

EXTERNAL (for general distribution)

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UA 15/94 Fear of Torture/Legal Concern

14 January 1994

SOUTH AFRICA: Theo MABUSELA - Pan Africanist Congress of Azania (PAC),  
Chairperson, Western Cape Region  
Michael SIYOLO - PAC Organizer, Western Cape Region  
Mncebesi Leonard NASO  
Zola Prince MABALA  
Richard DALA - PAC Executive Member, Western Cape Region  
Mr KONZAPHI  
Mr RHANUGU

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Amnesty International is concerned for the safety of those named above who are being held incommunicado in police custody under Section 29 of the Internal Security Act. Section 29 allows the police to detain a person incommunicado for interrogation purposes for 10-day periods renewable by the agreement of a Supreme Court Judge.

Michael Siyolo and Theo Mabusela were arrested in Cape Town on 3 January 1994, in connection with the police investigation into the murder of four people and wounding of seven others by gunmen, who attacked a crowded tavern with automatic weapons on 30 December 1993. The other detainees were arrested between 4-7 January, including Mncebisi Leonard Naso and Zola Prince Mabala, whom police arrested in the Eastern Cape near the Transkei border. All of the detainees are being held, apparently at different police stations in the Cape Town area, in connection with the same investigation. Amnesty International has received reports indicating that at least one of the detainees, Theo Mabusela, has been assaulted in custody.

The police have applied to the Supreme Court for an extension of the detention of Michael Siyolo and Theo Mabusela. Under the provisions of Section 29 lawyers were able to have access to them on 12 January. The hearing will take place on 18 January and an urgent application for a Supreme Court order restraining the police from further assaulting Theo Mabusela will also be heard. The police are also reported to be applying for an extension of the detention of Zola Prince Mabala and Richard Dala.

#### BACKGROUND INFORMATION

The PAC is a legal political party, whose leadership is currently involved in talks with the South African government about the "suspension of hostilities" by its armed wing (APLA). The PAC has officially denied responsibility for the 30 December attack. The Police have not so far made public any evidence which might implicate the PAC or these detainees in the December attack.

The use of section 29 creates conditions whereby torture and ill-treatment, both physical and psychological, are likely to occur. Under section 29 the police are not obliged to inform the arrested person's family or lawyer of their detention or where they are being held. They can also prohibit access to the detainee by a lawyer until the final stage of the 10-day period. Prior to that, a representative of the International Committee of the Red Cross (ICRC) is the only independent person who may have access to the detainee. The ICRC is bound by rules of confidentiality and cannot make its concerns public.

The Supreme Court, when hearing an application for the extension of the period of detention, has no power to call the detainee before it and is not required

to have the detainee's lawyer present during the closed-door hearing. The police are not obliged to give the detainee reasons for his or her detention, so the detainee cannot prepare adequately written submissions for the hearing.

In late 1993 the Negotiation Council, in which the Government, the African National Congress and other organizations are represented, agreed that Section 29, along with certain other laws, should be repealed by the South African Parliament as soon as possible. The Parliament apparently failed to do this before the end of its parliamentary session in December 1993.

**RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express and airmail letters either in English or in your own language:**

- expressing concern at the incommunicado detention under section 29 of Theo Mabusela and other PAC members and officials, despite the fact that the Negotiations Council agreed last year that section 29 should be repealed;
- noting that section 29 creates conditions in which torture and ill-treatment is likely to occur, expressing concern at reports that Theo Mabusela has been assaulted in custody and fears for the safety of the other section 29 detainees;
- urging that Theo Mabusela and the other section 29 detainees are given immediate access to lawyers, family members and medical practitioners of their choice;
- noting that in January 1993 the South African Government signed the UN Convention Against Torture which obliges it to refrain from any act which would defeat the Convention's objective of eliminating torture and other cruel, inhuman or degrading treatment or punishment, and urging the immediate repeal of section 29;
- urging that all security force members investigating incidents of terrorism or political violence should adhere to international human rights standards, in particular the UN Code of Conduct for Law Enforcement Officials, which prohibit all forms of cruel, inhuman or degrading treatment even in exceptional circumstances.

**APPEALS TO:**

Mr F W de Klerk  
State President  
State President's Office  
Private Bag X83, Pretoria 0001  
South Africa

**Telegrams: President de Klerk, Pretoria, South Africa**

**Faxes: + 27 12 323 3982**

**Salutation: Dear President**

Mr H J Kriel  
Minister of Law and Order  
Private Bag X463, Pretoria 0001  
South Africa

**Telegrams: Minister Law/Order, Pretoria, South Africa**

**Telexes: 321353**

**Faxes: + 27 12 322 2559**

**Salutation: Dear Minister**

Lt-Gen N Acker  
Regional Commissioner of Police (Western Cape)  
Private Bag X9004, Cape Town 8000, South Africa

**Telegrams: Lt-Gen Acker, Police Commissioner, Western Cape region, Cape Town,**

**South Africa****Salutation: Dear Commissioner****COPIES OF YOUR APPEALS TO:**

Colonel Knipe, Unrest and Violent Crime Investigation Unit, Bellville South  
7535, South Africa

Trauma Centre for the Victims of Violence and Torture, Cowley House, 126 Chapel  
Street, Cape Town 8001, South Africa

The Editor, The Argus, POB 56, Cape Town 8000

and to diplomatic representatives of South Africa accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.** Check with the International Secretariat,  
or your section office, if sending appeals after 25 February 1994.