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VIOLATIONS OF HUMAN RIGHTS IN SOUTHERN AFRICA

REPORT OF THE AD HOC WORKING GROUP OF EXPERTS PREPARED
IN ACCORDANCE WITH COMMISSION ON HUMAN RIGHTS
RESOLUTION 5 (XXXVII) AND ECONOMIC AND SOCIAL
COUNCIL RESOLUTION 1982/40

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ABBREVIATIONS

INTRODUCTION

A. Mandate and composition of the Ad Hoc Working Group of Experts on southern Africa

1. Historical background and present mandate of the Group

1. The original mandate of the Ad Hoc Working Group of Experts on southern Africa, established under resolution 2 (XXIII) of the Commission on Human Rights on 6 March 1967, was to investigate the charges of torture and ill treatment of political prisoners, detainees or persons in police custody in South Africa. That mandate has been successively enlarged and extended by various resolutions and/or decisions of the Commission on Human Rights and the Economic and Social Council. In accordance with its extended mandate the Ad Hoc Working Group has carried out various investigations into allegations of violations of human rights in southern Africa and has submitted a number of reports to the Commission on Human Rights, to the Economic and Social Council and to the General Assembly at its special request.

2. At its thirty-seventh session, the Commission on Human Rights decided, by resolution 5 (XXXVII), adopted on 23 February 1981, that the Ad Hoc Working Group of Experts should continue to examine policies and practices which violate human rights in South Africa and Namibia (para. 16). Therefore the Commission requested the Group to submit a report on its findings to the Commission at its thirty-ninth session at the latest, and to submit a progress report to the Commission at its thirty-eighth session (para. 19).

3. In accordance with the above-mentioned provisions, the Ad Hoc Working Group of Experts submitted a progress report (E/CN.4/1485) to the thirty-eighth session of the Commission.

4. The Commission also decided that the Ad Hoc Working Group of Experts should examine in particular the report of the Secretary-General on apartheid as a collective form of slavery ^{1/} and the report on child labour in South Africa submitted to the Working Group on Slavery at its sixth session by the Anti-Slavery Society for the Protection of Human Rights ^{2/} and propose in due course such measures as the Group deemed appropriate (para. 17). In accordance with this request, the Group considered the question at its meetings in January 1983. In this connection an account of the Ad Hoc Working Group's consideration of the question is contained in document E/CN.4/AC.22/1983/WP.1.

5. The Commission further requested the Ad Hoc Working Group of Experts, in co-operation with the Special Committee against Apartheid:

(a) to investigate the conditions of imprisonment and the state of health of persons captured at Kassinga and imprisoned at the Hardap Dam Camp, near Marienthal, in the south of Namibia. With a view to giving effect to that decision, the Group submitted a study which is contained in its interim report submitted to the Commission on Human Rights at its thirty-eighth session; ^{3/}

^{1/} E/CN.4/Sub.2/449.

^{2/} E/CN.4/Sub.2/447, paras. 28-30.

^{3/} Document E/CN.4/1485.

(b) to study the effects of the policy of apartheid on black women and children in South Africa, in conformity with General Assembly resolution 35/206 E of 16 December 1980 (para. 21). In accordance with that decision the Group submitted to the Commission at its thirty-eighth session a special report entitled: "Study on the effects of the policy of apartheid on black women and children in South Africa" (E/CN.4/1497). In this connection additional information has been included in the present report.

6. Furthermore, the Commission decided that the Ad Hoc Working Group should continue to institute inquiries in respect of any persons suspected of having been guilty in Namibia of the crime of apartheid or any other serious violation of human rights. In that connection, the Ad Hoc Working Group of Experts has drawn up a list of persons suspected to be guilty of crimes of apartheid as defined under articles 2 and 3 of the International Covenant on the Suppression and punishment of the Crime of Apartheid. This list supplements those already brought to the attention of the Commission on Human Rights in earlier reports.

7. Finally, the Commission invited every Member State of the United Nations to make observations on the draft statutes of the International Penal Tribunal, as envisaged in the study contained in document E/CN.4/1426, so as to enable the Ad Hoc Working Group to continue its study. In this connection it should be recalled that in compliance with the request made by the Commission on Human Rights in its resolution 12 (XXXVI), the Ad Hoc Working Group of Experts submitted in 1981 this study which dealt with ways and means of ensuring the implementation of international instruments such as the International Convention on the Suppression and Punishment of the Crime of Apartheid, including the establishment of the international jurisdiction envisaged by the Convention.

8. However, being of the view that the replies received at the end of 1981 did not constitute enough material for the Group to continue the study, the Commission on Human Rights, in its resolution 1982/8 of 25 February 1982, renewed its invitation to all Member States of the United Nations to make observations on the study containing the draft statutes of the International Penal Tribunal. In addition, in its resolution 1982/10, the Commission again requested the Secretary-General to invite the States parties to submit their views and comments on this study. Letters to that effect were addressed to the States parties on 15 June and 29 September 1981 and 30 August 1982. As at December 1982, the Group had received replies from the following:

(a) Member States not party to the Convention: Algeria, Bahrain, Colombia, Costa Rica, Cyprus, Germany, Federal Republic of, Guatemala, Malta, Mauritius, Portugal, Swaziland and United States of America;

(b) States Parties to the Convention: Bahamas, German Democratic Republic, Hungary, Iraq, Mexico, Panama, Philippines, Syrian Arab Republic and Yugoslavia.

9. The Ad Hoc Working Group of Experts points out that there are still not enough replies to permit a detailed study. It therefore reiterates the recommendation to the Commission on Human Rights that observations should be submitted on the study containing the draft statutes of the International Penal Tribunal, contained in document E/CN.4/1426, so that the Group can continue this study.

10. Following the consideration of the progress report submitted by the Group to the Commission at its thirty-eighth session, the Commission adopted, on 25 February 1982, resolution 1982/8 by which it requested the Group to continue to study the policies and practices which violate human rights in South Africa and Namibia and to submit its findings and recommendations to the Commission at its thirty-ninth session.

11. At the same time, by its resolution 1982/9, the Commission requested that South Africa allow the Ad Hoc Working Group of Experts to make an on-the-spot investigation of living conditions in the prisons of South Africa and Namibia and of the treatment of prisoners in those countries. In this connection the Group has not so far received a reply to a letter transmitted to the Government of South Africa by the Director of the Division of Human Rights dated 8 April 1982, which reads as follows:

"Sir,

I have the honour to draw Your Excellency's attention to the activities of the Ad Hoc Working Group of Experts on southern Africa established under Commission on Human Rights resolution 2 (XXIII) of 6 March 1967.

In accordance with its mandate which was extended by successive resolutions of the Commission on Human Rights and the Economic and Social Council, the Ad Hoc Working Group has carried out investigations on the human rights situation in southern Africa and has submitted a number of reports to the Commission on Human Rights and to the Economic and Social Council.

By its resolution 5 (XXXVII), adopted on 23 February 1981, the Commission on Human Rights renewed the mandate of the Ad Hoc Working Group of Experts and decided that it should continue to study the policies and practices concerning human rights in South Africa and Namibia and submit a report to the Commission on Human Rights at its thirty-ninth session in 1983 on its findings on the following questions:

- (1) The treatment of political prisoners, detainees and captured freedom fighters in South Africa and Namibia;
- (2) The deaths of political detainees while in detention in South Africa's prisons;
- (3) The "Bantu homelands" policy in the Republic of South Africa;
- (4) The infringements of trade union rights in the Republic of South Africa;
- (5) The forced removals of population in South Africa and Namibia;
- (6) The impediments to student movements in South Africa and Namibia;
- (7) The disparity between the wages and the conditions of employment of black and white workers in South Africa and Namibia;

- (8) The conditions of imprisonment and the state of health of persons captured at Kassinga and imprisoned at the Hardap Dam Camp, near Marienthal, in the South of Namibia;
- (9) The effects of the policy of apartheid on black women and children in South Africa.

The above questions and others of particular concern to the Working Group are dealt with in its progress report (E/CN.4/1485) and its special reports (E/CN.4/1486 and E/CN.4/1497) submitted to the Commission on Human Rights at its thirty-eighth session copies of which are enclosed.

In this connection, at its thirty-eighth session in February/March 1982, the Commission on Human Rights requested the Group to continue to study the policies and practices which violate human rights in South Africa and Namibia and to submit its findings and recommendations at the thirty-ninth session; by its resolution 1982/9 of 25 February 1982, the Commission also requested that South Africa allows the Ad Hoc Working Group of Experts to make an on-the-spot investigation on living conditions in the prisons of South Africa and Namibia and on the treatment of prisoners in those countries. Copy of this resolution is enclosed herewith.

Under the above-mentioned resolution 2 (XXIII) of the Commission on Human Rights, the Ad Hoc Working Group is authorized, in carrying out its mandate, to receive communications and hear witnesses and to use such modalities of procedure as it may deem appropriate. The Ad Hoc Working Group intends to visit a number of countries and cities during the months of July and August 1982 for the purpose of receiving evidence and hearing testimony concerning matters falling within its terms of reference.

The Ad Hoc Working Group is composed of the following experts: Mr. Annan Arkyin Cato (Ghana), Chairman/Rapporteur; Mr. Branimir Janković (Yugoslavia); Mr. Humberto Díaz-Casanueva (Chile); Mr. Mulka Govinda Reddy (India); Mr. Felix Ermacora (Austria) and a sixth expert to be appointed by the Chairman of the Commission on Human Rights at its thirty-eighth session.

At the request and on behalf of Mr. Annan Arkyin Cato, Chairman of the Ad Hoc Working Group of Experts, I have the honour to invite Your Excellency's Government to extend its co-operation to the Working Group in order to facilitate the accomplishment of its mandate.

The Ad Hoc Working Group considers the co-operation and support of Your Excellency's Government essential for the successful accomplishment of its tasks.

The Working Group would be grateful, in particular, for any assistance which Your Excellency's Government could provide in connection with its proposed visit, and would appreciate it, if it would agree to receive the Group and grant the necessary authorization for its travel and stay in South Africa as well as any other facilities that may be considered appropriate.

The Working Group would also be grateful if Your Excellency's Government could communicate, through the Secretary of the Ad Hoc Working Group of Experts, Division of Human Rights, Palais des Nations, Geneva, Switzerland, any information relating to matters within its mandate, including the names and addresses of persons or organizations who might wish to furnish such information, either orally or in writing. The names of such persons or organizations would be kept confidential upon request.

The Working Group has expressed particular interest in gathering first-hand information, and wishes to concentrate its attention essentially upon developments which have occurred since 1980, when it conducted an investigation of similar scope, and in particular on the specific questions relevant to its mandate as described above.

Accept, Sir, the assurances of my highest consideration."

12. The Commission further decided that the Ad Hoc Working Group of Experts should continue to bring to the attention of the Chairman of the Commission on Human Rights, for whatever action he may deem necessary and appropriate, particularly serious violations when it learns of such violations during its inquiries. To this effect, the Group informed the Chairman of the Commission of two situations concerning human rights in South Africa (see paras. 26-27 below).

13. It should also be noted that in its resolution 1982/40 of 7 May 1982 the Economic and Social Council requested the Ad Hoc Working Group of Experts to continue to study the situation relating to allegations of infringements of trade union rights in South Africa and to report thereon to the Commission on Human Rights and the Council as appropriate. In the same resolution, the Economic and Social Council also requested the Ad Hoc Working Group of Experts, in the discharge of its mandate, to consult with the International Labour Organisation and the Special Committee against Apartheid, as well as with International and African Trade Union Confederations. On 6 October 1982, the Chairman of the Ad Hoc Working Group of Experts addressed letters to the organizations concerned drawing to their attention the need to co-ordinate their action according to the request made by the Commission on Human Rights.

14. The present report, which contains conclusions and recommendations, is submitted in accordance with the mandate conferred on the Ad Hoc Working Group of Experts by the Commission on Human Rights and the Economic and Social Council under the above-mentioned resolutions. It is based essentially on first-hand information which the Ad Hoc Working Group of Experts received in the form of oral testimony and written communications from individuals and organizations concerned in the course of its mission of inquiry, which it carried out from 12 July to 3 August 1982. In addition, the Group engaged in a systematic search and analysis of documents of the United Nations and the specialized agencies, of official gazettes and reports of relevant parliamentary debates, of publications, newspapers and magazines from various countries, as well as of works dealing with matters relevant to the Group's mandate.

2. Composition of the Ad Hoc Working Group of Experts

15. The Ad Hoc Working Group of Experts which is composed of six members acting in their personal capacity and appointed by the Commission on Human Rights was established in 1967 in accordance with resolution 2 (XXIII) of the Commission on Human Rights.

16. The mandate of the Ad Hoc Working Group of Experts which was extended and enlarged by subsequent resolutions of the Commission on Human Rights and the Economic and Social Council was most recently renewed by the Commission in resolution 5 (XXXVII) of 23 February 1981. The Economic and Social Council approved this resolution by decision 1981/137.

17. In the course of the thirty-eighth session of the Commission on Human Rights, Mr. Mikuin Leliel Balanda (Zaire) was appointed to replace Mr. Keba M'Baye who had resigned as a member of the Working Group upon his election as a member of the International Court of Justice.

18. The Ad Hoc Working Group of Experts is composed of the following members:

Chairman-Rapporteur: Mr. Annan Arkyin Cato (Ghana), Deputy Permanent Representative Permanent Mission of Ghana to the United Nations Office at Geneva;

Vice-Chairman: Mr. Branimir Janković (Yugoslavia), Professor of International Law;

Mr. Humberto Díaz-Casanueva (Chile); Lecturer on International Organizations, Rutgers University and Professor of Hispano-American Literature Columbia University, New York, United States;

Mr. Felix Ermacora (Austria); Professor Public Law, Member of Parliament;

Mr. Balanda Mikuin Leliel (Zaire); Vice-President of the Supreme Court of Justice;

Mr. Mulka Govinda Reddy (India); Former Member of Parliament.

B. Organization of work and procedures adopted by the Ad Hoc Working Group of Experts

1. Meetings and mission of inquiry

19. Following the past practice and pursuant to its mandate, the Group agreed on the arrangements for the mission of inquiry, which it planned to undertake in Europe, Africa and Asia, at a series of meetings held from 4 to 8 January 1982 at the United Nations Office at Geneva.

20. In order to compile information and gather evidence about the further facts that had arisen in connection with the matters falling within its mandate, the Group heard witnesses in London from 12 to 16 July 1982, at New Delhi from 17 to 20 July 1982, at Bombay from 20 to 24 July 1982, at Dar-es-Salaam from 24 to 30 July 1982, at Lusaka from 30 July to 4 August 1982, at Luanda from 4 to 10 August 1982 and at Geneva from 12 to 13 August 1982.

21. The Group then met from 3 to 12 January 1983 at the United Nations Office at Geneva to consider and adopt the present report.

2. Conduct of the investigation

22. As in the past, the Ad Hoc Working Group of Experts sought the co-operation of the Member States concerned and of interested organizations and individuals with the principle purpose of hearing the greatest possible number of witnesses capable of providing it with reliable information on the matters falling within its mandate. The procedure followed the measures adopted by the Group in connection with the organization of the mission of inquiry are set forth below:

(a) Relations with Governments of Member States

23. On 14 April 1982, the Director of the Division of Human Rights, acting at the request and on behalf of the Chairman of the Group, addressed a letter to the Ministers of Foreign Affairs of the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the Republic of Zambia, the Republic of India, the People's Republic of Angola and the Republic of South Africa, drawing to their attention the mandate and the activities of the Working Group and inviting their Governments to co-operate with it in the fulfilment of its mandate. They were requested, in particular, to transmit any information relevant to matters covered by the mandate of the Working Group, including the names and addresses of persons or organizations willing to furnish such information, either orally or in writing.

24. The Governments of the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the Republic of Zambia, the Republic of India and the People's Republic of Angola agreed to co-operate with the Ad Hoc Working Group of Experts and the Group therefore visited those countries where it received full co-operation.

25. On 8 April 1982 the Director of the Division of Human Rights, acting at the request and on behalf of the Chairman of the Group, addressed a letter to the Minister for Foreign Affairs of the Republic of South Africa, drawing to his attention the mandate and the activities of the Group and inviting his Government to co-operate

with it in the fulfilment of its mandate. The letter also referred to Commission resolution 1982/8 of 25 February 1982, by which the Commission requested South Africa to allow the Ad Hoc Working Group of Experts to make an on-the-spot investigation on living conditions in the prisons of South Africa and Namibia and on the treatment of prisoners in those countries. No reply had been received from the Government of South Africa, at the time of the preparation of the present report; the Government of South Africa has also consistently refrained from replying to similar requests in the past.

26. In this connection, during the mission of inquiry from 12 July to 13 August 1982, the Group was informed of a certain number of particularly serious situations which it considered should be drawn to the attention of the Chairman of the Commission on Human Rights in accordance with the provisions of paragraph 18 of resolution 12 (XXXV), paragraph 6 of resolution 9 (XXXVI) and paragraph 9 of resolution 1982/8 which provide that the Working Group should immediately bring to the attention of the Chairman of the Commission on Human Rights, for whatever action he may deem necessary and appropriate, particularly serious violations when it learns of such violations during its inquiries.

27. Accordingly, the Group drew the attention of the Chairman of the Commission on Human Rights to the situation outlined in the following two telegrams:

(a) By telegram dated 10 August 1982: "...

"THE AD HOC WORKING GROUP OF EXPERTS ON SOUTHERN AFRICA OF THE COMMISSION NOW IN FIELD MISSION IN UGANDA (ANGOLA) HAS LEARNED WITH DEEP CONCERN OF DEATH SENTENCE PASSED ON MR. SIMON MOGOERANE 23, MR. JERRY SEMANO MOSOLODI 25, AND MR. MARCUS THABO MOTAUNG 27, YOUNG ANC MILITANTS, ON ACCOUNT THEIR OPPOSITION TO APARTHEID SYSTEM IN SOUTH AFRICA. HAVING REGARD TO REPEATED DECISIONS OF INTERNATIONAL COMMUNITY CONCERNING APARTHEID, THE AD HOC WORKING GROUP CONSIDERS DEATH SENTENCE ON MR. SIMON MOGOERANE, MR. JERRY SEMANO MOSOLODI AND MR. MARCUS THABO MOTAUNG AS BEING UNLAWFUL AND UNJUST. GROUP CONSEQUENTLY REQUESTS CHAIRMAN OF COMMISSION ON HUMAN RIGHTS TO TAKE SUCH ACTION AS HE CONSIDERS APPROPRIATE IN ACCORDANCE WITH PARA. 9 OF COMMISSION ON HUMAN RIGHTS RES. 1982/8 OF 1982, TO PREVENT DEATH SENTENCE OF MR. SIMON MOGOERANE, MR. JERRY SEMANO MOSOLODI AND MR. MARCUS THABO MOTAUNG FROM BEING CARRIED OUT.

SIGNED A.A. CATO, CHAIRMAN, B. JANKOVIC, VICE-CHAIRMAN, MESSRS. BALANDA, ERMACORA, DIAZ-CASANUEVA AND REDDY, MEMBERS."

(b) By telegram dated 13 August 1982: "...

"THE AD HOC WORKING GROUP OF EXPERTS ON SOUTHERN AFRICA, IN THE COURSE OF CARRYING OUT ITS MANDATE UNDER COMMISSION RESOLUTION 5 (XXXVII) AND 1982/8 HAS TAKEN NOTE OF RECENT REPORTS WHICH INDICATE THAT DETAINEES IN SOUTH AFRICA CONTINUE TO DIE IN SUSPICIOUS CIRCUMSTANCES; IN PARTICULAR THE WORKING GROUP NOTES THE DEATH OF MR. ERNEST DEPALE FOUND HANGED ON 8 AUGUST 1982 IN HIS CELL AT THE SECURITY POLICE HEADQUARTERS IN JOHN VORSTER SQUARE IN JOHANNESBURG. THE DEATH OF MR. DEPALE FOLLOWS THAT OF DR. NEIL ACGETT WHICH OCCURRED LAST FEBRUARY IN IDENTICAL CIRCUMSTANCES.

THE WORKING GROUP FURTHER NOTES THAT SUCH HANGINGS, OF WHICH OVER 50 HAVE BEEN REPORTED SO FAR, TOGETHER WITH THE CONTINUED INDIFFERENCE OF SOUTH AFRICAN AUTHORITIES, CONSTITUTE AN INTOLERABLE VIOLATION OF THE RIGHT TO LIFE OF PERSONS IN DETENTION UNDER THE EXISTING DRACONIAN LEGISLATION AND A CRIME UNDER THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID.

THE AD HOC WORKING GROUP OF EXPERTS BY VIRTUE OF PARAGRAPH 9 OF RESOLUTION 1982/8 WISHES TO DRAW THE FOREGOING TO YOUR ATTENTION AND WOULD HOPE THAT IN CONTEMPLATING WHAT ACTION YOU MAY WISH TO TAKE UNDER THIS RESOLUTION, YOU MAY ALSO SEE FIT TO BRING IT TO THE ATTENTION OF THE MEMBERS OF THE COMMISSION ON HUMAN RIGHTS.

HIGHEST CONSIDERATION.

ANNAN CATO, BRANIMIR JANKOVIC, FELIX ERMACORA, HUMBERTO DIAZ-CASANUEVA, MUIKA GOVINDA REDDY, MIKULI LELIEL BALANDA."

28. The two telegrams received by the Chairman of the Commission on Human Rights were transmitted, in a letter dated 17 September 1982, to all members of the Commission on Human Rights at its thirty-eighth session.

(b) Relations with the Organization of African Unity

29. On 21 April 1982, the Director of the Division of Human Rights, on behalf of the Group, informed the Administrative Secretary-General of the Organization of African Unity of the mission of inquiry to be undertaken by the Group in Europe, Asia and Africa and invited the Organization to co-operate, as in the past, with the Group in the fulfilment of its mandate.

30. At the same date, the Chairman of the Ad Hoc Working Group of Experts informed the Executive Secretary of the Co-ordinating Committee for the Liberation of Africa of the mission of inquiry and suggested that it would be of mutual benefit if consultations were to take place between the Co-ordinating Committee and the Group, at the outset of its visit to Dar-es-Salaam (Tanzania) where the Liberation Committee has its headquarters. Consequently, on 26 July 1982, the Ad Hoc Working Group of Experts and the Officer-in-Charge of the Co-ordinating Committee in Dar-es-Salaam exchanged views concerning the situation in South Africa and Namibia.

(c) Relations with African liberation movements, individuals and non-governmental organizations

31. On 15 April 1982, the Director of the Division of Human Rights, acting at the request and on behalf of the Chairman of the Ad Hoc Working Group of Experts, brought the mandate of the Group to the attention of various non-governmental organizations interested in matters relating to human rights in South Africa and Namibia, and in particular to a number of African liberation movements that had already co-operated with the Group during its previous missions of inquiry. Reminders were sent by telegram on 7 June 1982. The names of most of the witnesses heard by the Group were provided by the organizations and liberation movements contacted in that way. Moreover, during its mission, the Group maintained the closest contacts with those organizations and liberation movements.

(d) Evidence received

32. During its mission of inquiry, the Ad Hoc Working Group of Experts heard 59 (fifty-nine) witnesses, some of whom provided information concerning both South Africa and Namibia. Eleven (11) witnesses were upon request, heard at closed meetings, and for this reason their names are not reproduced in the report. A list of the witnesses who gave evidence at public meetings is provided below. The records of the testimony heard at public meetings are kept in the files of the Secretariat of the Ad Hoc Working Group of Experts.

33. In regard to the situation in South Africa 42 (forty-two) witnesses were heard, 11 of them at closed meetings, in accordance with their request. The 31 witnesses who gave evidence at public meetings were the following: Mr. Zolile Hamilton Keke (560th meeting, London); Mr. Wiseman Khuzwayo (561st meeting, London); Rev. Guthrie Michael Scott (561st meeting, London); Mr. Michael Terry (562nd meeting, London); Mr. Samuel Adelman (562nd meeting, London); Mr. Steven Kitson (562nd meeting, London); Mr. Anthony McNulty (563rd meeting, London); Mrs. Ruth Mompoti (563rd meeting, London); Mrs. Shumikasi Jako (563rd meeting, London); Mr. Philip Malcolm Smart (565th meeting, London); Mr. Sydney Molifi (567th meeting, New Delhi); Mr. Dustine O. Okundaye (567th meeting, New Delhi); Mr. Geoffrey N. Nwando (567th meeting, New Delhi); Mr. Eldridge Katse (572nd meeting, Dar-es-Salaam); Mr. Pule Tsatsi (572nd meeting, Dar-es-Salaam); Mr. Thozamile Majola (572nd meeting, Dar-es-Salaam); Mr. Silver Mogale (572nd meeting, Dar-es-Salaam); Mr. Andrew Kailambo (573rd meeting, Dar-es-Salaam); Mr. Jacob ("Jackie") Selebi (574th meeting, Lusaka); Mr. Balelekeng S. Masemola (575th meeting, Lusaka); Mr. Martin Sere (575th meeting, Lusaka); Miss Hope Ramaphosa (577th meeting, Lusaka); Miss Gladys C. Mohapi (577th meeting, Lusaka); Mr. Andrew Mashaba (580th meeting, Luanda); Mrs. Grace Motaung (580th meeting, Luanda); Miss Lulama Sebolao (580th meeting, Luanda); Mr. Don Mthuli (581st meeting, Luanda); Mr. Gladstone Moroka (581st meeting, Luanda); Mr. Uriah Mokeba (582nd meeting, Luanda); Mr. Fred Masodi (584th meeting, Luanda); Mr. W. Ratteree (585th meeting, Geneva).

34. In regard to the situation in Namibia. The following 20 witnesses were heard at public meeting.: Ms. Margaret Ling (559th meeting, London); Mr. Jacob Hannay (560th meeting, London); Rev. Guthrie M. Scott (561st meeting, London); Rev. Brian J. Brown (564th meeting, London); Mr. Philip M. Smart (565th meeting, London); Mr. Frederick Matongo (566th meeting, New Delhi); Mr. Nestor Iyambo (571st meeting, Dar-es-Salaam); Mr. Eldridge Katse (572nd meeting, Dar-es-Salaam); Mr. Moses M. Garoeb (576th meeting, Lusaka); Mr. Herman Ithete (578th meeting, Luanda); Mr. Andreas P. Nailenge (578th meeting, Luanda); Mr. Mathew Nafuka (578th meeting, Luanda); Mr. David P. Shikomba (579th meeting, Luanda); Mr. Andreas J. Norbert (579th meeting, Luanda); Mr. Clavi P. Mathews (579th meeting, Luanda); Mr. Victor Nkandi (579th meeting, Luanda); Mr. José P. Ndakolute (583rd meeting, Lubango); Mrs. Eugenia N'Desilita (583rd meeting, Lubango); Mr. Inacio Francisco (583rd meeting, Lubango); Mr. José Manuel (583rd meeting, Lubango).

35. According to the procedure established by the Group, each witness, after stating his name, age, occupation and address, was invited by the Chairman of the Group to take an oath or to make a solemn declaration.

36. The chairman explained to each witness the purpose of the Group's mission and the various matters that the Group had been instructed to investigate. After making a statement, the witness was questioned by the members of the Group. In cases where the witness neither spoke nor understood any of the working languages of the United Nations, the Group had recourse to the services of locally recruited interpreters, who were similarly required to swear or solemnly declare that they would do their utmost to interpret the testimony accurately.

37. In addition to oral evidence, the Group received a number of written statements dealing with various matters falling within its mandate.

(e) Other activities of the Group during its mission

38. The Ad Hoc Working Group of Experts met and had consultations with a number of leading figures and senior officials in the Governments of the United Kingdom of Great Britain and Northern Ireland, the Republic of India, the United Republic of Tanzania, the Republic of Zambia and the People's Republic of Angola.

39. On 13 July 1982, the Group visited the Foreign and Commonwealth Office in London, where it had an exchange of views with the Minister of State, Mr. Cranley Onslow. The exchange of views was mainly about the situation in Namibia and the state of negotiations with the Western Contact Group composed of Canada, United States of America, France, and the Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland. The Minister of State expressed his hopes for an early agreement on the issue of Namibia's independence and reiterated the United Kingdom's abhorrence of apartheid.

40. On 19 July 1982 during its visit to New Delhi, the Group paid a courtesy call to the President, H.E. Dr. Neelam Sajeve Reddy, the Prime Minister, H.E. Indira Gandhi, the Vice-President, H.E. Hidayatullah and the Foreign Minister for External Relations H.E. P.V. Narasimha Rao. The Prime Minister of India spoke of India's principle opposition to Apartheid and her Government's determination to support all United Nations efforts to eliminate the evil system.

41. On 28 July 1982 in Dar-es-Salaam (Tanzania), the Group was received by His Excellency G.M. Nhigula, Acting Principal Secretary in the Ministry of Foreign Affairs. The exchange of views was mainly about the situation in Namibia as regards which Mr. Nhigula stated that hopes for an early solution to the problem generated by recent consultations had been complicated by pronouncements linking the question of Cuban troops in Angola with a settlement of the situation in Namibia.

42. During its visit to Zambia, the Group had talks on 3 August 1982 at Lusaka with the Minister of State for Foreign Affairs, the Hon. Okema S.Y. Musuka. The discussions dealt with the situation prevailing in South Africa and Namibia. In this connection, the Minister stated that his Government was committed to the total freedom, peace and stability of the southern Africa subregion. He appealed to the Working Group, the Commission on Human Rights and the United Nations in general, to bring pressure to bear on South Africa to grant freedom to the majority black populations in Namibia and in South Africa. He also appealed to the international community to exert pressure on the multinational corporations and their countries of origin to desist from supporting South Africa by their discriminatory wages policy against black workers.

43. In the course of its visit to Angola, the Ad Hoc Working Group of Experts had talks on 10 August 1982 with the Vice-Minister for External Affairs, H.E. Venancia de Troura. The exchange of views was mainly about the situation in Namibia and, in particular, the problems faced by the Government of Angola because of its support for and assistance to the African liberation movements principally SWAPO.

44. On 9 August 1982, the Ad Hoc Working Group of Experts visited Lubango in the province of Cunene (South of Angola) where it had the opportunity to hear four witnesses who supplied the Group with first-hand information relevant to its mandate referring to acts committed against the civilian population of Angola by South African troops from 1979 to 1982. The content of the evidence received is outlined in the chapter dealing with Namibia.

45. Following the hearings, the Group visited factories which had been bombed and completely destroyed by the South African army on 26 September 1979. A wood factory, called Maderas de Huila, in the city of Lubango, was the target of an attack by South African troops, in which 36 workers were killed and 34 injured.

46. During its stay in London, the Group viewed three films made available to the Group by the services of the International Defence and Aid Fund, dealing with the question of resettlement camps, the forced removal of populations and the death of Neil Aggett, the trade unionist found dead in gaol on 5 February 1982.

47. In the course of its mission of inquiry and with a view to informing world public opinion making the Group better known and giving the maximum publicity, in suitable form, to its activities, the Group regularly held press conferences in the places that it visited.

48. The representative of the Special Committee against Apartheid, Mr. Ahmed Mohammed Adan (Somalis) assisted in the work of the Ad Hoc Working Group of Experts when it met in London from 12 to 16 July 1982.

C. Basic international standards relevant to the matters falling within the mandate of the Group

49. In preparing its report the Group took account of the basic international standards relating to its activities. It should be noted that all the provisions embodied in these standards prohibit any form of racial discrimination.

50. The Universal Declaration of Human Rights provides the United Nations General Assembly's interpretation of what is meant by "human rights and fundamental freedoms" in the texts quoted above from the Charter of the United Nations. It has been maintained that the obligations imposed by those texts upon States Members of the United Nations have therefore been extended to the more precise provisions of the Universal Declaration. It has also been claimed that the provisions of the Universal Declaration have become recognized as general principles of international law by dint of their widespread acceptance by States and international organizations. Those provisions of the United Nations Declaration which have a bearing on the treatment of prisoners, detainees and persons in police custody include articles 2, 3, 5, 6, 7, 8, 9 and 10. These read as follows:

"Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

"Article 3. Everyone has the right to life, liberty and security of person.

...

"Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

"Article 6. Everyone has the right to recognition everywhere as a person before the law.

"Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

"Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

"Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

"Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

The Government of South Africa abstained in the vote on the Universal Declaration.

51. In particular, the Group took into account the international standards embodied in the following instruments:

The Charter of the United Nations;

The Universal Declaration of Human Rights;

The International Convention on the Elimination of All Forms of Racial Discrimination;

The International Covenant on Economic, Social and Cultural Rights;

The International Covenant on Civil and Political Rights;

The relevant provisions of the four Geneva Conventions of 12 August 1949 (see E/CN.4/1020, paras. 40, 41, 45, 46);

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide (in particular, articles I, II, III and IV);

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

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

The International Convention on the Suppression and Punishment of the Crime of Apartheid;

The 1951 Convention relating to the Status of Refugees;

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

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

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

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

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

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

The UNESCO Convention against Discrimination in Education.

52. Without prejudice to other provisions, the Group bore in mind the following resolutions adopted by the General Assembly at its thirty-sixth and thirty-seventh sessions, as well as those adopted by the Security Council: resolution 36/172 A of 17 December 1981 relating to the situation in South Africa; resolution 36/172 B of 17 December 1981 dealing with the International Year of Mobilization for Sanctions against South Africa; resolution 36/172 C of 17 December 1981 concerning Acts of aggression by the apartheid regime against Angola and other independent African States; resolution 36/172 J of 17 December 1981 referring to political prisoners in South Africa, resolution 36/172 K of 17 December 1981 relating to the situation of women and children oppressed by apartheid; resolution 37/2 of 22 October 1982 concerning South Africa's application for credit from the International Monetary Fund; resolution 37/39 concerning adverse

consequences for the enjoyment of human rights of political, economic and other forms of assistance given to the racist and colonialist regime of South Africa; resolution 37/40 concerning the Implementation of the Programme for the Decade for Action to Combat Racism and Racial Discrimination; resolution 37/68 of 7 December 1982 referring to further appeal for clemency in favour of South African freedom fighters; resolution 37/69 A of 9 December 1982 concerning the situation in South Africa; resolution 37/69 B of 9 December 1982 relating to concerted international action for the elimination of apartheid; resolution 37/69 H of 9 December 1982 concerning investments in South Africa. The Group also paid special attention to the following resolutions adopted by the Security Council during the period reviewed by the report: resolution 503 (1982) of 9 April 1982 calling upon the South African authorities to commute the death sentences passed by the Supreme Court of Pretoria on three members of the African National Congress of South Africa; resolution 525 (1982) of 7 December 1982 referring to the consideration of the death sentences imposed by the Government of South Africa on six members of the African National Congress of South Africa.

53. In the following paragraphs, the Working Group sets out its report in accordance with the mandate contained in Commission on Human Rights resolutions 5 (XXXVII), 1982/8, 1982/9 and 1982/10. Chapters I and II contain information as received by the Working Group on the situation of human rights in South Africa and Namibia, Chapter III refers to the participation by the Working Group in international conferences on the problems of apartheid, and Chapter IV gives the evaluation of this information by the Working Group, together with certain recommendations.

I. SOUTH AFRICA

Introduction

54. The period within which the Ad Hoc Working Group of experts has examined the question of offences against human rights in the Republic of South Africa over the current year has once more been one of intensified repression in all the fields covered by this report.

55. A striking development has been a number of murders and assassinations of opponents of apartheid both within the Republic and beyond its borders. A terror campaign of bombings, border raids and other violent acts has been seen by observers as part of a South African strategy not only to demoralize South African opponents of apartheid but to "destabilize" independent African States on its borders. In its 1982 report (E/CN.4/1985, para. 20) the Group commented on the explosive growth of South African military spending and the increasing acts of military aggression against Angola and Mozambique. During the period under review these incursions have intensified and there have been raids into Zimbabwe, Angola (see chapter II on Namibia), Lesotho, Botswana and Mozambique. According to information received South African agents are believed to have been active in encouraging dissident movements in all these territories, in assassinations of political leaders in Zimbabwe, Lesotho and Mozambique,^{4/} and in an attempted coup d'etat in the Seychelles.^{5/}

56. Along with the increasing role of the military and security forces in advancing the "destabilization" strategy has gone a militarization of the instruments of Government themselves. According to information available to the Working Group, recent so-called constitutional reforms (see E/CN.4/1985, para. 22) were designed to distract attention from a process of centralization of effective power, including the emergence of the State Security Council (Members: the Prime Minister, Minister of Defence, Defence Chiefs, Minister of Police, Commissioner of Police, Minister of Justice, Minister of Foreign Affairs and the head of National Intelligence) as the major decision-making body.^{6/}

57. In the light of this concentration of power, the so-called constitutional proposal for three (white, Coloured and Asian) assemblies, a Council of Cabinets of ministers appointed from each assembly by the State President, and a President's Council, as already set up, appears as no more than cosmetic. Blacks have no role in the planned constitution; only the white parliament would have legislative power; and whites would have a built-in majority in the proposed electoral college to choose the State President.^{7/}

58. The South African Government has further made clear its readiness to ignore the rights of black citizens in its proposal to cede the KaNgwane "homeland" and the Ingwavuma area of kwaZulu, including 750,000 people, to Swaziland. The people involved have not been consulted (section G below). Information available to the Working Group indicates that the South African Government hopes both to secure

^{4/} The Guardian, London, 19 August 1982; United Nations Centre against Apartheid, "Southern Africa: The Time to Choose", Notes and Documents 11, 82.

^{5/} The Guardian, London, 29 July 1982.

^{6/} International Defence and Aid Fund, Briefing Paper No.3, November 1981.

^{7/} Ibid and the London Observer, 1 August 1982.

independent Swaziland's support against South African liberation movements and to gain diplomatic recognition of its "homelands" policy by the deal. Since KaNgwane has no economic resources and a per capita GDP of only R95 (£49) per year, compared with Swaziland's present per capita GDP of R550 (£280), Swaziland would face a severe economic problem which would compound its economic dependence on the Republic. 8/

59. The Group heard evidence of a striking rise in the number of deaths in detention (see section D), including deaths in detention in the so-called independent homelands, where the methods of interrogation and torture used by the South African security forces are being adopted, along with the South African security laws (sections C and G).

60. Testimony before the Working Group stressed the increased proportion of trade unionists among those detained without trial. Several witnesses pointed out that the black trade union movement is growing rapidly, and interpreted the detentions as "framing" trade union leaders in order to demoralize the movement (section I).

61. Another feature of the period under review has been the growing number of trials of anti-apartheid militants for treason. Nine men, tried in three separate trials, have been under sentence of death for treason during the year. Three had their sentences commuted following an international campaign, including a plea from the United Nations Security Council to save their lives; another three were sentenced to death in August 1982 (section A).

62. Having received additional information on the detention of children and their use as State witnesses, and testimony on the political, social and economic burden that apartheid imposes upon women, the Working Group has prepared a complementary report on this question which is contained in document E/CN.4/1983/37.

8/ New Statesman, 11 June 1982.

A. Capital punishment

1. Reference to some relevant laws

63. The laws in force providing for the death penalty have been described in previous reports of the Ad Hoc Working Group of Experts (see E/CN.4/1020, paras. 75-81 and E/CN.4/1111, paras. 40-43). Particular attention has been drawn to the "security laws" providing for the death penalty: the Sabotage Act (General Law Amendment Act No. 76 of 1962) and the Terrorism Act (No. 83 of 1967) (see E/CN.4/1135, para. 18 and E/CN.4/1111, paras. 42-43).

64. During the period under review, no new laws have been enacted which reduce or extend the circumstances under which the death penalty might apply in South Africa.

2. Summary of information and evidence received by the Ad Hoc Working Group of Experts

65. According to information available to the Working Group, 57 people were hanged in the first six months of 1981, and 39 were hanged in the second half of 1981. 9/

66. Of the 39 people hanged in the last six months of 1981, 2 were whites, 11 Coloureds and 26 blacks. All were male. They were sentenced for murder, murder and rape, murder and robbery with aggravating circumstances, housebreaking with intent to rob and robbery with aggravating circumstances. 10/

67. Further information contained in a report before the Group indicates that South Africa is a leading country in the world in judicial executions. In the previous three years executions averaged 130 annually and, in spite of a decrease in 1981, it seems unlikely that the death penalty will be abolished. The same report quotes from a book by Professor John Dugard, Human Rights and the South African Legal Order, published in 1978, that the racial factor cannot be divorced from the death penalty in South Africa: of the 2,740 persons executed between 1910 and 1975, less than 100 were white; no white had been hanged for the rape of a black; and only about six whites had been hanged for the murder of a black. 11/

68. A witness, Eldridge Katse (572nd meeting), speaking on behalf of the African National Congress, told the Working Group that over the past two decades more than 50 political prisoners had allegedly been found hanged by the apartheid regime. Another witness, Uriah Mokeba, also speaking for the African National Congress (582nd meeting), went on to argue that these sentences were in contravention of

9/ South African Institute of Race Relations, Survey of Race Relations 1981, p. 66; and House of Assembly Debates, 15 March 1982.

10/ House of Assembly Debates, 15 March 1982.

11/ Rand Daily Mail, 16 April 1982.

international law in terms of the Protocols Additional to the Geneva Conventions of 12 August 1949. In this connection, he appealed to the Group to act to enforce the Geneva Conventions on the treatment of captured freedom fighters, and in particular to save the lives of Tsotsobe, Shabangu and Moise, 12/ currently under sentence of death, and Mogoerane, Moscloli and Motaung, sentenced in August 1982. 13/

3. The case of the Pretoria Three

69. In its 1982 report (E/CN.4/1485, paras. 30-33, 60), the Working Group gave details of the trial and sentencing of nine members of the African National Congress on charges of high treason, attempted murder and terrorism, three of whom - Ncimbithi Lubisi, Petrus Mashigo and Naphtali Manana - were sentenced to death (see para. 150 (v) below).

70. An appeal against the death sentence failed in the Bloemfontein Appeal Court on 7 April 1982 and as a result an international campaign was launched to save the lives of the three men. On 9 April the United Nations Security Council adopted resolution 503 demanding that the death sentences be commuted and calling on all member States to act urgently to save their lives. 14/

71. In early June, the State President commuted the death sentences and the three men will serve life imprisonment. 15/

72. Witnesses, Ruth Mompoti, on behalf of the African National Congress (563rd meeting), Mike Terry (on behalf of the Anti-Apartheid Movement) (562nd meeting), and the representative of Amnesty International (565th meeting) all stressed the importance of international campaigns to save the lives of those sentenced to death. Mr. Terry pointed out that under Protocol 1 Additional to the Geneva Conventions captured guerrillas had the right to treatment as prisoners of war and that the General Assembly of the United Nations and the Organization of African Unity had recognized the right of national liberation movements to resort to all means, including armed struggle.

4. Sasol treason trial

73. In August 1981, Anthony Tsotsobe, Johannes Shabangu and David Moise were sentenced to death on charges of treason, following the Sasol II explosions and attacks on the Booyens police station in 1980 (see E/CN.4/1485, paras. 34, 60). According to Mr. Michael Terry (562nd meeting), their appeals against the death sentence were to be considered by the Supreme Court on 3 September 1982, (see para. 150 (vi) below).

12/ See para. 73 below.

13/ See para. 75 below.

14/ Focus No. 41, July-August 1982; Anti-Apartheid News, July-August 1982.

15/ Ibid.

74. In this connection, according to information before the Group, judgement was reserved in the appeal, during which counsel for the three argued that the trial judge had erred in finding that the three men had acted with common purpose and that he had failed to take into account the mitigating circumstances that Tsotsobe had aimed high to avoid loss of life, that Shabangu was under 21 when the offences were committed, and that Moise had not been involved in action which involved loss of life or injury. 15/

75. On 4 August 1982, three more members of the African National Congress - Thelle Mogoerane, Jerry Mosoldi and Marcus Motaung - were found guilty of high treason and were sentenced to death two days later (see para. 151 (i) below). 17/ Mr. Terry (562nd meeting) pointed especially to the case of Mogoerane, Mosoldi and Motaung, who had been charged with treason and murder - because they are alleged to have been involved in guerrilla attacks where South African police officers were killed. He asked the Working Group to follow with special care this apparently new policy of charging guerrilla fighters with murder. (See paras. 26-28 above).

76. In this connection, the General Assembly adopted, on 1 October 1982, resolution 37/1 entitled "Appeal for clemency in favour of South African freedom fighters" by which it called upon the South African authorities not to proceed with the execution of the three members of the African National Congress of South Africa, Thelle Simon Mogoerane, Jerry Semamo Mosoldi and Marcus Thabo Motaung, and to commute the death sentences as soon as possible. It also recommended that the Security Council should direct an appeal for clemency to the South African authorities not to proceed with the execution of the three above-mentioned members of ANC.

77. Lawyers acting for Mogoerane, Mosoldi and Motaung announced at the beginning of September that they would not appeal against the death sentence but would petition the President for clemency. 18/

16/ The Guardian, London, 4 September 1982.

17/ The Guardian, London, 5 August, 7 August 1982.

18/ The Guardian, London, 4 September 1982. Herald Tribune, 7-8 August 1982; Rand Daily Mail, 7 August 1982; Le Monde, 6-8 August 1982.

B. Other violations of the right to life

78. According to figures published by the International Defence and Aid Fund and available to the Working Group, the number of people shot and killed by police in South Africa between 1970 and 1979 (excluding the many hundreds killed during and after the 1976 uprisings) was 1,273 19.

79. A parliamentary question revealed that 353 persons were killed by the South African police "in the execution of their duties" in 1980 and 1981, categorized as follows: 20.

	Adults		Juveniles	
	1980	1981	1980	1981
Whites	2	2	-	-
Coloureds	27	23	8	4
Asian	-	-	-	-
Blacks	125	121	20	20

80. According to further information before the Group "at least" eight black mineworkers were shot dead by police in July 1982 during protests against inadequate pay increases in the Johannesburg goldmines. 21.

81. Written evidence submitted by a witness, Mike Terry (562nd meeting), drew the attention of the Working Group to the increasing use of assassination and political terrorism by South African "security" forces, not only inside but also outside South Africa. In this connection the document listed incidents involving kidnapping and murder of political leaders from across South Africa's borders since 1961, and increasing raids into seven neighbouring territories, notably Angola, Zimbabwe and Mozambique and Lesotho, over the past few years, the most recent resulting in the killing of Petrus Jabu Nzima in Swaziland in June 1982.

82. According to further information before the Working Group, on 17 August 1982 in Mozambique a parcel bomb assassinated Ruth First, the South African writer, academic and former editor of the resistance newspaper New Age. The Mozambican Government and the African National Congress placed responsibility for the murder at the door of "the South African secret services". 22.

83. The death of Ruth First was commemorated by the United Nations Special Committee against Apartheid at its 505th meeting on 19 August 1982, with a minute's silence and tributes from the Chairman and delegates. The Chairman laid responsibility for her death on the South African Government.

19/ Focus, No. 40, May-June 1982.

20/ House of Assembly Debates, 12 May 1982.

21/ Morning Star, 5 July 1982.

22/ The Guardian, London, 19 August 1982.

C. Treatment of political prisoners, detainees and captured freedom fighters

84. This section is devoted to a study concerning the treatment of persons while held in detention by virtue of the powers conferred on the police in accordance with the repressive legislation applicable in South Africa. The section deals with:

- (a) the treatment of detainees, (b) the treatment of political prisoners; and
- (c) recent political trials.

1. Reference to some relevant laws

85. In previous reports (in particular E/CN.4/1159, para. 50; E/CN.4/1187, paras. 30-32) the Ad Hoc Working Group of Experts has described legislation governing detention without trial, security legislation that makes a wide range of political acts punishable by law, and the laws governing the conditions of prisoners. The 1982 report of the Group (E/CN.4/1485, para. 41) summarized the conditions under which individuals may be held without trial, under three separate Acts: (i) pending the investigation of possible charges under security legislation; (ii) preventive detention of persons considered to "endanger the security of the State or the maintenance of public order"; and (iii) as potential State witnesses.

86. During the period under review, the Rabie Commission, set up in 1979 to review South Africa's security legislation, submitted its report, which was accepted by the Government as the basis for a new programme of security legislation. The Commission stated in its report that interrogation of detainees was the most important source of information about "subversive" activities, as well as an important source of evidence for trials. ^{23/} A new Act, the Internal Security Act No. 74 of 1982, has already been passed to implement some of its central recommendations, replacing portions or the whole of 29 previous laws, including the Internal Security (earlier the Suppression of Communism) Act, the Unlawful Organisations Act, the Terrorism Act, and section 2^o of the General Law Amendment Act of 1966. It is a "rationalizing" Act and retains without moderation all the previous laws' provisions for detention without trial.

87. In addition, administration of security legislation has been shifted from the Department of Justice to the Department of Police, renamed the Department of Law and Order, and security offences have been redefined in terms of terrorism, subversion and sabotage. Terrorism is defined as aiming to overthrow the State or bring about constitutional change by violent means; subversion covers the same aims but does not necessarily involve violence; and sabotage is defined as the destruction or damage of strategic buildings or installations. Assistance to anyone committing any of these offences is a further offence, which includes failure to report to the police any suspicion that someone else is committing any of these offences; and new legislation will create a new "crime" called "intimidation" and increase existing powers to deal with people who allegedly induce others to act against apartheid. ^{24/}

88. These laws are expected to be supplemented by further legislation, including a Protection of Information Bill and a Co-operation and Development Bill which, together with the Intimidation Bill, will further limit disclosure of information. ^{25/}

89. In addition to the above provisions under Republic Law for detention without trial, individuals in the so-called independent "homelands" may be detained under special laws and proclamations, notably the Transkei Public Security Act, the Ciskei Emergency Proclamation R252, the Venda Proclamation 276, and the Bophuthatswana Internal Security Act No. 22.

^{23/} Focus 40, May-June 1982.

^{24/} Ibid.

^{25/} Rand Daily Mail, 29 May 1982.

2. Summary of information and evidence received

90. A witness appearing on behalf of Amnesty International (565th meeting) concluded that "the potential for 'disappearances', a phenomenon previously associated with human rights violations in some parts of Latin America, now appeared to have increased" in South Africa, as a direct result of the rationalization and extension of powers recommended by the Rabie Commission, in particular the new powers related to the dissemination of information on arrests, detentions, political trials and security operations.

91. Another witness, Andrew McNulty (563rd meeting), a British barrister and human rights specialist sent by the British Council of Churches and the International Commission of Jurists to observe the trial of black pastors in Sibasa, Venda, in February 1982 (see paras. 104, 153 (i) and 257 below), described the provisions for detention without trial in the new legislation as in direct violation of articles of the International Covenant on Civil and Political Rights. He cited particularly sections 28 and 29 of the new Internal Security Act (formerly section 6 of the Terrorism Act) as contravening article 9, paras. 3 and 4, of the International Covenant on Civil and Political Rights.

92. South Africa's security laws, especially the provisions for detention without trial, have also been under attack from the legal profession in South Africa, according to information before the Working Group. Press reports indicate dissatisfaction among lawyers that the report of a committee of the Association of Law Societies submitted to the Minister of Justice in 1979 has never been published and indeed has been banned from publication by the Government. It is believed in South Africa that the committee's report called for a warrant from a judge of the supreme court before a person could be detained without trial and for protection for detainees in the form of access by attorneys, relatives and friends as well as regular medical examinations. None of these recommendations, except that calling for medical examination, has been made by the Rabie Commission. 26/

93. According to information contained in the annual report of the Department of Justice and available to the Working Group, the daily average of people in South African prisons has once more risen over the past two years and reached a record 104,622 in February 1981. The report published during the period under review, showed that only 75,576 of these prisoners could be accommodated according to international standards. It also noted that 2,477 babies had been admitted to, or born in, prison between July 1980 and June 1981. 27/

94. According to further testimony available to the Working Group, over 50 per cent of all the people detained in 1981 were detained in the so-called "homelands". Of a total 772 detentions in 1981, 393 were in the "homelands": 59 in Transkei, 318 in Ciskei, 15 in Venda and one in Bophuthatswana. 28/

(a) Treatment of detainees

95. Written testimony submitted by Ruth Mompoti (563rd meeting) indicated that during 1981, 622 persons had been detained under security laws. Of these, according to the Detainees Parents Support Committee, 306 were trade unionists and workers, 80 students and academics, 61 scholars and teachers, 18 community workers, 10 clergymen, seven journalists, 117 "other", and 85 of "unknown" occupation.

26/ Sunday Express, London, 14 February 1982.

27/ Rand Daily Mail, 6 May 1982; Star, Johannesburg, 8 May 1982.

28/ Star, Johannesburg, 29 May 1982.

96. According to figures released by the South African Institute of Race Relations, 190 persons were currently in detention in May 1982. 29/
97. According to further information available to the Working Group, 25 boys under the age of 18 were detained under the Internal Security Act during the first six months of 1981; 30/ and 22 boys and two girls under the security laws during the second six months, only six of whom were charged and none convicted. 31/
98. In July 1982, lawyers acting for 15 Kimberley schoolboys brought an unsuccessful application before the supreme court for their release. They were believed to have been held illegally as State witnesses in a long-drawn out "terrorism" trial arising from the unrest in Galeshewe, Kimberley, during the schools boycott of 1980/81. They had been detained for 13 months. 32/

Torture

99. Arising out of a renewed spate of deaths in detention during the period under review (see section D), a Detainees Parents Support Committee (DPSC) was formed by relatives of detainees. In June 1982, the DPSC submitted a memorandum to the Ministers of Justice and of Law and order charging that there had been a "systematic application of torture and assault by members of the security police upon people detained under security legislation", and listing sleep, food and drink deprivation, electric shocks, hooding, physical assaults and enforced standing for long periods of time among the methods used: 33/

- (a) Continuous Interrogation: Interrogation over a period of several days and nights by successive teams of interrogators. This naturally involves sleep deprivation and can also involve deprivation of food and drink and even toilet facilities;
- (b) Enforced Standing: Standing for long periods during interrogation, including standing on bricks, standing on one leg, standing in an unsupported squatting position;
- (c) Humiliation and Intimidation: By being stripped naked during interrogation, handcuffing and manacling, shouting, threatening, insulting and being forced to exercise vigorously; also holding for long periods in solitary confinement without interrogating;
- (d) Physical Assault including assault with fists and with various objects;
- (e) Psychological Assault: Includes false reports of death or illness of dear ones, threat of being held in detention indefinitely and of course solitary confinement itself;

29/ Focus 41, July-August 1982; Star, 22 May 1982.

30/ Focus 37, November-December 1981, quoting Cape Times, 8/8/1981.

31/ House of Assembly Debates, 24 March 1982.

32/ Rand Daily Mail, 27 July 1982.

33/ Cape Times, 3 June 1982, International Herald Tribune, 1 October 1982; The Times, 1 October 1982.

(f) Electric Shock: The equipment for electric shock is available at many security police interrogation centres and is in common use. It is also used in conjunction with "straitjackets" of wet canvas;

(g) Hooding: Used to induce near suffocation, and also to hide the identity of security police engaged in assaulting the detainee;

(h) Other Tortures: Include hanging from the arms or legs for long periods, alternate immersion of feet in hot and icy water, and subjection to extreme noise. The Memorandum from DPSC further stated that "DPSC wishes to have a clear statement from the Ministers as to which of the above practices are sanctioned by them." 34/

100. According to information available to the Working Group, the members of the Detainees Parents Support Committee have suffered from considerable harassment as a result of its attempt to break the silence surrounding South African detainees. This includes threatening telephone calls, smashed windows, damaged cars, public assaults and suspicions of police surveillance. 35/

101. According to further information available to the Group, the Detainees Parents Support Committee submitted a second report to the Government later in the year, based on statements by 70 former detainees. The report alleged 22 cases of electric shock torture, 14 of attacks on prisoners' genitals, 54 of beating, slapping and kicking, 25 of interrogation while naked, 20 of sleep deprivation and 28 of enforced standing for long periods and enforced physical exertion. It is pointed out that only a small proportion of the people assaulted or abused were convicted of any offence, and most were not even charged. 36/

102. Several witnesses drew the attention of the Working Group to the reintroduction into police interrogation methods of torture to death, a practice which appeared to have been suspended after the world-wide outcry at the death of Steve Biko in 1978. Three political detainees died in detention between February and July 1982 (see section D), and evidence of torture in several of these cases has been made available to the Working Group. Amnesty International submitted documentation on the case of Dr. Aggett, in which a fellow detainee offered the following description of what he saw: "I saw him being interrogated by approximately six persons. Some left, and three remained. He was standing all the time. Later, he was still standing, but he was naked. He was made to do push-ups - a substantial number. He was hit either with a belt or rolled-up newspaper while doing them. Then he had to get up and run on the spot, arms outstretched in front of him. Every so often he was made to lift his legs up high while running and all this was interspersed with more push-ups. All the while he was being interrogated the hitting with the newspaper went on ... especially if his arms sagged. He was sweating profusely and when once he nearly fell over a chair with exhaustion he was further harassed. When he got dressed after 12 o'clock, he was pushed around even then." The former detainee, Maurice Smithers, gave evidence to this effect at the inquest on Dr. Aggett, 37/ together with eight other former detainees, including Dr. Liz Floyd, the dead man's friend. 38/ The court heard that Dr. Aggett had lodged a complaint about torture, with a magistrate 10 days previous to his death, but that when the magistrate came to see him he was said to be "out of his cell" so not available to be seen. A further statement, made 14 hours before he died, alleged that he had been tortured,

34/ Quoted in written testimony handed in by Ruth Mompoti (563rd meeting).

35/ Sunday Express, 13 June 1982.

36/ The Times, London, 2 October 1982.

37/ Rand Daily Mail, 15 June 1982.

38/ Rand Daily Mail, 23 June 1982.

given shock treatment and assaulted. A constable admitted that a false entry had been made in the occurrence's book that his cell had been visited at 12.54 a.m. on the night of his death. 39/ Mr. George Bizos, counsel for the Aggett family, told the magistrate: "Complaining about ill-treatment does not help because the complaint is not properly investigated and is made known to the persons against whom the complaint is made. We have proof that this is done on a systematic basis." 40/ The inquest was adjourned until September. 41/

Torture in the "homelands"

103. An inquest on the case of Tshifilwa Muofhe, a preacher detained in Venda and found dead on a toilet seat in November 1981, was told that Mr. Muofhe had died of severe bruising and internal bleeding - he had lost more than a litre of blood, had severe injuries to scrotum and back, and also had head and kidney injuries. 42/ The inquest found that two security policemen, Captain Muthuphei Ramaliegela and Sergeant Phunula Mangaga, had beaten him to death. The Lutheran Dean of Venda, Simon Parisani, subsequently described his own torture at the hands of the same security police, from which, six weeks after his release, he was still suffering severe emotional shock, after heart failure had nearly led to his death. He described being forced to do exercises until he collapsed, being beaten until his eyes bled and his eardrums burst, being suffocated under a wet canvas hood and subjected to electric shocks to the head, spine and genitals until he lost consciousness. "They went berserk", the Dean said, "they punched, kicked and hit me with everything they could lay their hands on, even the chairs ... (they said) 'Nobody comes out of here alive unless he tells us what we want to hear.'" 43/

104. A witness, Anthony McNulty (563rd meeting), in his written testimony on the trial in Sibasa, Venda, of the Reverend M.P. Phaswane, the Reverend N.P. Phosiwa and others on charges of murder, attempted murder and offences under the Terrorism Act, reported complaints by the Reverend Phaswane that while in detention he had received injuries to his shoulders, neck, fingers and genitals, and his hair had been pulled out in tufts.

105. An anonymous witness (570th meeting), a member of the Pan-Africanist Congress, described his detention in December 1978 in the Transkei. He said that "the detention policy of the Bantustans is the same as that of the South African authorities", and quoted the examples of Nimrod Molhele, involved in black community projects, arrested in December 1979 and deported to South Africa; Peter Honey, a journalist who had exposed the Transkei police, detained without trial; Tembile Magingxa, detained at the same time as himself and beaten so that he could hardly walk; and a number of members of the Transkei defence forces arrested for making "anti-Government" statements. He personally had been held until October 1979, had been on 43 days' hunger strike, and he was charged only after managing to smuggle a letter abroad. He was interrogated by South African security police, and believed that the Transkei Government had intended to hand him over to the South African authorities.

39/ Rand Daily Mail, 12 June 1982; Star, 24 July 1982.

40/ Rand Daily Mail, 12 June 1982.

41/ New York Times, 12 July 1982.

42/ The Guardian, London, 21 July 1982.

43/ The Observer, London, 25 July 1982.

106. The representative of Amnesty International (565th meeting) expressed his opinion that torture continues to be used on a systematic basis by the security police. He quoted several further examples of persons, details of whose torture were known to Amnesty International. Alex and Khosi Mbatha were detained, with their daughter of two years (later taken away by friends), in the early hours one morning in October 1981. Alex Mbatha was a church worker. He was hooded, punched, kicked and tortured with electric shocks. Khosi was separately tortured, became seriously ill either from a stroke or heart attack, and had to be hospitalized, apparently under strict conditions of secrecy imposed by the police. The Medical Association of South Africa (MASA) had made inquiries as to whether she had been visited by a magistrate, and been told that she had been visited on 23 February 1981 - i.e four months after her arrest - in spite of the fact that the Terrorism Act specifies that detainees should be visited once a fortnight.

Poisoning

107. Another case which Amnesty felt most disturbing was that of Sipile Mtemkulu, aged 19 or 20, who had been arrested in early 1981, held incommunicado and in solitary confinement until October and released without charge. He too needed urgent hospital treatment, and was diagnosed as suffering from thallium poisoning - a rare poisoning since thallium is usually used as a rat killer. "The evidence", according to the witness, "suggests that this poison was administered, probably deliberately, while he was detained in the sole custody of the security police". This is a new feature of detention, as far as witnesses before the Working Group are aware. An even more disturbing circumstance is that after Sipile Mtemkulu instituted civil action against the police for damages, he appears to have vanished. He was still suffering from poisoning and allegedly could hardly walk when he disappeared. 44/

108. Written evidence handed in by the African National Congress describes several cases of torture, including that of Joseph Cumbi, who told the court during his trial in 1981 under the Terrorism and Internal Security Acts that he was handcuffed, blindfolded with a wet cloth, and an elastic band was tied round his penis. He was hit, kicked and forced to do frog jumps. He lost consciousness, and when he came to was lying on the floor, wet from being splashed with his own urine. 45/

109. Mr. Jacob ("Jackie") Selebi (574th meeting), a student involved in the South African Students' Organization and the South African Students' Movement, described his detention and torture in September 1976. He was taken to John Vorster Square, where Major Cronwright told him he must have the "red carpet treatment", by which he meant that the floor of the "truth room" would be made red with blood. He was manacled by hands and feet, and beaten until he was prepared to say "That's me, baas" when Cronwright showed him a picture of a monkey. He was then told to write a statement, alone in a cell. The next interrogator, called Smit, put a gun to his head and he had to kneel in front of him. At one point he pulled the trigger, and the witness thought he had been shot. In fact the interrogator had removed the magazine, and stop laughing at him. That spell of interrogation lasted three weeks. Next they questioned him about the disappearance of the student leader Tsietsi Mashinini, and a man called de Lima took over, a Portuguese

44/ Star, 24 July 1982.

45/ African National Congress, Detention, Torture and Murder in Apartheid South Africa, London 1982.

from Mozambique who claimed to be a professional torturer and arrived with a syringe in one hand and a bible in the other. He was injected with a "truth serum", and they later showed him what they claimed was a tape recording of his replies, but refused to play it back to him. At one time he was made to kneel for 14 days while shifts of three interrogators at a time questioned him. Later he was tortured by electric shocks applied to his genitals, and his mouth was forced open with pliers while they threatened to pull his tongue out. Once he complained to a visiting magistrate, but this led only to further torture. During two further months of solitary confinement he developed abscesses and a doctor recommended hospitalization, but he was denied this and spent three further months in prison before being released, and rearrested 20 days later and held at Modder B for 10 months.

110. Mr. Andrew Mashaba (580th meeting) described his torture under interrogation in Pretoria in 1964, after his arrest by Brigadier van den Bergh. He was handcuffed throughout, and beaten by a Mr. Ferreira, in the presence of an African policeman, Simon Macheeni. He lost consciousness. The interrogator inserted a wooden stick to tighten the handcuffs so tightly that circulation of the blood was stopped, which was very painful. On the third day of interrogation, Ferreira kicked and punched him in front of another man called Koetzer. At one point he was questioned by Brigadier van den Bergh.

Psychological torture

111. Mr. Mike Terry (562nd meeting) was among those who drew the Group's special attention to a development which is beginning to emerge from information seeping out of South Africa - the use of psychological torture, or the deliberate and systematic inducing of mental breakdown during interrogation. Mr. Terry promised further information, to be compiled by the Anti-Apartheid Movement, but mentioned among others Thozamile Gqweta, President of the South African Allied Workers' Union, detained in November 1981 and admitted to mental hospital in February 1982. His brother, who visited him there, described him as "unrecognizable. He had severe head pains, had lost his memory, lost weight, seemed depressed, anxious and disorientated and at one stage started crying." 46/ This was Mr. Goweta's fifth period in detention. He is now on trial under the Terrorism Act (see para. 157 (iv) (2) below).

112. The African National Congress written testimony states that at least five people are known to have been admitted to mental hospital following torture.

113. According to further information available to the Working Group, after the death of Dr. Neil Aggett his friend Dr. Elizabeth Floyd, was taken from solitary confinement to a psychiatric hospital as an alleged "suicide risk" after his death. She was not allowed to attend his funeral, and her family had to get special police permission to tell her about the death and the funeral. Aggett and Floyd had not seen each other since their detention. Dr. Floyd was eventually released in March 1982. 47/

114. Mrs. Emma Mashinini, a trade union leader, was released after five months in detention. She collapsed while on a visit to Denmark after leaving South Africa, and was admitted to hospital where doctors analysed her case as "the worst they had seen" of the effects of solitary confinement and interrogation. 48/ Evidence of the breakdown of three other women under torture is described in paras. 122-126 below.

46/ Ibid.

47/ Daily News, Natal, 27 May 1982.

48/ Star, 24 July 1982.

115. In August 1982, a detained trade union organizer, Eric Mntonga, was admitted to a Johannesburg hospital after apparently taking an overdose of sleeping pills. 49/

116. Written testimony handed in by Amnesty International also described the situation of Pravin Gordhan, an executive member of the South African Indian Congress, arrested with 17 others (trade unionists, community workers and students) in November 1981, detained under the General Law Amendment Act and then the Terrorism Act, and transferred to hospital in March 1982, allegedly with "virus keratitis" (an eye infection), though the Minister of Law and Order admitted in parliament that he had also seen a psychiatrist. His wife was not informed of the move nor has she been allowed to visit him.

117. In a letter to the South African Medical Journal, the Dean of the Faculty of Medicine at the University of Cape Town warned that interrogation of persons in solitary confinement presented a high risk of injury and of severe psychological disturbance, and even the possibility of suicide. The medical profession, he said, should not "condone the practice of torture" and he called on the South African Medical Association, the South African Medical and Dental Council and the appropriate ministers to do everything in their powers to ensure in law the proper protection and health rights for persons held in South African jails. 50/

118. Mr. Steven Kitson (562nd meeting), who gave evidence about his own detention while on a visit from his home in London to see his father, David Kitson, serving a 20-year sentence in South Africa, described being continuously interrogated for 24 hours, being made to stand erect throughout, having his face slapped, being shaken. Cold water was thrown on him when he could no longer stay awake. He described the mental torture of continual threats - that they would pour boiling water on him, they would beat him up, keep him in jail even longer than his father. He was taken to a doctor, but since his interrogators were with him he could not make detailed complaints for fear of more reprisals. When he complained of being cold, tired and wet, the doctor said he ought to be used to this. He described the psychological effects of isolation as "horrendous".

119. The witness also described hearing the screams of black prisoners, apparently being savagely beaten - the screams of one man were finally "like those of a three-year-old child. It was one of the most horrifying sounds I have ever heard".

120. The witness also referred to the mysterious murder of his aunt in Johannesburg soon after he returned to London. She had no political involvement except that she arranged family visits for his father. The witness believes that his own arrest, his aunt's murder and the authorities' resistance to allowing his father the medical help he needs at present in jail may all be part of an attempt to break his father's spirit and kill him.

49/ The Guardian, London, 9 August 1982.

50/ Cape Times, 21 May 1982.

Assaults on women

121. In addition to the cases of Khosi Mbatha (para. 106) and Dr. Elizabeth Floyd (para. 113), the Working Group has received information on the torture under interrogation of other women. Barbara Hogan, a rural development worker, who had been under detention for nearly a year appeared in court in August 1982 charged with treason (para. 151 (iii) below). She described in court, in July, being beaten with fists and open hand on the head, face, ears and back by two officers during interrogation, and being threatened that they would "turn her into a vegetable". A medical witness, Dr. Norman Jacobson, told the court Ms. Hogan was "terrified" of the police who had assaulted her. that she was crying and distressed and appeared under mental strain. 51/ She had been interrogated for 24 hours continuously, refused permission to go to the toilet, and developed rectal fission. When she was taken to the doctor, she was told that she would be assaulted again if she told him she had been assaulted, and Pechloefn had said he "was not scared of being charged because the charges were always squashed". 52/ Prince said he "took delight in beating terrorists and communists, including women". 53/

122. Mrs. Grace Motaung (580th meeting), described being so severely tortured that she had to be taken to hospital with a fractured leg and twisted kneecap. She was beaten with a sjambok (hide whip), forced to stand for four hours by four white policemen; released; then rearrested and beaten again, chained, and then forced into a police van with dogs in it. She was beaten on the front of her skull with a gun until she was bleeding badly, and she and her companions were kicked. One youth had his hand twisted until he cried and passed urine. She was beaten again by white policemen in a cell full of water, and her legs collapsed with pain so they called an ambulance. In hospital she was chained to the bed. Back in jail she found blood on her cell wall. A fellow prisoner warned her not to drink the coffee as it was drugged. She was forced to strip naked in front of white policemen. She was released without charge, but rearrested in 1981, when she was forced to sit on a pillow connected to an electric plug by wires. "I sat there with pains running out of my ears." They beat her with bicycle chains and broke a finger on her left hand. As a result of the beatings she miscarried.

123. Another witness, Miss Zulena Sebolao who left South Africa in 1981 (580th meeting) was detained at Humansdorp for a month and nine days, and interrogated under threat of death. She was masked and handcuffed and driven into the country in a police car, where another police car met them. They covered her face again, laid her on a sack which they wrapped tightly round her, and tied electric wires to her toes. She felt as if "hundreds of needles were going up my body from my toes". They questioned her about her attempt to leave the country, some policemen asking questions, others laughing. They gagged her when she screamed with pain. A police doctor examined her next day and gave her an injection and some tablets. She developed "a nerve problem" as a result of which she spent nine days in hospital. Her mother was then allowed to see her, and her mother told the medical staff that she was a "completely changed person" who "seemed to have lost the normal sense". She was then allowed home, but after three days her whole body started trembling. The same witness was also arrested in December 1977 for her alleged part during the

51/ Sunday Express, London, 1 August 1982.

52/ Rand Daily Mail, 23 July 1982.

53/ Cape Times, 23 July 1982.

June 1976 uprising, and sentenced to 10 months. She described how another woman prisoner was set to spy on her and three of her comrades. During this period, she again found herself breaking down emotionally, as a result of which she was locked up and beaten by the staff, and one of her fingers was broken. She was left in a straitjacket, in isolation, then sentenced to 60 days' spare diet. During the following period she refused food and prison medical treatment, fearing that the prison doctor, Dr. Lange, might kill her "as he had killed Biko". Eventually, through the intervention of her mother and a lawyer, she was released on 7 December 1978.

124. The witness told the Group that many young women she knew had been subjected to sexual assault while in detention, but she had not herself been sexually assaulted.

125. A third witness, Miss Gladys Claire Mchapi who left South Africa on 23 April 1981 (577th meeting), told the Group that she had been arrested in her family home in November 1979, in the early hours of the morning, when about 20 policemen had surrounded the yard and started kicking doors and windows. She was taken to Protea police station outside Soweto and put in solitary confinement, in a black-painted cell with no light, and left there for a week. After two weeks she was taken for interrogation and asked to make a statement. When she refused she was made to stand on one foot and hold a brick high over her head with one hand. After "at least an hour" her interrogator, Treulieb, started questioning her again, and every time she refused to answer to his satisfaction hit her hard in the centre of her head with a wooden stick, making her dizzy. After a week of this, four policemen took over, making her stand tip-toed against a wall with her hands over her head. One of them jumped off his chair and squeezed her throat, promising her they would "use other means" to get her to tell the truth. They then tied her feet and handcuffed her, blindfolded her and made her lie on the freezing cold floor. She felt something attached to her knees, then "I felt something moving through my bones, as though my blood was freezing". She jumped and screamed, and the policemen began kicking her. They then tied her more tightly, with her tied feet at the back of her body "so that my whole body looked like an anchor or a bow", and gave her electric torture again. When she was too tired even to scream, Treulieb came in again and pushed his hand under her shirt and touched her breasts. She believes that only her repeated screams stopped him from further assaulting her. She asked for medical attention, but received none for two months. When she did see a doctor, he took a statement but did not bother to examine her, and handed the statement over to the police, who verbally abused her as a result. She was given some tablets by a prison doctor, but had very unpleasant reactions to them, and thought they were poisonous.

126. Ms. Mchapi claimed that several women political prisoners came out of prison pregnant by the police. She mentioned the names of two women, Esther Levitan and Rene Roux, who had been transferred to psychiatric wards within days of their detention.

127. A witness, Zolile Hamilton Kase (540th meeting), a chief representative of the Pan-Africanist Congress of Azania in the United Kingdom, told the Working Group about a 16-year-old girl, Pumza (name), detained by the Ciskei security police for her part in the student rebellion of 1976, in Mdantsane township, near East London. He said that she was brutally assaulted, and according to affidavits sworn by three young women detained with her, her head was swollen and she fainted. However, the affidavits of the three young women were contradicted by another witness, and the judge president of the Eastern Cape, Judge Cloete, refused their application for an injunction to restrain the security police from assaulting Pumza (name).

Trade unionists

128. Mr. Wiseman Khuzwayo (561st meeting), a former member of the South African Congress of Trade Unions (SACTU), stressed the increase in the number of trade unionists being detained during the period under review - at least 347 in 1981. He referred to the case of Dr. Neil Aggett (see paras. 102 and 164-169), and to the statement by his union, the African Food and Canning Workers' Union, refuting the suggestion by the police that his arrest and detention were for reasons of State security that had nothing to do with his trade union work.

129. According to further information available to the Group, a wave of arrests of trade unionists, including officials of the Motor Assembly and Component Workers Union and the General Workers Union, took place in Port Elizabeth in October 1981, following industrial disputes. Several officials of the South African Allied Workers Union were arrested in East London in August-September 1981. 54/ More arrests, of officials of the same unions, followed in November and December, including that of Thozamile Gqweta (para. 109) and Rita Ndzanga, organizing secretary of GAWU, whose husband had died in detention in 1977. 55/ In March 1982, three members of GAWU and the general secretary of the National Federation of Workers were detained. 56/ In June 1982, June Bonisile Norushe, acting national organizer of the African Food and Canning Workers' Union (the union of Neil Aggett and Oscar Mpetha (see para. 150 (iv))), was detained, with two SAAWU activists, in the Ciskei 'homeland'. They were released in July. 57/ Further details on arrest and detention of trade unionists appear in Section I below dealing with infringements of trade union rights.

Journalists

130. According to information available to the Working Group, a number of journalists have been detained in the period under review. In June 1982 four black journalists - Joe Thloloe, Quraish Patel, Vas Soni and Mathata Tsedu - were detained under section 22 of the General Law Amendment Act. 58/ They were subsequently held under section 29 of the new Internal Security Act of 1982. 59/ Joe Thloloe and Mathata Tsedu have both been previously banned and thus prevented from working as journalists. 60/

Detentions at funerals

131. A further feature of the period under review has been detentions of mourners at funerals of political figures. In June 1982, 250 people were reported to have been detained at the memorial service in Soweto for Joseph Mavi, former president of the Black Municipal Workers Union, killed in a motor car accident, and two ANC members,

54/ Focus 38, January-February 1982.

55/ Focus 39, March-April 1982.

56/ Focus 40, May-June 1982.

57/ Focus 42, September-October 1982; Citizen, 25 June 1982.

58/ Sowetan, 25 June 1982.

59/ Rand Daily Mail, 9 July 1982

60/ Star, 31 July 1982.

Petros and Jabu Nzima, killed by a bomb in Swaziland (see para. 81). Among those arrested were Dr. Nthato Motlana, Chairman of the Soweto Committee of 10, Albertina Sisulu, banned wife of Walter Sisulu, Ellen Khuzwayo, also of the Committee of 10, two trade union officials and a member of the Federation of South African Women. 61/

(b) Treatment of political prisoners

132. According to information available to the Working Group, 386 persons were serving sentences on Robben Island on 30 March 1982 for 'crimes against the State'; 62/ and 37 persons were serving life sentences in various prisons for 'crimes against the State'. 63/

133. Mr. Mike Terry (562nd meeting) expressed the Anti-Apartheid Movement's serious concern for long-term political prisoners in South Africa. He submitted a copy of a letter smuggled out of Robben Island by Govan Mbeki, serving a life sentence, alleging that, in spite of a statement by the prison authorities in 1981 that prisoners would be free from 1982 to study "at any level", he had been refused permission to take a postgraduate degree, the Commissioner of Prisons informing him that only prisoners with two years or less still to serve may study for postgraduate degrees. 64/

134. According to further information available to the Working Group, hopes that political prisoners, especially those sentenced to life imprisonment, would be considered by a newly established Prisoners' Advisory Release Board were disappointed in July 1982, when it was made clear that the cases of political prisoners were excluded from the board. 65/ Sixteen political prisoners who had apparently been released before the end of their sentences were all found to be short-term prisoners, some of whom had only days or weeks still to serve. The Black Sash called the Government's apparent promise to consider political prisoners for parole "cheating and misleading". 66/

135. During the period under review, a number of prisoners on Robben Island have been transferred to other prisons in the Western Cape. Nelson Mandela, Walter Sisulu, Raymond Mhlaba and Andrew Mlangeni were moved in April and other prisoners are believed to have been transferred since. No reasons have been given for the transfers. 67/

136. According to further information available to the Group, five women political prisoners at Pretoria Central Prison were refused a supreme court order restraining the Minister of Prisons from keeping them in solitary confinement. They stated in affidavits that they had been kept in solitary confinement for "crimes" committed while in prison. Elizabeth Gumede's case was described as acute because she is over 60, suffers from hypertension and finds isolation "so claustrophobic she screams for long periods." 68/

61/ Rand Daily Mail, 14 and 15 June 1982.

62/ House of Assembly Debates, 21 April 1982.

63/ House of Assembly Debates, 31 March 1982.

64/ Southern Africa - The Imprisoned Society, 1982.

65/ Rand Daily Mail, 20 July 1982.

66/ Sunday Express, 11 July 1982.

67/ Rand Daily Mail, 23 June 1982.

68/ Sowetan, 29 January 1982.

137. Mr. Hamilton Kike (560th meeting) described his experience as a prisoner at Fort Glamorgan and on Robben Island. At the former he and his fellow prisoners, young members of the ANC, were brutally assaulted by the prison warders, on the instructions of Colonel Gemeenhuis. On Robben Island, similarly, the chief warder, Theron, assaulted them, and other warders, notably Piet Kleynhous, who urinated in the mouth of Johnson Mlambo while he was buried in sand. Dogs were set on the prisoners. Several prisoners, including Moutain Langben and Mqalu, died while in jail.

Leeuwkop Prison

138. David Pandeni Shikomba (579th meeting), a convicted Namibian prisoner (see chapter II on Namibia), gave the Group a detailed description of conditions at Leeuwkop. He had, on conviction, been sent first to Swakopmund prison in Namibia, then to Leeuwkop, preparatory to being sent to Robben Island. He described Leeuwkop as "a place where it is taboo to fulfil human rights", and he was kept in solitary confinement for six months there. There are four main sections of the prison: the main section; the isolation section; the segregation section; and the medium section. In all, the sections can be made to accommodate more than 9,000, most of them common law prisoners. In the isolation section are political prisoners, those being punished on spare diet, juveniles under 12 years old, and some prisoners who are being trained as agents to spy on other prisoners. The segregation section is used for those who have attempted to escape. And the medium section is for prisoners aged between 15 and 20 years.

139. The witness described the brutal treatment of prisoners at Leeuwkop. On one occasion he was in the exercise yard, and saw a long queue of prisoners waiting for food. The men were being beaten with batons by the warders, and had to thank the warder, "Thank you, my baas, as they were beaten. The witness described the death of two prisoners at Leeuwkop, apparently as a result of beatings (see section D, para. 175 below).

Robben Island

140. A document handed to the Working Group by the Amnesty International representative (565th meeting) 69 detailed the experience of Indres Naidoo on Robben Island. The book documents at length the authorities' attempts to break the spirit of the prisoners by deprivation, violence, by threats of death, humiliation and degradation. The book also names warders and security police guilty of particular cruelty towards prisoners (see section E).

141. Mr. David Shikomba (579th meeting) described conditions on Robben Island. He said that from Monday to Friday, including sometimes Saturday, prisoners worked from 8 a.m. to after 4 p.m. Work included digging stone and lime from the quarry and until this was abolished following protests from the International Red Cross, extracting stones from water near the sea. The lime quarry was 40-50 metres wide, 80 metres long and 10-15 metres deep, and work there was particularly hard, especially in hot weather and with the sun in their eyes. Work there was used as an "indirect" punishment. One warder actually made the men pull up the shrubs with their bare hands, so that there would be no shade.

69 Indres Naidoo, as told to Albie Sachs, Island in Chains: 10 Years on Robben Island by Prisoner 885,63, Penguin Books, 1982.

142. The witness claimed that 'more than three-quarters of' prisoners suffer from high blood pressure (hypertension) on Robben Island because of the high salt content of the food. He said that there are four visiting doctors attending the jail, and a prisoner who becomes ill may have to wait four weeks to see 'his' doctor. "These doctors are pro-Government and their behaviour is not in accordance with their oath to save human lives. Many prisoners got skin conditions and genital conditions from the excess of salt.

143. The witness also stated that study facilities were at the discretion of the authorities and always at the prisoner's expense. In addition, the authorities used ways of sabotaging studies, such as delaying answers to study applications or supply of study materials, or provoking an 'incident' so that the prisoner could be deprived of privileges. In particular prisoners were no longer allowed to do postgraduate study 'because they are becoming cleverer than the warders' (see para. 133).

144. Until 1977, according to the witness, all radio news broadcasts and newspapers were banned to the prisoners. Only after a visit of the International Red Cross were news broadcasts, prerecorded, played over the intercom system. Letters were censored, and prisoners might receive only an address, or nothing at all. If a prisoner died, the other prisoners were not allowed to inform his relatives. Even when visits were allowed, warders were present "frightening them". Ex-prisoners are prevented from exposing these conditions in South Africa by the Prisons Act.

145. Mr. Andrew Mashaba (580th meeting) confirmed that conditions improved on Robben Island after the visit of the International Red Cross in 1977. He was sentenced to 15 years, served mainly on Robben Island, in September 1964. He described arriving on the island in chairs, and being put naked into a cell, where he had to sleep with nothing but a mat and a blanket through an exceptionally cold winter. The political prisoners worked in teams, driven by a criminal prisoner, and the work was often too hard for them. Before the visit of the Red Cross, requests for medical treatment - when the prisoner did reach the doctor - were normally greeted with "Don't come and waste my time". Two doctors named were Dr. Andersten and Dr. van der Berghe. According to Mr. Mashaba medical treatment improved after the visit of the Red Cross.

146. Mr. David Pandeni Shikomba (579th meeting) drew the attention of the Working Group to the situation of five old men, still held on the island, who specially deserve release (see Chapter II on Namibia).

(c) Some recent political trials

147. In the period under review, according to information made available to the Working Group, there has been a significant increase in the number of political trials in South Africa. The number of trials involving trade unionists has risen dramatically and, according to the witness Wiseman Khuzwayo, in 1981 more than 1,200 workers were charged with offences arising out of disputes or trade union action. 70/ The number of cases involving charges of high treason has also increased. In the period under review, three new treason trials involving 11 individuals have been brought to the Working Group's attention (see para. 151 below).

70/ Focus 42, July-August 1982.

148. Increasingly, political trials have depended for convictions on admissions and statements made by defendants and State witnesses held for long periods in detention preceding trial. Coercion of defendants and State witnesses into making statements while in detention, with allegations of torture and assault, have also increased. In one recent Terrorism Act trial, 9 out of 21 witnesses refused to testify when brought to court and were sentenced to between 9 and 18 months' imprisonment. 71/ A number of witnesses have also been sentenced for perjury when they refused to corroborate statements made in detention (see para. 156) and others have admitted memorizing their statements.

149. At a number of major trials, demonstrations have continued to take place. In one case a court was cleared by police with teargas (see para. 151 (ii)). Legislation planned for later this year would prohibit demonstrations in the vicinity of courts. 72/

Trials referred to in previous reports

150. The Ad Hoc Working Group of Experts, in previous reports, drew attention to a number of trials of freedom fighters, trade unionists, youths and others. Developments in these cases are summarized below:

- (i) Mashilo and youth (E/CN.4/1485, para. 58 (v)). On appeal, convictions and sentences on Caiphus Mashilo and a 17-year-old youth were set aside after they had spent 249 days in prison. 73/
- (ii) Motlana and others (E/CN.4/1485, para. 58 (viii)). Dr. Ntando Motlana, Leonard Mosala and Tom Manthata, members of the Soweto Committee of Ten, were acquitted on all charges. The State failed to establish that the meeting they attended was of a 'political' nature. 74/
- (iii) Berger and Pillay (E/CN.4/1485, para. 58 (vi)). On appeal Guy Berger had his sentence effectively reduced from four years to two years, and Devandiren Pillay from two years to one year. 75/
- (iv) Oscar Mpetha and 18 others (E/CN.4/1485, para. 59 (i)). The trial of Oscar Mpetha and 18 others continues. There is growing concern over the 72-year-old trade union leader's health. He has been hospitalized on a number of occasions and has been excused further court appearances. He has undergone a number of operations, his sight is fading and, due to a vascular disease, he is now confined to a wheelchair. Despite his condition, he is still refused bail. 76/ Since resuming in February, following a two-month adjournment, much of the trial has been concerned with the admissibility of statements made by five of the

71/ Anti-Apartheid News, July-August 1982.

72/ Anti-Apartheid News, July-August 1982.

73/ Rand Daily Mail, 21 October 1981, Sovetan, 21 October 1981.

74/ Sovetan, 23 September 1981.

75/ Cape Times, 13 March 1982.

76/ Observer, 4 April 1982.

accused while in detention. 77' The statements made by two of the accused have been upheld as admissible by the judge. 78' Six of the accused made complaints to the police of assaults while in detention, but these were not brought to the defence counsel's attention until nine months after the trial began. 79'

A number of State witnesses have contradicted in court statements made to police while in detention. Witnesses have also made allegations of police intimidation and assault: 80'

(a) One key State witness, a youth, said that the statement he made while in detention was false. Another State witness told the court he would say anything to get out of detention;

(b) A 16-year-old State witness said she had been kicked, hit, beaten and not allowed to go to the toilet over a two-day period and had then given answers just to please her interrogators;

(c) Another 16-year-old State witness who had "identified" nine of the accused later gave evidence saying that she could not remember any of them being where she had claimed;

(d) A 17-year-old State witness denied all statements made to police while in detention;

(e) Another State witness was jailed for 15 months on charges of perjury. 81

The trial is expected to continue into 1983. 82'

- (v) Silverton Bank siege trial (E/CN.4/1485, para. 60 (i)). The appeals against the death sentence by Johnson, Libisi, Petrus Tsepo Mashigo and Naphtali Manara were dismissed in April. 83' A vigorous campaign was sustained both inside South Africa and internationally by South African church leaders headed by Bishop Tutu, and heads of the front line States - to save the three ANC members' lives. 84' The Security Council of the United Nations, by resolution 503 (1982) adopted on 9 April 1982 called on South Africa to commute the death sentences and the United States State Department, reaffirming its support for the resolution, pointed out that if the sentences were carried out it would be the first time in South Africa's history that anyone was executed for participation in an event in which no lives were lost. 85' The three sentences were commuted to life imprisonment

77' Cape Times, 10 February 1982; Work in Progress, April 1982.

78' Cape Times, 24 March 1982.

79' Sowetan, 10 December 1981.

80' SASPU National, November-December 1981.

81' Cape Times, 28 May 1982.

82' Anti-Apartheid News, July-August 1982.

83' Rand Daily Mail, 8 April 1982.

84' Sowetan, 12 May 1982.

85' Sowetan, 24 May 1982.

in June 1982. 86/ There was some speculation in the South African press that effective pressure had been brought to bear by the plea for clemency from President Rene of the Seychelles, where four South African mercenaries faced possible death sentences. 87/ (See also paras. 69-72 above.)

- (vi) "SASOL Three" trial (E/CN.4/1485, para. 60 (ii)). Anthony Tsotsobe, Johannes Shabangu and David Noise, sentenced to death for "treason", had judgement reserved in their appeal against sentence. 88/ (See also paras. 73-74 above.)

(d) Treason Trials

151. Three treason trials have been conducted during the period under review. As noted in earlier reports of the Working Group (E/CN.4/1365, paras. 72 and 74, and E/CN.4/1429, para. 112) charges of high treason were reintroduced in political cases for the first time since 1961 in the Pietermaritzburg treason trial. Since then the number of treason trials has increased (E/CN.4/1429, para. 112, and E/CN.4/1429, para. 60). The Group has further noted that in one case two alleged ANC members face treason charges where no engagement in military or violent activity has been alleged (see (iii) below). The Working Group is also gravely concerned over the six ANC freedom fighters presently facing the death sentence (see paras. 150 (vi) and 151 (i)). Current treason cases are summarized below:

- (i) Mogoerane, Mosololi and Motaung: According to various elements of information, Mr. Thelle Mogoerane, aged 25, Jerry Mosololi, 25, and Marcus Motaung, 27, were found guilty of high treason and sentenced to death for attacks on three police stations and the killing of four policemen. They were also found guilty of murder, attempted murder and sabotage. The State's case relied on the evidence of the defendants and on 135 witnesses. 89/ Lawyers acting for the three said they would petition the President for clemency. 90/ Mogoerane said of his return to South Africa after receiving military training in Angola: "I regarded myself as a soldier fighting for the freedom of my people". 91/
- (ii) Maquabela, Maqutyana and Gaba. Three ANC members were sentenced to 20 years each on charges including high treason, terrorism, sabotage, attempted murder and malicious injury to property on a total of 57 counts, following seven bombings around Durban in 1981. According to information available, Mr. Maquabela who was arrested in 1981 has been indicted under section 22 of the General Law Amendment Act. 92/

86/ The Guardian, London, 4 June 1982.

87/ Rand Daily Mail, 15 April 1982.

88/ The Guardian, London, 4 September 1982.

89/ Le Monde, 8-9 August 1982.

90/ The Guardian, 4 September 1982; Sowetan, 15 July 1982.

91/ The Guardian, 7 August 1982.

92/ The Guardian, 8 September 1982; Daily News, 28 April 1982.

(iii) Hogan and Mayson. Two ex-detainees, Barbara Hogan and Cedric Mayson, were charged with high treason and alternative charges under the Terrorism Act. 95/ They had previously appeared together with three SAAWU leaders (see para. 339) and were to have been tried under the Terrorism Act. 94/ Among the major charges against Ms. Hogan were that she joined the ANC, learnt a secret code and helped convey information to the ANC high command in London. Among the charges against Mr. Mayson were that he had talks at various times with ANC officials and with the commander of Umkhonto we Sizwe in London, that he aided the escape of several people from South Africa and that he received and distributed ANC literature and tapes. 95/ A third ex-detainee, Alan Fine, with whom they had been previously charged, was committed to trial separately under the Terrorism Act. He was charged with furthering the aims of SACTU and the ANC. 96/

(e) Other major security trials

152. (i) Adam and Themba. Robert Adam and Mandla Themba, a photo-journalist, were sentenced to 10 and 5 years respectively for "conspiring" to destroy a TV tower and overthrow "law and order" in South Africa. According to the State's evidence, Adam had written a report on the vulnerability of the tower and Themba had taken photographs. They sang with spectators as they were led from the court after sentencing. 97/
- (ii) Monty Mzinyathi. Monty Mzinyathi was freed after serving 18 months of a seven-year sentence on Robben Island, for allegedly having left the country in 1977 to undergo military training in the Soviet Union. On appeal, the Pretoria supreme court found that there had been "a miscarriage of justice" because the trial judge had refused to allow evidence on commission from high-ranking officials in Lesotho where Mzinyathi maintained he had been during the period in question. 98/

(f) "Homelands" security trials

153. During the period under review a number of important trials have taken place under the 'homelands' security legislation. Some of these are summarized below:

- (i) Duma and others. In the first trial under the Ciskei Terrorism Act, inherited from South Africa on 'independence', four men - William Mabone Duma, Dumisani Malingwa, Bayi Keye and Luyanda Mayekiso - were alleged to have been active members of the ANC. In an independent medical report, Dr. I.D. Huskinson said Keye had told him that during his two months of interrogation he had been hit with fists and kicked in the head. Following this he could not see out of his right eye. 99/

93/ Cape Times, 15 June 1982.

94/ Focus 41, July-August 1982.

95/ Cape Times, 15 June 1982.

96/ Ibid.

97/ Rand Daily Mail, 2 June 1982; Star, 25 March 1982.

98/ Sowetan, 21 May 1982.

99/ Work in Progress, April 1982.

The defence was stopped by the trial judge from questioning one State witness about the fact that the investigating officer was escorting the witness to and from court. 100/

- (ii) Two Lutheran priests. In Venda, where the South African Terrorism Act still remains in force, two Lutheran priests and a third man, John Ravele, were charged with murder, attempted murder and participation in terrorist activities following a grenade attack on Sibasa police station in October 1981. Two policemen died in the attack. 101/

Mr. Ravele was found guilty of participating in terrorist activities by aiding those responsible to escape. He was sentenced to five years' imprisonment. 102/ A month later the main charges against the priests, the Reverend N.P. Phaswana and the Reverend M.P. Phosiwa, were dropped. However, the Reverend Phosiwa was sentenced to two years in prison, suspended, for assisting "terrorists". 103/

Twenty-one church members had been held in detention following the attack, one of whom died in custody (see para. 170). The Reverend A.M. Mahamba, who is crippled, and the Dean of the Lutheran Church in Venda were held in detention throughout the trial as prospective State witnesses. The Dean told the Sunday Times that he was admitted to hospital three times as a result of assaults and the conditions of his detention. 104/ The Reverend Phosiwa's lawyer asked the court to note a number of injuries received in detention. These included scars on his head where tufts of hair had been pulled out, a mark over his right eye resulting from a punch, and marks on his wrists. The Reverend Phosiwa said also that he had been tortured with electric shocks to his genitals and had had a wet cloth tied around his head during interrogation. 105/ (See also paras. 104 and 257.)

- (iii) Marwane appeal. Wilfred Marwane's appeal has been described as "historic" in the South African press. 106/ Marwane was found guilty under the Bophuthatswana Terrorism Act and sentenced to 15 years' imprisonment

100/ Daily Despatch, 18 May 1982.

101/ Star, 2 June 1982.

102/ Star, 5 May 1982.

103/ Star, 2 June 1982.

104/ Sunday Times, 6 June 1982.

105/ Rand Daily Mail, 11 February 1982.

106/ Sowetan, 19 November 1981, Cape Times, 22 May 1982.

by the Bophuthatswana Supreme Court in 1979. He appealed on the grounds that the Terrorism Act then in force was in contravention of Bophuthatswana's Constitution, which includes a declaration of human rights. Among the fundamental rights he claimed were infringed were the right to be presumed innocent until proved guilty; the right to be informed promptly, and in detail, of charges to be faced; the right not to be subjected to torture or degrading treatment or punishment; and the right, after arrest or detention, to a trial within a reasonable time, or release pending trial. 107/ Marwane's case was heard in the South African court of appeal which acts as the highest court of appeal for the "independent homelands", by a full bench of 11 judges. The court upheld the grounds of his appeal and set aside conviction and sentence on the main charge. 108/ This was only the third time a full bench of the court had been convened. The decision coincided with the passage through parliament of the Internal Security Act (see para. 86) which was designated to replace the Terrorism Act. A number of South African legal experts were quoted in the South African press saying that the decision struck at the core of "anti-terrorist" legislation. Professor John Dugard, Director of the Centre of Applied Studies at the University of Witwatersrand, told the Star newspaper that the Terrorism Act and the main provisions of the Internal Security Act "have now been condemned as contrary to civilized standards". 109/

(g) Students and Youth

154. In the period under review, a large number of cases involving students and youths have taken place. The age of some of the accused and the severity of the sentences they receive continues to be of concern to the Working Group. In one case a 15-year-old youth was sentenced to five years' imprisonment following the burning down of a school (see subpara. (i) below). Another 15-year-old was found guilty of public violence following an incident when he was shot in a crowd. He said that he had been assaulted and stood on by policemen while lying wounded on the ground. A doctor confirmed that he had sustained a broken collar bone, a fractured thigh, as well as numerous shot wounds. 110/ In two other cases Terrorism Act charges have been brought against members of youth and student organizations (see subparas. (iii) and (iv) below). Other trials of youths and students involving public order offences are summarized in paragraph 155 below.

- (i) Four Mlungisi youths. Four youths from Mlungisi township, three aged 17 years and one aged 15, were found guilty of sabotage following the burning down of a primary school in 1980. They received sentences of five years each. In passing sentence the judge said he was applying the minimum sentence which left him no option but to send them to jail for that period. 111/

107/ Sowetan, 19 November 1981.

108/ Star, 22 May 1982.

109/ Star, 22 May 1982; Rand Daily Mail, 21 May 1982.

110/ Daily Despatch, 27 January 1982.

111/ Daily Despatch, 4 September 1982.

- (ii) 17-year old youth. A 17-year-old girl, who was unrepresented in court, was sentenced to six months' imprisonment for attempted arson, following a fire at a school. 112/
- iii) Seatlholo and Loate. Two members of the South African Revolutionary Youth Council, formed after the disbanding of the Soweto Students Representative Council, were found guilty under the Terrorism Act of furthering terrorist activities. Khotso Seatlholo was sentenced to 10 years and Masabata Loate to 5 years' imprisonment. According to the Sowetan, the judge in passing sentence said that SAYRCO had been aiming to increase the incidence of terrorist activities in the country, and though it was extremely difficult to punish people for matters like this one the court could not be construed as being in sympathy. 113/
- (iv) Sithole and others. George Sithole, Jabulani Ngcobo and Titi Aloicia Mthenyane were each given effective five-year jail terms under the Terrorism Act. 114/ They were found to have formed an organization called the African Youth Congress with the intention of furthering the aims of the ANC. They were also found guilty of "inciting" others to undergo military training, and of having conspired to commit acts of sabotage by gaining information on Caltex oil terminal. During the trial a psychiatrist examined Mthenyane, who had been in detention for a number of lengthy periods and had served an 18-month sentence for refusing to testify at another Terrorism Act trial. 115/
- (v) Greyling and three Wits students. Benjamin Greyling, 20, and three other University of Witwatersrand students were charged under the Internal Security Act. They were alleged to have made posters to commemorate the 60th anniversary of the South African Communist Party. During the trial Greyling said he had been interrogated naked, and assaulted on three occasions by a security policeman. He had been questioned all day and every day for a week, and then left in solitary confinement. 116/ Greyling had been held in custody since July 1981 and had earlier been acquitted on charges under the Official Secrets Act. 117/ Another defendant, Elaine Rose Mohamed, said a statement she had made under threat had been destroyed by security police. After two days of questioning, her interrogator had said: "You had better talk. It is sometimes more fun getting things out of women." 118/

112/ Cape Times, 31 March 1982.

113/ Sowetan, 12 March 1982.

114/ Cape Times, 9 July 1982.

115/ Work in Progress, 22 April 1982.

116/ Rand Daily Mail, 2 March 1982; Star, 2 March 1982.

117/ Star, 2 March 1982.

118/ Star, 3 March 1982.

(h) Protest and public order" trials

155. Some of the major trials involving charges arising out of demonstrations and protests are summarized below:

- (i) Rabie and others. The leader of the Transvaal Labour Party, Jac Rabie, and 24 others were charged with public violence following the Reiger Park riots in 1981. During the trial a policeman described how he shot and wounded five people. 119/ Defence counsel asked the judge to discharge 21 of the accused since, he said, several State witnesses had told deliberate lies, and three State witnesses had been discredited because they had contradicted other State evidence. 120/ According to information available, Mr. Jac Rabie has been acquitted in July 1982. 121/
- (ii) Three University of the North students received 18-month prison sentences, having been found guilty of public violence following an anti-Republic Day demonstration. At the demonstration, which the defence claimed had been non-violent, the police opened fire to disperse the crowd, wounding the three defendants. One of the defendants subsequently had to have his leg amputated at the ankle. 122/
- (iii) 1,500 Fort Hare students. In Ciskei, 1,500 Fort Hare students were fined R50 under the Riotous Assemblies Act. They were protesting over the detention of 22 students following a demonstration when the Ciskei's "president" attended the university's graduation ceremony. 123/
- (iv) 51 rent protesters. Fifty women and one man were arrested and charged under the Riotous Assemblies Act after delivering a petition about rents to the responsible council. On their appearance in court the State withdrew charges. 124/
- (i) Refusal to testify and perjury during trials

156. With the increasing reliance for convictions on statements made in detention, there has been an increase in the number of cases of witnesses refusing to testify. One magistrate was reported as saying that refusing to testify was as serious as an offence under the Terrorism Act. 125/

- (i) Thami Mazwai, news editor of the Sowetan, and four others were jailed for 18 months for refusing to testify in the trial of Khotso Seatlholo (see para. 154 (iii) above). They had been in detention for up to eight months before the trial started, and have been refused bail three times pending appeal. 126/

119/ Rand Daily Mail, 29 June 1982.

120/ Sowetan, 15 July 1982.

121/ Sowetan, 20 July 1982, Focus, No. 42, September/October 1982.

122/ Voice, 28 March 1982, 4 April 1982.

123/ SASPU National, Vol. 1, No. 2, June-July 1982.

124/ Sowetan, 24 March 1982.

125/ Rand Daily Mail, 14 November 1981.

126/ Sowetan, 4 March 1982, 26 April 1982.

(ii) In another case, five murder defendants were discharged when three State witnesses denied all knowledge of the facts in their statements which, they said, police had given to them already written out and told them to sign. The judge ordered them to be arrested and charged with perjury or contempt of court. 127,

(j) Trade unionists trials

157. According to information available to the Working Group, during the period under review most trials of trade unionists were on charges under the Riotous Assemblies Act. The most common charges were "intimidation", attending illegal gatherings, illegally striking and illegal fund-raising. The number of SAAWU trade unionists and workers in the Eastern Cape generally who have faced trial has been especially high following the large number of strikes in 1981 (see para. 324). Some of the more important trials are summarized below.

- (i) 52 post office workers in Port Elizabeth were tried on charges of intimidation under the Riotous Assemblies Act. The charges related to a strike by 180 workers in October 1981. All were fined and 76 were charged. Of the 52 tried, 16 received jail sentences or fines. The remaining 36 received suspended sentences or were acquitted. Eight men received one-year sentences. Many of the men were members of the General Workers Union of South Africa (GWUSA). 128/
- (ii) 177 bus drivers, convicted under the Riotous Assemblies Act, had their sentences set aside when the Transvaal Supreme Court decided that there had been irregularities in court procedure and that the original sentences were "draconian". The workers had been arrested after a wage negotiating dispute. They were tried almost immediately after arrest. All 177 were tried in six hours. They were given sentences of 18 months suspended for five years on condition that they return immediately to work. They had no access to legal representation, which the Supreme Court found to be "highly undesirable". 129/
- (iii) NAAWU. The National Automobile and Allied Workers Union lodged an appeal in Bophuthatswana against the conviction of three of its members under the Internal Security Act for holding an illegal meeting. A union spokesman said to the Rand Daily Mail that "Bophuthatswana has a bill of rights guaranteeing freedom of association. We shall see whether this freedom extends to unions". 130/ (See para. 153 (iii)).
- (iv) SAAWU trials. According to information available to the Working Group, members and leaders of the South African Allied Workers Union (SAAWU) in particular have faced harassment from the South African authorities. (See para. 339 below.) Summaries of trials involving SAAWU members brought to the Working Group's attention are given below:

127/ Rand Daily Mail, 17 February 1982.

128/ Star, 11 January 1982, 5 April 1982.

129/ Financial Mail, 11 September 1981.

130/ Rand Daily Mail, 13 January 1982.

(a) In June 1981 at least 33 Wilson Rowntree workers were arrested to face charges under the Riotous Assemblies Act, after attending the trial of a colleague, Danile Tokwe. 131/ In October charges were withdrawn and 24 SAAWU workers who had been held in detention for two months were released; 132/

(b) In three separate trials, eight SAAWU Wilson Rowntree workers were found not guilty of intimidation, incitement and malicious injury to property relating to the Wilson Rowntree strike; 133/

(c) Of 205 trade unionists arrested by Ciskei police in September 1981, 35 SAAWU members were found guilty of incitement to public violence, while 139 had charges against them withdrawn. Those found guilty were sentenced to nine months' imprisonment suspended for five years, and fined R100 each. The State alleged that the defendants had sung 'inflammatory' songs, given black power salutes and shouted "inflammatory" slogans while on a bus returning from a meeting. 134/ Two other East London SAAWU members were found not guilty of collecting contributions for an unregistered organization. 135/

(d) During the period under review, three SAAWU leaders - Sam Kikine, Thozamile Gqweta (President) and Sisa Njikelana (Vice President) - were charged under the Terrorism Act. They appeared together with Barbara Hogan and Cedric Mayson, who were later charged with treason (see para. 151 (iii) above). 136/ Charges against Mr. Kikine were withdrawn but he was immediately rearrested. The other two leaders have had their cases transferred twice, but no details of the charges against them have been made available. 137/

131/ Rand Daily Mail, 12 June 1982.

132/ Star, 17 October 1981.

133/ Daily Despatch, 24 June 1981, 11 December 1981, 16 January 1982.

134/ Daily Despatch, 19, 20 and 26 February 1982.

135/ Daily Despatch, 19 February 1982.

136/ Cape Times, 15 June 1982.

137/ Rand Daily Mail, 1 July 1982; Sowetan, 2 July 1982.

D. Deaths of detainees

158. In previous reports the Ad Hoc Working Group of Experts has reviewed and analysed deaths in detention between 1953 and 1977 (E/CN.4/1270, paras. 112-122, and E/CN.4/1366).

159. Several witnesses drew the Group's attention to a new spate of deaths in detention during 1982. The deaths of Dr. Neil Aggett at John Vorster Square; Tshifilwa Muofhe in Venda; Ernest Dipale in Johannesburg; and Manana Mzoweto in the Transkei all took place during the period under review. The witness from Amnesty International related the deaths to the strategy of the South African police of obtaining convictions on the basis of "confession" statements, which has now become standard in the South African courts following relaxations in rules of evidence and procedure over the past years. He quoted Colonel Goosen of the South African police on the case of Steve Biko: "We don't work under statute."

160. In its two most recent reports (E/CN.4/1429, para. 116, and E/CN.4/1485, para. 62), the Working Group described the investigations carried out by the South African Medical Council and the Medical Association of South Africa into the death in detention of Steve Biko in 1977.

161. A new demand to the South African Medical and Dental Council (SAMDC) has been made in the period under review for a fresh inquiry into the treatment of Steve Biko before his death. The four doctors referred to are Dr. R.J. Keeley, who was consulted by two other doctors in the case and gave advice without seeing Mr. Biko, Drs. Benjamin Tucker, Ivor Lang and Colin Hersch. No reply has yet been received from the Council. 138/

162. According to information before the Group, fresh evidence, which cannot be publicly disclosed "for fear of reprisals against people still living in South Africa", has come to light about the murder in detention of Steve Biko. In a newspaper report, Mr. Donald Woods, exiled former editor of the Daily Despatch, challenged the South African Government to prosecute Captain D. Siebert and Lieutenant W. Wilken for the murder, or culpable homicide, of Steve Biko. He said that enough evidence was on record from the inquest to identify these two as the main suspects and that "a proper investigation would yield more than enough evidence" to warrant such a prosecution. 139/

163. During the period under review, the promotion of the former head of the Port Elizabeth Security Police, Colonel Pieter Goosen, to the rank of brigadier and deputy commissioner of police, "drew sharp reaction from black leaders". Col. Goosen was closely involved in the interrogation of Steve Biko and his promotion was described as "distressing" by AZAPO and "odd" by the chairman of the Soweto Committee of Ten. 140/

138/ Rand Daily Mail, 24 June 1982.

139/ The Observer, 12 September 1982.

140/ Sowetan, 19 February 1982.

164. On 5 February 1982, Dr. Neil Aggett, Transvaal Secretary of the South African Food and Canning Workers Union, was found hanged in his cell, the 55th detainee to have "died in detention" since 1953. He was the first white to die in detention, where he had been held under section six of the Terrorism Act since November 1981. 141/

165. The inquest into the death of Neil Aggett opened on 13 April 1982. Counsel for the deceased's family told the inquest that Dr. Aggett had died by "induced suicide" and referred to a statement made by Dr. Aggett in which he said he had been assaulted and given electric shocks. Counsel also referred to a statement by a former detainee whom he might wish to call as a witness, and to the fact that he had been refused permission by the authorities to inspect the interrogation cells at John Vorster Square. The former detainee had been served with a two-year banning order on leaving the court, and counsel had reapplied for permission to see the interrogation rooms. Counsel for the police had objected to Dr. Aggett's statement being read out in court but the magistrate ruled that it could be referred to. The inquest was suspended until 1 June to allow government lawyers to appeal against this ruling. 142/

166. At the resumed inquest, the court heard that the inspector of detainees was unable to see Dr. Aggett because "he was not in his cell", and that a false entry had been made in the occurrences book that Dr. Aggett had been visited 54 minutes before he was found dead. 143/ The prison commander told the court that Dr. Aggett had never complained to him about his treatment. 144/ The magistrate ruled that Dr. Aggett's statement could be used in the proceedings, but not as a sworn statement. He also warned those present not to interfere with witnesses, following an incident in which a member of the security police had been seen to shake his head at a witness. 145/

167. The former detainee referred to above, Maurice Smithers, gave evidence at the inquest that he had seen, through a frosted glass window, Dr. Aggett being beaten with a rolled up newspaper while doing "a substantial number" of push-ups (see para. 102 above). Mr. Smithers had smuggled a note out of the prison to Mrs. Helen Suzman in which he detailed what he had seen. 146/

168. Eight former detainees were to give evidence at the inquest, and 13 affidavits by co-detainees of Dr. Aggett were submitted by counsel. 147/

169. In July the inquest was postponed to September following a request to the magistrate by Major Cronwright, head of interrogation at John Vorster Square, that statements made by Dr. Aggett be withheld because they would link "a very respected person" present in court with the South African Communist Party. 148/

141/ Daily Telegraph, 12 February 1982, SACTU, Press Release, Feb. 1982.

142/ Guardian, 14 April 1982.

143/ Rand Daily Mail, 10 June 1982.

144/ Citizen, 11 June 1982; Rand Daily Mail, 11 June 1982.

145/ Citizen, 15 June 1982; Rand Daily Mail, 12 June 1982.

146/ Rand Daily Mail, 15 June 1982.

147/ Rand Daily Mail, 23 June 1982.

148/ Financial Mail, July 1982; The Citizen, 29 June 1982; Rand Daily Mail, 30 June 1982.

170. According to information before the Working Group, Mr. Tshifitwa Muofhe, a Lutheran lay preacher, died in security police detention in the Venda bantustan in November 1981, after being assaulted by a police captain and sergeant. Medical reports showed that Mr. Muofhe had died from severe bruising and internal bleeding: he had also suffered head and kidney injuries. Mr. Muofhe was one of several churchmen and others detained following an attack on Sibasa police station in August 1981 in which two policemen were killed. 149/ (See also paras. 103 and 153 (ii) above, and 257 below).

171. A detainee, Mr. Ernest Dipale, held under the Internal Security Act was "found hanging in his cell" just three days after his arrest on Thursday, 5 August 1982. According to the acting police commissioner, Ernest Dipale was found hanged by a strip of blanket at Johannesburg Police headquarters. 150/

172. Speaking to the Ten for Ten Dependents Association on 6 August, the Minister of Police, Mr. Louis le Grange, defended South Africa's detention practices, saying: "I don't think you will obtain much information from a man held in a five-star hotel." At the same time he described Dr. Aggett's death in detention as "unfortunate". 151/

173. The opposition spokesman on justice, Mr. Ray Swart, called for an urgent inquiry into all aspects of security detention following Mr. Dipale's death. 152/

174. As a result of the "political demonstrations" surrounding the funeral of Dr. Aggett, at which the ANC flag was hoisted over his coffin and a five-mile procession of thousands of mourners followed it through the streets of Johannesburg, the Internal Security Act was amended to forbid the declaration of support for any political organization, to prohibit the carrying of posters or banners and distribution of pamphlets, barring pedestrians from the funeral procession and ordering that the procession follow a predefined route. These restrictions and the presence of security police to enforce them inhibited the mourners at Mr. Dipale's funeral from giving him a hero's burial. White journalists at the funeral had their permits allowing them to enter Soweta confiscated, and were forced to leave. 153/

175. According to the testimony of Mr. David Pandeni Snkombo (579th meeting), a Namibian prisoner who spent some time in Leeuwkop jail in South Africa (see paras. 138 and 139 above), described the deaths of two prisoners while he was there. One night he heard a man crying "I can't sleep, I can't stand up!" Later he heard a warder ask what was wrong, and the man said "You have beaten me up", which the warder denied, and told the prisoner to wait until morning, saying he was not going to die that night. Early in the morning he was taken to the local clinic, then brought back to his cell and told to die. "He died while they joked", the witness said. He understood that the prisoner had been beaten up after an attempt to escape, and his intestines were damaged. However, the inquest concluded that he died of natural causes. The man's name was Rufus Mak... On the occasion, the witness saw a dead man in cell 22, as he passed. It was alleged that the man had committed suicide.

176. Another witness, Mr. Jacob Selebi (574th meeting), told the Group that during his detention in 1976 he had been in the next cell to Jacob Mashabane, from whom he had received considerable support. Mashabane had then been taken for interrogation, and found hanged in his cell next morning. The witness maintained that Mashabane could not have committed suicide and that there had been a pact between them not to break down.

149/ The Guardian, London, 21 July 1982.

150/ The Guardian, London, 9 August 1982.

151/ The Guardian, London, 10 August 1982.

152/ Ibid.

153/ The Guardian, London, 16 August 1982.

E. Alleged responsibility of security police forces:
list of persons implicated in cases of torture

177. In a special report submitted to the Commission on Human Rights at its thirty-seventh session in 1981 (E/CN.4/1366), the Ad Hoc Working Group of Experts examined the alleged responsibility of members of the security forces in cases of murder, torture and deprivation of liberty and fundamental rights in South Africa. The report listed 37 cases, and named specific police officers identified as being suspected of having been guilty of the crime of apartheid in accordance with articles II and III of the International Convention on the Suppression and Punishment of the Crime of Apartheid. Further evidence and names of additional persons implicated in the crime of apartheid were published in the Group's 1982 report (E/CN.4/1485, para. 65).

178. During the period under review, the Working Group heard a great deal of evidence from new witnesses alleging torture during interrogation and transgression of fundamental human rights. A number of these witnesses once more named individuals involved in torture and violations of fundamental rights.

179. The representative of Amnesty International (565th meeting) named Major Arthur Cronwright (E/CN.4/1366, Cases No. 8, 29, 34, 36) as chief interrogating officer in the case of Dr. Neil Aggett, who died in detention (see paras. 164-169 above). Further information available to the Working Group implicates Brigadier Hendrik Muller, chief of Johannesburg's security police, Constable Andre Martin, who was on duty on the night Aggett died and admitted making a false entry in the occurrences book, and Warrant Officer Walter MacPherson, in charge of detainees at John Vorster Square, who told the Inspector of Detainees, Mr. N.H. Mouton, that he could not see Dr. Aggett on 4 January. 154/

180. Written testimony submitted by Ms. Ruth Mompoti (563rd meeting) named a Mr. Carr and a Mr. Sithole, both of the security police, as responsible for brutal assaults on Joseph Gumbe (see para. 108 above).

181. A witness, Jacob Selebi (574th meeting), named well-known torturers of prisoners under interrogation as Major Cronwright, Lieutenants Mackintyre, Andries Struwag and Andries Visser, and Captain Brookdryk. He held Major Cronwright personally responsible for the death of Jacob Mashabane (para. 176), and had been in his charge himself. He also named Lt. Struwag and Warrant Officer de Lima among his own torturers. In general only white police took part in torturing, but he had personally been assaulted by a black officer, since promoted to Captain, named Sons. He also named Warrant Officer Koors Smit, Major Olivier and the current head of South African security services, in front of whom one of the beatings of the witness had taken place.

182. A witness, Zolile Hamilton Keke (560th meeting), named security policemen Detective Sergeants Donald John Card (Carr?), Schaeppers and Tshikila as having tortured him under interrogation; and again Lt. Venter and Warrant Officer du Rand, who kept him standing for long periods under interrogation in 1976, and later Warrant Officer van Vuuren, Detective Sergeant Fourie and Detective Sergeant Sithole. Mr. Keke also names security police Fikile Zibi and Rosenthal Zozzi Ncoko as having assaulted Pumeza Ngxalo, Tamara Waka, Busisiwe Baartman and Nosisane Buyani, all young girls in Mdantsane in 1981.

183. According to further information available to the Working Group, Barbara Hogan, detained in 1981, lodged an assault charge in January 1982 against Warrant Officers Nicolaas Johannes Deetleefs and Lawrence Charles Philip Prince for assaulting her during interrogation in October 1981. She alleged in court in July 1982 that she had been beaten with fists and open hands on face, ears and back by the officers, who threatened to "turn her into a vegetable" (see para. 121 above). 155/

184. Written testimony handed to the Working Group by Amnesty International names Major General Charles Sebe, head of the Ciskei security police, as responsible for the wave of arrests in the Ciskei. Major-General Sebe has denied that the arrests of the trade unionists involved (paras. 157 (iv) (c) above and 252 below) have anything to do with their trade union activities.

185. The Working Group has noted that Col. Pieter Goosen, listed as having senior responsibility for the death of Steve Biko in the Group's Special Report in 1981 (E/CN.4/1366, Case No. 1) has been promoted to the rank of Brigadier and Deputy Commissioner of Police. The Group has also noted the protests of Dr. Nthato Motlano, Chairman of the Soweto Committee of Ten, and Mr. George Wauchope, publicity secretary of the Azanian People's Organization (AZAPO), at the appointment (para. 163 above). 156/ Donald Woods, former editor of the Daily Dispatch, challenged the South African regime in September 1982 to prosecute Captain D. Sibbert and Lt. V. Wilton for Steve Biko's murder (see para. 162 above).

186. A witness, Liliana Sobalzo (580th meeting), named Captain du Plessis, Mr. Strydom, Mr. Rudolph, Mr. Durrant and Mr. Lokwe as among her torturers, as well as an African special branch officer Miller Joliffe. She also named Dr. Lang as the prison doctor of whom she was too afraid to accept treatment (see para. 125 above, also see E/CN.4/1366, Case No. 1).

187. Giacys Claire Mohapi (577th meeting) named the interrogator Treulien as "notorious" for his sexual assaults on women prisoners. He had handled her breasts after she had been tortured with electric shocks, but her screams seemed to have stopped him from going further. It was also he who was held to be responsible for the pregnancy of several women prisoners who came out of jail pregnant in 1977 (see para. 126 above).

188. A witness, Andrew Mashaba (580th meeting), named two doctors on Robben Island who refused prisoners medical treatment before 1977 as Dr. Anderson and Dr. van der Berg, who was also named in written testimony handed to the Group. 157/ He also named Brigadier van den Bergh and police officers Ferreira, Simon Machori and Koetze, as having taken part in his torture and interrogation (para. 110 above).

189. A witness, David Pandani Shikomba (579th meeting), named an African warder at Louwkop Prison, who regularly beat prisoners while white warders looked on. He was the first black to be promoted to the rank of adjutant, and his name was Khumalo. Another warder, by the name of Louson, was also notorious for beating prisoners, including the man Rufus Makhe, who died as a result of his beating (see para. 175). Monitor would beat a man, then go away reading the bible.

190. Mr. Zolile Hamilton Kek in his testimony (560th meeting) named a prison warder on Robben Island, Piet Klyheys for having buried a political prisoner, Johnson Mlambe, neck-deep in sand and then urinated in his mouth. He also named Colonel Wessels and Major Kruger as responsible for the regime on Robben Island when he arrived and "a vicious chief warder" named Peron, who himself assaulted prisoners and authorized other warders to do so, including warders Zeele, van der Bergh, Delpot, Piet and Jieford Klyvhens and du Plessis.

155/ Sunday Express, 1 August 1982.

156/ Sowetan, 19 February 1982.

157/ undoc, as told to Sachs, op. cit., p. 244.

F. Forced removals of population

191. In previous reports, the Group documented the forced removals of populations consequent on the policy of territorial apartheid. In three of its previous reports (E/CN.4/1311, paras. 139-142; E/CN.4/1365, paras. 89-90; and E/CN.4/1429, paras. 121-124) the Group noted that such removals had been accelerated in connection with the implementation of the "independent homeland" and migrant labour policies. In its 1982 report (E/CN.4/1435, paras. 94-97) the Group also noted that individuals, whole families and large groups are in many cases moved more than once; and that influx control laws are still being rigorously enforced against individual Africans in urban areas.

192. An anonymous witness (559th meeting), stated that the current policies of removals are part of a very long historical process which changes its form from time to time. He said that the present removal policies are being closely geared to the South African regime's attempts to maintain its rule in the face of expanding unemployment, growing resistance and the advancing forces of liberation; and that the policies of removals are based on the premise that the black people have no fundamental rights of property or territory in South Africa.

193. He also said that the South African Government's relocation programme was primarily to remove from the urban areas all unemployed people and the families of people who work. Secondly, the witness confirmed, the relocation programme has involved moving employed workers in order, wherever possible, to bring them into the system of bantustans, "the subordinate administrations which the government has set up". The result of this has been the growth of dormitory townships in the bantustans where Africans live only to sleep, and work during the day in "white areas".

194. The witness continued that it was impossible to calculate how many people had been evicted from rural areas but that figures were certainly in the millions.

195. According to additional information available to the Group, a study undertaken by the Black Sash organization shows that at least three million people have been forcibly relocated over 20 years, and estimates that a further one million are scheduled for removal soon. 158/

196. During the period under review, the Minister of Co-operation and Economic Development, Dr. Koenhof, said that between 1970 and 1980, 317,000 black South Africans had been removed to the "homelands". A report drawn up by the Department of Co-operation said that between April 1970 and March 1980, 74,275 black people were removed from "white areas". 159/

1. Reference to some relevant laws

197. In its 1982 report (E/CN.4/1435, paras. 70-74, 99-93) the Group noted the increased use of prosecutions under the Group Areas Act; the use of "immigration legislation" rather than the pass laws to remove Africans from urban areas; and the use of summary deportation powers which were invoked in order to circumvent the defence of squatters' cases in the courts.

158/ The Observer, London, 18 July 1982.

159/ Star, 5 April 1982.

198. An anonymous witness (559th meeting) said that the seriousness of the Government in its determination to continue with removals is indicated by the measures it has taken to restrict information and to impose greater secrecy both through legislative and through administrative means. The witness told the Group that legislation gives the Minister of Co-operation and Development the power to impose secrecy on the plans of the main Government body concerned in the plans for removal.

199. The witness also told the Group that further legislation is planned which increases the powers of the Government to remove those resisting their relocation by rendering such resistance illegal, "so that resisting removal is being made a crime and the punishment is removal".

200. The witness also said that the Government has given itself much greater powers to move people by using the pass laws. He referred to a Bill before parliament called the Orderly Movement and Settlement of Black Persons Bill, which raises the penalty of R500 to R5,000 to be used against people who are in so-called white urban areas without "permission". This Bill will include a new penalty of R500 imposed on people giving accommodation to those without the necessary passes to be in the urban areas.

201. According to additional information available to the Group, the new law which allows the government greater secrecy on removals is only a legalized continuation of government policy. According to a Federal Party member of parliament, the South African Government has, since 1980, been evading questions in parliament which seek information on removals, and has now said that removal of people living in "black spot" areas will be dealt with on a "confidential basis". 160/

2. Conditions in resettlement areas

202. Mrs. Ruth Mompoti (563rd meeting), said that the black women and children in South Africa, along with the old and sick, are the worst victims of removals to the so-called bantustans. She said that women and children are dumped into places where they have to eke out a living without homes or water.

203. Mrs. Mompoti told the Group that people are not warned about their removals. She said that "a few days before they are removed the authorities come and mark the houses with white paint, and on the day of removal a few days later they come with bulldozers, and people's belongings are thrown on lorries and these people are taken to the bantustans. And what happens when they get there, they are dumped. Some of them live in tents, some of them have pieces of corrugated iron with which they build their houses in most of the bantustans, because this is part of the 13 per cent of the arid land which has been allocated to the 80 per cent of the population".

204. At the 559th meeting an anonymous witness said that removals make people even more vulnerable to the security police, who operate in the bantustans under conditions of even greater secrecy. The witness outlined how people resisting removal had been detained without trial and how armed police were used regularly against them.

205. According to a former Johannesburg city councillor and doctor, Dr. Selma Browde, the fact that resettlement camps have no adequate health, sanitary and social services means that outbreaks of cholera and other epidemics would not come as a surprise. 161/

206. In its 1982 report (E/CN.4/1982, para. 75) the Group referred to conditions in the Onverwacht resettlement area. According to additional information available to the Group, an American newspaper, the Christian Science Monitor, estimated unemployment in the area at about 50 per cent and said that there were water shortages, inadequate housing and malnutrition. The Minister for Co-operation and Development confirmed that people in the area were living in tin shacks. 162/ During the period under review, 70 children suffering from gastroenteritis had to be rushed to a Bloemfontein hospital after the clinic in the area admitted it could not cope with emergencies. 163/

3. Examples of removals

207. In previous reports the Group has categorized mass removals of the population as "black spot" removals (of farm labour tenants and squatters as "redundant labour" from white farms); land consolidation removals (on redrawing of borders of African reserves in pursuance of the "independent homeland" policy); and urban removals (covering removals of Africans from urban areas where they are "surplus to labour requirements"). It has also covered removals of Asians and Coloured people under the Group Areas Act. In previous report (E/CN.4/1982, para. 134) the Group also referred to removals involving movements within bantustans, following powers granted to the "homeland governments". The Ad Hoc Working Group lists below some examples of population removals during the period under review.

(a) "Black spot" removals

208. An anonymous witness (559th meeting) referred to the programme of forcing African people from areas in which they have freehold title to land which has been proclaimed "white" by the Government. The witness said that the Minister of Co-operation and Development had stated early in 1982 that there are still 75 such areas scheduled to become "white". An organization which gives aid to people threatened with this type of removal has estimated that in the Natal province alone between 200,000 and 300,000 people are threatened.

209. According to additional information, eight areas with a total population of between 40,000 and 60,000 people in the "border" between Transkei and Ciskei "homelands" have been proclaimed "black spots" by the South African Government. The inhabitants of this land will be forcibly removed to the Frankfort-Braunschweig area where there is no water available. 164/

161/ Ken Daily Mail, 3 May 1982.

162/ Star, 5 April 1982.

163/ Sunday Express, 25 April 1982.

164/ Daily Despatch, 7 April 1982.

210. During the period under review, the Minister of Co-operation and Development said that the Oliviershoek area, to which 658 families had been moved previously, has been declared a "white area" and the families will be moved again. 165/

(b) Squatter removals

211. In previous reports (E/CN.4/1365, para. 105; E/CN.4/1429, para. 143; E/CN.4/1485, paras. 81-82) the Group has dealt with Crossroads, a squatter camp outside Cape Town. During the period under review, six-month permits of Crossroads residents were summarily cancelled by an Administration Board official. 166/ Squatters were also forced to leave houses in Crossroads or lose their dispensation to live in the Western Cape. 167/

212. In its 1982 report (E/CN.4/1485, paras. 83-84) the Group referred to the squatter camp in the Nyanga Township. According to information available to the Group, by March 1982 squatters in the township had been subjected to at least 50 raids by police since the previous July. Because of fear of more raids, the squatters have not erected shelters and have been living out in the open. In March 1982, police again raided the camp and surrounded the spot in the open "bush" where the squatters were camping. 168/ One group of squatters who escaped the police net set up camp in Cape Town's St. George's Cathedral to protest against their victimisation. 169/ Of these people, 72 per cent had lived in Cape Town for at least 10 years and 11 of them had been "legally" born in the Republic of South Africa.

213. All of the 850 Nyanga squatters were taken, in lots of 50, to the Administration Board inspectors' headquarters to have their cases processed. 170/ A joint church and township organization's statement said, in a meeting called by the "Nyanga Bush Action Committee", that the struggle for rights of the people of the Nyanga Bush would continue. 171/ During the period under review, the Ministry of Co-operation and Development broke two of their self-imposed deadlines set to tell the squatters of the decision of the Ministry. 172/

214. According to information available to the Group, more than 1,900 people have died in the squatters camp of Onverwacht, which was established in June 1979 to accommodate people who did not want to belong to the Bophuthatswana "homeland" after "independence". One thousand and twenty-five of the dead were children. 173/

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- 165/ Daily News, 3 May 1982.
 - 166/ Cape Times, 20 March 1982.
 - 167/ Rand Daily Mail, 10 June 1982.
 - 168/ Rand Daily Mail, 16 March 1982.
 - 169/ Rand Daily Mail, 13 March 1982.
 - 170/ Cape Times, 6 April 1982.
 - 171/ Cape Times, 23 April 1982.
 - 172/ Cape Herald, 15 May 1982.
 - 173/ Sowetan, 26 April 1982.

215. During the period under review the Bophuthatswana "government" issued temporary residents' permits to regulate the squatter movement in Winterveldt. Every tenant will be compelled to carry a permit which says that the holder "shall without expense to the government depart from the Republic of Bophuthatswana on or before the expiry date of this permit or such later date as endorsed on the permit". 174/ The Bophuthatswana authorities also told 515 squatters who had been living at Rogierd since 1971 (when they were forced to leave their homes near Potchefstroom) that they would have to leave. 175/

216. More than 1,500 families are living in what has been described as "appalling conditions" in a squatter camp established by the East Rand Administration Board near Tsakane township. Four families share one bucket-system toilet, one water-tap and one rubbish bin. There is only one high mast light in the middle of the squatter camp. 176/

(c) Group area removals

217. An anonymous witness (559th meeting) referred to the Group Areas Act, which is used against the groups that are called Indian and Coloured. The witness said that already 600,000 people have been forcibly removed from their homes under this Act and that in September 1981 the Minister for Co-operation and Development stated that another 70,000 people are still to be moved.

218. According to information available to the Working Group, 120,767 families had been moved under the Group Areas Act between its commencement and May 1982. Of these, 80,053 families were Coloured, 39,472 were Indian and 2,242 were white. 177/

219. During the period under review, the South African Progressive Federal Party criticized the government for refusing to "restore" the suburb of Pageview to Indian families. The Government had moved Indian families out of Pageview in order to prevent Indians and whites living as neighbours. As the Indian families were removed, their homes were demolished. 178/

220. According to information available to the Group, the South African Government is offering financial subsidies to white families in order to induce them to move into District Six - an area out of which Coloured families had been removed under the Group Areas Act. The Government is offering renovated houses to whites at subsidized prices. In addition, two companies, Anker Data Systems and Shell Oil,

174/ Sowetan, 3 May 1982.

175/ Rand Daily Mail, 19 July 1982.

176/ Sunday Express, 7 February 1982.

177/ Rand Daily Mail, 25 May 1982.

178/ Rand Daily Mail, 5 February 1982.

have already dropped their plans to build in District Six, and a third, Total Oil, is asking the government to cancel its proposed purchase of land in District Six because of community pressure. 179/

(d) Influx control

221. According to the president of the Black Sash, the Orderly Movement and Settlement of Black Persons Bill would give the Minister of Co-operation and Development sweeping powers, enabling him unilaterally to take away rights granted to blacks under the proposed new influx control laws. 180/ (See also paras. 200-201 above.)

222. During the period under review, the West Rand Administration Board arrested an undisclosed number of black workers seeking employment. The workers were locked up for a time and then "dumped" at the New Canada labour bureau where there was no chance of finding a job. Women coming into the West Rand Administration Board (WRAB) offices to fix their passes are being arrested by police before they can reach the building. 181/

179/ Rand Daily Mail, 3 April 1982.

180/ Rand Daily Mail, 15 June 1982.

181/ Sovetar, 9 March 1982.

G. The "Bantu Homelands" policy

223. In previous reports (notably E/CN.4/1050, and E/CN.4/1187) the Group reviewed the historical background to the "Bantu homelands" policy. In recent reports (E/CN.4/1270, E/CN.4/1411, E/CN.4/1365, E/CN.4/1429 and E/CN.4/1485) the Group has considered the question of the "homelands" specifically in relation to the rights of peoples to self-determination, as defined and developed by the United Nations, in the light of the South African Government's claims to be offering the "homelands" so-called "political independence".

224. During the period under review, the South African Government decided to cede nearly 2.5 million acres, previously the KaNgwane "homeland" as well as part of the KwaZulu "homeland" to Swaziland.

225. The meaning of this decision and the reactions to it are described in paras. 231-233 below.

1. Summary of relevant legislation

226. In previous reports the Group has described and analysed the laws relating to the setting up and development of the "homelands". In particular, the legislation passed in relation to the so-called "independence" of the Transkei, Bophuthatswana and Venda is outlined in reports E/CN.4/1222, E/CN.4/1270 and E/CN.4/1365.

227. In its 1982 report (E/CN.4/1485, para. 106) the Group referred to the decision by the Ciskei "administration" to become "independent". During the period under review, the Status of Ciskei Act was passed. The Act declared the Ciskei to be a "sovereign and independent state" which ceases "to be part of the Republic of South Africa"; says that any rule or law previously in force in the Ciskei would still be applicable until amended or repealed; gives the legislative assembly of the Ciskei legislative power; takes away South African citizenship from every person born in or outside the Ciskei either before or after the commencement of the Act, from persons, one or both of whose parents were citizens of the Ciskei at the time of his/her birth, from persons who have been "legally domiciled" in the Ciskei for at least five years; and from "every person who was a citizen of Ciskei in terms of any law at the commencement of the Act". 182/

228. During the period under review the second reading of the Constitution Amendment Bill was heard before the Ciskei National Assembly. The amendment, which was retrospective, made it possible for the Ciskei "authorities" to enforce certain inherited South African laws. Mr. Lennox Sebe, chief minister of the Ciskei "homelands", said that the amendment was necessary because the Ciskei constitution provided that no law of the Ciskei National Assembly could be declared invalid by any court of law on grounds that it contravened any provision of the declaration of fundamental rights. According to Lennox Sebe, the bill would also make South African laws exempt from invalidation. 183/

182/ Government Gazette, 13 November 1981.

183/ Daily Dispatch, 26 June 1982.

229. A Ciskei National Security Bill was also tabled during the period under review. The Bill incorporates most of Ciskei's security legislation, repealing 34 Acts "inherited from South Africa" and bringing together a wide range of security measures. Under the legislation General Charles Sebe, brother of the Ciskei's chief minister, would have powers ranging from the vetoing of newspaper registrations, deciding what slogans, songs and salutes should be banned, what organizations and persons are a danger to the State and thus what organizations should be prohibited and which individuals detained. The Bill also provides legislation to control unlawful gatherings, strikes, demonstrations and people harbouring those considered to be a danger to the "State". 184/

2. Violation of the right of all people to the exercise of self-determination

230. The grounds on which the "independence" of the "homelands" violates the right of self-determination have been detailed in previous reports of the Group. During the period under review, the black majority have continued to be denied any right to self-determination over 87 per cent of South African land.

231. During the period under review, the South African Government proposed to make several hundred thousand people Swazi citizens and deprive them of their remaining rights as South African citizens. The South African Government plans to cede the Ingwavuma area in the Transvaal and most of the KaNgwane "homeland" to Swaziland. 185/ The plans would be finalized in 1983. Chief Buthelezi of KwaZulu rejected claims by Swaziland that Ingwavuma was Swazi land. 186/ The chief minister of KaNgwane, Mr. Mabuza, said that South Africa was using the land deal to get rid of blacks. 187/

232. In June 1982 the South African Government dissolved the KaNgwane "homeland" legislative assembly and placed its powers under the direct control of the Department of Co-operation and Development. Chief Gatsha Buthelezi stated that it was "another way of getting rid of black South African citizens because they couldn't force us into accepting independence.". 188/ Both the Natal Executive Committee and the KwaZulu "Government" decided to call referendums over the land deal. Mr. Frank Martin of the Natal Executive Committee said that the referendum would show the vast rejection of the Government's plan by all peoples. 189/ The South African Prime Minister, Mr. P.W. Botha, announced that the Natal Executive Committee had no constitutional right to hold a referendum despite views to the contrary by leading constitutional law authorities. 190/ The KaNgwane legislative assembly decided to ignore the decree dissolving it and to meet in July. The South African Government had not consulted the KaNgwane legislative assembly before dissolving it and had also dissolved the assembly by proclamation and not by statute as required by law. 191/

184/ Daily News, 25 June 1982.

185/ Rand Daily Mail, 12 June 1982.

186/ Rand Daily Mail, 15 June 1982.

187/ Ibid.

188/ Rand Daily Mail, 19 June 1982.

189/ Rand Daily Mail, 22 June 1982.

190/ Rand Daily Mail, 24 June 1982.

191/ Rand Daily Mail, 23 June 1982.

233. According to information available to the Group, the South African Appeal Court in Bloemfontein, declared "null and void" a proclamation in June 1982 by the State president on behalf of the Government, assuming control of part of the territory of KwaZulu. There were two main elements to the Court's ruling: (1) It appeared that the Government had not met a legal obligation to consult the KwaZulu tribal administration before making territorial changes; (2) It dismissed a plea by the State's lawyers that KwaZulu, as an organ of the South African State, had no right of legal redress against another organ of the same State. 192/

3. Obstacles to the right freely to determine political status

234. In previous reports the Group has identified among the obstacles to determine freely political status (a) the question of citizenship and (b) the enforced removals to the "homelands".

235. During the period under review, the South African Government, against the will of the "homeland" authorities and of numerous groups representing workers and black South Africans, announced its intention to cede part of KwaZulu and the KaNgwane "homelands" to Swaziland. The moves towards cession and the protests against it have been described in paras. 231-233 above.

236. During the period under review a survey of black attitudes in the KwaZulu "homeland" and in Natal showed that seven to eight out of every 10 people reject the tribal "homeland" policy. A large majority also expressed political anger or discontent and predicted violence and widespread social unrest if meaningful reforms did not take place in the near future. 193/

237. During the period under review, the South African Minister of Manpower announced that "border" negotiations with Venda had been finalized. The 24,000 hectare Zimbabwe "buffer zone" will be officially excised and "returned" to South Africa - the area is militarized and patrolled by South African forces. In "return" Venda is to be "given" a number of farms formerly considered by the South African Government to be outside of Venda's "borders". 194/

4. Exploitation of black workers

238. The exploitative nature of the policy of migrant labour whereby black workers are forced to "migrate" to "white" areas to work under contract and to live separately from their families has been described in previous reports of the Group (notably E/CN.4/1270 and E/CN.4/1311).

239. Mrs. Ruth Mompati (563rd meeting), said that Bantustans are to make sure that all the black people of South Africa are migrant workers. That is why the South African regime is going on to create parts of the Bantustan alongside and near the urban areas, so that in fact when you speak of the so-called independent homelands, you are speaking of a location 10 miles from Johannesburg being part of the Bantustan and people who work from there, who in fact are South Africans, commuting from there, working as commuter labour.

192/ The Times, London, 1 September 1982 and 1 October 1982; Le Monde, Paris 9 October 1982.

193/ The Times, London, 8 March 1982.

194/ Rand Daily Mail, 9 July 1982.

240. The witness went on to say that one of the reasons for employing forced occupants of the Bantustans as migrant labour is shown by the miners' strike (see para. 291 below). She said that once the miners went on strike they were immediately sent back to the Bantustans.

241. A survey published during the period under review showed that 28,500 men - 14 per cent of the Ciskei male workforce - were unemployed. The survey also found that 64,000 "citizens" of the Ciskei were migrant labourers and that most of them visited their families in the "homeland" only once a year. About 34,000 "homeland" dwellers commuted daily to work outside the "homeland". 195/ According to a further survey carried out in the Ciskei, there was 30 per cent unemployment there. A Rhodes University economist said that resettlement in the Ciskei has resulted in a system whereby about 60 per cent of the able-bodied men and women "migrated" to South Africa, leaving behind the young, the women and the decrepit. 196/

242. In the Gazankulu "homeland" only 30 per cent of its male "citizens" live there. The rest are in "white" areas or in other "homelands". As much as 85 per cent of income earned in Gazankulu is spent outside the territory. 197/

5. Obstacles to the right freely to pursue economic development

243. As in previous years, information has come before the Group to demonstrate the fundamental economic dependence of the "homelands" on the Republic of South Africa. The South African Government claims that its financial grants to the "homelands" are immense and even that it "outdoes the Marshall Plan". A 1982 South African budget allocated R916,000,000 to the "homelands". 198/

244. Mrs. Ruth Mompoti (563rd meeting) told the Group that the KwaNdebele "homeland" hardly has a place where people can work. "People are forced to commute to Pretoria, to areas lying around in order to be able to work, and some of them have to travel that distance every day in the morning and come back at night."

245. According to information available to the Group, there is almost no agriculture in the KwaNdebele "homeland". Water is scarce and residents say that some of the land has never been irrigated and that people have been settled on what were formerly dry, white-owned weekend farms. When families are allocated houses, no toilets are provided and as a result there is a widespread risk of a disaster should typhoid or cholera break out. The population of the "homeland" is officially 200,000 but unofficial estimates put the figure as high as 500,000. 199/

246. During the period under review, the Lebowa "homeland" experienced one of its worst droughts ever. At least 70 per cent of the maize crop was lost and the situation was further complicated by outbreaks of cholera and rabies. 200/ The Lebowa authorities have been responsible for the pensions of those resettled from "white" areas, and as a result many of those who qualify for welfare services are turned down due to lack of funds. 201/

195/ Rand Daily Mail, undated.

196/ Daily Dispatch, 16 February 1982.

197/ Star, 12 June 1982.

198/ The Guardian, London, 29 May 1982.

199/ Rand Daily Mail, 15 June 1982

200/ Daily News, 8 May 1982.

201/ Rand Daily Mail, 21 June 1982.

247. Much of the development in the "homelands" during the period under review was financed with loans obtained by the corporation for Economic Development at high market interest rates. The result was that the corporation scaled down development programmes in the "homelands". 202/

248. In the KwaZulu "homeland" only 200 doctors, some of whom are in private practice, serve 3.5 million people. The health budget for the financial year 1982/1983 is R129.3 million, 50 per cent of which goes on pensions. 203/

249. Also during the period under review, the South African Government introduced a Nursing Amendment Bill which would exclude nurses from the KwaZulu "homeland" from the South African Nursing Association. The chief opposition spokesperson, Mr. Ray Swart, said that in introducing the Bill the Minister of Health was introducing one of the first measures to excise non-"independent homelands" from the Republic. The nurses in KwaZulu were against the new Bill. 204/

6. Abuse of police powers by the "homeland" authorities

250. In previous reports the Group has detailed the transfer of repressive powers by the South African Government to the "homeland" authorities. Information available to the Group indicates that these powers continue to be used.

251. An anonymous witness (559th meeting) said that there had been a marked increase in the way security police within the Bantustan areas have taken an increasingly active role in attacking trade unionists. The witness gave as an example the township of Mdantsane, near East London, where workers who work in the city of East London and are forced to return each night to the "homeland" have been the subject of a sustained attack by the security police who operate in the Ciskei area. The witness also said that similar attacks had occurred in an area of the Bophuthatswana "homeland" north of Pretoria.

Ciskei

252. Reference is made in paragraphs 339-351 below to the continual persecution of members and officials of the South African Allied Workers Union (SAAWU). This has been carried out by both the South African security police and the Ciskei authorities. In 1980 Ciskei security police searched the offices of SAAWU and later detained its president, Thozamile Gqweta, under the Riotous Assemblies Act. He was later released on bail twice and then redetained, along with vice-president Siza Njikelana. 205/

253. According to further information available to the Group, mass detentions and other repressive actions continue within the Ciskei. 206/

254. During the period under review, members of all the Ciskei forces - a defence contingent, police, selected members of the central intelligence services and the "Sword of the Nation" squad - launched an operation which included roadblocks and

202/ Star, 17 July 1982.

203/ Financial Mail, 21 May 1982.

204/ Cape Times, 26 March 1982.

205/ Star, 18 May 1982.

206/ Focus 37, November-December 1981.

house-to-house searches. Quantities of pamphlets of the African National Congress and the Pan Africanist Congress were confiscated and a large number of people arrested. 207/

255. Between April and July 1982, at least 19 people were detained in the Ciskei. Some have been charged under the Terrorism Act, others are in detention and yet to be charged. 208/

Transkei

256. The state of emergency, first declared in the Transkei in June 1980, was extended for another year during the period under review. The proclamation extended the curbs on the movements and activities of "affected" people. "Affected" people are defined as scholars or students and persons employed by any institution whom a member of the police may declare to be an affected person. Such people are prohibited from being in public places and from leaving their homes or hostels or other places where they live unless they attend classes. 209/

Venda

257. During the period under review, four Lutheran pastors and at least 10 lay people were imprisoned and tortured in the Venda "homeland". One of the laymen, Tshifhiwa Muofhe, died shortly after being detained. The Reverend P.S. Faisani was taken to hospital with head and other injuries after being tortured: a few days afterwards he was rearrested. 210/ Those detained were held incommunicado under emergency legislation, which effectively provides for indefinite incommunicado detention without trial. 211/ (See also paras. 103, 105, 153(ii) and 170 above.)

258. During the period under review, Bishop Desmond Tutu, general secretary of the South African Council of Churches, was ordered out of Venda after he tried to visit detainees. 212/ The "homeland" has been described by the opposition Venda Independence Party leader, Mr. Gilbert Balana, as being in a "virtual state of siege". 213/

Bophuthatswana

259. During the period under review, three men suffocated to death after being locked in a school strongroom as "punishment" for allegedly breaking "tribal laws". 214/

260. Also during the period under review, an appeal against sentence under the Bophuthatswana Terrorism Act by Wilfred Marwane led to the ruling that the Act is in contravention of Bophuthatswana's bill of human rights under its constitution (see para. 153(iii) above).

7. Attempts to disrupt national unity and destroy the personality and identity of blacks

261. During the period under review, the "homeland" policy among others has continued to disrupt the national unity of black South Africans, not only by dividing them according to their supposedly traditional tribal groups, but also by causing conflicts between urban and "homeland" Africans and between "homeland" Africans and the groups of their own or other "tribe" forcibly removed into "homeland" dumping grounds.

207/ Daily Dispatch, 30 June 1982.

208/ Sowetan, 2 July 1982.

209/ Daily Dispatch, 8 June 1982.

210/ Lutheran World Information 4/82; Rand Daily Mail, 21 May 1982.

211/ Amnesty International Index No. AFR 53/61/82.

212/ Sowetan, 1 February 1982.

213/ Financial Mail, 22 January 1982.

214/ Rand Daily Mail, 21 January 1982, 23 January 1982.

H. Conditions of black workers

262. In previous reports the Group has covered extensively the conditions of black workers. Evidence before the Group has confirmed the conclusion of the International Labour Organisation that, despite certain legislative and administrative changes, the policy of apartheid involving inequality of income and opportunity determined by race remains entrenched in law and practice in South Africa.

263. In the past the Group has paid particular attention to the reports of the Wiehahn and Riecker Commission and the so-called "reforms" resulting from them (see E/CN.4/1311, paras. 253-262; E/CN.4/1365, paras. 184-195; E/CN.4/1429, paras. 245-249 and 256; and E/CN.4/1485, paras. 140, 159, 165 and 173). During the period under review, part 6 of the Wiehahn Commission report was published. It dealt with industrial relations in the mining industry and is covered in paras. 288-289 below.

264. The Group has also received further information on growing unemployment among black workers and the persisting poverty level of wages in both the industrial and agricultural sectors of society.

1. Conditions of workers in the agricultural sector

265. The plight of agricultural workers as the most numerous and most heavily exploited sector of the South African workforce has been described in previous reports of the Group, as has the farm labour system (E/CN.4/1187, paras. 130-172; E/CN.4/1222, paras. 184-213; E/CN.4/1270, paras. 139-154; E/CN.4/1429, paras. 220-234; and E/CN.4/1485, paras. 138-145). No further personal testimony on the conditions of agricultural workers was taken by the Group in its field mission of 1982 but, according to information available to the Group, farm workers continue to be paid starvation wages, living under conditions of heavy exploitation, ill treatment and job insecurity. Farm workers have no legal bargaining machinery, protection against sacking or other rights. 215/

(a) Recruitment of workers

266. In previous reports (notably E/CN.4/1187, paras. 134-244; E/CN.4/1222, paras. 186-191; E/CN.4/1270, paras. 141-147; E/CN.4/1429, paras. 221-223; and E/CN.4/1485, paras. 139-141) the Group has described the methods of recruiting black agricultural workers. These reports have covered the reliance on "influx control" through the pass system to keep African people out of towns; the policy of imposing migrant labour on agricultural workers; and the role of labour exchanges in the "homelands" as the principal official centres of labour recruitment.

267. According to additional information available to the Group, if farm workers lose their job they also lose their place to live: they become "displaced persons" to be returned to a "homeland". The South African Government has still not responded to the recommendation in 1979 of the Riecker Commission that farmers be allowed to house elderly people on their farms without Government permission. 216/

215/ Rand Daily Mail, 3 March 1982.

216/ Ibid.

268. In a previous report (E/CN.4/1982, paras. 230-234) the Group referred to the exploitation of child labour by farmers and to a study by the Anti-Slavery Society on child labour in the Eastern Transvaal and Natal.

(b) Wages and working conditions

269. According to information made available to the Group, in 1981 real earnings of farm workers declined. In most regions of South Africa wages are R25-35 a month for adults and as little as R8 a month for children. 217/

270. One of the biggest farmers' co-operatives in South Africa - the Natal Labour Co-operatie - which has an annual turnover of R150 million, pays many of its black employees far below the household subsistence level. In one case a female worker was being paid 16 cents a day. Many of the workers survive on a diet of mealie-meal while others go for days without any food. The workers do up to 54 hours a week and for this, according to information provided to the Group, an elderly woman who had worked on the same farm for 15 years was being paid R6.37 a week. 218/

271. In another case which was drawn to the Group's attention, 13 families had been living in the open for two years after their houses were demolished. 219/ Farm workers are in some cases told that their wages are so low because they get free housing; and yet they are forced to build their own homes. Food provided by employers includes meat which is already "bad". 220/

272. The Group was also informed that farm workers' starvation wages are being blamed for the high number of malnutrition and kwashiorkor cases admitted to the Baragwanath Hospital in Soweto. Most of the cases come from Reef farming areas, and claim to be Soweto residents in an attempt to get some medical treatment. Research has shown that Reef farm wages varied between R10 and R20 a month, with a sack of mealie meal as rations. In 1980, 1,089 children suffering from malnutrition were treated at the hospital; a doctor there stated: "It is common knowledge at Baragwanath that when a malnourished kid comes in it is likely he has been living on the farms." 221/

(c) Prison labour

273. According to information available to the Group, the practice of sending those declared "idle" and "undesirable", under section 29 of the Black (Urban Areas) Consolidation Act of 1945, to prison farms continues. 222/

2. Conditions of workers in the industrial and other sectors

274. A witness Mr. Wiseman Khuzwayo (561st meeting), said that the wage gap between black and white workers has widened, and that real wages of the majority of workers

217/ Rand Daily Mail, 23 February 1982

218/ Sunday Times, 21 February 1982

219/ Cape Times, 5 March 1982.

220/ Rand Daily Mail, 3 March 1982.

221/ Sunday Express, 2 May 1982.

222/ Rand Daily Mail, 29 May 1982.

have declined since 1972. He said that the suffering of the black South African workers is not at the hands of the security police and in the confines of the prison alone, but also through an attempt to survive on pitiful wages in work that involves high risks of contracting industrial diseases.

275. In his testimony Mr. Sere (575th meeting) said that poverty wages earned by black workers are set against an ever-spiralling cost of living, the most recent example being that in May 1982 the maize price had been increased by 15.9 per cent to R155.30 a ton. He quoted a report in the South African newspaper, the Star, which showed that in March 1981 the average earnings of more than 600,000 white workers exceeded R1,000 a month, and contrasted this figure with a report in the Cape Argus newspaper which said that over the same period the earnings of black workers rose by 25 per cent to an average of R220 a month, those of Coloured workers rose 23 per cent to R293 a month and for Asian workers by 20 per cent to an average R348 a month.

276. Mr. Sere said that legislation governing pay and working conditions for watchmen allows for an 84-hour shift a week with a minimum pay of R120.47 a month. He quoted a number of occupations where there was a wide gap between the wages of white and black workers in similar jobs; and pointed to the disparity between white and black senior nursing sisters' wages and to the disparity in pay between white and black reception officers in Government departments.

277. Mr. Majola (572nd meeting) gave the group the following statistics relating to the wage gap between white and black workers in the Government sector; June 1981:

	<u>No. of workers</u>	<u>Total earnings</u>
White workers	310,000	R730m
African, Coloured and Indian workers	570,000	R387m

He agreed that this amounted to a wage ratio between black and white workers of 1 to 8 or 10.

278. An anonymous witness (571st meeting) said that he worked in South Africa, starting at 7 o'clock in the morning and finishing at 5 o'clock in the evening, for which he earned R38 a week. He said that when he was absent from work once in the week, half his wages would be removed. When he asked about his wages he was threatened with being fired. Another witness (571st meeting) described how his weekly wage was R29 for a 12-hour day.

279. According to the South African National Manpower Commission, although real wages of all races rose in the first nine months of 1981, the absolute difference between white and black wages increased. 223/

280. Mr. Samavendra Kundu (566th meeting) told the Group that the average white wage per month was R1,077, while the black wage was R169.

281. According to additional information available to the Group, the average white wage was R1,042 compared with the average black wage of R257 at the end of 1981. 224/

223/ The Guardian, London, 26 May 1982; Star, 17 July 1982.

224/ Cape Times, 18 June 1982.

282. The Group noted that during the period under review no detailed figures for wages of black South Africans in each sector were available. However, figures were available for the number of "black South Africans" and "foreign black workers" (i.e. South Africans living in the "homelands" plus those from countries outside South Africa). These were as follows: 225/

<u>Sector</u>	<u>"South Africans"</u>	<u>"Foreign"</u>
Agriculture	445,872	174,622
Mining and quarrying	179,392	504,904
Manufacturing	589,974	177,033
Construction	308,007	117,047
Wholesale and retail trade	316,391	96,782
Government services	371,731	135,261
Domestic services	459,198	200,789
Other	215,891	114,544

283. Figures were also available for household subsistence levels for black South Africans: 226/

<u>Centre</u>	<u>HSL (rand)</u>	<u>% increase since:</u>	
		<u>April 1981 (12 months)</u>	<u>Sept. 1981 (6 months)</u>
Cape Town	238.16	13.9	2.8
Port Elizabeth	231.23	16.8	5.4
East London	235.17	17.8	7.2
Kimberley	235.92	16.8	8.5
Durban	236.26	15.2	3.3
Pretoria	232.18	16.9	6.4
Johannesburg	256.53	15.3	5.8
Bloemfontein	229.86	12.8	3.0
King William's Town	216.10	16.1	4.6
Uitenhage	238.52	18.2	7.7
Umtata	219.53	17.3	4.6
Springs	229.43	21.4	11.8
Vaal Triangle	246.02	19.4	10.7
Windhoek	261.37	11.8	4.4

225/ Assembly Debates, 22 April 1982.

226/ Financial Mail, 16 April 1982.

(i) Codes of conduct

284. The terms of the code of conduct recommended by the member Governments of the EEC to national and multinational companies operating in South Africa were outlined in a previous report of the Group (E/CN.4/1311).

285. Mr. Wiseman Khuzwayo (561st meeting) told the Group that notwithstanding the massive investment of multinationals in South Africa, the conditions of black workers have worsened. Mr. Khuzwayo told the Group that the ruthless and brutal acts of the multinational companies are clearly reflected in the health and safety conditions facing the workers in South Africa. He said that 72 per cent of the economically active population is not covered by legislation relating to occupational safety standards, and that in 1976 a South African Government-appointed commission admitted that if South Africa were to apply in its industry the standards of the United States and United Kingdom on the prevention of lead poisoning, 44 per cent and 26 per cent respectively of the plants using lead would close. Mr. Khuzwayo concluded that, given the high rate of unemployment, the multinationals find it cheaper to replace rather than to protect their employees, especially those in unskilled and semi-skilled jobs. Mr. Khuzwayo, on behalf of SACTU, called on the Commission to expose and condemn the disregard for the lives and safety of thousands upon thousands of South African workers, and reiterated the demand for the complete isolation of South Africa and the imposition of mandatory sanctions.

286. According to a report by a German church, the EEC codes of conduct have been "impotent" for four years. The report, which investigated 12 German firms, says that none of them has fulfilled the recommendations of the codes of conduct, except in a few instances regarding desegregation of facilities. 227/ According to research done by The Observer, London, some leading British companies are still paying poverty wages in South Africa, despite the codes of conduct. The companies include Associated British Foods, British Electric Traction, Dunlop, Guest Keen and Nettlefold, Lonrho, Low and Bonar, Turner and Newall, and George Wimpey. 228/

287. Mr. Andrew Kailombo (573rd meeting) said that since the ICFTU had produced a list of foreign companies investing in South Africa there had been an increase of 1,152 companies, making 3,035 in all. Of these, he said, 185 were British, 690 were from the United States and 350 from the Federal Republic of Germany. Mr. Kailombo said that the ICFTU felt it was right to report these companies since they made their profit at the expense of cheap black labour.

(ii) Miners

288. Part 6 of the Wiehahn Commission report, published during the period under review, dealt with industrial relations in the mining industry. The report detailed how the mining industry had never established an industrial council; how wages for black mineworkers, who had only recently been granted trade union rights, were fixed centrally and unilaterally by employers; nonetheless, although trade union rights were recently recognized, no union exists for black mineworkers. The report also covered wide-ranging job reservation for whites in the mining industry which, first established in the First Industrial Conciliation Act 1924, continues today. The reservation takes four forms: statutory job reservation requiring that certain

227/ Sunday Express, London, 14 March 1982.

228/ The Observer, London, 21 March 1982.

skilled or responsible underground jobs be restricted to holders of Government certificates, which are available only to "scheduled" persons (white, Coloured and Malay); closed shop agreements with the Chamber of Mines, which guarantee white workers control over all skilled jobs in gold mining; the Allocation of Occupations Agreement between the white unions and the Chamber of Commerce, which prescribes the occupations to be represented by each union; and two remaining job reservation determinations, originally promulgated under the Industrial Conciliation Act 1956, which prevent the employment of black workers in sampling, surveying and ventilation work in the mining industry.

289. The Wiehahn Commission, in a majority recommendation, proposed that the definition of a "scheduled person" in the Mines and Works Act 1956 should be replaced by a non-discriminatory definition of a "competent person" subject to safeguards, to protect white workers and to maintain work standards, levels of proficiency and the principle of equal pay for work of equal value. In addition, changes in work practices and conditions of employment should not be introduced without consultation with employee organizations, job security measures should be included in agreements and adequate provision provided against racial victimization for all groups. The parties concerned should negotiate the removal of industrial job reservation. In its White Paper, the Government agreed with the "underlying spirit of the recommendation" but did not consider that it called for action by the authorities. Industrial relations was a matter for the parties within industry. The Government favoured the adjustment of the definition of "scheduled person" to that of "competent person" at an appropriate time and in a suitable manner, that is, after the employers and trade unions had first reached agreement on the revision of other arrangements (the closed shop and the Allocation of Occupations Agreements which provide industrial job reservation). The Government therefore adopted a stance which reflected a concern for political considerations rather than the removal of statutory job reservation and other barriers to black advancement in the industry. 229/

290. Mr. Khuzwayo (561st meeting) told the Group that the lives of thousands of South African workers are at risk simply as a result of mining and working with asbestos - the fifth most important mineral in South Africa, which is primarily mined for export purposes.

291. During the period under review thousands of miners went on strike against Government-imposed wage increases. During incidents which followed, involving riot police, at least 10 miners were killed and many more injured. 230/ Hundreds of mine workers were dismissed after the incidents. Newspaper reporters were denied access to the injured miners. 231/

292. Mr. Sere (575th meeting) said that there was only one person employed in South Africa to ensure the occupational safety of the 700,000 workers in the South African mines. He said that this was one of the reasons why 750 miners were killed in mine accidents each year and another 28,000 injured.

293. Mr. Majola (572nd meeting) referred to the "notorious ... compound system" in the South African mines. He said that workers were divided according to "tribes" expressly to create tribal divisions and to disrupt the unity of the mine workers.

229/ International Labour Organisation, Eighteenth Special Report of the Director General on the Application of the Declaration concerning the policy of apartheid of the Republic of South Africa (Geneva, 1982), p.7.

230/ Morning Star, London, 6 and 8 July 1982.

231/ Sunday Express, 4 July 1982

294. The representative of the ILO, Mr. Ratteree (585th meeting), referred to a complaint that the World Federation of Trade Unions submitted to the ILO. The complaint concerned the violations arising from the strikes and violence in the South African gold fields, and had been submitted to the Economic and Social Council in conformity with Resolution 277 (X) of 1950. He said that further action on this matter would depend on acceptance by the South African authorities that the complaint be considered by the ILO's Fact Finding and Conciliation Commission stipulated in the same resolution.

(iii) Job reservation

295. In its 1982 report (E/CN.4/1485, para. 160) the Group detailed the remaining two job reservation determinations in force in South Africa. In February 1982 the reservation applicable to certain municipal employees in the Western Cape is reported to have been withdrawn. The determination which applies to sampling, surveying and ventilation operations in mining remains in force. 232/

296. The ILO reports that "the continued application of this determination taken together with the legislated prohibition on the holding of 'blasting certificates' by Blacks in the mining industry ... means that legislated job reservation in South Africa has not been fully abolished and continues to affect a very large number of jobs in mining." 253/

297. During the period under review, the Government decided to lift the suspension of the closed shop and to permit the system to continue. According to information available it is expected that a Bill will be introduced at the next Parliamentary session to amend the Labour Relations Act, allowing a 90-day period of grace for workers and employers with regard to membership of closed shops, will be introduced in 1982. 234/

298. According to the ILO, the reintroduction of the closed shop system has implications for both black job advancement and black freedom of choice of trade union membership. Skilled unions and unions in the mining industry are predominantly white, and through their established agreements with employers will, by regulating entry to union membership, be in a position to continue to protect white interests. The existence of long-established unions will prevent any newcomers bypassing this situation. In addition, black workers, as newcomers to trade union membership, will also suffer a severe limitation of choice of union in closed-shop industries, which will also determine their ability to retain employment. 235/

299. The ILO reports the case of a tobacco company where the workers lost their jobs after refusing to join the African Tobacco Workers' Union, a TUCSA affiliate which was granted a closed shop during the period of Government prohibition on new agreements. The ILO says: "It seems probable that the closed shop in its present form will become a source of more industrial unrest as black workers challenge a system which they identify with job reservation and discrimination, and which is to be allowed to continue with its entrenched structures and its legal basis." 236/

232/ ILO, op.cit., p.24.

233/ Ibid.

234/ Sowetan, 13 August 1982, Rand Daily Mail, 2 September 1982.

235/ Ibid.

236/ Ibid., p.25.

300. The ILO cites two other cases of job reservation in practice: (a) heads of fire departments refused to hire black workers to replace white workers who had left for higher paid jobs, because, they said, municipal policies would not permit the employment of blacks to replace them in "white" jobs; and (b) in addition to the segregated employment of nursing staff by provincial authorities, the South African Nursing Council registers training institutions for whites separately from those of other race groups. In all, 110 institutions exist for whites while 76 exist for other races. The ILO says: "The larger number of facilities for whites also raises questions of the inadequacy of opportunity of entry into the profession, and therefore of nursing services, for non-whites, in view of the relative sizes of the population groups." 237/

(iv) Training of black workers

301. In its 1982 report (E/CN.4/1982, para. 165) the Group detailed the provisions of the Manpower Training Act which was passed in 1981. During the period under review, the Minister of Manpower, Mr. S.P. Botha, explained that the Government was responsible for black basic education and training, while the private sector was responsible for the further proficiency of workers. The ILO reports that this statement holds considerable importance for Black advancement, when set against the Government's control of Black education, with low per capita expenditure, the Government's deliberate decision in 1977 to considerably increase overseas recruitment of labour, and the downturn in the economy in 1981. Genuine and uninhibited Black job advancement can only be ensured by an unambiguous policy to co-ordinate public and private responsibilities in this sphere. 238/ In this regard the Group wishes to recall that in the annex of the General Assembly resolution 31/5 J adopted on 9 November 1975 it is provided that the General Assembly called upon all Governments in particular to prohibit or discourage the flow of immigrants, particularly skilled and technical personnel, to South Africa.

302. In September 1980 the South African Government began to register black apprenticeships. By the end of 1980, according to a parliamentary reply, 82 blacks had been registered compared with 8,568 whites, 1,406 Coloureds and 471 Asians. According to further information, 300 further blacks had been registered in 1981. Companies have complained of difficulties concerning theoretical training for black apprentices because the Government would not allow them to enter white technikons (technical colleges). 239/

303. The South African Railways and Harbours Board has decided not to admit black apprentices until 1983. In 1980 the Board engaged 1,468 white apprentices. In the Government's own technical institutions for blacks, fewer students were undergoing training in 1980 (2,458 enrolled) than in 1979 (2,651 enrolled). 240/

237/ Ibid.

238/ Ibid., p. 27.

239/ Ibid., p. 28.

240/ Ibid.

(v) Unemployment

304. Mr. Wiseman Khuzwayo (561st meeting) told the Group that unemployment has grown to massive proportions in South Africa and is currently over 25 per cent.

305. Mr. Thozamile Majola (572nd meeting) said that unemployment is "not accidental in South Africa". He said that the unemployed in the Bantustans are used to suppress the demands of their militant working brothers, "in other words, striking workers in South Africa are summarily dismissed, repatriated to those so-called Bantustans, and then replaced by those from the reserves, that is, from the same homeland. Not only does this practice, often carried out by force, frustrate workers' demands, but it also serves to cause serious divisions amongst the blacks themselves."

306. According to additional information available to the Group, more than 50 per cent of unemployed black and Coloured people are younger than 30; of unemployed black people, 51 per cent have been seeking work for at least six months; blacks are excluded from unemployment benefits; more than half of South Africa's unemployed blacks have little or no education; and almost 35 per cent of unemployed blacks have never worked before. 241/

(vi) Women workers

307. A section of Part 5 of the Wiehahn Commission examined the problems of women in employment. As a result of the Commission's proposals, the South African Government accepted that sex or marital status should be precluded as a basis for defining the "class" of an employee, and that restrictions on overtime should apply equally to men and women. However, the Government rejected the Commission's proposals that the restrictions of the employment of women on night work after 6 p.m. should stand; that the proposed extensions of the period of pre-confinement leave should be increased from four to six weeks; that termination of employment on grounds of pregnancy be prohibited; and that employers be required to reinstate female employees at the end of an approved absence from work due to pregnancy. 242/

308. In its 1982 report (E/CN.4/1485, para. 167-168) the Group dealt with the conditions and wages of workers in domestic service - the largest employer of black women in South Africa. According to information available to the Group, the national average wage for a full-time worker in domestic work in 1981 was R39, as compared with R35 in 1978. 243/

241/ Star, 23 March 1982.

242/ ILO, op.cit., p.8.

243/ Rand Daily Mail, 23 February 1982.

I. Denial and infringements of trade union rights

309. By its resolution 1981/41 the Economic and Social Council requested the Group to continue to study the question of infringements of trade union rights under apartheid, and to report thereon to the Commission on Human Rights and to the Economic and Social Council.

310. Information has become available to the Ad Hoc Working Group of Experts during the period under review which concerns: (1) the suppression of the right to organize trade unions; and (2) the persecution of workers because of their activities, especially as a consequence of strike action.

311. A list of the names of some trade union leaders recently persecuted by the South African regime is contained in Annex I.

1. The suppression of the right to organize trade unions

(a) Labour relations

312. In previous reports (E/CN.4/1311, paras. 253-262, E/CN.4/1365, paras. 185-195; E/CN.4/1429, paras. 277-279, and E/CN.4/1485, paras. 172-182; the Ad Hoc Working Group of Experts detailed the setting up of the Wiehahn Commission to examine ways in which South African industrial relations could be reformed; the publication of sections of the Commission's report; the tabling of the Industrial Amendment Act and the amendment to it published in August 1981, and the reactions of black trade unionists to the reports.

313. During the period under review a Bill was published which envisaged two important changes to the Labour Relations Act. Under the draft law, unregistered unions would be able to take part in recognized conciliation boards. In addition, the Bill would empower the Minister of Manpower to appoint a mediator in any dispute, and to appoint a conciliation board if he considers it in the national interest to bring about a speedy conciliation. 244/

314. In its report the ILO made reference to the Labour Relations Amendment Act 1982 (see E/CN.4/1485, para. 181). The ILO points out that the revised definition of "trade union" embodied in the Act means that black political and community groups, some of which have played a role in industrial relations issues, would be subjected to controls to be exercised over actual, but unregistered, trade unions. 245/

315. In addition, the Act controls trade union members by restricting the influencing of trade union members with the intention of aiding a political party, or any person seeking office in a political party or legislative body. 246/

316. A new restriction was also introduced on trade unions, in that their head office must now be sited in the Republic of South Africa, that is, where the law of South Africa applies. The ILO points out that the effect of this is to prevent the establishment of trade union head offices in "independent homelands" and "self governing homelands". 247/

244/ The Guardian, London, 14 August 1982.

245/ ILO, op.cit., p. 11.

246/ Ibid.

247/ Ibid.

317. The ILO further reports that the Act introduced a new offence which applies to both registered and unregistered unions and union federations. It prohibits the payment of financial assistance to a striker with the object of "inducing" or "enabling him to take part in an illegal strike. As a result, the provision of strike pay for those engaged in illegal strikes becomes a criminal act subject to a fine of R1,000. Those taking part in illegal strikes also face increased fines of R1,000 or one year's imprisonment, or both. 248/

318. New controls which in effect provide a substitute for compulsory registration were also applied to unregistered trade unions by the Act. Such bodies are now required to supply details of their address, constitution and the names of their officers and officials to the Registrar. Subsequent changes must also be notified. In addition, these bodies must maintain records and audited accounts and prepare annual statements which become subject to inspection by the authorities. Restrictions also apply to internal voting and electoral procedures. 249/

319. Mr. Majola (572nd meeting) said that the apartheid regime is attempting to prolong its existence by "revising" its legislative control of the unions. He referred to the Labour Relations Amendment Act which, he said, has been portrayed by the South African Government as eliminating racist and discriminatory laws. But, Mr. Majola continued, although the Act removes all reference to race "it does not alter the position of black workers, and Africans in particular, within the apartheid system ... While the Act enables blacks to participate in the statutory bargaining system, it does not afford genuine trade union rights to any workers". Mr. Majola explained that the struggle of black workers is not about registration but the assertion by black workers of their right to be represented by the trade union of their choice. The new Act extends, rather than restricts, these controls to all unions.

320. Mr. Majola also pointed out that once workers participate in an "illegal" strike they are no longer regarded as employees. In the case of migrant workers and Bantustan residents, this means that their permits to be in the areas of employment are usually withdrawn. As a result, despite the change in wording brought about by the Labour Relations Amendment Act, the pass laws continue to be used as a means of strike breaking.

321. The ILO reports that controls placed on trade unions in general, and unregistered trade unions in particular, were severely criticized when independent trade unions representing the majority of organized black workers set for the first time. 250/

322. The ILO further notes that in South Africa the division of the labour field into two separate systems, one a Government-supervised industrial relations system, the other a Government-directed labour supply system, is a major obstacle to the exercise of genuine freedom of association. Its report states: "The removal of legislated discrimination from (Government-supervised industrial relations) does not remove the constraints of (the labour supply), which is based on constitutional law and administrative practice and regarded as outside scope of trade unions.". In addition, the ILO points out that although explicit racially discriminatory features of legislation concerned with manpower training have been removed, in practice the discrimination continues in a variety of forms. 251/

248/ Ibid.

249/ Ibid.

250/ Ibid. p.12.

251/ Ibid. p.32.

323. Mr. Wiseman Khuzwayo (561st meeting) said that there was no sign of genuine dismantling of apartheid. He said that the Labour Relations Amendment Act, in prohibiting all strikes except those against working conditions, was aimed at black unions since white unionists had no need for political strikes.

(b) The struggle for the acquisition of trade union rights

324. The period under review was a year of increased and widespread strikes. In 1981 the total number of strikes rose by 65 per cent over the previous year: 342 strikes in 1981 compared with 307 in 1980. The strikes in 1981 involved 84,705 black workers out of a total of 92,842 striking workers. 252/ The number of man-days lost through strikes increased by 30 per cent over 1980, to 226,550. The number of man-days lost in disputes involving black workers rose by 39 per cent to 206,225. 253/ Of the recorded strikes, 29.5 per cent (101) took place in the Eastern Cape and 27.5 per cent (94) in the Pretoria-Witwatersrand-Vereeniging area. In 48 per cent of cases, the strikes were started over pay. 254/ The ILO reports that in a study of 24 disputes involving 10,772 black workers in the East Rand, 12 had been protests concerning dismissals, six involved workers' demands for the dismissal of other staff including white foremen and managers, and six concerned wages issues. 255/ In accordance with available information, 51,000 were involved in strikes in the first six months of 1982 compared with 30,000 in the first six months of 1981. 256/

325. Mr. Sere (575th meeting) stated that the major causes of the growing number of strikes in 1981 were the poverty wages, appalling working conditions and a total rejection of the over-all apartheid system by the workers.

326. During the period under review, the organizer of the Metal and Allied Workers' Union, Mr. Moses Mayekiso, said that the root causes of strikes in the East Rand were low wages and to protest retrenchment, and that in some instances employers were adamant in refusing to meet workers' demands, and in insisting that wage negotiations take place at industrial council rather than at plant level. He warned that unless the system of industrial councils was improved, strikes might further escalate. 257/

327. The ILO report states that many strikes were provoked by proposed pension legislation. The Government, in an amending Bill, had proposed that all pension contributions should be "frozen" until retirement. This meant that workers' contributions would no longer be repaid when a worker left his or her employment through being forced to move to a "homeland". No consultation took place with black workers about this change, and as a result strikes in all major industrial centres occurred. Some employers returned the contributions but others required workers to resign first. After initial refusals, the Government finally withdrew the Bill. 258/

252/ Ibid., p. 17; Rand Daily Mail, 11 May 1982; Financial Mail, 5 February 1982; The Guardian, London, 24 May 1982.

253/ Financial Mail, 5 February 1982.

254/ Rand Daily Mail, 25 February 1982.

255/ ILO, op. cit., p. 16.

256/ Focus, No. 43.

257/ Ibid.

258/ ILO, op. cit., pp. 16-17.

328. During the period under review, 1,700 workers at Alusaf, Richards Bay, went on strike after demanding that their pension money be transferred from the Metal Industries Pension Fund to a private fund. 259/

329. The ILO points out that virtually all strikes in 1981, as in previous years, were illegal. Mrs. Helen Suzman commented that over a period of 10 years only one strike had been legal. The ILO says that "this illustrated that the strike procedures laid down by law ... were not working, they did not suit the needs of the vast majority of workers and were too complicated, having been established to settle major disputes, whereas most strikes arose out of shop floor grievances. 260/

330. In its 1982 report (E/CN.4/1982, para. 186) the Group made reference to a series of strikes at the Wilson-Rowntree sweet factory in East London. Some 1,530 workers had decided not to work after the firm refused to recognize their union, the South African Allied Worker's Union (SAAWU). During the period under review, there were renewed calls both from within South Africa and outside it to boycott all Wilson-Rowntree sweets. A number of trade union and community organizations supported the call to boycott and during the period under review the Joseph Rowntree Memorial Trust and Joseph Rowntree Charitable Trust considered placing their weight behind the campaign to condemn the company's South African subsidiary. 261/

331. Mr. Khuzwayo (551st meeting) told of how Bantustan authorities have used violence and force to break up meetings of workers and arrest striking workers on several occasions at the East London Wilson-Rowntree plant.

332. According to information available to the Group, the South African Allied Workers' Union (SAAWU) has continued to face harassment from the South African and "homeland" authorities. In 1981 a security branch officer circulated a document to employers in East London which proposed strategies to hamper the union. 262/ At one stage, 255 SAAWU members were reported to be in detention. 263/

2. The persecution of workers because of their activities, particularly as a consequence of strike action

333. Several witnesses who appeared before the Group, as well as the ILO representative, gave testimony about the increased use of penal sanctions against trade unionists and striking workers, through the continued use of police in labour disputes, through action against trade unionists by "homeland" authorities, and through the murder and harassment of trade union activists.

334. In her written evidence to the Group, Ms. Ruth Mombati, Representative of the African National Congress said that figures from the South African Institute of Race Relations show a decided swing of security attention from students to workers and trade unions.

259/ Rand Daily Mail, 24 June 1982.

260/ ILO, op. cit. p. 17.

261/ The Guardian, London, 10 May 1982.

262/ Financial Mail, 11 June 1982.

263/ Anti-Apartheid Movement, leaflet.

335. Mr. Wiseman Khuzwayo (561st meeting) told the Group about the death on 5 February 1982 of Neil Aggett, Transvaal Secretary of the African Food and Canning Workers' Union (see paras. 149-154 above). According to Mr. Khuzwayo, Mr. Neil Aggett was the 46th person known to have died whilst in detention since 1963. The regime says he hanged himself in prison. The autopsy was begun immediately and the police refused to wait for a private doctor or family representative. Mr. Khuzwayo quoted Neil Aggett's union as saying: "The authorities seek to convince us that Neil's detention is for other reasons, reasons of State security which have nothing to do with the Union. At the time of his detention the security police took from our Johannesburg office our minute book, petty cash book, bank deposit book, receipt books, letterheads and files on negotiations with employers ... many of these things were not even used by Neil." According to additional information available to the Group, Mr. Jan Theron of the Food and Canning Workers' Union described Dr. Aggett's death as a "turning point in relations between unions and the State" and said that "his death must be commemorated in a proper manner and those who are responsible must feel our shock and anger. His call was backed by all the main independent black unions. 264/ Fifteen hundred people attended the memorial service to commemorate Dr. Aggett's death. 265/

336. According to additional information available to the Group, during the inquiry into Dr. Aggett's death the chief district surgeon, Dr. Vernon Kemp, said that, before Aggett's death, he had examined him and found an injury on his arm which was consistent with maltreatment whilst in detention. Dr. Kemp also admitted that the post mortem revealed that Dr. Aggett could have died from torture and then been hanged to conceal this fact. 265/

337. Mr. Khuzwayo also told the Group about the persecution of a veteran trade union leader, Oscar Mpetha (see para. 150 (iv)), who has been in Pollsmoor Prison in Cape Town for more than 21 months, first as a detainee and then as an accused. The health of Oscar Mpetha, who is 72 years old, has deteriorated so much that the judge has excused him from further appearances in court. He has become mentally confused, can no longer recognize his family, is confined to a wheelchair and has had to have a prostate gland operation due to complications from diabetes. Yet the Cape attorney general has rejected a request for bail six times (see para. 150 above).

338. Mr. Khuzwayo also drew the Group's attention to the murder of two activists of the South African Congress of Trade Unions. Petrus and Jaba Nzima were killed when a bomb exploded in their car on 4 June 1982. Both were active trade unionists who had been forced to flee the country but had continued their trade union work outside.

339. Mr. Khuzwayo told the Group that the SAAWU and the Media Workers Association of South Africa (MWAASA) have recently had to bear the wrath of the regime. Three members of SAAWU - Thozamile Gqweta, the president, Siza Njikelana, the vice president, and Sam Kikine, the general secretary - are presently facing charges under the Terrorism Act. Mr. Gqweta has been in detention eight times before and at one stage the regime's agents murdered his mother and uncle when a fire bomb was thrown into his home. His girlfriend was later shot by police at their funeral. At the beginning

264/ The Guardian, London, 11 February 1982.

265/ Daily Dispatch, 11 February 1982, Rand Daily Mail, 14 June 1982.

266/ Citizen, 8 June 1982.

of 1982, both Mr. Gqweta and Mr. Kikine were admitted to psychiatric hospitals in a serious condition. The Group was given information stating that Mr. Gqweta was in good health before his arrest, 267/ (see paras. 141 and 157 (iv) (d) above).

340. According to additional information available to the Group, "it is no secret that the security police have endeavoured to 'break' the 85,000 strong union of SAAWU, or attempted to exert greater control over its leadership". 268/ In addition to the raiding of offices (see para. 332 (c) below) and the detention and persecution of leaders, several key organizers for the union have been dismissed from several factories. 269/

341. Mr. Khuzwayo said that 13 of MWASA's leaders were put under banning orders following a strike on the Post and Weekend Post at the end of 1980. Four of the current leaders are at present in detention, one of them, Joe Thloloe, has spent 18 months in continuous detention in the past.

342. Mr. Khuzwayo said that the militancy of the South African workers is something the regime knows and fears, and its response is to increase the use of the security laws. He said that, whereas in 1981 21 active trade union members are known to have been detained, the figure for 1981 is at least 347. In addition, in 1981 more than 1,200 workers were charged on the basis of their involvement in disputes and work stoppages at their place of work. The Minister of Police stated that during 1981 the police were called to the scene of stoppages, strikes and disputes 191 times.

343. According to additional information available to the Group, between 1 July 1980 and 30 June 1981, 78 workers were charged with illegal strikes and related conduct and 67 were convicted. 270/

344. Mr. Khuzwayo said that armed police have continued to be used regularly to control and intimidate workers. He said that in 1981 they were called to enforce mass dismissals and frequently used dogs and teargas to disperse striking workers.

345. Mr. Andrew Kailambo (573rd meeting), representing the ICFTU, said that the introduction of new legislation in South Africa on the registration of black trade unions had brought no improvement. He said that in fact the situation of the independent trade unions was now much worse and that out of 772 detentions in 1981, more than 500 had been of trade unionists. Mr. Kailambo quoted the South African chief of security police as saying that detention of trade unionists was intended "not to try criminals but to get information". Mr. Kailambo said that trade unionists were regarded by the South African authorities as "ideological criminals".

346. Mr. Kailambo pointed to the large number of strikes where police had been called in. He cited a case in June/July 1982 where striking black workers had been set upon and beaten by white workers. Ten of the black workers had had to be sent to hospital.

267/ Amnesty International, Index AFR 53/66/82.

268/ Star, 18 May 1982.

269/ Daily Dispatch, 25 June 1982.

270/ Assembly Debates, 30 March 1982.

347. Mr. Kallemba stated that there had been 2,212 strikes in South Africa since 1973. Only one of them had been legal. He said that lack of funds in the black trade unions meant that they were unable to finance strikes and that the present Industrial Relations Bill precluded the collection of funds. He said that the largest black trade union federation, FOSATU, which had 60,000 members, was forbidden specifically to receive funds under section 29 of the Fund Raising Act.

348. He went on to say that although there were in existence 185 agreements between companies and independent black trade unions, companies were still capable of calling in the security police to break up strikes.

349. Another witness, Mr. Sere (575th meeting), told the Group that he was a member of SACTU. He described his five-year electricians training course when he was taught electrical trade theory and given no proper technical training. Mr. Sere described how in 1980 he had joined with other workers to form the Legal Black Municipal Workers Union, of which he became vice president. He described the arrest of Joseph Mavi, the BMWU president, and how police took striking workers to a compound and kept them overnight without room to sit or lie down, and then deported them to the Bantustans. As a result of police persecution, the strike was broken, the executive committee of the BMWU was harassed, and the witness left South Africa.

350. Mr. William Ratters (585th meeting), speaking to the Group on behalf of the ILO, said that the response of the authorities and some employers to the increased level of militancy among black workers had been "predictable". He said that summary dismissals of strikers continue as a principal feature of the South African industrial relations system and that increased use of penal sanctions, including repression by the so-called 'homeland' authorities in collaboration with the South African authorities, had been instituted against striking workers and trade unionists.

351. The ILO and Amnesty International detailed the names of a large number of trade unionists detained during the period under review. Those detained under the Terrorism Act without trial include Ernest Wesna, African Food and Canning workers' Union; four members of the Motor Assembly and Component Workers Union; Thami Mazwai, Media Workers Association; Xolani Khota, SAAWU; nine members of the National Automobile and Allied Workers' Union, and Alan Fine, National Union of Distributive Workers. 271/

352. Further incidents of the persecution of workers during the period under review include:

(a) Security police raids on the offices of the General Workers' Union and the Food and Canning Workers Union; 272/

(b) The use of teargas by riot police against 500 striking workers at Mondini; 273/

271/ ILO, op. cit., p. 19, Amnesty International, Index, 53/21/82.

272/ Daily Dispatch, 7 November 1981.

273/ Cape Times, 6 August 1982.

(c) A security police raid on the Kempton Park office of SAAWU, in which the police confiscated documents and T-shirts, ripped posters off the walls and threatened union members; 274/

(d) The abduction and questioning at gunpoint of a 19-year-old union official by four men claiming to be security police; 275/

(e) The arrest by security police of more than 200 mourners at a memorial service in Soweto for trade union leader Joe Mavi; 276/

(f) The attack by police on black gold miners who were striking against Government-imposed wage increases. Ten black miners were killed by police and in riots many were injured and hundreds sent to the "homelands"; 277/

(g) The use of police to enforce mass dismissals in order to break strikes. Police with dogs or teargas were called in by some managements to disperse strikers from their workplace, or workers attempting to hold meetings away from the work site. Police were also used to implement eviction orders aimed at forcing strikers to vacate their tied accommodation. 278/

274/ Rand Daily Mail, 27 May 1982.

275/ Rand Daily Mail, 3 June 1982.

276/ Cape Times, 17 June 1982.

277/ The Guardian, London, 8 and 10 July 1982; Sunday Express, London, 4 July 1982; Morning Star, 6 July 1982.

278/ Sowetan, 18 February 1982; Cape Times, 16 February, 30 March and 11 May 1982.

J. Student Movements

353. In a previous report (E/CN.4/1187) the Group described the segregation of university education by race and the rise of student movements among white and black students. The boycotts and disturbances in schools and universities that followed the student uprisings in June 1975 and continued throughout the period 1977-1978 are described in two subsequent reports of the Group (E/CN.4/1270, and E/CN.4/1311). In addition, in its two most recent reports the Group described the new upsurge of political resistance by students in schools and universities during 1980 and 1981 (E/CN.4/1429, paras. 318-321; and E/CN.4/1435, paras. 206-225).

1. Relevant legislation

354. The legislation relevant to university education was summarized in previous reports of the Group (E/CN.4/1187, paras. 176-189), as were the provisions of the Government's policy of "Bantu Education" (later called Black Education) which since 1978 has been administered by the Department of Education and Training, instead of the Department of Bantu Education, although still on a segregated basis. In its 1982 report (E/CN.4/1435, para. 202) the Group described the publication of new school regulations that provided for the expulsion of pupils who participated in "any riotous" action, or who violated any regulations under the Education and Training Act, and the expulsion of pupils by the Department of Education and Training without recommendation by the school principal. It also (para. 204) detailed new school regulations which dealt with boycotts of schools by pupils and stipulated maximum ages for pupils in certain standards.

355. During the period under review the Age limit law was put into effect. It legalized the regulations on maximum ages, ruling that no person over 16 could enrol at a primary school, no person over 18 could enrol in standards 6, 7 or 8, and no person over 20 could enrol in standards 9 and 10. Two hundred and fifty-one schools under the Department of Education and Training were affected. In Port Elizabeth, by July 1982, 800 students were affected by the law. 272/

356. During the period under review, parents of black pupils were forced to sign statements absolving schools and the Government from blame in the event of their children being injured during school activities and trips. The children were required to declare that they would abide by the regulations of the Department of Education and Training and the rules of their schools. 281/

2. Student campaigns against the Government's policy of black education

357. According to information available to the Group, the large-scale school boycotts which characterized the previous few years have somewhat abated during the period under review. However, information has reached the Group concerning incidents which occurred in schools where pupils, parents or teachers protested against the quality of black education. Some of these incidents are outlined below.

358. Police vans and cars blocked a walkout of pupils after a protest meeting at Mountview Senior Secondary School, Cape, in February 1982. The meeting was called after the school principal refused to recognize the Students Representative Council. Pupils at the school complained about victimization by the principal, and said that pupils had been suspended and expelled without reasons being given. After the walkout a youth was arrested. 281/

279/ Sowetan, 20 January 1982; Sunday Times, Johannesburg, 11 July 1982.

280/ Rand Daily Mail, 20 January 1982.

281/ Cape Herald, 27 February 1982.

359. Students at George Khona Senior Secondary School in Dobsonville, Transvaal, threatened to stage a sit-in unless their grievances were settled. The students had asked the circuit inspector to look into the causes of the high failure rate in all classes of their school, to determine what qualifications teachers of standards 8, 9 and 10 should have, and to clarify the position regarding the issuing of departmental books and the procedure used to admit new students. 292/

360. More than 800 Sobantu Secondary School pupils in Natal refused to attend classes until class fees expelled from the school were reinstated. About 72 pupils had been ordered by the local Department of Education and Training to leave the schools two weeks after they were enrolled because they were not deemed to be residents of Sobantu. The pupils who enrolled in the school after being turned away from schools in the KwaZulu "homeland". 293/

361. During the period under review, the Departments of Education and Training and Internal Affairs decided to close schools early so that 16 and 17 June would be school holidays. A newly-formed organization - the Unenfranchised Students Union of South Africa (USA) - resolved at its national congress to commemorate these days "the days of our heroes". 281/

362. On 16 June 1982, the sixth commemoration of the 1976 events, youths and police clashed in Soweto. About 40 buses were damaged and thousands of workers were unable to get home. Among other incidents that occurred on 16 June were. 285/

- (a) At the University of the North at Soweto police used tear-gas to disperse 2,000 students;
- (b) In KwaMashu near Durban three buses were stoned;
- (c) In some East Rand townships stones were thrown;
- (d) At the Peglar Mundi church in Soweto police used tear-gas, batons and tear-gas against crowds at a memorial service. Among those injured were Tom Mantsata, an executive member of the Committee of Ten, the daughter of Bishop Desmond Tutu and her fiancé, and three executive members of the African People's Organisation (AZAPO).
- (e) 47 local and 'foreign' journalists were detained for up to five hours when they entered Soweto to report on the service at the church.

363. Pupils at the Sibaya Secondary School in the KwaZulu "homeland" boycotted school, saying they would return only if the security police did not enter again without a letter signed by the KwaZulu secretary of education, and if teachers made arrangements to take pupils to national meetings regarding the Durban issue. Eight pupils were detained by police after the pupils started their protest. 296/

292/ Sowetan, 27 January 1982.

293/ Sowetan, 1 February 1982.

294/ Cape Herald, 12 June 1982.

281/ Rand Daily Mail, 17 June 1982. Citizen, 17 June 1982.

285/ Rand Daily Mail, 1 August 1982.

364. According to information available to the Group, 13 Johannesburg and Cape teachers were banned from teaching by the Director of Coloured Education after they stayed away from school on 16 June 1981, when a boycott was called by students as a day of remembrance. A teacher from the Chris Van Rensburg High School in Baurton was detained by security police in March 1982 and questioned about his involvement in the boycott. Eight teachers at the C. J. van Rensburg and Florence Park High Schools were dismissed from their posts at the beginning of 1982 because of their involvement. 287/

365. During the oral hearing, information reached the Group reflecting growing concern about the standard of education for black pupils under apartheid. Details on various studies and processes are given below.

366. The Soweto Teachers' Association and the joint Education Commission Committee to investigate the current state of affairs in black education in Johannesburg pointed to the denial of education to over-18 year-olds as one of the most sensitive issues. 288/

367. Nearly half of the black high school students who wrote their final examinations in Soweto failed. In contrast, more than 70 per cent of the white students in the Transvaal passed, notwithstanding university qualifications. Although the white results were released within three weeks of the examination, those of the black pupils were released piecemeal over several months. 289/

368. A survey published by the University of the Orange Free State points to the phenomenal increase in the number of black pupils - a rise of 13.1 per cent in the 15 years to 1971. The survey also found that 'hundreds of thousands' of these pupils are leaving school without having learned to read or write. 290/

369. The treasurer of the Cape Teachers' Professional Association, Mr. de Jager, said in June 1982 that the standard of education in coloured schools was dropping each year because of frustration with apartheid in the school system. Mr. de Jager pointed to the shortage of classrooms and teachers, the minimal amount spent on Coloured education, social conditions which make studying difficult, the lack of training and standards of teachers, bureaucratic interference in classroom activities and 'an abnormal separate education system' as well as the 'political situation Coloured people find themselves in'. 291/

370. Less than 2 per cent of the 445,000 black children enrolled in schools in 1965 reached Standard 1. In 1982 only 4.5 per cent of black teachers had qualification to the level of principal, class teacher and higher teacher training. 292/

371. According to a study by a University of Pretoria researcher, the quality of education in black schools has dropped rapidly. The survey showed that the pupil-teacher ratio is increasing and is likely to remain at 1:40 for some time; the qualifications of teachers had deteriorated since 1965, despite slight recent improvement; and that although expenditure per pupil has increased in recent years, it would have to more than double to fulfil the minimum requirements for an adequate quality of education. 293/

287/ Rand Daily Mail, (1982) 28, 1 January, 1982.

288/ ibid. n. 27 January 1982.

289/ ibid. n. 1, 17 June 1982.

290/ Rand Daily Mail, (1982) 28, 17 June 1982.

291/ Daily Dispatch, 16 June 1982; Rand Daily Mail, 16 June 1982.

292/ ibid. n. 17, 17 June 1982.

293/ Rand Daily Mail, 17 August 1982.

372. According to information available to the Group, per capita Government spending on black school education in the financial year 1980/1981 was R176.20 as compared with R913 for white pupils. 294/

3. Student movements in black universities and schools

373. Mr. Sammy Adelman (562nd meeting) told the Group that there can be no free education in an unfree society. He described how universities receive 75 per cent of their funding from the State, which exercises great control through continual threats of withholding funds, and the other 25 per cent from big business which demands that research be carried out in areas of particular interest and profit to itself.

374. The witness also described how universities are still not integrated. He told the Group how, in black universities, students are not allowed student unions. He said that facilities at black universities are "pathetic, they are virtually non-existent". He drew the attention of the Group to the overcrowding, lack of trained teachers and lack of textbooks.

375. Mr. Adelman went on to say that the student movement sees its primary role as an educational one. The students try to counter State propaganda, indoctrination and censorship, as well as attempting to create awareness of the links between apartheid and the lack of democracy in every area of South African society.

376. An anonymous witness (569th meeting) said that out of a population of about 25 million non-white South Africans, about six Indians annually and a smaller number of Coloureds and Africans are accepted into the two universities in South Africa which accept black South Africans openly.

377. The same witness described the case of a relative who, as a medical student, was not allowed to look at, touch or work on a white corpse. The witness also described the case of another relative who, expelled from Witwatersrand University after joining a student protest meeting on 16 June 1981, was taken into custody three times and subjected to torture.

378. Mr. Sidney Molifi (567th meeting), stated that the fundamental right of the student to self-organization is denied in South Africa. Students' lives are epitomized by a continual array of bannings, arrests, "disappearances", harassment, deaths in detention, expulsions and other persecutions. The fragmentation of South Africa along "tribal lines" and into the so-called Bantustans is a deliberate policy to undercut the national movement as a whole. He told the Group that, although there has been strong opposition to "tribal and lingual" separation by the South African Government, it has become relatively harder to work with students from the Transkei, Bophuthatswana, Venda and other "homelands".

379. Mr. Molifi described how one of the ways students' rights were circumscribed is that they are prevented from studying outside South Africa. Those who do manage to leave South Africa to study face the risk of harassment and even detention when they return. He drew the Group's attention to the case of one student who, after studying in India, was killed during an interrogation about his "activities" in India.

380. An anonymous witness (570th meeting) said that when he had been involved in student boycotts the "Boers" had tried to intimidate students' parents. When a parents' committee, consisting of teachers, students and parents, was formed, the Boers arrested the whole committee and the student bodies.

381. A further witness (570th meeting) described how in 1977 police had provoked a peaceful demonstration of parents and students protesting against rent increases in Soweto. Police shot tear-gas into the crowd, "shooting at all angles", and sent in dogs which bit demonstrators. The witness went on to describe how, after a peaceful demonstration was organized to try to release those who had been detained, the police organized workers in hostels to fight against the protesting children. The hostel dwellers, armed with "kiris" (clubs), started going from house to house fighting students and killing everyone in sight, including small children. The witness said that about 35 people were killed.

382. Mr. Gladstone Mbroke (581st meeting) said that students in South Africa are continually monitored and that even answers in examinations are used to monitor students' views. Students have only limited rights over what they choose to study. He described how, although he wanted to study as an engineer, because no engineering courses were available in the so-called "tribal universities", he would have had to apply specifically to the Minister of Education two years before starting the course, explaining why he should have a dispensation to study outside of the limits of the education system for Africans.

383. Mr. Fred Masodi (584th meeting) described how, since the uprising in Soweto in 1976, the attitude of the police and the South African Government towards students had remained brutal.

384. An anonymous witness (571st meeting) described how, as a result of his membership of and activity within the Students Representative Council at his school, he was sought by police and forced to leave the country. If he had remained in South Africa, he would never have been able to attend university since his family was too poor.

385. Mr. Pule Tsatsi (572nd meeting) said that the struggle of black students against "Bantu Education" and for a democratic educational system for all is an integral part of the national liberation struggle waged by the oppressed people. He described the formation of the South African Students' Organisation (SASO) and the South African Students' Movement (SASM) in 1968 and 1971 respectively, and told the Group how, after students began to mobilize, the police reacted brutally by killing hundreds of defenceless students, arresting and detaining others.

386. Mr. Tsatsi stated that the South African regime merely changed the name of the Department of Bantu Education to the Department of Education and Training without making any attempt to improve the quality and content of African education. He explained that R7,000 is spent on educating a white child, who attends school for an average of 10 years, and only R350 on educating a black child, who is able to attend school for an average of four years.

387. Mr. Tsatsi said that black students who want to go to white universities have to apply to the Prime Minister and that, as a result, no student who has been previously involved in political activities will ever be admitted to white universities. He described how black students who are admitted to white universities are not allowed to stay on campus and instead have to travel daily from areas outside the universities.

388. Mr. Tsatsi said that students are being admitted to the so-called "tribal universities" in accordance with their "tribe", regardless of where they are living.

389. Describing attempts by the South African police to intimidate students who wanted to participate in the Congress of South African Students (COSAS) and the Azanian Students Organisation (AZASO), both of which demand a non-racial education system for all, the witness said that these organizations pose a serious threat to the regime.

390. A number of student witnesses to the Croup (notably in the 570th, 571st, 572nd and 574th, 581st and 584th meetings) described both their personal experiences and the experiences of other student activists whilst in detention.

391. The witness Jacob (Jackie) Selebi (571th meeting), a member of SASO, described his experience as a school teacher in black schools in the Transvaal. Between 1971 and 1974 he held four teaching jobs and was dismissed from each of them because he "taught children more politics than school work". He described an encounter with a school inspector named de Beer while he was at Musi High School, Pinville, who told the children that "You have no heroes to commemorate, that is why you don't have monuments to black people in South Africa." The witness argued with the inspector on this point and was dismissed a month later. He was subsequently prohibited by the Department of Bantu Education from teaching anywhere in South Africa. His arrest, detention, interrogation and torture are described in paragraph 57 above.

392. According to information available to the Group, security police raided the offices of the University of Cape Town's Students' Representative Council during the period under review, and confiscated hundreds of posters portraying Oscar Mpetha, who is presently on trial (see para. 150 (iv) above). 295/

393. Violence broke out on the Durban campus of the University of Natal during demonstrations against a tour by English cricketers. During a meeting at the campus, students passed a motion condemning the tour. 296/

394. The South African Students Association condemned the detention of Johnny Issel, the Mitchell Plains community leader, and called for all detainees to be freed. 297/

395. A study commissioned by the University of the North (Turfloop) found that the university authorities were institutionalizing the system of racism and white domination on the campus and that, because of this, the university was "heading towards a major explosion". The educationist who compiled the study, Professor E. . . van Trotsenburg, accused the university authorities of suppressing the results. 298/

396. Black students of the University of South Africa formed their own council - the University of South Africa Black Students Coordinating Council - during the period under review. The Council was formed because of the academic problems facing black students for lack of proper facilities. 299/

397. During the period under review COSAS held its second national congress. Throughout the congress the organization condemned the systems of detention without trial and called for the unconditional release of all detainees. A member of the COSAS national executive, Oupa Masuku, has been in detention since November 1981 300/ Among other actions taken by COSAS was the condemnation of those who voted for the community councils in the Vaal Triangle. A spokesman for the Vaal branch of COSAS said that the elections were window-dressing experiments "which did not have the aspirations of the majority of the country's people at heart". 301/

295/ Sunday Times, 14 February 1982.

296/ The Rand Daily Mail, 17 March 1982

297/ Cape Herald, 20 May 1982.

298/ Sunday Times, 2 May 1982.

299/ Voice, 7 April 1982.

300/ Grassroots, June 1982.

301/ Sowetan, 20 June 1982.

398. During the period under review, six South African university student bodies launched an international campaign to get the South African Medical Students Association (SAMSA) expelled from the world body. The student bodies want the International Federation of Medical Students Associations to ban SAMSA because of its "lack of action concerning matters related to health in its broader social context", and its failure to take a stand over deaths in detention or the effects of apartheid on health in South Africa. 302/

399. During the period under review, AZASO decided, at its conference, that South African students including "progressive whites" should participate in the drawing up of an Education Charter, a student blueprint for the reform of the educational system. Both NUSAS and the liberal Afrikaans organization, POLSTU, gave support to the idea. 303/ The Education Charter would aim to forge links with all relevant organizations concerned with the liberation of the oppressed and exploited people in South Africa; to participate in community and labour issues at a supportive level; and to strive to eradicate exploitation of women with the formation of a woman's movement within AZASO. 304/

400. NUSAS, AZASO and COSAS united on one platform during the period under review to discuss South Africa's "education crisis". 305/

Fort Hare

401. Twenty-two students were arrested following a demonstration at the University of Fort Hare during a graduation ceremony. Police fired at the students and at least two were injured. The students were demonstrating against Chief Lennox Sebe, "president" of the Ciskei "homeland". 306/ A further undisclosed number of students were arrested when they refused to disperse after demonstration 307/

402. After the shooting, students boycotted classes at Fort Hare. Most of the 1,500 students refused to meet a deadline to resume classes. Students who had previously been arrested were being charged under the Ciskei Riotous Assemblies Act. According to information available to the Group, more than half the student body had been arrested and fined R50 each. The 22 detained during the ceremony were still held in custody. More than 300 Rhodes University students decided to stage a two-day boycott of lectures and a sit-in in solidarity with the Fort Hare students; the University of Witwatersrand SRU came out in full support of the Fort Hare students; and the University of Natal's Students' Representative Committee criticized the Ciskei "government" for its behaviour. The Fort Hare students refused to return to classes unless their 22 colleagues were released, and their R50 fines, which had been loaned to them by the university, were frozen. Finally, after students refused to return to classes, they were asked to leave the university. 308/

403. On 30 July 1982, Ciskeian police, assisted by the army, rounded up hundreds of male students at Fort Hare and ordered them out of the town of Alice. Students who tried to return to the university were turned away at the main gate and told they

302/ Sunday Times, 8 August 1982.

303/ Sunday Express, 11 July 1982.

304/ Star, 7 July 1982.

305/ Sunday Times, 11 July 1982.

306/ Daily Dispatch, 3 May 1982.

307/ Sowetan, 4 May 1982.

308/ Ibid; Cape Times, 5 May 1982; Daily Dispatch, 5 May 1982; Sowetan, 6 May 1982; Daily News, 7 May 1982; Sowetan, 7 May 1982; Daily Dispatch, 7 May 1982.

would not be readmitted. The police action was taken after students had protested at the lack of adequate electrical power in their hostels and had begun a boycott. Twelve hundred students left the university and the authorities said they would not be readmitted during the semester. 309/

404. A lecturer, Mr. Jonathan Jackson, who had tried to accommodate students stranded by police and university moves to eject them from the campus, was suspended by university authorities. He was arrested by the police when helping the students and held for some hours. After he blamed the university authorities for neglecting their responsibilities and leaving students stranded, he was suspended. 310/

405. The chairman of the Release Mandela Committee and the chairman of AZASO were refused permission by the registrar of Fort Hare University to address a memorial service in honour of those who had died in the Sharpeville shootings. 311/

4. Student movements in white universities

406. Mr. Sammy Adelman (562nd meeting) described the history of the National Union of South African Students (NUSAS). He told the Group that after Steve Biko had led black students out of NUSAS to form SASO, white English-speaking students were forced to re-examine and redefine their role within South African society. He described how, in response, the State banned some NUSAS leaders, charged some under the Suppression of Communism and Unlawful Organisations Acts, and declared NUSAS to be an "affected organization". Mr. Adelman said that "while maintaining the facade of tolerance for opposing viewpoints for world consumption, the State systematically attempted to destroy NUSAS". Mr. Adelman went on to describe how, in the 1980s, the influence of black consciousness began to decline and black and white English-speaking students began to reconcile their differences. Mr. Adelman said that during 1981 black students raised the idea of forming a national, non-racial student body, but decided against it since such a body would be a target too great for the State to resist oppressing.

407. During the period under review, a publication by NUSAS called Campus Action for Democracy 1982 was listed as an "undesirable" publication, which means that it is now an offence to import and/or distribute it. 312/ Mr. Adelman told the Group about the banning of the publication SASPU National - the organ of the South African Students Press Union, which is affiliated to NUSAS. SASPU National replaced National Student, itself banned for all future editions. Mr. Adelman said that in addition to the stringent banning rules, it "is not uncommon to find the university itself censor material, out of fear of alienating either state or capital".

408. According to further information available to the Group, the South African Students Press Union won an appeal against the banning of all future editions of its newspaper. 313/

309/ Rand Daily Mail, 30 July 1982; Sowetan, 3 August 1982.

310/ Sowetan, 4 August 1982.

311/ Daily Dispatch, 20 March 1982.

312/ Citizen, 18 June 1982.

313/ Star, 17 July 1982.

409. Mr. Adelman described how, when he was president of the SRC at the University of Witwatersrand, he helped organize an "Anti-Republic Day" in 1981. He described how, soon after a massive campaign involving 50 groups of different colours and political opinions, the State detained and then banned four students from the university, three members of the black students' society, and himself, as well as the president of NUSAS. He went on to tell the Group that after campaigns against Ciskei "independence" a massive crackdown at the end of 1981 saw nearly 40 students and trade unionists detained over a two-month period.

410. Mr. Adelman described the case of Mr. Auret van Heerden, a former president of NUSAS, who is presently detained as a State witness in the trial of Cedric Mayson and Barbara Hogan (see para. 151 (iii) above), and who has been subjected to systematic torture. He also referred to the trial of Alan Fine - a man who also "comes out of the student movement". Mr. Adelman then described to the Group his own banning and silencing two days before he was due to address a meeting on the anniversary of Soweto in 1981.

411. According to information available to the Group, despite the continued attempt by the South African Government to destroy NUSAS, the union has grown in strength. According to its president, NUSAS, because of continual State repression, has had to change its strategy, and instead of merely responding to an immediately tense situation the union has to "educate students to their role within the university, their community, South African society". 314/ (See also paras. 399-400 above.)

412. According to information available to the Group, more Afrikaans-speaking students are beginning to realize the value of the student union POLSTU (Politieke Studente Organisasie). Unlike other Afrikaans students unions, POLSTU's policy is that white students should work with black people and accept them as citizens. Despite verbal attacks by the Minister of Police, POLSTU has begun to speak to black student and community groups. 315/

314/ Star, 29 June 1982.

315/ Star, 3 July 1982.

K. Other serious violations of human rights resulting from the policy of apartheid and racial discrimination

413. Rabie Commission: During the period under review, a new Act, the Internal Security Act No. 74 of 1982, was adopted in order to implement the principal recommendations in the report submitted by the Rabie Commission which had been set up in 1979 to review South Africa's security legislation. The new legislation contains the following elements. 316/

- (i) Repeal of 12 laws, including the Terrorism Act of 1967;
- (ii) Three new crimes of terrorism, sabotage and subversion to be defined, with sentences of 20 to 25 years;
- (iii) An offence introduced of aiding any person to carry out any of the crimes in (ii), which would include requiring to notify the police. This would carry the same penalties as (ii);
- (iv) Powers given to a minister to declare any publication, organization or periodical illegal if he was convinced that they were engaged in activities which could endanger the public or safety of the State;
- (v) An advisory committee which would advise the relevant minister whether action should be taken against certain publications or organizations, or whether an organization should be declared illegal;
- (vi) No court of law would be able to give judgement on the activities or recommendations of such an advisory committee;
- (vii) Any person who refused to take an oath or belittled the findings of the committee would be guilty of an offence.

1. Censorship and restrictions on the journalists

414. The Ad Hoc Working Group of Experts's last report (E/CN.4/1485, para. 231) referred to concern over possible use of the newly enacted amendments to the Police Act, regarding information on detainees. It also noted a memorandum to newspaper editors from the South African Defence Force warning them against any mention of the SADF or reporting of results of SADF operations and casualties.

415. During the period under review, additional measures, planned or implemented, are likely greatly to curtail the future freedom of the press. Following the report of the Rabie Commission on security laws, 317/ legislation was put before parliament, contained in the Protection of Information Bill, aimed to increase police powers in censoring the press. The Bill prohibits publication of information concerning "a security matter or the prevention or combating of terrorism". 318/ Following the Steyn report, which included recommendations for the registration of

316/ Rand Daily Mail, 17 February 1982.

317/ Rand Daily Mail, 4 February 1982.

318/ Rand Daily Mail, 29 May 1982.

all journalists as well as registration of newspapers, as at present, a Newspaper Bill was put before parliament. Its provisions allow for the Minister for Internal Affairs to cancel the registration of newspapers, and force newspapers to submit themselves to a disciplinary body, recognized and sanctioned by the government. It was described as "an ominous threat to the freedom of the press". 319/ A draft bill to be called the Journalists Act was also published. Under it a General Council of Journalists would be established, all members of which would initially be nominated by the Minister for Internal Affairs. The Council would draw up a register of journalists and would have powers to take sanctions against them. All journalists convicted of "subversive activities" would be excluded. No news from unregistered foreign or local news agencies would be allowed. 320/

416. During the period under review, section 29(c) of the Police Act was used for the first time to prevent publication of information concerning the detention of four journalists and two others. A statement issued by Mr. David Bleazard, president of the South African Society of Journalists, said: "The horrifying implications of such action is that people can be made to disappear without trace at the whim of police." 321/ A Rand Daily Mail reporter was told that because of an article in which she quoted the president of the Black Sash "as saying the security police were 'answerable to no one'", she and her paper were being investigated under section 27(b) of the Police Act. She was told that in "terms of Section 27(b), it is an offence to publish any untrue statement relating to an action of the police". 322/

417. An Eastern Province Herald reporter, Sandra Smith, after interviewing trade unionist Thozamile Gqweta (see para. 339 above), said she was told by police to produce "a statement detailing everything Mr. Gqweta had told me, even the stuff I didn't publish". 323/

418. During the period under review, two editions of the monthly newsletter of the Media Workers Association of South Africa were banned. Among the other publications banned was an edition of Work in Progress. 324/

419. According to an article on book censorship by Christopher E. Merret, a study on censorship using the Government Gazette for the period 1974-1978 "has shown ... a steady increase in the total number, in the proportion of 'possession prohibited' items and the relative number of political bannings. Student publications, in particular, have been hard hit." 325/

319/ Rand Daily Mail, 12 June 1982.

320/ Focus 40, May-June 1982.

321/ Rand Daily Mail, 26 June 1982.

322/ The Journalist, February 1982.

323/ Ibid.

324/ Sowetan, 16 August 1982.

325/ "Political Censorship in South Africa", in Reality, March 1982...

420. A number of journalists have been banned and arrested during the period under review, among them Zwelakhe Sisulu, detained for eight months from June 1981, and banned since December 1980. 326/

2. Pass laws

(a) New legislation

421. In its 1982 report (E/CN.4/1485, para. 245) the Group referred to the publication of new proposals for legislation tightening up the pass law system, and increasing fines for employing "unauthorized" blacks from R100 to R500, following the recommendations of the Riekert Commission. During the period under review, new measures were placed before parliament in the "Orderly Movement and Settlement of Black Persons Bill". If adopted the Bill will provide for:

(a) Abolition of the 72-hour period during which a black person may remain in a "white" area without a permit;

(b) A curfew in "white" areas for all unauthorized blacks between 10 at night and 5 in the morning;

(c) A further massive increase in the fines for employing "unauthorized" labour from R500 to R5,000;

(d) Fines for anyone providing accommodation for "unauthorized" blacks of R500 plus R20 for each night the offence continues;

(e) Although, in the first instance, blacks previously "authorized" to live and work in "white" areas will retain their rights, they may have these withdrawn unless they are living in "approved accommodation";

(f) No resort to the courts, against a minister's ruling an individual or settlement "unauthorized". 327/

422. Mrs. Sheena Duncan, national president of Black Sash, and an authority on "influx control", said in a statement that the proposals amounted to "genocide": "They would create walls around the cities, trapping people in the homelands. The situation that faces them in these homelands amounts to genocide". 328/

423. According to Marian Lacey, an academic expert on Ciskei labour affairs, in 1979 only 870,000 families qualified as "permanent urban residents" under section 10 of the Black Urban Areas Act. Since 1979, 9,000 have lost these rights due to resettlement. 329/ It was estimated from statistics cited by the Riekert Commission that, if the Bill became law, at least three out of every four blacks would find the whole country outside of the "homelands" forbidden territory at night. Dr. Olivier, a Progressive Federal Party MP, said he was not optimistic that the Bill would be radically altered before becoming law. 330/

326/ Written testimony handed in by the witness representing Amnesty International.

327/ Financial Mail, 11 June 1982; Guardian, 28 August 1982.

328/ Sowetan, 26 July 1982.

329/ Ibid.

330/ The Guardian, London, 28 August 1982.

(b) Arrests

424. According to the information given by Dr. Piet Koornhof, Minister for Co-operation and Development, in parliament, 88,333 people were arrested for "influx control" offences by the regional administration boards in 1981. 331/

425. According to information available to the Group, section 29 of the Black Urban Areas Act which allows for blacks found "idle" in urban areas to be sent to "work colonies" for "rehabilitation" and banned from returning to where they were arrested, is still in use. In the first three months of 1982, 55 people were sent to work colonies, and on 31 March 1982 there were 195 section 29 prisoners at the "work colonies". 332/

3. Bannings

426. According to information available to the Group, the following people were among those banned during the period under review:

(a) Mrs. Nontsikelelo Albertina Sisulu, wife of jailed ANC secretary-general, Walter Sisulu, was served with her fifth banning order, which expires in 1984; 333/

(b) Mrs. Nomzamo Winnie Mandela was served with a five-year banning order, expiring in 1986; 334/

(c) A witness called by Dr. Neil Aggett's family at the inquest into their son's death in detention, Mr. Morris Smithers, was served with a two-year banning order outside the court where he was waiting to give evidence; 335/

(d) Four Port Elizabeth trade unionists - Mr. Dumile Makanda, Mr. Sipho Pityana, Mr. Maxwell Madlingozi and Mr. Zandile Mjuzawe - were banned for two years. All had recently been released from detention, 336/

(e) Three ex-detainees, Mr. Nicholas Haysom, a labour lawyer, Mr. Keith Coleman and Mr. Clive van Heerden, both industrial sociology students, were all banned for two years. 337/ According to written testimony handed in by Amnesty International, another detainee, Pravin Gordhan, executive member of the Natal Indian Congress, was released in May 1982 after five months' detention and served with a three-year banning order.

4. Denials of issues of passports

427. During the period under review, people who had their passports confiscated or withheld included Bishop Desmond Tutu, secretary general of the South African Council of Churches, and Mr. Hassan Howa, president of the South African Cricket Board. Bishop Tutu's application to the Pretoria supreme court for the return of

331/ Rand Daily Mail, 10 March 1982.

332/ Sunday Express, 9 May 1982.

333/ Rand Daily Mail, 15 June 1982.

334/ Rand Daily Mail, 27 February 1982.

335/ Rand Daily Mail, 16 April 1982.

336/ Rand Daily Mail, 8 April 1982.

337/ Ibid.

his passport was dismissed. 338/ The court found that the Minister of Internal Affairs had the right to revoke a passport at his pleasure. 339/ Mr. Howa had his application for a passport turned down for the seventh time. 340/

428. According to information available to the Group, Malusi Mpumlwana, a theology student, and Charles Ngakula, ex-president of the Media Workers Association of South Africa, both received letters informing them that since they were now "citizens" of the "independent homelands", "before you can enter the Republic of South Africa you must be in a possession of a valid visa". 341/

5. Health

429. In its previous reports the Ad Hoc Working Group of Experts pointed out how apartheid in medical services continues to cause suffering to black patients. The Group has referred to accounts of seriously ill or injured patients where the nearest whites-only hospital could not treat them, or where a whites-only ambulance could not pick them up. (E/CN.4/1429, para. 375) The Group has also referred to witnesses' evidence of the appalling conditions and overcrowding in black hospitals and the involvement of the South African medical profession in the planning, establishment and administration of the apartheid health services (E/CN.4/1485 paras. 249, 251).

430. According to information available to the Working Group, suffering and illness among black South Africans due to policies of apartheid has reached a critical level. 342/ This, in the opinion of the Group, is due to a combination of factors: the inadequate resources allocated to the black medical services and hospitals where overcrowding results in many patients having to sleep on the floor under beds (see paras. 433 and 434); a growing number of serious epidemics caused by increasingly concentrated rural populations, especially in the "independent homelands", without clean water supplies or sanitation (see paras. 435, 436 and 437); increases in the cost of living and unemployment, and a general deterioration in the living conditions of black South Africans (see para. 437); and a vastly inadequate number of black doctors and nurses arising also from apartheid in education (see para. 439).

431. According to Mr. Martin Séré (575th meeting) probably the clearest indication of the way in which transnational corporations use their ability to transfer production from one area, where health regulations are strongest, to those where they are not, can be seen in the actions of Cape Industries and Deutsche Kap Asbest Werke. Because of the pressure against the use of asbestos in the United Kingdom, the demands for asbestos there have dramatically decreased. As a result, Charter Consolidated announced in their 1979 Annual Report that Cape Industries have sold their interests in the South African asbestos mines and

338/ Star, 14 August 1982.

339/ Rand Daily Mail, 12 August 1982; Citizen, 11 June 1982

340/ Voice, 6 June 1982.

341/ New York Times, 18 July 1982.

342/ Star, 3 July 1982.

have begun to utilize and investigate substitutes in the United Kingdom. They have not, however, transferred any of this "concern or good intention" about the dangers of asbestos to the South African workers. Safety standards in these factories are very bad, and workers are exposed to the dangers of using very refined forms of asbestos, not just in a concentrated form, but also in the form of powder.

This process of transference of industries is already under way in the case of the asbestos textile factory from Hamburg in the Federal Republic of Germany, called Deutsche Kap Asbest Werke. Because asbestos usage is being phased out completely in the Federal Republic of Germany because of the cost of implementing stringent safety levels, this factory was forced to close down. The Argus of 18 April 1980 reported that this factory was dismantled and shipped to South Africa in 1979, where it was re-erected at Philippi.

This total disregard for the lives and safety of black workers is exemplified by the fact that only one person is employed in South Africa to ensure the occupational safety of the 700,000 workers in the mines, according to a report in the Rand Daily Mail of 28 April 1982. This is why the apartheid regime's own Department of Statistics shows that 750 miners are killed in mine accidents each year, and another 28,000 injured in mine accidents. And as the greed for higher profits increases, so too the number of accidents increases.

432. This information was confirmed by another witness who stated that asbestos is very dangerous to health, but the South African Government uses asbestos as a building medium, as a prefabricated structure for all educational institutions, black educational institutions, all over the country. In any small town to date in South Africa you will find these asbestos constructions for young South African schoolchildren.

(a) Medical services

433. Information recently published by the Department of Statistics showed that in 1979 there were 39,887 beds available for white patients, 34,771 for black patients, 4,826 for Coloured, and 2,080 for Indian patients. 343/

434. According to information available to the Working Group, a black township with a population of 140,000 was left with no ambulance service when its only operative ambulance broke down. 344/ At Ngwelezana Hospital, the chief medical officer told the Sunday Times that they sometimes had more than 1,000 patients in the 660-bed hospital. "We cope by putting them two in a bed by topping and tailing, and sometimes we even put patients underneath the bed." 345/ At one of South Africa's biggest hospitals, Baragwanath, near Soweto, scores of nurses have been resigning each month because of their appalling working conditions: in the children's ward, two or three babies share one cot. Dangerously ill patients have to be kept in the general ward because there is no room in intensive care units. With over 117,000 patients admitted in 1981, the hospital is overcrowded to twice its normal

343/ Cape Times, 26 January 1982.

344/ Sowetan, 2 March 1982.

345/ Sunday Times, Johannesburg, 21 March 1982.

capacity of 2,713 beds. 346/ At Boksburg Benoni hospital, 30 white-designated wards stand empty while black male patients at the hospital are given mats to sleep on. 347/

(b) Diseases

435. A cholera epidemic affecting Natal, Kwazulu, Bophuthatswana and Eastern Transvaal killed 31 blacks in 1981. The death toll is expected to be higher for 1982. 348/ Between August and December 1981 more than 1,000 cases were reported in Kwazulu, and more than 4,000 throughout South Africa. 349/ It also hit Durban slum areas, as well as Durban prison. The incidence of cholera per capita among black South Africans is now higher than it is in any country where the disease has hitherto been endemic. 350/ In an article on illnesses among blacks in South Africa, Dr. Anthony Zwi drew attention to the socio-economic reasons for such illnesses, which a past witness to the Group has previously emphasized (E/CN.4/1485, para. 249). 351/ Professor Margaretha Isaacson, and many other experts, have stated that the disease will not be eradicated until purified water and sanitation is provided in the overcrowded "homelands" and rural areas of South Africa. 352/

436. Professor John Gear of the University of Witwatersrand, commenting on the "disproportionate" amount of attention given in the South African press to the cholera epidemic, said "for people living in these stricken areas cholera is just another disease with which they have to cope". He estimated that for every cholera case there are 10 cases of typhoid. 353/

437. Other widespread diseases include tuberculosis, polio, hepatitis and malaria. Several dozen people in the Eastern Cape have also contracted bubonic plague. 354/ Ten million people are now estimated to be infected with TB, which kills 20 people per day. 355/ One hundred and twenty thousand are estimated to have active TB. Dr. Theo Collins of the Department of Health and Welfare said that the present upsurge in TB was largely due to the high cost of food and to unemployment. 356/ In one week in June 1982, five people died of polio in Gazankulu and 113 cases were reported in hospital. In 1981 only 20 cases were reported nationwide. 357/ Due partly to cuts in health and welfare spending, which have also affected treatment of TB, some of the paralysed polio patients were forced to sleep on the floor in hospital because of overcrowding. 358/

346/ Rand Daily Mail, 13 April 1982.

347/ Sowetan, 28 April 1982.

348/ Rand Daily Mail, 4 January 1982.

349/ Sunday Express, 31 July 1982.

350/ Rand Daily Mail, 4 January 1982: Sunday Express, 31 January 1982:
New York Times, 17 January 1982.

351/ New York Times, 17 January 1982.

352/ Star, 30 January 1982.

353/ Sunday Express, 7 February 1982.

354/ Sunday Express, 11 July 1982.

355/ Cape Times, 6 February 1982.

356/ Star, 6 February 1982.

357/ Star, 3 July 1982.

358/ Sunday Express, 11 July 1982.

438. Dr. Walter Loening, senior paediatrician at King Edward VIII hospital, Durban, South Africa's second largest hospital, stated that 45 per cent of all children admitted to the hospital were malnourished. Infant mortality stood at 134 per 1,000 for blacks compared to 20 per 1,000 per whites, he said. 359/

(c) Doctors

439. During the period under review, a number of Government and academic studies highlighting apartheid within the medical profession itself were published. Some of the information they contained is summarized below:

(a) Blacks constitute 2 per cent of South Africa's 15,663 doctors; 360/

(b) In 1979 only 50 black doctors worked full-time in 652 hospitals, only two of whom were specialists; 361/

(c) Up to 1977, 50 per cent of black applicants were admitted to South African medical schools. 362/ In 1981, only 8.7 per cent of black, Coloured and Indian applicants were accepted. Out of 958 first-year students, only 35 were black; 363/

(d) Professor Francois Retief, rector of Medusa, in the South African Medical Journal, estimated doctor/patient ratios in South Africa (excluding Transkei, Bophuthatswana and Venda) to be 1:330 for whites, 1:730 for Indians, 1:12,000 for Coloureds and 1:91,000 for blacks. 364/

(d) Reaction of the International community

440. In the Group's previous report (E/CN.4/1485, para. 251), attention was drawn to a paper submitted by Ms. Cate Clark, which stated that the continued acceptance of South Africa by the International health community remained a source of encouragement to the apartheid regime.

441. In September 1981 the World Medical Association (WMA), a non-governmental organization in official relations with the World Health Organization (WHO), readmitted the Medical Association of South Africa (MASA), and admitted the Medical Association of the so-called independent Homeland of Transkei. The Special Committee against Apartheid intervened with the World Health Organization

359/ Morning Star, 20 January 1982.

360/ Financial Mail, 23 April 1982.

361/ Cape Times, 26 January 1982.

362/ Financial Mail, 23 April 1982.

363/ Rand Daily Mail, 30 March 1982.

364/ Financial Mail, 23 April 1982.

and its representative Mr. J.V. Gbeho addressed the WHO Executive Board on the matter at its sixty-ninth session in January 1982 declaring that the WMA decision was an attempt to give international respectability to the apartheid regime which was "the only racial oligarchy in the world". He also recalled the role of MASA doctors in covering up the murder of Mr. Steve Biko and referred to the trials of Nazi doctors at the Nuremberg Subsequent Proceedings which could have relevance as regards what had happened in the Biko case. The WHO Executive Board decided to discontinue official relations with the World Medical Association as a direct result of its readmission of MASA to its membership and its admission of the Medical Association of the so-called independent Homeland of Transkei. 365/

442. Following the death in detention of Dr. Neil Aggett (see paras. 164-169) a number of criticisms and disclosures have been made in the South African press relating to the South African Medical Council and the Medical Association of South Africa. The professor of pharmacology and chief physician at Groote Schuur hospital, Professor P.I. Folb, referring to the death of Neil Aggett, complained that, although the SAMC had passed a resolution in 1980 committing itself to changes in the detention laws to ensure the safety and wellbeing of detainees, no further progress had been made. He said "the inevitable conclusion ... is that the spokesmen and guardians of the medical profession are posturing in their expressions of concern, and that it is in no small way as a result of this charade that the death has occurred in detention of yet another - ironically, this time a colleague". 366/

443. During the period under review, further information regarding the death in detention of Mr. Steve Biko and subsequent "cover up" has come to light. Regarding three doctors involved, one of whom admitted that he had subverted the interests of his patient to that of the security police and another of whom admitted to filing a "grossly inadequate" medical certificate, MASA have maintained that they "noted" and not "condoned" the SAMC's finding that there was no case to answer, but that the finding of its Cape Midlands branch, that there was no evidence of improper conduct, meant that it could take no further action. This view was reiterated in a document published by MASA on the Association's readmission to the WMA and the "medical treatment received by the late Mr. S.B. Biko". 367/

444. According to information available to the Group, the Cape Midland Branch enquiry had only three of the 23 volumes of inquest evidence and, since only one doctor was a member of MASA, it considered only his case. The doctor concerned was not called on to testify. Members of the branch recently recommended that the SAMC should hold a new enquiry. 368/

365/ WHO doc. EB 69/1982/REC/2 pages 296-297; WHO doc. A/35/2 para. 3.27; WHO doc. EB 69/SR/23 dated 27 January 1982.

366/ Cape Times, 11 February 1982.

367/ Cape Times, 24 February 1982.

368/ Cape Times, 5 March 1982.

L. Violations of the integrity of neighbouring States

445. During its mission of inquiry, the attention of the Ad Hoc Working Group of Experts was drawn on several occasions to the consequences of the raids by South African troops into the territories of Angola, Zimbabwe, Mozambique and Lesotho in 1982 (see also paragraph 81 above).

446. Captain Gouveia da Costa (583rd meeting) of the defence forces of the People's Republic of Angola gave a detailed picture of loss of life in Angola as a result of the repeated violations of Angolan territory by the South African army before and after Angolan independence in 1975. Since August 1979 these attacks no longer pretended to confine themselves to military camps of SWAPO, but were launched on Angolan civilian targets, including the Huila furniture factory in Lubango, when 36 workers were killed and 34 injured; the Changongo school, when 34 pupils were killed and 100 people injured; a helicopter-borne operation in Leba, where South African troops killed 20 people "in cold blood", including children, women and old people; and an airborne and land attack on Cuamar, where they killed 38 people, including 15 children in the school.

447. In 1978 alone, South African forces carried out 831 reconnaissance flights over Angolan territory, 58 bombings from the air, eight bombings from land, and six land attacks by troops. These attacks caused 138 civilian deaths and 84 injured. In 1981 the attacks increased, culminating in an attack on 22 August launched from the Namibian border, in which thousands were killed, and a large part of Cunene province was occupied. During 1982 air and land attacks have been launched from this region and a campaign of sabotage has been carried out, including raping of women and girls, machine-gunning of cattle, and poisoning of water supplies.

448. A witness, Jose Pedro Ndakolube (583rd meeting), gave personal testimony on experience of the brutality of these attacks on civilians (see section on Namibia), as did the witness Jose Manuel, a civil servant from Cuamato, Cunene (583rd meeting), on the bombing of a student hostel, when 30 children were killed (see section on Namibia).

449. Eldridge Katse (572nd meeting), representative of the Africar National Congress, was among many witnesses who drew the attention of the Working Group to the deaths of anti-apartheid cadres as a result of the activities of the South African security forces and their agents operating well beyond South Africa's borders, in independent African countries. In addition to the case of Joe Gqabi he said that the ANC's representative in Swaziland, Petrus Nzima, had been murdered by a car bomb, together with his wife, Jabu, on 2 June 1982.

450. The Group has reported on the murder of Ruth First in August 1982, in para. 30 above.

II. NAMIBIA

Introduction

451. In its previous report, the Ad Hoc Working Group of Experts had described the illegal measures by which South Africa had continued to maintain its jurisdiction over Namibia by consolidating internal, purportedly autonomous government structures in Namibia (E/CN.4/142), paras. 266-273). The Ad Hoc Working Group of Experts referred to the efforts by the international community to implement the proposal for a peaceful settlement as provided for in Security Council resolutions 385 (1976), 431 (1978), 435 (1978), and 439 (1978).

452. The most significant developments considered by the Ad Hoc Working Group of Experts during the period under review have been the continued effort to implement a peaceful settlement through negotiations involving all parties concerned, the holding of a population census in Namibia, the further militarization of Namibia and escalation of attacks on civilians and refugee centres in Angola, including several major incursions into southern Angola; the mass intimidation, maltreatment, abduction and murder of civilians in northern Namibia by South African forces; the admission by South African army chiefs in Namibia that some atrocities had been perpetrated by their troops and establishment of a commission to investigate allegations, new evidence on the treatment of captured freedom fighters and the conditions of imprisonment and state of health of Namibian prisoners on Robben Island and the Kassinga detainees; the continued widespread arrest and intimidation of SWAPO members, supporters and other individuals with a further tightening of regulations inhibiting political activities, further attacks on church members and property in northern Namibia.

1. Efforts to secure a peaceful settlement

453. On 24 September 1981, foreign ministers of the Western Contact Group composed of Canada, the Federal Republic of Germany, France, United Kingdom and the United States of America issued a joint statement in New York noting that extensive discussions with the parties concerned had enabled them to develop a time table for further negotiations with the objective of implementing Security Council resolution 435 (1978) during 1982. Accordingly the Western Contact Group said it intended to begin concrete discussions of proposed constitutional principles and other outstanding issues (E/CN.4/1485, para. 260). At the end of October 1982, the Contact Group presented its revised settlement proposal to South Africa, SWAPO, the African front-line States, Kenya, Nigeria, and the so called 'internal parties' in Namibia. The proposal comprised three phases: first, negotiations on principles for a constituent assembly and an independence constitution; second, negotiations on other outstanding issues, including the composition of UNTAG (United Nations Transitional Assistance Group) and the question of United Nations impartiality; and finally implementation of the settlement plan as set out in Security Council resolution 435 (1978). Spokesmen for the Contact Group stated that if phase one were successfully completed, i.e. if the constitutional proposals proved acceptable to all parties concerned, phase two could begin by the end of the year, and phase three by March 1982.

454. The proposals put forward by the Western Contact Group for the constituent assembly and the constitution itself are summarized below, and it may be noted that they provide for a declaration of fundamental rights enforceable by the courts, including provisions prohibiting all forms of discrimination. 369/

369/ See the Working Paper on Namibia prepared by the Secretariat for the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, paras. 63-76 (A/AC.109/699).

Constituent assembly

The elections to the constituent assembly should ensure fair representation to different political groupings representing the people of Namibia. The assembly would formulate the constitution for an independent Namibia in accordance with the principles set out below and would adopt the constitution as a whole by a two thirds majority of its members.

Independence constitution

Namibia would be a unitary, sovereign and democratic State. The constitution would be the supreme law of the State and might be amended only by a designated process such as a popular referendum. The constitution would provide for a system of government with three branches: an elected executive branch which would be responsible to the legislative branch; a legislative branch elected by universal and equal suffrage which would be responsible for the passage of all laws; and an independent judicial branch responsible for the interpretation of the constitution, ensuring its supremacy and the authority of the law. The electoral system would ensure fair representation in the legislature to political groups, for example by proportional representation by appropriate determination of constituencies or by a combination of both. The constitution would embody a declaration of fundamental rights including the rights to life, personal liberty and freedom of movement, freedom of conscience; freedom of expression, including free speech and a free press; freedom of assembly and association, including political parties and trade unions, due process and equality before the law; protection from arbitrary deprivation of private property and just compensation, and freedom from racial, ethnic, religious or sexual discrimination. The declaration of rights would be consistent with the provisions of the Universal Declaration of Human Rights and would be enforceable by the courts, at the instance of an aggrieved individual. Private cultural, social, health and education institutions would be open to all without discrimination, provision would be made for the establishment of elected councils for local and regional administrative and fiscal purposes. 370/

455. It was also reported that in order to gain South Africa's support, the Western Contact Group had proposed a form of non-aggression pact between an independent Namibia and neighbouring States. Among other things, the State of Namibia would not permit within its territory "the installation of foreign military bases or the presence of foreign military units", nor would it tolerate organized activities directed towards the commission of acts of aggression against "any other State". and neighbouring States would follow the same principles with regard to Namibia. It may be noted that South Africa might be able to use the pact as a pretext for intervention in Namibia by alleging that there were plans to install foreign troops, while the existing formulation would also protect South Africa's control of Walvis Bay. 371/

456. On 21 November 1981 SWAPO the African front line States Kenya and Nigeria issued their formal response in a document setting out their own principles concerning the constituent assembly and the independence constitution, which was considered to

370/ See the Working Paper on Namibia prepared by the Secretariat for the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples paras. 63-76 (A/AC.109/699).

371/ Ibid.

represent acceptance in principle of the substance of the Western proposals, including the adoption of a constitution by a two-thirds majority. The main differences were that this document omitted the provision for fair representation of different political groupings and specified that every adult Namibian would be eligible, without discrimination or fear of intimidation from any quarter to vote campaign and stand for election. The Western provision for the establishment of local and regional elected councils were also omitted, and the need for a "balanced restructuring" of the public service, the police and the military was stressed. At this stage no formal response was made public by South Africa. On 17 December 1981 after further consultations, the Contact Group submitted modified proposals to the parties concerned, of which the most significant dealt with the means of electing the constituent assembly. It was now proposed that half the delegates to the assembly should be chosen by proportional representation and half from single member constituencies, with each voter casting two votes, one for a party and one for a candidate in a geographic constituency. It may be noted that the proposed "one person two vote" system is that used in elections in the Federal Republic of Germany, and that in Namibia, because SWAPO support is concentrated in the north, the dual system would tend to favour other parties, particularly the Democratic Turnhalle Alliance (DTA), making it difficult for SWAPO to secure the two-thirds majority of members necessary to adopt the independence constitution. Another modification was the omission of the provision in the original draft that all private cultural and other institutions must be open to all without discrimination, while the revised draft made provision for the establishment of elected councils for local and regional administration only, leaving out the fiscal element, and specifying that it was not intended to detract from "the freedom of the constituent assembly to provide for primary authority to rest with the elected national government at the centre". 372/

457. Responses from all parties to the revised proposals of the Contact Group were received in January 1982. In his opening address to the South African parliament on 29 January 1982, Mr. Marais Viljoen, the State President of South Africa, said that South Africa formally accepted the proposals on phase one and was prepared to move on to phase two of the negotiations, but said the "lack of United Nations impartiality" remained a major problem. A joint reply from the African front line States, Nigeria, Kenya and SWAPO rejected the proposed electoral system. At a meeting of its central committee on 13 February 1982 SWAPO said the system proposed would give pro-South African groups an advantage, and in a subsequent statement of 19 March 1982 said that it would accept either a proportional representation system covering the whole of Namibia or an election by constituencies. Further talks were held between a delegation of the Contact Group and African leaders at the end of March 1982, and a modification of the proposed system was suggested, whereby each voter would only cast one ballot, but this would then be counted twice, once in a nationwide proportional race and once in a first-past-the-post geographic constituency contest. Half the seats in the constituent assembly would be elected through each of the two mechanisms. This was rejected by Mr. Sam Nujoma, the President of SWAPO, as too complicated, and Mr. Paulo Jorge, the Foreign Minister of Angola said in an interview at the end of April that the talks seemed to have reached an impasse, and that the second electoral proposal of the Contact Group seemed no different from the first. 373/

372/ Ibid., paras. 77-84, Quarterly Economic Review of Namibia, Botswana, Lesotho, Swaziland, 4th Quarter, 1981 p. 23. 1st Quarter, 1982, p. 5 (London, Economist Intelligence Unit).

373/ Ibid., African Research Bulletin, 1-30 April 1982.

458. The Foreign Ministers of the front-line States and Kenya, a representative of Nigeria and the President of SWAPO held further talks in Dar es Salaam in May 1982. In a communique of 4 May 1982 they expressed "deep disenchantment with the current protracted and sterile phased approach to a negotiated solution of the Namibian question as proposed by the contact group", and stated that SWAPO remained ready to accept either a proportional representation formulae or a single member constituency system, but not a combination of the two. The participants also endorsed a proposal previously made by SWAPO that all outstanding issues should be discussed together in a comprehensive manner in order to resolve them as a package. After a three-day meeting in Arusha, Tanzania, the United Nations Council for Namibia reaffirmed its backing for SWAPO as the "sole and authentic representatives of the oppressed people of Namibia" and said it favoured a new Geneva-style conference to resolve Namibia's accession to independence. After further discussion between the Contact Group and all parties in June it was agreed that outstanding issues should be resolved as part of an over-all settlement. A document drafted by the Contact Group stated that the constitutional principles with the exception of the electoral system could now be considered settled and that the Secretary General would be so informed. The previous proposal of a mixed electoral system would not be pursued further and the issue would be settled in accordance with the provisions of Security Council resolution 435 (1978). On the other issues, previously considered as phase two of the negotiations, the authorized upper limit of 7,500 for the military component of UNTAG remained intact, but there remained the need to resolve deployment levels, and concurrence on some adjustment of UNTAG's functions, including the concept of UNTAG monitoring of the restriction of armed SWAPO personnel to base in Angola and Zambia which could be accomplished by a small number of UNTAG personnel. The elimination of the proposed Demilitarized Zone (DMZ) would permit some reduction in size and cost of the operation, without impairing UNTAG's ability to perform its assigned functions (E/CN.4/1429, paras. 377-379). It was stated that the impartiality problems could be dealt with by: a Security Council reaffirmation of impartiality an understanding between the Contact Group, SWAPO the African front-line States and South Africa that United Nations activities running contrary to Security Council resolution 435 (1978) should not continue; restriction of the number of speakers at the Security Council meeting to implement resolution 435 (1978) and the General Assembly session held to authorize the funding of UNTAG, this understanding to include the point that no participant should speak. It was proposed that if there were agreement in principle on these ideas, there could be talks among representatives of the parties concerned and the United Nations Secretariat designed to reach final agreement. 374/

459. Another boost to the negotiations was provided by a meeting between the United States Secretary of State for African Affairs Dr. Chester Crocker and the SWAPO president in June 1982. After the meeting, Mr. Nujoma was reported to have said that he was now convinced that the Western negotiating effort was serious, and was also reported to have provided Mr. Crocker with assurances that an independent Namibia would be genuinely non-aligned and would not allow foreign troops to maintain bases in the country. At the same time as these talks were held Mr. Dirk Mudge, chairman of the Council of Ministers and DTA leader, called for the holding of internationally-supervised elections by March 1983, even if SWAPO did not take part. He defined the outstanding issues as: final and acceptable guarantees on United Nations impartiality, monitoring of SWAPO bases in Angola, withdrawal of Cuban forces from Angola at the same time as withdrawal of South African troops from Namibia, and guarantees of

financial support for Namibia after independence. At the beginning of July talks were initiated in New York between representatives of the Contact Group, SWAPO, African Front Line States and South Africa. At the same time bilateral talks were held in Washington between the United States Government and South Africa. By mid-August, Western diplomats claimed that a number of important issues had been resolved although SWAPO's chief delegate, at the New York talks Information Secretary Mr. Ndipho Hamutonya, maintained that little concrete progress had been made because South Africa had not participated directly at the discussions held in New York. It was reported that documents covering the main outstanding issues included the logistical matters involved in the establishment of UNTAG and been drawn up. Agreement was reported to have been reached on the dismantling of the command structure of the South West Africa Territorial Force, transfer of all executive powers in Namibia from the Council of Ministers to the Administrator General, ending the United Nations funding of SWAPO offices as soon as a settlement was agreed. The issue of the electoral system and what would happen to SWAPO guerrillas inside Namibia at the time of a settlement had been set aside to be resolved by the United Nations Special Representative and the Administrator General. There was also reported to have been progress on the constitution of UNTAG, with agreement on the countries to provide troops, including Australia, Bangladesh, Panama, Sudan and Yugoslavia while the United Nations Secretary General requested Japan to provide staff for the proposed 1,500 civilian components of UNTAG. However a provisional one month ceasefire failed to come into effect on 15 August 1982. According to the latest information received by the Group the bilateral negotiations have not reconvened. 375

460. The key to South Africa's apparent willingness to accept most of the proposals which it had rejected at the 1981 Geneva conference appeared to be an understanding that the implementation of the settlement would be in parallel with a withdrawal of the Cuban forces in Angola. This issue increasingly became the main underlying factor preventing further progress in the negotiations, as South Africa maintained it could not withdraw its forces from Namibia as provided in the settlement plan as long as Cuban forces remained in Angola while Angola maintained that it needed such troops as protection against continuing South African incursions. The presence of South African troops in occupation of parts of Southern Angola and its continued support for UNITA also constituted obstacles to further progress. Attempts to resolve this issue were made in a series of bilateral talks between the United States and Angola officials throughout 1982, following an initial meeting in mid-January between Dr. Crocker and Mr. Jorge in Paris, at which Dr. Crocker was reported to have said that the United States might establish diplomatic relations with Angola and resume foreign aid if Angola gave an undertaking to reduce foreign troops once a cease-fire was agreed on. On 3 July 1982 Mr. Jorge set out the terms on which Cuban forces would be withdrawn from his country. He said that their presence was a bilateral question between Cuba and Angola and rejected any attempt to make Cuban withdrawal a precondition for a Namibian settlement. He said that in terms of a joint declaration drawn up on 4 February 1982 in Luanda after talks with the Cuban Foreign Minister, any withdrawal would be carried out by sovereign decision of the Angolan Government once each and every act of aggression or armed invasion ceased to exist and that the Cuban Government had reiterated that it would implement without hesitation any such decision on the withdrawal of these same forces. A summit meeting of the African front-line States and SWAPO in Lusaka during August 1982 expressly rejected the idea of 'linkage' of the two issues as an interference in Angola's internal affairs.

During a European tour for consultations in Brussels, London and Paris at the end of September 1982, the SADC President said that there was deadlock over South Africa's insistence on the withdrawal of Cuban troops from Angola as a precondition of a Namibian settlement. He said that this was a separate issue and had no place in Security Council resolution 435 (1978). Mr. Tutu confirmed that virtually all other outstanding issues had been resolved, although he called on South Africa to announce first electoral method it accepted for the planned elections. He also said that the composition and membership of UNTA should not constitute a precondition. 2/5/

2. Views towards the disposition of an interim settlement

451. During the period under review South Africa continued its policy of consolidating internal, autonomous government structures in Namibia and the Group has paid particular attention in its reports to this process in relation to human rights violations. Previous reports of the Ad Hoc Committee of Experts (E/CN.4/1311 paras. 336, 348-351; E/CN.4/1365, paras. 172-200; 1700-4 1420 paras. 38-50; E/CN.4/1405 paras. 26/27) have described the measures taken by South Africa since the establishment of the post of Administrator General for the territory on 1 September 1977.

462. The Administrator General Mr. Daniel Louw, announced on 2 August 1981 that as from 14 September 1981 the Council of Ministers would exercise full executive power for the internal administration of the territory, with the exception of constitutional affairs, security, foreign affairs and matters that affected the international status of Namibia. The Administrator General's sole remaining function would be to act as titular head of the executive and de facto head of State although he retained the ultimate power of appointing both the Council of Ministers and the National Assembly in terms of the functions granted to him by the South African State President (see E/CN.4/1311 paras. 342-351). Also to promote constitutional development and ensure stability for all groups, two additional measures were to be implemented. The 17 second tier authorities (11 white and 10 non-white) would each be entitled to nominate two members directly to the National Assembly, thereby enlarging its composition from 59 members to a total of 71. The Council of Ministers would be expanded from 12 to 15 appointed members. Both these measures were seen as reinforcing the control of the Democratic Turnhalle Alliance (DTA) over the internal government as well as increasing the number of ethnic leaders thus having a vested interest in the status quo. As a final step it was announced that as from 1 January 1982 by proclamation of the State President the High Court (Supreme Court) would become autonomous from the South African Supreme Court and be known henceforward as the Supreme Court of South West Africa. 2/6/

463. Despite these increased powers and the fact that almost no action during the period under review to eradicate apartheid or otherwise to reduce discrimination in the access to social and economic facilities by the African majority. There was an increasing tendency by the DTA leadership to blame this lack of action on the interim three tier structure introduced by Proclamation 1 of 1981 in terms of which second tier ethnic representative authorities established for each population group have control over education, health, the provision of social and cultural amenities, although the spending of these authorities is controlled by the

2/6/ See Working Paper on Namibia prepared by the Secretariat, paras. 91 of Financial Times, 9 July 1982 & October 1982. lines (London), 2 October 1982.

2/7/ See Working Paper on Namibia prepared by the Secretariat, paras. 1/1 of Quarterly Economic Review of South Africa, Botswana, Lesotho, Swaziland, 3rd Quarter 1981, p. 13.

National Assembly. Mr. Dirk Mudge, DTA chairman and chairman of the Council of Ministers, stated in November 1981 that the constitution had been made unworkable by the refusal of the white second tier authority to abolish apartheid in schools, hospitals and public amenities under its control in Windhoek, or to hand over certain buildings previously occupied by the South West Africa Administration to the Council of Ministers. Mr. Mudge called on the Administrator General to amend Proclamation AC.3 so as to reduce the powers of the second tier authorities. However, many commentators noted that the DTA leadership had endorsed the Proclamation when it was being drafted. 370/

464. The political effectiveness of the DTA and in particular its claim to national support, was reduced by the resignation of the DTA President Mr. Peter Kalangula, on 15 February 1982. Mr. Kalangula also withdrew his Ovambo based National Democratic Party (NDP), which controls the Ovamboland second tier authority and has the largest group of members in the National Assembly from the DTA. Prior to his resignation, Mr. Kalangula had called for the reconstitution of the DTA as a unitary non-racial party, but this was reported to have been resisted by the other parties, including the Republican Party of DTA chairman, Mr. Mudge. In May 1982, Mr. Kalangula announced the establishment of a new party, the Christian Democratic Action for Social Justice (CDA), in an attempt to broaden the ethnic base of the former NDP. Mr. Kwame Aikuako, Paramount Chief of the Hereros and President of the National Unity Democratic Organization (NUDO), was appointed to succeed Mr. Kalangula as DTA President. 379/

465. In September 1982 it was disclosed that South Africa had been secretly planning to change the internal constitution and reconstitute the composition of the Council of Ministers. In a speech to the Transvaal National Party Congress on 14 September 1982, the South African Prime Minister Mr. P.W. Botha, said that it was imperative that "the National Assembly becomes more representative and also that a more efficient Executive be created". He also confirmed that the Administrator General had been holding talks with internal party leaders with this intention. Mr. Mudge, in a press conference of 7 September 1982 had claimed that he had been flown to Pretoria on 12 August 1982 to meet with Mr. P.W. Botha and the Defence Minister General Magnus Malan, where he had been told of the plans. The proposal was that instead of the present system whereby the DTA as the strongest party in the National Assembly, nominated the members of the Council of Ministers, a new provision would be inserted in the constitution which would make the leader of the strongest party on each of the 13 ethnic second tier authorities, automatically members of the Council of Ministers. If this was carried out, five DTA ministers would be replaced by the leaders of ethnic authorities not controlled by the DTA - Mr. Josic Pretorius (leader of the National Party (white authority)), Mr. Peter Kalangula (Ovamboland), Mr. Justus Garoo, leader of the Damara Council (Damara land), Mr. Barney Barnes (Coloured), Mr. Hans Diergaardt (Rehobothers). This would make Mr. Mudge's position impossible most observers concluded, making his resignation almost certain. His most likely successor was seen as Mr. Kalangula, who had come to be regarded by Pretoria as a more credible leader. Mr. Mudge claimed that the South African Department of Military Intelligence (MI) was behind the plan and said that the only thing in common between the non DTA ethnic leaders was the desire to get rid of

370/ Ibid.

379/ New African, May 1982: Quarterly Economic Review of Namibia, Botswana, Lesotho, Swaziland, 1st, 2nd Quarter. p. 6, p. 11 resp ctively.

the DTA. It was widely concluded that while South Africa's strategy appeared to be to give the internal administration wider support, it would only make sense if the new team had time to establish itself, which indicated that Pretoria had decided to delay the holding of United Nations supervised elections. 380/

466. According to information available to the Group Mr. Hough met with at least six political parties and prominent business leaders in the attempt to create a more effective central administration in Namibia. These included the Federal Party, the South West African National Union (SWANU), SWAPO Democrats, Rehoboth Liberation Party, AKTUR (the National Party's election front), and the CDA. However, at the end of September 1982, the SWAPO Democrat leader Andreas Shipanga said his party would refuse to take part in any new interim arrangement, and would prefer to see the implementation of a comprehensive peace settlement in Namibia, with in the meantime the Administrator-General continuing to rule as colonial governor, until independence. Similar statements were made by the President of SWANU Mr. Moses Katjiuongua, and Dr. Kenneth Arahams, leader of the National Independence Party (NIP). 381/

467. The Administrator-General announced on 5 October 1982 that it had been decided to hold new elections for the Damara Legislative Assembly. This followed the setting aside by the Appeal Court in Bloemfontein of the election results of November 1980 on the grounds of electoral irregularities. The powers of the Damara representative authority were to be taken over by the Administrator-General's office. The move to have the election result declared invalid was taken by the Damara United Front (DUF), affiliated to the DTA, the loser in the election (E/CN.4/1485, para. 276). 382/

468. Results from the official population census conducted in May 1981, the first for 11 years, were published in April 1982. The census showed a total population of 1,009,900, an increase of 53 per cent since the previous census of May 1970. In 1974 South African estimates put the total population at 852,000. The most notable feature of the current official population figures are the decline in the white population by 16.5 per cent to 75,600 compared to 1970, and a huge increase in the Kavango population of 97.9 per cent to 96,000. The decline in the number of whites is thought to be due to increasing numbers leaving Namibia to return to their country of origin, South Africa, as the war has encroached on traditional white farming areas in the north. The increase in the Kavango population was more difficult to explain, as none of the other "population groups" into which the African population are categorized experienced comparable increases, according to the census figures. One probable explanation is that the figure included the large number of refugees known to have fled into Namibia from southern Angola. Estimates put the number of refugees in the north at about 70,000, with about 35,000-40,000 living in Kavangoland. These refugees appeared to comprise two categories - those who entered Namibia during South Africa's invasion of Angola in 1975-1976, and those who have fled in recent years, following the South African attacks on Angola. Some 5,500 Angolans were reported to have fled following the so-called "Operation Protea" in August 1981 (E/CN.4/1485, paras. 294-297). Other notable aspects of the census figures were that

380/ Economist, 11 September 1982; Star, 4, 25 September 1982.

381/ Namibia News, Namibia Information Service, 14 October 1982.

382/ Star, 9 October 1982.

the number of separately listed "population groups" had been reduced from 13 in the 1970 census to 10, with no categories for Bushmen, Kaokolanders or "Others", which represented 23,000, 7,000 and 15,000 people respectively in 1970. For some purposes, the Kaokolanders have been merged with the Hereros, and the higher percentage increase for some "population groups" compared to the over-all total would appear to be partly caused by the incorporation of these categories with other "population groups". For most of these the increase since 1970 averaged around 52 per cent, although the Ovambo population was shown to have increased by 46.5 per cent. On the other hand contrary to the results of the official census established in May, 1982, 73,000 Namibians living in exile, and the total population remains lower than the 1978 estimate of 1,250,000 by the United Nations Institute for Namibia in Lusaka. 383/

Namibia's population in 1970 and 1981

<u>Population group</u>	<u>1970</u>	<u>1981</u>	<u>% of total</u>	<u>% increase over 1970</u>
Ovambos	352 640	516 600	51.1	46.5
Whites	90 583	75 600	7.5	-16.5
Damaras	66 291	76 800	7.6	15.9
Hereros	30 589	77 600	7.7	53.4
Kavangos	49 512	98 000	9.7	97.9
Namas	32 935	49 700	4.9	50.9
Coloureds	28 512	43 500	4.3	52.6
East Caprivians	25 580	29 000	2.9	13.4
Bushmen	22 330	..		
Rehobothers	16 649	25 800	2.6	55.0
Kaokolanders	6 567	..		
Tswanas	4 407	6 800	0.7	54.3
Others	15 089			
<u>Total</u>	<u>762 184</u>	<u>1 009 900</u>		

The figures resulting from the census conducted in May 1981 were officially released in the National Assembly at Windhoek.

3. Militarization of Namibia and attacks against Angola

469. In its previous report (E/CN.4/1985), the Ad hoc Working Group of Experts drew attention to the intensification of South Africa's military build-up in Namibia and the almost continual pattern of attacks directed against Angola, as SWAPO for its part continued to intensify its armed struggle against the South African forces illegally occupying Namibia. During the period under review, further major attacks were launched on Angola, and the strengthening of South Africa's military presence in Namibia was continued.

470. According to the information available to the Group, the total SADF troop strength in Namibia as of September 1980, excluding police, was estimated at between 70,000-80,000. The total number organized within the South West Africa Territory Force (SWATF) was about 20,000 of which about 10,000 were white Namibians. 384/

383/ Focus on Political Repression in Southern Africa, No. 42, September - October 1982, p. 3, International Defence and Aid Fund.

384/ Apartheid's Army in Namibia, Fact Paper on Southern Africa, No. 10, International Defence and Aid Fund, January 1982.

471. During the period under review a number of major attacks were launched against Angola by South African Forces stationed in Namibia. These included so-called "Operation Daisy", from 1 to 20 November 1981, which involved a sweep by South African air and ground forces up to 250 km inside Angola. The attack was alleged to be directed against SWAPO's regional headquarters at Chitequeta, about 240 km north of the border. After capturing an airport at Ionae, 120 km north of the border, South African forces attacked Chitequeta, which they claimed had been evacuated a few hours before the attack. South Africa claimed 71 SWAPO guerrillas had been killed, and that large quantities of arms, ammunition and other supplies had been captured. The Angolan Government and SWAPO denied that a base had been destroyed, and SWAPO President, Mr. Sam Nujoma, said that there were only refugee camps in Angola and that in fact South Africa had directed its attack at a vacated SWAPO base in northern Namibia. The Angolan Ministry of Defence said that nine Angolan soldiers and 32 civilians were killed and another 37 people wounded. 385/

472. In March 1982, a SADF raid into Mocamedes province was reported to have killed 201 Namibians at Carbeno, 34 km north of the border. While the site was described by South Africa as a military base it appeared to have been a transit camp for refugees, similar to that at Kassimba, which was attacked in May 1978. The raid was carried out by two airborne assault platoons, drawn from 32 Battalion, as well as a South African mortar group, which bombed the area from high ground. 386/

473. Lieutenant Colonel Ngongo of the Angolan Ministry of Defence visited London in March 1982 to brief a conference organized by the United Kingdom Anti-Apartheid Movement and the United Nations Committee against Apartheid on the current military situation in Angola. 387/ He confirmed that South African forces continued to occupy approximately 50,000 sq km of Kunene province seven months after the launching of the so-called "Operation Protea" in August 1981 (E/CN.4/1985, paras. 294-297). Recent operations by South African forces had included high-altitude reconnaissance flights over Cahana, 150 km north of the border, as well as over areas of Mocamedes and Kunene provinces. 388/

474. On 5 April 1982, the Angolan Defence Minister, Colonel Pedro Tonha Pedale, announced that about 50 South African troops had launched attacks on the Chitenba region, 160 km south of Lubango, including bombing attacks, and this had followed intensified reconnaissance flights over Angola in previous weeks. On 22 April 1982, the South African Defence Minister, General Magnus Malan, announced that South Africa might launch military strikes even deeper into Angola than in the past against SWAPO. This announcement was followed by a further escalation of reconnaissance flights over Angolan territory, with 115 flights alone during the first half of May 1982 over the provinces of Mocamedes, Huila, Moxico, Kunene and Cuando Kubango, according to Angolan government communiqués. Attacks were launched between 14 and 16 May 1982, in the form of air raids over southern Angola, which reportedly resulted in the deaths of seven civilians and six Angolan soldiers. According to an Angolan communiqué of

385/ Working Paper on Namibia prepared by the Secretariat, paras. 35-36.

386/ Focus, No. 40, p. 10.

387/ Southern Africa. The Time to Choose, 1: 13 March 1982.

388/ Focus, No. 40, p. 10.

17 May 1982, South African Mirage jets bombed military positions on 15 May 1982 and attempted to bomb Jamba airport but were repulsed. South African forces were said to be in continued occupation of parts of Kunene province and were also said to have built up forces and supplies on the Namibian side of the border. 389/

475. South Africa confirmed on 11 August 1982 that its forces had launched a further raid: this acknowledgement came after Angolan claims of a new attack on 20 July 1982 had been dismissed by Pretoria as 'propaganda'. A defence Force communiqué said that 15 airmen and soldiers had died when their Puma helicopter had been shot down, the largest single loss ever admitted, as against 514 SWAPO guerrillas killed in the raid. The Chief of the Defence Force, General Constand Viljoen, said the decision to invade had been taken after the capture of SWAPO documents, which he claimed included "combat orders" to assassinate or abduct prominent internal leaders. According to South African figures released during August, 1,629 guerrillas had been killed since August 1981, 937 since the beginning of 1982, as against 72 South African losses, the highest figure reported for any period of the war. 390/

389/ See Working Paper on Namibia prepared by the Secretariat, para. 10; Focus, No. 41, p. 4. See also para. ___ of the Chapter on South Africa.

390/ Quarterly Economic Review of Namibia, Botswana, Lesotho, Swaziland, 3rd Quarter, 1982, p. 9; Guardian (London), 11 August 1982.

A. Capital punishment

1. Reference to some relevant laws

476. As described in previous reports of the Ad Hoc Working Group of Experts, the various South African laws providing for the death penalty have been made applicable to Namibia. These include the Terrorism Act, No. 83 of 1967 (made retroactive to 1962 when introduced), which provides the death penalty for a wide definition of "terroristic activities", the Sabotage Act (General Law Amendment Act No. 76 of 1962) and the Internal Security Act, 1950 (formerly known as the Suppression of Communism Act, 1950) as amended in 1976, which are used in Namibia to the exclusion of all other legislation in this sphere (see E/CN.4/1270, para. 296).

477. No new additional legislation has been made applicable to Namibia during the period under review to reduce or extend the circumstances in which the death sentence may be applied. However, in November 1981 the National Assembly in Windhoek debated the Combating of Terrorism Bill, which was tabled with the intention of replacing a number of existing laws including the Terrorism Act. One clause of the bill provided for the abolition of the death penalty and provided instead for a maximum 20-year term of imprisonment. After strong opposition to the proposed bill had been expressed both within and without the assembly, it was referred to a select committee, and according to the information available to the Group was not promulgated during the period under review (see para. 527 below).

2. Summary of evidence and information received

478. The South African Government publishes no separate figures on executions of convicted Namibian prisoners. However, as noted in previous reports, relatively few SWAPO guerrillas captured have actually been tried for participation in guerrilla activities. It has been suggested that many are being held at undisclosed locations, and may have been tried and executed in secret.

479. Mr. Malcolm Smart stated in his written submission (565th meeting), that a high degree of official secrecy surrounds the situation of SWAPO guerrillas captured by South African forces. They are not formally recognized as prisoners of war nor are they prosecuted in the courts for political offences. The increased international pressure for the treatment of captured SWAPO combatants as detainees with full prisoner-of-war status in terms of the Geneva Conventions is described below, together with a trial of three captured combatants under the Terrorism Act (paras. 550-554 below).

B. Other violations of the right to life

480. The Ad Hoc Working Group of Experts once more received extensive evidence and information relating to atrocities against the civilian population in northern Namibia. Serious concern about the violence inflicted on the people of Namibia was expressed by church leaders of different denominations, both from churches inside Namibia and from churches overseas.

481. In his testimony before the Ad Hoc Working Group of Experts (564th meeting), Reverend Brian Brown said that the British Council of Churches (BCC) had a particular concern with Namibia and that in his capacity as Africa Secretary of the BCC he had worked with the Council of Churches in Namibia (CCN) over the previous two years. 391/

392/ The CCN is an umbrella body representing the Anglican church, the African Methodist Episcopal Church, the Evangelical Lutheran Church in SWA, the Evangelical Lutheran Ovambokavango Church (ELOC) and the Roman Catholic Church whose congregation collectively amount to 75 per cent of the population.

At the invitation of the CCN the ECC had sent a four-member delegation to Namibia, and the witness presented the report prepared by the ECC after the return of the delegation at the end of 1981, entitled Namibia - A Nation Wronged. The witness said the report highlighted in an appendix some 20 atrocities perpetrated by the South African security forces. The atrocities outlined had not been sworn to and the victims were not named for their own protection, but the credibility of the accounts stemmed from the fact that they had been communicated by Namibian churchmen to British churchmen. The churchmen had no immediate political motive in publicizing the information. Their primary interest was pastoral concern for the people of Namibia.

482. According to the information contained in this report many houses have been burned down by the army, according to the same report. A woman gave an account of a visit by soldiers who claimed to have information that guerrillas had been given food there. They tortured the woman and her husband with electric shocks, then burned everything at her home except what they had stolen. She was told not to return to the house.

483. The report described "a particularly objectionable practice" in which soldiers dragged the corpses of those whom they alleged to have been "terrorists" through villages behind their vehicles. The victims' bodies are exhibited to their parents, to villages, and even to young children in school to demonstrate what happens to those who "rebel" against the authorities. The report noted that "this desecration of the dead, particularly their own dead, is very deeply offensive to the Ovambo people, and totally counter-productive".

484. Many Namibians respond to South African attempts to justify civilian killings by pointing out that "once dead they all become SWAPO". The ECC delegation was told by local church leaders that even when their members were willing to make public complaints about security force atrocities, there was no guarantee that they would be properly heard. The churchmen had complete details which they would have published if proper action had been promised, but their representations were ignored. The team had held a meeting with Peter Kalangula, the DTA president, in his heavily guarded Ondangwa office. In response to their complaints about the security forces, he told them that he was aware of what had been happening and that earlier that week he had called in the army commanders to tell them that this was not the way to win the hearts and minds of the people.

485. Reverend Brown also submitted to the Working Group the report published in May 1982 by the South African Bishops' Conference (SACBC) entitled Report on Namibia. The SACBC is composed of all the Catholic Bishops of South Africa, Botswana and the two dioceses of Namibia. The report, which detailed allegations of torture by the security forces, also referred to claims that people were shot and beaten to death, and that it was not unknown for black soldiers to be posted as guards over families while white soldiers raped the women out in the veldt. South African troops and police were universally referred to by the Ovambo word "omakukunya" which meant "bloodsuckers" or "bone-pickers". There was no redress because reporting irregularities or atrocities to commanders is considered a dangerous or fruitless exercise.

486. Although the investigators had not found any direct evidence of atrocities, Mr. Brown was of the view that the accounts they had heard had an element of truth about them, and many contained a convincing amount of circumstantial detail. They

had found fear of the security forces amongst civilians pervasive, as the security forces when searching for SWAPO guerrillas break into homes, beat up residents, shoot people, steal and kill cattle, and generally stop at nothing to force information out of people. Whenever tracks identified as belonging to SWAPO guerrillas are discovered, the local people are immediately in danger. Harsh measures are intensified, people are blindfolded, taken from their homes and left beaten up or dead beside the roadside. The team was also told that the security forces paraded the dead bodies of their victims, alleged SWAPO guerrillas, by driving around with the bodies dangling from their vehicles. The dawn-to-dusk curfew imposed in the operational area means that anyone moving about after dark is shot, a person cannot even go to the help of a sick neighbour or woman in childbirth, and a priest risks his life by going on a sick call. 392/

487. Reverend Brown also referred to the visit to Namibia by two leaders of the South African Council of Churches (SACC). Bishop Desmond Tutu and the Reverend Peter Storer, president of the SACC, who had visited Namibia for a week in February 1982 at the invitation of the Council of Churches in Namibia. They endorsed the findings of both the UCC and SACBC reports, which the witness said indicated one growing swell of church opinion against not only the atrocities committed against the Namibian people but also South Africa's military presence in Namibia. According to the information available to the Group, Bishop Tutu said at a press conference at the end of his visit that all the church leaders he had spoken to, with the exception of one, had expressed the view that the South African security forces in Namibia were seen as an occupying army who terrorised the Namibian people. The two visiting churchmen had been given a long catalogue of incidents including killings, the destruction of people's property, the burning of huts and rape. The security forces also laid landmines which they wanted people to believe were laid by SWAPO. 393/

488. It was reported that three people were killed on 18 January 1982, including Reverend Iilonga, dean of the western area of the Evangelical Lutheran Ovambokavango Church (ELOC), when a vehicle in which they were travelling detonated a landmine on the road between Oshakati and Okanao. Ten days earlier, four civilians had been killed when the truck in which they were travelling hit a landmine one kilometre from Eenhanz, near a South African army base about 10 kilometres south of the Namibian-Angolan border. It was subsequently reported by a Lutheran Church in America publication that the explosion which had killed Reverend Iilonga had been set off by South African forces. Iilonga had been travelling with materials and foodstuffs for the drought-stricken people of his diocese. The landmine explosion had occurred in late afternoon; earlier in the day, Iilonga had travelled the same untarred road after it had been swept for mines by South African soldiers. Observers of the explosion reported that it was near a South African army outpost and that it would have been impossible for SWAPO guerrillas to have planted landmines in that spot during daylight. Proper medical care had been withheld from Reverend Iilonga after the explosion, as it had taken the South Africans five hours to take him to hospital despite pleas to take him to the nearest hospital, 45 minutes away. Iilonga died before the helicopter arrived. The South African soldiers allegedly tried, but failed, to get Iilonga to sign a statement before he died saying that SWAPO had caused the explosion. 394/

392/ Observer, 16 May 1982.

393/ Focus, No. 40, May-June 1982, p. 11.

394/ Lutheran World Information, 7/82, 23/82.

489. Reverend Brown said that while it was difficult to decide whether publicity would help or hinder victims in Namibia, and the local churches had asked that no names and addresses should be published whereby the victims could be identified, they wanted widespread publicity to be given to the actions reported because South Africa was sensitive to world opinion, and concerned about its international image. Since the church reports had been published, Major-General Lloyd, chief of the South African Defence Force in Namibia, had gone on record as admitting that "there have been isolated acts of atrocities". Although Major-General Lloyd tried to justify this by saying that it was the kind of thing to be expected in all wars, his admission was significant as there had been no such admissions before the publication of the reports. There had also subsequently been an inadequate, but at least a partial, attempt to establish a process of investigation of reports of atrocities against civilians.

490. Another witness Mr. Herman Ithete (573th meeting) submitted a written document prepared by SWAPO which detailed atrocities and criminal acts said to be attributed to South African troops in Namibia. According to this document a number of innocent people had been killed in the 1980-1981 period. On 27 October 1980 security guards at the state electricity corporation SWAWEK in Windhoek, had brutally assaulted an African, Moses Namiseb, who was found unconscious and later died in hospital. According to the autopsy he had 11 head injuries and 14 body injuries. The three policemen were named Conradie, Havenda, and Mel. On 10 April 1981, Efraim Ivula and his wife Hagar Ivula were shot to death by a Koevoet unit a few metres outside their home at Ombathi in the northern district of Ombalantu. They had been questioned as to the whereabouts of their daughter, Perukeni Kaulinge, the Secretary-General of the SWAPO Womens' Council, who they said they had not seen since 1974. On 14 April 1981, four civilians were shot dead by South African troops at Etomba, north-east of Ondangwa, an elderly man, Jonas David of Efide West in Ikankolo, was shot dead and his wife wounded by troops on 29 April 1981. Despite the reporting of the latter killing by the Windhoek Observer in May 1981, no action had been taken against those responsible for the killing. Ondangwa magistrate's court had released a total of 1,000 deaths for the one-year period, most of them due to murders carried out by South African troops.

491. According to Mr. Ithete the lack of action by the judicial authorities was illustrated by the killing of two civilians at Ruacana during 1981, Johannes Sampson and Johannes Classen. The murders had been carried out by two South African soldiers, Charles Diedrich of Johannesburg and Hendrik Cloete of Port Elizabeth. Eyewitnesses of the shooting included a Mr. Justino who was forced to show the soldiers where the deceased had been living, and a Miss Ponto, who had been raped by the soldiers. On 13 July 1981 Robinson du Plessis admitted to Justice Mouton that he had raped Nelmina Jacob and afterwards shot her dead.

492. Furthermore, Mr. Ithete described the following situations:

(a) Killings known to SWAPO in the first half of 1982 included the shooting of three civilians near Oshakati on 30 January; shooting and serious wounding of a teacher, Markus Nambinga, at his home at Iipanda Yaamati in the Ukwambi area on 2 February; and firing on a peasant family working in the fields by a South African Air Force helicopter gunship on 27 February, resulting in the death of two elderly people, one 18-year-old person, and the wounding of three children. This incident occurred hours after a successful attack on Okahao military base by PLAN forces.

(b) On 13 March 1982 Engele Endjale, 65 years old, was murdered by soldiers at Okawuholamwa; on 10 April a 10-year-old boy was shot during a round-up of villagers at Onepata, 12 km north of Okango.

(c) On 11 April 1982 Benny Iyambo, 40 years old, was found dead after being beaten to death by J.D. Pshrevder and J.A. Brand, both South African soldiers at Swakopmund.

(d) On 26 April 1982 Thomas Shaduka, 24 years old, was shot and killed by soldiers who believed he was a "terrorist".

(e) On 19 May 1982 the Windhoek Advertiser had referred to the arrest of 46 Africans in the workers' compound at Tsumeb on the grounds that they were there "illegally". During the arrest one worker had been shot dead by the police.

493. Mr. Ithete also referred to the killings which had taken place in Kavangoland and which had been reported by local and overseas journalists (see para. 59 below). The witness said there was evidence of a mass grave near Okatope mission, 25 km from the Angolan border, where most civilians killed were taken.

494. Mr. Ithete and Mr. Moses Garoeb (576th meeting) testified that a massacre of civilians had taken place on 10 March 1982, and Mr. Garoeb also presented documentation by the SWAPO Department of Information and Publicity on this event (Massacre at Oshikuku). The massacre occurred in a small village of Oshipanda located near the Oshikuku Roman Catholic Mission in Ovambo. Five African soldiers, led by Nakale, said to be an infamous and brutal commander of the Koevoet special squad, and including a soldier identified as a member of the Ovambo Homeguard, had arrived at 2 a.m. at the homestead of Hubertus Neporo. Neporo was away from home, but his family of ten including his 60-year-old mother, and two other people who lived in the homestead, had been ordered outside the kraal by the soldiers who were armed with automatic weapons with fixed bayonets. The soldiers ordered them to line up outside and demanded money and clothes.

495. The soldiers had opened fire and killed eight persons. They then destroyed a vehicle belonging to Mr. Neporo. Iyambo Ipingue, a cousin of Neporo, escaped without injury and he carried Ms. Angula, who had been shot in both legs and one shoulder, to the house of a neighbour, Michael Uupindi, who had been awakened by the sound of gunfire. In the morning, Uupindi went to the scene of the massacre and covered the corpses with blankets before he went immediately to the police station to request action - but the police claimed that no vehicle was available. They also hinted that SWAPO might be responsible. The survivors of the massacre however identified the five black soldiers, including Nakale, and another member of the Ovambo Homeguard who had lived not far from Neporo's house.

496. According to additional information, an inquest opened in June 1982 on the case at the Ondangwa Inquest Court, which heard an account from one of the survivors. A witness who appeared before this court, Mr. Jolidye Nauyoma, confirmed the above-mentioned testimony. The names of those who died in the massacre were recorded by the Ondangwa Inquest Court as: Gisella Nupindi (Uusindi) aged 61; Johannes Silas (42); Bernadette Tobias (27); Katoole Kawelakana (a girl aged 9); Shivute Kengayi (a male student, 18); Gisella Nepolo (a girl aged 13); Tselina Matheus (13); and Benediktus Nepolo (a male student aged 20) - a total of eight people. 325/

497. Mr. David Pandeni Shikomba (579th meeting) testified that while he was under restriction in the Uukwambi area of northern Namibia after his release from Robben Island in 1980 he had observed the activities of the Koevoet unit. He said the majority of the unit were Africans and amongst their commanders are Tonata Lindongo, Matteus Shikongo, Thomas Shikomba and George Nghikumwa. They killed those they suspected to be SWAPO supporters, including businessmen, clergymen and teachers, and sometimes even their own supporters. They were friendly at first to their intended victims, and reconnoitred by day, before returning at night to kill. Mr. Shikomba said that the unit had been created in 1978 to cause confusion amongst the Namibian people at the time that United Nations-supervised elections were a real prospect. They had a list of the names of those already killed and those they planned to kill. Such a list had been found in the pocket of one of their leaders, Levi Amadhila, who had died in a car accident, and the names had been published in Omukwetu the newspaper published by the Ovambokavango Lutheran church (see E/CN.4/1424, paras. 411, 413). Another unit under the command of one Thomas Kandove was known as the "Security Forces" and also killed innocent people, and displayed their bodies at communal drinking places, claiming they were terrorists. They also killed people who forgot to carry their identity papers.

498. The Group heard two witnesses, Mr. Andreas Nailenge (578th meeting) and Mr. Andreas Norbert (579th meeting) who had been enrolled into the South African armed forces. Mr. Norbert had been forced to enlist in the South African Defence Force in 1975, in Ovamboland. In May 1982, he escaped across the border with two other black soldiers. Mr. Nailenge enlisted in the South African defence army in July 1978 and left the South African army at the end of 1981. Those two witnesses gave evidence about their participation in atrocities against Namibian and Angolan civilians. Their instructors were Naukushu and three white South Africans: Lt. Lose, a company commander, Corporal Roggrenburg, Corporal Deuser, a platoon commander, and Lt. Botha. They had been taught that SWAPO was the enemy of the country and therefore they had to fight SWAPO and anyone who supported or sympathized with them without mercy. After five months' training they had been taken to Oshivelo to be integrated into the 41st battalion for a month, and afterwards they had been sent to the border and engaged SWAPO and FAPLA over 20 times.

499. In November 1980 Mr. Nailenge had gone for special training in Bloemfontein for three weeks, and while he was there the South African Foreign Minister Pik Botha visited his unit and said that South African troops would be withdrawn soon from Namibia and that it would be up to units like his to defend the country and prevent SWAPO from taking control. He said that the beating and torturing of civilians in northern Namibia was daily practice when looking for SWAPO fighters. He had witnessed the killing of two civilians at Otamanzi in 1981. He said that the major operation in which he had participated in Angola was in August/September 1981 during which many villages were destroyed. Apart from himself and one other, all the rest of the 480-strong unit involved in this operation had been South African whites. He said that after his first year of service he had received R380 a month, with a special bonus of R1,700 after five months.

500. Mr. Norbert said he had been forced to join the SADF in 1975 in Ovamboland after he had been arrested in Windhoek. Following six months' training he had been sent to Windhoek where he had started arresting SWAPO members together with a Lt. King. The first two members he had arrested had been sent to Ongnediva and forced to join the SADF. In northern Namibia he had participated in the arrest, beating and killing of Namibian civilians. He stated that Lt. King and a black army officer called Shilumbu were responsible for beating up detained subjects. At Oshandumbala

in Ukwaludhi district they had arrested Philemon Ipinge who had been beaten repeatedly with sticks. They had also arrested a girl, Raina Jonathon, from the same village, and taken her to Oshakati where after interrogation she agreed that she had cooked for SWAPO fighters and agreed to work for the SADF to avoid torture. She had been given R200 initially. In August 1981 a white officer called Sleeper and a black soldier called Kambangula had arrested David Mueya from Shandumbala in Ukwaludhi area who was suspected of being a SWAPO fighter. After interrogation he had been taken into the bush and shot dead and his body left there. Although a Col. Mayer had said that those two soldiers would be punished, no action had been taken. In December 1981 they had arrested Martin Jona from Selma who was reported to have received a visit from four SWAPO guerrillas, and he had been taken to Oshakati for interrogation and the witness believed he had died. Norbert said that he had then been given a new assignment by Lt. King to locate SWAPO bases in Angola so they could be bombed, for which he was to get R3,000.

501. Mr. Francisco and Mr. Manuel (583rd meeting) testified that a school hostel in Changongo, Angola, had been bombed by South African aircraft on 26 September 1979. They said that six South African planes had bombed the hostel without warning in the morning and 30 children had been killed, and other civilians shopping or out in the streets. The school hostel had been totally destroyed. Mr. Francisco's brother had been found dead in the rubble of the building. The witnesses said the raid had been to frighten the population as there was no military target in the area. He said there had been further bombing attacks on Changongo. 396/

502. During the visit of the Group to Lubango, Angola, Captain da Costa (583rd meeting) said that from August 1979 onwards several civilian targets had been hit by South African bombing attacks. The Maderas de Huila wood factory near Lubango had been bombed, resulting in the death of 36 workers and injuring 34. Another example was a helicopter attack in the Leba area, where 20 people had been killed in cold blood, including women, children and old people. South African airborne and infantry troops had also attacked Cuamar, where they had killed 38 people, including 15 school children who were in school at the time. During the military operation launched in August 1981, thousands of people had been killed in the Cunene province Angola. Following the hearings, the Group visited factories which had been bombed and completely destroyed by the South African army on 26 September 1979. A wood factory, called Maderas de Huila, in the city of Lubango, was the target of an attack by South African troops, in which 36 workers were killed and 34 injured.

503. Mr. Ndakolote (583rd meeting) said that after the occupation of Cunene province Angola South African troops had killed women and children, burned houses, laid mines on roads, poisoned water in wells, and burned cattle in enclosures where they were kept. Other brutalities perpetrated by South African troops were the filling of bottles with urine and sand and forcing them into the vaginas of women. An elderly man was forced to have intimate relations with his daughter in public.

504. Details of a range of atrocities perpetrated by South African troops in Namibia were provided by Mr. Ithete (578th meeting). These included random brutality, rape and kidnapping. In January 1982 eyewitnesses had reported that a group of Roman Catholic mission workers were assaulted by national servicemen near Otavi. Two nuns had their buttocks burned by a piece of hot wood. No reason was given for this action either before or afterwards. On 18 March 1982 John Shitumbapo and Kayofi Munona, residents of Epinga, were abducted from their village to Eohana military base and beaten and given electric shocks. A number of rape cases had been reported. In December 1980, Milas Searias, 25 years old, had been raped by a

soldier, Jacobus van Zyl, who had also attempted to rape Frieda David, 20 years old, in February 1981; and among other cases in the same month were Lavinia Heita of Ohangwena and Lucia Mwadjanga of Oshana. In January 1981, Johannes Pretorius of the SADF had raped Savina Kasiku at a wedding party in Kavangoland. Many people had been secretly kidnapped from their homes by South African police and their whereabouts were unknown. Cases in 1980 included Vilho Mateus, Aaron Ibinge, Festus Kadhikwa of Luderitz, Lazarus Shilaba from Onambidi. Shilaba had been arrested in May 1980, taken to Omungwelume, and later the military had informed his family that he was nowhere to be found. In September 1980, Hamakali Iyela from Oshakati had been arrested and his family subsequently told by the police at Oshakati to stop asking for information about him. They refused to release his car, which had been repainted and was being used by the military police. In 1981, a number of people had gone missing due to abduction by the SADF. They included, Cammilus Nangonya, 33 years old, reported missing from Windhoek hospital where he was being treated; Elago Gerhard from Ongandjora district, who had been abducted by two SADF soldiers, Carel Shikapa and Chalio. Many people had also been kidnapped from Iiti Itoka, Eehana and Elundu villages.

505. According to information available to the Ad Hoc Working Group of Experts, there were attacks involving fatalities on contract workers in Otjiwarongo and Windhoek during the period under review. In September 1981 the Council of Churches in Namibia made public an appeal for an independent commission of inquiry into incidents at Otjiwarongo in which an unknown number of people had reportedly lost their lives. The appeal followed a series of violent events at the Otjiwarongo township between 7-10 August 1981; no response to the appeal was reported to have come from the Administrator-General. The chain of events had been set in motion by the fatal stabbing of a Damara woman in Ormetoveni township; a number of reprisal attacks had subsequently been made on the homes of Ovambo residents in the belief that the killer had been an Ovambo. Three days after her death, a force of Damara soldiers and/or police, together with members of the security police, had gone to the Ovambo workers' compound and ordered them to assemble outside on a soccer pitch while a search of their living quarters was made. Then without warning teargas bombs had been hurled into the crowd, and the workers had been set on and beaten so badly that many had to be admitted to hospital. In October 1981 it was reported that an inquiry had been held to determine whether the four men arrested by the police - two of them soldiers and one a policeman - could be criminally charged with the death of two Ovambo workers.

506. According to information available to the Group, the South African Defence Force established a Board of Inquiry during the period under review to investigate allegations of atrocities. The Board, appointed by the Chief of the Defence Force and headed by Brigadier Ben de Wet Roos of SADF headquarters in Pretoria, began to hear evidence in March about atrocities committed in the Kavangoland area the previous month. These were reported after a visit to the region by a French journalist from Le Monde, Hans Rohr, leader of the Namibia Christian Democratic Party, and the journalists from the Namibian and South African newspapers. Among the incidents recounted to the journalists by villagers were the shooting to death of a 70-year-old man while he rested under a tree in the Canchana district, 24 kilometres south of Tondoro, and that of another man, killed without reason by SADF soldiers while he was taking a can of milk to his children. The journalists heard from Johannes Tjapwa that he had been taken from his home by security force members one morning to an army base for interrogation. He was accused of being an Angolan citizen and a MPLA spy, was severely beaten and then taken to another military base where he was placed in a cell too low to stand up in. Another detainee told him that he had been put in a cage 30 centimetres high because he had been mistaken for another man they were looking for. Jaakko Kangaji, a headmaster, had been subjected to a similar experience. Arrested on 29 December 1981, he was kept in detention for two

weeks, where he was blindfolded, assaulted and beaten with fists and a stick, sustaining bruises on his face and body. He was also subjected to electric shock with wires attached to his little fingers, his tongue and the back of his head.

507. Announcing the Board of Inquiry, Major-General Lloyd, head of the South West Africa Territory Force (SWATF), said that every allegation of SADF brutality would be investigated and when necessary those responsible would be brought to justice. At the same time a Pretoria spokesman for the SADF denied allegations made by Reverend Storey of the SACC that 90 per cent of the atrocities in the operational area were committed by the SADF. 397/

508. Further measures to investigate atrocities were announced by the SADF in June 1982. The chief of civic affairs at army headquarters in Oshakati, Commandant As Kleynhans, announced that a special liaison committee had been set up in the operational area, involving Peter Kalungula, the Ovambo chief minister, church members, local businessmen and SADF commanders. He said the committee's task would be to investigate complaints from the civilian population. He claimed that people who had been scared to lay complaints in the past were now coming forward, and that the committee had already investigated several cases of assault or mistreatment for which members of the SADF had already been charged. He gave no details of the incidents or the names of those involved. While admitting that South African troops had committed some atrocities, Kleynhans claimed that considering the conditions and the number of troops "the rate of atrocities is very, very low". He stated that each soldier was now required to sign a special card stating that he respects the local population and will never resort to using physical violence against local inhabitants.

509. Subsequently it was reported that Major-General Lloyd had announced comprehensive measures to combat incidents of alleged atrocities committed by members of the security forces. Steps to be taken included the establishment of communication links between the SWATF headquarters and the "representative authority" in the area, and the creation of an office in Windhoek run on a permanent basis by the Military Law Division to investigate reports and take corrective action. Complaints could be lodged in person or in writing.

510. It was also announced that several soldiers are to be prosecuted and one man had appeared in court on charges in connection with atrocities. An alleged shooting had been investigated by the police and a case of indecent assault was in the hands of the Attorney-General of Namibia. The prosecutions came in the wake of a three-month investigation by the Military Board of Inquiry. The Board of Inquiry, whose brief was extended by one month to the end of July 1982, had investigated 40 allegations of atrocities. In Kavangoland, allegations of fatal shooting incidents, rape, intimidation and theft had been investigated, and in Ovamboland, only one of 24 allegations had not been solved, according to a statement by the SADF headquarters in Pretoria. No details of the case were released.

511. It was reported that church leaders had denied that they had agreed to be represented on the liaison committee, stressing that the churches were unwilling to give any credibility to a body where the army was both accused and judged. Archbishop Hurley of the SACBC said the church would welcome an independent board of inquiry consisting mainly of persons versed in the law. 398/

397/ Windhoek Observer, 27 February 1982; Focus, No. 40, May-June 1982, p. 9.

398/ Focus, No. 42, September-October 1982, p. 8; Times, 2 June 1982; Survey of World Broadcasts (BBC Monitoring Service), Africa and Middle East, 4 June 1982.

C. Forced removals of population

512. The previous report by the Ad Hoc Working Group of Experts (E/CN.4/1485, paras. 324-334) described several kinds of forced removal: the removal of Ovambo civilians to fortified areas to prevent them giving support to SWAPO guerrillas; the abduction of civilians and refugees in both northern Namibia and southern Angola; and the disruption caused to the civilian population in Angola by regular South African attacks.

513. During the period under review the Group received further evidence and information relating to the forcible displacement of civilians in Namibia and Angola as a result of the operations of South African security forces, as well as details of an impending forced removal in terms of the implementation of the "homelands" policy in Namibia, the first reported instance of removals of this category for several years (see E/CN.4/1485, para. 324).

514. Mr. Jacob Hannay (564th meeting) and Mr. Frederick Matongo (566th meeting) referred to the forced removals of inhabitants of Namibia to prevent people assisting SWAPO. This was done without any compensation or provision for resettlement and resulted from the militarization of Namibia. The removals were carried out under the pretext of ensuring protection for civilians, and involved the clearing of zones for operations against SWAPO guerrillas and the establishment of military bases. Mr. Hannay also explained that the forced removals were taking place in northern Namibia, from Kaokoveld along the border to Caprivi, with all communities in those areas under threat. Forced removals were also carried out in other areas further south as reprisals if the population was thought to support SWAPO. The witness also referred to the disappearance of detained persons in particular prisons, with no subsequent information about the missing person available. In this connection, he referred to the disappearance around 1967-1968 of the SWAPO Vice President Brendan Simbwaye. He was last seen in detention in Pretoria, and subsequently believed to have been returned to the Caprivi but had not been seen since. He also referred to the disappearance at the beginning of 1982 of Jeremiah Gangongo who had been held at Ondangwa.

515. According to information available to the group, villagers believed by the security forces to be providing food to the guerrillas, or who provided food under duress to agents provocateurs employed by the security forces, routinely had their homes and property destroyed, and were evicted. Their homes, kraals, grain bins were all destroyed and families turned loose to beg food from friends and relatives. 399/

516. It was reported that a member of the Herero tribal authority in Kaokoland, Tinus Smit, had admitted in January 1982 that because of the spread of the war to the area, the rural population was being forced to live around South African military camps, having fled from their homes to avoid being caught in the intensifying war. Journalists visiting the region were told by Smit that 90 per cent of the massive exodus into the capital Opuwo and surrounding centres was the result of the increased level of fighting in the north. Consequently Opuwo's population had increased from about 500 two years ago to around 4,000, and many people were living in squatter camps. Having left their possessions behind, many of the newly-arrived rural families had become dependent on the earnings of sons who had joined the security forces for a regular wage. 400/

399/ Namibia - A Nation Wronged, op.cit., p. 12.

400/ Focus, No. 39, March-April 1982, p. 4.

517. Ms. Margaret Ling (599th meeting) testified that both SWAPO and the Angolan Government had stated their belief that many Angolans, described as "refugees" by South Africa, who had crossed the border from southern Angola to northern Namibia in search of food and safety, had in reality been evacuated by South African forces for propaganda and other purposes. The numbers involved was very substantial, and by the third week in September 1981, a total of 1,100 refugees were reported by South African forces to have arrived in northern Namibia since the start of "operation Protea". However, at a press conference in Luanda, President dos Santos of Angola had said that his Government "did not recognize the existence of Angolan refugees fleeing to Namibia", charging that there had been "a forced evacuation" with the objective of gaining more recruits for groups seeking to destabilize Angola. The President had asked international relief organizations to investigate reports that villagers in southern Angola had been abducted en masse by South African forces and were being held in camps inside Namibia.

518. The witness said that some of the refugees, interviewed subsequently inside Namibia by journalists, provided confirmation of this stating that the South African troops involved in "Operation Protea" had threatened to kill them unless they moved south to Ovamboland. Their kraals and corn had been burned and later UNITA guerrillas had come along and driven away their cattle. Some Angolans who had been abducted had subsequently escaped and returned to Angola where they had described to the session of the International Committee of Inquiry into the Crimes of the Racist and Apartheid Regimes in Southern Africa held at the beginning of 1981 how they had been given military training by South Africa to fight against SWAPO and the Angolan Government (see E/CN.4/1485, paras. 280-284).

519. During the period under review large numbers of Angolan citizens were reported to have been displaced as a result of South African incursions into the southern area. During the first three weeks of "Operation Protea", launched by South African forces on 23 August 1981, an estimated 30,000 people were forced to flee their homes in Kunene province. Preliminary estimates of the total dislocation of population in southern Angola was of 150,000-160,000 left homeless by the South African invasion. In addition 280,000 people were estimated by the end of 1981 to have been affected by the protracted drought in the south, against which effective counter-measures had been made impossible by the scope of the South African military activities. 401/

520. It was reported that Lieutenant-Colonel Ngongo, of the Angolan Ministry of Defence, had confirmed that South African troops continued to occupy and control about 50,000 sq. km of Kunene province but had not established any form of administration in the area. He said that 150,000 people had been displaced from their homes and forced to flee northwards, while those remaining in the occupied zone were being bribed with food to persuade them to turn informer against the Angolan armed forces. 402/

521. In her testimony before the Ad Hoc Working Group of Experts, Ms. Ling (599th meeting) referred to the pressures being brought to bear on the Topnaar community to move from their ancestral land around the Kuiseb river to the Nama "homeland" in the south-east. The approximately 600 Topnaar people were classified by South Africa as part of the Nama group. The community had lived in the area around Walvis Bay (annexed by South Africa in 1977) and along the Kuiseb river for centuries, and had formed part of the wider Nama Confederation of pre-colonial Namibia. Various attempts had been made in the past to move the Topnaars, in terms of the Odendaal Plan of 1964, to their designated "homeland". While there had been

401/ Focus, No. 37, November-December 1981; No. 38, January-February 1982, p.10.

402/ Focus, No. 40, May June 1982, p. 10.

no official programme of forced removals in Namibia in the past two years, in late 1981 it had been reported that the Department of Nature Conservation, which had established a nature reserve, the Nankluft Park, on Topnaar land, and imposed restrictions on their movements, had been pressing for them to be moved. The Topnaar community leader, Seth Kootje, had accused the authorities of depleting the underground reserve of the Kuiseb valley by selling water to the Rossing uranium mine as well as to the towns of Walvis Bay and Swakopmund. As a result he said that his people, who were farmers, could no longer get water from shallow wells, and in some settlements, suffered a water shortage. He stressed that the Topnaars were totally opposed to being moved, as they would lose income from economic activities specifically related to their present area of residence. Some engaged in sea fishing, while others harvested Inara fruit, selling roasted Inara pips to markets in Swakopmund and Walvis Bay. It was reported that a meeting was being arranged between the Nama tribal authorities and the Administrator-General at the end of 1981 to discuss the question, but no further details were available about the results of this meeting, and it was not known whether the Topnaars had yet been forcibly removed. 403/

522. According to information available to the Ad Hoc Working Group of Experts, conditions in the Nama "homeland" to which the Topnaars would be moved, were harsh and the land drought-stricken. According to the report of the visit to the territory by the British Council of Churches to Gibson, the land there is completely covered with stones from six inches to one foot in diameter lying on the surface, which has to be cleared before any land can be cultivated. The area is being consolidated as part of the Nama "homeland", and white farms have been bought up, the whites moving elsewhere, and other Namas had been moved on to them from Warmbad in the south. Ten to twenty families were now supposed to maintain themselves by sheep and goat farming which formerly supported one white family. No rain had fallen for the year at the time of the visit, and the number of sheep and cattle in the area was said to have been practically halved as a result of the drought over the previous two years. 404/

D. Treatment of political prisoners and captured freedom fighters

1. Summary of some relevant laws

523. The Ad Hoc Working Group of Experts noted in previous reports that the South African laws providing for long periods of detention and imprisonment for "political offences" as well as legislation covering the prisoners in gaol, have been made applicable to Namibia and are still applied (see E/CN.4/1030/Add.1, para. 9; E/CN.4/1311, paras. 372-376). These include the Prison Act, No. 8 of 1959, and the General Law Amendment Acts, Nos. 76 of 1962, 101 of 1969 and 94 of 1974: Act No. 76 was applied to Namibia with retroactive effect in 1966 but has since been largely superseded in usage by the Terrorism Act, No. 83 of 1967. The great majority of Namibian political prisoners serving sentences have been convicted under the Terrorism Act. The provisions of the Riotous Assemblies Act of 1956 were applied for the first time in Namibia during 1976 under the Internal Security Act of 1976 (embodying the provisions of the Suppression of Communism Act of 1950) providing for indefinite preventive detention and the banning of any persons deemed

403/ Windhoek Observer, 25 September 1981.

404/ Namibia - A Nation Wronged, a report prepared by the BCC, op.cit., p. 16.

likely to endanger the maintenance of public order. The laws taken together give the South African authorities in Namibia a wide range of repressive measures to choose from in enforcing "law and order". A person may be arrested under one law, and the terms of his or her detention order subsequently altered while in prison. In practice, many detainees are likely to be unaware of the precise legislation under which they are being held.

524. In addition, a number of laws and emergency proclamations have been specifically designed for use in Namibia, and enacted mainly by the Administrator-General on behalf of the South African authorities are still in force. These include the Security Districts Proclamation, AG.9 of 1 November 1977, which replaced the emergency measures in force in northern Namibia since the contract workers' strike of 1971-1972; Proclamation 217 of February 1972, covering Ovamboland; and its successor, R69 of May 1975 covering Ovamboland, Kavangoland and East Caprivi; Proclamation AG.26 of 18 April 1973, Provision for the Detention of Persons in order to prevent Political Violence and Intimidation, Proclamation AG.50 of July 1976 which amended the Undesirables Removal Proclamation No. 50 of 1920, so as to transfer the power to expel such persons to the Administrator-General, and the various amendments to these laws (see E/CN.4/1311, paras. 372-377; E/CN.4/1365, paras. 268-270, E/CN.4/1429, paras. 421-425). In recent years the security forces have increasingly used the two proclamations introduced specifically to provide for detention without trial, AG.9 and AG.26, to arrest and detain large numbers of SWAPO supporters, while the Terrorism Act has been used less frequently, and then mainly to bring charges against detainees in court. Under Proclamation AG.26 the Administrator-General has unqualified powers to detain any persons whose actions are felt to "promote violence or intimidation" indefinitely, without charge and without recourse to lawyers or to the courts. Initially the police were not empowered to interrogate detainees under the Proclamation, but in May 1979 powers of interrogation were introduced through an amendment authorizing the justice of the peace to conduct interrogations. While from time to time figures are issued by the South African authorities for the numbers of detainees held under Proclamation AG.26, they are never revealed for detainees held under Proclamation AG.9.

525. Of particular note is a clause of Proclamation AG.9 which protects any government or public official (including the police) and any member of the armed forces against prosecution for injuries inflicted through actions taken under the Proclamation. This reinforces the South African Indemnity Act, No. 13 of 1977, which indemnifies the State or its servants against civil or criminal proceedings in connection with the prevention or suppression of civil disorder, and which has been made applicable to Namibia. AG.9 was extended on 10 May 1979 when the districts Magistrate of Windhoek, Tsumeb, Outjo, Okahandja, Otjiwarongo, and Grootfontein were all declared security districts. In December 1979, certain sections of AG.9 were extended to Kaokoland in northwestern Namibia, and as a result of these additions, more than 50 per cent of Namibia's land area, including the major urban and mining centres with the exceptions of Keetmanshoop, Luderitz and Oranjemund, the centre of the diamond mining industry, and over 80 per cent of Namibia's population are subject to de facto martial law. A previous report of the Ad Hoc Working Group of Experts detailed the additional restrictions under Proclamation AG.9 introduced relative to freedom of movement in Ovamboland (see E/CN.4/1429, para. 422).

526. The previous report of the Ad Hoc Working Group of Experts detailed further additions to these regulations including an amendment to the Security Districts Proclamation which required any person in a security district who gives medical attention to persons wounded in 'suspicious circumstances' to report the matter without delay to the security forces. The Security Districts Act, AG.161/No. 20 of 1980 was adopted by the National Assembly in October 1980. Under the division of legislative and executive powers between the Administrator-General and the National Assembly, all such acts, while promulgated by the Administrator-General, have to be adopted by the National Assembly before coming into effect. The previous report also referred to the tightening of security in Kavangoland, with a ban imposed in April 1981 by the Kavango "representative authority" on all movement in the south-west of Kavangoland between dusk and dawn, which had the effect of restricting movement on the road from Rundu to Grootfontein, while in Ovamboland the security forces announced that vehicle control between sunset and sunrise was to be applied stringently (see E/CN.4/1985, paras. 340-341).

527. During the period under review a number of new measures were introduced providing for the detention and trial of opponents to the "internal government", and further curbs on political activity by SWAPO were debated and promulgated by the National Assembly. The new legislation was intended to tighten up existing provisions and consolidate a number of security laws applied in Namibia. It was also an attempt by the Council of Ministers to increase its authority "independent" of South Africa, while continuing to restrict political opposition by the use of arbitrary detention. The main new measures provided by the Combating of Terrorism Bill with the intention of replacing a number of existing laws, including the Terrorism Act, sections of the General Law Amendment Act as amended and the Internal Security Act (see paras. 476-477 above) are the following. Like the Terrorism Act, the new bill included a wide range of activities under the definition of "terrorism". According to local newspaper reports, the new law would have involved the scrapping of Section 6 of the Terrorism Act, and the removal of the provision for a minimum sentence for five years, and a maximum goal sentence of 20 years. One clause of the bill provided that any person accused and subsequently convicted of informing and feeding SWAPO guerrillas would receive a 20-year prison sentence. The bill was subsequently referred to a select committee of the National Assembly for review following objections by a number of political parties, with particularly strong opposition by the Ovambo tribal authorities.

528. During November 1981 the National Assembly also debated the Security Districts Amendment Bill, which is intended to amend Proclamation AG.9. Initially, persons detained under AG.9 could be held for interrogation for 96 hours; this period was extended to 30 days on 19 December 1979. This meant in practice the detention order could simply be renewed, or detainees could be transferred to detention in terms of Proclamation AG.26, which provides for indefinite detention without trial. When implemented, the new amendment to AG.9 will empower members of the security forces to interrogate detainees held for longer than 30 days. 405/

529. Another measure debated by the National Assembly was subsequently promulgated on 23 December 1981 as the Prohibition and Notification of Meeting Act, No. 22 of 1981. This provides for the prohibition of political meetings by parties "whose stated objective is the violent overthrow of the existing order". The Act stipulates that no person within the borders of Namibia may hold a meeting that has as its object, or favours, the overthrow of the Government by forcible means or intimidation. Section 3 of the Act requires that any gathering of more than 20 persons must be preceded by 24 hours written notice to the magistrate of the district in which the meeting is to be held. The organizers must submit information about the time and place of the meeting and its nature. The name of the person or organization on whose behalf the meeting is held as well as the names and addresses of the speakers must be given. The magistrate is empowered to ask for the constitution of a political party and he may ban any meeting if he considers that the constitution advocates the overthrow of the existing order. He may also require the organizers to furnish him with a written declaration stating expressly whether or not they favour the overthrow of the existing order by means of force. The penalty for contravening the provisions of the Act is three years' imprisonment or a maximum fine of R3,000, or both. 406/

530. A previous report of the Ad Hoc Working Group of Experts (see E/CN.4/1429, para. 425) referred to the proclamation published on 23 January 1980 by the Administrator-General offering a conditional amnesty to SWAPO guerrillas (AG.3, Granting of Amnesty to Certain Persons), and the extension of the initial deadline due to poor response, first to 31 August 1980 then to 31 August 1981, in spite of which by March 1981, a total of 103 guerrillas had turned themselves in (see E/CN.4/1485, para. 342). No further moves to extend the amnesty appear to have been made during the period under review.

2. The Police forces: present structure and United Nations proposals

531. A previous report of the Ad Hoc Working Group of Experts described the incorporation of the SWA Police Force into the South African Police, (see E/CN.4/1050, paras. 264-267). From that time onwards the Commissioner of the South African Police (SAP) exercised the command, superintendence and control of the force in Namibia, through the divisional Commissioner of Police at Windhoek, subject to the directions of the South African Ministry of Police. The previous report of the Ad Hoc Working Group of Experts outlined the steps taken since 1980 by South Africa to establish an "independent" police force in Namibia, the South West African Police (SWAP), under the formal control of the Administrator-General and the Council of Ministers of Windhoek, in place of the South African Commissioner and Minister of Police (E/CN.4/1485, paras. 267-268). Although as of 1 April 1981, the SAP formally relinquished the responsibility for policing Namibia to the new force, according to information available to the Working Group the SAP remains extensively involved in counter-insurgency activities, with SAP members officially serving in Namibia "on secondment".

406/ Ibid.

532. In view of the mushroom-like growth in the variety of types of police forces active in Namibia and the often confusing overlap between the functions exercised in practice by the different units, a fuller description than has been included previously is presented below. Much of the information is drawn from a document entitled "Apartheid's Army in Namibia" provided by Ms. Ling, Representative of International Defence and Aid Fund on Southern Africa (559th meeting). 407/

533. An accurate estimate of the total number of police of various kinds operating in Namibia is not possible as few official figures are published for non-SAP black police and no separate figures for Namibia are given in the case of the SAP or South African Railways Police. The rapid increase in the rate of recruitment of black police during 1979 and 1980 is another factor that makes calculations difficult. One source put the estimate at 7,000-10,000 as at the end of 1981, over 90 per cent of which had the status of "security forces". 408/

534. The South African Police is the largest of the various police forces deployed in Namibia, with an estimated 1,000-1,500 on "border duty". All its members, including those carrying out "civil" policing, receive counter-insurgency training, are heavily armed, equipped with military jeeps and are provided with South African Air Force helicopter support. The SAP first moved into the operational area in Namibia in 1966 and until June 1974 had the main responsibility for patrolling the northern border with Angola. These duties were then taken over by the SADF, but the SAP returned to the border on an operational basis in January 1976. The SAP's counter-insurgency units are deployed in numerous bases in the operational area with an average strength of thirty or forty men per unit, operating in close liaison with SADF, with particular emphasis on information gathering. It was reported during the period under review that the close co-operation between the SADF, the SAP and local police units had been deliberately publicized by the South African military authorities when journalists were allowed to visit a secret base in the north in May 1982. This publicity followed a countrywide alert and extensive mobilization of South African military and police units stationed in Namibia due to a series of successful operations staged by SWAPO's military wing PLAN, in the Tsumeb farming area. Colonel Durand, officer commanding the battalion of police in Ovamboland, said the SAP had a number of bases in the area, and played a supportive role to the SADF, making use of the air force, SADF medical facilities and other aids. In addition he said the SAP provided trained special constables to act as body guards to local tribal leaders and patrol the area in support of the South West Africa Police. The SAP was also responsible for escorting civilians, including contractors, in the operational area. 409/

535. The security police form part of the SAP and have a large detachment on duty in Namibia, particularly concerned with the detention and interrogation of political opponents of the South African Government. The Security Police remain

407/ Apartheid's Army in Namibia, Fact Paper No. 10, January 1982 (International Defence and Aid Fund for Southern Africa).

408/ Ibid., p. 42.

409/ Focus, No. 42, September-October 1982, p. 8.

directly responsible to Pretoria, and were specifically excluded, along with operatives of the national intelligence services, from the authority of the Administrator-General.

536. The South West African Police is headed by the former Divisional Commissioner of the SAP in Namibia, Major-General Dolf Gouws, who was one of the first policemen to accept a permanent position with the SWAP. The main SWAP bases are in Windhoek, Grootfontein, Oshakati and Ondangua.

537. Koevoet (crowbar) is a Special Police counter-insurgency unit, officially operating as part of the SAP, which first came to light in May 1980, following the reported discovery of a death list naming a number of individuals to be assassinated by Koevoet. According to information given by the commander of the unit, Brigadier Hans Dreyer, to the crews during the period under review, Koevoet is almost entirely composed of Ovambo Special Policemen under the command of mainly white SAP officers stationed permanently in Namibia. He said that the unit had been in operation for nearly four years, and was now estimated to number around 1,000, with new recruits selected after intensive training by the SAP counter-insurgency unit. 410/

538. The Municipal Police Force, including African constables under white officers, are all armed and mainly responsible for dealing with security in towns under white-controlled municipalities. Their duties include registration of workers at employment bureaux, patrol of labour compounds, issuing of permits, etc. In August 1980 a special permanent police force was established at the Katutura hostel compound in Windhoek. At the time of its introduction the force was reported to consist of 50 special constables drawn from Ovamboland, under the control of six white SAP officers, armed with automatic weapons and quartered in the hostel compound.

539. The South African Railways Police were included in the definition of security forces, giving them the same status and powers as the SAP and SADF in September 1979. A unit were reported to be undergoing training in Namibia in 1981 (see E/CN.4/1485, para. 344).

540. Under the proposal for a Settlement of the Namibia Situation transmitted to the Security Council of 10 April 1978 by the Western Contact Group and incorporated in Security Council resolution 435 (1978), primary responsibility for maintaining law and order during the transitional period leading to elections would rest with the existing regular police force, and with the Administrator-General to ensure its "good conduct". The proposal also involved the demobilization of the citizen forces, commando and ethnic forces, which SWAPO understood to include the tribal police. The proliferation of various types of police forces in Namibia complicates the process involved in the event of implementation of resolution 435 (1978). The Ad Hoc Working Group of Experts has already described the United Nations proposal for inclusion of a 360-strong police element in the military component of UNTAG, and the subsequent rejection of this by South Africa (see E/CN.4/1311, paras. 380-381).

3. Summary of evidence and information received

541. The evidence collected by the Ad Hoc Working Group of Experts on this subject is presented as follows: (a) the number and treatment of captured freedom fighters; (b) situation of political prisoners; (c) some recent arrests; (d) allegations concerning torture and the cruel, inhuman and degrading treatment of political prisoners; (e) allegations concerning violations of the right of the accused to a fair and public trial and procedures for complaints and redress.

(a) Situation of Namibian political prisoners

542. In his testimony (579th meeting) Mr. Shikomba former detainee on Robben Island, gave evidence of the numbers of political prisoners held on Robben Island and their conditions of imprisonment and state of health (see paras. 570-571). A previous report of the Ad Hoc Working Group of Experts provided a list of those Namibians detained (see E/CN.4/1429, para. 441). According to the list of prisoners presented by the witness, 46 were still held on Robben Island, 10 had been released, and three had died whilst in prison.

543. The names of the prisoners, term of imprisonment, age and state of health, where these facts are known, were as follows: Simeon Shixungileni, life, 40+, hypertension and asthma; Johannes Nankudhu, life, 40+, hypertension and abdominal pains; Lazarus Sacarus, 20 years, 40+, pneumonia and hypertension; Joseph Shityuwete, 20 years, 40, oedema of the legs; Iiro Ekandjo, 20 years, 41; Julius Shilongo, life, 41, hypertension and tuberculosis; David Shihveofoloni, 20 years, 41, hypertension; Eliazer Tshudeloni, life, 6, asthma and hypertension; Nghidipo Kaufiku, 20 years, 40+, hypertension; Kalob Tjipahura, life, 41; Immanuel Shifidi, life, 40+, hypertension; Rudolf Kadhuka, life, 40, hypertension; Abel Haluteni, life, 40+, Betuel Nuyango, life, 40+, hypertension; Isthias Kanyele, life, 40+, peptic ulcer; Malakia Uushona, life, 51, hypertension and abdominal pains; Johannes Shiponeni, life, 40+, amputated leg; Petrus Kamati, life, 40+, hypertension; Philemon Shitilifa, 20 years, 40+, hypertension and abdominal pains; Herman Toivo Ya Toivo, 20 years, 58; Simeon Hamulamo, 20 years, 50+, hypertension and abdominal pains; Shinima M'linge, 20 years, 70+, hypertension; Tsheringwa Ndjavulu, 20 years, 70+, hypertension and going blind; Mkhos Litaka, 20 years, 60+, hypertension and back pains; Naftali Anungulo, 20 years, 60+, hypertension; Rehoban Nambinga, life, 50+, hypertension; Moses Michael, life, 50, hypertension; Solomon Peita, 20 years, 36, problems with testicles due to electric shocks; Gaus Shikomba, 20 years, 40+, malignant tumour of mouth; Joseph Mpangelur, 20 years, 40+, hypertension and heartburn; Mosseck Victory, life, 40+, hypertension; Justus Heita, life, 30+, abdominal pains; Marius Amagula, 8 years, 32, chest pains; Sckaria Nashandi, 6 years, 33; Ruben Hlongo, 12 years, 27; Mical Shikongo, 5 years, 40+, hypertension; Lazarus Guiteb, 8 years, 30+; Benjamin Gulongo, 15 years, 30+; Naboth Iwene, 5 years, 40-; Makol Shilengelwa, 3 years, 41; Ardjiengo Kapolo, 8 years, 32, epilepsy; Manki Shitilifi, 5 years, 30, abdominal pains; Johannes Pandeni, 18 years, 32; Petrus Ilonga, 18 years, knee pains; William Biwa, 5 years, 33, hypertension; Willibard Sagarie, 5 years, 27.

544. Three prisoners died while in prison, they were: Festus Nahale, 8 March 1970; Petrus M'linge, 4 March 1971; Jonas Shumefelen, 1 August 1980. Ten prisoners had been released on completing their terms of imprisonment. Their names, length of prison terms, date of release, and present whereabouts are as follows: Nathaniel Hwateni, 5 years, February 1973, outside Namibia; Jonas Mashivela, 5 years, February 1973, still in Namibia; Gerson Mitjevi Veli, 5 years, February 1973, still in Namibia; Daniel Nshilongo, 2½ years, July 1976, since disappeared; Joseph Ndesi Ipenda, 2½ years, July 1976, outside Namibia; Martin Kamvasha, 8 years, 15 November 1981, still in Namibia; Jacob Nghidinwa, 8 years, 15 November 1981, still in Namibia; Jerry Ekandjo, 3 years, 15 November 1981, still in Namibia; David Shikomba, 6 years, 14 March 1980, outside Namibia; Risto Nakanyela, 5 years, October 1981, still in Namibia.

545. Mr. Shikomba said he had arrived on Robben Island on 7 October 1974, where with other new prisoners he was put in the isolation section. This was divided into three sections; a section for new arrivals and those being punished by solitary confinement; a section for political prisoners such as Herman Toivo Ya Toivo and Nelson Mandela; a section for trained ANC militants. On arrival they had known there were Namibians imprisoned but had not known where, and had found out by singing in their own language. All Namibians were kept in section D of the prison, except for Herman Toivo Ya Toivo who was kept apart. In section D there were big cells which could hold up to 50 prisoners. This section was known by the prison warders as the "Terrorist Section" since it contained Namibian prisoners and some South Africans sentenced under the Terrorism Act. The witness said that there were about 700 prisoners altogether on Robben Island. The witness said that after completing his sentence he was taken to Windhoek where he was due to be released on 14 March 1980. He had been allowed to go into hospital for treatment of his lungs after questioning by the special branch who wanted to know where he intended to go. After treatment in hospital in Cape Town for two months he had returned to Namibia and been told by the special branch to go to his father's house in Ovamboland. On the advice of his lawyer he had refused and stayed in Windhoek where he had been arrested under Proclamation AG. 26 on 3 September 1980. He had been released on 26 September in Oshakati on three conditions: he must not leave the Uukwambi tribal area without special branch permission; he must not receive any visitors without special branch permission; he must report every Monday between 8.00 a.m. - 4.00 p.m. at the local special branch office.

546. According to information available to the Ad Hoc Working Group of Experts, Jacob Ngidiru, one of the prisoners released on 15 November 1981, was subsequently arrested under Proclamation AG. 9 in his home area of Ordenga for breaking curfew regulations on 12 March 1982. His place of detention was not known. 411/

547. According to the SWAPO President, Sam Nujoma, Namibian political prisoners held on Robben Island may be moved to Walvis Bay. A new prison was being built at a cost of R2m, due for completion in May 1982, which could accommodate 200 prisoners. However a senior spokesman of the Department of Prisons in Pretoria denied the prison would be used for political prisoners from Robben Island. While it was not the normal policy of the Department of Prisons to disclose where prisoners were accommodated "it was a fact" that Robben Island was to be abandoned in favour of more centralized prisons in South Africa, with Namibian prisoners transferred to Windhoek or Marienfel. In 1981, 1,486 criminal cases had been heard in Walvis Bay, a number of which carried compulsory prison sentences. According to further information available to the Group, the need for a new prison was highlighted by the case of a prominent local businessman, who elected to go to prison rather than pay a fine for contravening the Group Areas Act, which is still applicable in Walvis Bay. As there were no prisons in Walvis Bay, he was admitted to a Swakopmund prison and there was considerable publicity over the fact that a person from Walvis Bay had to go to prison in Namibia where the law in question had been scrapped. 412/

411/ Focus, No. 41, July-August 1982, p.2.

412/ Namibia Times, 26 January 1982, Focus, No. 39, March-April 1982, p.9.

(b) The treatment of captured freedom fighters

548. Ms. Ling (599th meeting) gave evidence and provided written documentation on the subject of the capture and subsequent treatment of combatants of PLAN, SWAPO's military wing, by South African forces. She drew particular attention to the recommendations and conclusions of the Seminar on the Military Situation In and Relating to Namibia organized by the United Nations Council for Namibia and held in Vienna from 8 to 11 June 1982. The participants at the seminar had urged the Council for Namibia "to increase its efforts to secure the release of all combatants of the PLAN held by South Africa's military and other forces in Namibia, insisting on their prisoner-of-war status under the 1949 Geneva Conventions and the 1977 Additional Protocol I" (Recommendation II).

549. A previous report of the Ad Hoc Working Group of Experts (see E/CN.4/1270, para. 300) discussed the efforts of the international community to secure prisoner-of-war status for SWAPO combatants, in particular the participation by SWAPO delegation in the work of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts held in 1977 at Geneva under the auspices of the International Committee of the Red Cross (ICRC).

550. Ms. Ling referred to the trial of three captured SWAPO combatants under the Terrorism Act in the Windhoek Supreme Court which had raised the whole issue of the demand of prisoner-of-war status to a new level of public debate inside Namibia. The defendants were brought to trial in February 1982 and sentenced to prison terms in June 1982 for participation in various "terrorist acts" and their defence lawyers argued that SWAPO's case for its combatants to be accorded full prisoner-of-war status was especially stronger in the light of the international status of Namibia and the conflict therein; and of the illegal character of South Africa's occupation. In the written document presented by the witness it was stated that in practice only a minority of those combatants who were captured by South African forces were ever brought to trial under one or other of South Africa's security laws. The trial of Theophilus Jason, Lucius Malambo and Joseph Sagarias, all of whom were captured in the Tsumeb-Grootfontein-Otavi area and accused of participating in various guerrilla activities, was the first of its kind for more than three years. The last trial of its kind had taken place in November 1976 when Johannes Pandeni and Petrus Lilonga were each sentenced to 18 years imprisonment for the sabotage of a road bridge and derailment of a train in southern Namibia (see E/CN.4/1365, para. 262).

551. According to further information available to the Ad Hoc Working Group of Experts the trial began in the Windhoek Supreme Court on 25 February 1982 with the defendants charged with blowing up water installations, planting landmines, destroying a railway line and cutting telephone wires to farms. All the prosecution witnesses were apparently members of the SADF, although their names were kept secret on the order of the court. The three defendants were said to have been captured as a result of a massive operation by a police counter-insurgency unit and the army. Sagarias had been wounded in the hip and right leg and Jason had also been wounded, escaped and captured later, unarmed.

552. On the resumption of the trial, Sagarias had to be assisted into the court as he still had one leg in plaster. A number of prominent witnesses were called by the defence, including three local journalists, Angel Engelbrecht of Die Republikein, a pro-DTA newspaper, Max du Preez, head of the Nasionale Koerante Bureau in Windhoek and Hennie Smith, editor of the Windhoek Observer.

553. The main evidence was given by John Dugard, Professor of Law at the University of Witwatersrand, advocate of the Supreme Court in South Africa and former president of the South African Institute of Race Relations. Professor Dugard said that the armed conflict in Namibia had an international rather than a domestic character because of the international status of Namibia and the categorization by the international community of South Africa's administration as illegal. He said that the courts in Namibia, while not in a position to refuse to exert jurisdiction over SWAPO prisoners, should have due regard to developments in international law. He referred to South Africa's signature of the 1949 Geneva Convention in 1952, of which the article stating that no person should be summarily dealt with without a judicial hearing governed South Africa's treatment of SWAPO members. Professor Dugard said there was no doubt that the subsequent additions to the Conventions, relating to national liberation movements, had been intended to apply especially to SWAPO. Under Protocol I, which came into force in December 1978, and which had been ratified by 21 States, including five from Western Europe, national liberation movements had to meet the requirements of two articles of the Protocol to qualify for prisoner-of-war status. Article 43 provided that their armed forces had to operate under a command structure and observe military discipline, while under Article 44, combatants had to wear a distinguishing uniform, even if only during engagements. The court had previously been told that the three had been wearing SWAPO uniforms and insignia at the time of their capture. Professor Dugard said that while South Africa had not ratified Protocol I, and was not therefore bound to accord prisoner-of-war status to SWAPO, it could not in his view ignore the evolution of international law which it represented. He also said that the International Court of Justice and the United Nations had specifically recognized SWAPO's right to engage in military hostilities against South Africa on behalf of the people of Namibia. In terms of South African criminal law, captured SWAPO insurgents were treated as criminals, but outside South Africa, they might be regarded as members of an armed force he aid. Questioned by defence counsel, Professor Dugard said there was no reason to believe that a freed South African soldier, Sapper Johan van der Mescht, had been treated other than as a prisoner-of-war by SWAPO. According to information available to the Group, van der Mescht, who had been captured by SWAPO in northern Namibia in February 1978 and held as a prisoner-of-war in Angola, was released in 1982 as part of an exchange of captives involving a Soviet citizen, Major Koslov, who had been arrested in South Africa in 1980, and eight West German intelligence agents serving sentences in the Soviet Union for espionage. Speaking about his four years' imprisonment, van der Mescht said he had not been tortured, although he claimed to have been maltreated. The South African Red Cross confirmed that it had been able to arrange for parcels of food and letters to be sent to him.

554. The trial ended on 2 June 1982, with Sagarias and Jason sentenced to nine years' imprisonment each and Malambo to eleven years. In his reasons for the sentence Judge Bethune said it was common cause that the men were wearing distinguishing uniforms of SWAPO's armed wing, and that skirmishes between SWAPO combatants and the security forces could be described as taking place in a "war situation". He said the defendants had in all probability judged their actions part of a "just struggle" enjoying considerable internal and external support, but that the court was not empowered to declare that SWAPO combatants be treated as prisoners-of-war. 413/

555. Ms. Ling also referred to an apparent shift in South Africa's policy towards captured SWAPO combatants during the period under review. While previously South Africa had not publicly acknowledged holding captured combatants, a certain amount of information about these had now been provided by the South African authorities in Namibia. The witness referred to an important statement made in August 1981 by the head of the newly-opened Windhoek bureau of the ICRC, Peter Lutolf, who said at a press conference that the ICRC was concerned at the scanty information being provided by South Africa. He said his organization did not know what happened to SWAPO combatants taken prisoner or wounded and that they were not kept informed if there were any. He said "It simply does not happen in any conflict or battle that you have a clash with 200 people and 45 are killed and no prisoners or wounded are taken". These remarks had come a few days before the launching of "Operation Protea" into Angola, the witness said, and had possibly influenced the SADF's decision during September 1981 to reveal that a total of 38 prisoners had been taken by South African forces during the operation, comprising eight SWAPO combatants, and members of FAPLA. A number of these prisoners, including a Soviet motor mechanic who had been working in southern Angola, were presented to the press. Photographs were also published showing a wounded SWAPO combatant receiving medical treatment next to a South African soldier in Oshakati hospital. Another SWAPO guerrilla, John Angula, captured some months previously, and described as the commander of SWAPO's northern artillery, was described as having been captured inside Angola while leading a SWAPO specialist unit to attack the Ondangwa airbase in northern Namibia. 414/

556. It was reported that during October and November 1981, ICRC representatives were allowed access to a total of 95 Angolan prisoners, 30 of whom were seriously wounded, captured during South African operations in Angola and mostly held in southern Namibia. But during the period under review the ICRC had not been reported as having been granted access to captured Namibian combatants. South African journalists in November 1981 accompanying the SADF on "Operation Daisy" to attack Chitequela in Angola, had reported seeing captured and wounded SWAPO combatants, some of whom were flown to Oshakati hospital or elsewhere in Namibia for medical treatment and interrogation. Otherwise reports of captured combatants have been sporadic. It was reported that 15 of the 85 Angolans captured by South African forces in October 1981 were FAPLA members who had crossed the border looking for food. 415/

557. In May there were unconfirmed reports that two uniformed and armed SWAPO guerrillas had been taken prisoner in the black township of Lundu following a number of incidents in Kavango land. But in other respects South Africa's usual policy of maintaining secrecy appears to have been maintained during the period under review. There were for example no reports of prisoners being captured during the SADF attack on Cambeno in south-west Angola in March 1982, although over 200 SWAPO guerrillas were reported to have been killed. 416/

558. Ms. Ling said that because of this secrecy it was extremely difficult to arrive at any accurate estimate of the total number of captured combatants held in Namibia at any one time. The South African Minister of Police had disclosed in the Senate

414/ Windhoek Advertiser, 13 September 1981, Windhoek Observer, 19 September 1981.

415/ ICRC Bulletin, No. 71, 2 December 1981. Star, 12 December 1981; Windhoek Advertiser, 2 November 1981; Focus, No. 58, January-February 1982, p.8.

416/ Windhoek Advertiser, 17 March 1982.

on 11 September 1981 that 23 SWAPO members had been captured during a total of 50 clashes in the Ovamboland region between 1 July and 7 September 1981. This appeared a somewhat high figure, bearing in mind that the figure given related only to police and not army action, covered a period of just over two months, and was for Ovamboland only. The witness said in her view that South Africa had an interest in exaggerating the number of combatants reported as having been killed, wounded or captured, by including non-combatants also. Taking into account all the persons, combatants and others, captured in the course of military engagements by the SADF, SAP and other security forces operating in Namibia, the over-all total might run into several hundred a year.

559. The witness said there was not much new information available on the treatment of captured combatants. It was known that those wounded were given medical treatment in military hospitals, as for example those brought to trial. Apart from Oshakati, combatants were also believed to be held at Ondangwa. She said one of South Africa's main reasons for keeping captured combatants alive was to obtain information about SWAPO's military activities. South Africa's military authorities tried to persuade or force SWAPO combatants to co-operate with the SADF in various ways. Captured combatants had been put on public display at various times for propoganda purposes. Two former combatants, Dickson Namola and Emmanuel Hashiko, had testified to the United States Senate sub-committee hearings on Security and Terrorism in Washington at the beginning of 1982. Namola was captured in March 1981, and Hashiko in February 1980. 417/

560. The witness Mathew Nafuka (578th meeting) said that while he was imprisoned in Oshakati in February 1982, he had been served food and water by a co-prisoner, a captured combatant by the name of Shishivini, one of whose legs had been critically injured in fighting on the day of his capture. The witness said that many SWAPO combatants were held in Oshakati and other prisons in northern Namibia, and were allowed to leave prison and visit relatives within a 5 km radius. They were retained if possible and used by South Africa as false SWAPO guerrillas.

(c) Recent cases of arrest

561. A number of new arrests were reported during the period under review. Mr. Immanuel Ngatjizeko, acting Administrative Secretary of SWAPO inside Namibia was arrested on 1 September 1981 and detained under Proclamation AC. 9 after applying for and obtaining police permission to hold a Namibia Day rally in an area between the Katutura and Lhorasdal townships of Windhoek on 29 August 1982. The rally was reported to have been disrupted by DEA supporters using loudhailers and police equipped with riot vehicles and blunder flasher. Mr. Ngatjizeko was released after four days of questioning by the police but four other SWAPO members arrested on 30 August 1982 were kept in detention. The four SWAPO members arrested on 30 August 1982 were Gabriel Shikongo, a member of the SWAPO executive committee, arrested at Windhoek; Ardrios Tamba, an executive member of the Windhoek branch; Charles Kadhikwa and Abisa Hampolo, both members of the Tlokweng branch.

562. A few days later, two more SWAPO members, whose names were not disclosed by the police, were arrested in the mining town of Tsumeb, and a police spokesman said they had not been detained only in connection with the rally. A further six SWAPO members, some of them described as lower-ranking leaders, were arrested on 5/6 September 1982; their names also were not revealed. It was calculated by the press that these arrests brought the total number held under AC. 9 as a result of the police action to 10 people.

563. According to the information available to the Group, relatives of people detained under the security laws in force in Namibia are rarely informed by the police and suffer great anguish as a result. 418/

564. The previous report of the Ad Hoc Working Group of Experts referred to the case of Markus Kateka, who was sentenced to death on charges under the Terrorism Act in October 1980, and later had the sentence reduced to 17 years' imprisonment (see E/CN.4/1485, paras. 300-304).

565. According to information available to the Ad Hoc Working Group of Experts, pressure from church organizations has proved successful in some cases in penetrating official censorship over the numbers and whereabouts of those arrested and detained. In May 1982 a security force spokesman confirmed details of the detention of a Lutheran Pastor, Rev. Jason Haufiku, and a teacher, Sarah Shiveku after their case had been publicized internationally by the Lutheran churches. Rev. Haufiku, pastor of the 10,000-member Engela parish of the Evangelical Lutheran Ovambokavango church near the border in central Ovamboland was arrested by South African soldiers on 27 March 1982. According to the Lutheran World Federation's newsletter, six soldiers, five white with their faces smeared black, arrived at Rev. Haufiku's home to ask him to identify five or six people named in a list. He was then required to take the soldiers to the home of Sarah Shiveku, where she also was arrested. Inquiries by church officials at the local Ohangwena military camp initially produced straight denials that any information was available. It later transpired that the two were being detained for questioning in Oshakati, but it was not until 22 April that they were reported to have been released unharmed, and only on 5 May a force spokesman confirmed that they had been released about 8 April. 419/

566. A previous report of the Ad Hoc Working Group of Experts referred to the banning order imposed on Nathaniel Maxuilili, Acting President of SWAPO, which had kept him confined to the Walvis Bay enclave since the late 1960s. It was reported that his ban expired on 20 May 1982 but a new banning order was imposed on 18 June for a further two years. Under its terms he is prevented from writing or speaking publicly or taking any active part in SWAPO. According to the information available to the Group, Maxuilili is the only SWAPO member to be restricted in terms of a banning order. 420/

567. It was reported that 200 people had been arrested in Katutura in March 1982 for "trespassing", with another 150 awaiting trial for the same reason. The arrests took place at the single quarters where only people in possession of permits are officially allowed to reside. It was subsequently reported that one of these, a 30-year-old woman, unnamed, had been found dead in her cell at Windhoek magistrate's court on 5 March. An inquest was due to be held on the deceased. 421/

568. It was also reported that 46 Tsumeb miners were detained by the South African Police on 2 February 1982. According to one of the detainees, Theophilus Johannes, in a subsequent interview with the SWAPO journal, The Combatant, the miners had been arrested on returning from work by police asking for their identity documents, which

418/ Focus, No. 37, November-December 1981, p.11.

419/ Lutheran World Information, 14/82, 15/82, Focus, No. 41, July-August 1982, p.3.

420/ Windhoek Observer, 22 May 1982; Focus, No. 41, op.cit., p.2.

421/ Focus, No. 42, p.10.

they had left at the mine. They were taken to the Tsumeb police station for interrogation and forced to agree that they were "SWAPO terrorists". They had been given no food and as a result six people had died. Johannes had managed to escape and reached Angola with the help of local people, and there was no news of the other detainees. 422/

(d) Women in prison and detention

569. According to information available to the Ad Hoc Working Group of Experts, there are many women amongst those arrested and detained without charge. Ms. Ling (559th meeting) said there were no reports of captured women SWAPO members of the military wing, although there were women members of PLAN. With respect to non-combatant detainees, the witness said that about one third of the Kassinga detainees were women, and she referred to the testimony made by a nurse, Mrs. Magdalena Nghatanga, in the previous year, who had herself been detained at Oshakati, and who had outlined a number of difficulties experienced by women detainees, especially sanitary arrangements and medical treatment (see E/CN.4/1485, paras. 410-425).

(e) Evidence concerning torture and the cruel, inhuman and degrading treatment of political prisoners and captured freedom fighters

570. Mr. Shikomba (579th meeting) described his treatment in detention and his experience of the inhuman prison conditions at Robben Island. The witness said that he had been arrested on 19 January 1974 at the place where he had been hiding from the police by Thomas Shikomba, Thomas Kandove, Johannes Iitolwa and other police officers he did not know by name. Together with his brother he had been taken to the Oshakati offices of the Special Branch where he had been interrogated for two hours. His clothes, books and other possessions had been seized by the police, as well as his brother's savings book, although his brother had been released after being questioned as to whether he had any contacts with SWAPO. The witness had then been taken to Ondangwa police station where he had been kept for 12 days in a zinc cell and provided with only badly-cooked porridge to eat, only being allowed outside to empty his toilet bucket. He was then taken to Windhoek Central Prison where he was kept in the "waiting trial" cells. During his trial in Swakopmund he was detained in a cell with small holes for windows and as it was midday and very hot when he was first placed in the cell he had fainted. After his trial he had been taken to Windhoek where he was kept in a cell, which served as a mortuary, before being transferred to Leeukop maximum security prison in South Africa. This was where political prisoners on the way to or being released from Robben Island were held. The witness said he had been kept in solitary confinement for six months. During his stay he witnessed prisoners being beaten by warders, especially one called Mouton. When he had protested at the random beatings his privilege of going outside his cell each day for exercise was withheld.

571. The witness also described the maltreatment of Namibian prisoners at Robben Island, who were subjected to the same regime as prisoners from South Africa. He said that because medical care at the prison was inadequate, as the doctors were negligent or prescribed the wrong kind of medicine, a number of Namibians had died or suffered from serious ailments. He said that John Shioneni had fallen in the quarry and injured his leg, but had not had treatment for a long time and as a result

his leg had become gangrenous. The doctors had claimed it was not at the stage where it could be treated, and when it became worse he had been taken to Cape Town hospital where the leg had been amputated without his knowledge or consent. After the operation he was told it had been done because of cancer in his leg.

572. The witness said that sometimes prisoners were prescribed wrong drugs. A fellow Namibian prisoner, Sakeus Iitika, suffered from a constant migraine, but was given medicine for diarrhoea. Petrus Niilenge had a neck tumour, but when he died in March 1974 the cause of death was said to be cancer. Martin Kapewasha had nervous tension, but had been prescribed drugs for high blood pressure.

573. In his testimony Mr. Nkandi (579th meeting) said that he was arrested while on a mission for his parents and taken to Ovongo, where his arms were chained behind his back and his legs chained together and he was made to stand for a whole day and a night. He did not know at that stage why he had been arrested. After being taken for a search of his parents' house he was returned to Ovongo where he was made to stand for four days and nights without sleeping, only being allowed to go to the toilet once a day, during which time he was hit in the face and kicked, and when he hit his head and became unconscious had had cold water poured over him. After four days the police asked him to make a statement as to who had killed Elifas. After being tortured for two weeks he was taken to Oshakati and shown some statements which said that he knew everything about the assassination, and he was told that he would disappear if he refused to endorse these. He was then transferred to Ondangwa for three weeks, and then to Windhoek where he was asked to testify in a trial of other SWAPO members, and told he was lucky not to be charged, but he refused initially. He had been put in the cell of Aaron Muchimba and Hendrik Shikongo to hear what they said and report it, for which he was promised his freedom. He was then sent back to Ondangwa, and transferred to Swakopmund in March 1976 where he was offered R7,000 and a pick-up vehicle if he would testify against Muchimba and Shikongo at their trial. They brought him to court believing he would testify, and when he refused he was imprisoned for 12 months in solitary.

574. The witness said that after serving his sentence he was rearrested and taken to Oshakati, then tortured by having a stick put between his knees while his arms were tied over his knees, placed in a bath of water, blindfolded, and given electric shocks, first with the electrodes placed on top of his ears and then in his anus. In July 1977 his trial had begun in Windhoek, but most of the evidence given related to SWAPO's general activities in Namibia and had little to do with the witness. He was kept in the death cell from November 1977 to April 1978, and his guards told him that it was certain he was to be executed; his fellow prisoner Ndovo Nangolo had been executed, the witness said. He was removed from there shortly before his release on 1 May 1981 on the intervention of his lawyer, Mr. David Soggott, and fled to Botswana in August 1978 after being prosecuted once more on resuming his SWAPO activities.

575. Mr. Nafuka (578th meeting) described his suffering while in detention. He had joined SWAPO in 1976 at Oranjemund and had come to the attention of the police through his activities amongst the workforce. After several threats and intimidations, and warnings to stop working for SWAPO, in June 1979 he had been arrested at his home in Ovamboland by Koevoet policemen, including the chief commander of the Ovambo battalion, Kandove, Tonato Indongvo and Kahuandi. He had been ordered to go with them for questioning by white military police officers and had been kept at the Oshakati police headquarters for three days. While there he was told the names of people killed by the army and warned that the same would happen to him. After being released he was rearrested in October 1980 by the same black policemen at Endola and this time beaten by most of them. His shirt was used to blindfold him and he was again taken to Oshakati where he was held for three weeks, during which time he remained in pain from his beating. He was told that a doctor could not see him until he satisfied the police with his answers about PLAN.

576. After being released for one week he was rearrested again in mid-November, and locked up with four captured SWAPO combatants, all of whom had been disfigured by severe beatings and been denied access to medical attention. The only one whose real name he knew was David Elias. The witness said that two other SWAPO combatants had died as a result of beatings. Later conditions improved in an attempt to persuade them to work for the SADF, and normal beds and water for washing were provided.

577. During his three months detention the witness said he was beaten during interrogation at intervals of five to six days for the first month, but then was not beaten again. He was released in February 1981.

578. The witness said he tried to return to his job at Oranjemund, but the management had been told by the police he was a bad influence on the workforce and that there might be a strike as the workers were SWAPO members. Later he was arrested at a small town, Grunau, and sent to Luderitz prison on 25 April 1981, then transferred to Windhoek prison before being released. The witness said that two Namibians, one from Tsumeb and one from Otavi, had been killed during his stay in Windhoek prison.

579. In December 1981 he helped a SWAPO colleague Fehemia Nedolo to escape across the border by putting him in touch with the local PLAN commander, and to cover his tracks invented a false story that he had taken his colleague somewhere in the bush and there arranged for him to be killed. Nedolo's father reported him to the police and in January 1982 he was arrested by the same Koevoet squad as before with another policeman called Heita Hitapolwa. He was driven blindfolded in a car to about four kilometres from Oshakati and then beaten so severely that the bridge of his nose had been broken, and then washed in cold water so he would not drip blood on office floors. He was taken to an Oshakati military base called Onimwardi where he was kept for two weeks and beaten almost every day during questioning by Kandove, who finally told him that he would be killed. His friend who had helped with the escape was taken to Omunguelume base, where he was tortured until he admitted that they had killed Nedolo. At Onimwardi the witness said he was subjected to electric shocks by white soldiers. He was taken to a special room filled with electric equipment, told to sit close to a table and remove his clothes. Electrodes were attached to his fingers, toes, tongue, nose and penis and the current was switched on for two to three minutes at a time with intervals of three to five minutes. Sometimes the current was kept on longer and only turned off when he appeared to be on the point of death. He refused to answer questions about Nedolo and SWAPO and the torture continued until he felt pain in every cell in his body. He was taken back to his cell on 15 February and on 23 February 1982 asked to sign a statement admitting he had killed Nedolo, which he refused to do. The next day Kandove came into his cell, threatened to kill him with his pistol and read out details of his assistance to SWAPO. He was then taken to another room blindfolded where he heard his friend say that they had killed Nedolo. They were then taken by car near to their homes and released. The witness decided to leave Namibia with his wife and other colleagues and was taken by SWAPO across the border on 9 March 1982.

580. The previous report of the Ad Hoc Working Group of Experts outlined the conditions of imprisonment and state of health of persons captured at Kassinga in May 1978 and imprisoned at the Hardap Dam camp near Herienthal (see E/CN.4/1485, paras. 410-425).

581. Ms. Ling (559th meeting) said that available information indicated that most of the Kassinga detainees were still held at Hardap Dam. In reply to questions, the witness confirmed that although the main concern must still be to secure their release, it did appear that the worse excesses of torture and mutilation to which

a number of detainees had apparently been subjected now seemed to be tempered. The visits by the ICRC and local press reports were responsible for this slight improvement, the witness said.

582. Mr. Nafuka (578th meeting) testified that while he was held for three weeks in Luderitz prison from 25 April 1981 he had been incarcerated with Kassinga detainees. This is the first witness to give evidence to the Group who had been in direct contact with detainees from Kassinga. He confirmed the prisoners he saw had been mutilated by having their ears and noses cut off. They were subjected to the most inhuman treatment with a routine of hard labour and beatings and were used as an example to deter others from joining SWAPO. The witness had been told that he would suffer a similar fate if he continued to work for SWAPO, and he later learned that these detainees had been brought from Hardap Dam to Luderitz to hide them from the ICRC delegation which visited the Kassinga detainees. The witness said he had been transferred to Keetmanshoop and then to Hardap Dam where he spent three weeks. The prisoners there did forced labour in the fields. He also confirmed that there were over 15 mutilated prisoners at Luderitz and over 30 at Hardap Dam. The witness claimed it was common practice for prisoners to be moved out of prisons before the arrival of international delegations - for example many had been taken out before the arrival in 1978-79 of delegations led by Martti Ahtisaari, United Nations Special Representative and Commissioner for Namibia. He said that while at Luderitz he had been able to speak with Kassinga detainees since they shared a dormitory for two weeks. They told him that the detainees still at Hardap Dam were kept in an underground prison on the east side of the dam. Amongst them were the detainees who had been mutilated. Pieces of their noses had been cut out, eyes taken out and fingers cut off by security force officers after their capture at Kassinga.

583. Mr. Nestor Iyambo (571st meeting) testified that the number of concentration camps in which detainees are held was growing, especially in the north. He said that captured SWAPO combatants were tortured. He said there were huts in concentration camps containing poisonous snakes in which detainees were kept overnight, and rooms with dead bodies where detainees would also be put, according to reports from Namibians now in exile.

584. During the period under review Focus also reported that sworn affidavits by a number of detainees with the Windhoek Supreme Court detailed descriptions of assault and torture by the security police, and alleged that one detainee had died as a result of torture.

585. Other affidavits submitted to the court by witnesses who were also detained contained allegations about torture. Gustaf Hoo stated that he had been assaulted repeatedly. Tjituu Ndondou said the torture applied to him was of great intensity. 423/

(f) Violations of the right of the accused to a fair and public trial

586. Mr. Shikomba (579th meeting) said that while he was awaiting trial in Windhoek an advocate called Johnson had come to say he would be his pro deo defending counsel. Mr. Johnson said he was not a supporter of the South African Government, but the

witness had later discovered after being sentenced that the advocate was a National Party supporter. The witness said he had discussed his defence with the advocate for the first time in the Swakopmund courtroom.

587. According to the additional information made available to the Ad Hoc Working Group of Experts by Focus, three women detainees were coerced into making false statements and appearing as witnesses for the prosecution during the period under review. It was reported that Arnold Hans, Secretary of the Windhoek Catholic Justice and Peace Commission and Alex Kamaunju, a member of SWAPO, were acquitted on 15 March 1982 of charges of unlawfully aiding people to leave the country without passports. Originally four people were due to appear in court, charges had been withdrawn against two others; Moses Tjiramba and Emmanuel Muatara. Hans, Kamaunju and Muatara were detained under Proclamation AG. 9 at the end of January 1982, but Muatara was released from detention on 28 February and all charges against him dropped. The charges against Hans and Kamaunju were based on the arrest of four people, three women and a man, near the Botswana border on 21 January 1981. All four were convicted at Gobabis magistrate's court of attempting to leave the country illegally and were sentenced to six months' imprisonment. After being interrogated by the security police in Gobabis, the three women, Lea Hisika, Sarah Mufeti and Belinda Onesmus, were transferred to Windhoek to appear as State witnesses in the trial of Hans and Kamaunju. During the trial they stated that the security police had intimidated them into signing false statements. Miss Hisika stated that security police officers had threatened that if she refused to sign a statement, her sentence would be extended and she would be tortured. Miss Onesmus also said her statement was false. As a result the two defendants were acquitted and the public prosecutor applied to the Windhoek lower court to have the three women declared "hostile to the State", and they were arraigned to appear on charges of perjury.

588. When they appeared in court on 6 April 1982, the three defendants repeated that the police had coerced them into signing statements. The case was provisionally postponed to the end of April, but no further reports appeared at this time and the available information was that they were due to complete their sentences in July 1982. 424/

E. Situation of black Namibian workers

1. Background information

589. In its previous report the Ad Hoc Working Group of Experts has examined the effects of the labour system in Namibia, including the system of recruitment of migrant workers; the denial of trade union rights; the disparity in wages between black and white workers; and the low wages and resulting poverty (see E/CN.4/1222, paras. 385-390; E/CN.4/1187, paras. 376-379; E/CN.4/1135, paras. 2882-92, E/CN.4/5622, paras. 117-136; E/CN.4/1270, paras. 325-337; E/CN.4/1311, paras. 415-424).

590. A previous report of the Ad Hoc Working Group of Experts (see E/CN.4/1365, paras. 287-291; E/CN.4/1485, paras. 381-382), described the effects of the income available to the African population from the migrant labour system and subsistence agriculture, and surveyed the available information from United Nations and other sources, as to the number of economically active persons and employment by economic sector. According to South African data, there was an economically active population of 332,800 in 1979; 251,400 black, 44,400 white and 37,000 coloured. 425/

591. The available information from South African sources remains sparse but, with the establishment of local administrative structures in Namibia, more information on economic and social sectors is gradually being made available. However, the Ad Hoc Working Group of Experts is not in a position at this time to express an opinion about the accuracy of this information. Some companies in the private sector are now proving more forthcoming about their wages policy.

2. Summary of evidence and information received

592. Speaking on the issue of wages and the discrepancies in the conditions of employment between black and white workers in Namibia Ms. Ling (599th meeting) referred to a document entitled Apartheid in Namibia Today (IDAF Briefing Paper) which she said contained data on basic living conditions, poverty, wages, prices and the cost of living. She said that contrary to the view propagated by the South African Government and its various information agencies that discrimination had been abolished, the information available to the IDAF's research department showed that racial segregation was still very marked.

593. Wide discrepancies in wealth and spending power between blacks and whites continued to characterize Namibia, although in the absence of statistical data from official sources or otherwise it was difficult to estimate how per capita incomes had changed since 1978 when the United Nations Institute for Namibia in Lusaka had estimated that whites enjoyed per capita incomes of approximately R3,000 while blacks received in the region of R125 per head, a ratio of about 24:1. The great majority of the black population depended, wholly or in part, on the wages paid by white employers of the private and public sectors. Low wages, below Poverty Datum Lines, were still being paid in some economic sectors.

594. According to Mr. C.A. Gibson, Deputy Chairman and Chief Executive of Rossing Uranium Ltd., the mine had 3,000 employees, comprising 53 per cent black, 25 per cent white and 22 per cent coloured, with Ovambo workers making up the largest proportion

of black workers. He told a visiting delegation of the British Council of Churches in November 1981 that all jobs were graded from 1-13 according to the "Patterson system", with wages, medical care, pensions, housing, fringe benefits and amount of leave related to the position of the employee on the scale. He said the company spent R3 million on training each year. The minimum wage was R225 in cash value, which was said to be 25 per cent above the current Estimated Minimum Level (EML) for an African family of six. Mr. Gibson claimed that a specially appointed committee had been unable to find any evidence of racialism in the workplace and had disbanded itself recently. He said that the company contributed greatly in wages and the purchase of goods and services in Namibia and thus indirectly raised the standard of living in Ovamboland. Although the present Government was illegal, he maintained that people were still the better for the company's presence and participation in the economy, and it was preparing its workforce for the future. 426/

595. According to the information available to the Ad Hoc Working Group of Experts, conditions at the single men's hostels and compounds for contract workers in towns were extremely spartan. In Katutura a new hostel for 5,200 contract workers was opened in 1978, replacing the notorious old hostel which had been the focus of the 1971-1972 general strike. This provided a slightly better environment in material terms, with some improvement in facilities, although the essential rigours of the system remained. Elsewhere in Namibia conditions were generally much worse. In August 1981 the Windhoek Observer described the Otjiwarongo municipal hostel as a "filthy, revolting hotel", and said that the toilets were blocked and not functioning, with excreta on the floors, and from the open cooking places a stench emanated from decomposed cows' heads and other offal which seemed to form the staple diet. The dormitories comprised cement beds with a broad piece of wood for a mattress and wardrobes were cement-encased narrow structures. There was no privacy of any kind and the only amenity a dusty soccer field nearby. The newspaper said that conditions at the compound in Grootfontein, Keetmanshoop, Tsumeb and Walvis Bay were comparable to those of Otjiwarongo. 427/

596. At the Tsumeb Corporation, it was reported in 1981 that the programme of training African employees as artisan aides was scaled down, as all available jobs had been filled and turnover was low. To continue to offer training opportunities to black workers a technical training programme had been developed with a formal apprentice training scheme. Intensive training was due to be initiated in 1982, to run in addition to the full-time apprentice training programme. Training of black workers as metallurgical plant operators and crane drivers at the smelters was continued and Africans were said to occupy all the latter positions of 1981. The number of African employees in jobs "traditionally" held by whites increased from 42 in 1980 to 65 in 1981, or just over one per cent of the total workforce of approximately 5,000. 428/

597. It was reported in the newsletter of the Council of Churches in Namibia that conditions at the Deblin lead/zinc mine between Swakopmund and Usakos were shocking. The writer said he had driven to the mine where he discovered labourers living in conditions worse than in the old location at Windhoek. Speaking to the workers,

426/ Namibia - A Nation Wronged, pp. 19-20.

427/ Focus, No. 39, p. 4.

428/ Newmont Mining Corporation, 1981 Annual Report.

he was told that average wages per month were about R50, no provision was made for housing and workers had to build their own homes from oil drums taken from the mine. There were no ablutions and no transport to Swakopmund, so that the sick had to walk to the main road to try and get a lift. 429/

598. Information about wage levels in non-mining sectors of the economy is very scanty, as most employers either do not divulge details in their annual reports, or are subsidiaries of larger multinational concerns, with no obligation to publish more than a minimum of information.

599. According to information available to the Ad Hoc Working Group of Experts, unemployment is running at very high levels. 430/

600. As of January 1982, 1,133 people were reported to be registered as unemployed with the Windhoek Labour Bureau, with 17,853 employed. But these figures are probably too low. The deputy director for Katutura was reported to have confirmed that no figures were kept for refugees from the north, and estimated that the real population of Katutura had increased to 50,000-60,000 as a result of a huge influx of unemployed refugees, compared to its official population of 35,000. It was reported that besides general hardship, the rising unemployment rate had made it possible for employers to recruit workers on a short-term basis with minimum legal security or protection against redundancies and lay-offs. Little practical action to ease unemployment appears to have been taken by the authorities. In 1980 a special unemployment committee under the auspices of the Department of Civic Affairs and Manpower was set up by the Administrator-General to formulate proposals and submit them to the Ministers' Council. At the end of 1981 the Council was reported to have approved a number of suggestions submitted to it by the committee, including the promotion of migrant labour to South Africa, labour intensive relief works, the reintroduction of influx controls, and the introduction of family planning campaigning to limit population growth. It was not known from the information available how many they were, or how far these recommendations had been pursued during the period under review. 431/

601. It was also reported that unemployment was expected to rise even further as a result of the significant cut-back in new public building projects announced at the beginning of 1982. This mainly involved housing schemes, schools and hospitals, valued at R20 million a year. According to a local newspaper survey, over 1,000 black workers in the construction industry would lose their jobs as a result, and since some of the larger firms would not provide figures of retrenchments and some smaller firms were not contacted, the newspaper estimated that the eventual total could be several thousand. 432/

429/ Windhoek Observer, 24 April 1982.

430/ Quarterly Economic Review of Southern Africa, 3rd Quarter 1981, p. 24, 4th Quarter 1981, p. 25 (London, Economist Intelligence Unit).

431/ Apartheid in Namibia Today, op.cit., p. 2.

432/ Windhoek Advertiser, 5 May 1982.

F. Conditions of Africans in the "Homelands"1. Background information

602. The evolution of the 'homelands' policy, as established with specific application to Namibia pursuant to the recommendations of the official 'Odendaal Commission' of 1964 were described in a previous report of the Group (see E/CN.4/1020, paras. 29-30, see also paras. 512-522). Other reports of the Ad Hoc Working Group of Experts have summarized the legislation enacted in the period since February 1973 in relation to the setting up of the "homelands" specifically for occupation exclusively by the different officially-classified tribal groups in accordance with the provisions of the Self-Government for Native Nations in South West Africa Act, No. 54 of 1968, and the Amendment Act, No. 20 of 1973 (see E/CN.4/1135, paras. 245-252, E/CN.4/1159, paras. 237 et seq.).

603. A previous report of the Group also referred to the continued establishment of "homelands" in the guise of so-called second-tier representative authorities as provided for in the draft Turnhalle constitution of 1977 (E/CN.4/1231, para. 426).

604. In its last report (E/CN.4/1485), the Ad Hoc Working Group of Experts analysed this process, outlining the general provision for the establishment of representative authorities in terms of Proclamation AG. 8, Representative Authorities Proclamation of April 1980, as debated and approved by the National Assembly, the enactment of provisions for constitutions of individual representative authorities, the establishment of a representative authority for the white population, in place of the South West Africa Legislative Assembly, and the holding of elections for second-tier Governments for each ethnic group in November 1980.

605. The three-tier structure of government involves a considerable overlapping of administrative powers, the development of parallel bureaucracies, and little accountability to the population supposedly represented by the second-tier Governments. Among the areas coming within the legislative powers of the representative authorities are art and culture, civil defence and local security, control over chiefs, education, farming, health, housing, land social welfare and pensions, taxation and tribal elections.

606. Representative authorities can pass ordinances on these matters, which have to be submitted to the Administrator-General for approval, and the National Assembly is barred from passing legislation in these spheres. However the budget for the representative authorities is controlled by the National Assembly. The third tier of government, comprising local or municipal councils, is still awaiting implementation, and at present most major centres continued to be controlled by white-only municipal authorities.

2. Summary of recent developments

607. According to the information available to the Group the three-tier government structure was proving increasingly unworkable and costly during the period under review. In November 1981 it was reported that the DTA leadership had called on the Administrator-General to amend Proclamation AG 8 so as to reduce the powers of the second-tier authorities, despite the fact that it had accepted the proclamation in its entirety when first drafted. Mr. Dirk Mudge, the DTA leader and chairman of the Minister's Council stated that the system had been made unworkable by the intransigence of the white second-tier authority and its refusal to implement policies adopted by the first-tier central Government, as it was entitled to do in terms of the constitution, especially the desegregation of schools, hospitals and public amenities. 433/

608. A feature of the 1982/83 budget presented at the end of May 1982 by Mr. Dirk Mudge was the intensified centralization of spending controls. Of total projected capital spending of R182 million, only R58 million would go to the second-tier authorities. Another stipulation announced was that second-tier authorities could not spend more than R225 per child on education, a measure aimed particularly at the white authority which spent R1,000 a child in 1981. Any second-tier authority which wished to exceed this level, would have to do so from its "own resources". In contrast in the 1981/82 budget of R808 million, total allocations to the second-tier authorities amounted to R290 million. 434/

3. Summary of evidence and information received

(a) Restrictions on personal freedoms

609. It was reported that a Sunday worship service at Elombe on 16 May 1982 attended by 600-700 people had been violently interrupted by South African soldiers. According to a report by Bishop Dumoni, who was visiting the congregation at the time, while the service had been in progress, two army trucks pulled up, soldiers got out, and immediately surrounded the building. The soldiers then ordered everyone outside the church and threatened anyone refusing to leave the church or trying to run away. Some of the men were so badly beaten and kicked with boots that they could not continue with the service when the soldiers left an hour later. 435/

610. It was reported that Bishop Dumoni had protested about the incident in letters sent to the Ovambo Government, Administrator-General and the security forces. It was reported that the SADF had announced in Pretoria in June 1982 that at least one soldier had been court-martialled and others might face prosecution for the Elombe assault.

(b) Freedom of movement

611. It was reported that freedom of movement in Kavangoland has been severely restricted in the period under review. Military activity in the western part of the area, between the administrative/military centre of Rundu and Ovamboland had reached a peak of intensity not seen for the previous four years. A six-to-six curfew existed throughout the area, while in Rundu itself, no one was allowed to move about on foot after midnight. Movement on the roads out of Rundu was restricted after midnight to police patrols. 436/

(c) Economic conditions

612. The BCC delegation report stated that when they visited Ovamboland it was a dry and barren place where goats, cattle and donkeys foraged unsuccessfully for fodder. The soil was sand and most of the bush forest near the main centres had been destroyed for firewood. The main factor preventing outright famine during periods

434/ Ibid., 3rd Quarter 1982, p. 11.

435/ Lutheran World Information 32/82.

436/ Focus, No. 41, p. 3.

of drought was the water pipeline from the Cunene river. But although there were watering facilities all along the main road for communal use, there were interruptions to the water supply as a result of the security forces controlling or closing as many waterholes as possible to prevent their use by SWAPO guerrillas. 437/

(d) Health

613. During the period under review a considerable amount of data was published about the health conditions of the population, particularly in the 'homelands'. Much of the material involved information collected by medical and other experts, and published in the local press. These reports confirmed that the main cause of sickness and disease remained poverty and malnutrition, overcrowded living conditions, lack of preventative services, such as inoculation programmes, and a shortage of doctors, nurses and clinics in rural areas (see E/CN.4/1485, paras. 401-402). It was reported that detailed information had been submitted to an official Commission of Inquiry into the Health Service by Dr. Kenneth Abrahams, a former political exile and medical practitioner in Khomasdal, the Coloured township outside Windhoek. His findings showed a wide discrepancy between the state of health and conditions of treatment for different races in Namibia. Life expectancy for Namibian whites was between 68-71 years and between 42-52 for African and Coloured Namibians. The infant mortality rate for whites was 22 per 1,000 compared to 163 per 1,000 for Africans. 438/

614. Other data presented by Dr. Abrahams outlined the continued inequality in financial provision for the different 'ethnic groups'. In 1980/81 annual per capita expenditure on health for whites was R234, compared to R5 in Rehoboth, R15 in Damaraland, R25 in Ovamboland, R37 in Caprivi and R57 in Kavangoland. Only 20 per cent of the total of 152 doctors in the 'homelands' giving a doctor/patient ratio of 1:17,000 in the rural regions. Of the 16 dentists in the country, none practiced in the 'homelands', while most of the 2,261 registered nurses, half of whom were black, were concentrated in urban areas, and some rural clinics were entirely without nurses. 439/

G. Impediments to student movements

615. The question of student movements has been examined in previous reports of the Ad Hoc Working Group of Experts (see E/CN.4/1222, paras. 396-407; E/CN.4/1270, paras. 356-365; E/CN.4/1356, paras. 304-306; E/CN.4/1429, paras. 473-476). It was found that education was restrictive, authoritarian and limited, with far greater financial resources available for the white population compared to the black population.

616. There is no university in Namibia, only a number of technical and vocational training centres, theological seminaries and segregated government high schools. The only non-segregated post-primary educational facilities available to Africans are private schools, run mainly by the churches. Only a limited number of African

437/ Namibia - A Nation Wronged, pp. 11-12.

438/ Apartheid in Namibia Today, p. 3.

439/ Ibid.

students have been able to attend "Bantu" universities in South Africa; a few have managed to obtain scholarships abroad and many in exile are receiving education from the United Nations in Lusaka, Zambia. The primary and secondary education levels were characterized by progressively higher drop-out rates in respect of African students.

1. Relevant legislation

617. Previous reports of the Ad Hoc Working Group of Experts have summarized the South African legislation affecting the education of Africans (see E/CN.4/1187, paras. 388-389).

618. The general policy has been to regulate the pattern of education in conformity with the apartheid ideology, with separate provision for white, African and Coloured education. Education policy for Africans in Namibia, as set out by the Van Zyl (1958) and Odendaal (1964) Commissions, had been to concentrate almost all available resources on primary education.

619. African education comes under the aegis of the Directorate of National Education in Windhoek, established in October 1979, but several education departments have also been set up by several second-tier representative authorities, including those for Ovamboland and Kavangoland, and are each responsible for the schooling of the particular "population group" concerned, although this must be carried out in over-all conformity with Directorate of National Education directives. The Bantu education syllabus, which was enforced in Namibia from 1969, was dropped for government secondary schools in 1977 and replaced by the Cape Province secondary schools Afrikaans curriculum. An official survey states that each population group retains its own schools, and multiracial schools are an exception, found only in the case of a few private schools. Various factors, such as the language problem, were said to render multiracial schools "impracticable". 440/

2. Summary of information received

620. According to the information available to the Ad Hoc Working Group as of 1976 there were 6,517 Africans enrolled in secondary schools, of whom 4,231 were in Standard 6 (the first year of secondary schooling) and only 74 were in Standard 10 (matriculation year). Only 261 Africans were being trained in such skills as carpentry, building and tailoring, with some 800 training as primary school teachers. The 39 Africans who obtained university entrance certificates were all directed to South African "tribal universities". Afrikaans was the medium of instruction in all schools, with two exceptions. 441/

621. More recent available information, based on statistics compiled by the Council of Churches in Namibia, show that the position since 1976 has improved only slightly. As of 1981, while 83 per cent of primary school age children were in school, only 12,301 African students, 16 per cent of the potential secondary school population

440/ Secondary Education in Namibia, Background Paper for the World University Service Seminar on Education for Namibians in the United Kingdom, 7 June 1982, London.

441/ Ibid.

of 76,426, were attending secondary schools. There was reported to be a marked fall-off in attendance as the standards increased, with 4,967 students enrolled in Standard 6, but only 343 in Standard 10. Of those in the matriculation year, 105 were studying Mathematics, 42 Science, 25 Accounting, 6 Economics, 26 Typing and 17 Technical Drawing. 442/

622. In this connection it was reported that there had been some shift in South Africa's education policy as applied to Namibia which, together with transnational companies and local commercial interests, had begun to make resources available for secondary and technical education of Africans. Expensive projects such as the Concordia Matriculation College, a new vocational training college in Ovamboland, and a private fund offering bursaries for overseas study were the main indications of this trend. An Academy of Tertiary Education, which has been well funded by the Government, was established in Windhoek in May 1980.

623. Africans are encouraged to undertake part-time study for secondary and tertiary qualifications, the latter through an arrangement with the University of South Africa. A single matriculation examination has been introduced for all secondary schools, including those attended by whites; a few African students have been admitted to schools previously restricted to whites. The declared policy of the Ovamboland representative authority is now to introduce English as the medium of instruction in schools under its control, and there has been no interference with two private schools which are using the Botswana, Lesotho and Swaziland syllabus. 443/

624. It was reported that secondary schools were likely to remain places of conflict between young black Namibians and the school and State authorities. Of the 339 teachers involved in black secondary education as of 1976, 150 were white, and made no secret of their support for South African policies. Some were the wives of local South African officials, others were informers in the pay of the security police. The majority of whites in black secondary schools were now, however, South African soldiers in uniforms and carrying arms. In contrast one SWAPO school in Angola now had 10,000 students. 444/

625. The previous report of the Ad Hoc Working Group of Experts referred to the multiracial private school set up by Pastor Hendrik Withoof in Gibeon (see E/CN.4/1485, para. 406). It was reported by the BCC delegation which visited Namibia that the school accommodated 400 students, used the English-language medium, and was staffed mainly by members of the Namibian churches. But the self-help school's application for national registration had yet to be granted.

626. The seminar organized by the United Kingdom World University Service in June 1982 highlighted several points about the education of black Namibians, including the lack of full time tertiary education, the limited number of places available at secondary schools and that most primary school teachers were untrained.

442/ Namibia - A Nation Wronged, Appendix B.

443/ Secondary Education in Namibia.

444/ Education in Namibia.

627. It noted that the use of Africans as the medium of instruction in the schools had the effect of isolating Namibians from the rest of the world, and although English has been chosen as the official language at independence, at present less than 10 per cent of the population spoke it. It noted that the United Kingdom Government was contributing £250,000 towards the education of Namibians studying abroad, but noted that this compared to £7.5 million spent on the education of Zimbabweans abroad in 1979/80, and urged the increased provision by the United Kingdom for the financing of appropriate education and training programmes.

H. Information concerning persons who have been suspected to be guilty of the crime of apartheid or of a serious violation of human rights

628. It should be recalled that in its resolution 6 (XXVIII) of 4 March 1977, the Commission on Human Rights requested the Group to institute an inquiry in respect of any person who had been suspected, in Namibia, to be guilty of the crime of apartheid, or of a serious violation of human rights, in accordance with Article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid, and to bring the results of that inquiry to the attention of the Commission on Human Rights.

629. After studying the relevant evidence and information received, and in the light of the mandate entrusted to it, the Group has already drawn up four lists of persons who, in its view, were considered to be guilty of the crime of apartheid or of a serious violation of human rights (see E/CN.4/1311, para. 144; E/CN.4/1365, paras. 307-310; E/CN.4/1429, para. 179; E/CN.4/1485, para. 409).

630. The present report contains a fifth list drawn up from the information and evidence collected by the Group during the period under review. The Group feels there is sufficient reason for believing that the following persons have been suspected to be guilty of the crime of apartheid or of a serious violation of human rights in accordance with articles II and III of the International Convention on the Suppression and Punishment of the Crime of Apartheid:

Case No. 1

Major-General Charles Wood, officer commanding the South West Africa Territory Force, responsible for atrocities conducted against civilians by men under his command identified by the Reverend Brown (para. 489).

Case No. 2

Officers Conradie, Heyenda and Nel of the South African Police responsible for killing a Namibian civilian; Charles Friedrich and Hendrik Cloete, SADF soldiers, responsible for killing two Namibian civilians; J.D. Pochrovder and J.A. Brand, SADF soldiers, responsible for beating to death a Namibian civilian; all identified by Mr. Ilhete (57th meeting) (paras. 490, 491 and 492 (c)).

Case No. 3

Marale, a Ficoet commander, who led the soldiers responsible for carrying out the massacre of the family of Hubertus Neporo at Oshikuku; identified by Mr. Garoeb (576th meeting) (paras. 494 and 495).

Case No. 4

Tonata Lindongo, Matteus Shikongo, Thomas Shikomba, George Nghikumwa, commanders of Koevoet; Thomas Kandove, commander of the "Security Forces" unit; all identified by Mr. Shikomba (579th meeting); (paras. 497 and 570).

Case No. 5

Lieutenant Lose, Corporal Roggenburg, Corporal Deuser, Lieutenant Botha, South African Military instructors of the SADF; identified by Mr. Nailenge (578th meeting); Lieutenant King, SADF officer, Shilumba, a black SADF officer, Sleeper, a white SADF officer, Kambangula, a black SADF soldier; identified by Mr. Norbert (579th meeting); (paras. 498 and 500).

Case No. 6

Jacobus van Zyl, a white SADF soldier, for the raping of a Namibian woman and attempted rape of another; identified by Mr. Ithete (578th meeting); (para. 504).

Case No. 7

Captain Griebnan, of the Windhoek Special Branch, identified by Mr. Shikomba (579th meeting).

Case No. 8

Kandove, Tonato Indongvo and Kahuandi, Koevoet members; identified by Mr. Nafuka (578th meeting); (paras. 575 and 579).

III. CONFERENCES, SYMPOSIA AND SEMINARS

Participation by the Ad Hoc Working Group of Experts in International Conferences on the problem of Apartheid

631. In accordance with operative paragraph 24 of resolution 5 (XXXVII), adopted by the Commission on Human Rights at its thirty-seventh session, the Ad Hoc Working Group of Experts was assigned to participate in conferences, seminars or other events in connection with the action against apartheid, more particularly, those organizations in the auspices under the Special Committee against Apartheid.

632. In conformity with that decision, and having participated in the discussions in some international meetings during the period under review, the Ad Hoc Working Group of Experts intends in this chapter to set out the relevant aspects of the discussions directly relating to its own work.

A. The Preparatory Sub-Committee for the Second World Conference to Combat Racism and Racial Discrimination (New York, 15-26 March 1982)

633. In compliance with General Assembly resolution 36/8 of 28 October 1981, the Ad Hoc Working Group of Experts was invited to participate in the first session of the Preparatory Sub-Committee. Therefore, the Ad Hoc Working Group of Experts was represented by its Chairman, Mr. Amman Cato (Ghana) at these meetings.

634. In this connection, it may be recalled that the Economic and Social Council, by its decision 1981/130 of 6 May 1981, authorized its Chairman to appoint a committee of 23 States Members of the United Nations. Acting as the Preparatory Sub-Committee of the Council, this committee was entrusted with the task of completing the preparations for the Second World Conference to be held in August 1983.

B. International Conference on Women and Apartheid held in Brussels, Belgium, from 17-19 May 1982

635. In compliance with General Assembly resolution 36/172 K adopted on 17 December 1981, this Conference, which was organized by the United Nations Special Committee against apartheid in co-operation with the International Committee of solidarity with the Struggle of Women of South Africa and Namibia, sought to promote broader awareness of the struggle of women of South Africa and Namibia against apartheid.

636. Prior to the Conference, the Special Committee against Apartheid sent a mission from 20 March to 3 April 1982 for consultations with the Governments of the front-line States of Angola, Zambia and the United Republic of Tanzania, the leaders of the ANC, PAC and SWAPO on the situation created by the aggression against Angola, as well as on the projects being operated by the national liberation movements of South Africa and Namibia with a view to assessing their needs and to enable the Brussels Conference to promote international assistance.

637. In this connection, the mission reached the conclusion that it was necessary to expose South Africa's strategy of actively seeking to destabilize the front-line States in order to weaken the rear bases of the national liberation movements of South Africa and Namibia.

638. During the Conference, hundreds of women leaders from Anti-Apartheid Solidarity Movements in Europe, Asia, Latin-America and Africa joined their efforts with the women of the Liberation Movements of ANC, PAC and SWAPO to disseminate information about the enormous suffering of women and children in South Africa and Namibia as a consequence of the apartheid system.

639. Also represented at this Conference were 25 personalities invited as special guests, 35 governments, five ministers, four intergovernmental organizations, 72 NGOs and all specialized agencies, institutions and United Nations organs dealing with these questions.

640. Among the prominent personalities who addressed the Conference were Mr. Pieter Dankert, President of the European Parliament, Mr. Ivor Richard, Member of the Commission of the European Communities and Mrs. Lise Ostergaard, President of the World Conference of the United Nations Decade for Women.

641. The Commission of Human Rights was represented by H.E. Anisse Salah-Boy, Ambassador of Algeria, Vice-Chairman of the thirty-eighth session of the Commission.

642. The Ad Hoc Working Group of Experts on southern Africa was represented by Mr. Annan A. Cato (Ghana), Chairman of the Group, who was accompanied by Mr. Hamid Gaham, Secretary of the Group.

643. Among various documentation available to the participants of the Conference was the special report entitled: "The conditions of women and children under apartheid" which was submitted by the Group to the thirty-eighth session of the Commission on Human Rights in compliance with the Commission's resolution 5 (XXXVII) of 1981.

644. The Conference deliberations mainly focused on two topics:

- (i) the current situation in southern Africa, with particular reference to the repression of women in South Africa and Namibia and their participation in the struggle for national liberation, taking into account the extreme danger to peace and security in the region and to world peace;
- (ii) the effects of militarization and nuclearization of South Africa and the effects of acts of aggression against neighbouring States.

645. Transpiring out of the deliberations was the question of how concretely the international community could be made aware of the situation and be mobilized for assistance to, and solidarity with women and children in South Africa and Namibia.

646. On the grounds of the general agreement that the oppression of women under apartheid was a dual act based on colour and sex, most of the participants lay emphasis on three aspects which characterize this oppression:

- (i) forced removals to the so-called homelands and the consequent separation of women from their husbands;
- (ii) deprivation of political rights to black people of South Africa and Namibia including women;
- (iii) denial of the economic and social rights.

647. Evolving out of the statements was the necessity to give full support to the oppressed people of South Africa and Namibia.

648. In this regard, the Conference appealed to the European Communities and the European Parliament to provide generous assistance to the oppressed women of South Africa and Namibia through their national liberation movements and the governments of most countries of Africa, Latin America, South Africa and Namibia.

649. Delegations were unanimous in their expressions that the struggle is far from being accomplished and that more and more concrete measures and total sanctions against the South African regime. It was the general feeling that, as stated by Mr. Cato "the time has come when the international community should tackle the struggle in an honest, sincere, bold and imaginative way. It cannot be accepted that the collective effort of the international community, sincerely demonstrated, cannot bring an end to this system which is recognized as constituting a crime against humanity".

650. In the final declaration that was adopted by the Conference, attention was drawn to the fact that the Pretoria regime subjected the women of South Africa to oppression and humiliation, including forced deportations and separation of families. The declaration emphasized the repeated acts of killings, imprisonment, restriction and torture of numerous women and children for their opposition to apartheid.

651. Calling for effective international action in accordance with the United Nations resolutions, for the elimination of apartheid, the independence of Namibia and the establishment of a democratic society in South Africa, the declaration deplored the actions of those governments and individuals which continue to collaborate with the apartheid regime and called upon them to end such collaboration.

652. Other points of concern in the declaration dealt with: (a) the intensification of publicity to the plight of women and children in South Africa and Namibia; (b) the assistance and support of the national liberation movements and front-line States; (c) the position of SWAPO and the front-line States in the question of Namibia; (d) the support of the demand of SWAPO and the front-line States for the United Nations Conference to be organized as soon as possible; (e) a conference of all parties to the conflict in order to speed up the decolonization process of Namibia.

653. At the end of its work, to enforce the adopted several recommendations as submitted by an established Special Committee focusing, inter alia, on publicity on the plight and needs of women in South Africa and Namibia, material aid and solidarity with the struggle, assistance to front-line States and appeals for action by the United Nations and its agencies, trade unions, NGOs, women's organizations and mass media.

654. Concerning publicity on the political struggle of women in South Africa and Namibia, the conference requested the United Nations, UNLSCC and other organizations to promote maximum publicity on the effects of apartheid on women and children in southern Africa and Namibia.

655. The conference called on the Special Committee and the International Committee of Solidarity with the Struggle of Women of South Africa and Namibia and other organizations to exert their efforts for the release of all political prisoners in South Africa and Namibia, and to demand that the apartheid regime accords the freedom fighters prisoner-of-war status in accordance with the 1949 Geneva Convention and Protocols. The conference also issued an appeal to the European Communities and the European Parliament to provide assistance to the oppressed women of South Africa and Namibia through their national liberation movements and to the Governments of those countries of Africa, Latin America, South Africa and Namibia. The

Conference urged the United Nations and the Organization of African Unity to arrange for public collections of funds from organizations and individuals in all countries for the education and training of people from South Africa and Namibia so that the public may be directly involved in such assistance. It further urged non-governmental organizations, in co-operation with national liberation movements of South Africa and Namibia, to organize volunteer medical and para-medical staff to work in front-line States for assistance to refugees.

656. As to the assistance to front-line States, the conference urged the United Nations and other organizations to take action toward maximum publicity for the constant acts of aggression by the Pretoria regime against the People's Republic of Angola and other front-line States, and the acts of terrorism, sabotage, and destabilization committed by that regime in front-line and other neighbouring States, and in particular the effect on women and children. It further called for increased efforts to provide maximum assistance to the front-line States.

657. Other proposals of the conference included a request to the United Nations to invite designs for an emblem to symbolize the resistance of women of South Africa and Namibia, as well as international solidarity with them and a decision on an emblem to be used by the United Nations and other organizations and conferences. The conference appealed for financial and other support for the International Committee of Solidarity in order to enable it effectively to discharge its task. Furthermore, the conference urged the International Committee of Solidarity, in co-operation with the United Nations and the Organization of African Unity to consider sending a delegation of women leaders to the heads of States or governments which have strong links with South Africa in order to persuade them to co-operate fully in action for the elimination of apartheid.

658. Finally, the conference decided to send a message to the Chairman of the special session of the General Assembly on disarmament by which it draws the attention to the situation of women under apartheid. Reaffirming the support of the Conference to the women struggling against the system of apartheid, the message appeals that all the necessary action be taken to implement the sanctions on arms and military hardware against South Africa.

659. The first meeting of the conference was devoted to hearings of testimony from women who were giving information to the conference about their experience in detention in South African jails. In this connection, contacts have been established with the Department of Public Information in New York to make available to the Group the transcripts of these testimonies.

C. Second Preparatory Committee for the International Conference on Solidarity with Front Line States and National Liberation Struggle in South Africa
(Lisbon, 16-18 July 1982)

660. The Secretary of the Ad Hoc Working Group of Experts, Mr. Hamid Gaham, was appointed by the Chairman of the Ad Hoc Working Group of Experts to attend the meeting of the Second Preparatory Committee for the International Conference on Solidarity with Front Line States and report on it. The results of the debates are presented below.

661. The purpose of the International Preparatory Committee was to expose the nature of the apartheid regime and the role of the international community in its support to the struggle of apartheid by the Front Line States and the African Liberation Movements.

662. In this connection, the Committee reviewed the grave situation prevailing in southern Africa and the escalation of aggression committed by the apartheid regime against the independence and sovereignty of the Front Line States and expressed the urgent and timely necessity of the International Conference scheduled for 16-18 July 1982.

663. The Preparatory Committee had approved the draft programme for the conference especially the working aims dealing with the political and military situation in southern Africa, the legal and juridical aspects of the situation in South Africa, the international solidarity and co-operation with the Front Line States, and the programme of action.

D. United Nations Seminar on the Role of Transnational Corporations in South Africa and Namibia (Geneva, 8-9 November 1982)

664. The Secretary of the Ad Hoc Working Group of Experts, Mr. Hamid Gaham, was appointed by the Chairman of the Ad Hoc Working Group of Experts to attend the United Nations Seminar on the Role of Transnational Corporations in South Africa and Namibia.

665. The seminar was organized by the Department of Public Information in co-operation with the Centre for Apartheid and the Centre on Transnational Corporations. The purpose of the Seminar was to discuss Transnational Corporations' involvement at various levels in South Africa and Namibia, with special focus on Transnational Corporations with headquarters in Switzerland and the Federal Republic of Germany.

666. In discussing the various activities of Transnational Corporations in South Africa great stress was given to military, economic, labour and social implications of such activities.

667. While the primary purpose of the seminar was to exchange information relative to the subject matter, a number of recommendations were however made as to the type of action that might be taken at the national and international levels.

668. At the national level the action of trade unions, churches and other organizations was said to be very significant and could conceivably be very effective if properly organized, to disseminate information concerning the struggle against apartheid. At the international level, it was generally agreed that mandatory sanctions were necessary by implementing the various United Nations resolutions relating to apartheid.

669. In the military field the participants referred to the continued collaboration of Transnational Corporations with South Africa, in spite of the arms embargo imposed by the Security Council in 1977. In this connection, it was stressed that the foreign investment in and trade with the apartheid regime has contributed significantly to the development of industrial structures in South Africa. Thus, by developing its industrial and military self-sufficiency, the South African regime was able to pursue and expand its policy of operation and exploitation of the black majority. Therefore it was recommended that Transnational Corporations' involvement in South Africa has only led to the maintenance of status quo based on the denial of essential basic rights to black workers.

IV. CONCLUSIONS AND RECOMMENDATIONS

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

A. South Africa

On the basis of testimonies received by the Ad Hoc Working Group of Experts and of information it has gathered from various sources, the Group of Experts is of the view that apartheid remains cruel, inhuman and degrading and that no significant development has taken place in South Africa during the period covered by this report.

The Ad Hoc Working Group wishes to bring to the attention of the Commission on Human Rights the following developments which reinforce apartheid further and deny the blacks their enjoyment of human rights:

1. Conclusions

1. The constitutional developments in the Republic of South Africa which have in the past ignored the interests of the black population has continued to evolve in a discriminatory manner. So-called constitutional proposals were tabled during the period aimed at establishing three assemblies in which whites, coloured and Asian population groups would have representation. The black population has been denied any role in these proposals.
2. The South African Government, ignoring the rights and interests of the black population, had planned to cede most of the KaNgwane "homeland" and the Ingwavuma area in Transvaal to Swaziland without any consultation with the affected population. This was aimed at depriving the citizens of their South African citizenship and is contrary to the principles of the right to self-determination.
3. By maintaining and implementing the death penalty South Africa is still one of those countries which has the highest record of judicial executions.
4. The Geneva Conventions to which South Africa is a party are not applied to captured freedom fighters.
5. Violations of the right to life have been committed in particular by South African Security forces inside and outside South Africa.
6. A new Security Law - the Internal Security Act No. 74 of 1982 has been passed following proposals by the Rabie Commission. It has brought together, without modification, all the previous legal provisions for detention without trial.
7. The South African prison population has increased during the period in question and various methods of torture are still employed during interrogation of suspects. Cases of deaths occurring as a consequence of torture have been reported. So far about 50 persons are known to have died in South African prisons under suspicious circumstances. Also in South Africa the number of disappeared persons has increased during the period of the Group's inquiry.

8. The conditions of black workers have not changed fundamentally and the EEC Code of Conduct has not made any significant impact on conditions of black workers. Strikes by black workers are treated as criminal acts and workers are persecuted as a result. At least 347 arrests of black trade unionists took place in 1981. In spite of the withdrawal of certain job reservations other job reservations are still in force. South Africa also continues to attract white workers into the country to occupy jobs reserved for whites. The rate of unemployed blacks is still high, a factor which has not only economic significance but also political consequence. Unemployed blacks are forcibly removed from urban centres to the so-called homelands.
9. Robben Island is still a place where attempts are made to break the spirit of prisoners by deprivation, violence, by threats of death, humiliation and degradation. Political prisoners hope that their cases would have been considered by a Prisoners' Advisory Release Board were dashed in 1982.
10. Besides the notorious Robben Island, the Leeuwigkop Prison also has standards which contravene the minimum rules.
11. New names of persons suspected of having committed the crime of apartheid came to the knowledge of the Ad Hoc Working Group of Experts.
12. Not much progress has been made in the efforts to create an international penal tribunal as envisaged under article V of the International Convention on the Suppression and Punishment of the Crime of Apartheid; only a few States and/or States Parties have submitted information regarding the provisional study submitted by the Group to the Commission in 1982.
13. The forced removal of the black population is still a feature of South African policy. A new law, the Orderly Movement and Settlement of Black Persons Bill, raises the penalty for being in so-called white areas without permission from R 500 to R 5,000.
14. The granting of so-called independence to the homelands, which have not received international recognition, poses the practical problem of the "nationality" of the inhabitants of these homelands.
15. In the Ciskei, as well as in other so-called independent homelands, security laws have been introduced; these security laws sanction the policy of apartheid.
16. The policy of the homelands contributes more and more to the disruption of national unity and the identity of the blacks.
17. The co-operation of the multi-national corporations created in certain cases a shift of environmental responsibility from European countries to South Africa which has much weaker regulations on environmental policy; this has consequences for the health situation of workers. The transfer of an asbestos factory from the Federal Republic of Germany to South Africa is an important example of this development.
18. Large-scale student campaigns against government policy on black education have somewhat abated although a number of incidents took place in various schools during the period.

19. In the period under review the sovereignty and the security of neighbouring countries have been violated and endangered. In particular in Angola systematic bomb attacks against civil targets such as factories and schools have been launched. Many workers and school children have been killed in Angola in 1978, 1979, 1981 and 1982.

2. Recommendations

1. To request world public opinion to strengthen international campaigns whenever the life of political activists in South Africa is in danger.
2. To appeal for the release of those workers and trade unionists in South Africa who have been arrested as a result of their trade union activities.
3. To study thoroughly the question of the "sovereignty" of the so-called independent homelands and the use of this policy to maintain apartheid.
4. To further promote the effectiveness of the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Commission on Human Rights may wish to renew its appeal to Member States and States Parties to submit such comments and observations as will enable the Ad Hoc Working Group of Experts to continue its study on the establishment of an international penal tribunal. In the meantime the Commission should bring to the attention of States Parties to the Convention, the names of those persons who are suspected of having committed the crime of apartheid with the recommendation that those States Parties which may acquire jurisdiction over such persons should have them tried by their competent tribunals.
5. To request ILO to establish a list of jobs for which an adequate and thorough training for black workers in South Africa is not guaranteed.
6. To request Member States to offer all possible assistance to black South African nationals to enable them to acquire professional training particularly in fields where blacks are denied such training in South Africa.
7. The Commission should denounce the draft constitutional proposals tabled by the South African Government because they are discriminatory and racist and deny the black population their birthright as South African citizens.

B. NAMIBIA

1. Conclusions

1. The Ad Hoc Working Group of Experts deeply regrets to note that, during the time between the submission of its previous report and its present report in accordance with Commission on Human Rights resolution 5 (XXXVII), the situation in Namibia as regards the enjoyment of human rights has not improved. The main reason for the continued practice of the policy of apartheid in Namibia by the South African authorities seems to be the fact that an over-all political settlement of the Namibian question has not yet been achieved.
2. It is apparent that security laws and measures have been strengthened during the period under review; the result has been frequent infringements of guaranteed individual freedoms, such as the right to free choice of residence (continuation of the Homelands establishment policy), freedom of movement and freedom of assembly and association, as well as the disappearance of persons or their indefinite detention without trial, etc.
3. During the period under review, there has been no over-all improvement in the situation of political prisoners, despite specific measures taken by officials responsible for prisons or other places of detention.
4. In its attempts to combat SWAPO, South Africa has committed frequent violations of Angola's sovereignty, security and territorial integrity. During its visit to Lubango in the province of Cunene, which is about 300 km from Namibia, the Ad Hoc Working Group of Experts was able to note that the attacks of the South African forces are directed against schools and economic installations. Witnesses who testified to the Ad Hoc Working Group of Experts at Lubango informed it that South African forces making incursions into Angola poison the water in order to kill any human being or animal that drinks it. The Group considers that such conduct contains elements constituting the crime of genocide.
5. Under their policy of repression in Namibia, the South African authorities continue to apply torture (for instance, mutilation) to political prisoners and captured freedom fighters and to subject them to cruel and inhuman treatment (infliction of poisonous snake bites, particularly in order to extract confessions).
6. As regards social matters, the Ad Hoc Working Group of Experts noted, during the period under review, that black migrant workers have poor living conditions in their "compounds", as well as receiving different remuneration from that of their white colleagues. As a result, black and white workers in Namibia have unequal incomes. All kinds of devices are used to deny trade union rights to black workers. In the social field, it is also regrettable that there is no legislation to safeguard employment and provide social security for black workers.
7. In the light of the South African Government's refusal to co-operate, there is an evident necessity for the Ad Hoc Working Group of Experts, in pursuance of its mandate as defined by the relevant resolutions of the Commission on Human Rights and the Economic and Social Council, to continue to collect first-hand evidence on violations of human rights in Namibia, particularly by visiting countries where such evidence can validly be acquired.

8. The Ad Hoc Working Group of Experts noted with satisfaction the beneficial effects of the activities undertaken by international organizations in securing an improvement of the situation of prisoners and detainees in Namibia.

2. Recommendations

1. Regretting the unilateral measures taken in Namibia by the South African Government, which is illegally occupying that territory, the Ad Hoc Working Group of Experts recommends that the Commission on Human Rights should call upon the competent United Nations organs to redouble their efforts to achieve an over-all political solution to the Namibian question as rapidly as possible, in accordance with the relevant resolutions of the various United Nations bodies.

2. Noting the continuing increase in the number of Namibian refugees, particularly in Angola, the Group invites the Commission on Human Rights to recommend the adoption of appropriate measures on their behalf and to assist and encourage Governments taking Namibian refugees into their territory.

3. Considering the frequent violations of the territorial integrity of the African States adjoining Namibia, the Ad Hoc Working Group of Experts invites the Commission on Human Rights to condemn those violations and to recommend appropriate measures to avoid their repetition, and to call for the immediate and unconditional withdrawal of South African forces from Angola.

4. Deeply regretting the cruel and inhuman treatment which the oppressive and illegal regime in South Africa continues to inflict on captured freedom fighters and political prisoners, the Ad Hoc Working Group of Experts requests the Commission on Human Rights to do its utmost to ensure that such atrocities cease and that the South African authorities grant freedom fighters and political prisoners the status provided for in the Geneva Conventions on humanitarian law and the Additional Protocol thereto.

5. Noting the constant violation of human rights by the South African Government in Namibia and the impunity enjoyed by those responsible, the Ad Hoc Working Group of Experts invites the Commission on Human Rights to give very wide publicity to the information provided on this subject in the present report, particularly through the Department of Public Information of the United Nations. In this connection, the Group reiterates its recommendation that it should be provided with an Information Service Officer during its missions of inquiry so as to ensure that its work receives the necessary coverage and that its findings are publicized as widely as possible.

6. Regretting the continued establishment of homelands, which are becoming increasingly numerous and where health conditions are poor, the Ad Hoc Working Group of Experts recommends that the Commission on Human Rights should urgently appeal to the competent United Nations specialized agencies to make a concerted effort to improve medical conditions, and more particularly to mount a preventive medicine programme, in the homelands. In addition, the Group draws the Commission's attention to the negative effects of the application of the three-tier political and administrative system on the political future of black Namibians.

7. To further promote the effectiveness of the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Commission on Human Rights may wish to renew its appeal to Member States and States Parties to submit such comments and observations as will enable the Ad Hoc Working Group of Experts to continue its study on the establishment of an international penal tribunal. In the meantime the Commission should bring to the attention of States Parties to the Convention, the names of those persons who are suspected of having committed the crime of apartheid with the recommendation that those States Parties which may acquire jurisdiction over such persons should have them tried by their competent tribunals.
8. In view of the failure of the Government of South Africa to co-operate, particularly in regard to the situation of human rights in Namibia, the Ad Hoc Working Group of Experts reaffirms the need to continue to seek information on this subject, especially by collecting evidence from Namibian refugees in the countries adjoining Namibia.
9. The Group reaffirms the need for the Commission on Human Rights to persuade States which have not yet done so to ratify the International Convention on the Suppression and Punishment of the Crime of apartheid.
10. Noting the failure of the measures hitherto adopted by the United Nations with a view to combating the apartheid regime, the Group recommends the organization of a seminar designed specifically to investigate ways and means of securing the rapid elimination of apartheid.
11. Noting that detainees at Robben Island Prison are all suffering from hypertension, or at any rate from an ailment caused by malnutrition, the Group requests the Commission to draw the attention of the competent United Nations bodies to the need to remedy this situation. The Group further recommends that the Commission should take steps to secure the release of the old people imprisoned by the South African authorities, particularly those who are serving their sentence at Robben Island.
12. The Group requests the Commission to call upon and encourage all individuals, and in particular religious organizations operating in Namibia, to report any violation of human rights committed by the representatives of the illegal Government of South Africa.

V. ADOPTION OF THE REPORT

671. The present report has been approved and signed on 12 January 1983 by the members of the Ad Hoc Working Group of Experts, namely:

Mr. Annan Arkyin Cato
Chairman-Rapporteur

Mr. Branimir Janković
Vice-Chairman

Mr. Mikuin Leliel Balanda

Mr. Humberto Díaz-Casanueva

Mr. Felix Ermacora

Mr. Mulka Govinda Reddy

ANNEX I

Names of, and brief particulars on, some trade union leaders recently
persecuted by the racist regime of South Africa

ABRAHAMS, Armien

Member of MWASA. Advertising representative for Cape Herald.

Detained in Cape Town on 23 March 1982 and released in Johannesburg on 7 April 1982.

ADDLER, Taffy

Member of NAAWU.

Arrested in "Bophuthatswana" in November 1981. Charged under the bantustan's Internal Security Act, along with Martin Ndaba and Nelson Rakau, for allegedly holding an illegal gathering.

AGGETT, Neil

Secretary of AFCWU in the Transvaal, aged 27.

Detained on 27 November 1981. Died in detention on 5 February 1982. At the inquest on his death, his family produced evidence that (a) Dr. Aggett had been subjected to 28 interrogation sessions, including a 62-hour continuous interrogation shortly before his death; (b) that he had been assaulted and subjected to electric shocks on 4 January 1982.

BAARDMAN, Ronnie

Shop steward for NUMARWOSA.

Detained in Uitenhage on 3 July 1981.

BADELA, Siphon Arthur

Representative of MWASA in Port Elizabeth.

Detained in 1981. Served with a two-year banning order after release in August 1981.

BOTHA, Thozamile

Chairman of Port Elizabeth Black Civic Organization and leader of the strike at the Ford Motor Company in Port Elizabeth in December 1979.

Detained along with 24 other workers in December 1979. Charged under Terrorism Act. Released on 27 February 1980 and served with a three-year banning order. Left South Africa in May 1980.

COOPER, Ms. Diana

Member of GWU.

Detained during the "red meat" boycott on 24 May 1980. Because of severe nervous strain, she was examined by a psychiatrist. Released in September 1980. Expelled from Cape Town under police escort.

DENBILE, Lucky

Member of NUMARWOSA and Workers' Committee at the Dorbyl Company.

Detained in Uitenhage on 3 July 1981.

DIDIZA, Mxolisi

Organizer for MACWUSA.

Detained in Port Elizabeth on 3 June 1981 and released on 17 February 1982 after nine months in detention.

DLAMINI, Phillip

General Secretary of BMW. One of the leaders of the municipal workers' strike in Johannesburg in 1980.

Detained in August 1980. Charged under the "Sabotage" Act of 1962. Released on bail. Charges subsequently changed to incitement of an illegal strike. Acquitted on 4 March 1982. Detained again on 1 June 1982.

DUZE, Themba

Organizer for MACWUSA and GWU.

Detained in Port Elizabeth on 7 October 1981, and released a few days later.

FINE, Allan

Representative of National Union of Distributive Workers and the Hotel and Liquor Trade Union.

Detained on 25 September 1981. Charged under the Terrorism Act on 26 March 1982 and accused of furthering the aims of ANC. Trial began in July 1982.

FRANKISH, John

Member of GWU.

Detained during the "red meat" boycott in Cape Town on 13 June 1980 and released after two months. Expelled from Cape Town under police escort.

GRAAN, M. Van

President of FCWU.

Detained in "Ciskei" on 9 November 1980.

GQWETA, Robert

Official of SAAWU.

Detained in "Ciskei" on 9 November 1980. Acquitted in February 1982 on a charge of collecting contributions without authorization.

GQWETA, Thozamile

President of SAAWU.

Detained five times in 1980/81, by the South African Security Police and the Central Intelligence Service of "Ciskei", including 117 days in 1980, and for six months from November 1981. Admitted to psychiatric ward of Johannesburg hospital on 12 February 1982. Charged under Terrorism Act on 6 May 1982.

ISSEL, John

Member of MWASA, Western Cape branch, and leader of Coloured Mitchell's Plain Community.

Served with a three-year banning order on 21 November 1980. Prohibited from receiving visitors (except parents and doctors) and from entering any newspaper office, industrial complex or educational institution.

JAFFER, Miss Zubeida

Journalist for Cape Times.

Arrested under Terrorism Act in Cape Town on 26 August 1980. Subsequently charged under Publications Act and released on bail. Acquitted on 20 February 1982.

KADER, Azeem

Organizer for SAAWU. Held for questioning at Police Headquarters in Durban in February 1982.

KIKINE, Sam

General Secretary of SAAWU.

Detained on 26 November 1981. Admitted to the psychiatric ward of a Durban hospital on 22 February 1982. Discharged after two weeks and taken into police custody when the police accepted the condition made by the psychiatrist that he should no longer be held in solitary confinement. He had spent 90 days in solitary confinement before being admitted to hospital.

Charged under Terrorism Act on 8 May 1982.

KOTA, Xolani

Official of SAAWU. Detained in "Ciskei" on 9 November 1980.

LEWIS, David

Member of GWU.

Detained during "red meat" boycott on 24 May 1980. Released on 9 or 10 August 1980, and expelled from Cape Town under police escort.

MABASO, Obed

Member of MAWU.

Detained on 26 February 1981 during a strike at the Toyota Motor Company. Charged under Riotous Assemblies Act for allegedly inciting a strike. Acquitted in early 1982.

MADLINGOZI, Maxwell

Organizer of MACWUSA and GWU in Port Elizabeth.

Detained in 1981. Released on 17 February 1982 after 270 days in detention. On release, served with two-year banning order restricting him to Port Elizabeth.

MAJEKA, Loyiso

Member of SAAWU in East London and Workers' Committee at the Hoover Company.

Detained under Terrorism Act on 7 August 1981.

MAKALIMA, Mncedisi

Member of SAAWU in East London.

Detained on 4 September 1981.

MAKHANDA, Dumile

Chairman of MACWUSA.

Detained in 1981 and released in March 1982 after nine months in detention. Served with two-year banning order on 1 April 1982.

MAMABALO, Hope

Executive member of BIW.

Detained on 13 August 1980.

MAMPUNYE, Melvin

Member of SAAWU.

Detained in "Ciskei" on 9 November 1980. Acquitted in February 1982 on a charge of collecting contributions without authorization.

MANINJWA, Dumisani

Member of SAAWU in East London. Chairman of Workers' Committee at the Hoover Company.

Detained on 6 August 1981. Charged on 15 January 1982 on three counts under Terrorism Act for allegedly obtaining information on SAAWU which would further aims of ANC, and remanded for trial in "Ciskei" High Court.

MAPHELA, Zodwa

Member of AFCWU.

Arrested by "Ciskei" security police on 18 June 1982.

MASHININI, Mrs. Emma

General Secretary of CCAWU.

Detained under Terrorism Act on 27 November 1981. Released without any charges on 8 May 1982.

MATSOMELA, Moloso

Representative of MWASA in Pretoria.

Detained on 25 May 1980, and released after several days.

MAVI, Joseph

President of BMW. Leader of the municipal workers' strike in Johannesburg in 1980.

Detained in August 1980. Charged under "Sabotage" Act of 1962. Released on bail. Charges were subsequently changed to incitement of an illegal strike. Acquitted on 4 March 1982. Detained again on 28 May 1981 and released on 31 July following the death of his infant child, who was born during his detention. Killed in a car accident on 8 June 1982. Police arrested 250 persons during his funeral.

MAXGWANA, Humphrey

Official of SAAWU.

Detained in "Ciskei" on 9 November 1980.

MAZWAI, Thami

News editor of Sowetan, and General Secretary of MWASA.

Detained in June 1981 after the capture of Mr. Khotso Seatlholo. 1/ Sentenced on 11 February 1982 to 18 months' imprisonment for refusing to give evidence for the State against Mr. Seatlholo. Mr. Mazwai claimed that Security Police had assaulted him in detention. On 23 April the Rand Supreme Court rejected for the third time an application for bail pending the outcome of an appeal.

1/ Former President of the South African Youth Revolutionary Council who was undergoing trial under Terrorism Act.

MAZWI, Gatsby

Deputy secretary of BMW.

Detained in August 1980 following a strike by black municipal workers. Charged under "Sabotage" Act of 1962, and released on bail. Charges were subsequently changed to incitement of an illegal strike. Acquitted on 4 March 1982.

McCARTHY, Miss Mary

Shop stewardess for NUMARWOSA.

Detained in Uitenhage on 3 July 1981.

MEHLWAMAKULU, Zora

Organizer for GWU.

Detained on 20 June 1980.

MGIJIMA, Monwabisi

Member of SAAWU.

Detained under Terrorism Act in East London in early August 1981.

MJUZAWE, Zandile

Union representative of MACWUSA at the General Motors plant in Port Elizabeth.

Detained in 1981 and released on 17 February 1982 after 270 days in detention under Terrorism Act. On release served with a two-year banning order restricting him to Port Elizabeth.

MKHWANAZAI, Thami

Member of MWASA. Journalist for Post.

Detained in November 1979. Charged under Terrorism Act with encouraging youths to undergo military training. Sentenced to seven years imprisonment on 12 March 1980.

MINGADI, Miss Cindy

Organizer for GWU in Durban.

Abducted from her home on 1 June 1982 and questioned about the union by four men alleging to be security policemen.

MNTONCA, Eric

Secretary of SAAWU in East London. One of the leaders of strike at Wilson-Rowntree Company in East London.

Detained in "Ciskei" on 3 April 1981. Charged with arson and damage to property. Acquitted on 15 September 1981. Redetained in November 1981 under Internal Security Act (formerly Terrorism Act). Taken to hospital suffering from sleeplessness in 1982.

MPULAMPULA, Boyboy

Member of SAAWU.

Detained by "Ciskei" police in September 1981 and brutally assaulted. Suffered an epileptic fit and fell unconscious on 9 September 1981.

MOKHESI, Miss Joyce

Deputy organizer for CCAWU.

Detained on 27 June 1982.

MORRIS, Michael

Member of GWU.

Detained during "red meat" boycott in Cape Town on 13 June 1980. Released on 9 or 10 August 1980.

MPAKATI, September

Official of SAAWU.

Detained in "Ciskei" on 5 November 1980.

MPETHA, Oscar

Aged 72, founding member of the South African Congress of Trade Unions and the last elected ANC President in the Cape area. National organizer of AFCWU. Played a key role in the Fattis and Monis strike of bakery workers in 1980. Chairman of the Nyanga Residents' Association.

Detained on 13 August 1980 following the "bus" boycott in the Cape area. Held in solitary confinement. Denied access to doctors even though he has a serious diabetes condition. Charged under Terrorism Act on 4 December 1980 together with 18 others, almost all of whom were teenagers. One count of terrorism and two counts of murder related to the deaths of two white men near Crossroads in August 1980. Trial began in Cape Town on 3 March 1981. Several State witnesses admitted police intimidation. Part of the trial was held in camera.

Mr. Mpetha's health has deteriorated. He has been excused from further court appearances. Bail was refused.

MQHAKAWI, Leon

Organizing secretary of CCAWU. Assistant secretary of Nyanga Residents' Association. Organizer in "red meat" boycott.

Detained on 13 August 1980, and released a few days later.

MTIMKULU, Phil

Senior journalist for Post. Member of MWASA.

Served with a three-year banning order on 29 January 1981 following a protracted strike of journalists. Banning order prevents him from entering any newspaper office, industrial complex or educational institution.

MTUZA, Zandile

Member of MACWUSA at the General Motors Company in Port Elizabeth.

Detained on 3 June 1981 under Terrorism Act. Released on 17 February 1982 after nine months in detention.

MZOZOYANA, Welile

Chairman of AFCWU in East London.

Detained on 9 November 1980, and released a few days later. Redetained on 1 December 1980 and released on 19 December 1980.

NAIDOO, Miss Nalini

Representative of MWASA in Maritzburg. Journalist for Natal Witness.

Detained on 8 February 1981 and released on 2 August 1981.

NDABA, Martin

Member of NAAWU.

Detained in "Bophuthatswana" in November 1981. Charged under the bantustan's Internal Security Act, together with Taffy Addler and Nelson Rakau, for allegedly holding an illegal gathering.

NDINGANI, Oria

Official of SAAWU.

Detained in "Ciskei" on 9 November 1980.

NDOU, Samson

President of GAWU.

Detained under Terrorism Act in Durban on 27 November 1981, and released on 7 May 1982, after more than five months in detention.

NDZANGA, Mrs. Rita

Organizing secretary for GAWU.

Detained under Terrorism Act on 27 November 1981. Released without charges on 8 May 1982.

NGALWA, Calder

Shop steward for NUMARWOSA.

Detained in Uitenhage on 3 July 1981.

NGCOBO, Isaac

Natal.

Treasurer of SAAWU.

Detained on 28 January 1982.

NGOBESE, Charles

Shop steward at the Toyota Motor Company.

Detained on 26 February 1981. Charged under Riotous Assemblies Act for allegedly inciting a strike, and acquitted in early 1982.

NJIKELANA, Sisa James

Vice-president of SAAWU.

Detained on 9 November 1980. Charged under Terrorism Act on 8 May 1982.

NOKO, Alfred

Vice-president of AFCWU.

Detained in "Ciskei" on 9 November 1980.

NORUSHE, Bonisile

Secretary of AFCWU in East London.

Detained by "Ciskei" security police on 18 June 1981 under Terrorism Act. Released in Pretoria on 8 April 1982 after serving a year for refusing to give evidence in a political trial.

NPKELANAVERE, Sisas

Vice-president of SAAWU.

Detained on 9 December 1981.

NQAKULA, Charles

Acting president of MWASA. Senior journalist for Daily Dispatch in East London.

Served with a two-year banning and house arrest order. Order lifted in May 1982.

NTSEKE, Miss Mary

General secretary of GAWU.

Detained in Durban on 27 November 1981. Detained again on 2 March 1982.

OLIPHANT, Matthews

General secretary of National Federation of Workers.

Detained under Terrorism Act in Johannesburg on 13 March 1982.

PATEL, Quariash

Member of MWASA. Journalist for Daily News in Durban.

Detained on 24 June 1982. Police raided his home at dawn and confiscated MWASA documents. The regime invoked section 27C of Police Act - which restricts information about police action for the prevention or combat of terrorist activities - to prevent publication of information about his detention for several days.

PHOTO, Solly

Member of GAWU.

Detained in Johannesburg on 2 March 1982. Released a few days later.

PITYANA, Siphon

Port Elizabeth.

Organizer of MACWUSA and GWU.

Detained in 1981. Released on 17 February 1982 after 270 days in detention. On release, served with two-year banning order restricting him to Port Elizabeth.

QWESHA, Ernest

Chairman of AFCWU in "Ciskei".

Detained on 20 May 1981.

RAKAU, Nelson

Member of NAAWU.

Arrested in "Bophuthatswana" in November 1981. Charged under the bantustan's Internal Security Act, together with Taffy Addler and Martin Ndaba, for allegedly holding an illegal gathering.

SCHIPPERS, Karel

Official of FCWU.

Detained in "Ciskei" on 9 November 1980.

SHABANGU, Elliott

Member of GAWU.

Detained in Johannesburg on 2 March 1982 and released a few days later.

SHILANGU, Wilfred

Member of MAWU.

Detained on 26 February 1981 during a strike at the Toyota Motor Company. Charged under Riotous Assemblies Act for inciting a strike. Acquitted in early 1982.

SIDINA, Wilson

Member of GWU.

Detained under "red meat" boycott on 20 June 1980. Released on 9 or 10 August 1980 and expelled from Cape Town under police escort.

SISONGO, Bangunzi

Official of SAAWU.

Detained in "Ciskei" on 9 November 1980.

SISULU, Zwelakhe

News editor of the banned Sunday Post. Founding President of MWASA until banned in January 1981. Son of Walter Sisulu, leader of ANC, serving a sentence of life imprisonment.

Detained under Terrorism Act on 20 June 1981 after the capture of Khotso Seatlholo, former President of Soweto Students Representative Council. Released on 25 February 1982 after 251 days in detention.

SOCI, Boy

Member of AFCWU.

Detained by "Ciskei" security police on 18 June 1982.

SONI, Vas

Member of MWASA. Copy editor for Post in Durban.

Detained on 24 June 1982. Police raided his home at dawn and confiscated MWASA documents. The regime invoked section 27C of Police Act to prevent publication of information about his detention for several days.

SUBRAMONEY, Marimuthu

Vice-president and regional secretary of MWASA for Natal. Journalist for Daily News.

Detained on 28 May 1980 following a strike by black journalists. Released and subsequently banned for three years.

THANDANI, David

Secretary of GWU branch in East London.

Detained by "Ciskei" security police on 9 July 1982.

THELOLOE, Joe

Member of MWASA. Former reporter for Sowetan.

Detained on 24 June 1982. Police raided his home at dawn and confiscated MWASA documents. The regime invoked section 27C of Police Act to prevent publication of information about his detention for several days.

TSEDU, Mathata

Member of MWASA.

Detained on 27 June 1982.

TULUMA, Lawrence

Official of SAAWU.

Detained in "Ciskei" on 9 November 1980.

WINDVOGEL, L.

Shop steward for NUMARWOSA.

Arrested in Uitenhage on 3 July 1981.

Note

1/ Former President of the South African Youth Revolutionary Council who was undergoing trial under Terrorism Act.

Abbreviations

AFCWU	African Food and Canning Workers Union
AKTUR	National Party's election front (Front d'action pour le maintien des principes de Turnhalle)
AMM	Association médicale mondiale
ANC	African National Congress of South Africa
AZAPO	Azanian People's Organization
AZASO	Azanian Students Organization
BCC	British Council of Churches
BMW	Black Municipal Workers
CCAWU	Commercial Catering and Allied Workers Union
CCN	Council of Churches in Namibia
CDA	Christian Democratic Action for Social Justice
COSAS	Congress of South African Students
DTA	Democratic Turnhalle Alliance
DUF	Damara United Front (affiliated to DTA)
ELOC	Evangelical Lutheran Ovambokavango Church
FAPLA	Forces Armées pour la libération de l'Angola
FCWU	Food and Canning Workers Union
FOSATU	Federation of South African Trade Unions
GAWU	General and Allied Workers Union
GWU	General Workers Union
MACWUSA	Motor Assembly and Component Workers Union of South Africa
MAWU	Metal and Allied Workers Union
MWASA	Media Workers Association of South Africa
MASA	Medical Association of South Africa
NAAWU	National Automobile and Allied Workers Union
NDP	National Democratic Party

NIP	National Independence Party
NUDO	National Unity Democratic Organization
NUMARWOSA	National Union of Motor Assembly and Rubber Workers of South Africa
NUSAS	National Union of South African Students
POLSTU	Politieke Studente Organisasie
SAAWU	South African Allied Workers Union
SACBC	South African Bishops' Conference
SACC	South African Council of Churches
SACTU	South African Congress of Trade Unions
SADF	South African Defence Force
SAMC	South African Medical Council
SAP	South African Police
SASA	South African Students Association
SASM	South African Students Movement
SAMSA	South African Medical Students Association
SASO	South African Students Organization
SASPU	South African Students Press Union
SWANU	South West African National Union
SWAP	South West African Police
SWAPO	South West African People's Organization
SWATF	South West African Territory Force (Force du Territoire du Sud Ouest Africaine)
SRC	Students Representative Council
UNTAG	United Nations Transitional Assistance Group
USUSA	Unenfranchised Students Union of South Africa