ International Herald Tribune, 8 November 1984.
  - 18/ Submission of the Detainees' Parents Support Committee.
  - 19/ Submission of the Detainees' Parents Support Committee.
  - 20/ Hansard 79, Col. 711.
  - 21/ Debates 30 March 1983; Focus, No. 47, 1983.
  - 22/ Detainees' Parents Support Committee. Report, March 1984.
  - 23/ Ibid., April 1984.
  - 24/ Ibid., May 1984.
  - 25/ Ibid., June 1984.
  - 26/ Ibid., July 1984.
  - 27/ Ibid., August 1984.

- 28/ Rand Daily Mail, 13 March 1984.
- 29/ Rand Daily Mail, 18 April 1984.
- 30/ Memorandum by the MAWU.
- 31/ The Star, 22 August 1984.
- 32/ Financial Times, 24 October 1984.
- 33/ Ibid.
- 34/ Rand Daily Mail, 22 August 1984.
- 35/ The Times, 28 February 1984; The Guardian, 17 February 1984.
- 36/ Tribune de Genève, 16-20 February 1984; Rand Daily Mail, 28, 31 January and 16 February 1984; The Times, 28 February 1984; The Guardian, 26, 28 January and 28 February 1984; International Herald Tribune, 6-7 February 1984; Le Monde, 26-31 January 1984.
- 37/ Amnesty International, Annual Report 1984; The Citizen, 7 and 15 December 1983; Rand Daily Mail, 6 and 7 December 1983; The Times, 7 December 1983; The Star, 12 December 1983.
  - 38/ A/AC.131/130; Focus, No. 50, January/February 1984.
  - 39/ Focus, No. 50, January/February 1984.
  - 40/ Rand Daily Mail, 24 May 1984; The Guardian, 28 May 1984.
- 41/ Rand Daily Mail, 1, 2, 9 and 29 May 1984; The Times, 3 May 1984; The Citizen, 29 May 1984; The Star, 7 May 1984; International Herald Tribune, 4 May 1984.
  - 42/ Focus, No. 52, May-June 1984.
- 43/ Amnesty International, Annual Report, 1984; Focus, No. 50, January-February 1984, and No. 51, March-April 1984.
- 44/ Focus, No. 50, January-February 1984, Amnesty International, Annual Report 1984.
- 45/ League of Nations, Official Journal, 2nd Year, No. 1 (January-February 1921), p.90.
  - 46/ The Guardian, 8 February 1984.
- 47/ International Labour Office, Special Report of the Director-General on the Application of the Declaration concerning the Policy of Apartheid in South Africa, Geneva, 1984, p. 49.
  - 48/ Ibid., p. 50.
  - 49/ Ibid., p. 56.
- 50/ Justin Ellis, Education, repression and liberation: Namibia, (London, Catholic Institute for International Relations and World University Service, 1984), p. 41.
- 51/ The Citizen, 14 and 16 August 1984; Rand Daily Mail, 16, 17, 20, 27 and 29 August 1984; The Guardian, 16 and 17 August 1984; Le Monde, 18 August 1984.
  - 52/ Rand Daily Mail, 29 and 30 August 1984.
  - 53/ Focus, No. 50, January-February 1984.
  - 54/ A/AC.131/119; Focus, No. 51, March-April 1984.
  - 55/ Ibid.

#### Annex I

Note from the Government of Madagascar concerning
the draft Convention on the Establishment of an
International Penal Tribunal for the Suppression
and Punishment of the Crime of Apartheid and
Other International Crimes

Since domestic Malagasy legislation already provides for the punishment of the acts embodied in the definition of apartheid in accordance with article II of the anti-apartheid Convention (cf. document E/CN.4/1426, para. 13), including attacks on the physical security of the individual, murder and torture, or discriminatory activities as covered by article 115 of the Penal Code, it may be stated that the spirit of the draft Convention on the Establishment of an International Penal Tribunal for the Suppression and Punishment of the Crime of Apartheid and Other International Crimes would in no way run counter to the Malagasy legal order.

Madagascar has acceded to all the fundamental instruments relating to human rights, in particular the International Covenants formulated by the United Nations in the context of the Universal Declaration of Human Rights of 10 December 1948, including the International Covenant on Civil and Political Rights. The latter instrument was ratified by the Malagasy Parliament by Act No. 70-001 of 23 June 1970 (JORM of 27 June 1970, p. 1348), together with the Optional Protocol thereto.

Subsequently, the General Assembly of the United Nations adopted a number of conventions relating to the protection of the specific rights of minorities or a particular category of the human community (workers, women, refugees, etc.). Madagascar has acceded to these conventions, which include:

The International Convention on the Elimination of All Forms of Racial Discrimination, adopted in New York on 7 March 1966 (Act No. 58-021 of 17 December 1968, <u>JORM</u> of 21 December 1968, p. 2387);

The International Convention on the Suppression and Punishment of the Crime of Apartheid (Order No. 77-Oll of 13 April 1977, JORM of 23 April 1977, p. 967.

Given this situation and in view of the fact that the approach adopted in contemporary international criminal law is that of the "indirect enforcement model", in other words, States assume certain duties through their national systems, it is quite clear that the effectiveness of the international systems established will depend on the genuine will of States parties with regard to their functioning.

Nevertheless, the following observations would appear to be necessary concerning the draft Convention.

#### PART II. THE PENAL PROCESSES OF THE TRIBUNAL

## Article 8 (page 23)

### Initiation of process

Paragraphs 2 and 4: If the Procuracy decides to continue further investigation, how will it operate? Will it travel to the State concerned or will it delegate its powers to a national jurisdictional body? In short, what will its modus operandi be? (cf., however, the observation at the end of the second paragraph on page 46).

In addition, how will the Investigative Division determine that a communication is "manifestly unfounded" or not? Will this be a sovereign unappealable decision?

Paragraph 6: What are the criteria for prosecution? In short, it would appear to be necessary to formulate a procedure in this area.

#### PART IV. TRIBUNAL STANDARDS

## Article 19 (page 30)

## Standards for rules and procedures

Paragraph 1 (f) (4): What are the "critical" stages at which counsel for the accused will be allowed to be present?

PART V. PRINCIPLES OF ACCOUNTABILITY (PROVISIONS IN THE NATURE OF A GENERAL PART)

## Article 25 (page 39)

### Exoneration

<u>Paragraph 8 (b)</u>: If a person already tried by the national courts of a State party can be retried for the same conduct by the International Court, can one still speak of double jeopardy?

Would this not amount to censure of the decisions of the national courts on the conduct in question? This raises a delicate problem of national sovereignty which may encounter resistance by States parties, with regard to both the co-operation to be extended in the conduct of prosecution proceedings and the execution of adjudications.

In the latter case, would not the execution of sentences in the offender's country of origin but under the jurisdiction of the International Penal Tribunal (art. 31) constitute continuing and indiscreet supervision of the prison system of a sovereign State?

#### Annex II

Remarks by the Chairman of the Ad Hoc Working Group of Experts at the conclusions of the Group's visit to Luanda, Angola

Your Excellencies, ladies and gentlemen, it gives me great pleasure on behalf of my colleagues of the Ad Hoc Working Group of Experts to welcome you to this afternoon's session. My pleasure is the greater in welcoming to this meeting, His Excellency Comrade Roberto D'Almeida who is secretary of the Central Committee of the MPLA, also with special responsibilities for ideology and information. I'm also very delighted to have at this afternoon's meeting, our own good friend, His Excellency Mr. Demora, Vice Minister for Foreign Affairs.

On behalf of the Ad Hoc Working Group of Experts on Southern Africa, I should like to express to His Excellency Comrade Roberto D'Almeida, Secretary of the Central Committee of the MPIA our gratitude for his being kind enough to be here with us this afternoon and for the extremely important statement that he has addressed to us. The presence of His Excellency Mr. D'Almeida is evidence of the many ways in which the Government of the People's Republic of Angola has co-operated with the Working Group in enabling it to carry out our difficult task.

My colleagues and I are not new to Luanda, indeed we are not new to Angola. Most of us have been here before, and therefore we have had evidence of the many ways in which the courtesies of the Angolan Government can be warm and friendly. Every time we have been in Angola, we have been impressed increasingly by this courtesy, the many ways in which the Government of Angola has ensured our comfort and has placed at our disposal, facilities without which it would otherwise have been impossible for us to carry out our duties. Therefore on behalf of my colleagues, again, as we come to the end of our mission here, I would like to express through him, to the Government and people of this great Republic our appreciation for these courtesies.

As His Excellency pointed out, apartheid is a violation of elementary Human Rights. My colleagues and I came to Luanda three days ago, not that we were not aware of what apartheid meant; but in keeping with the mandate given to us, we had come here to listen, to watch and to obtain information about the current situation in South Africa and in Namibia. The importance of our mission is underscored by the fact that in many ways South Africa has tried to give its own version of what is happening in that wretched country. The pity of it is that some influential members of the United Nations, certain members of the Security Council, a Council which has responsibilities for maintaining international peace and security, seem to be succumbing to this deliberate act of misinformation and therefore our task has been, within reason and as objectively as possible, to listen to these young men and young women and I emphasize this fact because of the 10 witnesses or so who appeared before us the majority were young men and women. What we have seen here confirms the fact that South Africa is bent on maintaining apartheid, and in the process of doing this, South Africa will not stop at destroying the youth of that country.

My colleagues and I have been touched, deeply touched; I tell you we have been deeply touched by some of the moving testimonies that these young men and young women have had to place before us. The ease with which the prowlers of the night knock on the doors of their parents and pick them away; the denial to these parents of any right to demand to know why their children are being picked up; their only crime being that they have demanded as of right - because

E/CN.4/1985/8 Annex II page 2

they are born free with rights and dignity - that they should be treated as human beings in the country of their birth. We have been touched by the many ways in which evidence has been adduced to show the treatment which has been given to these young men and women in the police stations of South Africa, in the prisons of South Africa.

My colleagues and I have not been insensitive to the evidence that has been placed before us, of the wretched conditions in the prisons of South Africa, deliberately made wretched to break the spirits of these young men and women, expose them to filthy conditions; someone told us she was harassed by rats the whole night. They bit her fingers, they bit her lips, they bit her toes. This is cruelty, and yet this is the civilization that South Africa would want the world to believe she is holding out to the black population.

Your Excellencies, what is true of South Africa, is true of Namibia. Namibia, as you know is a special responsibility of the United Nations, which South Africa, contrary to international law, contrary to all the decisions of the Security Council and of the General Assembly, South Africa continues to occupy. South Africa has turned Namibia into a huge Military Camp. We are told that apart from Koevoet, the special South African counter insurgency unit, there are many scattered, many, and the emphasis is on many, scattered so-called security institutions whose only function can be seen as intended to intimidate anybody who, even remotely, is suspected of being sympathetic to SWAPO. And what is the crime of SWAPO? SWAPO is saying that first of all, South Africa has no right to be in Namibia. SWAPO is saying that Namibians, just like any others, have the right to independence and to sovereignty. The cruelty that is taking place in Namibia, we have been told of one case where a man was roasted alive. This cruelty confounds all comrehension. My colleagues and I will, of course, report on these matters faithfully.

For many years, as you know, the United Nations has determined that apartheid constitutes a threat to international peace and security. And if, for years, the full force of the cruelty of apartheid has been confined to the apartheid Republic, in recent years, there has been increasing evidence of the ways in which South Africa has carried this brutality beyond the boundaries of that Republic and the many ways in which South Africa has used its huge might and arsenal of weapons to intervene in the sovereignty of Independent African States, the intention being to destabilize these countries and to destroy economic infrastructures.

Two years ago when we were here we had the opportunity of visiting Iubango. This time, the Government of Angola was kind enough to have contemplated making it possible for us also to visit Cunene province. I do regret that due to certain difficulties which are of our own making, we could not take advantage of this facility. And yet, this morning, we saw evidence on the screens, of the wanton manner in which the retreating South African forces have destroyed structures in the southern portion of this Republic. We have seen the ways in which public buildings have been destroyed. We have seen pictures of bridges being blown up. We have seen pictures of clinics, hospitals destroyed. What could be the purpose of all this? What crime has Angola committed that she should be exposed to this senseless act of terrorism? How come that, in the face of all this, this apartheid Republic, enjoys the political, economic, social, military support of influential members of the world community. Angola deserves commendation for the heroism with which she has stood on all fours in support of this struggle. Our admiration for Angola is the greater because we have seen it. Angola has not been allowed to develop. From the moment of her independence,

South Africa has terrorized her, directly and through the use of surrogates. Its only intention is to destroy the infrastructure of this great country.

There is no way that my colleagues and I can be involved in documenting evidence of human rights violations in South Africa and Namibia without also reflecting on what we have seen here, the external manifestations of apartheid. This destruction that I talk about, the many ways in which these men and women are being pursued, even as they seek shelter. There was that young lady, who narrated her experiences on 9 December 1982 in Maseru. Nobody who has humanity could have failed to be touched by that testimony. And yet your Excellencies, I must bring this meeting to a close. So we shall be leaving Angola feeling that the visit has been well worth it. We shall be leaving this country with very heavy hearts. Heavy hearts because the evidence that we have seems to confirm the fact, in fact, it does confirm the fact that apartheid has not changed, that apartheid continues to be cruel, inhuman and degrading.

Let me conclude, therefore, Your Excellency, by thanking you Sir, and to you, Sir, Mr. Vice Minister for being so closely involved in our work here. We are grateful to you, to the officials of the Foreign Ministry, to the chauffeurs, to those unseen in the booths, those young technicians, without whose involvement our work would not have been possible. We are grateful to the representatives of the ANC and SWAPO who have always been associated with us, for the mutual support and benefit we have derived from them; we value this support. Thank you also, Your Excellencies, ladies and gentlemen who represent the diplomatic community in this country. I think that your presence here means a lot to us, because you do represent sovereign countries, influential countries. I am myself a diplomat as well and therefore I know what is expected of us. I hope that even as we seek through the United Nations to bring this cruelty, this phenomenon to the attention of the international community, you will also, on your part and through your own channels, inform your governments. Not that they didn't know what was happening, but to bring to their attention, so that collectively we can, through the councils of the United Nations, exert the necessary pressures and influences to put a stop to apartheid, because apartheid threatens not only the black population of South Africa, apartheid threatens all of southern Africa. Apartheid threatens the peace and security of Africa. Apartheid threatens world peace and therefore nobody who values human decency can be neutral on this question of apartheid. I thank you once more for your attention. THANK YOU VERY MUCH.

Your Excellency, I now have the honour to bring to a close the work of the Ad Hoc Working Group of Experts. Thank you very much, the meeting is adjourned.

### Annex III

# Statement made by H.E. Mr. Kenneth Kaunda, President of the Republic of Zambia on 16 August 1984

PRESIDENT KAUNDA: I know that my colleagues led by the Minister of Foreign Affairs of Zambia, have already said welcome to you, our brothers, but I thought I should take this opportunity to add my own welcome to those of us in authority in Zambia and I am sure we speak for our people as well.

The United Nations Organization is the last hope for man, especially the weak in the society of man, and for us, therefore, we feel greatly honoured that you were able to come and hold your session on human rights, on the situation as it is in South Africa and southern Africa in fact as a whole.

It is important to continue to pursue this approach. I know that human rights are being trampled upon east, west, north, south, that is, in many parts of our troubled world today. But I know of no other place where the trampling of human rights is on statute, is part of the Constitution, is part of the law, as it is in South Africa. I want you to know, brothers, that what I am going to say here briefly does not mean that we can ever think of being racists in reverse. We fight apartheid as a matter of principle, deeply rooted principle. We feel sorrow about this, that human beings can sink as low as our white brothers have in South Africa.

I know of no African National Congress leader who has said, "Drive the white man into the ocean", none. All of them speak of building a non-racial society. Indeed, I know of no African country that is independent where the colour of man has counted. It has just happened where some wild man has come up, like Amin of Uganda. Those were some of our saddest days on this continent. We condemned that, we condemned it without fear or favour: we did condemn that. It is a sad chapter in our history, but then Europe has raised some people like Hitler and Mussolini and these are the people that the present South African leadership supported. Therefore they are made of the same type of mind. What Hitler did to the Jews — and I keep asking our Jewish friends, "Why do you do this to the Arabs when what you are doing is what you condemned. When Hitler did it to you?" We do know, to come back to the subject, that the present leadership led by Verwoerd and Vorster was interned by General Smuts because they supported Hitler. They were students of Hitlerism.

So we see so many terrible things happening in South Africa against the black man, against the brown man, against the Coloured people, offspring of black and white. We have heard of changes which are being praised by some countries of the West, that some changes are taking place in South Africa, that we should be patient. What does this mean? What changes are really taking place there? Cosmetic, nothing more. It is a plan designed to hoodwink the rest of the world, to keep it believing that changes are taking place. To begin with, those so-called powers are not real that are being shared with people of Indian origin, people of Asian origin or of mixed blood. There is no real sharing of power there, to begin with. Secondly, the black man, by far, far in the majority, is not even thought of, not even thought of. I am not saying in any shape or form that we can accept the cosmetic changes that are taking place. I am saying, apart from that, that the evil intentions of not even thinking of the black man, by far the majority, is supportive of what I am talking about.

E/CN.4/1985/8 Annex III page 2

The system of <u>apartheid</u> is wicked, it is criminal, there is no way in which the world should even be thinking of having what is called "constructive engagement".

Your Excellencies, I do not know what is taking place in Poland - but this is the one subject which must be discussed freely and frankly. I don't know what is taking place in Poland, but what I do know is that the West have reacted to what is taking place in Poland, and they have applied economic sanctions against Poland. Whatever is taking place in Poland to which the Western countries have reacted must have started a few years ago. But what is taking place in South Africa has been there for centuries and, to my surprise, to our surprise here in Zambia, the West have not decided to take economic sanctions against South Africa. If anything, they support South Africa in what we in Zambia call the five main areas of human endeavour. They support, they co-operate with South Africa politically, they co-operate with South Africa economically, they co-operate with South Africa socially and culturally. They co-operate with South Africa in matters of science and technology. They co-operate with South Africa in matters of defence and security. What conclusions are we going to be allowed to draw on such actions? Poland: in no time at all economic sanctions are applied. Over the question of South Africa, for decades, for ages, for centuries, the black man has been trampled upon. His rights have been trampled upon and the West has remained adamant when the call of the international community is to apply sanctions of some sort. The one thing that is very clear in my mind as a humble observer on the southern African scene is that an explosion in South Africa is inevitable, and if the West cannot move into action, because of principles, then for goodness sake, let them move to protect their own interests, because those will go up in flames, they are bound to. At 60, I know of no country where a people have stood on principle, have started to fight for a right and have failed, none, none. What we worry about over the question of Africa is the bloodshed that will take place when this revolution comes as it is bound to. Have we lost our balance in the West, we who are under Western influence? Have we lost our balance of thought? Can't we see things clearly, or are our minds taken up with wealth for centuries and so are unable to move over an issue of this type.

The killings that go on of the people that are not white, we have known about. Names have come out; the Government has been unable to explain how these people under their control have lost their lives. They haven't explained. We believe that if the white people of South Africa want peace, they have a way out of that: the way is to release Nelson Mandela and all other nationalist leaders, not to bantustans, but as nationalists of South Africa. Because that is what they are: nationalists of South Africa. Let them release Nelson Mandela and then talk to him. President Oliver Tambo cannot meet them at the moment. he must continue that pressure. In my manifesto on southern Africa I have been very clear on this issue: we want to avoid bloodshed where it is possible. But where the rights of man continue to be trampled upon, those people themselves have a right to life, there is no other way. We are not advocating violence, we would like to avoid it, we must where we can. But in the case of South Africa I am not sure that violence can be avoided. So even for the sake of their own investments, Western countries, if they cannot act as a matter of principle, should now begin to undo the evils of their investment in South Africa. They talk of instability in independent Africa. We have been going for only 20 years now. The earliest is Ghana, among the modern countries. That was after a period of so many forces of destabilization and they give that as an excuse for not investing in independent Africa, the instability. Are we failing to understand and appreciate the forces that brought this about? Or is it deliberate? The

slave trade took its toll: millions were shipped away. The activities of the slave traders rocked the continent, shook it and, as if that were not enough, there came the period of colonization. Africa was parcelled out. That period was a period of great destabilization. People were divided across tribes, across nations, parcelled out under different cultures. Our African culture was destroyed, trampled upon, frowned upon deliberately, because to colonize people you must colonize them culturally. So they did that for ages. Our culture was almost wiped out. So we became a people pale in colour in terms of culture. And then indeed came the period of decolonization, the fight for independence. That too was destabilizing, it had to be, there is no other way. And now 20 years afterwards we are being told that the African continent is a failure. How cruel they can be! After destroying us through the slave trade, destroying us through colonization, destroying us after we had been decolonized, they come out now and say "Africa is not stable". I suppose that is the meaning of exploitation. Exploiters will always find the means to justify what they are doing and doing wrongly.

So now we have South Africa in southern Africa, destabilizing neighbouring countries: little Lesotho, proud Lesotho, is in trouble. Swaziland, Namibia - I am coming to that - they will not give it up. Angola, they threw in trained UNITA rebels. Mozambique, they trained MNR rebels. Here, in Zambia, Commissioners, they began here: in 1969 they trained 100 dissidents. God helped us, and we captured them. They were innocent, we only dealt with the leadership; they were not a gang. We let the rest go free, they were ignorant men.

After that the colonizers in Angola trained another gang called the Mishela gang. They trained them in Angola. The South Africans took them over, and trained 75 of them to command level and trained them very well. It took us eight years to kill the leader of that gang and that was after taking many lives, of our people and property in this country. The copper belt (?), the Northwestern province, the Western province: we are affected. The South Africans studied destabilization here in Zambia. God helped us and they failed. They did it in a much bigger way. Here they trained 100, here they trained 75. In Angola they have trained thousands; in Mozambique they have trained thousands. I fear they are training thousands now against Zimbabwe; you should see what they do there when you do get there eventually. So destabilization is part of this attempt to push back the wind of change that Macmillan talked about in 1960, to destroy the continent, and over and above that, to destroy the population, to destroy property. So this theme of instability in Africa is something which is being used by the very people who are responsible for the evils of this continent. I am not saying that we are not making mistakes. We do make mistakes, who doesn't? East, west, north, south, they make mistakes, all of us are human beings and, therefore subject to making mistakes, but also subject to doing some good.

So, my dear brothers, this question of <u>apartheid</u> in South Africa has a very wide implication, very wide indeed in this area and frightening. I have no doubt at all that even as I speak of the revolution which is coming, I don't relish it, but people must be free. I am proud of one thing which I have mentioned already. No African leader on this continent has ever said, "Drive the white men into the ocean". I am very proud of that. We are fighting racism, not to be racists in reverse. We will not be. We will not be. This is a matter of the deep rooted principle of human rights for us. I said to our brothers in Zimbabwe, at the height of their struggle, "Mugabe, Nkomo, if your colleagues, your comrades in a common struggle should become racists in reverse, we are going to denounce you".

E/CN.4/1985/8 Annex III page 4

I said that, it is on record. I have said the same thing to our brothers, "Nelson Mandela, Tambo, if you should become racists in reverse we shall come to the parting of the ways". Because racism is racism, as we did in Uganda when Amin came on the scene we denounced him as a racist, a political vagabond, with no principles at all.

Will the West ever listen? Will they ever accept reason, or are they preoccupied with the East-West confrontation? We have nothing to do with that, nothing at all. If they are fighting Mozambique and Angola because they think they are Marxist-Leninist States, who caused that? The West did. Human rights: in Angola and Mozambique they had to take up arms and fight. I warned them on behalf of Zambia as far back as 1966. "if you are thinking of your fight against the East, against the Warsaw Pact Powers then for goodness sake, grant independence now to Mozambique and Angola. You will be granting it to nationalist Governments. If you fail to do that now, you will be granting it to the very forces that you fear. Have no fear of Marxism-Leninism. To me my Christian faith in terms of behaviour towards my fellow men, is the same as Marxism-Leninism, the same. To me my Christian faith shows me the way, the same as Marxism-Leninism. Christ was a lover of man, a revolutionary. "Love thy neighbour as thyself." Can Botha say that he loves the black man as he loves himself? Can the capitalist exploiter love his worker as he loves himself? These are questions from which the West shies away. They are unable to face them. But I am bringing them up because they are part and parcel of this confrontation. It is a bitter question that we are unable sometimes to allow ourselves to face. It is the right of the Angolans, the Mozambicans, the Zimbabweans, to decide which way they will go, and to use that against them is wrong. Remember that the West was supporting Portugal for 500 years, exploiting the people of Angola, exploiting the people of Mozambique. Five hundred years! When the people rose to fight, Western capitals were silent on the issue; not silent. In fact, they were supporting Salazar, they were supporting Caetano until the revolution took place in Portugal itself. How can we blame the people of Angola, of Mozambique, because they had to fight? Western capitals did not only support colonial Portugal, but in fact they helped to destroy lines of communication between the fighters and themselves. Once they did that, the fighters had to go elsewhere to look for support. They had to go to the Eastern countries. Comrade leader of the delegation and comrades, they went to the East, not because they wanted to, they had no choice in the matter. And of course they are Communists, after that what do you expect? The people of the ideology which made those guns, they had to follow them, wherever they went. Was the West so blind as not to see this at that particular time? And now today we must be blamed for all this. They must train rebels against Mozambique, rebels against Angola. Commissioners, we have supported Mkomati because President Samora had no choice in the matter. It was either Nkomati or a bantustan in Mozambique. So we are supporting Nkomati for that reason, not because it is good for us, but because it is good for Mozambique, if Mozambique is to retain its character.

There are many powerful forces. It is not just four million people, four million white Africaners and others, their allies, the MNR that they support: it is also the investors, the multinationals; they have supported the racists in South Africa in their training of MNR. The investors in South Africa don't want to change. First of all the four million whites don't want to change. Why? Because they are a frightened people. They want to retain that power indefinitely. If I may quote Ian Smith who is still in Zimbabwe today, he said "Not in a thousand years will there be independence". His calculations are off the mark, I don't know by how much.

So the four million whites want that to continue in South Africa, the status quo to continue in South Africa. The investors want the status quo to continue in South Africa. Why? Because of rich harvests, rich profits which come as a result of the black man's cheap labour. The South African forces, the multinationals, heavy profits are an attraction to them. Thirdly, our brothers of the Western Governments now, what do they say? They say they are afraid of change in South Africa because today South Africa is a citadel of Western capitalism, today South Africa protects that way, the highway. The Russians cannot interfere there so long as the whites are in control. That is the third force. The fourth force: the steel-working Governments. They don't want to see any change because they see South Africa as a source of strategic minerals. To me this is a force, all these are forces, and let me just deal with these last two, because the first one I have described already. The second one, the multinationals, those will go up in flames. That is not what I want, your Excellencies, but it will come because the peopleare oppressed and the people will react violently. So the third point is the fear of the Soviet Union having access to South African ports when the ANC takes over, there is no choice in the matter, but there is the question of how, violently or more peacefully. We have gone past the stage of peaceful change now in South Africa, we are at the point of more violence or less violence, that is the position. Nobody should speak of peaceful change because that is no longer possible: we have gone past that. In any case, the oppression, the killing of the Africans is not peaceful. The destruction of the life and property of the Africans is not peaceful. That is not peace, the mere absence of war is not peace. It doesn't necessarily mean peace: mere absence of violent war does not mean peace necessarily, there is no peace in South Africa. The Government armed forces terrorize the black man in South Africa, terrorize the Asian, the man of Asian origin, terrorize the man of mixed birth. Back to the subject: we therefore have a problem there.

The third point I was making was this fear of South Africa being shared with the Soviet Union. In my opinion when the ANC takes over, they will be non-aligned, I have no doubt about that. They will accept whoever is reasonable to come and use their ports, and so on.

The fourth point, on strategic minerals, as I am speaking to your Excellencies now, there are direct injections of working capital for companies prospecting for oil and gas. Samora Machel has asked Western camp countries to prospect for gas and oil. Kenneth Kaunda allows copper and cobalt to flow to Western countries: strategic minerals. Robert Mugabe is allowing chrome to be sold to America. Masire in Botswana, the same thing, he allows copper, diamonds, the lot, to flow to Western capitals and above all Dos Santos uses Cuban troops to protect American company oil in Angola. What are they talking about? Strategic minerals. Who has prevented strategic minerals from reaching Western markets, anywhere? It is a false argument. On the spot they act against Poland; here we are still suffering.

Let me refer to Namibia very quickly. As we support the ANC in South Africa, so we support SWAPO equally strongly in Namibia. It is a just struggle. There, life and the property continue to be destroyed. Humble men, women and children are losing their lives, day in and day out. Why? Because Cuban troops are in Angola. How can we reason like that? We have called upon our American friends several times, publicly, privately; we have spoken to their leaders. I have spoken personally to some South African leaders, calling on them please to desist from pursuing this sick course, this very sick course, which leads to so many unnecessary deaths of the innocent. How can you persecute the people of

E/CN.4/1985/8 Annex III page 6

Namibia over an issue of the presence of Cuban troops in Angola, another country? It beats all reasoning, when we see their suffering on the continent because of an East-West confrontation. Why should we suffer like that? I hope that the time will come and come quickly when both the American Government and the South African Government will change their stand on this issue. The whole of the international community wants to see resolution 435 implemented, and only that can stop the unnecessary bloodshed that is taking place in Namibia today. It is a straightforward matter complicated by the involvement of big Powers, a straightforward matter such as implementing resolution 435. We know that without the United States administration moving in this, comrade Commissioners, nothing will move, because in the end it is American money which will be used to implement resolution 435. So we can only appeal to the American authorities, to those in power in America, to change their attitude and implement resolution 435.

As for us, I repeat what I said at the beginning. We support your mission here very strongly, we support the United Nations because it is man's last hope, in my humble opinion. Gentlemen, comrades, brothers and friends, you are welcome to Zambia.

The CHAIRMAN: Your Excellency, Mr. President, you have done my colleagues and me a very great honour by receiving us at the State House this evening. Your Excellency, our pleasure is the greater by the fact that you have today had to go to one of the provinces to carry out one of you very many duties as President of this Republic. When we were coming, we thought this was going to take the form of just a courtesy visit, to shake hands with the President, and perhaps you would say goodbye to us. I think that my high expectations have been fulfilled. You have, Sir, in a very few minutes, in a manner that is only possible with President Kaunda, you have enlightened us about the whole range of issues affecting the southern section of our continent. When I say "our", my colleagues who are not Africans will perhaps understand. You have gone even deeper than that, your Excellency, by delving deep into the causes of Africa's problems. These, your Excellency, are only possible with a man like you. But before I go any further, may I on behalf of my colleagues, Sir, thank you personally, your Excellency and your Government, for making it possible for this Working Group of Experts on southern Africa to come to this lovely city of Lusaka to carry out the mandate which has been given to us by the Commission on Human Rights. Your Excellency, without this support, without this encouragement from your Government, without the facilities such as have always been made available to us, it would have been impossible, Sir, for us to carry out these duties. We are not new to Lusaka. We have been coming here for years since the creation of this Working Group. The older members of the Working Group will tell you, Sir, that they started coming here in 1968. We joined later and we have been coming for the last six or eight years and whenever we have been in Lusaka we have felt at home. We have, while carrying out our mandate, also followed the progress of this great Republic and if I may, Sir, with all humility, since the twentieth anniversary of your independence is due on 24 October. I'd like to convey to you in advance of that anniversary, our congratulations. Twenty years, one would say, is still under age, but the progress that this country has made under your dynamic leadership is very impressive. I say this not only as a member of the Group, but also as an African and Ghanaian for that matter. So we want to congratulate you and we would like to thank you and your officials. We were privileged three days ago to be received by His Excellency the Minister of External Affairs. Since our arrival my own brother and colleague, Mr. Kaula, has bent over backwards to ensure that everything we need to make our work possible has been made available to us.

Your Excellency, you have underscored the fact that the United Nations is the last hope for mankind. You have, Sir, quite rightly pointed out the basic injustice of apartheid and the fact that apartheid, because it humiliates the non-white population of that country, because it has been institutionalized and given legal status, has caused most of the problems of the sub-continent. Your role as a leader of this country, Zambia's role in the United Nations, is there for all to see, and your chairmanship, Sir, of the Council for Namibia, over the years, and the contribution that Zambia has made in support of that Council. The Institute of Namibia has been stationed here. These are all concrete manifestations, not only of your faith in the United Nations system, but also in the principal position you have taken over this vexed question of apartheid. Particularly in the last couple of months, we have followed, again with very deep admiration, the efforts that you have made. Even as you underscored the dangers on the horizon for South Africa, one cannot, listening to you, fail to discern the basic humanity that was ringing out of your words. And this is the humanism which has characterized the work, the life, of this country. Even as you warned that time is ticking away, that the prospect for peaceful change in South Africa is deluding us, one could discern, through your words and also through the efforts you have been making in these last few months, that you are basically a man of peace, a man of great compassion, a man who values human dignity.

You were right, Sir, to say that what is at stake is not a question of black or white, because the evidence is very clear: all over Africa, blacks and whites are living together. And it is possible that once the change has come in South Africa, the whites also can live as human beings, which is their right; but unless it is done quickly, unless the recognized leaders of South Africa, Mandela and the others, are released from prison, and allowed to participate in the processes which will bring about peaceful changes in South Africa, then not even you, Sir, can stop the catastrophe that is looming.

We have in the United Nations always emphasized the fact that apartheid in South Africa and in Namibia constitutes a threat to international peace and security. And if these words didn't mean anything at all, everything that has been happening in this sub-continent in the last couple of years emphasizes the fact. You have talked about the many ways in which South Africa has tried to destabilize countries in this subregion, beginning from Zambia itself, Mozambique, Swaziland, Botswana, Lesotho, Angola. Your Excellency, we came here from Angola. Two years ago we were privileged to visit Lubango, we saw the destruction that had been caused. The authorities in Angola said to us that after the Lusaka accord of March it was agreed that South Africa would move its troops from Angolan territory. And it is matter for disbelief that as South Africa has sought to give effect to this withdrawal, South Africa has destroyed everything that it found in Angolan territory, from Lubango right down to Ngiva. We saw pictures, Sir, of the destruction to property, public buildings have been destroyed, clinics have been destroyed, schools have been destroyed, industrial complexes have been destroyed, bridges have been destroyed. It could only have one meaning: that South Africa basically does not want peace. The Lusaka manifesto of 1969, which you inspired, offered peace: that Africa would much rather talk than fight. South Africa, I know from the United Nations, South Africa rejected it. You have in many ways made it possible for South Africa to accept the olive branch. South Africa does not respond. What else is left for them to do? What else? We are confronted frequently with the argument about freedom fighting, the armed struggle. As you have said, the decision is not ours. Apartheid itself is built on force. It is nurtured by force. What can the people who are thus intimidated and under threat, what can

E/CN.4/1985/8 Annex III page 8

they do? They have no choice but to fight. This is what lies behind the legitimacy of the struggle by SWAPO and that is why the United Nations recognizes SWAPO as the authentic leaders of that country. South Africa has no right there to be in Namibia, because Namibia is United Nations territory. In South Africa, Sir, as we go along collecting material, every time that we have looked at this matter, the situation has deteriorated. I cannot but observe that, better than we can, you are an authority on these matters and therefore, if I may, I would like to say that we have been deeply touched and impressed by the analysis you have given. We are indeed inspired by the encouragement that your words will give to us. I am sure my colleagues and I recognize that it is words like this that can enable us to report faithfully to the United Nations.

Annex IV

DEATHS OF PEOPLE IN DETENTION UNDER SECURITY LAWS

DATE	NAMES	PLACE	ATTRIBUTEL CAUSE
3/9/63	Solwandle Looksmart Ngudle		Suicide by hanging
Sep. 1963	Bellington Mampe	Worcester	No details available
24/1/64	James Tyita		Suicide by hanging
9/9/64	Sukiman Saloojee	Johannesburg	Jumped from 7th floor
9/5/65	Ngeni Gaga		Natural causes
9/5/65	Pongolosha Hoye		Natural causes
Aug. 1966	James Hamakwayo	14	Suicide by hanging
9/10/66	Hangula Shonyeka		Suicide (no further details given)
19/11/66	Leong Pin	Leeuwkop Prison	Suicide by hanging
5/1/67	Ah Yan	Silverton	Suicide by hanging
9/9/67	Alpheus Madibe	·	Suicide by hanging
11/9/68	J.B. Tubakwa	Pretoria Prison	Suicide by hanging
1968	Unnamed person mentioned in Parliament		No details available
3/2/69	Nicodemus Kgoathe	Pretoria	Slipped in the shower
28/2/69	Solomon Modipane	Pretoria	Slipped on the soap
10/3/69	James Lenkoe	Pretoria	Suicide by hanging
1/6/69	Caleb Mayekiso	Port Elizabeth	Natural casuses
16/6/69	Michael Shivite		Suicide. No further details
10/9/69	Jacob Monnakgotla	Pretoria	-Natural causes
27/9/69	Imam Abdullah Haron	Maitland	Fell down the stairs

DATE	NAMES	PLACE	ATTRIBUTED CAUSE
1970	No deaths		
21/7/71	Mthayeni Cuthsela	Umtata	Natural causes
27/10/71	Ahmed Timol	John Vorster Square	Jumped through 10th floor window
1972	No deaths		
1973	No deaths		
1974	No deaths		
1975	No deaths		
}		Through a se	Wall on a chair
19/3/76	Joseph Mdluli	Durban	Fell on a chair
5/8/76	Mapetia Mohapi	East London	Death by hanging
2/9/76	Iuke Mazwenbe	Cape Town	Suicide by hanging
25/9/76	Dumisani Mbatha (16)	Modder B Prison	Natural causes
28/9/76	Fenual Mogatusi	Johannesburg Fort	Natural causes - epileptic fit
5/10/76	Jacob Mashabane	Johannesburg Fort	Suicide by hanging
6/10/76	Unnamed	Carletonville Police Cells	No details available, tut head injuries
9/10/76	Edward Mzolo	Johannesburg Fort	No details available
14/10/76	William Namodi Tshwane	Modder B Prison	No details available
19/11/76	Ernest Mamashila	Balfour (Natal)	Suicide by hanging
26/11/76	Thalo Mosala	Butterworth	No details available
11/12/76	Wellington Tshazibane	John Worster Square	Suicide by hanging
15/12/76	George Botha	Fort Elizabeth	Jumped six floors down a stairwell
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DATE	NAME	PLACE	ATTRIBUTED CAUSE
9/1/77	Nanoath Ntshuntsha	Leslie	Suicide by hanging
9/1/77	Lawrence Ndzanga	Johannesburg Fort	Natural causes
20/1/77	Elmon Malele	Johannesburg	Hit head against a desk after fainting
13/2/77	Mathews Mabelane	John Vorster Square	Fell from 10th floor
15/2/77	Tswafifeni Joyi		. No details
22/2/77	Samuel Malinga	Pietermaritzburg	Natural causes
26/3/77	Aaron Khoza	Pietermaritzburg	Suicide by hanging
7/7/77	Phakamile Mabija	Kimberley	Jumped through 6th floor window
1/8/77	Elijah Loza	Cape Town	Natural causes
3/8/77	Hoosen Haffejoe	Durban	Suicide by hanging
13/8/77	Bayempin Mzizi	Durban	Suicide by hanging
12/9/77	Steve Bantu Biko	Pretoria	Hit the back of his head agains a wall
16/11/77	Bonaventure Sipho Malaza (13)	Krugersdorp	Suicide by hanging
10/7/78	Lungile Tahalaza	Port Elizabeth	Jumped through 5th floor window
1979	No deaths		
10 <b>/9/</b> 80	Saul Ndzumu	Umtata	Natural causes
13/11/81	Tshifhiwa Muofhe	Venda	Found dead in his cell. No further details
5/2/82	Neil Aggett	Johannesburg	Still to be determined
8/8/82	Ernest Moabe Dipale	Johannesburg	Suicide by hanging

<sup>\*/</sup> A claim by the Muophe family against the Venda National Force for R 385,000 was settled out of court in July 1983, the family receiving R 150,000.

ĺ	DATE	NAME .	PLACE	ATTRIBUTED CAUSE
	28/2/83	Poul Axel Fabricious Arkner	,Johannesburg	Suicide by hanging
	7/3/83	Simon Tembuyise	Nelspruit	Found hanged
	3/5/83	Themba Manana	Dirkiesdorp police station	Murder
	4/5/83	Zephaniah Sibanyoni	Dirkiesdorp police . station	Natural causes
1	5/7/83	Paris Molefi	Protea police station/ Soweto	Died of bullet wound through the head
	20/1/84	Samuel Mugivhela Tshikhudo	Tshizidzini Hospital	Medical neglect during detention
	15/7/84	Johannes Bekele Ngalo	Tumahole, Parys	Serious internal injuries
	25/8/84	Ephraim Mthetwa	Durban :	Suicide by hanging

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## ANNEX V

## List of political trials

## (a) Summary of political trials in 1983

NAME .		CHARGES	REMARKS
January LERUMO, Samuel MAPHETO, Akila	}	Participating in terrorist activities	3 years Won appeal in September and released
March MOKONE, Andrew MAPUKELA, Vulindlela NKOSI, Reginald	}	Participating in activities of ANC	<ul><li>3 years (1 suspended)</li><li>3 years</li><li>3 years</li></ul>
April THLOLOE, Joe NGCOBO, Sipho SIBANDA, Nhlanganiso MZOLO, Steven		Possession of banned literature	$2\frac{1}{2}$ years $\left.\begin{array}{c}2\frac{1}{2}$ years $\left.\begin{array}{c}2\end{array}\right.$ Won appeal and released January 1984
RADEBE, Stanley MADALANE, Mthuthuzeli MOHAKALA, Lebona MAZIBUKO, Innocentia		Furthering aims of banned organization and recruiting for military training	All four acquitted. Magistrate criticized Security Police and ordered investigation into their actions
<u>June</u> MOLOISE, Benjamin Mal	esela	Murder	Sentenced to death. Leave to appeal refused. Petition for clemency pending (see paras. 22-26)
July MOTIHABAKWE, Sello KERS, Joey MOKGOASI, Eugene HLATSWAYO, Nelco FANI, Ben		Terrorist activities arising out of school unrest in Kimberley; all 5 were students	13 years 11 years 12 years 10 years 10 years

NAME		CHARGES	REMARKS
August			
MOKABA, Peter	)		6 years
MAAKE, Jerome	}	Terrorist activities	8 years
NHLAPO, Portia	<b>\( \)</b>		Acquitted
MASHEGO, Jacob	}	Possession of ANC tape cassettes	5 years (2 suspended) on appeal
MOLOI, Thabo	}	tape cassertes	2 years (1 suspended) out on bail
KING, Headley		ANC activities	18 months (6 suspended)
ŒNU, Isaac		Possession of ANC clothing	8 years on appeal
September			
MAKHATHINI, Siphiwe	)	Terrorist activities	10 years
SHEZI, Nthokozisi	}	101101101	10 years (4 suspended) on appeal
BANDA, Vronda		High treason	12 years on appeal
CIKOZANI, Mzwakhe	)	Terrorism	12 years
MAGXWALISA, Lungile	}	Treason	24 years
DINCA, Siphiwo	}	Treason	12 years
October			
MOLOTSI, Alpheus	)	High treason	18 years
MOLEFE, Jacob	}	<u> </u>	15 years
November	,		
NIEHAUS, Carl	}	High treason	15 years
LOURENS, Jansie	}		4 years
KWADI, Amanda	)	)	Bail not granted
MOILWA, George	>	Furthering the aims	Acquitted while awaiting
TSELE, Samuel	}	of ANC	trial; 3 months in gaol
•	•	·	(see para. 19)
December			
NTSHIWA, Matthews		Engraving "ANC" on mug	<pre>3 years suspended on appeal Bail of R 3,000</pre>
NCUBE, Sister Mary Bernard		Possession of banned publications	12 months (8 suspended) on appeal, out on bail

## (b) Summary of political trials in 1984 (January-August)

(b) Summary of political trials in 1984 (January-August)					
NAME	CHARGES	REMARKS			
January					
RAMANALA, Thomson	Possession of undesirable literature	2 years ( $l_{\overline{2}}^{\frac{1}{2}}$ suspended)			
February					
SISULU, Albertina	Furthering the aims of ANC	4 years (2 suspended) on appeal			
MALI, Thami	Furthering the aims of ANC	5 years out on bail			
March					
MUDZIELWANA, Petrus	High treason (Venda)	5 years (4 years 4 months suspended)			
MKHATSHWA, Smangaliso Fr.	Subversion, etc. (Ciskei)	Acquitted (after 4 months in detention)			
NGCOBO, Thembinkosi	Terrorist activities	20 years			
April					
RATSHITANGA, Robert	Assisting terrorists (Venda)	5 years on appeal			
DUNA, William	Terrorist activities	3 years effective			
MANINJWA, Dumisani	Terrorist activities	$\frac{31}{2}$ years effective			
KEYE, Bayi	Membership of ANC	3 years effective			
MAYEKISO, Luyanda	Membership of ANC	3 years effective			
RANOTO, Frans	High treason	12 years			
MORAKE, Philemon	High treason	12 years			
May					
MAHLOBO, Sithabiso	High treason	20 years			
MARTINS, Benedict	Terrorism	10 years			
GQUBULE, Duma	ANC activities	2½ years suspended			
VILIKAZI, Simon	Possession of banned book	l year suspended			
26 UDF supporters	Illegal gathering	Fined R 50 (or 25 days)			
June					
MELK, Emily	Possession of a banned book	18 months (12 suspended) on appeal			
July					
MABITSELA, Solomon	Possession of a banned book	18 months (9 suspended) on appeal. Out on bail			
DAU, Gerald	Possession of a banned book	12 months suspended			

E/CN.4/1985/8 Annex V page 4

NAME	CHARGE	REMARKS
July (continued)		
22 Fort Hare Students	Public violence	3 acquitted 19 fined + 200 days suspended
14 UDF members	Illegal gathering	Fined R 60 each
KHUMALO, Vusi	Possession of banned book	3 months suspended
RADEBE, Sipho	Possession of banned literature	2 years on appeal
NQAKULA, Charles	Entering South Africa from Ciskei without a visa	Acquitted but redetained and recharged
August		•
SISHAKANE "Shakes" plus 26 others	Illegal gathering	Found guilty on appeal
8 students, Nqweba school, Graaff-Reinet	Public violence	6 acquitted 2 given 3 years
SITHERE, Moses	Furthering aims of ANC	3 years ( $l^{\frac{1}{2}}$ suspended)
ŒNU, Isaac	Supporting ANC	Successful appeal against conviction and 8 year sentence
(c) <u>Trials in progress as</u>	at 31 August 1984	
Durban:-		
46 NIC demonstrators	Unlawful gathering (November 1983) Internal Security Act	Resuming on 2 October
MARRAND, Thembinkosi } MATHEBULA, Sibusiso MSHENGU, Phelelani MAPHUMULO, Lucky MSOMI, Sipho Themba CHIRWA, Aleck	Various charges under Internal Security Act	Another accused, Ephraim MTHETHWA, died in police custody on 25 August 1984 (See annex deaths in detention)
Grahamstown:- NZO, Rufus plus 10 others	Treason Internal Security Act	
Zwelitsha (Ciskei):  BAM, Boy  NOJILANA, Mandla	Harbouring terrorists Ciskei National Security Act	Resuming 3 October

NAME	AME CHARGES			REMARKS			
Somerset East:-							
Olicon to I			Public violence (Cradock March 1984)				
YOSE, Yint: 28 others	i plus			violence k April 1984)			
Johannesbu	rg <b>: -</b>						
JOSEPH, He	len )						
BARCLAY, He	eather $\langle$						
MATHATE, M	odiko )	Holdi	ng	demonstration	Resuming 4 December 1984		
ROUSSOS, M	)			t building in ention of the			
PAVLICEVIC	1			rations In or			
ROLNICK, B	`			urt Buildings			
SHEPHERD, 1	₹	Proni	DΤ	tion Act 1982			
HUNTER, Lu	)						
(d) Trial:	s scheduled at	t the tim	e	of preparation of th	ne re	eport	
	NAME			CHARCES		PLACE	
3 Sept.	HUNTER, Rolar	nd	)				
)	HANEKOM, Dere		(	High treason		Pretoria	
	MURRAY, Patri		3				
3 Sept.	TWALA, Nkanye		•	Activities of PAC		Johannesburg	
) ~ ° <u>.</u> ° °				Internal Security 1	Act	•.	
3 Sept.	SHOPE, Regan			Security offences Internal Security A	Act	Tzaneen	
3 Sept.	TSHUME, P. + 4 others		Banned literature Police Act			Port Elizabeth	
5/11 Sept.	17 ATTERIDGEV scholars	TILE		Public violence in March 1984		Pretoria	
6 Sept.	JAKES, Michae	el	)	Illegal gathering of	on	Bishop Lavis	
	KENNY, Andrew	v.	3	22 August		(Cape Town)	
	FREDERICKS, J	John	5	Internal Security !	Act		
6 Sept.	MASANGO, Zach			Offence on 22 Augus in Mamelodi	st	Pretoria	
10 Sept.	NYOVANE, Tenr	nyson		Banned literature Internal Security A	Act	Johannesburg	
ll Sept.	38 members EI	TYCO		Illegal gathering (July) Ciskei National Security Act		Mdantsane	

	NAME	CHARGES	PLACE
12 Sept.	CHOTIA, Mohamed	Public violence	Protea (Soweto)
12 Sept.	MALUIEKE, Saki	Putting up anti-	Dietersburg
	MARABA, Windsor	election posters without authority	Pietersburg
7.5 C. L	RASETHABA, Rachi )	-	D
17 Sept.	MTATI, Goodman	Furthering aims of ANC Internal Security Act	East London
17 Sept.	KGOMO, Gilbert	Banned literature Internal Security Act	Johannesburg
18 Sept.	NYOKONG, Michael	Public violence (August)	Potchefstroom
18 Sept.	MOHAMED, Elaine	Crimen injuria (August)	Pretoria
20 Sept.	42 PERSONS	Disturbing the peace (at Eesterus 14 August)	Pretoria
21 Sept.	VILIKAZI, Vusi	Malicious damage to property	Johannesburg
24 Sept.	MHIANZI, Fika Norman )		
	MTHOMBENI, Enoch Vusi	High treason	Johannesburg
	MYENI, Samuel		
	MAKHUBU, Jabulani		
26 Sept.	ISSEL, Johnny	Contravening banning order Internal Security Act	Wynberg, C.P.
27 Sept.	NQAKULA, Charles	"Entering South Africa" from Ciskei without a visa	East London
28 Sept.	NGOBENI, Edward	Banned publications Internal Security Act	Johannesburg
28 Sept.	11 SESHEGO scholars	Public violence (August)	Pietersburg
28 Sept.	8 members VAAL INTERYOUTH COMM.	Unlawful gathering in November 1983 Internal Security Act	Vanderbijl- park
? Sept.	LINDEWE, Rita Khoza	Banned literature Internal Security Act	Zeerust
? Sept.	27 TUMAHOLE residents	Public violence in July 1984	Parys
? Sept.	BADELA, Zoleka	Banned literature Internal Security Act	East London
1 Oct.	12 GRAAFF-REINET residents	Public violence in June 1984	Graaff-Reinet

	NAME		CHARGES	PLACE
1 Oct.	BATA, Mcebisi POSWA, Mxolisi KOTA, Pakamile SOMHLASO, Pakamisa	}	Attending illegal gathering of more than 20 people Ciskei National Security Act	Zwelitsha
2 Oct.	44 UDF members	,	Unlawful gathering (June 1984) Internal Security Act	Durban
ll Oct.	KHUMALO, Dick		Banned literature Internal Security Act	Johannesburg
12 Oct.	24 MEDUNSA students		Unlawful gathering (August) Internal Security Act	Pretoria
26 Oct.	MAMANE, Thabo ATKINSON, Joan	}	Illegal demonstration in court buildings	Pietermaritzburg
3 Dec.	MOHAPI, White	,	Public violence (April 1984)	Bloemfontein
5 Dec.	MAIELA, Churchill plus 24 others		Unlawful gathering (June 1984) Internal Security Act	Bloemfontein
9 Dec.	MARKS, Joseph	)		
	MARKS, Brendaline		Intimidation (August 1984)	Wynberg, C.P.
	AFRICA, Vivian	5	(	

Consulate in Durban on 13 September 1984.

Annex VI
List of persons held in preventive detention

DATE DETAINED	NAME	PLACE	REMARKS
1982			
22 March	TATSA, Mordecai	Modder B	Detention order expired 10 August 1983 and he was released. Served with banning order same day. Banning order expires 31 August 1986.
27 April	MTOBELA, David	Modder B	Mozambique citizen abducted by SADF in January 1981. Detention order expired 10 August 1983 and he was released.
1984			
31 March	GONIWE, Matthew	Cradock/Pollsmoor	Teacher, Chairman CRADOYA
31 March	GONIWE, Mbulelo	Cradock/JHB	Executive member CRADOYA
31 March	CALATA, Fort	Cradock/JHB	Teacher, Chairman CRADOYA
			Detention orders for the above three expire on 30 March 1985
31 March	JACOBS, Madoda	Cradock	Student leader. Currently on trial in Somerset East. Presumed no longer held under section 28.
21 August	GUMEDE, Archie	Durban	UDF $\underline{a}$ / Natal President
21 August	RAMBOGIN, Mewa	Durban	UDF Natal Treasurer/NIC Publicity Secretary
21 August	SEWPERSADH, George	Durban	NIC <u>b</u> / President
21 August	NAIDOO, M.J.	Durban	NIC Vice-President
21 August	NAIR, Billy	Durban	NIC Member
			The above five were released on 7 September 1984 after a Maritzburg Supreme Court ruling that their detention order was invalid. New detention orders were issued the following day, but could not be served due to their disappearance. They eventually took refuge in the British Consulate in Durban on

<sup>&</sup>lt;u>a</u>/ UDF - United Democratic Front.

b/ NIC - Natal Indian Congress.

DATE DETAINED	NAME	PLACE	REMARKS
21 August	LEKOTA, Patrick "Terror"	Johannesburg	UDF Natal Secretary Publicity
21 August	JASSAT, Essop (Dr.)	Johannesburg	UDF Patron/TIC <u>c</u> / President
21 August	MOKOENA, Aubrey	Johannesburg	UDF Vice-President/RMC $\underline{d}/$ Publicity Secretary
21 August	NKONDO, Curtis	Johannesburg	UDF Vice-President/RMC Chairman
21 August	SALOOJEE, R.A.M.	Johannesburg	UDF Vice-President/TIC Vice-President
22 August	MYEZA, Muntu	Johannesburg	AZAPO <u>e</u> / Publicity Secretary
22 August	PATEL, Haroon	Johannesburg	AZAPO, Lenasia Chairman
22 August .	THLOPANE, Jerry */	Sebokeng/JHB	
22 August	MAPETLA, Andries	Pretoria/JHB	COSAS f/ Atteridgeville
ZZ RUBUDU	imibiba, midi 100	1100011470115	
22 #45450	imi bilm, midi 105		The above nine are all held in Johannesburg prison and are appealing against the rejection of their challenge of the validity of their detention orders.
22 August	KIKINE, Sam	Durban	The above nine are all held in Johannesburg prison and are appealing against the rejection of their challenge of the validity of their
			The above nine are all held in Johannesburg prison and are appealing against the rejection of their challenge of the validity of their detention orders.  SAAWU g/
22 August	KIKINE, Sam	Durban	The above nine are all held in Johannesburg prison and are appealing against the rejection of their challenge of the validity of their detention orders.  SAAWU g/
22 August	KIKINE, Sam	Durban	The above nine are all held in Johannesburg prison and are appealing against the rejection of their challenge of the validity of their detention orders.  SAAWU g/  APDUSA h/ Natal Chairman  The above two were released on 7 September 1984 after the Maritzburg Supreme Court ruling and at the date of this
22 August 22 August	KIKINE, Sam HASSIM, Kadir	Durban Pietermaritzburg	The above nine are all held in Johannesburg prison and are appealing against the rejection of their challenge of the validity of their detention orders.  SAAWU g/  APDUSA h/ Natal Chairman  The above two were released on 7 September 1984 after the Maritzburg Supreme Court ruling and at the date of this report are still in hiding.

<sup>\*/</sup> Released late September 1984.

c/ TIC - Transvaal Indian Congress.

d/ RMC - Release Mandela Campaign.

e/ AZAPO - Azanian People's Organization.

f/ COSAS - Congress of South African Students.

g/ SAAWU - South African Allied Workers Union.

 $<sup>\</sup>underline{h}/$  APDUSA - African People Democratic Union of South Africa (a small political party not affiliated to UDF).

The expiry date of all the detention orders issued during August 1984 is  $28 \, \text{February} \, 1985$ .

It is possible that detention orders have been issued for other persons, but not served on them due to their disappearance (e.g. Paul David in Durban).

## Persons still in detention at end of August 1984

DATE DETAINEI	NAME	PLACE	ACT	REMARKS
<u> 1983</u>				
?/4/83	MATIKINCA, Khayalebo	Port Elizabeth	31 ISA	In "witness" detention
1984				
March				
19/3/84	NTIMBANI, Emma	Tzaneen	29 ISA	Teacher
31/3/84	GONIWE, Matthew	Cradock/Pollsmoor	28 ISA	Teacher, executive member CRADOYA
31/3/84	GONIWE, Mbulelo	Cradock/JHB	28 ISA	Executive member CRADOYA
31/3/84	CALATA, Fort	Cradock/JHB	28 ISA	Teacher
?/3/84	TSHABALALA, Charles	Durban	31 ISA	
?/3/84	TSHABALALA, Richard	Durban	31 ISA	
?/3/84	MASINGA, Nhlanhla	Durban	31 ISA	
?/3/84	NTAMBANA, Jabulani	Durban	31 ISA	
?/3/84	LUTHULI, Matthews	Durban	31 ISA	
?/3/84	LINDANI, Eugene	Durban	31 ISA	
?/3/84	GUMEDE, Sisiwe John	Durban		
?/3/84	MATANGANA, Bongile Christian	Durban		
April				
5/4/84	MAKELANI, Isaac	Tzaneen	29 ISA	
May				
25/5/84	NGWENYA, Sipho	Soweto	29 ISA	
29/5/84	LEEPHILE, Boitumelo	Soweto	29 ISA	
30/5/84	HASHE, Joy Pumela	Ermelo	29 ISA	
June				
5/6/84	NDLOVU, Leslie	Soweto	29 ISA	
7/6/84	XULU, Machina	Pietermaritzburg	29 ISA	
7/6/84	PAYI, Lucky	Pietermaritzburg	29 ISA	
7/6/84	MZAMO, Mbuso	Pietermaritzburg		
10/6/84	NGCOBO, Zondite	Pietermaritzburg	29 ISA	
10/6/84	NGCOBO, Patricia	Pietermaritzburg	29 ISA	
10/6/84	THABETHE, Penelope	Pietermaritzburg	29 ISA	

DATE DETAINED	NAME	PLACE	ACT	REMARKS <sub>.</sub>
10/6/84	KHAWULA, Cordelia	Pietermaritzburg	29 ISA	
10/6/84	MKHIZE, Ndumenzweni	Pietermaritzburg	29 ISA	
10/6/84	NDUNA, Xolani	Daveyton	29 ISA	)Trade-unionist
10/6/84	MAPHELA, Zanemvula	Daveyton	29 ISA	)FOSATU <u>a</u> /
11/6/84	GIDANA, Duke Madoda	Reef	29 ISA	
11/6/84	GONXEKA, Wanda Dennis	Reef	29 ISA	
11/6/84	MTHAZI, Michael	Reef	29 ISA	
14/6/84	NKOSI, Moses Duma	Johannesburg	29 ISA	Shop steward CCAWUSA <u>b</u> /
15/6/84	MATEBANE, Jimmy	Johannesburg	29 ISA	
16/6/84	GASA, David	Umlazi	29 ISA	Umlazi Resident Assistant
16/6/84	GUMEDE, Sipho	Umlazi	29 ISA	
16/6/84	MKIZE, Alfred	Umlazi	29 ISA	
19/6/84	TWALA, Lucky	Soweto	29 ISA	
26/6/84	MASONDO, Amos	Soweto	29 ISA	Organizing Secretary GAWU <u>c</u> /
26/6/84	NDZANGA, Rita	Soweto	29 ISA	Treasurer GAWU
27/6/84	TWALA, Elijah	Soweto	29 ISA	
28/6/84	MORUDI, Charles	Soweto	29 ISA	
?/6/84	TWO UNNAMED PERSONS	Pietermaritzburg	29 ISA	Held re death of Ben Langa
?/6/84	22 UNKNOWN PERSONS */		29 ISA	
July				
15/7/84	TSHABANE, Collins	Tzaneen	29 ISA	Teacher
24/7/84	MZINYATHI, Macebo	Soweto	29 ISA	
24/7/84	MAPHIRI, Solly	Soweto	29 ISA	Sculptor
24/7/84	MIYA, Themba	Soweto	29 ISA	Poet and artist
24/7/84	LESOTHO, Albie	Soweto	29 ISA	Actor
25/7/84	MAMPUNYE, Mzwandile	Ciskei	26 CNSA	Chair, Committee of 10
25/7/84	FAKU, Newell	Ciskei	26 CNSA	Secretary, Committee of 10
25/7/84	MAXONGO, Priscilla	Ciskei	26 CNSA	Member, Committee of 10
25/7/84	SILOTILE, Phillip	Ciskei	26 CNSA	Member, Committee of 10
25/7/84	SIBEWU, Norman	Ciskei	26 CNSA	Member, Committee of 10

 $<sup>\</sup>frac{*}{}$  Based on the statement in Parliament by the Minister of Law and Order that there were 70 persons in detention under Section 29 at the end of June.

a/ FOSATU - Federation of South African Trade Unions.

 $<sup>\</sup>underline{b}$ / CCAWUSA - Commercial Catering and Allied Workers Union of South Africa.

c/ GAWU - General Allied Workers Union.

DATE DETAINED	NAME	PLACE	ACT	REMARKS
26/7/84	MOTHAPO, Nick Mokone	Soweto	29 ISA	Taxi owner
26/7/84	PHOLOTO, Solomon	Soweto	29 ISA	Vice-President, GAWU
30/7/84	SISULU, Jongumzi	Soweto	29 ISA	
August				
1/8/84	DUMEZWENI, Shepherd	Ciskei	CNSA	Committee of 10
7/8/84	DUBASI, Mncedisi			
	James	Soweto	29 ISA	
15/8/84	MAHLANGU, Vincent	Soweto	29 ISA	
15/8/84	TSHEMESE, Bulelelwa	Ciskei	CNSA	COSAS
15/8/84	MPHOSULWA, Zithulele	Ciskei	CNSA	COSAS
15/8/84	SOBUYA, Gcininkosi	Ciskei	CNSA	COSAS
15/8/84	BAJI, Bukeka	Ciskei	CNSA	COSAS
17/8/84	MKEFA, Happy	Soweto	29 ISA	COSAS
17/8/84	BOBO, Zuntu	Transkei	TPSA	Official COSAS
21/8/84	LEKOTA, Patrick "Terror"	Johannesburg	28 ISA	UDF Natal Secretary Publicity
21/8/84	GUMEDE, Archie	Durban	28 ISA	UDF Natal President
21/8/84	RAMBOGIN, Mewa	Durban	28 ISA	UDF Natal Treasurer/ NIC Publicity Secretary
21/8/84	SEWPERSADH, George	Durban	28 ISA	NIC President
21/8/84	NAIDOO, M.J.	Durban	28 ISA	NIC Vice-President
21/8/84	NAIR, Billy	Durban	28 ISA	NIC Member
21/8/84	JASSAT, Essop (Dr.)	Johannesburg	28 ISA	UDF Patron/TIC President
21/8/84	MOKOENA, Aubrey	Johannesburg	28 ISA	UDF Vice-President/ RMC Publicity Secretary
21/8/84	NKONDO, Curtis	Johannesburg	28 ISA	UDF Vice-President/ RMC Chairman
21/8/84	SALOOJEE, R.A.M.	Johannesburg	28 ISA	UDF Vice-President/ TIC Vice-President
21/8/84	NHLAPO, Richard	Soweto	29 ISA	
21/8/84	THAVER, Sagaren	Durban	29 ISA	
21/8/84	THAVER, Devan	Durban	29 ISA	
21/8/84	PILLAY, T. (Ms)	Durban	29 ISA	Student UCW
22/8/84	JONES, Peter	Cape Town	28 ISA	AZAPO Cape Vice-President
22/8/84	MYEZA, Muntu	Johannesburg	28 ISA	AZAPO Publicity Secretary
22/8/84	PATEL, Haroon	Johannesburg	28 ISA	AZAPO Lenasia Chairman
22/8/84	KIKINE, Sam	Durban	28 ISA	SAAWU
22/8/84	HASSIM, Kadir	Pietermaritzburg	28 ISA	APDUSA Natal Chairman

DATE DETAINED	NAME .	PLACE		AC	Т	REMARKS	
22/8/84	THLOPANE, Jerry	Sebokeng		28	ISA		
22/8/84	NDIMANDE, Israel	Kwamashu 1	Durban				
22/8/84	SITHOLE	Durban					
22/8/84	MAPETLA, Andries	Pretoria		28	ISA	COSAS Atteridgeville	
26/8/84	CHIKANE, Moss	Pretoria		28	ISA	UDF	
28/8/84	MAPHOTA, Shadow	Potchefst	room			Scholar	
28/8/84	SENOKOANYANE, Tekere	Potchefst	room			Scholar	
28/8/84	PHETOE, Thabo	Potchefstr	room			Scholar	
28/8/84	MAJOE, Thabo	Potchefstr	room			Scholar	
28/8/84	BAQWA, Themba	Potchefstr	oom			Scholar	
30/8/84	TUTANI, Wandile	Ciskei		26	CNSA	Lawyer	
30/8/84	MGABELA, Malcomess	Ciskei		26	CNSA		
30/8/84	SHIBA, Godfrey	Ciskei		26	CNSA		
30/8/84	MAXHAGWANA, Joe	Ciskei		CNS	SA.	UDF	
30/8/84	NGALO, Makhaya	Ciskei		CNS	SA	Teacher	
?/8/84	MAJA, Themba Popo	Soweto		29	ISA		
?/8/84	KEKANA, Dime Matthews	Soweto		29	ISA		
SUMMARY B	Y AREA		SUMMARY	вұ	LENGT	H OF DETENTION	
Transvaal	48		Detained	si	.nce 1	982	1
Natal	33		Detained	si	.nce 1	983	1
Eastern C	ape 4		Detained	du	ring	March/April/	
Western C	ape 1		P.			May 1984	16
Ciskei	15		Detained	du	ring	June 1984	48
Transkei	1		Detained	du	ring	July 1984	13
Venda	-		Detained	du	ring	August 1984	45
Unknown	22						
	124					-	.24
	<del></del>					-	4
	SUM	MARY BY DE	TENTION .	STA	TUS		

Internal Security Act, section 28	22
Internal Security Act, section 29	69
Internal Security Act, section 31	7
Ciskei National Security Act	15
Transkei Public Security Act	1
Unknown	10
	104
	124

## Annex VII

## Provisions of Section 29 of the Internal Security Act, No.74 of 1982

- 29. Detention of certain persons for interrogation. (1) Notwithstanding anything to the contrary in any law or the common law contained but subject to the provisions of subsection (3), any commissioned officer as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958), of or above the rank of lieutenant-colonel may, if he has reason to believe that any person who happens to be at any place in the Republic:
- (a) has committed or intends or intended to commit an offence referred to in section 54 (1), (2) or (4), excluding, in the case of an offence referred to in section 54 (4), such an offence which the suspect committed or intends or intended to commit in connection with a person suspected of having intended to commit or having committed the offence of sabotage; or
- (b) is withholding from the South African Police any information relating to the commission of an offence referred to in paragraph (a) or relating to an intended commission of such offence or relating to any person who has committed or who intends to commit such offence.

without warrant arrest such person or cause him to be arrested and detain such person or cause him to be detained for interrogation in accordance with such directions as the Commissioner may, subject to the directions of the Minister, from time to time issue, until:

- (i) The Commissioner orders his release when satisfied that the said person has satisfactorily replied to all questions at the interrogation or that no useful purpose will be served by his further detention in terms of the provisions of this section: Provided that in the case where at the conclusion of the interrogation the matter is submitted to the attorney-general for his decision as to whether or not a prosecution should be instituted against the said person, that person shall, notwithstanding the aforegoing provisions of this paragraph, be detained in terms of the provisions of this section until:
  - (aa) in the case where the attorney-general declines to prosecute, his decision in this regard is made known; or
  - (bb) in the case where the attorney-general decides to institute a prosecution against the said person, the relevant indictment is served upon the said person; or
- (ii) the said person's release is ordered under subsection (5),

whichever takes place first.

(2) (a) The Commissioned officer referred to in subsection (1) shall as soon as possible after an arrest in terms of that subsection notify the Commissioner thereof, and the Commissioner shall as soon as possible after having been so notified advise the Minister of the name of the person so arrested and the place where he is being detained and shall:

E/CN.4/1985/8 Annex VII page 2

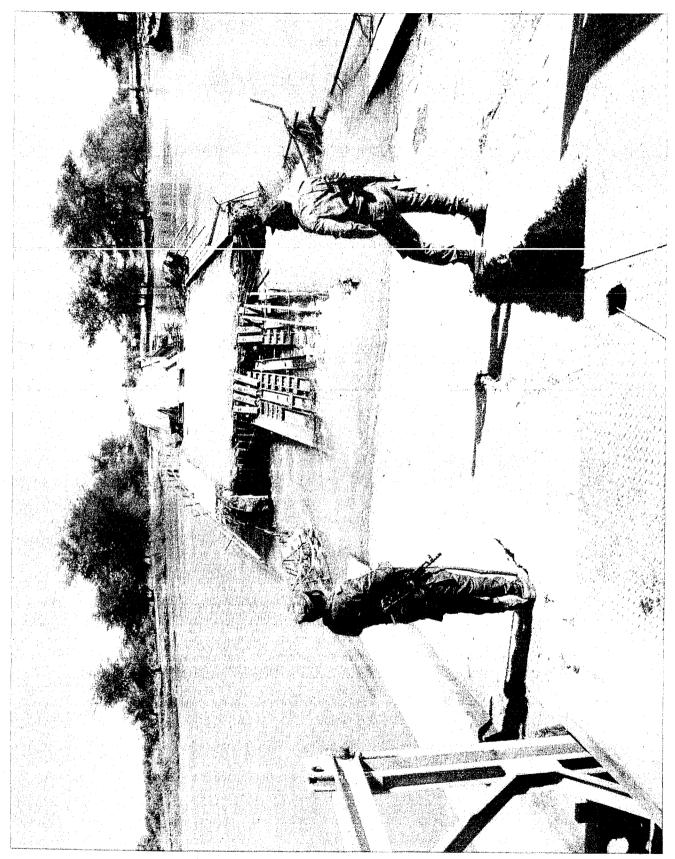
- (i) once a month furnish the Minister with reasons why the said person should not be released; and
- (ii) if the said person has at the expiration of a period of six months as from the date of his arrest not yet been released from detention in terms of this section, and thereafter at intervals of not less than three months while such a person is so in detention, in person or through a commissioned officer referred to in subsection (1), designated by him for that purpose, adduce reasons before a board of review as to why the said person should not be released.
- (b) At proceedings for the hearing of reasons adduced before it in terms of paragraph (a) (ii), the board of review shall consider such written representations, if any, as the person whose further detention in terms of this section is in issue, wishes to submit in connection with the matter, and may in its discretion also hear oral evidence or representation from that person.
- (c) At the conclusion of the proceedings referred to in paragraph (b), the board of review shall submit to the Minister a written report relating to the proceedings and its findings.
- (d) The provisions of section 8 (8) shall <u>mutatis</u> mutandis apply in respect of the proceedings, referred to in paragraph (b), of the board of review.
- (3) (a) Notwithstanding the provisions of subsection (1) no person shall be detained in terms of the provisions of that subsection for a period exceeding 30 days as from the date of his arrest, except under a written authority for his further detention granted by the Minister.
- (b) The Minister shall not grant any authority referred to in paragraph (a) unless he is satisfied, on the ground of a written application which is signed by the Commissioner and in which full reasons are given as to why the person concerned should not be released, that the further detention of the person concerned is necessary for the purposes of the interrogation in question.
- (c) Any person in respect of whom an application has been made in terms of paragraph (b) may, pending the result of such application, be detained as if the application had been granted.
- (4) Any person detained in terms of the provisions of this section may at any time make representations in writing to the Minister relating to his detention or release.
- (5) The Minister may at any time order the release of any person detained in terms of the provisions of this section.
- (6) No court of law shall have jurisdiction to pronounce upon the validity of any action taken in terms of this section, or to order the release of any person detained in terms of the provisions of this section.
- (7) No person other than the Minister or a person acting by virtue of his office in the service of the State:
- (a) shall have access to any person detained in terms of the provisions of this section, except with the consent of and subject to such conditions as may be determined by the Minister or the Commissioner, or

- (b) shall be entitled to any official information relating to or obtained from such person.
- (8) The provisions of section 335 of the Criminal Procedure Act, 1977 (Act No.51 of 1977), shall not apply in respect of any statement by any person detained in terms of the provisions of this section, made during such detention: Provided that if in the course of any subsequent criminal proceedings relating to the matter in connection with which the said person made that statement, any part of such statement is put to him by the prosecutor, any person in possession of the statement shall at the request of such first-mentioned person furnish him with a copy of the said statement.
- (9) Any person detained in terms of the provisions of this section shall, in addition to any visits under this Act by an Inspector of Detainees, be not less than once a fortnight:
  - (a) visited in private by a magistrate,
  - (b) visited in private by a district surgeon.

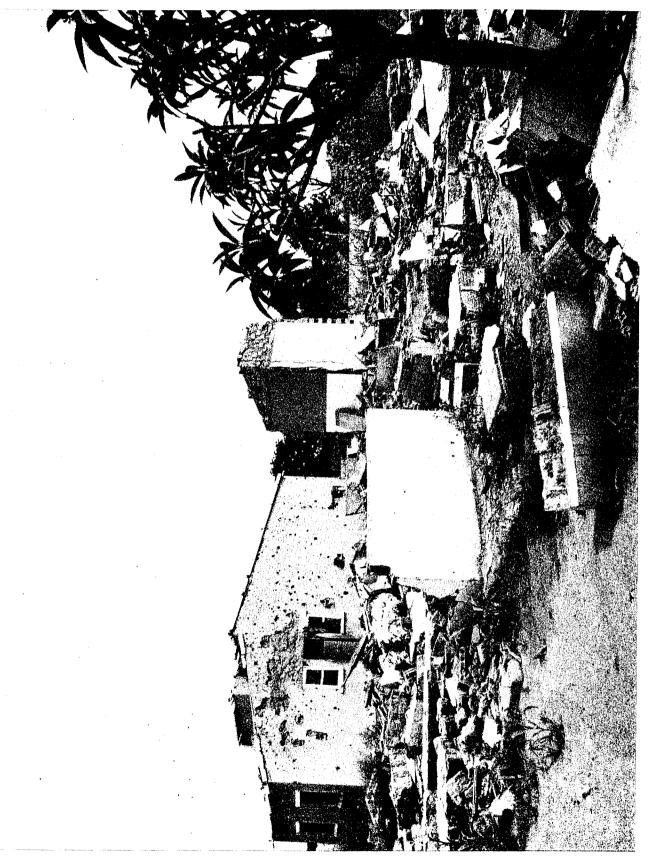
## Annex VIII

Selection of photographs transmitted to the Working Group by the Government of Angola in the course of its visit to Luanda from 9 to 11 August 1984

(Reference to these photographs is made in paragraph 31)



Xangongo - Province of Cunene, bridge destroyed in June 1984



Cuvelai - Province of Cunene, Aouses destroyed in March 1984

