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## £SOUTH AFRICA

### @STATEMENT BY AMNESTY INTERNATIONAL TO THE UNITED NATIONS AD HOC WORKING GROUP OF EXPERTS ON SOUTHERN AFRICA

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Mr Chairman, Members of the Working Group,

Amnesty International appreciates the opportunity to appear before you and recognizes the important, continuing role of the Working Group in addressing violations of human rights in South Africa.

This statement draws attention briefly to some of Amnesty International's current concerns in South Africa, in particular the following:

(a) the retention and continuing use of legislation permitting incommunicado detention without charge or trial;

(b) the failure of the authorities to investigate independently and impartially allegations of involvement by police and other members of the security forces in the torture of political detainees and criminal suspects, in some cases resulting in death, and to bring to justice those responsible for such violations;

(c) the alleged complicity of the security forces in killings and other acts of violence against members and supporters of the African National Congress (ANC) or allied organizations during the last five years of political conflict, notably in the provinces of Natal and the Transvaal in South Africa.

We have prepared, for submission to the Working Group today, a comprehensive compilation of all documents on South Africa issued by Amnesty International during the past year.

On 5 February 1991 Amnesty International expressed concern, in a statement to the 47th session of the United Nations Commission on Human Rights, that the South African Government had failed to repeal laws which permit indefinite, incommunicado detention without charge or trial and grant indemnity to the security forces against prosecution - provisions which have the effect of facilitating the torture and even the "disappearance" of detainees. During 1991 the police have continued to use their powers of detention without trial against political activists,

particularly in the northern Transvaal, and in the nominally independent "homelands" of Bophuthatswana and Ciskei. On 21 June 1991 the South African Parliament passed into law the Internal Security and Intimidation Amendment Act, which, among other things, amended the sections of the 1982 Internal Security Act relating to police powers of detention without trial. The parliament agreed to the repeal of Sections 28 and 50A which allowed for long-term "preventive" detention. The new law, however, retains two sections of the former law of particular concern to Amnesty International: Section 50, providing for 14-day "preventive" detention, and Section 31, permitting the incommunicado detention of potential state witnesses. Most importantly, Section 29, which under the 1982 law permitted the police to detain a person indefinitely, incommunicado and in solitary confinement for purposes of interrogation, was not repealed, only amended.

The amendments to Section 29, which in the past has facilitated the torture and deaths of political detainees by permitting unsupervised incommunicado police detention, still gives the police the power to detain a person incommunicado for 10 days. This period can be renewed, without restriction as to the number of times, for further 10-day periods if upon application from the police a judge orders its renewal. In reaching his decision to authorize a further 10 days' detention, the judge is not required to call the detainee's legal representative or the detainee to give evidence. Furthermore it is only if the police apply for an extension of the period of detention that detainees will have access to a lawyer. This means that a detainee can be held for at least nine days without being seen by anyone other than a few officials and members of the police unit responsible for his or her detention and interrogation. An additional aspect of the new law permitting the continuation of incommunicado detention is a clause permitting the police not to inform the detainee's relatives and lawyers of his or her detention, and to deny independent medical access to the detainee, if, in their view, either step would hamper police investigations. These amendments still fall far short of international standards and provide conditions where torture and "disappearances" can occur.

Amnesty International is particularly concerned at the failure of the government to investigate independently and impartially and bring to justice members of the security forces allegedly implicated in human rights violations, particularly in the torture and deaths of uncharged political detainees and criminal suspects. During the last 18 months Amnesty

International has received detailed and credible reports of assault and torture, in some cases leading to deaths, of detainees in police custody, particularly at the following police stations: Welverdiend (western Transvaal), Protea (Soweto), Brixton (Johannesburg) and at various police stations in the nominally independent "homeland" of Bophuthatswana. Official investigations arising from complaints lodged with the authorities have been extremely long drawn out, and, with rare exceptions, do not appear to have resulted in the suspension from or transferral to other duties of any police officers pending the outcome of investigations into particular incidents in which they were allegedly involved. This appears to be the case even where the complainants have laid charges against the police or sought court injunctions to restrain the police from further assaulting them. Several inquests, which have been held into the deaths of uncharged detainees, have taken place without the authorities informing the deceased's legal representative or family and thus denied them the opportunity of presenting written evidence and lists of witnesses whom they would like called by the court. In so doing the authorities prejudiced the possibility of the courts discovering the truth about the circumstances of certain detainee deaths.

Among other cases which the authorities have failed to pursue after serious allegations have been made, high school students detained under emergency regulations by the Bophuthatswana police in March 1990 alleged that they were tortured during their detention. They reported being punched, kicked, subjected to electric shocks from a cattle prod while, in some instances, being suspended upside down on a bar with their hands and feet tied - a form of torture known as the "helicopter" - and partially suffocated with rubber tubing. Doctors examining them after their release from custody found the students bore injuries consistent with their alleged torture and ill-treatment. Statements from the released detainees, together with medical reports, were submitted to the police. There appears to be no evidence that the authorities ever investigated these cases or took action against the police officers involved.

Lesley Majola drowned in July 1990 in the Vaal River while in the custody of the Vanderbijlpark Murder and Robbery squad. He had been arrested at his home in Soweto during the night by members of the squad, who, according to a second man arrested with him, forced Lesley Majola into the boot of a police vehicle. The two men were driven south to the Vaal River. Lesley Majola was apparently taken out of the car boot and, according to a later police statement, he allegedly drowned while trying to escape from their custody. Despite this claim, an independent post-mortem report revealed that at the time of Lesley Majola's death his hands and arms were secured so that "virtually no movement was possible" and leg irons limited his movements to "the length of the connecting chain". In December 1990 an inquest held into his death, apparently without Lesley Majola's family or their attorney being notified, returned a verdict of death by suicide.

In another case, involving the Protea police station, Bethuel Maphumulo died shortly after being taken into custody by the Soweto Murder and Robbery squad in December 1990. Acting on legal advice, he had voluntarily surrendered himself to the police on the agreement that the police would bring him to court within 48 hours and would not oppose a bail application. When his lawyer went to the court on the agreed day, he was told by the prosecutor that Bethuel Maphumulo was dead. The police said that he had drowned in the police station swimming pool while trying to escape from custody. However, an independent post mortem report revealed that Bethuel Maphumulo had multiple and severe bruising and a fractured hyoid bone in his neck, indicating manual strangulation. The state pathologist's report contained similar findings. Despite post mortem results clearly in conflict with the police version of events, there is no indication that any police officers involved in his arrest have been suspended from duties pending the outcome of investigations into Bethuel Maphumulo's murder.

In some cases, not only have the authorities failed to investigate properly serious allegations of torture and unlawful killings, but witnesses to such incidents have been killed under suspicious circumstances. In one such case involving the death of a witness, 15-year-old Eugene Mbulawa died in Leratong Hospital on 13 July 1990, a few days after he was arrested with 21 others at a police roadblock near Khutsong township in the western Transvaal. Fellow detainees later told lawyers that, at Khutsong police station, they were kicked and punched, beaten with broom sticks, and had their heads repeatedly beaten against the wall, before being drenched with water and left for the night. On 12 July six of the detainees, including Eugene Mbulawa, were taken to Welverdiend police station. One policeman allegedly told him, "I am going to hit you until you are half dead." According to the evidence of 16-year-old William Makage, who was detained with Eugene Mbulawa, one of the policemen hit Eugene Mbulawa across his lower back with a baton. When he fell to the floor three policemen kicked him repeatedly all over his head and body. The policemen then suspended him by the knees from an iron bar, tying his hands with a rope. They lifted him up and dropped him four times. Later, when William Makage saw Eugene again, he was lying on the floor, with a white substance coming out of his mouth and he was staring blankly.

On 13 July Eugene Mbulawa was taken to Leratong Hospital where he died. The hospital records indicate that he died as a consequence of head injury. Consistent with this, the state pathologist's post-mortem report apparently also concludes that Eugene Mbulawa died as a consequence of a fractured skull and inter-cranial haemorrhage. The police told the family that he died from epilepsy. Despite this explanation of his death, the police later attempted to arrest William Makage on a charge of murder in connection with Eugene Mbulawa's death. Amnesty International received a report in February 1991 that William Makage had gone into hiding, fearing for his life. Sometime between 9 and 10 May 1991 the police arrested him. He was later found dead, with a gunshot wound in his head and his hands tied together. The police said he was shot while attempting to escape from custody.

Both in February 1991 and subsequently Amnesty International has referred, in particular, to the failure of the authorities to investigate the repeated allegations that police officers at police stations in the Carletonville-Khutsong area of the western Transvaal have been responsible for the torture of detainees and the extra-judicial execution of released detainees and other township residents. Amnesty International notes that during the last month a "Special Task Force", set up by the State President and led by police Major-General Ronnie van der Westhuizen, has begun investigations into the allegations of unlawful police conduct in this area. Amnesty International is seeking further information about the terms of reference of this Task Force which reportedly has a focus wider than the allegations centering on police station members in the Carletonville-Khutsong areas. Amnesty International has repeatedly urged the South African Government to ensure that police officers suspected of involvement in torture and unlawful killings are suspended or transferred to other duties pending the outcome of investigations. We will be monitoring these Special Task Force investigations to see if they result in police officers alleged to be responsible for human rights violations being brought to justice. It is only by taking this step that the government will give a clear signal that such unlawful activities will not be tolerated.

Amnesty International in statements and reports has expressed concern about the persistent allegations being made regarding security force complicity in killings and other acts of violence carried out against members and supporters of the African National Congress (ANC) and allied organizations. The nature of the alleged complicity ranges from a failure to act impartially to covert involvement in assassinations. The majority of such cases have arisen

in the context of violent conflict between members and supporters of the ANC, or allied organizations, and the Inkatha Freedom Party, headed by the KwaZulu "homeland" Chief Minister and Minister of Police, Mangosuthu Gatsha Buthelezi. The conflict, which started in Natal province in the mid-1980s, spread to Transvaal province, in particular the townships in and around Johannesburg, from late July 1990 onwards. The violence has been and continues to be characterized by attacks both on individuals and on whole communities. The majority of attacks have been carried out by members and supporters of Inkatha, with the majority of those wounded or killed being members of the ANC or allied organizations, or communities identified as supporting these organizations.

Throughout this period of violent political conflict, during which thousands have been killed or wounded or made homeless, very serious complaints have been made and continue to be made against the police by the inhabitants of the black townships and squatter camps, and by lawyers and community organizations concerned with the situation. The number, content and consistency of these complaints have suggested at best a breakdown in the relationship between the police and a large number of the inhabitants of the black townships and squatter camps. At worst they point to political bias and deliberate and serious breaches of the criminal law on the part of the police and a failure to discharge the functions imposed on them by the law. Amnesty International has been concerned, in particular, about the following complaints made regarding the policing of the conflict in Natal and the Transvaal:

(a) that sections of the police have carried out acts of violence, harassment and intimidation against members of the community, in particular where they or their communities are identified as anti-Inkatha;

(b) that the police do not properly investigate crimes and have not taken preventive action, when it was within their means to do so, to stop violent attacks from occurring;

(c) that the police are biased and have actively or passively colluded with one side, the Inkatha side, in the conflict in Natal and the Transvaal.

In addition to those broad allegations regarding the conduct of the police, some human rights lawyers, opposition members of parliament and journalists have alleged for more than a year that the South African Defence Force (SADF) has been involved in training and supplying arms to members of Inkatha and directing the assassination of activists opposed to Inkatha. These longstanding suspicions of military involvement in the political violence have recently been corroborated by the revelations of a former Military Intelligence officer, Nico Basson, who told journalists in June 1991 that senior military officers, whom he named, were involved in supplying automatic weapons and logistical support to Inkatha members for use in attacks against ANC members and township residents in the Transvaal.

Further allegations regarding the military involvement in the township violence were made last week by a former member of the "Special Forces" unit, Five Reconnaissance Regiment, Felix Isaias Ndimene. He alleged that members of his unit carried out the attack against train commuters on 13 September 1990 in which 26 people were killed, as well as attacks against residents in Alexandra township, Johannesburg, and in Pietermaritzburg's townships in 1991. In further allegations made last week, Jacques van der Merwe, a former member of the covert military unit, the Civil Cooperation Bureau (CCB), whose unlawful activities were exposed during the hearings of a judicial commission of inquiry in 1990, alleged that a South African Defence Force colonel, whom he identified and said worked for the Directorate of Military Intelligence, had approached him on a number of occasions to carry out certain killings in Natal.

On 25 February 1991 a prominent Natal political activist and President of the ANC-aligned Congress of Traditional Leaders of South Africa (CONTRALESA), Chief Mlabunzima Maphumulo, was shot dead outside his Pietermaritzburg home. In 1989 Chief Maphumulo had initiated the establishment of an unofficial commission of inquiry into the Natal violence. In early 1990 his Table Mountain community outside Pietermaritzburg came under attack from armed Inkatha supporters, with the active support of members of the police, according to evidence later accepted by the Supreme Court. He had received many death threats and had survived several attempts on his life. At the end of 1990 CONTRALESA members requested the government to investigate the source of a "hit-list" which included Chief Maphumulo's name. No response had been received from the government before he was assassinated on 25 February 1991. Two months later, a man claiming to be a member of a "hit squad" who killed Chief Maphumulo

told The Natal Witness newspaper that the group had acted under the orders of certain members of the Security Police and Military Intelligence in Natal. The newspaper published his lengthy statement containing detailed allegations on 26 April 1991. The government ordered a senior police officer, Major-General Ronnie van der Westhuizen, to investigate the allegations. However, no arrests have yet been made in connection with the murder of Chief Maphumulo.

Claims that the security forces have been directly responsible for targeted killings of government opponents or of members of communities identified as "pro-ANC" or "anti-Inkatha" have been repeatedly denied and ridiculed by government representatives. However, in the past week government ministers and other officials have publicly acknowledged for the first time that the South African Police secretly funded Inkatha in 1989 and 1990 and that this was authorized by the State President and three senior Cabinet ministers. While they have denied that this policy was intended to accomplish anything other than the promotion of "order and stability", this officially sanctioned policy of police bias in favour of Inkatha has coincided with actions of the police on the ground which have resulted in serious human rights violations.

Among other cases which illustrate the consequences of this police bias, in April 1989 residents of the Natal township of Mpophomeni were forced to resort to the Supreme Court when their request for police protection from Inkatha attacks resulted in themselves becoming targets of assaults, kidnappings and torture by members of the South African Police. In March 1990, during a month when the police are now known to have been involved in funding political rallies by Inkatha, thousands of armed Inkatha supporters were involved in a massive, planned attack on non-Inkatha areas near Natal's provincial capital, Pietermaritzburg. The wave of attacks resulted in at least 80 deaths, the destruction of hundreds of homes and the displacement of some 14,000 people. The police took no effective action to stop the attack and refused to call in locally-based members of the South African Defence Force to suppress the violence.

In a more recent case, on 12 May 1991 at least 27 people were killed when an estimated 1,000 armed Inkatha members launched a pre-dawn attack on the Swanieville squatter camp near Kagiso, west of Johannesburg. On the day prior to the attack the Minister of Law and Order placed Swanieville under quasi-emergency "unrest areas" regulations, including a curfew which confined the camp's residents to their shacks overnight. The residents were still under curfew when the attack on the camp began in the early hours of the morning of 12 May. Despite the fact that the heavily-armed attackers had to travel some 10 kilometres from the hostel where they were based to Swanieville, the police did not intervene to stop them. After the attack the police did not disarm the men, but escorted them back to the hostel. The police role, however, reportedly was not restricted to just passively supporting the assailants: camp residents who survived the attack have alleged, in statements to lawyers and human rights monitors, that the attackers were escorted by police and army vehicles, that policemen in uniform and white men not in uniform were physically involved in the attack on the residents, including firing shots at them. One woman resident, who fled with others from the camp during the attack, described her attempts to

seek assistance from policemen sitting in police vans parked in a field. She said "they refused to speak to us. They did not even open the windows."

Mr Chairman,

Many of the concerns Amnesty International raised in its statement earlier this year to the United Nations Commission on Human Rights still persist, and the recommendations it made then are still appropriate. Amnesty International believes that the Government of South Africa needs to take immediate action to repeal all remaining legislation providing for indefinite incommunicado detention without trial. The Government should state publicly and unequivocally that torture and ill-treatment of prisoners will not be tolerated.

In light of compelling evidence of security force complicity in the township violence, it is clear that urgent and dramatic action needs to be taken by the South African Government to ensure that allegations of police, military or other official complicity in human rights violations are thoroughly and impartially investigated, and that those responsible for torture, politically-motivated killings or other serious violations are brought to justice without delay. Police officers and other officials against whom substantial allegations have been or may yet be made should be suspended from duty pending their full and impartial investigation.

Moreover, swift government action is needed in the form of instructions to the police from the highest level, to ensure that there are no further cases of police complicity in political violence or failure to act against it, and to ensure that individual members of the security forces, whether the centrally controlled South African Police or the local KwaZulu Police or members of the South African Defence Force, are held accountable for their actions and brought to justice for any offences they commit, whether these are active abuses or a form of criminal negligence.