

£SOUTH AFRICA

@Policing, human rights and the prospects for free and fair elections

ORAL STATEMENT BY AMNESTY INTERNATIONAL TO THE 50th SESSION
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COMMISSION ON HUMAN RIGHTS

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(The sections in brackets [] were not delivered orally)

Chairperson,

South Africa hovers on the brink of a new era in which the potential exists for creating a society based on legality, respect for the rights of every individual, and justice. Last year, on 22 December, the tricameral parliament adopted by an overwhelming majority the Constitution of the Republic of South Africa Act, which the new parliament will implement as an interim constitution after the country's first ever non-racial elections in April. The legislation entrenches, among other provisions, a set of fundamental rights¹, the articulation of which represents, at least in law, an astonishing reversal of decades of legalized repression and injustice for millions of South Africans. [The new constitution also provides for the setting up of a constitutional court to adjudicate in all matters relating to the interpretation, protection and enforcement of the provisions of the constitution, including "any alleged violation or threatened violation of any (entrenched) fundamental right". In addition the Act obliges the new President and Houses of Parliament to appoint a Human Rights Commission responsible for promoting the observance and protection of fundamental rights, monitoring proposed legislation for adherence to norms of international human rights law, investigating alleged violations of fundamental rights and assisting complainants in securing redress.]

¹ They include: equality of every person before the law, freedom from discrimination on the grounds of race, gender, belief or other similar reasons, the right to life, the right not to be subjected to torture or to detention without trial, the rights to freedom of belief, expression, association and peaceful assembly, the right to vote and to stand for election, and the right to fair trial.

The hopes for the new South Africa will be still-born, however, if those who seek to participate in the 1994 elections become victims of extrajudicial executions, deliberate and arbitrary killings, torture or arbitrary detention. The present government bears the greatest burden of responsibility in this regard, through its control of state resources, including the security forces, and its duty to protect the lives of all South Africans. Some of the burden of responsibility also falls upon the participants in the multi-party Transitional Executive Council (TEC) and the Independent Electoral Commission (IEC).²

In some areas, notably Natal, the East Rand and Bophuthatswana, violence and fear - whether the fear of violent attack or the fear of arbitrary detention and torture - are casting deep shadows over the prospects for a free and fair election. In 1993, according to the South African-based Human Rights Commission (HRC), at least 4,364 people died in incidents of political violence and through acts of terrorism. Nearly 90 per cent of these deaths occurred in Natal and in the townships on the East Rand near Johannesburg, where the political conflict between supporters of the African National Congress (ANC) and the Inkatha Freedom Party (IFP) is most intense. Amongst last year's victims were political leaders at national, regional and local level, trade unionists, and peacemakers, who were targeted for assassination by their political opponents, or by members of the security forces or men acting at their behest. [They included: Natal peacemaker Reverend Richard Kgetsi gunned down in his Murchison home; Thokoza ANC executive member Dennis Makhanya abducted into a hostel and later found in a mortuary with bullet wounds; Cape Town development worker Super Nkatozo abducted and shot dead; Transport and General Workers Union shop steward, Elias Shumi Mkhize, shot dead while travelling from work near Empangeni; and KwaThema IFP branch chair, Samuel Motha, shot dead as he left his home for work.] Many others apparently died simply because they lived in an area targetted for politically exclusive control. [For instance, in Sundumbile, Northern Natal, and Radebe section in Katlehong township on the East Rand, IFP supporters have been attempting to drive out supporters of the ANC and allied organizations. At the same time on the East Rand, Zulu-speaking township residents have been targetted by young ANC-aligned "comrades" or Self-Defence Unit (SDU) members as suspected IFP supporters.]

In many of these situations, the role of the security forces has been highly questionable, ranging from the direct involvement of the KwaZulu Police in "death squad" killings and participation in Inkatha Freedom Party (IFP) attacks on African National Congress (ANC) supporters and trade unionists in Northern Natal, through South African

² The TEC's functions include monitoring the conduct of key government departments or agencies, and ensuring the creation of a climate conducive to the full participation of all eligible voters in the electoral process. The IEC is charged with the responsibility of administering the elections, promoting conditions favourable to free and fair elections, and ultimately certifying the results, including the degree to which the elections have been free and fair.

Police Internal Stability Unit (ISU) involvement in arbitrary detentions, torture and extrajudicial executions of suspected Self-Defence Unit members on the East Rand, to a failure to protect the lives of vulnerable communities when the security forces had the capacity and the duty to act. [For instance, in Crossroads, Cape Town, the police failed to take appropriate measures during three months of arson attacks and killings, which left some 50 people dead and hundreds more homeless. Most of those affected by the violence were opposed to a development project, which was being aggressively pushed by the Cape Provincial Administration and a local ANC-aligned leader and his armed supporters.]

For the most part the arrest and conviction of Chris Hani's killers remained an exception during the past year in a situation where perpetrators of political killings were able to act with impunity. [Obstacles to justice included an apparent lack of will, training and resources on the part of police investigators, the passivity of the prosecuting authorities, and their failure to take effective steps to protect potential trial witnesses at a time when courts were readily granting bail to suspected multiple murderers.]

Adding to the atmosphere of fear and last year's death toll were the killings of hundreds of black civilians travelling on trains and in taxis, or moving about townships streets, as well as 55 white civilians. They fell victim to highly trained, masked gunmen motivated, apparently, by a desire to sow fear and panic, to increase the level of racial and political polarization within the country and disrupt progress towards the April elections. By the very nature of their operations and indeed from the apparent intentions behind their activities the men responsible for these murders are not susceptible to any local or national initiatives at peacemaking or political negotiations. They may only be brought under control by concerted and sophisticated police investigations leading to disclosure of who they are and their prosecution. Here, too, few suspects have been arrested other than a handful of alleged members of the military wings of the Pan Africanist Congress (PAC), the ANC, the IFP and the *Afrikaner Weerstandsbeweging* (AWB). Human rights monitors in South Africa fear that behind at least some of these killings lie the operations of the South African Defence Force's Directorate of Military Intelligence, known to have been involved in the training of assassins in the late 1980s.]

During this crucial pre-election period, government, TEC and IEC capacity to ensure the creation of a climate conducive to free political activity will rest ultimately on the will, resources and training of the security forces, in particular the South African Police and "homeland"-based police forces. [The eventual deployment of the National Peacekeeping Force (NPKF), currently undergoing training and answerable to the TEC, should contribute to this task. The new force, though, will be relatively small - some 10,000 members, hastily trained and integrated. An additional problem may also undermine the effectiveness of the peacekeeping force, in that, at the time of its deployment - possibly in March - it may still lack representatives of the military or police or paramilitary forces of Bophuthatswana, KwaZulu, the IFP and the white rightwing, all of whom, in February 1994, were still refusing to

participate in the TEC. Amnesty International is concerned, in addition, that in light of the brief period available for training, the new force may not be adequately instructed in international human rights law. However successful the training process may be though, the National Peacekeeping Force, and for that matter South African Defence Force members deployed in peacekeeping operations, will not have responsibility for the crucial areas of investigation and prosecution of alleged perpetrators of killings or other acts of political violence. The proper functioning of the criminal justice system is essential to the restoration of a lasting peace in many communities. It would most obviously help put a stop to the resort to "selfhelp" or vigilante violence.]

Current efforts to build up relationships of trust between the police and local communities should help improve the criminal justice system and combat the problem of impunity for human rights violators. In the Grahamstown area, in Cape Town's Nyanga and Mannenburg townships, in Sharpeville and Alexandra townships, for instance, police station commanders or officers under their command have committed themselves to a process of consultation and accountability to the local communities. [In some of these townships where violence has been a continuing problem, grassroots peacemaking efforts have also been underway. These initiatives, which are helping to break the cycle of distrust and violence, are being encouraged and facilitated by the South African Police's Division of Community Relations, and by representatives of National Peace Accord structures, non-governmental organizations focusing on policing issues, and of intergovernmental organizations.]

These initiatives, however, can be undermined when, for instance, outside police units such as the Internal Stability Unit and the Murder and Robbery Units fail to co-ordinate with the local station commander regarding their operations in his area of command. Members of these units are often identified by township residents as responsible for search raids on homes which are conducted with gratuitous violence, and for assaults and torture of arrested suspects. [On 27 December 1993, in a disturbing illustration of the problem, members of the East Rand Murder and Robbery and Vehicle Theft Units allegedly ambushed a vehicle in Vosloorus, opening fire on its occupants without warning and killing a local resident, Thabiso Mofokeng, and an Umkhonto we Sizwe (MK) member, Samuel Mabuja. During the six months preceding this incident local MK members were holding regular meetings with officers from the Vosloorus police station and were co-operating successfully with them in apprehending and handing over suspects involved in criminal activities in the township. On 27 December Samuel Mabuja was involved in one such investigation when he was shot dead. An eye-witness account indicates that one of the police officers, at the behest of a locally-notorious gangster, deliberately shot Samuel Mabuja in the head as he lay injured on the ground. Although police representatives later justified the killings on the grounds of self-defence, the incident clearly jeopardized progress made by the local police and community representatives. In this, as in other incidents where there is suspicion that the police have used lethal force unlawfully, there is an urgent need for a thorough, prompt and impartial inquiry.]

The continuing practice of arbitrary detention without trial and the use of torture by the police also undermine efforts to transform relations between the police and black communities. Despite the government's decision in January 1993 to sign the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, violence, whether in the form of verbal threats, including death threats, serious assaults or systematic torture is still a feature of arrest and detention. [The police also continue to use security legislation which permits incommunicado detention, including Section 29 of the Internal Security Act and Section 47 of Transkei's Public Security Act. Both create conditions whereby torture and ill-treatment - physical and psychological - are likely to occur.

In one case, illustrating the routine use of violence against arrested suspects in criminal matters, Mduduzi Maphanga, a senior clerk with the Natal Provincial Administration office in Imbali township, was arrested on 19 August 1993 by members of the South African Police. During the ensuing four or five hours he was subjected to a brutal assault by the police, who were interrogating him about the whereabouts of a missing firearm. During the interrogation, he was assaulted with punches and kicks, stripped of his clothes, tied to a chair with rope, and subjected to partial suffocation with rubber tubing which his interrogators pulled over his face. The police eventually released him, uncharged, dumping him in a state of shock and pain in the streets of Pietermaritzburg.

In July and August last year Internal Stability Unit police and Defence Force members arrested several hundred young men, detaining them under the 30-day provisions of "Unrest Areas" state of emergency regulations imposed on East Rand townships. During the initial 48 hours of detention and interrogation the security forces obstructed the efforts of family members, lawyers and others seeking access to the detainees, who were subjected to beatings, partial suffocation with rubber tubing, and other forms of torture, in some cases while hooded. Lawyers representing some of the youths detained during this period succeeded in obtaining an interim order from the Supreme Court restraining the police from further assaulting or otherwise ill-treating the detainees. Medical evidence submitted as part of the court application documented a range of injuries and symptoms consistent with the allegations of assaults, including, in several cases, "subungual haematoma...consistent with the allegation of having had needles pushed under their fingernails". In late October investigators attached to the office of Advocate Jan Munnik, the Witwatersrand Police Reporting Officer, carried out a search of East Rand Internal Stability Unit vehicles and seized torture equipment, including electric shock motors and rubber car tyre tubing. Despite this discovery, a Supreme Court injunction and the appeals from the UN Observer Mission representatives who visited the detainees in prison, official investigations which may have taken place have not resulted in suspensions or prosecutions of security force members involved in these abuses.]

South African citizens living within the boundaries of the nominally-independent "homeland" of Bophuthatswana have suffered increased repression and human rights violations as a direct consequence of the "homeland" authorities' rejection of the new constitution, refusal to participate in the TEC, the National Peacekeeping Force and the planned elections. During the past year the authorities and the security forces have used arbitrary detentions and unjustified excessive force to break up public gatherings, which are virtually impossible to hold legally in Bophuthatswana. In recent months the same pattern of human rights abuses has occurred against ANC officials, other political activists, human rights activists and church groups, when they attempt to organize meetings, training courses and publicity events intended to inform eligible voters about their rights and the procedures involved in registering for identification documents and voting on election day. Organizers have been forced to conduct meetings outside "homeland" territory or risk harassment and assault at the hands of the Bophuthatswana police.

[On 10 November 1993, for instance, Bophuthatswana police broke up an ANC-sponsored meeting in Moruleng village, in the Mankwe District, and detained 49 of the participants, including nurses, teachers, business people, civil servants and youngsters, at Mogwase police station. There the police kicked and hit them with boots, fists and wooden pick handles. Several detainees were so seriously injured they required hospitalization. Among them was school student Godfrey Sojane, who had to have one of his testicles surgically removed as a consequence of the assault. The detainees were released five days later and most were charged in court with attending an "illegal gathering". Similar incidents of detentions and assaults, including in January this year, demonstrate the politically-biased nature of the "homeland's" police force and the great difficulties confronting any person or organization wishing to exercise their internationally recognized rights of freedom of expression and peaceful assembly. As noted by the South African-based organization, Lawyers for Human Rights, in their urgent memorandum to the TEC and IEC this January, the rights of nearly two million potential voters are being placed in jeopardy by the repressive practices of the "homeland" government.]

In conclusion, during this critical period in South Africa's history, the government, together with the TEC and the IEC, is obliged to ensure that the planned elections can be conducted in an atmosphere free of fear. They are obliged to ensure that the authorities' response to situations of potential or actual violence is impartial and prompt, both in terms of law enforcement and investigations into suspected offences; that any arrests made are carried out lawfully and with due respect for the basic rights of those detained; and that the rights to freedom of association and peaceful assembly are fully respected. In addition, Amnesty International urges the government to give unequivocal support to the initiatives of locally-based police who are committed to being accountable to the communities they serve, and an unequivocal commitment to conducting swift investigations leading to members of the security forces and others implicated in human rights violations being brought to justice.

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