POLITICAL IMPRISONMENT IN SOUTH AFRICA

An Amnesty International Report

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AMNESTY INTERNATIONAL opposes torture and the death penalty in all cases and without reservation. It advocates fair and early trials for all political prisoners and works on behalf of persons detained without charge or without trial and those detained after expiry of their sentences.

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Introduction

The South African Government may be expected to respond to this report in two ways. They may attempt to raise doubts about the integrity of Amnesty International by attacking the reasons for publishing this report and by demanding that attention is turned to human rights violations in black African countries—they may be expected to ignore or minimise the work that Amnesty International is doing in this field. The South African authorities may declare this report an "undesirable" publication so as to ensure that it does not become readily available to the South African people. This would be particularly regrettable since the information contained in it should be of vital interest and concern to all South Africans. It is in their name after all, or at least in that of the ruling white minority, that countless individuals have been subjected to arbitrary imprisonment, torture, or death at the hands of the State. They have a right to know what is done in their name.

The primary reason for the publication of this report is Amnesty International's deep concern about the plight of political prisoners in South Africa. It is necessary to inform a wider public of the suffering and hardships endured by South Africa's political prisoners, in the hope that more people will understand the reasons for their actions and appreciate the values which they uphold.

The report is mainly about people who have been imprisoned for their conscientious opposition to *apartheid,* rather than about those who might be termed victims of *apartheid.* The latter category includes those convicted and imprisoned for contraventions of the country's discriminatory racial legislation, such as the pass laws and the Immorality Act.

The report describes the legal structure created by the South African Government to consolidate white political power and social and economic privileges, and to prevent the formation of effective black political opposition. Within such a structure it is inevitable that individuals will be imprisoned for reasons of conscience.

The publication documents the major aspects of political imprisonment—the system of detention without trial, the widespread use of torture, the treatment of convicted political prisoners and banned

and banished people—but it makes no recommendations. Certainly, material improvements are desperately required in many areas to protect prisoners from physical ill-treatment, but Amnesty International believes that no reforms in the present structure will be sufficiently far-reaching to remove the causes of political imprisonment unless the whole system of *apartheid* is dismantled. It is to be hoped that this report will help to generate international pressure to achieve this end. While *apartheid* remains, there can be no structure which conforms with and guarantees universally recognised standards of human rights. In 1973, the United Nations General Assembly declared *apartheid* a "Crime against Humanity".

South Africa in Outline

South Africa has a total land area of approximately 750,000 square kilometres. It is bordered by Swaziland and Mozambique to the north-east, Rhodesia to the north and Botswana and Namibia to the north-west. Namibia continues to be administered by South Africa in defiance of the United Nations. The independent Kingdom of Lesotho is an enclave within South Africa.

The population in South Africa in 1976 was estimated to be 26 million, with an annual growth rate of 3.3 per cent. The ethnic balance of the population is:

African	72.5%
Coloured	9.0%
Indian	2.5%
European (i.e. white)	16.0%

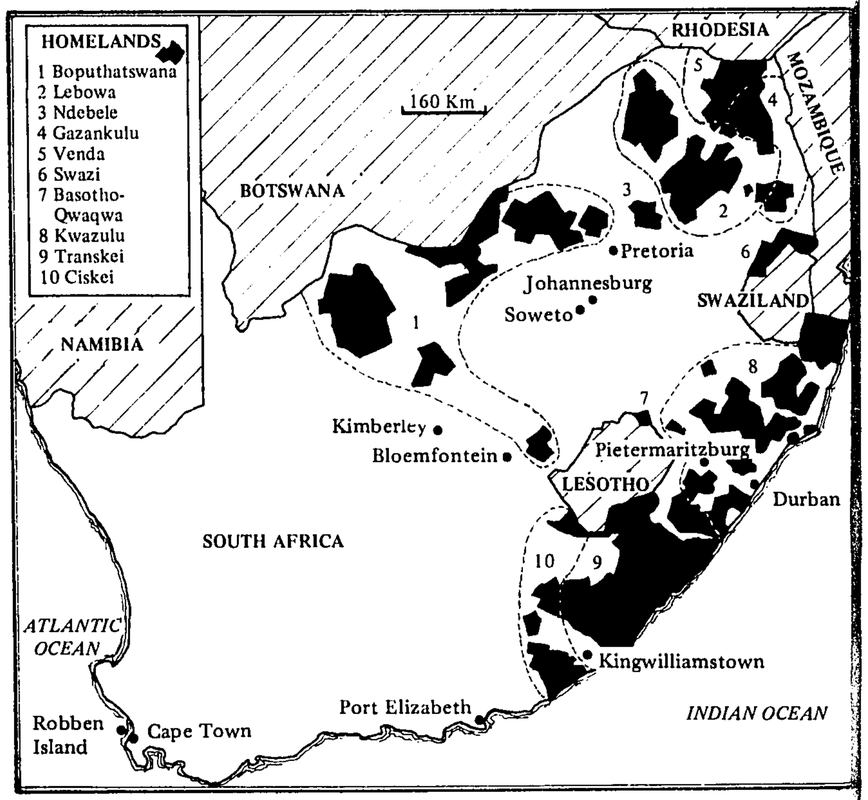
Despite this extreme racial imbalance, approximately 87 per cent of the total land area, including all major urban and industrial centres, is reserved for occupation by the white minority. The remaining 13 per cent is allocated for black settlement and divided up in accordance with the South African Government's *apartheid* policies to form 10 African "homelands". In October 1976, the Transkei homeland was declared "independent" but it has not been accorded international recognition by any country except South Africa. Bophuthatswana, the homeland for Tswana-speaking people, was declared "independent" in December 1977. However, at present approximately half the total black population lives in the area reserved for white occupation, where blacks have no political rights. Blacks are only permitted political rights in their respective homelands.

The white minority exercises effective governmental authority. The franchise is exclusive to whites. Parliament consists of a 165 member lower House of Assembly and a 51-seat upper house or Senate. Representative Councils are appointed by the Government to supervise the affairs of the Coloured and Indian communities. However, in late 1977 the Government was considering constitutional changes which would result in the appointment of an executive president as head of state, and the creation of separate parliaments for the white,

Indian and Coloured groups from which a joint cabinet would be formed under white leadership.

The economy is based on the country's natural resources – gold, iron, diamonds and most other minerals with the exception of oil. The mining sector depends for its profitability on the large African labour force and has provided the stimulus for considerable industrial development. Agriculture is also important, with fruit and maize production predominant. Main trading links are with West Germany, France, the United States, the United Kingdom and Japan.

In 1961 South Africa became a republic and left the Commonwealth of Nations. South Africa is a member of the United Nations, although it has been condemned by the UN for continuing unlawfully to administer Namibia, for supporting the illegal Rhodesian Front regime in Rhodesia, and for its own *apartheid* policies.



The Political Background

i) Early history to the formation of the Union, 1910

The area of present day South Africa had been inhabited for at least several centuries before the first permanent white settlement was established by the Dutch East India Company in 1652 on the site of what is today modern Cape Town. The Khoikhoi people and the San, commonly known as Bushmen, inhabited the Cape area, while further north the more numerous Bantu-speaking peoples lived in relatively complex political societies. The combined effects of aggressive white expansionism and exposure to alien diseases resulted in the decimation of the Khoikhoi population, its remnant being absorbed into what became called the Cape Coloured Group. This group, now known simply as the "Coloured" group, consists primarily of people whose ancestors were the result of miscegenation between white settlers and Khoikhoi or other "non-white" groups. The San, too, were decimated as a result of increasing contact with white settlers and Bantu-speaking groups.

The area of white settlement expanded slowly at first but more rapidly in the first half of the 19th century to culminate in the Great Trek. This commenced in the mid-1830s and continued for several years. The mass exodus of Dutch settlers—Afrikaners—from Cape Colony to the highveld north of the Orange River, and the coastal plain of Natal, was caused originally by hunger for more land due to natural population increase but gained impetus from disillusionment with British colonial rule established in the Cape in 1806. White expansion during the previous two centuries had resulted in a racially stratified society. The British, however, stirred Afrikaner resentment by the abolition of slavery but, most importantly, by attempts to provide equality before the law to all inhabitants of the Colony regardless of colour.

White expansion to lands outside British control brought increased contact with Bantu-speaking groups who were better organised than the San or Khoikhoi and so more able to withstand white settler pressure. White domination was not effected over the Xhosa of the eastern Cape until the late 19th century, and then only after a series of "frontier wars" and the involvement of military forces

sent from Britain. Large-scale British military intervention was also required to break the power of the Zulu kingdom in Natal.

North of the Orange river, however, the Trekkers generally found it easier to establish white control as their arrival coincided with the end of the *Mfecane*, a series of tribal wars and migrations which had caused widespread depopulation on the highveld. The Trekkers thus occupied much of the vacant highveld and formed uneasy relationships with Bantu-speaking groups now concentrated in more easily defended areas around the fringes of the highveld. These groups—the Tswana, Pedi, Venda, Sotho—were gradually subjugated in turn either by the settlers or by British colonial power until, by the end of the 19th century, white domination had been extended almost throughout the entire area of modern South Africa.

The Great Trek resulted in the formation of two independent Afrikaner republics, the Orange Free State and Transvaal, as well as the new British colony of Natal. In each of these, as in Cape Colony, a racially stratified society developed with whites assuming a position of dominance and the indigenous African population being relegated to serf-like status. In the Cape and Natal the declared policy of the British was to make no discrimination on grounds of colour or race. In practice, however, a property qualification restricted the franchise largely to whites. After the granting of representative self-government in the 1850s, communities in the Cape and Natal were able further to disenfranchise the black population by raising such property qualifications and making them more exclusive.

In the Afrikaner republics, Africans were denied the franchise from the outset, debarred from acquiring ownership of land in the Free State and obliged to carry passes when in the white-occupied areas of the Transvaal.[1] The strong Calvinist views of the white settlers, from which they derived a belief in their own racial superiority, ensured that the lines of racial stratification were even more sharply drawn in the republics than in areas of British control.

The discovery of diamonds at Kimberley and large gold deposits in the Transvaal at the end of the 19th century touched off an economic revolution and began the process of change whereby a predominantly agricultural economy became one based on mining and industry. The pattern of white settlement changed as large influxes of gold and diamond prospectors from Europe led to the rapid development of Johannesburg and Kimberley. The discoveries led to increased competition between the Afrikaner republics on the

[1] A pass was a form of regional passport purchased from the white authorities. These have since been transformed into documents which severely restrict the movement of Africans. They must be carried at all times and produced on demand.

one hand and the two British colonies and British Government on the other, contributing to the tension that led to the outbreak of the Boer War in 1899. By 1902 the two Afrikaner republics had been brought under full British rule and eight years later, in 1910, they were united with Cape Colony and Natal to form the Union of South Africa, a virtually independent state with dominion status under the British Crown.

The discovery of minerals had far-reaching effects on the African population. Large numbers of Africans were drawn to the diamond diggings or gold mines to work as migrant labourers which led among other things to the weakening of traditional tribal affiliations. Africans became the major part of the labour force and thus a vital factor in determining the course and rate of industrial development.

ii) The consolidation of white rule, 1910-1977

The period since the formation of the Union in 1910 has seen the progressive disenfranchisement of the black majority population and the consolidation of white political control throughout South Africa. It has also been marked by increased social stratification on racial lines as extraordinary measures have been implemented to preserve the superior social and economic status enjoyed by the white population. Both these trends have been particularly evident in the past 30 years while the National Party has been continuously in power.

The creation of the Union reaffirmed the political supremacy of the white population. Blacks were not consulted over the form of the Union Constitution, nor were their protests heeded by the British Parliament responsible for enacting the Union. Consequently, the franchise was restricted to whites except in Cape Province where existing black voting rights were confirmed and protected by a stipulation that any reduction in such rights would require a two-thirds majority of the South African Parliament. Subsequent events, however, steadily eroded the influence of even these black voters. First, white women were given the vote in 1930. Then, in 1936, Africans were removed from the common voters' roll in the Cape by the introduction of the Representation of Natives Act, which was passed by the necessary two-thirds majority of Parliament. Under this law Cape Africans who qualified for the franchise were placed on a separate voters' roll and entitled to elect three white members to the House of Assembly. Africans throughout South Africa were entitled to elect four white representatives to the Senate, then a 48-seat upper house. Even this minimal form of parliamentary representation was abolished in 1959 when the Promotion of Bantu Self-Government Act was introduced to establish territorial, regional,

and tribal authorities in the various "homelands" designated for African occupation.

Coloured voters in the Cape were similarly removed from the common voters' roll in 1956. They were then allowed to elect four white representatives to the House of Assembly until this provision too was abolished in 1968. It is only the white population, therefore, that is now represented in the Parliament, South Africa's supreme legislative authority.

Having been denied a role in the mainstream of politics, blacks have been provided with a series of lesser institutions which are supposed to represent their various interests. Thus, the Coloured and Asian communities have been granted Representative Councils which act in an advisory capacity to the Government. Africans, on the other hand, have been subdivided into tribal groupings and provided with territorial authorities possessing limited powers of self-government in the areas designated as "homelands". Africans who live outside these areas, however, who comprise an estimated half of the total African population, have no political representation whatsoever in the urban areas in which they live. Under the system of *apartheid*, or separate development, introduced since 1948, any rights that Africans may have as citizens can be exercised only within their respective "homelands". This was made abundantly plain in October 1976, when the South African Government declared the Transkei homeland "independent". Many Xhosa-speaking Africans resident in Soweto and other urban areas were then summarily deprived of their South African citizenship and told that they would henceforth be considered Transkeian nationals.

South Africa passed from a dominion under the British Crown to a "sovereign independent state" within the British Empire after the Status of the Union Act in 1934. Then, in 1961, the link with Great Britain was broken when South Africa became a Republic and left the Commonwealth. The decision to introduce a Republican Constitution followed a referendum in which only the white population was consulted.

By maintaining political power, the white minority group has been able to safeguard its privileged economic and social position through manipulation of the mechanisms of State. A disproportionately small share of the State's resources has been devoted to the black community, and numerous laws have been introduced to limit black advancement in all spheres. A system of job reservation has been introduced to prevent blacks competing for employment on an equal basis with whites, and discriminatory labour legislation has stifled the emergence of black trade unions. Priority in educational spending

has been given to whites; blacks are educated to occupy a subservient role. Blacks have been denied permanent residence rights in the greater part of the country as a result of the Group Areas Act of 1953. This divided South Africa into a series of racial or ethnic "homelands", in each of which the members of one particular racial or ethnic group were given land ownership rights. According to this division, which was of course decided upon by a government representing only the white minority population, some 87 per cent of the total land area was reserved for white occupation. Within that area, which includes the main mining and industrial complexes, Africans are not permitted to own land, to move about freely, and must carry identity documents—pass reference books—at all times.

Many of these discriminatory features were in evidence in the period 1910-1948. However, they were made much more distinct after the National Party assumed power in 1948 and commenced with the introduction of its *apartheid* program. This requires the complete separation of the different population groups and theoretically seeks to limit inter-racial contact. In fact, it ensures that effective power throughout South Africa remains in the hands of the white minority population, which is then able to use this power in order to preserve its dominant social and economic status.

iii) African political opposition

Since the first years of white settlement at the Cape, African tribal groups had firmly resisted encroachment and the extension of white political control. However, they had resisted as separate tribal entities rather than as one people united by a common cultural and linguistic background. Only after the formation of a unitary state in South Africa early in the 20th century did African resistance to white rule begin to be organized on cross-tribal and more clearly nationalist lines. Indeed, it was the formation of the Union in 1910 that gave the first significant impetus to the development of a supra-tribal form of African nationalism.

At first, this form of African nationalism had widest appeal within the small but significant African middle class which had developed in the urban and industrial areas of the Cape and Transvaal. In 1912, these elements grouped together to form a national political organization which would represent African interests. The organization was first named the South African Native National Congress, but was renamed the African National Congress (ANC) in 1923.

The Congress was by no means a radical political force in its formative years. Its activities were designed to effect improvements in the social status of western-educated Africans rather than to articulate

the grievances of the majority of the black population. Nevertheless, it did voice African concern over the introduction of measures such as the Native Land Act of 1913, which denied Africans the rights to purchase land outside their designated reserves, and the Representation of Natives Act of 1936, which removed Africans from the common voters' roll in the Cape. It was not until after World War II, and especially until the National Party took power in 1948 and began to implement *apartheid*, that the ANC developed an overtly political program and received mass support.

In 1952, the ANC joined with the South African Indian Congress to organize a mass campaign of passive resistance and defiance against discriminatory and unjust laws. Many blacks, and some whites, purposely contravened such laws and presented themselves for arrest. The Government responded, despite the non-violent nature of the campaign, by imprisoning more than 8,000 people. After sporadic violence had broken out in the Eastern Cape, the Government rushed through emergency measures which were used to suppress the campaign. Despite this the ANC and other anti-*apartheid* organizations continued to press for change through non-violent methods. In 1955 a Freedom Charter was drawn up by the ANC, the white Congress of Democrats and by Congress organizations representing the Asian and Coloured peoples. The Government responded by arresting more than 150 leaders of these organizations in December 1956. They were all charged with plotting the overthrow of the State and brought to trial in Pretoria. Their trial, commonly known as the Treason Trial, continued until 1961 when all the accused were acquitted. While the trial was still in progress, disillusionment with the achievements gained by the ANC's policy of cooperation with other anti-*apartheid* organizations, caused a faction, led by Robert Sobukwe, then a leading member of the ANC, to break away and form the Pan-Africanist Congress (PAC).

Throughout the 1950s there were sporadic instances of African resistance to the implementation of various *apartheid* measures. Such incidents were particularly evident in certain rural areas, such as the Marico District of the western Transvaal, where there was great resistance in 1957 to the introduction of pass books for women, and in Eastern Pondoland in 1960, where there was even more concerted and violent opposition to the imposition of African territorial and regional authorities.

The transition by the ANC and PAC from a non-violent to a violent strategy occurred in the early 1960s. At Sharpeville in March 1960, police opened fire without provocation upon a crowd of unarmed Africans demonstrating against the restrictive pass laws. Altogether

69 Africans were killed, many of them being shot in the back as they tried to escape. Protest demonstrations occurred throughout South Africa but were met by the introduction of further emergency measures and by the banning of the ANC and PAC. Robert Sobukwe, the PAC leader, was arrested and imprisoned. These experiences convinced many black political leaders that change could only be brought about by violent means. They formed two secret organizations, Umkhonto we Sizwe and Poqo, to act as the military wing of the underground nationalist movement. These organizations engaged in acts of sabotage against white property but were largely destroyed following the "Rivonia Trial" in 1963 when Nelson Mandela and other nationalist leaders were imprisoned. Mandela, who used the trial as an occasion to present a formidable indictment of *apartheid*, was sentenced to life imprisonment. The headquarters of the ANC were then established outside South Africa, and the organization commenced an armed struggle for the overthrow of white minority rule.

The political vacuum left by the banning of the ANC and PAC was to some extent filled in the early 1970s with the development of the Black Consciousness movement. This movement, which stresses the need for black solidarity in order to achieve a stronger bargaining position with the white minority, received widespread support among young, educated blacks, and particularly those living in the major urban areas. The black South African Students' Organization (SASO) took the lead together with the Black People's Convention (BPC) in stimulating the development of black self-help, self-education and community programs. The organizations which dominated the movement were not suppressed immediately by the Government, but many of the leaders were subjected to banning, detention and imprisonment. In spite of this, and perhaps partly as a result, the Black Consciousness movement achieved considerable support and had become a major factor in South African politics when the Soweto disturbances broke out in June 1976. In October 1977, the South African Government arbitrarily banned SASO, the BPC, and some 16 other Black Consciousness organizations together with the anti-*apartheid* Christian Institute of Southern Africa.

The Legal Situation

The fundamental aim of government policy in South Africa has been, and continues to be, the maintenance of white political supremacy and the preservation of white social and economic privilege. In other words, South African Government policy is designed to perpetuate a system in which the white minority receives a disproportionate share of the country's wealth and prosperity. Successive South African governments have therefore adopted a variety of methods to effect the complete disenfranchisement of the black majority, to deny them equal educational, employment and land ownership opportunities and to construct a legal and administrative system whereby they are constantly reminded of their subordinate and inferior status. These measures have been accompanied, and protected, by a series of far-reaching security laws used to suppress all forms of black political opposition.

Most security laws have been introduced since the National Party came to power in 1948. In 1950, the National Party Government of Prime Minister D.F. Malan passed the Suppression of Communism Act in order to proscribe the Communist Party of South Africa and to enable the authorities to take action against those people and organizations suspected of fomenting radical political opposition to the Government's racist policies. The Act defined "communism" in very broad terms, not merely as socialism as expounded by Marx and Lenin but also as any "doctrine which aims at bringing about any political, industrial, social or economic change within the Union by the promotion of disturbances or disorder, by unlawful acts or omissions or by means which include the promotion of disturbance or disorder, or such acts or omissions or threats". Any organization considered by the authorities to be furthering the aims of communism, as defined in the Act, could be summarily declared unlawful. Members of such organizations would then be "listed" as communists by the Minister of Justice who could impose "banning orders" prohibiting them from attending gatherings or belonging to specific organizations, or restricting them to certain specified areas. Listed "communists" were also debarred from holding public office.

Since its introduction the Suppression of Communism Act has

been modified and amended many times in order to increase the number and severity of the restrictions which the Minister of Justice may arbitrarily and without recourse to the courts impose on individuals and organizations. In 1976, the Suppression of Communism Act was again amended and broadened and, at the same time, renamed the Internal Security Act. (See page 23.)

The passing of the Suppression of Communism Act in 1950 was the first step towards the creation of a police-state in South Africa. It was soon followed by several other laws which added to its draconian effect. Following the start of a massive passive resistance campaign against unjust laws, organized by the African National Congress and South African Indian Congress, the Government introduced the Public Safety Act and the Criminal Law Amendment Act in 1953. The first provided for the possible proclamation of a State of Emergency either regionally or throughout the country, and the assumption of emergency powers by the Government if it believed that the actions or threatened actions of any persons endangered public safety or the maintenance of public order. The Criminal Law Amendment Act was even more clearly designed to break the passive resistance campaign. It prescribed penalties of up to three years' imprisonment for those persons convicted of offences committed in protest against any law. People convicted of inciting others to make such protests were made liable to five years' imprisonment.

In 1960, following the Sharpeville massacre, the Government invoked the Public Safety Act and declared a State of Emergency throughout South Africa. Similar emergency provisions were later imposed in the Transkei "homeland". Police were given extensive powers to arrest people without warrant and hold them incommunicado. Further provisions were designed effectively to suppress any expression of organized black opposition. (See Detention without trial, page 24.)

Another law passed after Sharpeville, in 1960, was the Unlawful Organizations Act, which was used immediately to ban the ANC and PAC. Those convicted of furthering the aims of a banned organization were made liable to 10 years' imprisonment.

Further security laws were introduced at regular intervals throughout the 1960s. A series of General Law Amendment Acts was passed which, among other things, created the offence of "sabotage", for which the death penalty may be imposed, and provided for the house arrest of those "banned" under the Suppression of Communism Act (1962); the arrest, without warrant, and detention incommunicado and without trial of any person for successive 90 day periods (1963); the imprisonment of recalcitrant witnesses (1964); the extension to

Namibia of the earlier provisions covering sabotage and detention for up to 14 days of those suspected of possessing information that could be used to further the aims of a banned organization (1966). The Criminal Procedure Amendment Act of 1965 created the notorious "180-day law" permitting the Attorney General to order the detention incommunicado for 180 days of anyone considered likely to be able to give material evidence for the State in trials involving serious criminal or political offences. Courts of law were expressly denied jurisdiction to pronounce upon the validity of any detention or order the release of any detainee.

In 1967, the most stringent security law of all—the Terrorism Act —was passed overwhelmingly by the South African Parliament and immediately given retroactive effect to 27 June 1962. The Act created the new offence of "terrorism", widely defined so as to constitute a catch-all measure, and empowered the authorities to detain anyone incommunicado and without charge for an indefinite period of time.

Following the introduction of the Terrorism Act, there was something of an hiatus until 1976, when the Internal Security Act already mentioned and described in detail on page 23, was passed in order to supersede and widen the terms of the Suppression of Communism Act. The same year, the Government passed the Parliamentary Internal Security Commission Act which established a permanent commission of inquiry, composed of up to 10 members of Parliament, to investigate matters affecting internal security. The Act enables the Commission to meet *in camera* and gives it powers equivalent to those of the Supreme Court to summon witnesses and examine them under oath. Such witnesses are not permitted legal representation and may be sentenced to successive six month terms of imprisonment for refusing to appear or testify before the Commission. Apart from being permanent, this commission is similar in scope to the earlier Schlebush/Le Grange Parliamentary Commission of Inquiry, whose report led to the passing of the Affected Organizations Act[1] in 1974 and the application of that Act to the Christian Institute of Southern Africa and the National Union of South African Students.

In mid-1977, the Minister of Justice was reported to be considering proposals for the revision and consolidation of the country's security legislation.

[1] Organizations declared "Affected" are prohibited from receiving funds from abroad.

i) Legislation under which prisoners are held

Most political prisoners in South Africa, who include both convicted political offenders and untried detainees and restrictees, are held under the terms of the following security laws:

a) *Terrorism Act, No.83 of 1967*—when it was first introduced in 1967, the Terrorism Act was made retroactive to 27 June 1962 and made applicable to Namibia in order to facilitate the prosecution of Namibian nationalist leader Toivo Hermann ja Toivo and 36 other Namibians, most of whom had been detained on political grounds since 1966.

The Act created the new offence of "terrorism", which is defined in very broad terms as any activity likely "to endanger the maintenance of law and order". Activities which may have any of 12 listed "results" fall within this category. These include activities which may result in the promotion of "general dislocation, disturbance or disorder"; "prejudice" to "any industry or undertaking"; "the achievement of any political aim, including the bringing about of any social or economic change, by violent or forcible means"; cause "financial loss to any person or the State"; increase "hostility between the White and other inhabitants of the Republic"; "obstruction" to the "free movement of any traffic on land, at sea or in the air"; or "embarrassment" to "the administration of the affairs of the State". The law covers activities which take place in South Africa, Namibia, or even abroad.

Those engaging in activities which may have any of the aforementioned consequences may be judged under the Act to have committed the offence of participation in terrorist activities. In so doing, they are presumed to have acted with intent unless they can demonstrate beyond "reasonable doubt" that they did not intend their actions to have any of the listed results. In other words, the burden of proof is placed upon the accused to show the innocence of their intentions rather than on the State to prove their guilt.

Trials under the Terrorism Act are conducted on a summary basis either in the Supreme Court or before a Regional Magistrate. The summary nature of the proceedings is generally disadvantageous to defendants, since defence counsel may be kept in ignorance of the precise content and direction of a State case until the actual start of the trial.

Conviction under the Terrorism Act carries a mandatory minimum sentence of five years' imprisonment. The maximum sentence under the Act is death.

Section 6 of the Terrorism Act relates specifically to detention

without trial. Its features add to the already far-reaching and severe effect of the Act and explain why it is viewed as the most draconian of all South Africa's security laws. The section authorises any police officer of, or above the rank of lieutenant-colonel, to arrest, without warrant or charge, anyone suspected of being a "terrorist" as defined, or of possessing information relating to terrorists or terrorist offences. Such detainees are held incommunicado, often in solitary confinement, until such time as the Commissioner of Police considers that they have replied "satisfactorily" to all questions put to them by their interrogators, or until it is felt that further detention will serve "no useful purpose". In effect this section of the Terrorism Act provides the security police with powers of indefinite detention without charge or trial.

Detainees are left entirely in the care of their interrogators. Detainees held under the Terrorism Act do not fall within the jurisdiction of the Supreme Court and no court can either pronounce upon the validity of any detention order or instruct the authorities to release any particular detainee. Visits from members of their families or legal representatives are not permitted. However, detainees may be visited by a magistrate once every two weeks, if it is possible under the circumstances of their detention. Since visiting magistrates are invariably regarded as Government officials it is unlikely that detainees derive much comfort from these visits.

b) *General Law Amendment Act, No.76 of 1962, Section 21*—this Act, commonly called the Sabotage Act, introduced and defined the offence of "sabotage" as any "wrongful and wilful act which injures, destroys or endangers public health and safety; water supplies, public utilities or services; supply or distribution of food, fuel, water; maintenance of law and order; free movement of traffic; or State or private property". Anyone convicted of committing, attempting to commit, conspiring to commit, inciting or aiding such an act, or illegally possessing explosives, fire-arms or other weapons, or being on any land or in any building illegally, may be considered to have committed "sabotage", and may be imprisoned for no less than five years or sentenced to death. Those who commit an illegal act under this law but who can prove that in doing so they did not intend to cause "general disturbance" or "hamper maintenance of law and order" or several other listed "results" may be found not guilty of sabotage. The Sabotage Act is therefore very similar to, but somewhat narrower in scope than, the later Terrorism Act. Indeed, following the introduction of the Terrorism Act in 1967 very little use was made of the Sabotage Act until late-1976, when a spate of "sabotage"

trials began as a result of civil disturbances in Soweto and other African townships.

c) *Internal Security Act No.79 of 1976*—this Act amended and replaced the Suppression of Communism Act of 1950. It contains clauses which provide for preventive detention and the detention of potential State witnesses in political trials, and clauses which broaden the terms under which banning orders may be imposed.

The Act empowers the Minister of Justice to serve banning orders on anyone who, in his opinion, "engages in activities which endanger or are calculated to endanger the security of the State or the maintenance of public order". Previously, under the Suppression of Communism Act, all banned people were alleged to have been "furthering the aims of communism". The wider terms of the new Act further facilitate the banning of leading members of the Black Consciousness movement and other anti-*apartheid* organizations.

In addition to banning orders, the Internal Security Act provides for two separate types of detention without trial. Section 4 enables the Minister of Justice to order the preventive detention of any person whom he regards as a threat to State security or the maintenance of public order. Such people may be detained for up to seven days pending the delivery of a detention order of this type, and may thereafter be detained incommunicado and without trial for, in effect, an indefinite period. However, the provisions governing preventive detention may only be enforced for periods of 12 months at a time and only in those parts of South Africa determined by the State President and proclaimed in the *Government Gazette*. This provision was first enforced in August 1976 when it was effectively applied to the whole country. The Act provides for the establishment of a review tribunal, consisting of a judge or magistrate and two other members appointed by the State President. Its task is to review the grounds for each detention order within two months of its being imposed and thereafter at intervals of not more than six months, and to make recommendations to the Minister of Justice as to whether individual orders should, or should not, be lifted. The Minister is not obliged to act on the tribunal's recommendations, nor may any court of law pronounce upon the validity of the review tribunal's deliberations or recommendations, or indeed upon the validity of a detention order itself. All the Minister is bound to do is report his decision to Parliament within one month of receiving the tribunal's advice. The review tribunal may meet *in camera* and the identities of its members need not be revealed. In fact, Minister of Justice James Kruger refused to name the tribunal's members in

February 1977. At least 135 people were detained under this preventive detention clause during 1976-77, the first year of its operation. They were detained for periods ranging from five to 137 days. After their release, a number of detainees were served with five-year banning orders.

Prior to the introduction of the Internal Security Act, preventive detention had been permitted under a section of the General Law Amendment Act of 1963. This enabled the authorities to detain those who had just completed a prison sentence for a political offence, and thereby extend indefinitely the term of imprisonment originally imposed by a court of law. This provision was only invoked in one case, that of the PAC leader Robert Sobukwe, who was detained on Robben Island for a further six years following the completion of a three-year prison sentence in 1963.

A second form of detention without trial is provided for by Section 6 of the Act. Under this section the Minister of Justice is authorised to detain any potential State witnesses in a political trial if it is considered likely that they would otherwise abscond or be subjected to intimidation. Witnesses detained in this way may be held for a period of six months, or until the trial at which appearance is required has been concluded, whichever is the shorter. Witnesses are held incommunicado although an Attorney General may authorise special visits from time to time. Previously, the Criminal Procedure Amendment Act of 1965 authorised the detention of potential State witnesses for up to 180 days but this did not apply to trials under the Terrorism Act, a limitation removed by this section of the Internal Security Act. The same section also empowers the Attorney General to issue an order preventing the release on bail of any person charged with an offence under the Terrorism Act, Sabotage Act or related security legislation.

ii) Detention without trial

As can be seen from the previous section, the South African authorities possess wide powers of arbitrary detention without trial which are used primarily to intimidate opponents of *apartheid,* to suppress, or prevent the growth of effective African political opposition. Most people detained on security grounds under the Terrorism Act, Internal Security Act and related legislation[1] are eventually released without any charges being brought against them. Even so, they are frequently re-detained and held for further lengthy periods at the whim of the security police. This happens particularly in the case of

[1] For example, Section 22 of the General Law Amendment Act No.62 of 1966 provides for detention without trial for 14 days.

Kruger: Release Detainees" Soweto Students' Demonstration, 1976

black political leaders, many of whom have been singled out for vicious and vindictive treatment by the South African authorities. Winnie Mandela, the wife of African National Congress leader Nelson Mandela, who is serving a sentence of life imprisonment on Robben Island, has been arbitrarily arrested and detained on numerous occasions. Similar treatment has been meted out to leaders of the Black Consciousness movement such as Jeff Dumo Baqwa and Barney Nyameko Pityana, both of whom, like Winnie Mandela, have also been banned under the provisions of the Internal Security Act. Steve Biko, one of the founder members of the Black Consciousness movement, was banned in 1973 and repeatedly detained without charge before his death in security police custody in September 1977.

At certain times and in certain areas, the South African authorities have assumed additional powers by declaring a State of Emergency. In 1960, following the Sharpeville massacre, the Public Safety Act was invoked and a State of Emergency declared throughout South Africa. The police were empowered to arrest without warrant and to detain those arrested incommunicado. It was made an offence to disclose the name of any detainee. The authorities were also given wide powers of search, to prohibit gatherings or the publication of any newspaper, to seize documents, and to take any action considered necessary, including force, to maintain public order. The State of Emergency remained in force for a period of six months during which more than 11,000 people were detained. At the end of 1960, a new Emergency was declared in the Transkei and the South African authorities were given similar extensive powers. This State of Emergency, declared in terms of proclamations R.400 and R.413 of 1960, remained in force continuously until after South Africa declared the Transkei "independent" in October 1976. It was terminated by the Transkei administration in mid-1977 and replaced by a new and equally stringent Public Security Act.

States of Emergency were introduced in the Ciskei "homeland" in September 1977, and the following month in the Venda "homeland". In these areas any person may be detained incommunicado and without trial for periods of up to 90 days at a time.

In Namibia, which is still administered by South Africa in defiance of the United Nations, a State of Emergency was proclaimed in the Ovamboland area in February 1972. The Emergency was extended to the neighbouring Kavango and Eastern Caprivi areas in May 1976, and was still in force at the end of September 1977. Under the terms of Proclamation R.400 of 1960, the Transkei Emergency regulations and Proclamation R.17 of 1972, which initiated the State of Emergency in Ovamboland, any police officer is empowered to detain anyone without charge for an indefinite period if it is believed that

the detainee has information about any crime, committed or intended, under any law. The regulations state that detainees must be held incommunicado.

The detention laws are not merely a form of restraint to be used in times of crisis or national emergency; rather they are for everyday use in shoring up white political control and stifling the emergence of effective black political opposition. The way they are framed legitimises political persecution and invites, even incites, security police ill-treatment of detainees. Running through most of the detention legislation is a notion that it is the detainees themselves, not the State, who must take ultimate responsibility for the existence of such a system. Thus, detainees receive no compensation for the time spent in detention without charge, nor are they likely to obtain redress for any injuries suffered. State officials, in contrast, are protected against civil or criminal prosecution for acts committed "in good faith" either by indemnity clauses or by provisions which allow the Attorney General to decide whether or not a criminal prosecution may be instituted against members of the security police or other officials.

iii) Political Trials

a) *The Judiciary*—the South African judiciary is in theory divorced from the executive. However, as previously outlined, several of the most important security laws contain provisions which cannot be challenged in a court of law. The Terrorism Act, for example, provides that "no court of law shall pronounce upon the validity" of any detention order issued under Section 6 of the Act, "or order the release of any detainee". Similarly, the courts cannot challenge the validity of any banning order issued under the Internal Security Act.

The authority of the courts is limited in other ways. The extent to which judges may exercise discretion in sentencing political offenders is restricted by laws such as the Terrorism Act and Sabotage Act and by clauses which provide for the imposition of mandatory minimum sentences of five years' imprisonment.

The South African judiciary is exclusively white.[1] It is likely therefore to be more in sympathy with the aims and aspirations of the ruling white minority than with the black majority. This has been

[1] There are several black magistrates in the Transkei, the Xhosa "homeland" declared "independent" by South Africa in October 1976. The Chief Justice of the Transkei is a white South African.

made particularly clear in the handling of political cases, where the judiciary has tended to support the Government by accepting and implementing security laws such as the Terrorism Act, even though such laws gravely infringe civil rights. From time to time individual judges have criticised certain aspects of these laws but there has been no concerted effort by the judiciary to secure the repeal of such legislation. Far more often, judges have taken the position that the laws, good or bad, are determined by government, and that the judiciary exists merely to see that they are upheld.

Most attorneys and advocates practising in South Africa are white. They do, however, include a small group who have been tireless in defending a succession of political cases over the years and by so doing have risked both official harassment and social isolation within the white community. Perhaps the most notable of such lawyers was the late Bram Fischer, who was himself subsequently imprisoned for life. There are still several white lawyers willing to participate in controversial political cases, although in recent years Asian attorneys have also been prominent.

The South African judiciary consists of a Supreme Court and a series of inferior or Magistrates' Courts. The Supreme Court comprises an Appellate Division, which sits in Bloemfontein, and a series of Provincial and Local trial divisions based in each of the country's four provinces.[1] The provinces are further sub-divided into regions and districts over which the Magistrates' Courts preside. These lower courts have jurisdiction over all cases except those involving capital offences, such as murder, which are heard in the Provincial and Local trial divisions of the Supreme Court. Cases in the Magistrates' Courts are referred on appeal to the relevant trial division of the Supreme Court in the first instance, and thereafter to the Appellate Division if necessary. Supreme Court cases go directly on appeal to the Appellate Division in Bloemfontein.

b) *Court Procedure*—until 1977, the trial method favoured in South Africa was the British-style accusatorial system whereby the presiding judicial officer in a court of law, the judge or magistrate, adopts a neutral attitude during the court proceedings while listening to the arguments presented by prosecution and defence counsel. Under this system, an accused person is, of course, considered innocent until proven guilty. However, with the introduction of the Criminal Procedure Act of 1977 an inquisitorial system was adopted, whereby the

[1] There is another Provincial trial division in Namibia, as the country is still under South African rule.

presiding judicial officer becomes a part of the process of pre-trial investigation. According to this Act, at the beginning of summary trials, presiding judges may ask those accused who plead not guilty whether they wish to make a statement indicating the grounds of their defence. If the accused do not agree to do so, and it is not clear to what extent they admit or deny the elements in each charge, the courts may then question them in order to establish which parts of the charges are in dispute. In the words of the Act, the court may "enquire from the accused whether any allegation which is not placed in issue by the plea of not guilty, may be regarded as an admission by the accused of that allegation". Since many of those brought before South Africa's courts are defended on a *pro deo* basis[1] and their parent tongue is neither English nor Afrikaans, the official languages of the court, this innovation in judicial procedure appears to make it almost inevitable that many defendants will incriminate themselves, thus jeopardising their defence case during this pre-trial interrogation.

Following the introduction of the Criminal Procedure Act, the South African Parliament also passed the Lower Courts Amendment Act. It became law in July 1977, and empowers Regional Magistrates' Courts to hear cases brought under the Terrorism and Sabotage Acts and to pass sentences of up to 10 years' imprisonment. Previously, all such cases had been heard in the Supreme Court, Regional Magistrates' Courts not being empowered to impose sentences of more than three years' duration. The 1977 Act also allows magistrates to refer the cases of those convicted of sabotage or terrorism to the Supreme Court if, in the view of either the magistrate or the Attorney-General, a sentence of more than 10 years' imprisonment is justified. Theoretically at least, an accused person can now be convicted in a Regional Magistrates' Court and then sentenced to death by a Supreme Court judge who has never taken any part in judging the facts or circumstances of the particular case.

Commenting on the introduction of the Lower Courts Amendment Bill, Professor John Dugard of the University of the Witwatersrand Law Faculty said:

> "It cannot be welcomed as it seeks to empower Regional Court magistrates to try crimes which are political crimes *par excellence*. Because these crimes are political it is essential that they are heard by judges. No matter how competent magistrates may be, they are after all civil servants and this will inevitably be seen by the public

[1] That is, by Defence counsel appointed by the court.

as affecting their detachment in judging the crimes affecting the State and individuals."[1]

Taken together, the two new laws are likely to increase the ease with which the state can obtain convictions under the Terrorism and Sabotage Acts. Most people charged under one or other of these laws are brought to court and asked to plead only after a prolonged period of detention incommunicado and in solitary confinement. Often such defendants are not legally represented when they first appear in court, and so may be expected to be unaware of the full implications of any submission which they may make to the presiding judicial officer during the mandatory pre-trial interrogation. It is particularly disturbing that such interrogation can be entrusted to magistrates, who, as civil servants, are inclined to be biased in the Government's favour.

Even before the introduction of the Criminal Procedure and Lower Courts Amendment Acts in 1977, the conduct of political trials in South Africa left much to be desired. Defendants charged with offences under the Terrorism Act, for example, have always faced a number of distinct disadvantages. Firstly, Terrorism Act trials, like other major political trials, have always been summary—that is, with no preliminary examination before a magistrate to establish a *prima facie* case. As a result the defendant, and defence counsel, may not know who is to appear as a State witness and what evidence is to be put forward until the trial commences. Consequently, frequent delays and adjournments are sometimes necessary so that defence counsel can take further instructions from a client after each State witness has testified.

Under the Terrorism Act, the task of defence counsel is made still more difficult because it is up to the accused to prove innocence rather than the State to prove guilt. In other words the accused must demonstrate innocence of intent beyond "reasonable doubt" and that, in the commission of any act, there had been no intention to endanger the maintenance of law and order. Proving this is made more difficult by the broad terms of the Terrorism Act, by the summary nature of the proceedings and by the fact that many defendants are detained incommunicado and in solitary confinement for long periods before being charged and brought to trial.

In recent years, it has been common practice for political detainees to be summoned to appear as State witnesses in trials under the Terrorism Act and other security laws. Before starting to give evidence,

[1] Quoted in the *Rand Daily Mail*, Johannesburg, 25 April 1977.

they are normally warned that they are regarded as accomplices, who may, however, be freed and made not liable to prosecution if they give evidence that is satisfactory to the court. Any detainee who refuses to testify is treated as a recalcitrant witness and therefore may be sentenced to successive three-year terms of imprisonment for contempt of court. In February 1976, Raymond Burgers and Patrick McGluwa were each sentenced to 1 years' imprisonment[1] when they refused to testify against Bernard Bloem, who was subsequently acquitted of charges under the Terrorism and Suppression of Communism Acts. Patrick McGluwa claimed that he had been brutally treated while in detention and forced to make a false statement to satisfy the security police. He told the court, "I was told what to say, which was contrary to my knowledge. The contents of my statement are the thoughts of the security police". In April 1977, Elijah Mqaba was jailed for four months when he refused to continue with his testimony during the trial in Durban of 20 University of Zululand students charged under the Sabotage Act. He had had a nervous breakdown while in detention, and told the judge, "My evidence-in-chief was nothing but a song; thoroughly rehearsed and easily sung". More recently still, in August 1977, Titi Mthenjane was jailed for three years when he refused to testify as a State witness against Paul Langa, charged under the Terrorism Act in the Kempton Park circuit court.

Many detainees who have testifed as State witnesses have claimed they were ill-treated during detention and have refuted in court statements made earlier under security police duress. Victor Vuyisile Selanto, a State witness at the trial of Eric Molobi in November 1975, said he had been kept in solitary confinement for nine months, physically assaulted by security police and induced to make a false statement incriminating Eric Molobi. As he left the witness box, he was taken back into detention and subsequently charged with perjury. He was acquitted eight months' later after two security police gave conflicting evidence concerning his interrogation. In March 1976, Jairos Kgokong told the Pretoria Supreme Court that while in detention he had been forced, under threat of violence, to sign a statement which included a passage dictated by a security police officer, Captain A.B. Cronwright. He said that the passage falsely incriminated the seven accused, all members of the National Youth Organization (NAYO), and identified in court a piece of paper on which Captain Cronwright had written the passage he was to copy.

[1] This was the maximum sentence then permitted. It was extended to three years' imprisonment when the Criminal Procedure Act was passed in 1977.

Although the trial judge accepted his allegations, Jairos Kgokong was re-detained when he left the court and charged with perjury. In August 1977, during the trial in Pretoria of Vincent Fakude and two others charged under the Terrorism Act, three detainees called as State witnesses were charged with perjury during the first two days of the trial. One of the witnesses, William Tshimong, told the court that he had been woken in the middle of the night by five security police who forced him to make allegations against one of the three accused. He said that the allegations were "completely false" but that "one policeman threatened to shoot me if I did not write what he demanded and sign it afterwards". William Tshimong was re-detained as he left the witness box and dragged screaming from the court, to which he appealed unsuccessfully to protect him from security police abuse. The three trial defendants were subsequently acquitted.

At another trial in Pretoria involving 12 alleged members of the ANC, chief state witness Ian Rwaxa testified in June 1977 that he had been severely assaulted and threatened with death while in security police custody. He said he had been forced to make a false statement incriminating the accused, and had been made to rehearse the evidence he was supposed to give in court. When he agreed to this, his conditions of detention were greatly improved and he was promised an indemnity against prosecution. After completing his testimony, he asked the trial judge to issue an order granting him protection from the security police. However, this was refused on the grounds that the judge was not empowered to issue such an order.

During the same Pretoria trial, other State witnesses described the psychological pressures to which they were subjected while detained incommunicado. Stephen Motepye Lekgoro, who had been kept in solitary confinement for more than six months, said in court in July, "I am the sole supporter of my wife. Now there is no money coming in. What is more I don't know if they are still in this life". Joseph Tseto, who had also been detained in solitary confinement for six months, told the judge that he had worried that he "might get into trouble" if he forgot any part of his statement and said, "All I know is that if I give my evidence satisfactorily I might go free."

Many other examples could be quoted indicating that detaining potential State witnesses incommunicado in solitary confinement for long periods raises doubts about the reliability of any evidence they give. While in security police custody, detainees can be pressured, by threats, tricked, or persuaded by promises of early release into signing false statements helpful to the police and to the prosecution case. This point was made by Mr Justice Theron in the Cape

Town Supreme Court in March 1977 when acquitting John Christopher Hoffman and two others of charges under the Terrorism Act. According to Judge Theron, "the mere possibility that the witness, and especially one falling into the class of accomplice, may be threatened with detention if he does not produce a satisfactory statement, is sufficient to tarnish him from the point of view of the court". Nevertheless, South African judges generally continue to treat the evidence of detained State witnesses as admissible and, in some cases, as a sufficient basis for conviction.

iv) Banning Orders

Since the introduction of the Suppression of Communism Act in 1950, more than 1300 people are believed to have been restricted under banning orders imposed by the Minister of Justice. When it first became law, the Act empowered the Minister to declare unlawful those organizations which he considered were furthering the aims of communism, as defined in the Act, and to "list" the members of such organizations. Listed people could be forbidden to belong to certain organizations, to attend gatherings or to hold public office.

In 1954, the Act was amended to enable the Minister to impose such restrictions without giving his reasons and without allowing the listed people concerned an opportunity to make representations in their defence before the restrictions took effect. The Act was again amended in 1962, when the Minister of Justice was empowered to impose a variety of new restrictions including the issue of banning orders against people allegedly engaged in activities likely to further the aims of communism. Under the terms of such banning orders, a person could be ordered to live under conditions of full house arrest between such hours as the Minister may decide, usually from 6pm to 6am on weekdays, and from noon each Saturday till 6am the following Monday morning. Banned people could also be forbidden to communicate with any other person or receive any visitor except a doctor or legal representative. Communication between banned people was prohibited. The amendment also enabled the Minister to order banned people to report regularly, perhaps daily, to the police and to forbid them to attend social as well as political gatherings. Finally, it was made an offence for any person to reproduce or disseminate a speech or written statement made by a banned person.

Further amendments to the Act were made in 1966, when it was extended to Namibia with retroactive effect, and in 1967, when banned people were forbidden to practise as lawyers. More recently, in 1976, the Act was radically altered when it was re-named the Internal Security Act. Banning orders may now be imposed not

merely against those whose actions are considered likely to further the aims of communism, but against all who, in the opinion of the Minister of Justice, are engaged in "activities which endanger or are calculated to endanger the security of the State or the maintenance of public order". This amendment, again widening the terms of the original Act, makes it easier for the authorities to impose banning orders on African trade union organizers and leaders of the Black Consciousness movement, who try to bring about social rather than immediate political change.

Banning orders are usually imposed for two or five years, although they may be re-imposed upon expiry. A.K.M. Docrat, for example, was served with a third five-year banning order in 1974 and has now been banned continuously for more than 13 years. Lilian Ngoyi, former President of the Federation of South African Women and the ANC Women's League, was banned for the third time in May 1975. Previously, she had been banned continuously from 1962 to 1972.

It is an offence punishable by imprisonment or a fine for any banned person to contravene the terms of a banning order. There have been numerous prosecutions for this offence, and several banned people have been sent to prison as a result. For example, in October 1974, two banned people, Peter Magubane and Winnie Mandela, were each jailed for six months after being convicted of communicating with one another. In June 1977, Sheila Weinberg was sentenced to nine months' imprisonment, suspended for three years, upon being convicted of attending a social gathering. A further conviction during the next three years will of course render her liable to serve the sentence.

v) Banishment

In addition to the powers the South African authorities possess under the Internal Security Act to ban organizations and individuals without recourse to the courts, they may also order any African, or group of Africans, to leave their homes immediately and move to another, perhaps distant, part of the country. These powers of banishment were first introduced in 1927 when the Native Administration Act was passed to increase the Governor-General's supervision of African affairs. However, banishment was seldom used before the National Party took office in 1948. Then it began to be employed increasingly to suppress African opposition. This came particularly from African tribal chiefs, against the implementation of *apartheid* measures, such as the Bantu Authorities Act of 1951, which established tribal, regional and territorial authorities to supervise the administration of African areas, and the Natives (Abolition of Passes

and Co-ordination of Documents) Act of 1952, which introduced passes for women. African chiefs who challenged these measures were summarily removed from office and, together with a number of other Africans, banished to areas far from their homes.

In 1956, the Act of 1927 was amended after one banished person obtained a court order restraining the authorities from banishing him on the grounds that he should be given an opportunity to appeal against the order before his actual removal. The amendment empowered the authorities to serve banning orders without advance notice and denied banished people recourse to the courts as a means of obtaining a stay of removal. It provided that no appeal against a banishment order could be lodged until the individual concerned had been removed to the place of banishment; then, that person might ask for the reasons for the imposition of the order, but the Minister need only provide such information as would not be of "detriment to the public interest".

The South African Government has made limited use of its banishment powers under the Native Administration Act in recent years, mainly because of the wide range of other security laws available for use against African political opposition. The Act was most frequently used in the 1950s and early 1960s when more than 140 people were banished. More recently, it was employed at least twice in 1974 when Louis Mtshizana, a lawyer, was banished from Mdantsane near East London to the Herschel district of the north-eastern Cape, and Mkubu Mngomezulu was banished from Ingwavuma to Port Shepstone.

Those subjected to banishment suffer many hardships and difficulties. In certain cases, individuals were banished to the areas furthest from their homes: Mokate Ramofoko, for example, is reported to have been banished from Mabieskraal in the western Transvaal to Driefontein in the northern Cape in 1956. Foko Mbata was banished in 1964 from Nqutu, Zululand to Sibasa in the northern Transvaal, a distance of some 800 kilometres. John Kgalaeothswane Tsetsete was banished from Sekhukhuniland, eastern Transvaal, to Kuruman, northern Cape, more than 1000 kilometres away, in 1965. None was ever charged or brought to court. Their banishment was the result of an administrative decision taken by the Minister of Bantu Administration. In some cases, the wives and children of men who were banished were not allowed to accompany them. In most cases, banishment meant being sent to an area where the local inhabitants spoke a different language, where little or no work was available and the means of subsistence were insufficient. It meant many years of enforced poverty and isolation from family and friends.

Although banishment under the Native Administration Act of 1927 has not been common in recent years, it has become regular practice to send political prisoners to specified "resettlement areas" when they are released from prison, regardless of where they lived before. Thus, many political prisoners released after serving long sentences on Robben Island have been sent either to Ilingi or Dimbaza in the eastern Cape. There, they have no opportunity of obtaining paid employment and have no chance of starting a new life. They are kept under surveillance and constantly harassed by police. Those who have tried to assist them, members of the Black Community Programme and other Black Consciousness movement organizations, have also been subjected to official harassment and repeated detentions. Both Mapetla Mohapi and Steve Biko, Black Consciousness leaders instrumental in the creation of the Zimele Trust Fund, a rehabilitation scheme for former political prisoners, died in mysterious circumstances while detained by the security police. Dr Mamphela Ramphele, also a trustee of the Zimele Fund, is restricted by a banning order. The Zimele Trust Fund was itself banned by the South African Government in October 1977.

One former Robben Island prisoner, whose plight is perhaps typical, recently wrote from Ilingi:

> "I have been on the island for 12 years. I was released in April and sent here to Ilingi. My original home was at Molteno where I was convicted. I am really stranded here—no job, no clothes to wear and food to eat because I have no money. They gave me a four-room house which is a poor thing. Such a house needs a person who has money, the interior of it is not prepared."[1]

Most recently, in 1977, the terms of certain banning orders issued by the Minister of Justice under the Internal Security Act have been so drafted that the individuals concerned have, in effect, been banished. Dr Mamphela Ramphele, for example, when she was banned under the Internal Security Act in April 1977, was restricted to a remote district of the northern Transvaal, more than 1000 kilometres from her home in Kingwilliamstown. Thembani Phantsi was banned and restricted to Graaff Reinet, 250 kilometres from his Kingwilliamstown home, in June 1977. One month before, in May 1977, a banning order issued against Winnie Mandela in December 1976 was amended so as to provide for her restriction to the small town of Brandfort in the Orange Free State, 350 kilometres away from her home in Soweto.

[1] Molteno is situated some 300 kilometres north-west of Ilingi.

Number and Description of Political Prisoners

South Africa's political prisoners form a diverse group whose one common bond is their determination to create a more socially and politically just society. In trying to achieve this goal, many people have been imprisoned and many have died. Drawn from various ethnic and occupational groups, those at present detained or imprisoned for political reasons include members of each of the country's four official race categories and people from all over South Africa. They include black and white intellectuals with university degrees and Africans from the rural areas who received at most a simple primary school education. They include leaders and supporters of nationalist political organizations such as the ANC and PAC, members of the Black Consciousness movement, white supporters of the banned Communist Party of South Africa, and individuals whose contribution has been made in the field of social rather than overtly political reform. There are those who advocate violence as the only means to effect political change, and there are those who wish even now to explore non-violent methods to bring about majority rule and greater social justice.

Over the years, several commentators have made the point that the restrictions imposed by *apartheid* on the individual's freedom of movement, association and expression, have effectively made political prisoners of all South Africa's population. In some senses this is perhaps true, for the introduction of discriminatory *apartheid* legislation has imposed new and artificial limits on each individual's activity and behaviour. Even members of the dominant white group are restricted in that, for example, they may not enter certain areas without official permission or marry the person of their choice if such a person is not a member of the same racial group. Blacks are subject to restrictions on all aspects of life.

For the purposes of this report, however, a narrower definition of political prisoners is used. They are those who are detained, imprisoned or restricted because they have, or are suspected to have, engaged in activities designed to bring about political and social change in South Africa. They fall into the following categories:

a) Convicted political prisoners: those charged, tried and sentenced

for both violent and non-violent political offences. At present, there are more than 450 prisoners in this category all of whom have been convicted under laws such as the Terrorism Act, Internal Security Act and Sabotage Act. Most are Africans, but there are also members of the Asian, Coloured and white ethnic groups.

The number of convicted political prisoners has remained relatively constant since the early 1960s, and indeed some of those currently held have been imprisoned since that time. Most prisoners now held were either convicted in the mid-1960s or much more recently, following the widespread disturbances in Soweto and other black townships in 1976. Their number includes several individuals who are generally accepted as leaders of the black population, such as ANC leaders Nelson Mandela, Walter Sisulu and Govan Mbeki, and leaders of the Black Consciousness movement such as Dr Aubrey Mokoape, Saths Cooper, Pandelani Nefolovhodwe and Zithulele Cindi. The Namibian nationalist leader, Toivo Hermann ja Toivo, is also imprisoned in South Africa.

At least 37 convicted political prisoners, including Nelson Mandela and the other ANC leaders, are serving sentences of life imprisonment.

b) Political detainees: those held without charge or trial under the provisions of the Terrorism Act, Internal Security Act, and similar security legislation. There are three main categories of detainees: those held for interrogation purposes under such provisions as Section 6 of the Terrorism Act, those detained as potential State witnesses under the Internal Security Act, those held in preventive detention also under the provisions of the Internal Security Act.

It is impossible at any one time to make an accurate estimate of the total number of political detainees held in South Africa. The authorities neither publish detainees' names nor inform their families of their arrest. Most detainees are held incommunicado. From time to time however, the authorities have issued detention statistics, and estimates of the numbers of detainees have been made by authoritative organizations such as the Christian Institute and the South African Institute of Race Relations. In April 1976, for example, the Christian Institute issued figures to show that at least 217 people had been detained since the beginning of 1974 for an accumulated total of more than 22 thousand days. Only 46 of these detainees had been charged.

Six months later, in October 1976, Minister of Justice, James Kruger, announced that 697 people had been detained since the outbreak of disturbances in Soweto on 16 June 1976. Of these, 123 were held in preventive detention under the Internal Security Act and 217 were detained for interrogation purposes under Section 6

of the Terrorism Act. Thirty-four others were detained as potential state witnesses and 323 people were awaiting trial on political charges.

In mid-December 1976, the South African Institute of Race Relations estimated that 619 people were in detention, including 42 held without charge in the Transkei. At the end of the month, however, the Government released all detainees held in preventive detention. In February 1977, Kruger said that a total of 135 people had been held under the preventive provisions of the Internal Security Act during the second half of 1976. They had been held for periods ranging from six to 139 days.

Further figures for detainees were issued by the South African Institute of Race Relations in March 1977. It was claimed that the total of 471 detainees then held included 84 school students. At least 33 detainees were reported to have been detained without trial for more than one year. More than 360 detainees had been released without being charged during the previous 15 months.

The Johannesburg *Sunday Express* reported in April 1977 that 150 children of under 16 had been arrested since June 1976. Children aged no more than 10, 12 or 13 were reported to have been detained in solitary confinement for up to five months.

New official figures were provided at the end of May 1977, when Kruger stated that 336 people were detained under the Terrorism Act and related security laws. In September 1977, Kruger told the Natal Congress of the National Party that 2,430 people had been arrested since 16 June 1976. Of these, he said, 817 had been convicted for offences ranging from public violence to terrorism; 118 were currently awaiting trial; and the cases of 372 were still being investigated. The remainder are presumed to have been released without being charged.

In October 1977, the South African Institute of Race Relations again issued figures for the number of people detained. It estimated that 662 people were in detention on 30 September 1977 and said that at least 566 detainees had been released uncharged between January 1976 and September 1977. As many as 97 of those freed had been detained for more than one year.

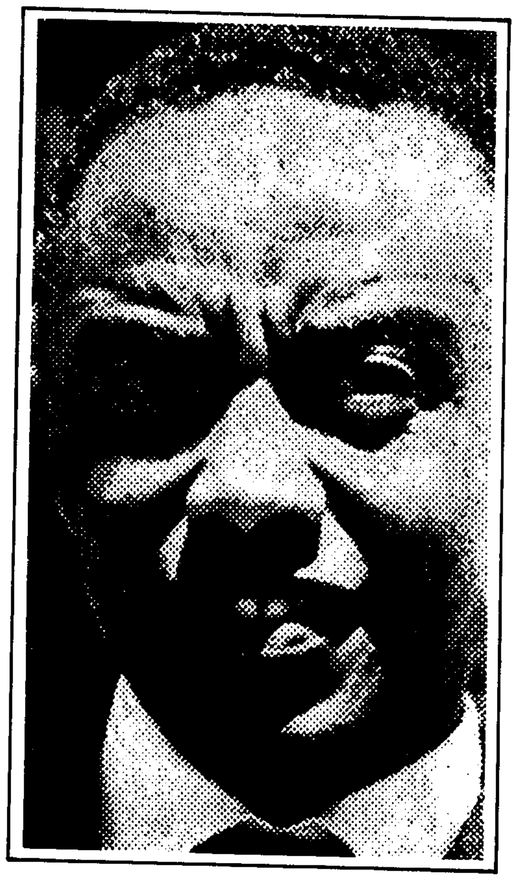
c) Banned people: those who are subjected to partial house arrest and other restrictions under the provisions of the Internal Security Act. At the time of writing there are more than 160 banning orders in force against people of both sexes and all races. The majority are Africans, but substantial numbers of whites, Indians and Coloureds have been banned over the years. In all, more than 1,300 people are believed to have been banned since the Suppression of Communism Act was passed in 1950.

More than 40 new banning orders were issued in 1976, many of of them against people who have never been charged with an offence.

d) Banished people: those who are arbitrarily subjected to internal exile within South Africa under the terms of the Native Administration Act. More than 140 persons were banished for long periods in the 1950s and 1960s, although few people now live under banishment orders.

Profiles of Seven Prisoners of Conscience

The following brief case-histories are intended primarily to illustrate some of the ways in which Prisoners of Conscience are treated in South Africa. None of the individuals concerned has used or advocated violence. They have been imprisoned or restricted because of their opposition to apartheid and racial discrimination. Their cases typify those of many hundreds of South Africans who have opposed the oppressive policies of the South African regime.



Dr Neville Alexander

Dr Neville Alexander

Dr Neville Alexander, 40, was convicted under the Sabotage Act and, although he was not found to have used or committed violence, was sentenced to 10 years' imprisonment in April 1964.

As in all cases of convicted political prisoners in South Africa, Dr Alexander was denied parole and remission of sentence. He was imprisoned on Robben Island, South Africa's maximum security prison for political prisoners, for the full 10 years of his sentence and released on 13 April 1974. On that day, he was served with a five-year banning order, imposed by the Minister of Justice under the Suppression of Communism Act, on the grounds that he had engaged in "activities which are furthering or may attempt to further the achievement of the objects of communism". The banning order was signed by the Minister five days before Dr Alexander's release.

Dr Alexander appealed to the Supreme Court to order the Minister to reveal the specific reasons for the imposition of the banning order. He claimed that he had been under 24-hour surveillance while imprisoned on Robben Island and could not therefore have been engaged in any subversive activities. He claimed that any information against him which the Minister possessed must relate to the period prior to his arrest in 1963, and that such information must already have been used to secure his prosecution. The banning order therefore effectively imposed an additional sentence to that passed by the court of law that originally tried his case. He told the High Court that the banning restrictions placed upon him had a "profound and upsetting" effect. He added:

> "The many predicaments in which I am placed as a result of my restrictions are arduous and the conditions are stifling . . . these restrictions constitute a drastic inroad into my liberties. If this inroad is not justified and lawful, it is imperative and urgent that it be removed. I have, as I have said, paid my penalty to the full."

The High Court decided, however, that it had no jurisdiction over the imposition of the banning order.

Dr Alexander has a most distinguished academic record. He studied at the University of Cape Town and in 1961 obtained a Doctorate of Philosophy from the University of Tübingen in West Germany. At the time of his arrest in 1963, he was a senior teacher in a Cape Town high school and a part-time lecturer in German at the University of Cape Town. The terms of his banning order prohibited Dr Alexander from entering any university or other educational institute. Since his release from Robben Island, he has worked in a grocery store.

Nonzamo Winnie Mandela

Nonzamo Winnie Mandela

Winnie Mandela, one of the best-known leaders of black opinion in South Africa, has suffered a long history of political persecution. The wife of Nelson Mandela, the ANC leader now serving a sentence of life imprisonment under maximum security on Robben Island, Winnie Mandela is a major political figure in her own right.

In 1969 Winnie Mandela and 21 others were charged under the Suppression of Communism Act. They were alleged to have undertaken activities on behalf of the ANC, which had been a banned organization since 1960. During the course of the trial, various defendants and State witnesses alleged torture and ill-treatment by security police, and the State withdrew all charges against the 22 accused in February 1970. However, before they could leave the court, they were all re-detained under Section 6 of the Terrorism Act. In May, all but three of the detainees were again charged, this time under the Terrorism Act. They were acquitted in September but Winnie Mandela was then placed under house-arrest and other restrictions under a five-year banning order.

Winnie Mandela was constantly harassed and intimidated by the security police. She was charged on several occasions with contravening the terms of her banning order and was jailed for six months for this offence in October 1974.

Winnie Mandela's banning order was not re-imposed by Minister of Justice James Kruger when it expired in September 1975. However, following the outbreak of disturbances in Soweto, Winnie Mandela was detained under the preventive detention clause of the Internal Security Act on 13 August 1976. She was held, together with other women detainees, at the Fort Prison in Johannesburg until the end of December 1976. At the time of her release, a new five-year banning order was imposed by the Minister of Justice to restrict her once again to the Soweto area. In May 1977, the terms of this banning order were amended by the Minister to provide for her restriction to the small town of Brandfort in the Orange Free State, some 350 kilometres from her home in Soweto. In September 1977, Winnie Mandela faced several charges of contravening the terms of her banning order.

Winnie and Nelson Mandela have two daughters.

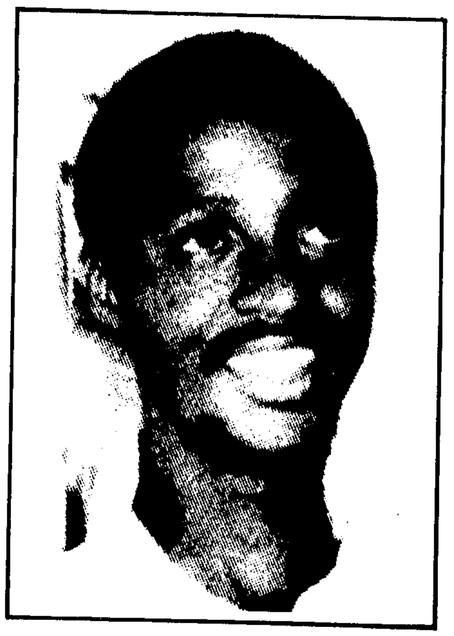
Lilian Mazediba Ngoyi

Lilian Mazediba Ngoyi

Lilian Ngoyi became a prominent figure in South African politics during the 1950s. She was appointed President of the Women's League of the ANC in 1954 and also became President of the Federation of South African Women. Both organizations were in the forefront of the African nationalist struggle against the implementation of *apartheid* and because of her role in them she was subjected to considerable harassment and intimidation by the South African authorities. She was one of the accused in the so-called "Treason Trial" held in Pretoria from 1956 to 1961 and, like all the other accused, she was acquitted. In 1960, following the declaration of a State of Emergency in South Africa, she was detained without trial for a period of five months.

In 1962 she was prohibited from attending political or social gatherings by a banning order issued under the terms of the Suppression of Communism Act. In 1963 she was again detained without trial for a period of 71 days. The same year the terms of her banning order were amended in order to restrict her to Orlando township, Soweto, a restriction which forced her to give up her employment as a skilled garment worker. When Lilian Ngoyi's banning order expired in 1967 it was immediately re-imposed for a further period of five years. However, the second banning order was allowed to expire in November 1972. For a relatively brief period of two and a half years, Lilian Ngoyi was able to resume a normal life. She could talk to whom she wished and engage in the other social activities which are normally denied to banned people.

In May 1975 however, a new five-year banning order was imposed on her. As with all banning orders, the Minister of Justice gave no specific reason for the imposition of restrictions; it was merely stated that she had been engaged in activities likely to further the aims of communism.



Barney Nyameko Pityana

Barney Nyameko Pityana

Barney Nyameko Pityana, 32, was banned for five years under the Suppression of Communism Act in February 1973. He was then full-time Secretary-General of the black South African Students' Organization (SASO), one of the main organizations of the Black Consciousness movement. Steve Biko and several other Black Consciousness movement leaders were banned at the same time.

In October 1974, Barney Pityana was one of more than 40 Black Consciousness leaders arrested following an attempt to hold political rallies in Durban. He was detained without charge under Section 6 of the Terrorism Act and held incommunicado for a period of 166 days before being released, still uncharged, in April 1975. Following the outbreak of civil unrest in Soweto in mid-1976, Barney Pityana was again detained without charge, this time under the preventive detention provisions of the Internal Security Act. He was released on 20 December 1976 after 130 days in detention. He was re-detained under the Terrorism Act in August 1977.

Under the terms of his banning order, Barney Pityana was specifically prevented from continuing his activities on behalf of SASO and was prohibited from having any further contact with Steve Biko and other Black Consciousness movement leaders. He was placed under partial house-arrest and restricted to the Port Elizabeth area. In all, his banning order has 30 restrictions and conditions attached to it, the contravention of any one of which can result in a prison sentence.

Barney Pityana has defied his banning order and risked imprisonment on several occasions. In November 1975 for example, he was found to have contravened the terms of his banning order by allowing his younger brother and sister to visit him on four occasions. He was warned by a magistrate that his "attitude of defiance" would lead him into serious trouble with the authorities, but received a suspended sentence as he had recently been released after a prolonged period in detention.

Barney Pityana is married and has one child. His wife, Dimza, was also banned for five years in April 1977. As a result of this, and because banned people are allowed no contact, she had to obtain a special dispensation from the Minister of Justice to be able to communicate with her husband. Dimza Pityana had previously been detained without trial for two substantial periods. Firstly she was held without charge under the Terrorism Act for more than 70 days before being released on 13 August 1976. Five days later, she was re-detained without trial for a further four months. Dimza Pityana now works for the Dependants' Conference of the South African Council of Churches and is the sole supporter of the family.

Dr Mamphela Ramphele

Dr Mamphela Ramphele

Dr Mamphela Ramphele, 29, was banned for five years under the Internal Security Act in April 1977. At that time, Dr Ramphele was a superintendent of the Zanempilo Clinic near Kingwilliamstown. This clinic was established under the auspices of the Black Community Programmes, a part of the Black Consciousness movement, to provide medical care for Africans living in the eastern Cape area. Under the terms of her banning order, Dr Ramphele was restricted to a village near Tzaneen in the northern Transvaal, more than one thousand kilometres from her home in Kingwilliamstown. The Government's decision to ban Dr Ramphele aroused considerable criticism both from the black community and from the opposition Progressive Federal Party. Even so, in early May the Minister of Justice, James Kruger, refused to disclose in parliament his reasons for imposing the banning order.

Earlier, in 1976, Dr Ramphele had been detained without trial after attending a post-mortem examination of the body of Mapetla Mohapi, a close friend and organizer of the South African Students' Organization (SASO), who was alleged to have hanged himself on 5 August 1976 while in security police custody at Kingwilliamstown. It was widely suggested that Mapetla Mohapi had died as a result of security police torture and then been hanged to fake a suicide. Dr Ramphele was held without charge under the Internal Security Act until the end of December 1976, altogether a period of almost five months.

Strinivasa Rajoo Moodley

Strinivasa Rajoo Moodley

Strini Moodley, 31, was the publications director of the South African Students' Organization (SASO) when he was banned, together with several other Black Consciousness movement leaders, in February 1973. Before that he had been active in student politics and in 1967 was summarily expelled from the University of Durban/Westville where he had been studying for a degree in English and drama. He then became involved with the Theatre Council of Natal (TECON), a Black Consiousness organization which promoted cultural awareness among black people.

He was detained without charge under the Terrorism Act together with many other Black Consciousness movement leaders in October 1974. In early 1975, he and 12 other detainees were charged with offences under the Terrorism Act which related to their activities in the Black Consciousness movement. It was alleged by the State that, by attempting to promote a spirit of black consciousness, the 13 defendants had sought to bring about racial confrontation and endanger the maintenance of law and order in South Africa. The trial, commonly known as the "SASO/BPC Trial", was not concluded until December 1976, more than two years after they had been detained. Four defendants were acquitted and discharged during the proceedings but Strini Moodley and eight other accused were convicted and sentenced to terms of five and six years' imprisonment, Strini Moodley himself being sentenced to five years. All were refused leave to appeal.

Immediately after being convicted, the nine SASO/BPC leaders were removed to Robben Island, South Africa's main maximum security prison for political prisoners. In February 1977, Amnesty International received information concerning an incident on Robben Island where Strini Moodley and a group of other prisoners were assaulted by prison staff.

Strini Moodley is married and has one child. His wife, Sumboornam, is also restricted under a five-year banning order which was imposed in July 1973. Sumboornam Moodley lives in Durban, more than one thousand kilometres from Robben Island.

Tenjiwe Ethel Mtintso

Tenjiwe Ethel Mtintso

At the time of her arrest in August 1976 Tenjiwe Mtintso was working as a reporter for the East London *Daily Dispatch*, a leading English-language newspaper. She was also a member of the Black Community Programmes and a close associate of Steve Biko and other Black Consciousness movement leaders in the Eastern Cape area.

Tenjiwe Mtintso was detained without charge under the Internal Security Act until late-December 1976. Upon release, she was immediately banned for five years and restricted to Soweto, although prior to her detention she had lived and worked in East London, some 600 kilometres away. As a banned person she cannot be quoted in any way and has therefore been forced to give up her career as a journalist. The editor of the East London *Daily Dispatch*, Donald Woods, was himself banned for five years in October 1977.

In March 1977, Tenjiwe Mtintso appeared at an inquest into the death in detention of Mapetla Mohapi (a prominent member of the Black Consciousness movement) and gave evidence concerning her own experiences in security police custody. She said that after her arrest at Kingwilliamstown she was punched in the face and kicked by members of the security police. Later she was interrogated by Captain Hansen, head of the security police in Kingwilliamstown. She was again slapped and punched, and was made to stand for three days and nights during which she was allowed no food, drink or toilet facilities. In September, she was taken to Kei Road police station in Kingwilliamstown, where Mapetla Mohapi had been in custody at the time of his death. It was there, she alleged, that Captain Hansen and another security police officer had placed a wet towel round her face causing partial suffocation. This happened three times. Tenjiwe Mtintso alleges that she was told by Captain Hansen "now you see how Mapetla died". Tenjiwe Mtintso also alleged that while she was in detention the security police had told her, falsely, that her own child had died.

Treatment of Prisoners

i) Torture and Deaths in Detention

To accuse any government of sanctioning the torture of its own citizens is a most serious matter; it is not a charge which Amnesty International would make lightly. However, Amnesty International is convinced that such a charge against South Africa is fully justified. All the evidence indicates that torture is extensively inflicted on political detainees, and that the Government sanctions its use.

Throughout the past 15 years, Amnesty International has received many consistent and substantial allegations about the torture of political detainees during interrogation by South African security police. They concern not only detainees in South Africa but also people detained for political reasons in Namibia. Amnesty International has repeatedly drawn the South African Government's attention to these allegations and has urged it to conduct an independent inquiry into detainees' complaints. Similar representations have been made by many other international organizations, also by the press, the churches and individual community leaders within South Africa itself. The result has always been the same. Successive South African Ministers of Justice have invariably stated that such allegations of torture are groundless, mere fabrications put forward as part of some communist plot to undermine morale in South Africa. They have declined to set up any independent, effective inquiry. For example, in February 1977, when challenged to explain why at least 11 political detainees had died in security police custody during the previous 11 months, Minister of Justice James Kruger suggested in the House of Assembly that political detainees committed suicide on instructions from the banned ANC and Communist Party of South Africa.[1]

The pattern that emerges, on examining the available evidence, is one of torture being used almost on a routine basis by security police and where the Government, by failing to remedy the situation, appears to condone the practice. The unsurprising result of allowing the security police to proceed unchecked is that from time to time

[1] From the *Guardian*, London, 21 January, 1977.

they appear to have got out of control and to have been responsible for the deaths of detainees in their custody. This certainly appears to have been the case with Joseph Mdluli, who died within hours of his detention by Durban security police in March 1976, also perhaps in the cases of several other political detainees who died in security police custody.

Ultimate responsibility for those deaths, and for the torture of other political detainees, lies not with the security police but with the Government, particularly the Minister of Justice. It was therefore somewhat ironic when, as a result of the widespread international protest following the death in detention of the Black Consciousness leader Steve Biko in September 1977, Minister of Justice James Kruger threatened that "heads will roll" if any member of the security police is found to have been negligent. It was he, after all, who had steadfastly refused to draw the obvious conclusions about security police misconduct from information given to him by the press, and from the results of a series of inquests, after the deaths in custody of at least 20 political detainees during the previous 18 months.

A) *Allegations of torture*

Numerous allegations of torture have been made against the South African security police in recent years. Such claims have been made by former political detainees and by defendants and State witnesses at political trials. Almost invariably, the individuals concerned have alleged that they were tortured during interrogation by security police, who were trying to extract false "confessions" from them, or statements incriminating others whom the authorities intended to prosecute.

The frequency of these allegations, also the fact that a number of released detainees bore scars and abrasions suggest that the allegations are true. Nat Serache, a black journalist who fled to Botswana in April 1977 shortly after being released from detention in Johannesburg, was found by a doctor in Gaborone to have injuries which supported his assertion that he had been subjected to physical assault and electric shock torture. Bruises and abrasions were similarly found on the bodies of several other political detainees who died in security police custody in 1976-77, suggesting that they too had been assaulted while in detention.

The detainees' torture claims are strengthened by the nature of the laws under which most of them are held. Section 6 of the Terrorism Act, which is widely used, is, as has already been said, a law which would appear to invite, or even incite, security police ill-treatment

of detainees. People detained under this Act are left entirely in the care of the security police. They are denied access to close relatives or legal representatives and may be held for indefinite periods. They are also completely outside the jurisdiction of the courts. On several occasions, relatives of detainees, concerned about their safety and by reports of ill-treatment, have tried to obtain Supreme Court injunctions prohibiting the security police from further interrogating, assaulting or molesting particular detainees. In late 1974, such an attempt was made by relatives of five members of the South African Students' Organization who had been detained two months before. They were unsuccessful, as was the wife of Harold Nxasana, who made a similar application to the Durban Supreme Court in April 1976. She claimed that her husband had been severely assaulted and urged that an independent medical practitioner and the Chief Magistrate be allowed to visit him and report their findings to the court. This request was refused after several members of the security police testified in court that Harold Nxasana had not been ill-treated. However, the security police did not produce him in court, just as they had not produced the SASO detainees in November 1974, although this would seem to have been the most obvious way to assess the validity of the torture allegations.

Various methods of torture have been alleged: these include physical attacks, and beatings, the application of electric shocks to the body, being made to stand for long periods, wearing shoes containing small stones and to assume a sitting position—the "invisible chair"—for several hours at a time. Many former detainees have also alleged that they were subjected to murder threats, to threats against members of their families, to prolonged interrogation, sleep deprivation, and psychological disorientation through long-term solitary confinement.

It would be impossible, within the confines of this report, to describe every case in which former detainees have alleged torture by South African security police. However, some indication can be given of the ways in which detainees have been ill-treated while in security police custody by quoting extracts from statements made by former political detainees. These are not the only such statements in the possession of Amnesty International; they are merely typical of many detainees' claims.

1. Statement by Strini Moodley. Strini Moodley, a leading member of the Black Consciousness movement, was detained under Section 6 of the Terrorism Act in October 1974. After three months in detention, he was charged under this Act together with 12 others and brought to trial in the Pretoria Supreme Court. The trial concluded

in December 1976, when he and eight others were convicted and sentenced to five and six years' imprisonment, Strini Moodley receiving five years. In an affidavit prepared in February 1975, Strini Moodley described his experiences in detention in the following way:

> "We arrived at the headquarters and I was taken into one of the interrogation rooms where Mr Welman began to threaten me. He said that I had not told the truth and he was going to beat the truth out of me. The said Mr Welman then clouted me with the palm of his hand and forced me to crouch against the wall. With my back to the wall, in a sitting position, my knees together and my hands on my head, I was made to remain in that position for a long period.
>
> During this time two other members of the security police came into the room and they together with Mr Welman began to physically assault me. I was kicked on my buttocks continually, punched about the body and clouted with open palms about the face and sides of my head. Every time I was dragged up by the hair. At one stage I fell and I was kicked and punched continually in my back. The entire assault went on intermittently for about two hours.
>
> Although I do not know the names of the two security policemen I can identify them.
>
> While I was being interrogated during December, at Security Branch headquarters I saw Sylvia Mbandla. She was in a different room and I heard her being beaten up. She was screaming and someone was saying 'Talk, talk'.
>
> I also saw Menziwe Mbeo at the Security Branch headquarters during December, and at one stage heard him being beaten up in one of the other interrogation rooms."

2) Statement by Dr Aubrey Mokoape. Dr Mokoape, like Strini Moodley, was a leading member of the Black Consciousness movement at the time of his arrest under Section 6 of the Terrorism Act in October 1974. He stood trial with Strini Moodley and is at present imprisoned on Robben Island. He made the following statement in an affidavit prepared in February 1975:

> "I was interrogated by about eight security police, among them was Major Stadler, Messrs. Kruger, van Wyk, Marx, Capt. Welman. All eight or so policemen were present for the great part of six hours interrogation. At every stage when Major Stadler was not present the other police threatened and intimidated me. Mr Marx and Mr van Wyk made me stand up from the chair and the latter said he was not worried about a clever kaffir, that every kaffir is a kaffir and as such must be made to defecate (*kak*). Mr Marx told

me that he would hit me to death if I did not tell him the truth. He stood menacingly in front of me with clenched fists. He held me by my left shoulder and shook me violently. He alleged I was a *hardegat*.

I was limp with fear. I sincerely believed that they were going to kill me. I never reported to the Magistrate for fear of being assaulted or killed as a result.

Whilst I was held in solitary confinement in Pretoria Prison I managed to know that S. Moodley, R. Cooper, S. Cooper were held in cells in the same corridor as I. At various stages there were also Paul Tsotetsi, Muntu Myeza and P. Nefolovhodwe, in that sequence in time. I knew of their presence because we used to communicate by way of shouting from our cells, to each other.

During late November, Saths Cooper told me that he had been interrogated for several days and that he had been severely tortured and beaten by the security police. He said specifically that his head had been bashed against the wall numerous times until he became dizzy. He also said that he had been lifted off the floor and dropped on the floor, which is of cement. He complained thereafter of earaches and constant headaches. On Monday the 3rd February 1974, he had an epileptic seizure. I saw the whole episode and attended to him initially. In the absence of a history of epilepsy and with a history of head injury I formed a tentative opinion of post traumatic epilepsy, all as a result of his head injury sustained at the hands of the security police.

In the early part of December, S. Moodley also told me that he had been assaulted by the police.

In January 1975, Muntu Myeza told me he had been assaulted by the security police and that he had reported them to the Magistrate. As a result of this report he told me that the security police had visited him in his cell in the prison and again assaulted him.

As a result of my treatment at the hands of the security police, the various assaults upon me, and to my knowledge on the fellow detainees who were assaulted and tortured, I fear for the mental and physical health of all persons still held in detention. I sincerely believe that the treatment that was meted out to me and others I know of is similarly dealt out to persons still held in detention."

3) Statement by Stephen Dlamini. Stephen Dlamini was arrested at his home in Bulwer, Natal, at the end of March 1976. At that time he was subjected to partial house-arrest under the terms of a banning order issued against him when he was a prominent member of the South African Congress of Trade Unions (SACTU). After a period of interrogation, which is described below, he was detained in solitary

confinement for more than six months before being released uncharged in October 1976. He left South Africa as a political refugee in May 1977.

"I was made to stand against the wall on my toes, run on the spot; ordered to take off my shoes. Zondi brought gravel which was put into my shoes. I was forced to tie up the laces and stand. They beat me from the back of the knee, punched by all three in the back and on my sides, made to stand against the wall on my toes in the gravel-filled shoes. Whenever I fell down they picked me up and knocked my head against the wall. Scars on my left foot still remain from the stones in both my shoes.

Throughout this interrogation and torture the question they asked was why did Mdluli come to see me. The answer I gave them did not satisfy them. 'You are a communist' they said, and continued the torture. Later another group of SB's [security police] came in. The stones were removed by the outgoing group. When I fell with the stones in my shoes they kicked me and this broke off bits of the sole of my shoes. Blood stains in my shoes still remain. The shoes are available. Different groups of SB's came in, and each had their own specialised torture. One group came in and one SB beat me on the head with his ring. I don't know their names; even Zondi—I only heard him being called Zondi.

I had no sleep but remained in the room in Loop Street. I was given food when it was dark. I had no idea of time. The curtains blotted out the daylight. The first night I had no food. I was allowed to go to the toilet twice in four days and three nights. I drank water once in those four days and three nights, and in that period I did not wash. After the first day food came in intermittently. I did eat even though I was beaten up because I knew that food was my only sustenance. My whole body was swollen, my ears blocked from a SB shouting into my eardrum saying 'speak up'.

Another group made up of blacks and whites came in. Paulos came in, pulled out my glasses and hit me with the open palm over my eyes. I could not see—I feel I lost 75 per cent of my eyesight. Others kept punching me. Another group took over. Zondi came in again with the gravel stones. The same group came back and inflicted the same torture. I ran on the spot. They knocked my head against the brick wall. They tried to break my arm. 'We are going to throw you out of the window because you are a communist'—throughout they shouted abuse at me. One punched me below the belt. I could hardly pass water. In fact when I passed water it was very painful and all the while 'why did Mdluli visit you?'."

4) Statement by Cleopas Ndlovu. Cleopas Ndlovu was convicted under the Terrorism Act and sentenced to 15 years' imprisonment by the Pietermaritzburg Supreme Court in July 1977. Eight other defendants received prison sentences ranging from seven years' to life imprisonment. A tenth was acquitted.

Cleopas Ndlovu described his conditions of detention in the following statement made in August 1976:

"I was arrested on the 25th March 1976. This arrest took place at night at about 8-9 pm and it was such a shocking, unexpected and most surprising event. The arrest taking place in Swaziland territory and done by the South African police demonstrated a clear case of kidnapping which had all the advantages of it taking place at night with nobody witnessing it.

During this interrogation and detention period what contributed much to mental imbalance and despair was:

one: blindfolding of my eyes which took place on the same day of my arrest;

two: the place where this interrogation took place. (I was taken to a remote camp right in the forest, where I could hear the waves.) I spent 13 days in this camp;

three: the threats which were being used by the interrogators (besides from the severe beatings and torture) had the most serious effect.

During all my 13 days in this camp I was blindfolded whilst the interrogations and physical tortures took place. I was threatened with death and told I'll be killed and my body will be thrown in the sea. I was asked about my family and about my children in particular. I gave them the answers and thereafter I was told I will never see them again. During this torture operation I screamed out loudly, but was told by my torturers that my screaming is of no use because we are in the forest and at a very isolated spot where no-one will hear my screams.

The whole operation was so nerve wrecking that never in my life have I attempted to commit suicide but during this period I did.

In the room where I was detained the police used to come or creep stealthily and sit next to me, then all of a sudden somebody will burst or beat me making such a noise so that I could get a shock. This happened several days during this camp interrogation, so much that never during this period had I a relaxed state of mind. I was always at high tension, shaky and fearful. During this time I developed a high state of mental imbalance, so much so that at times I used to find myself talking alone, and while this

was happening, somebody sitting quietly next to me would interrupt by shouting or performing any act that would shock me.

When we arrived at the camp at about 2am on Friday morning, the 26th March 1976, I was questioned the whole day and whole night, standing, even on the following day, Saturday, I was questioned until 8pm or 9pm. The interrogation occurred in a small room in the forest camp. During all this time, my eyes were blindfolded, my arms were tied with the rope at my back as follows: my wrists were tied with rope and the rope was tied around my neck. When they were beating me this rope was tied to a rafter or some structure on the ceiling above me. When they moved me or led me to a toilet, they pulled me by this length of rope wound round my neck."

5) Statement by Mrs Oshadi Jane Phakathi. Oshadi Phakathi was first detained without charge from 16 to 18 June 1976. She was re-arrested early on the morning of 24 August 1976, when her house was raided by members of the security police. She was taken to the Fort Prison in Johannesburg, where she was detained without charge or trial for more than 120 days. She was released in December 1976 and subsequently banned for five years under the provisions of the Internal Security Act. She left South Africa in 1977.

Oshadi alleges that she was tortured while held at the Fort:

"I was later questioned intensively for three successive days and assaulted in between the questioning.

I was then forced to re-write a document of my activities as guided by the security policemen. Their guidance involved information that would give the impression that I voluntarily gave the policemen information that involved several people because I co-operated with the police. Also I was forced to sign back-dated receipts that gave the impression that I was on the police payroll. The actual pressure was applied by means of assaults, electric shocks applied around my waist and on my breasts whilst I was blinded with a thick cloth around my eyes.

I was also put in an electric frozen bag and suspended in the air by means of a heavy iron until I was suffocating. The policemen then remarked that I could go and continue my struggle, nobody would heed me, because they were going to expose that I co-operated with them.

I spent two weeks in complete isolation."

After her release from the Fort in December 1976, Oshadi Phakathi received the following information from other detainees who had been freed from Modderfontein B Prison in Benoni:

"They told me that security police squads used to visit Modderfontein B Prison frequently, heavily armed and accompanied by a lot of police dogs. There was a special place prepared for interrogation of detainees at that prison. They said that some scholars were heavily assaulted on interrogation. They told me that on some night two male scholars were so heavily assaulted by policemen that one died. They heard them scream the whole night as they were assaulted. The following morning they saw the one through his cell window seriously swollen up, struggling for his life. A convicted prisoner at the same prison told them that this struggling young man was assaulted by the security policemen and that the other one with whom he was assaulted had died as he was assaulted."

6) *Statement by Mr M.* The following statement was made by a former detainee who is now at liberty in South Africa. His name has been deleted for fear of recriminations.

"They ordered me to undress. When I refused they beat and punched me. At last I was standing in my vest only. They tied the string to the jack and other end to my testicles. They dropped the jack. I screamed with pain. They dropped the jack for the second time. They beat me while I was held by my armpits. When I screamed one SB (security police) put his hands on my mouth to muffle the scream.

The SBs were not satisfied with my story. They continued to punch and slap me, I was taken by three SBs to a room with a door that looked like a butcher's refrigerator. They pushed me into it. When the door was closed it was too dark. I felt something like fingers touch me. With every touching I felt terrible shock. I screamed. I wet my pants on the second shock. There were three shocks in all. My whole body was wet when they opened the door. I promised them that I would speak if they can stop taking me into that Black House. They took me to the first room. Here again they said I will be locked up for life if I don't tell them the truth."

7) *Statements by Soweto students.* Police ill-treatment of detainees reached a new intensity following the outbreak of civil unrest in Soweto in June 1976. This is clear both from the frequency with which allegations of torture have been made by defendants and witnesses at subsequent political trials, and from accounts received from a number of Soweto students who were detained at that time. The following extracts are taken from some of these accounts and are generally typical.

The first statement was made by an 18-year-old who was interrogated at Protea police station in Soweto:

"Four whites and one black questioned me but gave me no chance to reply. During this they were beating me with their fists and kicking me. They asked me about Tsietsie, Khotso and the rest. One of the police said I must strip. I refused and when they saw I was stubborn they all came and beat me. They didn't even question me. They stopped and I was taken to another police station. Two days later they came again and fetched me to Protea. They questioned me about what I had done since the disturbances broke out and tried to force me to say I had been involved in incidents of arson. When I denied it, one of them pointed an FN and threatened to shoot me unless I agreed to say what they wanted. Then they put things on my head and gave me shocks. I was screaming and crying. When I got up I was dazed. One of them told me to sit on a chair but there was no chair where he pointed. I had to sit on an imaginary chair. He said I must sit there for two hours, which was impossible. I fell and they laughed. Another policeman came in and lashed my back with a rod. They forced me to sign a statement and they took me back to the police station. After 31 days in detention I was released."

The next account came from a 20-year-old secondary school student who was also interrogated at Protea police station. First, he was beaten and kicked by four members of the riot police when questioned about attending the funeral of a detainee who died in police custody.

"Afterwards I realised that they had damaged my left ear, because since then I can't hear properly. Then I was questioned again about the funeral and tried to deny again that I was there. He threatened that I would stay in jail for 180 days. He said I would rot in jail and that I would commit suicide. He showed me a hole and said they could shoot me and put me in the hole. I was scared because I know this is one of the things they do. He took out a pen and said I must start speaking about the funeral. I again denied it and he took me to another office where there were four whites. They again beat me on the body. I was screaming very loud. Another policeman came and said the Minister of Justice was present and they should be careful. So they stopped beating me and said I should squat in a corner. It was about lunchtime and they started to have their lunch. I heard a helicopter going off and they started to call me again. They sat me down on a chair and put a sack over my head. I was tied to the chair by my wrists and ankles. They tied something else around my wrists. They also tied

something on to my head. I felt as if I was being pricked by needles. It was very painful. It went through my whole body. It was for about 15 minutes. After that the sack was removed. Then they asked me again about the funeral. They threatened to do that thing again for one hour. So I said I was at the funeral, although that was a lie. They started to write down then what I was telling them about the funeral. They then asked me what I have done and I said I haven't done anything. They put back the sack again. They gave me electric shocks for another 15 minutes. After they removed it I told them that I had thrown stones. It was not true but I said so because I was afraid. They wrote it down and said that was what they wanted and I could go. They told me to tell nobody what they have done to me. I was then taken back to the other police station. I stayed there for 32 days."

The following statement was made by a 20-year-old secondary school student who was detained for 14 days at Protea police station.

"They took me to an interrogation room. They told me to take my clothes off. I took them off and then they told me to sit on a chair behind the door. Then they fastened me to the chair by my wrists. Then they put something on my head, like a cap. I didn't see what it was. Then they came with a wet cloth and put it inside my mouth. Then I felt electric shocks going through my body. After five minutes the shocks stopped and they asked me if I would tell them the truth. I said I would tell them the truth. Then the shocks started again. Then it stopped. They asked me about the first demonstration on 16 June. I told them I was at school and that when it started I went home."

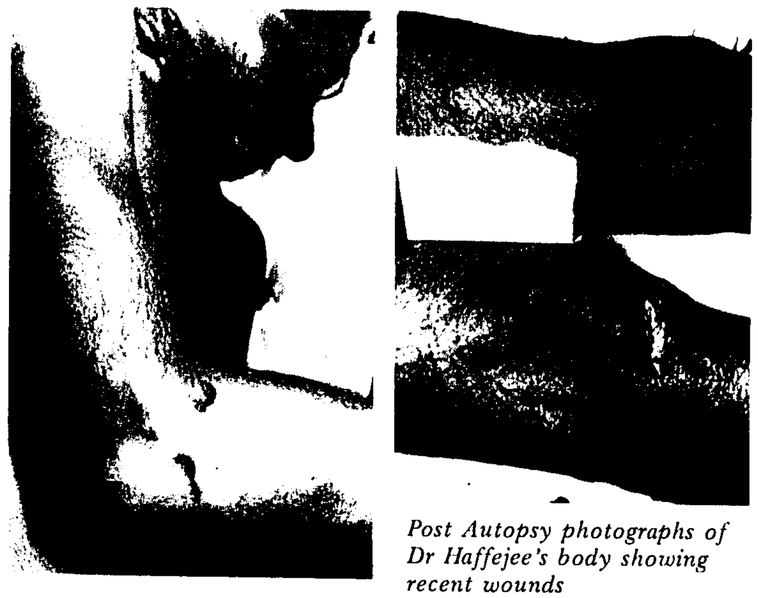
Amnesty International cannot vouch for the accuracy of these statements but they appear to be sincere and credible. Many similar allegations have been made by other detainees.

B. *Deaths in Detention*

A succession of deaths of detainees in security police custody in 1976-77 focussed international attention on the issue of torture in South Africa. Such deaths were not without precedent, since as many as 22 political detainees had died in mysterious circumstances while detained by the security police between 1963 and 1972. The death, in March 1976, of Joseph Mdluli within hours of his arrest by Durban security police has already been mentioned. Following the outbreak of the Soweto disturbances in June 1976, the deaths of political detainees occured with unprecedented frequency. At least 20 political detainees are known to have died in security police

Steve Biko: Died in Detention, September 1977

Dr Hoosen Haffejee: Died in Detention, August 1977



Post Autopsy photographs of Dr Haffejee's body showing recent wounds

Joseph Mdluli: Died in Detention, March 1976

Injuries on Mdluli's body

Mapetla Mohapi: Died in Detention, August 1976

custody between August 1976 and September 1977 (when the Black Consciousness movement leader Steve Biko died in detention in Pretoria). Even this figure may be an underestimate, because of uncertainty in some cases as to whether particular detainees were arrested for political reasons, as their families claimed, or for non-political offences, as the authorities state.[1] In addition, there were fears for the safety of Malebelle Joseph Molokeng, formerly detained and tried under the Terrorism Act, who "disappeared" in March 1977. His wife claimed that he had been re-detained, but this was denied by the security police. Similar uncertainty surrounds the fate of two detainees who were reported to have escaped in February 1977 from John Vorster Square police station, headquarters of the Johannesburg security police.

Several detainees died in circumstances which have not been satisfactorily explained by the authorities. Mapetla Mohapi, a leading member of the Black Consciousness movement, for example, was alleged to have hanged himself by his trousers on 5 August 1976 while detained at Kei Road police station, Kingwilliamstown. He died three weeks after having been detained on 16 July 1976. At an inquest into his death held in 1977, a handwriting expert testified that an alleged suicide note produced by the police had not been written by Mapetla Mohapi. Tenjiwe Mtintso, a former detainee, also appeared at the inquest and gave evidence about her own torture by Kingwilliamstown security police. She alleged that, at one stage, Captain R. Hansen of the security police tied a wet towel round her face causing partial asphyxiation, and said, "now you see how Mapetla died". The inquest magistrate decided that nobody was to blame for Mapetla Mohapi's death, but nevertheless declined to deliver a formal verdict of suicide.

An inquest in May 1977 returned a similar finding on George Botha, a 30-year-old Coloured teacher who died on 15 December 1976, five days after being detained in Port Elizabeth. He was alleged to have broken free while being escorted by police guards and to have thrown himself from the sixth floor of Port Elizabeth security police headquarters. A pathologist who appeared at the inquest stated that several wounds and other abrasions on George Botha's body had been inflicted two to six hours before his death, while he was in security police custody. However, according to the security

[1] The death rate for people detained by the South African police is even more alarming than the figure for political detainees suggests. In 1976, for example, of 130 untried prisoners who died in police custody, only 13 were officially recognised as having been held under security laws.

police, he "was treated like a cultured person and police had respect for him". No explanation was forthcoming concerning the infliction of wounds on George Botha's body shortly before his death.

In another case, that of Dr Nabaoth Ntshuntsha, an inquest was told by a senior pathologist that the dead man bore marks on the back of the head and ears which could have been caused by electrical contact. Dr Ntshuntsha had been detained under Section 6 of the Terrorism Act in Johannesburg on 14 December 1976. According to police he had hanged himself with strips torn from a blanket while detained at Leslie Prison on 8 January 1977. His wife had earlier been refused permission to see him and had not been able to find out where he was being held. A pathologist who attended the post-mortem on behalf of Dr Ntshuntsha's family refused to participate in the autopsy as various incisions had already been made in the body by a police mortuary attendant. Dr Ntshuntsha was said by his security police custodians to have left no suicide note, and to have been in a genial mood only hours before his alleged suicide.

In Kimberley, 27-year-old Phakamile Mabija died when he fell from a sixth floor window of the Transvaal Road police station on 7 July 1977. There were cuts on his face, hands and on the liver which could have been caused either by an assault before his death or by the impact of his fall. The security police said he had broken free suddenly and thrown himself from the window. However, his mother told the inquest in August 1977 that after his arrest Phakamile Mabija had been taken back home by security police who were searching for a certain document. She said that when the police did not find it they told her son in her presence that he would not see his family again. This was denied by the security police.

Dr Hoosen Haffejee, a 26-year-old dentist, was found hanged by his own trousers in a cell at Brighton Beach police station in Durban on 3 August 1977. His trousers were tied around his neck so tightly that they had to be cut free with a razor blade. Security police said he died approximately four hours after his arrest late at night on 2 August. His family, however, believed he was detained much earlier since he did not appear at work as expected that day. A post-mortem examination carried out on 3 August was attended by his brother who stated afterwards that numerous abrasions had been found on his body. He said that the injuries appeared very recent and were concentrated on the ankles, knees, abdomen, back, elbows and arms.

Suspicious circumstances of one sort or another surrounded the deaths of other detainees who died in security police custody between August 1976 and September 1977. Luke Mazwembe, Ernest Mamasila, Wellington Tshazibane, Aaron Khoza and Bayempin Mzizi were all alleged to have hanged themselves while held incommunicado.

Mazwembe had been detained a matter of hours, Mamasila and Tshazibane for approximately two days, Mzizi for some weeks, and Khoza for several months. None had been charged with any offence. Jacob Mashabane, a 22-year-old University of Zululand student, was alleged to have hanged himself at the Fort Prison in Johannesburg on 5 October after an earlier suicide attempt had failed. His death was announced nine days later. The authorities alleged he had been charged with the theft of a motor vehicle. He had disappeared on 1 October and his parents had been unable to trace him.

In the same way as Phakamile Mabija and George Botha, Matthews Mabelane a 23-year-old Soweto student, was alleged to have jumped from the upper storey of a security police building, in his case John Vorster Square police station in Johannesburg. He had been detained incommunicado for approximately four weeks at the time of his death on 15 February 1977.

Other detainees were alleged to have died from natural causes. Dumisani Mbatha, a 16-year-old Soweto student detained under Section 6 of the Terrorism Act, was alleged to have died from heart failure in September 1976. The deaths of Lawrence Ndzanga in January 1977 and Samuel Malinga, who died the following month, were attributed to similar causes. Sixty-one-year old Terrorism Act detainee Elmon Malele was said to have died from hypertension in January 1977 after being interrogated by the security police. Another Terrorism Act detainee, 59-year-old Elijah Loza was reported to have died on 1 August 1977 after suffering a stroke three weeks before while held at Victor Verster Prison in Paarl.

The most politically significant death of a detainee was that of Black Consciousness movement leader Steve Biko on 12 September 1977. He was reported to have died in security police custody in Pretoria. At first, his death was attributed by Minister of Justice James Kruger to a hunger-strike which he was said to have begun seven days before while held by Port Elizabeth security police. Subsequently, however, when this version of Steve Biko's death was challenged internationally and in the South African press, Kruger withdrew his statement. He said he might have been misinformed by his security police advisers. He then claimed that a post-mortem and inquest were required to determine the actual causes of death.

An atmosphere of general disbelief surrounds official explanations of both detainees' deaths and the frequency with which they occur. Many think that detainees have been tortured to death during interrogation by security police, who have then made it appear that they had committed suicide. Both the security police and Department of Justice have failed to provide adequate explanations of how certain detainees' bodies bore marks and abrasions. Nor have they

explained satisfactorily what it is about incommunicado detention that apparently causes so many detainees to commit suicide.

C. *Official Attitudes to Torture*

Despite numerous allegations of torture made by former detainees, the South African Government has done little over the years to investigate such complaints and to ensure that those arrested are fully protected from abuse by security police. Instead, government ministers and officials have tended to deny absolutely either that torture occurs or that it receives official sanction. But their statements do not appear to be backed by facts.

It is the South African Government which has passed laws permitting incommunicado detention—laws it has consistently refused to repeal. The Government has also refused to hold open, independent inquiries into the deaths of particular detainees and into allegations of torture made by those who survived. The inquests that have been held attempted only to determine the immediate causes of death; they did not try to apportion responsibility for the conditions which led to death. The Department of Justice, for its part, does not attempt to reconcile inconsistent evidence, such as the evidence in the case of George Botha, who appeared to have been assaulted only hours before his death despite security police claims that he had been treated "with respect".

Although almost all torture allegations emanate from detainees who were held incommunicado under laws such as the Terrorism Act, the South African Government continues to deny such detainees access to their relatives, legal representatives or independent medical practitioners. The South African authorities have also refused a request by the International Committee of the Red Cross to visit these detainees regularly. Accordingly the outside world gets the impression that the South African authorities know they have something to hide.

The South African Government's attitude to the use of torture is also demonstrated by their inaction in dealing with known torturers. The names of certain security policemen recur time and time again in detainees' torture allegations yet they do not appear to be disciplined or dismissed. The Government's reluctance to deal with torturers was also clearly indicated in 1976. Following the death in detention of Joseph Mdluli on 19 March, an attempt was made to suppress the post-mortem findings. Griffiths Mxenge, a lawyer representing the Mdluli family who attended the post-mortem, was himself detained under Section 6 of the Terrorism Act several days later. Only when photographs of Joseph Mdluli's body, taken without the

authorities knowing, were published internationally did the authorities take action. Three months after Joseph Mdluli's death, four members of the security police were charged with his culpable homicide. It was alleged that they had killed him accidently when restraining him during an escape attempt. He was alleged to have struck his neck while falling to the floor, and to have died as a result. In October 1976, the four security police were acquitted because of lack of evidence. Earlier, a pathologist told the court that Joseph Mdluli's injuries could not have been caused by a single fall but probably arose from pressure applied to the neck. The judge stated that there should be a further inquiry as the court had not received a satisfactory explanation of the circumstances of Joseph Mdluli's death. In February 1977, the Attorney General of Natal announced that his Department had carried out a full investigation and concluded that no further prosecutions were necessary. However, at the conclusion of a Terrorism Act trial in the Pietermaritzburg Supreme Court in July 1977, Mr Justice Howard stated:

> "We are satisfied that Mr Mdluli sustained the injuries when in the custody of the security police. There is no evidence of how he suffered the injuries or in what circumstances. That is a matter peculiarly within the knowledge of the persons in whose custody he was at the time and none of them has given evidence."

No satisfactory explanation of Joseph Mdluli's death has yet been forthcoming from the South African Government, nor have any more prosecutions been instituted against the security police responsible.

The South African Government has attempted repeatedly to prevent allegations of torture becoming public knowledge. A report entitled *Torture in South Africa*, published by the Christian Institute in April 1977, was almost immediately banned, as were similar reports about detention and torture published by the Christian Institute during the course of 1976. The Christian Institute was itself banned in October 1977. It is also likely that the South African Government will make it unlawful for any person in South Africa to possess a copy of this Amnesty International Report.

ii) Prison Conditions

For many years the South African Government has treated political prisoners in a vindictive and uncompromising manner. Political prisoners have no special status, and from time to time, Government ministers and senior police officials have even denied the existence of this identifiable group of political prisoners, claiming rather that those convicted under security laws such as the Terrorism Act and

Hard Labour on Robben Island

Sabotage Act are merely criminal offenders. In April 1977, for example, Deputy Commissioner of Prisons Major General Jannie Roux, was reported to have told a group of South African and foreign journalists, "There are no political prisoners on Robben Island. They have all been convicted of criminal offences".

Despite such assertions, the South African authorities clearly do distinguish between those convicted of political offences and those imprisoned for non-political crimes. Political prisoners are held in special maximum security prisons or prison sections and are treated more harshly than criminal prisoners. They are denied many rights and privileges normally permitted to criminal prisoners, even those imprisoned as habitual offenders. Political prisoners are denied parole or remission of sentence, although most categories of criminal offenders may receive up to one third remission of sentence. Political prisoners, too, are subject to a complete news ban. They are not permitted to receive newspapers or magazines of their choice, and even those they are permitted are heavily censored by the prison authorities to ensure that even general news does not filter through to the prisoners. After serving their full sentences, political prisoners, when released, are frequently subject to restrictions: served with banning orders or sent to so-called "resettlement areas" such as Ilingi and Dimbaza in the eastern Cape. Thus, the South African authorities effectively impose an additional sentence to that passed by the court which originally tried and convicted the prisoner. It is therefore impossible for many former prisoners to enjoy any form of normal social intercourse, to rejoin families and friends, or to re-start a normal life.

When they enter prison, all convicted prisoners, whether political or criminal offenders, are classified according to their social, political or criminal background. They are then put in one or other of the four official prison grades, numbered A to D, which determine the diet, clothing, cell equipment and privileges they are entitled to receive. Initially, at least, most political prisoners are given D category status, the lowest of the four grades and the one usually reserved for habitual offenders, although they may subsequently be upgraded to C or, more rarely, B or A status.

Political prisoners in D category may be visited only by members of their immediate family, and may receive only one half-hour visit a month, except in December when two visits are allowed. They may not be visited by children of under 16. If prisoners do not receive a visit in any particular month, they may subsequently be allowed a slightly longer one at the discretion of the prison authorities; or else they may send and receive two, instead of one, letters of not more

than 500 words. All letters are, however, subject to close scrutiny and censorship by the prison authorities. Only matters of a personal or family nature may be discussed. D category prisoners are also limited as to the use they can make of the money, a maximum of 8 Rand per month (approximately US $10.00) which each prisoner i. allowed to spend within the prison. They may purchase items such as stationery, toiletries or tobacco, but they are not permitted to buy food to supplement their prison diet.

Prisoners in C category receive visitors and mail on the same basis as D grade prisoners, but they are permitted to buy some items of food each month. Further up the scale, B grade prisoners may receive one visit by two people, and can send and receive two letters each month. A category prisoners are entitled to two visits per month, each by two persons, and may send and receive three letters each month. They may also spend 5 Rand (approximately US$6.0) out of the maximum 8 Rand allowed on foodstuffs.

Some indication of the numbers of prisoners apportioned to each of the four grades was given in April 1977 when the Department of Justice arranged for a number of South African and foreign journalists to visit Robben Island, the main maximum security prison for political prisoners. Out of a total of some 370 prisoners held on Robben Island, it was reported that 113 were in D grade, 36 in C grade, 48 in B grade and 85 in A grade. A further 88 prisoners were awaiting classification most of whom, as newly arrived prisoners, could expect to be placed in D category.

The prison authorities do not merely discriminate between prisoners according to their social background. They also discriminate on racial grounds. All white prisoners, for example, are provided with divan beds and mattresses as part of their normal cell equipment. In contrast, black prisoners are supplied with sisal sleeping mats and blankets. They receive beds only on health grounds, and upon the recommendation of the prison medical officer. Different diets, too, are prescribed under prison regulations for the different ethnic groups. The prison authorities claim that their intention is not to discriminate between prisoners but rather to cater for the different cultural backgrounds. As a result, African prisoners receive a diet consisting largely of mealie-meal porridge, made from maize meal, but no fresh milk and only very small quantities of such other commodities as sugar, bread and tea which have become a prominent part of the diet of most urban Africans. The prisoners commonly interpret the existence of different diets as an attempt by the authorities to emphasise the inferior status of black prisoners and to provoke bad feeling between black and white political prisoners.

All convicted political prisoners in South Africa are held in maximum security prisons. They are racially segregated, so that black male prisoners are usually sent to Robben Island while white male prisoners are mainly held at Pretoria Central Prison. Female political prisoners are usually held at Kroonstad Prison in the Orange Free State.

A) *Robben Island*

The majority of convicted political prisoners are held on Robben Island, a small island located some 10 kilometres off the South African coast at Cape Town. The Island, as it is commonly known, has for long been a place of imprisonment. A leper colony for much of the 19th century, it has also been used in the past to imprison various African tribal chiefs who attempted to resist the expansion of white power in South Africa. It is generally regarded as an inhospitable place which experiences greater extremes of climate than the nearby Cape mainland. Prisoners have complained that in summer the heat is intensified by salt air, sparse vegetation and lack of shade. In winter, the Island is said to be continually damp because of frequent fog and sea storms.

In 1959, the South African Government decided to build a maximum security prison on Robben Island, and two years later the Island was declared a "prison and prison premises". At first it housed convicted criminal offenders as well as political prisoners, but now only the latter remain. Although all the prisoners are black, the prison staff is exclusively white.

Robben Island prison has a capacity for 650 prisoners. Until recently, the prison was divided into three sections, one containing single cells and the others containing larger communal cells. However the arrival of a large number of new prisoners, following the outbreak of disturbances in Soweto in June 1976, led to the creation at the end of the year of a fourth section into which all new prisoners are now placed.

Each of the four sections is divided one from the other by high walls and wire fences, allowing little contact between the prisoners of different sections. This is particularly true of the smaller section, the isolation section, which contains approximately 30 single cells each measuring 2.1 metres by 2.4 metres. In this section, several African Nationalist leaders are imprisoned including Nelson Mandela, Govan Mbeki, Walter Sisulu, and Ahmed Kathrada, all of whom were sentenced to life imprisonment in 1963. Imprisoned in the same section with them is the Namibian nationalist leader, Toivo Hermann ja Toivo, who was sentenced to 20 years' imprisonment in 1968.

These prisoners may mix with one another, but are kept completely separate from the other political prisoners on Robben Island both while at work and during periods of leisure time. As internationally known African Nationalist leaders, the conditions of their imprisonment are to some extent easier than for the majority of prisoners. Their single cells provide a greater degree of privacy, and they tend to receive rather more frequent visits than other prisoners. However, the aim of the prison authorities is not to provide them with greater facilities or better treatment, it is rather to minimize their influence over other prisoners and to ensure that they do not provide the type of leadership in prison which they formerly provided outside.

Conditions on Robben Island were reportedly very harsh during the mid-1960s when Mandela, Sisulu and other isolation prisoners first commenced their sentences. Frequent acts of brutality occurred then as the all-white prison staff attempted to break the spirit and resistance of their black prisoners. Every attempt was made to humiliate and degrade them. They received a diet even more meagre than that which is provided today, yet were expected to engage in hard manual labour. They were not given any constructive form of work to do, they were merely made to break stones, to work in the prison's lime quarries or to collect seaweed along the shore. Even prisoners who had previously had sedentary occupations were made to engage in work of this kind. D category prisoners, then as now, the largest group, were allowed to send and receive only two letters each year. Visits, too, were limited to two a year, though most prisoners in fact received none. Medical facilities were inadequate, and many prisoners criticised the unsympathetic attitude of the medical doctor who visited the prison on average twice a week. Prisoners were particularly worried that their sparse diet and long daily exposure to the cold and wet climate of Robben Island might lead them to contract tuberculosis. Several prisoners did indeed develop this disease.

In many respects, conditions on Robben Island are generally reported to have improved in recent years. Acts of brutality against prisoners are now less frequent, though they still undoubtedly occur from time to time. Workshops have been established where prisoners can practise carpentry and other such activities. More leisure time facilities have also been made available.

The improvements that have taken place may be attributed to three main factors. First, the prisoners themselves have continuously stood up to the authorities and struggled for an improvement of their conditions. They have petitioned the prison authorities concerning their most acute grievances and have gone on hunger-strikes. On

occasions, the prison authorities have responded by disciplining those who protest, placing them in solitary confinement and on a reduced diet for long periods. Such was the experience of Kader Hassim and Sonny Venkatrathnam who were placed in isolation and deprived of the privileges of reading, studying and smoking for six months during 1972-73 after they had compiled a list of complaints and, with 50 others, addressed a petition to the officer commanding Robben Island Prison.

International pressure has also been a factor in bringing about improvements on Robben Island. The prison became notorious during the 1960s when considerable information about the prevailing harsh conditions was given to the outside world by prisoners' relatives and former prisoners. Reports of ill-treatment received wide international publicity, the more so because those involved included well-known leaders of the African Nationalist movement. The South African Government has shown its sensitivity to such international criticism on more than one occasion. In 1973, for example, it gave Australian journalist David McNicoll special permission to visit Robben Island and to talk to a number of prisoners, including Nelson Mandela and Dr Neville Alexander. More recently, in April 1977, a group of 25 South African and foreign journalists were given a conducted tour of Robben Island by the Deputy Commissioner of Prisons, Major General Jannie Roux. This followed publicity given to a claim made by Amnesty International that several new prisoners had been attacked by warders using guard dogs while working in the prison's lime quarry. Minister of Justice James Kruger told the journalists who visited the Island that they were allowed to do so "to ascertain for themselves the true treatment circumstances of the prisoners incarcerated there". However, the journalists were given no advance warning that they were to be allowed to visit Robben Island and therefore had no opportunity to research details of specific allegations of ill-treatment. Nor were they permitted to speak to any of the prisoners in order to obtain a clear understanding of their grievances. Before publication the journalists had to submit their reports to the Commissioner for Prisons on security grounds. The main news agencies also agreed in advance "in the interests of objective and perspective reporting" to publish in full any comment the Commissioner of Prisons might wish to make concerning a particular press report.

One effect of international pressure was to persuade the South African Government to permit delegates from the International Committee of the Red Cross to visit Robben Island annually in order to inspect prison conditions. As a result Red Cross delegates have

been able to mediate effectively between the prisoners and the prison authorities, and thereby reduce the areas of friction. The Red Cross delegates' findings are kept secret by mutual consent, but it is clear from the reports of released prisoners that many material improvements have occurred.

Although conditions now are not so harsh as they were during the 1960s, there still remain many areas which require significant improvement. The first of these concerns the question of news. Prisoners on Robben Island are allowed no radio sets or newspapers, and the only reading matter they receive is subject to strict censorship. The aim of the authorities is to prevent them from obtaining any news concerning political events and developments within South Africa itself and in the world in general. According to Mac Maharaj who served a 12-year sentence before his release in December 1976, prisoners on Robben Island are "covered in a stifling blanket against information from the media or from any source outside the prison gates". However, it is only political prisoners who are treated in this way. Convicted criminal prisoners are allowed to receive newspapers and may listen to radio broadcasts from time to time.

The facilities governing visits are generally unsatisfactory. The great distance of Robben Island from most prisoners' homes, and the expense of travelling, means that prisoners receive few visits from their families. In April 1977, it was reported that 240 visits had been made to prisoners on Robben Island during 1976, an average over the year of less than one visit per prisoner. There are believed to be several prisoners who have not received any visits although they have been on Robben Island for ten years or more.

Even when a prisoner is visited by a member of his family he is allowed no physical contact with the visitor. Conversations must be held through a wire-mesh window linking two sides of a glass screen. At no time may children under 16 be taken to visit their fathers on Robben Island.

Many prisoners also complain that their relatives are deterred from visiting Robben Island for fear of harassment and intimidation by security police and prison staff. Nevertheless, many prisoners' wives continue to make the long journey to the Island for the sake of a few minutes with their husbands. One such woman recently wrote the following to Amnesty International:

"Now about my visit: it was one of the most fulfilling moments I have had for the year. Despite all the setbacks, despite being followed and trailed like a hound, and then being treated like a sub-human being on the boat to the Island, my visit was filled with courage and deaf admiration for all those like my husband, banished

to this lost piece of land, just for their beliefs and convictions. He 'appears' to be well. He has just recovered from a seven day attack of bronchial pneumonia. The Island doctor has placed a tuberculosis query on his file. This has disturbed me immensely, especially now that I am aware of the bitter cold that bites through the body in this place. And there to be sleeping on those damp cement floors can worsen such a poor health condition. I will push to get him to a specialist on the mainland. Pray I succeed, because I know how people in the past have been neglected or were not allowed further medical treatment."

With regard to mail, prisoners complain that their letters are often delayed unnecessarily by the prison authorities. They complain, too, that they are allowed to study as a privilege and not as a right. No desks and few other educational facilities are available within the prison, nor are prisoners permitted to study at postgraduate level or to take correspondence degrees in subjects such as law or political science.

Discrimination on racial grounds continues as before. Black prisoners still receive what the authorities consider to be their "traditional" diet, and must sleep on mats on the floor. Only 13 out of 370 prisoners held on Robben Island in April 1977 had been provided with beds, although these are supplied as a matter of course to all white prisoners.

Some prisoners are still made to work in the prison's lime quarries, where the work is of a heavy manual nature. They and others complain that medical facilities remain inadequate and that the visiting medical officer is unsympathetic because they are political prisoners. Over the years, several examples have been cited by the prisoners of individuals imprisoned with them who died either because they received unsatisfactory medical treatment or because they were treated too late. There remain on Robben Island at the present time, several prisoners (some of whom are quite elderly) whose health is generally reported to be poor.

A more humane policy is also needed to deal with the problems of the 37 or more prisoners who are known to be serving sentences of life imprisonment. Their sentences are interpreted in such a way that under present circumstances they may expect to be imprisoned on Robben Island until they die. Like all other political prisoners, they have no prospect of parole and do not qualify for remission of sentence. They include at least 12 Namibian nationalists who were arrested and convicted for offences committed in Namibia. They will no doubt remain in prison at least until a settlement of the Namibian constitutional issue has been agreed.

During the early 1970s, the trend was towards a declining prisoner population on Robben Island. There were relatively few political trials and only a small intake of prisoners. However, following the outbreak of civil unrest in Soweto and other black townships in mid-1976, there were many political trials under the Terrorism Act and the Sabotage Act, and many sentences of imprisonment were imposed. As a result, Robben Island received a relatively large influx of new prisoners in late 1976, causing relations between prisoners and warders to deteriorate significantly. For the older inmates who had been on Robben Island since the mid-1960s and who had been denied access to political news, the arrival of many new prisoners served to indicate that the nationalist struggle in South Africa was still continuing. This appears to have strengthened their resolve and determination to stand up for the principles in which they believe. The new prisoners too appear to have shown their determination not to be cowed by the thought of the years of imprisonment in front of them, and to have actively supported one another in confrontations with the prison staff. At the end of September 1977, there were more than 450 political prisoners on Robben Island.

B) *Pretoria Prison*

The political section of Pretoria Prison contains nine white political prisoners serving sentences ranging from five years to life imprisonment. A tenth white prisoner, the distinguished Afrikaans poet and painter Breyten Breytenbach, was formerly held at Pretoria Prison though not with the other political prisoners. He was moved to Pollsmoor Prison near Cape Town in August 1977.

Prisoners in the political unit at Pretoria Prison are held in single cells each measuring about 2.75 by 1.75 metres. Cell furnishings include beds, wash basins and flush toilets. Prisoners are allowed out of their cells at 7.30am but are locked up again for the night at 4.30pm, so that they are confined to their cells for an average of 15 hours a day. Most of the prisoners have university degrees but they are mainly employed in the prison's carpentry workshop. They are allowed to study to degree level, but afterwards cannot take a second degree course or study at postgraduate level. In the opinion of the prisoners, however, the worst aspect of their imprisonment, like the prisoners on Robben Island, is that they are subject to a total news ban. In August 1977, the nine Pretoria prisoners attempted to obtain an order from the Supreme Court instructing the prison authorities to allow them greater access to news. They claimed that this deprivation was a "cruel, inhuman and unnecessarily harsh punishment", and asked that they be treated in the same way as the convicted criminals who form the majority of the population of

Pretoria Prison. Their application was however rejected by Mr Justice Curlewis when it was heard in the Pretoria Supreme Court. The Judge decided that it was not necessary for political prisoners to be provided with reading matter that kept them in contact with the outside world. He said, "It's not necessary for me. The last thing I want to do is look at a newspaper".

In a report entitled *Prison Administration in South Africa*, which was published by the South African Department of Foreign Affairs in 1969, it is claimed that the "administration and management of penal institutions is based on legislation conforming to the *Standard Minimum Rules for the Treatment of Prisoners* adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 30 August 1955", and that the "major objective is rehabilitation with a view to preparing the prisoner for a normal and productive life on release." It is however clear to Amnesty International that the conditions under which convicted political prisoners in South Africa are held fall far short of the standards prescribed in the *Standard Minimum Rules.* Many examples could be quoted of how actual conditions of treatment do not conform with the *Standard Minimum Rules.* This can be shown clearly through one example, often raised by prisoners themselves.

Paragraph 39 of the *Standard Minimum Rules* recommends that prisoners be kept informed of the more important items of news by being allowed to read newspapers or listen to radio broadcasts, yet this is not permitted on Robben Island or in the political unit of Pretoria Prison.

iii) Banned People

During the last 15 years, banning orders have been employed by the South African Government as one of their main instruments of political control. They have been used with drastic effect to emasculate black political organizations and other anti-*apartheid* groups, by imposing on their leaders a form of enforced social isolation and by prohibiting the dissemination of their views. Faced with international criticism, government ministers and officials have frequently tried to defend their use of banning orders by emphasising how few people have actually been banned relative to the population of South Africa as a whole. This is really a meaningless argument designed merely to stave off international pressure and to give the impression that banning orders are only imposed against political extremists. In fact, the real significance of the people banned far exceeds their number. Those who have been banned include many individuals, who are widely regarded, both within South Africa and internationally, as

being among the accepted leaders of black opinion. At the present time, banning orders are enforced upon people such as Winnie Mandela, wife of jailed ANC leader Nelson Mandela, Robert Sobukwe, former leader of the PAC, and Barney Nyameko Pityana, former Secretary-General of SASO. Steve Biko, the first SASO President and acknowledged founder of the Black Consciousness movement, was restricted under a banning order from February 1973 until his death in security police custody in September 1977. Even after his death, the banning order remained in force and so prevented publication of his earlier writings and speeches.

The South African authorities have not only used banning orders to disrupt the development of an effective political opposition. They have also used their powers to ban individuals, in conjunction with their censorship powers, to prevent a wider South African public becoming informed about some of the most alarming aspects of *apartheid*. In 1972, for example, a Catholic priest named Father Cosmas Desmond was banned for five years shortly before the publication of a book he had written about conditions of life for Africans living in the so-called "resettlement areas". As a result, Desmond's book, *The Discarded People*, could neither be published nor sold legally within South Africa, and many South Africans therefore remain ignorant of the disquieting revelations it contained.

The provisions of the Internal Security Act relating to the imposition of banning orders have already been described (see page 23). However, the full implications of the restrictions placed on an individual's freedom of movement, association and expression cannot be fully appreciated unless reference is made to specific cases and to the effect which banning orders have had on the lives of particular banned people.

The first thing to be said is that the restrictions imposed under banning orders vary considerably. Some banning orders provide that the person concerned should not attend political or social gatherings of any kind – that is, meetings of three or more people. In contrast, the terms of other banning orders are drafted in such a way that the people concerned are severely restricted and deprived of the opportunity to lead any kind of normal social life and even, in some cases, to continue their chosen career. Such banning orders have been imposed on many people over the years. William Letlalo, for example, was subjected to 24-hour house-arrest continuously from 1965 to 1969, a period of four years. Similarly, A.K.M. Docrat was only allowed to be absent from his home for two hours each weekday under the provisions of a banning order imposed in 1969. Subsequently, this restriction was eased when he was banned for a third successive five-year period in 1974.

All banning orders, of whatever intensity, are of course imposed arbitrarily by the Minister of Justice and without specific reasons being given. In at least one case, that of Neville Alexander, a five-year banning order was actually imposed several days before his release from Robben Island, where he had served a 10-year prison sentence, on the grounds that he was engaged in activities likely to "further the aims of communism". Alexander appealed to the Supreme Court to order the Minister of Justice to lift his banning order, claiming that he could not have been furthering the aims of communism while imprisoned for 10 years on Robben Island, but only succeeded in having the Supreme Court declare that it had no jurisdiction over the terms under which banning orders are imposed. The 10-year prison sentence imposed on Alexander by a court of law was thus augmented by an additional punishment imposed administratively by the Minister of Justice. A former university lecturer with a doctorate in German Literature, Neville Alexander is prohibited from entering any educational institution in South Africa under the terms of his present banning order.

Many other political prisoners have been served with two or five year banning orders at the time of their release from prison. In some cases they have not been allowed to return to their homes, even for a brief visit, before being sent to live under restriction in such places as Ilingi, Dimbaza and other "resettlement areas". They can rarely find work, even of the most menial kind, and when they do are liable to be dismissed at a moment's notice as a result of security police pressure on their employers. Living at poverty level, they often lack sufficient means to support their families who are thus unable to join them.

But it is not only former political prisoners who experience hardship. All banned people, the majority of whom in fact have not at any time served prison sentences or been charged with political offences, may be abruptly deprived of their livelihood and isolated from their friends because of the restrictions imposed under their banning orders. Bokwe Mafuna and Tenjiwe Mtintso, for example, were both forced to give up their careers as journalists when they were banned in 1973 and 1976 respectively, as it is an offence to publish the writings of any banned person. Similarly, Peter Magubane, although an internationally-renowned press photographer, could not continue with his career while banned between 1970 and 1975. A wave of bannings in the last months of 1976 resulted in more than 20 people associated with the promotion and organization of black trade unions being ordered to have no further contact with the very unions they had done so much to develop. Those banned at this

time included such prominent trade unionists as Eric Tyacke and Loet Douwes-Dekker of the Johannesburg-based Urban Training Project, an organization specialising in workers' education for African trade unionists.

Banning orders have also been widely used against university students and teachers, who have as a result been prevented from continuing with their studies or teaching duties. In February 1973, for example, five white students and one university lecturer, all associated with the National Union of South African Students, were banned together with eight leading members of the black South African Students' Organization. They were all prohibited from entering any university, school or other educational institution under provisions which apply to most banning orders.

As banned people are not permitted to communicate with one another, so the South African authorities have on many occasions issued banning orders simultaneously on groups of people who are known to be personal friends or professional associates. In this way, they are cut off from one another and prevented from continuing with their mutual activities. Even members of the same family have been banned from time to time. Strini Moodley, one of the SASO leaders banned in February 1973, had to obtain a special dispensation to communicate with his wife, Sumboornam, when she too was banned in July 1975. A similar dispensation had to be obtained by Barney Nyameko Pityana, who was banned in 1973, when his wife, Dimza, was banned in April 1977. Sheila Weinberg, who was banned in November 1976, also had to obtain special permission from the Minister of Justice before she could communicate with her mother, Violet Weinberg, who had been banned in November 1973.

Many banned people have been subjected to constant surveillance, harassment and persecution by the security police. One wrote recently to Amnesty International and described the sort of situation typical of that experienced by many banned people:

> "Coming back to our family, we are still living under terrible conditions from the police. They watch our house constantly. They come to my place of employment regularly and interfere with our clients . . .
>
> I have a case coming up for attending a social gathering contrary to my banning order. This is how this happened. One morning the police found a friend of mine with whom I was detained last year at our office. Immediately they concluded that that was a social gathering . . . They took me and opened a file about me.
>
> So as it were we do not know what the future holds for our family. We only hope that God will see to it that justice is done to my case. The police do not want to see anybody talking to me as they always go and ask that particular person what we were talking about. They have in fact said to me and to some people that I am not allowed to talk to anybody. I am sure this is not what the law says."

As this statement shows, the imposition of a banning order not only condemns an individual to stifling restrictions and a life outside the limits of normal society, it also empowers the police to invade every sphere of life.

Death Penalty and Civilian Killings

i) The Death Penalty

South Africa has one of the highest rates of judicial executions in the world. In 1974, for example, 86 people were sentenced to death and 40 were executed. The following year 103 sentences were passed by the courts, 68 executions carried out. Sixty-seven people were executed in 1976. The death penalty may be imposed for a wide range of serious crimes such as murder, rape or robbery with aggravating circumstances, and for certain political offences covered by the Terrorism Act and related security legislation. Persons convicted of treason may also be sentenced to death, although there have been no prosecutions for this offence in recent years.

Three main security laws make provisions for the imposition of the death penalty. The Internal Security Act of 1976, which replaced the earlier Suppression of Communism Act, makes it a capital offence for any person to undergo, or encourage others to undergo, any form of "training" in order to achieve any of the objectives of communism, as these are widely defined under the terms of the Act. The Internal Security Act further provides for a possible death penalty where a past or present resident of South Africa or Namibia is convicted of having advocated, while abroad, foreign intervention to effect change or the achievement of the objectives of communism.

The Terrorism Act of 1967 and the so-called Sabotage Act—Section 21 of the General Law Amendment Act, No.76 of 1962—also contained provisions for the death penalty, the former for the offence of "participation in terroristic activities", and the latter for "sabotage", as these offences are defined in the two Acts. Both these laws, together with the Internal Security Act, are applicable not only in South Africa but also in Namibia while that country remains under South African occupation. They are not applicable in the Transkei, where they have been replaced by a new Public Security Act. This not only duplicates the main provisions of the South African security laws but adds a clause to the effect that any person convicted of repudiating the sovereignty and independence of the Transkei, or claiming that the Transkei is really a part of South Africa, is guilty of treason and liable to the death penalty. Introduced in early-1977,

several months after South Africa declared the Transkei "independent", the Public Security Act was made retroactive to 1975. It is clearly designed to effect wider recognition of the independent status claimed for the Transkei by the Matanzima administration and thus help to legitimise the South African Government's "bantustan" programme.

Despite the spate of political trials involving offences under the Terrorism and Sabotage Acts which occurred in 1976-77, no executions have been imposed for overtly political offences since the mid-1960s. Judges have refrained from imposing the death penalty, perhaps for political reasons in some cases, preferring instead to sentence convicted political prisoners to long terms of imprisonment. However, this trend may be expected to change as Africans turn increasingly to more violent methods in their attempt to secure effective participation in the government of their country. To some extent, this situation has already come about in Namibia, where nationalist guerrillas belonging to the South West Africa People's Organization (SWAPO) have been engaged for some years in an armed struggle against the illegal South African administration. In July 1977, the South African authorities in Namibia executed an alleged member of SWAPO's guerrilla forces, Filemon Nangolo, who had been convicted of four murders—but not of offences under the Terrorism Act—in September 1976. In May 1976, two other Namibians were sentenced to death, this time under the terms of the Terrorism Act. Subsequently, however, the two men—Hendrik Shikongo and Aaron Muchimba—were acquitted and discharged by the Appellate Division of the South African Supreme Court. Convicted murderers comprise the majority of prisoners sentenced to death and executed in South Africa. Murder is punished with death on a mandatory basis unless, in the view of the presiding judge, extenuating circumstances apply. The death penalty may not be imposed however upon pregnant women or juveniles under 18. When a death penalty is passed and upheld upon appeal, a report is sent to the State President who may then make a recommendation for clemency. At the same time, a report is also passed to the Department of Justice for scrutiny and for a decision as to whether an execution should take place. Executions are authorised by the Minister of Justice and are normally carried out at Pretoria Central Prison. It is not unusual for multiple executions to take place.

By far the majority of prisoners sentenced to death and executed are Africans. Clearly, this is partly a result of the fact that Africans comprise not only the overwhelming majority of the population but also constitute the group which, under the *apartheid* system, occupies

the position of greatest social deprivation. However, it is also widely believed that the courts tend to discriminate against Africans and impose on them heavier penalties for specific offences than they would normally impose on members of other racial groups, in particular the white group. No comprehensive study of this subject has yet been undertaken, but individual cases do lend support to the general supposition.

Murder trials involving white people certainly arouse much more publicity and public comment than those involving blacks. As a result, white people accused of murder or other serious crimes tend to have the benefits of eminent and experienced defence counsel, psychiatric reports and so on. Blacks, in contrast, are frequently defended by junior counsel appointed on a *pro deo* basis and are rarely subjected to psychiatric examination. The following official figures[1] for the years 1973 to 1975 provide a clear indication of the extent to which Africans predominate as victims of the death penalty in South Africa.

Executions carried out (by year)	*Africans*	*Asians*	*Coloureds*	*Whites*
1973	29	–	12	1
1974	30	2	7	1
1975	50	–	18	–

ii) Civilian Killings: Soweto and its aftermath

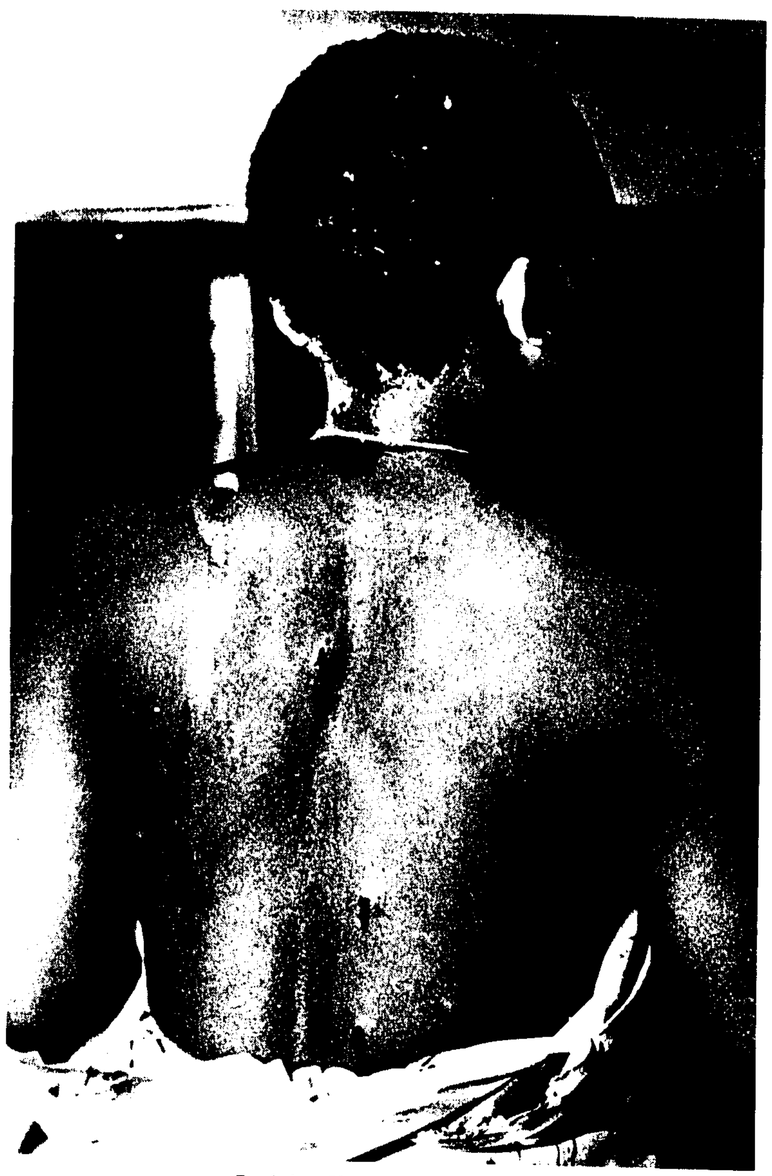
No report concerned with human rights in South Africa can fail to make reference to the mass civilian killings which occurred in Soweto, Nyanga and other black townships in the second half of 1976 and in 1977. The killings, unprecedented in scale and involving many schoolchildren, evoked horror and revulsion throughout the world but, strangely, seemed to give South Africa's government ministers little cause for concern. Speaking on 27 August 1976, by which time more than 250 people had been killed and more than 1000 injured largely as a result of police action, Prime Minister John Vorster declared "there is no crisis" in South Africa.

In fact, there appears to have been a deliberate attempt by government ministers and officials to conceal or at least minimise the true extent of the killings, particularly in Soweto, but also throughout the rest of the country. Senior police officers with responsibility for the areas of unrest repeatedly refused to release lists of the dead and injured to the press, claiming that such statistics were a matter of "national security". General Gert Prinsloo, for example, the

[1] *Source:* South African Institute of Race Relations.

Riot Police, Soweto 1976

Civilian Killing, Soweto 1976



Buckshot Victim, Soweto 1976

Civilian Killing, Soweto 1976

Commissioner of Police, told the Johannesburg *Rand Daily Mail* that police lists of the dead were not available to the public although they had been given to the Commission of Inquiry headed by Judge Cillie, which was established in June 1976 to investigate the causes of unrest. The Government had still not issued an official list of the dead and injured by 16 June 1977, the anniversary of the first shootings in Soweto.

In November 1976, visiting United States Congressman Charles T. Diggs reported that South Africa's Information Minister, Dr Connie Mulder, estimated that between 250 and 280 people had been killed during the Soweto disturbances alone. Mr Diggs disputed this figure claiming that it was an under-estimate. His view was supported by a number of unofficial sources, all of whom put the death toll much higher. Following a three-week investigation, the American magazine *Newsday* announced on 12 December that at least 332 lives had been lost in Soweto and that the death toll for the country as a whole was in excess of 435. At the end of December 1976, by which time of course more killings had taken place, the *Rand Daily Mail* listed the names of 499 people who had died in the riots. Five months later, in May 1977, the South African Institute of Race Relations claimed that at least 618 people had been killed throughout the country as a result of the disturbances in 1976. Eighty-five of the dead were said to have been youths or children. Out of the total, 442 people had been killed in the Transvaal, 153 in the Western Cape, and 23 in the Port Elizabeth area.

Allegations of police brutality during the disturbances were made from many quarters. Mrs Oshadi Jane Phakathi, a prominent member of the Christian Institute, was arrested on the day of the first shootings—16 June 1976—when she went to Orlando police station in Soweto to act as a witness for a woman whom the police had charged with incitement. Mrs Phakathi was held without charge in cramped and overcrowded conditions for three days before her eventual release. While in detention, she talked with three teenage girls who had been arrested and assaulted by the police. They told her that they had been brought to Orlando police station in a police vehicle packed full with injured people and the corpses of the dead. On arrival at Orlando the dead bodies had been stacked in one corner while very seriously injured people "were made to lie flat on their stomachs and the police walked on them with their heavy boots until they were dead". Mrs Phakathi herself reported:

> "Right through the night of the 16th and 17th June, from our cell, we could hear fights going on between the policeman and

arrested males in the next-door cells. We heard men scream, appealing for sympathy as the policemen assaulted them bitterly. We could also very frequently hear guns fired in those cells. Frequently in between the fights we heard the prisoners shout for the policemen urging them to remove dead prisoners from their cells, giving the impression that the dying people were those who were assaulted and shot. The doors of the cells were frequently opened and closed. Indeed, on the 18 June at 3am when we were transferred to a different police station in Soweto, we walked across many corpses left lying all over in the yard of the Orlando police station as well as immediately in front of the doors of our unit of cells."

It was also alleged in both Soweto and Cape Town that the police encouraged, and even participated in, attacks made by migrant workers upon students and other residents of the black townships. Such attacks occurred in Soweto on 24th and 25th August 1976, when workers from the Zulu migrant labourers hostel attacked and killed a number of township residents. Several press reporters who witnessed the scene claimed that the migrant workers' attacks had been directed by members of the police force using loudhailers. Even more serious clashes occurred during the Christmas holiday period in Nyanga township near Cape Town. At least 26 people were killed and more than 100 injured. Subsequently, a multi-denominational group of churchmen issued a document entitled *Report on the Role of the Riot Police in the Burnings and Killings in Nyanga Township, Cape Town, Christmas 1976.* The document alleged that the riot police had fomented the killings and burnings in Nyanga and charged that they had both instigated and encouraged migrant workers to attack and kill township residents. The document also contained certain eye-witness accounts in which it was claimed that members of the riot police had accompanied the migrant workers, firing at township residents and pointing out victims for the migrants to kill. In one such account, a woman named only as "Mrs D.M." reported:

"On Sunday afternoon, 26 December, 1976, I was in my back yard when five vans with riot police came into 5th Avenue, Nyanga. I saw a riot policeman sitting in front on the bonnet. He shot at Mr M. Mr M is an elderly man, he was carrying no weapon, intending no harm. I had only just spoken to him as he passed my gate.

After the shot, Mr M. fell to the ground, bleeding at the stomach. I saw the riot policeman beckon with his arm, and a large group of migrants came running. The riot policeman pointed them to Mr M. on the ground and then left, as the migrants came and killed him with their weapons.

The migrants carried sticks and axes. Some had petrol bombs; and I saw them throwing them into houses, setting them alight. The riot police never made any attempt to intervene and stop the violence, instead they came in with guns and opened the way for the migrants; instigating a group of them to attack us."

In another statement, "Mrs G" of Zwelitsha, Nyanga, gave the following account:

"On Sunday, 26 December at about 2pm, the police told residents in our area to go back to their houses, as there was no danger. We returned to the houses—I myself went into a friend's house a few doors down in the same block as my own house.

About half an hour later there were shouts that the police and migrants were attacking us. We bolted the door and I went to the window to close the curtains. I saw riot police and migrants inside the front yard. I was shot in the chest and arms by a riot policeman. The migrants then started to batter down the door. My two daughters dragged me into a toilet at the back, where we hid, until we thought the police and migrants had passed. Our houses were burning—there was fire everywhere.

We went to the road, where I was picked up by a resident driving a van, and taken to Tigerberg hospital. I heard later that my husband had been killed in our own front yard, a few doors along."

The South African authority's response to the publication of these claims was, first, to ban the *Report on the Role of the Riot Police* as an unlawful publication, and then to institute a court action against the principal author of the Report, Reverend David Russell, when he refused to divulge the names of his informants. David Russell, an Anglican churchman, was sentenced to three months' imprisonment in February 1977.[1] Subsequently, in a memorandum prepared for Members of Parliament and entitled *The Riot Police and the Suppression of Truth,* David Russell described as "a mockery of justice and truth" the accusation that the Ministers' Fraternal, the authors of the earlier *Report,* had produced documents harmful to race relations and the welfare of the State. He wrote:

"It is the activities of a section of the Riot Police that have had such a disastrous effect on race relations, and it is their activities which are so harmful to the long-term welfare of our country. It is their activities which are shattering confidence in structures of authority, and which will provoke desperate and despairing violence

[1] He appealed successfully against this sentence in August 1977, but was banned for five years under the Internal Security Act in October 1977.

in response. By exposing these shocking things, it was hoped and is hoped that those in authority would act to halt them. Instead it appears that we are being accused of the very evils we are so anxious to eradicate."

David Russell indicated that he had decided to prepare a memorandum for Members of Parliament because he felt that the activities of the riot police were a matter for urgent public concern and because he hoped that publicity would have a deterrent effect. He said that he did not expect any individual riot policemen to be prosecuted: "The fact that the Riot Police are purposely given no numbers on the uniforms, and that the Indemnity Act is soon likely to become law, does not lead me to believe that official inquiries will achieve much."

In January 1977, an Indemnity Bill was introduced in the South African Parliament by Minister of Justice, James Kruger. Under the terms of the Bill, which became law several months later, the State and its servants were indemnified against civil or criminal prosecution of any kind for acts committed "in good faith with the intent of suppressing or terminating internal disorder". The indemnity was given retroactive effect to 16 June 1976, the beginning of the Soweto disturbances. Introducing the second reading of the bill in the House of Assembly on 31 January 1977, Mr Kruger said:

"Those who gave rise to the unrest, and had a part in it, and in the process were injured or suffered damages, cannot expect to load the police with defending unfounded claims."

He added that false claims and the disruption of essential police work could result if the State and its officials, including the police, were not safeguarded against claims arising out of the civil disturbances. Mr Kruger said that compensation would be paid "in deserving cases". Mrs Helen Suzman, unsuccessfully opposing the passage of the bill, said that its introduction would cause people to "lose their last remnants of faith in the courts and justice".[1]

The killings in Soweto and other black townships were not the first of their kind to occur in South Africa. On several occasions during the course of recent South African history, notably at Sharpeville in 1960, police have opened fire indiscriminately and with no justification on crowds of unarmed black demonstrators. Many civilian deaths have occurred as a result but at no time have the police been held responsible by the governing authorities. The events

[1] Quoted in the *Rand Daily Mail*, Johannesburg, 1 February 1977.

of 1976, therefore, were neither unique nor unprecedented. However, what was unprecedented was the massive extent of the killings, which surpassed all that went before, and the extremely excessive brutality of the methods employed by the police and the Government to suppress all expression of black political unrest.

Apartheid and Human Rights

The restrictions imposed by *apartheid* affect most aspects of life and severely circumscribe the fundamental human rights of all South Africans. Freedom of expression is limited by the authorities' extremely wide powers under the Internal Security Act and similar laws to ban all publications deemed undesirable, and by an effective system of press censorship which ensures that certain subjects receive little attention in the media. Journalists who do offend the government may expect to be subjected to security police harassment or arbitrary detention without trial. At least 15 black journalists who reported the riots in Soweto and other townships in 1976 were detained without charge or trial for periods of up to four months. In October 1977, the South African Government banned *The World* newspaper, which had the second highest circulation of any newspaper in the country, and its weekend edition, *Weekend World*. Percy Qdoza, the *World's* editor, and several other journalists, were detained under the Internal Security Act.

Freedom of association is also severely curtailed. The Immorality Act and the Prohibition of Mixed Marriages Act prohibit sexual relations and inter-marriage between peoples of different races, while the Group Areas Act sets aside separate areas of settlement for each race group. Separate schools and universities, and very different opportunities, exist for the children of each racial group, and there is little inter-racial contact in the political and cultural fields. Even sporting activities are largely segregated, despite concerted international pressure to bring about multi-racial sport. The restrictions on where a person may live effectively ensure that all black South Africans who reside in the 87 per cent of South Africa set aside for whites are officially regarded as "temporary" residents. As such, they are allowed no civil rights in that area and may be arbitrarily removed—"endorsed out"—to the "homelands" or "bantustans" set aside for African occupation. While in the "white" areas of South Africa, they are severely restricted as to their movements and are made to carry identity certificates—pass reference books—at all times. These are endorsed to show in which particular districts the bearer may work or reside, and must be carried at all times. More

than 250,000 people are arrested each year, and many of them imprisoned, on the grounds that they did not have their pass book when stopped by a policeman or were in the wrong area.

Apartheid's advocates claim that it is an ideology and a system which provides for the separate but parallel development of peoples whose skins are a different colour. Stripped of its pseudo-philosophical basis, however, *apartheid* is seen for what it really is—a justification for the continuing domination of the black majority population by South Africa's ruling white minority. It is a system of institutionalised racial segregation and racial domination which provides for discrimination against blacks in all walks of life. They are denied equal opportunities with whites in education, in employment and, most importantly, in determining by whom they should be led and by whom they should be governed. Blacks are treated as inferior human beings, and are condemned to a subservient role.

Apartheid creates countless victims. There are those who have had to live as squatters because they wish to have their wives and families with them, not hundreds of miles away on a rural African reserve, only to see their makeshift homes destroyed by the very government authorities who refuse to provide them with adequate housing and other normal facilities. There are those who are imprisoned because they fall foul of the country's discriminatory race laws. There are those 8,000 or more Africans who are detained in mental health institutions and who have been "farmed out" by the South African Government as cheap and easily exploitable labour to a private profit-making corporation. There are those who are "endorsed out" to African "homelands" and do not know when they will come to the end of their working life. And lastly, there are those who are subjected to arbitrary detention without trial, torture and even death because they oppose the existence of the *apartheid* system and demand governmental recognition of the fundamental human rights of all South Africans.

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