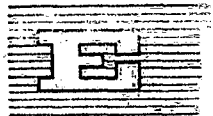


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COMMISSION ON HUMAN RIGHTS
Thirty-first session

AD HOC WORKING GROUP OF EXPERTS
ESTABLISHED UNDER RESOLUTION 2 (XXIII)
OF THE COMMISSION ON HUMAN RIGHTS

REPORT OF THE AD HOC WORKING GROUP OF EXPERTS PREPARED IN
ACCORDANCE WITH RESOLUTION 19 (XXIX) OF THE COMMISSION ON HUMAN
RIGHTS AND RESOLUTION 1868 (LVI) OF THE ECONOMIC AND SOCIAL
COUNCIL

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INTRODUCTION

A. MANDATE AND COMPOSITION OF THE AD HOC WORKING GROUP OF EXPERTS

1. Past history and present mandate of the Ad Hoc Working Group of Experts

1. The original mandate of the Ad Hoc Working Group of Experts, 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 prisoners, detainees or persons in police custody in the Republic of South Africa. That mandate has been successively enlarged and extended by various resolutions of the Commission on Human Rights (resolutions 2 (XXIV), 21 (XXV), 8 (XXVI), 7 (XXVII) and 19 (XXIX)). In accordance with these resolutions, the Working Group has submitted to the Commission seven reports on various questions relating to human rights in southern Africa and African Territories under Portuguese administration (E/CN.4/950, E/CN.4/984 and Add.1-19, E/CN.4/1020 and Add.1-3, E/CN.4/1050 and Corr.1, E/CN.4/1076, E/CN.4/1111 and E/CN.4/1135).

2. At its twenty-ninth session the Commission on Human Rights, in its resolution 19 (XXIX) of 3 April 1973, decided that the Ad Hoc Working Group of Experts should continue carefully to observe and survey further developments concerning the policies of apartheid and racial discrimination present in the situation prevailing in Namibia, Southern Rhodesia, Angola, Mozambique and Guinea-Bissau and resulting from the actions of the illegal South African régime in Namibia, the illegal minority régime in Southern Rhodesia and the Portuguese régime in Angola, Mozambique and Guinea-Bissau (para. 13). The Commission also requested the Ad Hoc Working Group of Experts to give particular attention to situations which interfere with human rights in Guinea-Bissau (para. 14) ^{1/} and to remain active and vigilant in its observation of colonial and racially discriminatory practices, especially those arising from the Bantu homeland policies and the disclosure of the payment of wages below the poverty line to black African workers in South Africa (para. 15). The Commission requested the Working Group to submit a report on its findings to the Commission not later than at its thirty-first session and to present an interim report to the Commission at its thirtieth session (para. 16). The Commission further requested the Ad Hoc Working Group of Experts to list all inhuman acts resulting from punishment meted out to the freedom fighters of the liberation movements in Angola, Mozambique and Guinea (Bissau) and to compile a comprehensive report for the consideration of the Commission at its thirty-first session (para. 17).

3. In this connexion, the Ad Hoc Working Group of Experts was not able, because of the lack of time, to draw up a list of inhuman acts in accordance with paragraph 17 of its resolution.

4. In accordance with the latter provisions, the Ad Hoc Working Group of Experts presented to the Commission at its thirtieth session an interim report (E/CN.4/1135). On the proposal of the Commission, the Economic and Social Council adopted resolutions 1868 (LVI) and 1869 (LVI). In its resolution 1868 (LVI), the Council requested the Working Group to remain active and vigilant at all times and to report to the Commission, at its thirty-first session, on any events constituting serious violations of human rights and requiring urgent investigation that might occur in the above-mentioned countries and Territories. In accordance with these resolutions, the present report takes into account new information and new sources concerning

^{1/} See paragraph 30.

developments in the situation in southern Africa and Territories under Portuguese administration. The Working Group has also had regard, in preparing the report, to the international standards (see sect. C) enunciated in various conventions and in a number of resolutions of the General Assembly and the Security Council.

5. It should be recalled that the Economic and Social Council, in its resolution 1216 (XLII) of 1 June 1967, also requested the Ad Hoc Working Group of Experts to make an investigation of the allegations regarding infringements of trade union rights in South Africa. That mandate was extended under Economic and Social Council resolutions 1302 (XLIV), 1412 (XLVI), 1509 (XLVIII), 1599 (L) and 1796 (LIV). The Council authorized the Ad Hoc Working Group of Experts to carry out similar examinations of allegations regarding infringements of trade union rights in Namibia and Southern Rhodesia; to investigate, in the Portuguese colonies in Africa, the working conditions of the African producers of primary products, the sector of an organized labour such as farm labour, and workers from Mozambique and Angola who are or have been employed in South Africa, Namibia and Southern Rhodesia; to continue to monitor the system of recruitment of African workers, as well as the disparities in wages between black and white workers in South Africa, Namibia, Southern Rhodesia and the African Territories under Portuguese domination. As requested by the Council in its resolution 1796 (LIV), the Working Group conducted in 1974 an investigation into systems of recruitment of African workers as well as the disparities in wages between black and white workers in those countries and territories and will report on the matter to the Council at its fifty-eighth session.

2. Composition of the Ad Hoc Working Group of Experts

6. The Commission on Human Rights, recalling its resolution 2 (XXIII) establishing the Ad Hoc Working Group of Experts and its resolution 19 (XXIX) renewing the mandate of the Working Group, decided at its 1237th meeting, on 3 April 1973, that the Working Group should be composed of the following experts acting in their personal capacity:

Mr. Kéba M'Baye (Senegal), First President of the Supreme Court,
Chairman-Rapporteur of the Working Group;

Mr. Branimir Janković, (Yugoslavia), Professor of International Law, Belgrade,
Vice-Chairman of the Working Group;

Mr. Humberto Diaz Casanueva (Chile), Professor of International Organizations,
Rutgers University, and Professor of Latin American Literature, Columbia
University, United States of America;

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

Mr. A.S. Mani (India), Counsellor to the Permanent Mission of Bhutan to
the United Nations;

Mr. Mahmud N. Rattansey (United Republic of Tanzania), Ambassador at
The Hague;

B. ORGANIZATION OF WORK AND PROCEDURES ADOPTED BY THE
AD HOC WORKING GROUP OF EXPERTS

1. Meetings, officers and secretariat of the Ad Hoc Working Group of Experts

7. At a series of meetings held at United Nations Headquarters in New York from 25 to 29 June 1973 and at the United Nations Office in Geneva from 14 to 22 January 1974, the Working Group organized its work and decided to undertake a mission to Europe and Africa in 1974 for the purpose of receiving evidence and hearing testimony concerning recent developments in matters falling within its mandate.

8. In the course of this mission, from 15 July to 22 August 1974, the Working Group heard witnesses in London (15-19 July 1974), Nairobi (22-23 July 1974), Lusaka (26-27 July 1974), Gaborone (29-30 July 1974), Dar-es-Salaam (1-7 August 1974), Kinshasa (9 August 1974), Brazzaville (10 August 1974), Dakar (14-16 August 1974) and Geneva (19-22 August 1974). The Group later held a session at Geneva, from 6 to 17 January 1975, to consider and adopt its reports to the Commission on Human Rights and the Economic and Social Council. The records of testimony taken at public meetings are to be found in documents E/CN.4/AC.22/RT.149-188.*

9. Mr. Kéba M'Baye (Senegal) continued as Chairman-Rapporteur and Mr. Branimir Janković (Yugoslavia) as Vice-Chairman. Mr. Janković and Mr. Ermacora took the Chair at some meetings in the absence of Mr. M'Baye.

10. During the Working Group's mission, Mr. Maxime Tardu, Division of Human Rights, acted as Principal Secretary and Mr. Hamid Gaham, Division of Human Rights, as Assistance Principal Secretary. At the meetings in Geneva from 6 to 17 January 1975, Mr. A.H. Gaham acted as Secretary. Mr. Marc Schreiber, Director of the Division of Human Rights and in his absence, Mr. Henri Mazaud, acted as Representatives of the Secretary-General.

2. Conduct of the investigation

11. As in previous years, the Working Group sought the co-operation of Member States and of organizations and individuals it considered competent with a view to hearing the greatest possible number of witnesses and receiving relevant information on the matters falling within its mandate. The steps taken by the Working Group for that purpose are set forth in paragraphs 12-30 below.

(a) Correspondence with Governments of Member States

12. On 21 February 1974, the Chairman of the Ad Hoc Working Group of Experts sent a letter to the Ministers for Foreign Affairs of Senegal, Portugal, the Republic of South Africa, Botswana, the United Kingdom of Great Britain and Northern Ireland,

*/ In the present report, these documents will be referred to in abbreviated form, e.g.: RT.149 (I), RT.149 (II), RT.150.

Malawi, the United Republic of Tanzania, Zaire and Zambia, drawing their attention to the activities and the mandate of the Working Group and inviting the co-operation of their Governments in the fulfilment of its mandate. They were requested in particular to transmit any information relevant to matters within the mandate of the Working Group, including names and addresses of persons or organizations that would be willing to furnish such information, either orally or in writing, to the Working Group.

13. On 5 July 1974, the Chairman of the Ad Hoc Working Group of Experts dispatched a letter to the Minister for Foreign Affairs of the Government of Portugal recalling the Working Group's mandate and inviting the co-operation of the Government of Portugal in the performance of the Group's mission. The Chairman cabled a reminder from Nairobi on 22 July 1974. No reply was received by the Working Group. At its 381st meeting on 6 January 1975, the Ad Hoc Working Group of Experts, meeting at the Palais des Nations, Geneva, to complete and adopt the reports prepared following the mission of investigation which it carried out in Africa in August 1974, transmitted to the Minister for Foreign Affairs of the Government of Portugal a letter in which it expressed its wish to know whether the Government of Portugal had any observations to make or information to communicate concerning the matters to be dealt with by the Group in the reports it was required to submit to the Commission on Human Rights and to the Economic and Social Council.

14. With regard to the visit which the Working Group had planned to make to Malawi, the Government of Malawi sent the following reply:

"The Government of the Republic of Malawi has noted that an Ad Hoc Working Group of Experts of the Commission on Human Rights was to visit Malawi from 20 to 24 July 1974 for the purpose of hearing testimony concerning violations of human rights in the countries of southern Africa under white rule. Unfortunately, at that time, the competent authorities who could have assisted the Ad Hoc Working Group of Experts of the Commission on Human Rights in its work will be occupied with other urgent duties. Accordingly, the Permanent Mission of the Republic of Malawi has been instructed to advise the Secretary-General of the United Nations, with regret, that the Working Group of Experts of the Commission on Human Rights should not visit Malawi as proposed."

15. The Governments of the United Kingdom of Great Britain and Northern Ireland, Senegal, Kenya, Zambia, Botswana, the United Republic of Tanzania, Zaire and the Republic of the Congo in their answer agreed to co-operate with the Working Group.

(b) Relations with the Organization of African Unity

16. On 11 March 1974, the Chairman of the Ad Hoc Working Group of Experts addressed a letter to the Administrative Secretary-General of the Organization of African Unity informing him of the mandate of the Ad Hoc Working Group of Experts and suggesting that the Group should contact the OAU authorities direct with a view to obtaining close collaboration from that Organization, which would be of the greatest value to it in carrying out the mission. On 11 July 1974, two members of the Group, Mr. Janković and Mr. Mani, accompanied by the Principal Secretary, Mr. Tardu, had consultations in Addis Ababa with Mr. Chimuka, Director of the Political Department, Mr. Samuel Alomaychu, Chief of the Decolonization Division, Mr. Mfuni-Tshiamanyanu, Director of the Bureau for the Placement and Education of African Refugees, and Mr. Mlambo, Chief of the Sanctions Section. After recalling the mandate and activities of the Working Group, which had already been described to OAU in the letter from the Chairman of the Group dated 11 March 1974, the Working Group's delegation expressed the hope that OAU might be able to assist the Group in its activities,

particularly with regard to publicity for its work, contacts with the liberation movements and the provision of names of witnesses who would be prepared to communicate relevant information on recent developments. OAU offered its whole-hearted co-operation with the Working Group and stated that it would immediately draw the attention of its specialized offices responsible for liaison with the liberation movements to the probable dates of the Group's visits to the various cities. With regard to the possibility of the present Portuguese Government's modifying the position of its predecessors and allowing the Working Group to visit, if not the African Territories, at least Lisbon, the OAU authorities, after recalling their Organization's position as reaffirmed at Mogadiscio and elsewhere, that all activities in the struggle against Portuguese colonialism should continue so long as the territories in question had not become completely independent, voiced no objection to the Group's going to Portugal, at the invitation of the Portuguese Government, provided that the Government allowed it to interrogate, without interference or outside pressure and in private, those freedom fighters who were still detained. In reply to a question concerning the real effect of the bantustan policy on public opinion, the OAU officials expressed the view that the South African Government's efforts to create the impression of a semblance of independence in the bantustans had had but little success internationally. The OAU officials said that the OAU does not recognize the bantustan movement at all. The OAU officials suggested that the United Nations carry out a stepped-up publicity campaign to familiarize the work of the Group in the United States, Canada, Western Europe and Japan. They expressed the desire to receive a larger number of copies of the Group's reports. In return, OAU would try to give the Group and the other United Nations bodies concerned as much information as possible on its work relating to assistance to the liberation movements and to their activities, so far as security considerations permitted. The OAU officials stated that they supported the meeting of the international trade union held at Geneva which investigated the absence of trade union rights to the blacks in South Africa and Namibia and infringements of trade union rights by local and foreign firms in both countries. They also recommended that the group might visit Brazzaville in order to meet the followers of MPLA and talk with them. During the Group's visit to Africa, the heads of the African Liberation Committee of OAU in Lusaka and Dar-es-Salaam gave the group some very valuable information.

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

17. In a letter dated 11 March 1974, the Chairman of the Ad Hoc Working Group of Experts brought the mandate of the Working Group to the attention of various non-governmental organizations concerned about human rights in southern Africa and African Territories under Portuguese administration, particularly many African liberation movements which had co-operated with the Working Group in its previous missions of investigation. Reminders were sent on 26 June. The organizations were requested to communicate any relevant information, including names and addresses of witnesses. The names of most of the witnesses heard by the Group were communicated by those organizations and liberation movements. At every stage, the Group and, on its instructions, the secretariat maintained the closest and most cordial contacts with those organizations and movements.

(d) Testimony heard

18. In the course of the mission to Europe and Africa in 1974, the Ad Hoc Working Group of Experts heard 105 witnesses. Some of the witnesses gave evidence about more than one country or Territory. Six witnesses were heard at closed meetings at their request. The list of the witnesses who gave evidence at public meetings, divided according to the countries or Territories about which they spoke, is given below.

(i) South Africa

19. Thirty-three witnesses were heard. Two of them gave evidence at closed meetings. The 31 witnesses who gave evidence at public meetings were the following: Mr. Neville Rubin (RT.151, London); Miss Shanthavothi Naidoo (RT.152, London); the Reverend Michael Scott (RT.152, London); Mr. Baruch Hirson (RT.150, London); Mrs. Phyllis Altman (RT.154, London); Mr. Alan Brooks (RT.154, London); Mr. Hugh F. Lewin (RT.154, London); Mr. John Gaetsewe (RT.154, London); Mr. David Sibeko (RT.154, London); Mr. Albic Sachs (RT.156, London); Mr. David Davis (RT.156, London); Mr. Malcolm Smart (RT.156, London); Mr. John Ennals (RT.157, London); Mrs. Ray Simons (RT.162, Lusaka); Mr. Duma Nokwe (RT.163, Lusaka); Mr. Francisco Chikole (RT.166, Gaborone); Mr. Solomon Ndhlovu (RT.166, Gaborone); Mr. Christopher Nozwane (RT.167, Gaborone); Mr. Amin Mohammed (RT.167, Gaborone); Mr. Henderson Selele (RT.168, Gaborone); Mr. Jeremiah Mbuli (RT.168, Gaborone); Mr. Maxen Msehego (RT.168, Gaborone); Mr. Leballo (RT.169, Dar-es-Salaam); Mr. Nkula (RT.169, Dar-es-Salaam); Mr. Peter Nkosi (RT.172, Dar-es-Salaam); Mr. Joël Carlson (RT.174 (II), RT.175, Dar-es-Salaam); Mr. Moses Mabhidu (RT.175, Dar-es-Salaam); Mr. James Adebe (RT.175, Dar-es-Salaam); Mr. Taboko Sebina (RT.181 (I), Dakar); Mr. Carl Anton von Knörring, representative of ILO (RT.183, Geneva); Mr. Niall MacDermot (RT.187, Geneva).

(ii) Namibia

20. The 23 witnesses who gave evidence at public meetings were the following: Mr. Randolph Vigne (RT.151, London); Mr. David de Beer (RT.151, London); Mr. Peter Katjavivi (RT.151, London); the Reverend Michael Scott (RT.152, London); Mrs. Joanna Herbertson (RT.155, London); Mr. Malcolm Smart (RT.156, London); Mr. Aaron Shindjoba (RT.160 (I), Nairobi); Mr. Matthew Haikali (RT.160 (I), Nairobi); Mr. Moses Garoeb (RT.165, Lusaka); Miss Othilie Nangolo (RT.165, Lusaka); Mr. Andreas Muukwawo (RT.165, Lusaka); Miss Ndakundana Shiluwa (RT.165, Lusaka); Mr. John Ya Otto (RT.165, Lusaka); Mr. Jackson Kaudjue (RT.166, Gaborone); Mr. Uapingena Ngava (RT.167, Gaborone); Mr. Ernest Jiriange (RT.171, Dar-es-Salaam); Mr. Daniel Sodidos (RT.177, Kinshasa); Mr. Timothy Hishongwa (RT.180, Dakar); Mr. Per Sanden (RT.185-186, Geneva); Mr. Rudi Spee (RT.186, Geneva); Mr. Ewald Katjivona (RT.187, Geneva); Mr. Niall MacDermot (RT.187, Geneva); Mr. John Alexander (RT.188, Geneva).

(iii) Southern Rhodesia

21. Twenty witnesses were heard. Three of them gave evidence at closed meetings. The 17 witnesses who gave evidence at public meetings were the following: Mr. Garikayi E. Mandizha (RT.152, London); Mr. Herbert Tafara Musikavanhu (RT.152, London); the Reverend Michael Scott (RT.152, London); Mr. Peter Molife (RT.150, London); Mr. Jacob Moyo (RT.150, London); Mr. Nelson Mukanganga-Nyashanu (RT.153, London); Mr. Innocent Nkomo (RT.153, London); Mr. Didymus Mutasa (RT.156, London); Mr. P. Mangwende (RT.157, London); Mrs. Phyllis Altman (RT.154, London); Mr. Malcolm Smart (RT.156, London); Mr. Philemon Makonese (RT.162, Lusaka); Mr. Noel Mukono (RT.165, Lusaka); Mr. Emerson Mhangagwa (RT.165, Lusaka); Mr. Dile Kote (RT.168, Gaborone); M. Big Tamai and M. Zebedich Silongoma (RT.189, Lusaka).

(iv) Angola

22. Twenty-one witnesses were heard. One of them gave evidence at a closed meeting. The 20 witnesses who gave evidence at public meetings were the following: Mr. Manuel Cordeiro (RT.176, Kinshasa); Mr. Eugenio Manuel da Mata (RT.176, Kinshasa); Mr. José Francisco Neto (RT.176, Kinshasa); Mr. Alvaro Antonio dos Santos (RT.176, Kinshasa); Mr. Daniel Sodidos (RT.177, Kinshasa); Mr. João Pinto (RT.177, Kinshasa); Mr. Augusto Sampaio (RT.177, Kinshasa); Mr. João Antonio Damião (RT.177, Kinshasa); Mr. Miguel João Domingo (RT.177, Kinshasa); Mr. Flavio Henriques Macedo Jr. (RT.177, Kinshasa); Miss Isobel Jose Miguel Sebastião (RT.178, Brazzaville); Mr. Paive Domingos da Silva (RT.178, Brazzaville); Mr. Baltazar Diogo Cristovão (RT.178, Brazzaville); Mr. Egas Moniz Carlos Julio (RT.178, Brazzaville); Mr. Carlos Manuel de Mesquita Octavio (RT.178, Brazzaville); Mr. Domingos Berganha Assis Neto (RT.178, Brazzaville); Mr. Tukayana (RT.178, Brazzaville); Mr. José Joaquim Alberto (RT.182, Dakar); MM. Tabita Nkwenda and Andres Jose (RT.190, Brazzaville).

(v) Mozambique

23. Seven witnesses were heard. One of them gave evidence at a closed meeting. The six witnesses who gave evidence at public meetings were the following: Father Alfonso Valverde (RT.149, London); Mr. Benjamin Nkwalembo (RT.158, Nairobi); Mr. E. Gunguhane (RT.158, Nairobi); Mr. Obrigado Buque (RT.166, Gaborone); Pastor Morier-Genoud (RT.184, Geneva); Pastor Georges Andrié (RT.184, Geneva).

(vi) Guinea-Bissau

24. The five witnesses who gave evidence at public meetings were the following: Mr. Inacio Soares de Carvalho (RT.179, Dakar); Mr. Albino Sampa (RT.179, Dakar); Mr. Aliou Djogui Djallo Barry (RT.179, Dakar); Mr. Bernardo Mago (RT.179, Dakar); Mr. Manuel Delgado (RT.180, Dakar).

* * *

25. Each witness, after stating his name, age, occupation and address, was invited to take an oath or to make a solemn declaration. The two formulas proposed were the following:

"I swear to tell the truth, the whole truth, and nothing but the truth"

or

"I solemnly declare, in all honour and conscience, that I will tell the truth, the whole truth, and nothing but the truth".

The Chairman explained to each witness the purpose of the investigation that the Working Group was conducting and asked him if he wished to make a statement. After hearing the witness's statement, the members of the Working Group put questions to him. 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. These interpreters either took an oath or solemnly declared that they would do their utmost to interpret accurately the statements made.

26. In addition to the oral evidence, the Working Group received a number of written communications dealing with various matters within its mandate.

27. During its mission, the Working Group also attended, in London and Lusaka, the showing of two films dealing with the situation in the territories within its mandate.

28. In Lusaka, the Ad Hoc Working Group of Experts delegated one of its members, Mr. Ermacora, accompanied by a secretariat official, to hear the testimony of two wounded refugees from Southern Rhodesia at the Lusaka Hospital (RT.189). On 11 August 1974 the members of the Group also took evidence from a number of wounded freedom fighters who were being cared for at the FNLA field hospital at Kinsangako, near Kinshasa (RT.190).

29. The Working Group heard a statement by a representative of the Government of Zambia (RT.162). On 30 July 1974, the representative of the Government of Botswana made a statement to the Group (RT.168). On 1 August 1974, at the first meeting in Dar-es-Salaam, a representative of the Government of the United Republic of Tanzania made a statement to the Working Group (RT.169).

30. The Working Group intended to visit Guinea-Bissau because of the policy that was taking place there in discharge of its functions under the mandate as defined in the various resolutions of the Commission on Human Rights and the Economic and Social Council, including Council resolution 1868 (LVI). On 13 August 1974, the Chairman of the Working Group addressed the following cable to the Secretary-General of PAIGC, Mr. Aristides Pereira:

"Ad Hoc Working Group of Experts Commission on Human Rights comprising four members and secretariat extremely anxious to visit Guinea-Bissau. Group now in Dakar will leave here for Geneva Saturday morning 17 August but if possibility visit Guinea-Bissau could delay its departure from Dakar one or two days. If you agree please suggest travel schedule. Highest consideration. Kéba M'Baye, Chairman Ad Hoc Working Group of Experts Commission on Human Rights."

On 16 August 1974, the Chairman of the Working Group received the following cable in reply:

"Re your cable 13 inst., greatly regret present circumstances do not permit visit requested now. Will give favourable consideration visit in near future. You will always be welcome our free and sovereign country. Highest consideration. A Pereira, Secretary-General, PAIGC."

In view of this cable, the Chairman of the Working Group on 20 August 1974 addressed the following letter to the Secretary-General of PAIGC:

"On behalf of the Ad Hoc Working Group of Experts of the Commission on Human Rights, I have the honour to acknowledge receipt of your cable of 16 August 1974 in reply to my cable of 13 August 1974."

"The Ad Hoc Working Group of Experts of the Commission on Human Rights has taken note with appreciation of the intention of PAIGC to invite us to Guinea-Bissau in the near future."

"We should be pleased to have your specific suggestions on this point, which you might address to Mr. A.H. Gahan, Assistant Secretary of the Working Group, room 301-9, Division of Human Rights, Palais des Nations, Geneva. On receipt of your suggestions, the Group intends to delegate its Chairman and one other member to visit Guinea-Bissau in exercise of its functions under the mandate as defined in the various resolutions of the Commission on Human Rights and the Economic and Social Council, with which you are familiar, including Economic and Social Council resolution 1868 (LVI).

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

C. INTERNATIONAL STANDARDS RELEVANT TO THE QUESTIONS MENTIONED
IN RESOLUTION 19 (XXIX) OF THE COMMISSION ON HUMAN RIGHTS

31. The main international standards which are relevant (conventions, declarations and some resolutions of the General Assembly) have been quoted or summarized in the earlier reports of the Ad Hoc Working Group of Experts, particularly in its 1970 report (E/CN.4/1020, paras. 31-70) and its 1972 report (E/CN.4/1111, paras. 30-39). In view of the detailed information given in those reports, the international standards will be mentioned only briefly here, taking into account certain recent developments in this respect. The basic standards governing all activities of the Working Group are those of the United Nations Charter (in particular Article 1 (3), Article 2 (2), Articles 55 and 56) and the general provisions of the Universal Declaration of Human Rights (articles 2 and 7), the International Convention on the Elimination of All Forms of Racial Discrimination (articles 2 and 3) and the International Covenants (article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights; article 2, paragraph 1, of the International Covenant on Civil and Political Rights). All of these provisions prohibit any discrimination, and particularly any racial discrimination.

32. The international standards which the Working Group took into account are contained, in particular, in the following:

Charter of the United Nations;

Universal Declaration of Human Rights;

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

International Covenant on Economic, Social and Cultural Rights;

International Covenant on Civil and Political Rights;

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

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

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 International Convention on the Suppression and Punishment of the Crime of Apartheid; */

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

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;

UNESCO Convention Against Discrimination in Education.

33. The Group also took into consideration the recommendations of the International Conference on Human Rights, held at Teheran in 1968, in particular resolution VIII entitled "The importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights". Without prejudice to other relevant provisions, the Group bore in mind the following resolutions adopted by the General Assembly at its twenty-eighth and twenty-ninth sessions: 3103 (XXVIII), "Basic Principles of the legal status of the combatants struggling against colonial and alien domination and racist régimes"; 3163 (XXVIII), "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples"; 3111 (XXVIII), "Question of Namibia"; 3113 (XXVIII), "Question of Territories under Portuguese administration"; 3114 (XXVIII), "Establishment of the Commission of Inquiry on the Reported Massacres in Mozambique"; 3115 (XXVIII), "Question of Southern Rhodesia"; 3116 (XXVIII), "Question of Southern Rhodesia"; 3205 (XXIX), "Admission of Guinea-Bissau to membership in the United Nations"; 3324 (XXIX), "Policies of apartheid of the Government of South Africa"; 3218 (XXIX), "Torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment"; 3294 (XXIX), "Question of Territories under Portuguese domination"; 3295 (XXIX), "Question of Namibia"; 3297 (XXIX), "Question of Southern Rhodesia"; 3298 (XXIX), "Question of Southern Rhodesia".

*/ An analysis of the relevant provisions of the International Convention on the Suppression and Punishment of the Crime of Apartheid was made by the Ad Hoc Working Group of Experts in its interim report (E/CN.4/1135, paras. 188-194) presented to the Commission on Human Rights at its thirtieth session.

I. SOUTH AFRICA

34. The Ad Hoc Working Group of Experts took note of the statement made by the representative of South Africa in the Security Council on 24 October 1974, when the Council reviewed the relations of South Africa with the United Nations. In his statement the South African representative informed the Council that his Government did not change its position in regard to Article 2(7) of the Charter, but it was ready to explore all avenues which might bring about an understanding among those concerned. The statement then went on in great detail to defend and justify the policy of apartheid in South Africa. The Working Group has been informed that a great number of the Member States were not at all impressed by the South African statement. The Working Group also took note of the decision taken by the General Assembly at its recently concluded twenty-ninth session, by which South Africa was debarred from participating in the proceedings of the General Assembly and its Committees during the whole period of that session.

A. CAPITAL PUNISHMENT

1. Reference to some relevant laws

35. The South African laws in force that provide for the death penalty were reproduced or analysed in previous documents of the Working Group (notably E/CN.4/1020, paras.73-81, and E/CN.4/1111, paras.40-43).

36. Particular attention was drawn to provisions of the 1962 Sabotage Act 2/ and the 1967 Terrorism Act, 3/ each of which considerably extended the range of offences for which the death sentence may be imposed, while the Terrorism Act transferred the burden of proof to the accused in contravention of the Universal Declaration of Human Rights (see E/CN.4/1135, para.18, and E/CN.4/1111, paras.42-43).

37. It will also be recalled that the number of executions of persons condemned to death in South Africa has been consistently higher than in any other country in the world and that the burden both of sentences and executions falls most heavily on the African population (E/CN.4/1135, para.19, and E/CN.4/1111, paras.46-47).

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

(a) Information and evidence concerning sentences and executions ordered by judicial decision

38. The witnesses, Mr. Albie Sachs, Mr. Hugh F. Lewin and Mr. Potlako Leballo, all drew the attention of the Working Group to the high number of death sentences and executions in South Africa. Mr. Sachs, in his written evidence (Justice in South Africa, p.192), 4/ demonstrated that between 1958 and 1968 six new capital crimes were added to

2/ General Law Amendment Act, No.76 of 1962.

3/ No.83 of 1967.

4/ Albie Sachs, Justice in South Africa (London, Chatto-Heinemann, 1973).

the three (murder, rape and treason) punishable by execution since the time of Union in 1910; and that during the five years to 30 June 1966, 508, or nearly half the total number of executions reported to the United Nations, took place in South Africa.^{5/} Reference should also be made to the interim report of the Ad Hoc Working Group (E/CN.4/1135, para.22).

39. According to information available to the Working Group, 42 persons were hanged by judicial decision during the calendar year 1973, ^{6/} representing a slight but continuing decline in the annual figure for executions. ^{7/} Of these, 29 were African, 12 Coloured and 1 white. There were 22 reprieves. ^{8/} During the first three months of 1974, there were 20 hangings - 16 Africans, 2 Coloureds, and 2 whites - and 5 reprieves. ^{9/}

40. Mr. Lewin, who described his period of eight months in Pretoria prison when it was the "hanging jail" (see his account of conditions there in a previous report, E/CN.4/1111, para.47, and in his book Bandiet, ^{10/} handed in as evidence to the Group) as "possibly the most terrifying experience of my time inside" (RT.154), thought that the drop in executions from 1970 was "very largely" in response to external pressure and paid tribute to the role played by the Commission on Human Rights in this respect.

41. Mr. Leballo, in his testimony (RT.169), drew attention to the fact that leaving the country without a passport could in itself be evidence that a man had done so in order to obtain military training, punishable by death under the Terrorism Act (also mentioned by Mr. Sibeko (RT.154)), and said that 98 members of the Pan Africanist Congress had been hanged "for political reasons" since 1962. ^{11/}

42. Mr. Sibeko (RT.154) reminded the Group of the case of Wellington Tyobeka, hanged under the Terrorism Act in 1967 on evidence for which he had already served a three-year jail sentence.

43. Mr. Sachs drew the attention of the Working Group to the racial factors behind sentencing policies in South African courts. Blacks who commit the same crimes as whites are more likely to be executed: "The shock of an execution is assumed to be much greater in respect of a member of the white community than it is in relation to a member of the black" (Justice in South Africa, pp.154-155).

^{5/} Ibid., p.193.

^{6/} Star, 5 January 1974.

^{7/} Cf. E/CN.4/1135, paras.20-22.

^{8/} Star, 5 January 1974.

^{9/} Rand Daily Mail, 29 March 1974; Moto, 6 April 1974.

^{10/} Hugh Lewin, Bandiet (London, Barrie and Jenkins, 1974), pp.134-148.

^{11/} Mr. Hirson made the point that one white person only had been hanged under the Sabotage Act in nine years (RT.150).

44. Mr. Niall MacDermot (RT.187), in his testimony, referred to a civil action for defamation brought by the former Minister of Justice, Mr. Pelser, against Professor Barend van Niekerk, a persistent campaigner against capital punishment in South Africa, who had publicly criticized the racial aspect of a governmental decision to reprieve only one (white) of two men found guilty of a murder. The other man (black) was hanged, a decision which, the Professor wrote, "speaks volumes for the (Government's) lack of concern for justice and the reputation of our law" (the case is referred to further in para.186 below).

(b) Alleged violations of the right to life

45. Previous reports of the Working Group recorded information on the deaths of 19 political prisoners in suspicious circumstances (E/CN.4/1050, para.59; E/CN.4/1111, paras.48 and 61-63). Mr. Carlson, in his evidence (RT.174 (II)), said he knew of 22 deaths of political prisoners in detention to date. According to further information available to the Working Group, Police Commissioner Crous told the press in December that two people had fallen to their death from John Vorster Square police station during 1973. ^{12/} During 1974, the South African press carried reports of the death in hospital of Mr. Z.J. Maseka after jumping or falling from the fourth floor of the police headquarters, following interrogation about a suspected theft. ^{13/}

46. Mr. Potlako Leballo (RT.169) estimated that more than 200 Pan Africanist Congress members had died in jail since 1960.

47. The Group also had before it figures for the total number of prisoners who died in jail in the year 1972/73. Mr. Duma Nokwe, in his testimony (RT.163), stated that 321 had died in gaol: 275 from "natural causes", 21 from "accidents", 17 from "assaults by fellow prisoners", 4 by "suicide", and 4 "killed while escaping". No breakdown of these figures by race is available. ^{14/} The figure is an increase on a similar figure of 265 deaths in 1971/72 (E/CN.4/1135, para.23).

48. Details on the death of an African prisoner following an assault by prison warders emerged in a court case in which three warders were found guilty of assault in October 1974. ^{15/} The warders were found to have beaten the man to death and then tried to hide the crime by hanging his corpse and presenting the death as suicide. This case is referred to in paragraph 86 below.

49. Figures given by the Minister of Police in the House of Assembly on the number of persons killed by police "in the execution of their duties" also show an increase in 1973 over 1972 (94 in 1972 - see E/CN.4/1135, para.24); 117 people were killed, of whom 4 were juveniles. Two victims were white, 16 Coloured, 1 Asian and 98 African. ^{16/}

^{12/} Rand Daily Mail, 12 December 1973.

^{13/} Rand Daily Mail, 17 April 1974, 18 April 1974, 29 June 1974.

^{14/} Rand Daily Mail, 14 May 1974.

^{15/} Guardian, 10 October 1974.

^{16/} House of Assembly Debates, 26 February 1974, cols. 169, 170.

B. TREATMENT OF POLITICAL PRISONERS
AND CAPTURED FREEDOM FIGHTERS

1. Reference to some relevant laws

50. The several laws under which persons may be detained in South Africa without trial, which have been analysed in previous reports and other documents available to the Working Group, including the General Law Amendment Act No. 37 of 1963 (the "90-day law"), the Criminal Procedure Act No. 96 of 1965 (the "180-day law"), the General Law Amendment Act No. 62 of 1966, the Terrorism Act No. 83 of 1967, Proclamation 400 of 1960 which applies in the Transkei, and the Abuse of Dependence-producing Substances and Rehabilitation Centres Act No. 41 of 1971 (see E/CN.4/1111, paras. 49-52, and the 1972 report of the Special Committee on Apartheid, A/8770). In 1973, these powers were further extended by regulation R1003 of the Department of Bantu Administration and Development (E/CN.4/1135, para. 26) and Proclamation R103 made under the Bantu Administration Act No. 38 of 1927, applying to the District of Msinga, Natal (E/CN.4/1135, para. 27).

51. The steady erosion of the rights of the accused in courts of law has also been dealt with in previous reports, arising out of the above legislation and the 1972 amendment to the General Law Amendment Act 1969 (the BOSS law, analysed in reports E/CN.4/1020 and E/CN.4/1050). The proposed Criminal Procedure Bill, which will still further restrict the rights of an accused (cf. E/CN.4/1135, para. 29), has yet to be reintroduced in Parliament.

52. In December 1973, new amendments to the Prison Regulations were gazetted ^{17/} again extending the circumstances in which "isolation" can be prescribed for prisoners as a punishment, and making permission to study in gaol, and even to use the gaol library for recreational reading, a privilege to be awarded at the discretion of the authorities. The amendment lays down that any prisoner who "abuses" such permission or his study material in any way or uses it for purposes other than study, may forfeit his study permission. It also provides for punishment (isolation) of any prisoner who, inter alia, "has a bad or harmful effect on another prisoner or is responsible for the deterioration of the relationship between a member of staff and a prisoner and their attitude towards each other, or causes unrest or dissatisfaction among other prisoners ..."

2. Analysis of information
and evidence received

(a) Treatment of political detainees

53. No official information is available to the Working Group on the total number of political detainees in 1973, since, as in previous years (see E/CN.4/1111, para. 74, and E/CN.4/1135, para. 35), the Minister of Police refused to disclose the number of those detained under the Terrorism Act, though he did state that seven persons had been charged under the Act and convicted.^{18/} Between 1 March 1973 and 31 December 1973, 49 whites, 16 Asians, 34 Coloureds and 117 Africans were detained under the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act, 2 of whom

^{17/} Government Gazette, No. 4103, 14 December 1973.

^{18/} House of Assembly Debates, 12 February 1974, cols. 74, 75.

were detained for 113 days, 2 for 69 days, 2 for 65 days and 2 for 62 days.^{19/} In addition, the Minister revealed that three persons (names refused) had been held incommunicado for 14 days under section 22 of the General Law Amendment Act No. 62 of 1966, following a Republic Day demonstration by pupils of Coronationville High School, Johannesburg, in May 1974;^{20/} and that 29 persons had been detained since 18 May 1973 under Proclamation R103 of 1973 (applying to the Msinga District of Natal); ^{21/} 26 were detained for withholding evidence in offences concerning violence, 3 for withholding evidence in offences concerning the theft of firearms and stock. All have since been released, 18 of them subsequently charged, 15 of these with murder. The Minister refused to divulge the names of those detained.

54. Once more a number of witnesses offered testimony on the inhuman treatment of political detainees. Miss Shanthavothi Naidoo (RT.152) told the Group that she was arrested in June 1969, placed in a cell with mats, blankets and two buckets, and no reading or writing matter, for 23 1/2 hours per day. The food was inedible. After a week she was interrogated in Pretoria by Major Swanepoel and a rotating team of police officers, for five days without sleep. She was made to stand on a brick and "I lost touch with reality. I just remembered the security police now and again, but I was actually talking in a sort of dream about flying in a plane and jumping from one plane to another, but I kept waking up and seeing Swanepoel's face in front of me". After this she was kept in solitary confinement, seeing no one except the warders who brought her her meals and the visiting magistrate, for five months, when she was taken without warning into court, to give evidence in a political trial. She refused and was allowed by the court to see a lawyer. She was sentenced to two months for refusing to give evidence, ^{22/} during which time her conditions remained exactly as they had been under detention; and served a further four months of detention before being released, without any further charge being made against her. Miss Naidoo and Mr. Carlson (RT.174 (II)) stressed that women have not been spared brutal treatment in detention.

55. Mr. Jeremiah Mbuli (RT.168) described his five and a half months in detention before 1965 as "one of the worst experiences I have ever had". He was held in solitary confinement and made to stand for hours under interrogation, sometimes on one leg, and beaten with a sjambok (hide whip). He felt he was going to lose his mind. "I think there is nothing that is as bad as when a man's mind has got to be tortured".

56. Mr. Peter Nkosi, who had been connected with the black South African Students' Organisation, gave testimony (RT.172) on two periods in detention from 24 January 1973 and again from 22 March 1973. He explained that he was interrogated for two days at John Vorster Square, about his political songs - he is a musician - composed while he was a member of the group Black Magic Endeavour; about alleged

^{19/} House of Assembly Debates, 8 February 1974, col. 38.

^{20/} House of Assembly Debates, 13 August 1974, col. 71.

^{21/} House of Assembly Debates, 16 August 1974, col. 104.

^{22/} Under the General Law Amendment Act, 1964.

plans to leave the country; and about friends who had already left. He was offered a salary for spying on his comrades, and when he refused was beaten and threatened with 15 years in detention. The second time he was detained, he was beaten from "about 2 till late in the evening" by policemen in turns. He was stripped naked, his arms and feet tied, his genitals squeezed until he screamed, and burned with lit cigarettes. After this he admitted he was planning to leave the country. He was treated in hospital for his injuries, but nobody in the hospital asked how he had got them. He has not yet recovered from them. Mr. Nkosi referred also to his friend, Mr. Kerwin, who had been similarly tortured. "He was terribly ill, we took him to the hospital, he was green all over his body".

57. According to further information available to the Working Group, an 18-year old matriculation student at the Coronationville School, one of two students detained under the General Law Amendment Act in May (see para. 53 above), alleged in August that he had been beaten and threatened with death while under interrogation by the police, who wanted him to give evidence against Clarence Hamilton, charged under the Suppression of Communism Act for publishing a leaflet containing a formula for making a grenade and a petrol bomb. 23/

(b) Treatment of political prisoners

58. Several witnesses (including Mr. Carlson, Mr. Sachs, Mr. Gaetsewe) drew the attention of the Working Group to the fact that South Africa has one of the highest daily average prison populations in the world, amounting to about 90,000 prisoners daily (RT.174 (II)); and to the political nature of the pass law arrests, which constitute the majority of prisoners since the influx control laws apply only to Africans. In an average daily prison population in 1972-1973 of 95,015, 73,313 prisoners were Africans, mainly arrested for "influx control" and other technical offences. 24/

59. Witnesses made repeated reference to the fact that the South African Government denies that it holds political prisoners, yet reserves special treatment for those described as "guilty of crimes against the State" (testimony of Mr. Hirson, RT.150). These are, for instance, segregated from ordinary prisoners, they receive no remission of sentence such as all other prisoners may receive; they are artificially isolated from contact with the world by being denied access to newspapers, their mail is strictly censored and their family visits are strictly controlled (see testimony of Mr. Lewin and Mr. Hirson, and written testimony on conditions on Robben Island handed in by Mr. Nokwe).

60. Further information received by the Group corroborated the picture of generally unsatisfactory prison conditions and callous attitudes of prison staff. John Bradbury, a Briton gaoled for a gangland murder in 1966, complained that sodomy, stabbings and suicide were widespread in Zonderwater prison. A Prisons Department spokesman said that the incidence of sodomy was no higher than in other

23/ Rand Daily Mail, 21 August 1974.

24/ Rand Daily Mail, 28 February 1974.

all-male institutions, and that the stabbings were the result of the "large number of psychopaths" among convicts, as also were the suicides, since psychopaths were "inclined to try to take their own lives and could not be prevented from doing so". 25/

61. Mr. Duma Nokwe gave the latest figure on political prisoners serving sentences in South Africa under the Security Laws (RT.163) as 389 on Robben Island (African, Asian and Coloured men), 12 (white men) in Pretoria, and 3 (black women) in Barberton: a total of 404. He pointed out that many of these were going into their second decade of imprisonment at the beginning of the Decade for Action to Combat Racism and Racial Discrimination, and that even in gaol the South African régime "tries to separate comrades ... on the basis of colour". Mr. Potlako Leballo (RT.169), on the other hand, calculated that the Pan Africanist Congress alone had more than 11,000 "political prisoners" in various South African prisons. Some of those on Robben Island had been only 16-18 years of age when first sent to prison.

62. Several testimonies, including that of Baruch Hirson and Hugh Lewin, referred to a general deterioration in conditions for political prisoners in the past two to four years, and in particular emphasized the distress for prisoners that either isolation or the withdrawal of study facilities involve, particularly for prisoners serving long terms. Mr. Lewin called this "a policy of spite imposed by the security police against those inside" (RT.154). Mr. Hirson commented that conditions were continually tightened. They were "made more and more onerous, whereas we might have expected the opposite, and people were being cut off from the external world by a multitude of small steps" (RT.150). In his opinion, this continuous isolation was "affecting the stability of some of the political prisoners (he) left behind". He quoted as an example of the "absurd triviality" of these restrictions a ban on feeding breadcrumbs to birds in the yard outside the cells. He also stressed the arbitrariness of bans on books needed for study - when "book after book after book is rejected, you feel in the end that the studies have become a farce, and as the studies are the one thing you clutch on to to maintain an equilibrium, this has a fairly disastrous effect on the stability of the individuals". And he pointed out how in the past 15-18 months further restrictions had been placed on visiting, which for instance prohibited lawyers or journalists - even if these were members of the prisoner's family - from visiting. This, together with increasingly strict censorship of correspondence, contributed to a dangerous sense of isolation, particularly for long-term prisoners.

63. The record of an anonymous taped interview with a former Robben Island prisoner, submitted by Mr. Nokwe, charged that conditions on Robben Island had seriously deteriorated since 4 December 1970, 26/ when a new group of staff were sent to the island "in order to deal with the political prisoners". After this, complaints were met only with penalties for the complainers: demotion to a "lower" category (i.e. fewer privileges), deprivation of meals, and solitary confinement. Those demoted to "category D" also had their study permission withdrawn (Sechaba, p.15). The witness charged also that physical brutality was used against the prisoners; that a named warder, Piet Fourie, beat up prisoners behind closed doors for being

25/ Cape Times, 31 October 1973; Rand Daily Mail, 5 November 1973.

26/ Sechaba, October 1972, pp. 11-16.

"cheeky"; and that medical treatment was denied by the prison doctor. He cited the case of Mr. Raymond Mhlaba, whose health had necessitated fortnightly visits to the doctor, and who, when a new doctor, Poleski, was appointed, was told "you are just wasting my time", and was sentenced instead to 6 months' isolation (ibid., p. 16).

64. A smuggled report by prisoners from the Robben Island Prison at the end of 1973 27/ detailed inadequate diet in spite of a new diet scale introduced in July 1973; inadequate medical care in the prison hospital; difficulties in buying books or recreational kits; and charged that under the new prison regulations (referred to in para.52 above) prisoners are being forbidden to keep more than two letters at a time, and none for more than two months. "The prisoners' letters," says the report, "are the only link they have with their families and in fact represent their families ... some prisoners have not seen their families and friends in the form of a visit for the last 10 years." Up to the end of 1973, 11 prisoners had had their study facilities withdrawn. Prisoners were also forbidden to hold their own classes and educate each other.28/

65. The Minister of Prisons denied in August that any changes had been made recently in the study facilities available in prisons.29/

66. Mr. Leballo (RT.169) told of his own experience on Robben Island "building huge dams and bridges" and then having to demolish them; carrying stones uphill and being flogged with sjamboks when he tired; being chained on both legs; and being fed on "soft dirty porridge". In Pretoria gaol he spent 42 days on spare diet alone in a small cell, with ice-cold water dripping from the ceiling. His eyesight had been permanently impaired by this experience.

67. Mr. Keke Nkula described a technique by which prison authorities provoke prisoners into a "fight" and beat them up. On the occasion when he experienced this in Stoffberg gaol, Orange Free State, the prisoners were stripped for searching (for tobacco and other contraband) when they were set upon by warders armed with pick handles, etc. In such circumstances, the witness said, anyone who resisted might be seriously wounded or shot dead, and the death accounted for as killed while "trying to break away from gaol" (RT.169). Six people were hurt. The witness himself was permanently crippled by a broken back.

68. Several testimonies linked the new prison regulations (see para. 52 above) with an attempt to stifle all complaints by prisoners, and in particular to prevent one or more prisoners from acting as spokesmen for others. Mr. Hirson quoted the sentencing of Dennis Goldberg to solitary confinement over Christmas 1972 after he had raised complaints on behalf of the Pretoria group (RT.150). The Robben Island witness told a similar story of retaliation against four prisoners in 1970 (Alexander, Daniels, Pokhela and Sisulu) who had been chosen as spokesmen before the officer commanding the prison (Sechaba, p.15). It will also be recalled from a previous report (E/CN.4/1135, paras. 38-42) that in 1973 the wives of two Robben Island prisoners told a Cape Town court that their husbands had been penalized for presenting a petition on behalf of 50 prisoners to the Commanding Officer, Colonel Willemse. This case, the first time that the plight of political prisoners had been brought out in open court, immediately preceded the introduction of the new regulations.

27/ Guardian, 22 March 1974.

28/ Ibid.

29/ House of Assembly Debates, 15 August 1974, cols. 81-83.

69. Mr. Henderson Selele (RT.168), who had served most of his two years' sentence for belonging to a banned organization at Vooruitsig prison among "ordinary" and not political prisoners, commented on apartheid between the races even in gaol. Training in a number of skills was available to white prisoners and only in a very few skills to blacks. Whites were given better food, clothing and accommodation than blacks.

70. Mr. Lewin (RT.154) drew the attention of the Working Group to the practice of banning, restricting or house-arresting political offenders after they have served their gaol sentences (cf. para. 191 below on bans; paras. 144-162 on transit camps and resettlement areas), which he said was a penalty imposed particularly on blacks, and amounted to a "second sentence against which they have no recourse at all by way of law". Miss Naidoo (RT.152) described how after her detention she was confined under a banning order to the Magisterial District of Johannesburg until she was permitted to leave the country. And Mr. Malcolm Smart of Amnesty International (RT.156), called the practice of banishing (African) former political prisoners to resettlement areas "an extension of persecution for their political views". Living conditions in resettlement areas were in any case "culturally and economically deprived", but for ex-political prisoners the normal difficulties were magnified: the prisoner's family may have been sent there in advance and be already in a state approaching destitution; the difficulties in finding employment are for former prisoners even more frustrating than for others. He quoted a social worker's letter: "unfortunately his passbook has the Robben Island stamp on it, and this will definitely prejudice his chances of finding work"; and a letter from an ex-prisoner working as a labourer "for a boss who is constantly visited by the security police and therefore my position is somewhat tenuous". Other ex-prisoners write of starvation, of children roaming the township because they cannot afford school, of ill-health, crude housing, no clothes and "no means to start a living".

71. Mr. Leballo (RT.169) reminded the Working Group that Mr. Robert Sobukwe was still confined to the municipal area of Kimberley, house-arrested between 6 p.m. and 6 a.m. and banned from teaching (his profession), speaking or writing for publication, and communicating with any other banned or listed person. He also described the fate of other former political prisoners, including Mr. Zeph Motupeng, banished to a remote area of the Orange Free State, Mr. S.T. Ngendane, banished to Herschel in the Cape, and Mr. Stanley Mogoba, banished to Sekhukhuniland. Mr. Leballo himself had been banished to Zululand after his release from gaol.

72. According to further information available to the Working Group, at least 15 released political prisoners have been banned for five-year or two-year periods in the first six months of 1974. These are Girja Singh, Papi Riot Mkwanazi, Alfred Maphanga Duma, David Ndawonde, Dr. Neville Alexander, Elizabeth van der Heyden, Marcus Chinsani Solomon, the Reverend Don John William Davis, Baruch Hirson, Twalamfeme Gobinambo Joyi, Livingstone Russel Mbane, Zolile Hamilton Keke, Joel Gwabeni, Sipho Price Ndabana and Martin Ramokgadi. 30/ The orders on at least five more ex-political prisoners have been renewed, 31/ including that on Robert Sobukwe.

30/ Star, 9 March 1974, Government Gazette, No. 4254, 19 April 1974; No. 4279, 17 May 1974; No. 4307, 21 June 1974; No. 4135, 4 January 1974; No. 4152, 1 February 1974; No. 4231, 22 March 1974.

31/ Rand Daily Mail, 31 May 1974.

(c) Information on recent political trials

73. According to evidence and information before the Working Group, political arrests and trials in the past year have mainly involved members of black organizations (South African Students' Organisation, Natal Youth Organisation, Black Peoples' Convention, etc.), particularly youth organizations, students, and members of those (mainly) white organizations in opposition to apartheid (South African Christian Institute, NUSAS, Spro-cas, etc.) under current investigation by the Schlebusch Commission on Internal Security (see E/CN.4/1135, paras. 150-151). Among the cases brought to the attention of the Group are those described below:

(i) Appeal of John Hesey

74. The appeal against a five-year sentence under the Terrorism Act of John Hesey, an Irish citizen, convicted in June 1973 at the trial of the Pretoria Six (see E/CN.4/1135, paras. 53-55), was rejected in November. 32/

(ii) "Terrorism" trial

75. Nkutsou Petrus Matsau was sentenced to five years' imprisonment for two acts of "terrorism" with the intention of endangering law and order. One of the acts was the publication of a poem entitled "Kill, kill". On appeal he failed to prove that he had not had the intention of endangering law and order. 33/

(iii) Contraventions of banning orders

76. Two leaders of SASO, Henry Eric Isaacs (former President of SASO and a leader of the 1973 protest at the University of Western Cape (see E/CN.4/1135, paras. 119-124), and Wehle Nhlapo, a SASO field worker, were charged with contravening banning orders in November. Both were convicted and Mr. Isaacs was sentenced to 12 months suspended for three years. 34/

77. Among others convicted on similar charges, Mohammed S. Bhana has been sentenced to six weeks (suspended); 35/ Nyameko Barney Pidvana to 18 weeks; 36/ Sipho Herman Buthelezi to 27 months (suspended for three years); 37/ John James Issel, a former regional secretary of SASO, to 12 months, all but seven days suspended for three years; 38/ Srinivasa Rajoo Moodley to seven years suspended for one year; 39/ and Mrs. Winnie Mandela (see E/CN.4/1135, para. 138) lost her appeal against her conviction with Peter Magubane for contravening a banning order. 40/ Her sentence and Mr. Magubane's were, however, reduced from one year to six months. 41/

32/ Star, 1 December 1973.

33/ Rand Daily Mail, 20 August 1974.

34/ Rand Daily Mail, 17 November 1973, 19 January 1974, 2 April 1974.

35/ Rand Daily Mail, 30 January 1974.

36/ Rand Daily Mail, 13 March 1974.

37/ Rand Daily Mail, 30 March 1974.

38/ Rand Daily Mail, 31 July 1974.

39/ Rand Daily Mail, 31 August 1974.

40/ Daily Telegraph, 2 October 1974.

41/ Cape Times, 1 October 1974.

(iv) "Schlebusch trials"

78. A number of individuals have been prosecuted under the Commission Act of 1947 for refusing to give evidence to the Schlebusch Commission (see E/CN.4/1135, para. 151). The Reverend Beyers Naude of the South African Christian Institute won his appeal against conviction in March and charges were then withdrawn against the Reverend B. Brown, the Reverend D. van Zyl, the Reverend Roelf Meyer, Dudley Homer and Clive Nettleton. 42/ But Mrs. Dorothy Clemenshaw had her appeal rejected by the Transvaal Supreme Court in May. 43/

(v) Arrests following banned pro-FRELIMO rally

79. A new wave of political trials was predicted 44/ after a series of raids on members of SASO, BPC and other black organizations at the end of September 1974. At least 19 persons were charged under the Riotous Assemblies Act with attending a banned meeting in Durban in support of FRELIMO. Among those arrested were Mr. M. Myesa, SASO Secretary-General; Mr. M. Leko, a SASO permanent organizer; Mr. L. Mbanda, research officer of the Black Allied Workers Union; and the Reverend C. Mayatula, chairman of the Black Peoples' Convention. 45/ Press reports suggested that a further 30 people had been held in other raids. 46/

(vi) Role of the courts

80. Some detailed testimony was received by the Group on the role of the South African courts in political cases. Mr. Sachs argued (RT.156) that the courts are used "not to protect people but to maintain a system of privilege and to deny elementary human rights to the majority of the population", not only because it is through the courts that the all-powerful pass laws are imposed upon the black population, but because judges tend to favour the authorities against the individual persons, and "have made it easier for torture to be carried out". Mr. Carlson (RT.174 (II)) made a similar point, charging that the courts have collaborated with the executive, in particular in the implementation of the security laws.

42/ Rand Daily Mail, 13 March 1974.

43/ Rand Daily Mail, 21 May 1974.

44/ The Times, 30 September 1974.

45/ Cape Times, 27 September 1974.

46/ The Times, 30 September 1974.

(d) Evidence regarding the torture and cruel, inhuman or degrading treatment of detainees and political prisoners

81. As in previous years, a considerable volume of verbal and written testimony was laid before the Working Group on the question of torture at the hands of South Africa's security police, and cruel treatment in South African gaols. Mr. Carlson told the Group (RT.174 (II)) that he had over 100 statements from political prisoner who had been tortured by the security police. He pointed out that these police are responsible only and directly to the Prime Minister, and that they have been carefully trained in the systematic application of the most sophisticated torture methods, working with the aid of doctors, psychiatrists and pathologists.^{47/} Almost all the former political detainees who appeared before the Working Group complained of having been kept for long periods in solitary confinement, a form of mental torture which in many cases led to some form of "emotional collapse" (cf. Hirson, RT.150). Most had, in addition, received the "statue torture" (Naidoo, Mbuli, RT.168; descriptions of other cases, Carlson, RT.174 (II)).

82. African prisoners, in particular, complained also of torture by electric shock and physical violence: sjambokings (Mbuli, RT.168) and beatings which in some cases left prisoners' health permanently or fatally damaged (e.g. Mr. Mbuli described the fate of a friend, Motsepe, who died abroad in 1966 or 1967 with a damaged liver and spine after beatings by the security police). Mr. Leballo charged (RT.169) that hot pokeres were applied in Pretoria New Lock prison to the testicles of Sidney Mbuyazwe and Marcus Motgotle, after they had been extradited to South Africa from Mozambique in 1968. Mr. Nkosi described being stripped naked and his testicles squeezed until he screamed during interrogation at John Vorster Square (RT.172).

83. Further witnesses referred in verbal or written testimony to the cruel treatment of sentenced political prisoners. Mr. Leballo referred to a "favourite sport" of security police on Robben Island: burying a prisoner upright in the sand and urinating into his mouth (RT.169). Mr. Nkula (see para. 67 above) described the systematic beating of prisoners in Stoffberg gaol.

84. An anonymous witness (365th meeting) described his experience in a farm gaol in Breyten in the Eastern Transvaal, where he saw a fellow prisoner struck with a warder's gun. Afraid that he would be left for dead and buried on the spot, a fate alleged to have met others killed on farms, the man disarmed his warder, shot him in the leg, and escaped into the woods from where he defended himself against his pursuers. When he was eventually overcome, he was returned to the witness's cell, bleeding from 15 bullet wounds, and once more brutally assaulted. When the witness protested, he too was beaten until he was unconscious. This witness described other barbarous practices on farm gaols, including an occasion, whose victims he had interviewed, when prisoners had been "put into" a dam which had been electrified, causing extensive skin burns and shocks.

^{47/} For details of torture techniques, see Joel Carlson, No Neutral Ground (London, Davis-Poynter, 1973), pp. 226-245.

85. Mr. Nokwe (RT.163) referred, as evidence of the brutality and inherent racialism of the South African penal system, to the number of persons flogged in South African gaols in the period 1 July 1972 to 30 June 1973. A total of 3,578 prisoners were flogged by judicial order, of whom it seems that only 22 were white. 48/

86. According to further information available to the Working Group, there have come to light several more cases of brutality by the authorities towards prisoners in their charge in the period under review. An African taken by Vereeniging police station charged with trespass was shot in the wrist and hip by a police constable. The policeman was fined R50 for pointing a firearm. 49/ A former policeman was ordered to pay an African, Mr. Ben Bidi, R10 per month damages after crippling him by assaulting him with a cricket bat in March 1967. 50/ And in a case that received considerable publicity in the South African press, in which five prison warders were charged with assaulting two African prisoners, one of whom died, the judge complained of "torture" and "barbaric assaults" that had been revealed as having taken place in Leeukop gaol, Transvaal. Three warders were given, respectively, 18 months, one year suspended and six months suspended sentences; 51/ and it emerged that one warder, Captain S. Potgieter, who had helped to cover up the death by making it seem that the dead man had hanged himself, had been promoted from the rank of lieutenant to captain since the death. 52/ A promised special committee of inquiry into the incident, it was announced in October, would not be a full inquiry into the prison system but a magisterial investigation into whether two of the warders concerned in the case were fit to remain in the prison service. 53/ A Commission of Inquiry into the Penal System, under the chairmanship of Mr. Justice Viljoen, was also announced on 1 October, according to the Rand Daily Mail of 2 October 1974. It is not known whether this inquiry will investigate allegations of torture and brutality by police and prison staff.

48/ Cape Times, 14 May 1974.

49/ Rand Daily Mail, 6 June 1974.

50/ Rand Daily Mail, 16 August 1974.

51/ Times, 9 October 1974.

52/ Guardian, 10 October 1974.

53/ Star, 26 October 1974.

C. THE CONDITIONS OF AFRICANS IN THE "BANTU HOMELANDS"

1. Historical background

87. The origins of the policy of "native reserves" and their constitution under the present Government as "Bantu homelands" was described in detail in the 1970 report of the Working Group (E/CH.4/1050).

88. The Group also took into consideration the Working Paper "The Bantu Homeland" policy and the condition of 'Black Labour' in South Africa". 54/

2. Summary of legislation in force

89. The laws relating to the setting up and development of the homelands have been described and analysed in earlier documents of the Working Group (E/CN.4/1020 and E/CN.4/1111, paras. 104-109). These include the Bantu Homelands Citizenship Act No. 26 of 1970, which makes every African a citizen of a homeland whether or not he lives there; the Bantu Education Amendment Act No. 44 of 1970, which places schools in homelands under the control of the homeland authorities; the Bantu Homelands Constitution Act No. 21 of 1971, which enables the executive to set up legislative assemblies by proclamation instead of by act of parliament; and the General Law Amendment Act No. 102 of 1972, which enables control of internal police forces to be transferred to the control of homeland governments by proclamation. Additionally, the Bantu Law Amendment Act No. 7 of 1973 (described in the report of the Working Group of 4 February 1974, E/CN.4/1135) contains provisions to accelerate the consolidation of homeland land areas and gives homeland governments powers to raise loans, including development loans, abroad.

3. Analysis of evidence and information received

(a) Land consolidation

90. In his evidence, Mr. Hozwane (RT.167) pointed out that the Bantustans were all claiming additional land. However, even if these claims succeeded and the Bantustans were successful in federating, their combined area would leave the Africans a very limited land area. And Mr. Carlson in his testimony (RT.174(II)) pointed out that at present even that land does not belong to those who live on it, but is "held in trust by the State President". 55/

54/ The "Bantu Homeland Policy" and the condition of "Black Labour" in South Africa. Working Paper prepared by R. Wimmer under the direction of Professor Ermacora, Professor of Public Law, Vienna University.

55/ The Deputy Minister of Bantu Development announced in July 1973 (see para. 121 below) that land ownership would become vested in the homeland governments: that is, it would not be available in freehold tenure as envisaged by the 1955 Tomlinson Commission report (Southern Africa Information Service of the International Defence and Aid Fund (hereinafter referred to as SAIS), July-December 1973, col. 272).

91. From evidence available to the Working Group, it appears that the Government plans to consolidate the homelands, all of which, with the exception of Basotho Qwaqwa, consist of numbers of scattered areas of land, have continued during the year to provoke considerable conflict with the homeland authorities, many of whose leaders have argued that unless more land is available to the homelands, "independence" will be impossible. The Lebowa Legislative Assembly rejected entirely the Government's proposals to consolidate that homeland. 56/ It demanded more land, including 12 neighbouring "white" towns (Pietersburg, Potgietersrus, Lydenburg, Middelburg, Marble Hall, Phalaborwa, Tzaneen, Belfast, Groblersdal, Burgersfort, Witbank and Mooketsi). Under the present land consolidation plans, Lebowa would be split into five pieces. 57/ The Bophuthatswana Legislative Assembly wants one large united homeland which would include the towns of Mafekeng, Rustenburg, Brits, Zwartkops, Lichtenburg, Zeerust and Vryburg. Government plans are to constitute the homeland of six unconnected areas which do not include any "white" towns. 58/

92. During a meeting with homeland leaders held during 1974 (see para. 114 below), the Prime Minister was adamant that he would not reconsider his attitude towards consolidation. He said the Government would not deviate from the 1936 Act, and could not allocate land beyond its provisions. 59/

93. In a statement opening the Bophuthatswana Legislative Assembly, the Minister of Bantu Administration warned against any "false hopes" for a greater share of the land of South Africa. It had to be realized that historically the division of the land between white and Bantu had already taken place. All that remained for the Government was to purchase land in order to acquire land to compensate the "black" spots and unsuitably situated reserves, and to acquire the land still due for acquisition in terms of the additional land allocation of 1936. 60/

94. Chief B.M. Gatsha Buthelezi has pointed out that not a single African homeland leader is involved in the actual working out of the suggestions about the boundaries of the homelands: "It is all worked out by Pretoria on its own." He added: "Not even when we co-operate in the implementation of the white man's political dreams for us, are we given the privilege of making any concrete contribution or even suggesting improvements. Any suggestion by us is suspect." 61/

56/ Rand Daily Mail, 9 June 1973.

57/ Ibid., 1 May 1974.

58/ Sunday Times, 10 June 1973.

59/ Sunday Times, 10 March 1974.

60/ Rand Daily Mail, 13 March 1974.

61/ "White and black nationalism, ethnicity and the future of the homelands", Alfred and Winifred Hoernle Memorial Lecture, 16 January 1974, South African Institute of Race Relations.

95. The Chief Minister of Lebowa, Mr. C. Phatudi, disclosed that Lebowa had appointed its own land commission to investigate and to represent its point of view. It was in keeping with the policy of separate development, and part of the homeland's duty to the North Sotho people. 62/ The Minister of Bantu Administration, Mr. M.C. Botha, warned the homeland governments that it did not lie within their field of authority to appoint committees to say what land should be given them by the South African Government. 63/

96. The July-December 1973 issue of the South African Information Service of the International Defence and Aid Fund, handed in as evidence by Mr. Alan Brooks, described a "summit meeting" held at Umtata in November 1973 of leaders of six of the eight South African homelands. The meeting approved the idea of federation as a long-term policy and demanded that homelands should be consolidated by the removal of "white patches". It also stated that homeland governments should not collaborate with the South African Government in the forced removal (see paras. 103-108 below) of black people from their lands (Southern African Information Service (SAIS), July-December 1973, col. 271).

97. The Deputy Minister of Bantu Development released figures in Parliament of the additions to be made to comply with the quota requirements under the provisions of the 1936 Land Act: 64/

| | <u>Hectares</u> |
|-------------------|-----------------|
| Transvaal | 661,304 |
| Cape | 525,132 |
| Natal | 54,849 |
| Orange Free State | 7,142 |

98. The extent of the compensatory land for "black spots" (from which Africans have in some cases already been settled elsewhere) which must still be added to the homelands at present, is as follows: 65/

| | <u>Hectares</u> |
|-------------------|-----------------|
| Transvaal | 51,874 |
| Cape | 55,494 |
| Natal | 42,157 |
| Orange Free State | 6,464 |

99. Draft plans for the consolidation of six homelands were announced during 1972 and were readjusted and retabled in Parliament in 1973 following objections from white landowners. 66/ A five-year plan (1973-1978) for the consolidation of the Ciskei in the Eastern Cape was announced in April, though no details of the total land or

62/ Rand Daily Mail, 1 May 1974.

63/ Cape Times, 1 May 1974; Star, 5 May 1974.

64/ House of Assembly Debates, 9 August 1974, col. 14.

65/ Ibid.

66/ See the estimates reproduced in E/CN.4/1135, paras. 72 and 73; and ibid., para. 75.

population involved have yet been worked out. In brief, the plan involves the removal of a number of small reserves in the east, around Stutterheim, and to the north of East London, with the addition of the Peddie area and some land around King William's Town and Queenstown. The only existing town which would be included in the Ciskei is Peddie. Alice, the black educational centre for the whole of the Cape, with schools, seminaries and Fort Hare University, is to remain a "white" town. 67/

100. With regard to the Transkei homeland, white ratepayers of Port St. John's, the port within the Transkei, have voted overwhelmingly to reject a proposal that the enclave be handed over to the Transkei. 68/ Consolidation proposals for the Transkei and the Ciskei came under heavy fire at Bantu Affairs Commission hearings where the insistence of white residents was that Port St. John's, Indwe, Matatiele, Elliott, Maclear, Ugie and Alice districts should remain in white hands. 69/

101. The Deputy Minister of Bantu Development, Mr. A.J. Raubenheimer, told the annual congress of the Transvaal Agricultural Union that while final boundaries for the consolidation of most of the homelands would be known by the end of 1974, consolidation would not be completed within five years. 70/ The consolidation plans, he said, would not take into account the expanding African population. "If we did this there we would have to continue handing over land until there was not enough left for the whites." 71/ This problem is linked with the question of over-population as is shown in document E/CN.4/1135, paras. 77 and 78.

102. In its 1973/74 budget, the Government set aside R8.5 million for the purchase of land. 72/ This was R3 million more than the allotment for the previous year 1972/73, and was viewed in South Africa as reflecting the Government's move to speed up the removals and the homeland consolidation process. 73/

(b) Forced removals

103. The forced removals not only serve to implement consolidation schemes but also serve to create transit camps. Government and unofficial estimates vary concerning the number of Africans moved and resettled in order to implement consolidation schemes. 74/ 75/ The South African Institute of Race Relations attempted in 1972 to

67/ Uprooting a Nation, Africa Publications Trust, p. 30.

68/ Star, 12 January 1974.

69/ Cape Times, 25 January 1974.

70/ Cape Times, 22 August 1973.

71/ Sunday Times, 3 February 1974.

72/ 1973/74 estimates of the expenditure to be defrayed from loan accounts

73/ Star, 29 March 1973.

74/ See the previous report of the Working Group, E/CN.4/1135, para. 80, foot-note 59, which cited the total of 1.6 million Africans removed from urban areas and white farmland since 1960.

75/ See Cosmas Desmond: "The discarded people: an account of African resettlement in South Africa", Penguin African Library, Penguin Books, 1971.

work out the total numbers of people moved and resettled under the Government's plans between 1960 and 1970. Working from official figures, projections, induction and estimates, it was calculated that 1,820,000 people had been moved. The breakdown was as follows: 76/

| | |
|--|-------------------|
| Abolition of labour tenancies on white farms | 340,000 |
| Laws prohibiting squatters living on white farms | 656,000 |
| Elimination of "black spots" in the rural areas | 97,000 <u>77/</u> |
| "Endorsement out" of the urban areas under pass law offences and other legislation controlling the lives of urban Africans (particularly the Bantu Laws Amendment Act of 1964) | 400,000 |
| Re-siting of urban townships in the neighbouring reserves | 327,000 |

104. Consolidation of the homelands is expected to increase considerably the total numbers of Africans to be removed. 78/ Official figures for the removal of Africans under consolidation plans for the various homelands are 231,000 in the northern homelands, 46,000 Swazi, 120,000 Tswana, an undisclosed number of Ciskei Xhosa, and 132,000 Zulus, though the Natal Agricultural Union put the latter figure at 230,000. 79/

76/ See "Mass population removals and break-up of family life in South Africa", Memorandum of the African Bureau, published by the United Nations Unit on Apartheid, Notes and Documents No. 13/74.

77/ The official figure for "black spot" removals (areas occupied by Africans which do not form part of a homeland scheme) was 176,000 in March 1973 (E/CN.4/1135, para. 80). It was disclosed in Parliament in February 1974 that this figure then totalled 181,788, comprising persons removed from black spots, small scheduled areas, and outlying parts of other scheduled areas. (House of Assembly Debates, 2, 13 February 1974, col. 78.)

78/ A figure of over 2 million was cited by the Financial Mail, 26 October 1973. According to A Place called Dimbaza, p. 3, "The grand totals of peoples so far caught up in the population removals under the officially announced, or already implemented, plans stand at not less than 2,884,000 people. It is impossible to say how many more will be caught up in this process by the time the full programme of population transfers has taken place under the various apartheid laws."

79/ Star, 1 December 1973.

105. As part of plans for the consolidation of KwaZulu, the Department of Bantu Administration is considering moving 100,000 Africans out of areas near the Drakensburg where three black locations house the Africans on 130,000 hectares, which areas are separated by two blocks of white farming land. Originally the intention was to incorporate the white areas into the homeland, but white farmers under the leadership of the Natal Agricultural Union voiced strong objection. The plan, not yet official, is now to move the Africans into two areas of a combined size of 55,000 hectares 80/ and to declare the entire Drakensberg area "white".

106. The 10-man Lebowa land commission has told the tribes of Ramokgopa, Machaka, Makgatho, Dinkonyana and Mamejata to vacate more than 200,000 hectares of land to make room for whites and for the resettlement of the Gazankulu and South Ndebele homelands.81/ The official figures released for families to be resettled were: Matoka-Ramokgopa 25,930; Block 22, which is the Pala area of Seleka-Shongwane, 18,400; Denelton-Elandsdorn 29,050; Selokane in Phalaborwa 1,500, and more than 6,000 in the Mapulaneng area of Bushbuckridge. These figures are based on the 1970 census and do not include the areas of Chieftainess Victoria Dinkonyane and Chief Semenya or several other small areas scattered over Lebowa. Besides those who are to be moved from the excised areas, a great number not included in the above figure will come from the white-owned farms. In the Eastern Transvaal alone, an estimated unofficial figure is more than 8,000.

80/ Financial Mail, 8 February 1974; Daily News, 6 October 1973; Uprooting a Nation: The Study of Three Million Evictions in South Africa (London, Africa Publications Trust, March 1974), p. 29, for the African reaction. Draft plans for the consolidation of KwaZulu were released by the Department of Bantu Affairs during June 1972. They were said to form the basis for discussion at public hearings. Final consolidation plans, recommended by the Parliamentary Select Committee on Bantu Affairs, were released on 27 April 1973. The plans were in effect to consolidate about 44 scattered reserves and some 144 "black spots" into 10 areas. Chief Buthelezi rejected these proposals, as did the Natal Provincial Council. Mrs. R. Suzman, MP, described the plans as a "hotch-potch of excisions and additions". The United Party opposed the proposals since it did not see Parliament bound to fulfil the 1936 quotas in view of the population explosion, which meant that "good land should not be placed in the hands of tribes who would not be able to farm it properly". See M. Horrell, The African Homelands of South Africa, South African Institute of Race Relations, pp. 17-28.

81/ Rand Daily Mail, 26 October 1973: "At Ramokgopa the people said: 'We cannot go on living an unsettled life. We were moved in 1945, and again in 1968 we were brought to where we are now, and in 1973 we are told that we will be taken to Dendron.'"

107. In the case of the Swazi homeland and plans for the resettlement of Swazi outside it, 818 square miles have been designated for this Bantustan. The three principal "white" towns bordering the reserve are Nelspruit, White River and Kaapmuiden. The inhabitants of the African townships of these towns have been moved into an area of reserve known as Naikasi. From Nelspruit 2,600 families were moved 23 kilometres to Lekasi. From White River, 600 families were moved 20 kilometres to Kabokwebi, which is planned to house up to 40,000 people. An unknown number were moved from Kaapmuiden 10 kilometres to Matsulu. Africans have also been moved to these new homeland townships from white farms. 82/

108. In addition to these removals from "black spots", removals from "white" areas of rural squatters and labour tenants, and the removal of Africans from urban areas, instances have been cited from all parts of the country where old-established municipal townships in "white" areas have been de-proclaimed and the residents moved to newly created townships in the bantustans. 83/ Particular resettlement schemes are described in section D below, paragraphs 144-162.

(c) Political and civil rights

109. Several witnesses testified to the Working Group on the severe limitations to the power bantustans are able to exercise. Mr. Leballo (RT.169) said the bantustan policy was a hoax. Mr. Mohammed (RT.167) said the policy was fraudulent. Mr. Nozwane (RT.167) said that the Bantu leaders should be seen as agents of the ruling South African Government.

110. Mr. Msehego (RT.168) testified that the bantustans had introduced division in the Transkei among the Xhosa people and that this had been followed by the intimidation of those who opposed the homeland policy. This took the form of beatings, arrests and detention without conviction, the confiscation of properties, and enforced removals from homes. The Transkei, he reminded the Group, was still governed under emergency law.

111. The material placed before the Working Group by Mr. Brooks for the International Defence and Aid Fund detailed political events concerning the bantustans in the course of which homeland leaders pressed for more land and greater powers. This material included information about the summit meeting held on 8 November 1973 of representatives of six of the homelands to work out a common strategy to deal with the South African Government. 84/ Leaders of two of the smaller homelands stayed away, apparently out of opposition to any notion of federalism, 85/ but the talks were attended by

82/ Uprooting a nation, p. 30.

83/ Financial Mail, 26 October 1973, p. 351.

84/ SAIS, July-December 1973, col. 271; see also Survey of Race Relations (South African Institute of Race Relations, 1973), p. 164.

85/ Those absent from the meeting were Chief Patrick Mphephu of Venda and Chief Wessels Mota of Basotho Qwaqwa.

Paramount Chief Kaiser Matanzima of the Transkei; Chief Gatsha Buthelezi of KwaZulu; Chief Lucas Mangope of Bophuthatswana; Professor Hudson Ntsanwisi of Gazankulu; Mr. Colin Ramusi, who represented Chief Minister Cedric Phatudi of Lebowa; and Mr. Lennox Sebe of the Ciskei. Resolution of the meeting saw federation as a long-term policy vital to the unity of the African people, providing (1) that homelands be consolidated, with the removal of "white" patches, (2) that homeland governments be given unfettered rights to seek outside financial assistance, (3) that pass laws and influx control regulations be repealed, and that Africans should be able to sell their labour wherever required, and (4) that all departments be transferred to a self-governing homeland when constituted. 86/

112. In announcing plans for the meeting, Chief Mangope had stated that the object of the summit was to achieve consensus among the bantustan leaders; they would then be in a position to approach the South African Government with a more powerful voice when they sought "redress". 87/ There were several points of difference between the homeland heads. Chief Mangope (Bophuthatswana) preferred a link between his homeland and that of neighbouring independent Botswana. Professor Ntsanwisi envisaged federation before homeland independence, whereas Chief Matanzima wanted federation after independence.

113. Four months after the summit meeting the leaders of the Lebowa bantustan signed an agreement with representatives of the opposition United Party to the effect that "the federal concept" appeared to be the best framework on which to seek a constitutional framework for South Africa. 88/ In reply to the Opposition's motion of no confidence during the parliamentary session which opened shortly thereafter, the Prime Minister, Mr. Vorster, issued an appeal for the rejection of the concept of political federation: he was not prepared in respect of the whites to subordinate any part of their sovereignty. 89/

114. On 6 March 1974 all eight bantustan leaders met in Pretoria for eight hours of confidential talks with the Prime Minister, who was accompanied by the Minister of Bantu Administration and Development and his two deputies. During the meeting the Prime Minister is reported to have reiterated his Government's view that the homeland leaders were free to request independence talks at any time. It was reported that no such request was raised. 90/ During the discussions, homeland leaders stressed that they were not satisfied with the allocation of land under the 1936 Act. The Prime Minister is reported to have replied that he is bound by the Act. On the question of consolidation, Mr. Botha was reported to have said that the Government would speed up the purchase of land under the 1936 Act. 91/

86/ SAIS, July-December 1973, col. 271.

87/ Star, 30 October 1973.

88/ Sunday Times, 31 March 1974.

89/ House of Assembly Debates, 1, 4 February 1974, cols. 54-58.

90/ Star, 9 March 1974. The following month the Minister of Bantu Administration and Development said the South African Government would maintain control over the foreign policy of the independent bantustans through the threat of withdrawing the subsidies they would need to exist. He continued that the bantustans and South Africa would always be interdependent, and this would ensure their common safety, security and good neighbourhood. See Star, 6 April 1974.

91/ Star, weekly airmail edition, 9 and 16 March 1974.

115. From information available to the Working Group, it transpires that the Transkei Legislative Assembly appointed a 27-man committee under the chairmanship of Chief Kaizer Matanzima "to draft a constitution for independence." 92/ This followed a decision by the ruling Transkei National Independence Party that the Transkei should ask for independence within five years, provided that the land promised to the homeland would be granted within that period. 93/ "Subsequently the Transkei Legislative Assembly endorsed this decision and adopted a motion calling on the South African Government to grant full independence for the Transkei." 94/ The committee's terms of reference are: (1) to consider the financial implications of independence; (2) to establish the boundaries of an independent Transkei; (3) to consider the implications of independence on chieftainship; and (4) to consider the possibility of amalgamation with the Ciskei. 95/ The committee will also investigate the international relations between the Transkei and the Republic of South Africa. Chief Matanzima as Chief Minister was reported to have asked the South African Government to make available officials to serve the committee in an advisory capacity.

116. It has been pointed out that this decision of the Transkei appears to renege on the gentleman's agreement reached among the homeland leaders at a black summit held in Umtata during 1973 that none would negotiate for independence without the co-operation of the others. 96/ A query has also been raised about the present legislation that gives both South Africa and the Transkei jurisdiction over the Xhosa people in both areas; once the Transkei becomes independent the question will arise who has sovereignty over the citizens of the Transkei living and working in South Africa. 97/

117. Negotiations by a "works" committee and a "joint Cabinet committee" of Transkei and South African representatives were announced in Parliament by the Prime Minister during September 1974. 98/ With the Transkei functioning under limited self-government to the extent of controlling finances (with South Africa still financing about 81 per cent of the budget), justice, education, agriculture and forestry, roads and works, and health and hospital services, it was considered likely that negotiations would centre on the matters that are still South African controlled, namely defence, external affairs, railways, internal security, postal services, immigration, currency, banking, customs and excise, information, and the Transkei Constitution itself. 99/

92/ Rand Daily Mail, 29 March 1974.

93/ Rand Daily Mail, 26 March 1974.

94/ Chief Kaizer Matanzima rejected an amendment to the motion by the leader of the Opposition, Mr. Knowledge Guzana, to the effect that the electorate should be consulted by referendum before these negotiations took place.

95/ Rand Daily Mail, 29 March 1974.

96/ Financial Mail, 24 May 1974, p. 743.

97/ Ibid.

98/ Financial Mail, 13 September 1974, p. 1022.

99/ Ibid.

Demands for powers against "subversion"

118. The written evidence handed in by Mr. Brooks stated that the Ministers of Justice of two homelands (Transkei and Ciskei) have called on the South African Government to grant them powers for combating subversion without consulting the central government. Mr. Myakaza, Minister of Justice for the Transkei, wants powers of detention without trial (South African Information Service, July-December 1973, cols. 276, 279).

Conflict with white officials

119. A commission of inquiry into the employment and grading of Lebowa civil servants and into the human relations between black and white officials tabled its report in April. According to the Star, the commission questioned 532 African civil servants and found that: 19 had been assaulted by white seconded officials; 124 said they had had "serious quarrels" with seconded officials; 231 of 759 resignations in all grades of the service were because of "ill-treatment by whites"; more than one third said that relations with white seconded officials were bad; three quarters said that whites were not preparing blacks to take over white jobs; only one quarter had received training while in the service. 100/

Budgetary dependence

120. From information before the Working Group, during the financial year 1973/74 the amount spent on the homelands by the South African Bantu Trust was R100,656,936. This sum did not include funds made available via Bantu authorities nor expenditure by various government departments from the revenue vote. 101/

121. The Transkei budget for 1974/75 is R73 million, of which R58 million will be in the shape of a subsidy from the South African Government. Mr. Knowledge Guzana, leader of the Opposition in the Transkei, said: "If we can raise only one sixth of our budget, how can we look at independence seriously? We will keep alive, as long as the South African Government pumps money in. If it stops we'll die." 102/ KwaZulu's budget is financed to the amount of 77 per cent; 103/ the Ciskei will receive R17,222,000 in financial aid in the year 1974/75. 104/ This inability of any homeland to meet its recurrent budgetary expenditure from revenue raised internally, and thus the financial dependence of the homelands, is implicit in nationalist economic thinking, according to a recent study. The policy is that the homelands' public expenditure will be financed by fixed statutory grants from South Africa; to these grants will be added additional yearly grants depending on the needs of each territory and the ability of South Africa to afford the grant. At present 75 per cent of homeland budgetary revenue is voted by the South African Parliament. 105/

100/ Star, 20 April 1974.

101/ House of Assembly Debates, 1, 5 February 1974, col. 1.

102/ Financial Mail, 24 May 1974.

103/ X-Ray, vol. 4, No. 5, February 1974.

104/ Star, 14 March 1974.

105/ G.G. Maasdorp, "Economic Development of the Homelands", South African Institute of Race Relations, May 1974, p. 7.

122. Chief Mangope of the Bophuthatswana homeland has called for a development grant of R12 million a year for 20 years from the South African Government "as compensation for the Tswana contribution to the country's economy". 106/

123. Towards the end of 1973 the Minister of Bantu Administration, Mr. M.C. Botha, announced the creation of a new post of Director of Homeland Affairs as from 1 December. Mr. C.J. Grobler, the then Deputy Secretary of Community Affairs, was appointed to fill the post, which would co-ordinate activities in the homelands. 107/

(d) Economic development

124. Mr. Nozwane (RT.167) said that the bantustans could not be sovereign independent States because they were economically tied to South Africa. South Africa could in turn not afford to let the bantustans develop to the point where their manpower would no longer flow to the "white" areas. Industry built or projected was being established not in the bantustans but in areas to which workers from the bantustans had to travel. The companies in the border areas might have black managers, but they were not under black control. The companies were also subsidiaries of South African companies, and they could not supply sources of development for the bantustan areas themselves.

125. Port St. John's in the Transkei would take a considerable amount of capital to develop into a port for the Transkei. In the case of KwaZulu, there was considerable doubt that the Government would ever hand over Richard's Bay. This left the homelands virtually land-locked.

126. Mr. Leballo (RT.169) stressed that the bantustan policy was unworkable, inter alia, as a means towards independence because the land allocated could not support the population. Evidence placed before the Working Group in the documentation of the International Defence and Aid Fund showed that Government agricultural policy for the homelands outlined by the Deputy Minister of Bantu Development in July 1973 indicated important revisions both of present policy and of the perspectives of the 1955 Tomlinson Commission, which prepared the blueprint for homeland policy development. According to the revised policy, land ownership is to become invested in the homeland governments (the Tomlinson Commission had envisaged freehold tenure); the concept of white agency participation is to be extended from the industrial sphere to agriculture, in relation to certain crops classified as industrial commodities, e.g. sugar, cotton and sisal; and the uneconomic small farmer was to be eradicated. The intention would be to reduce the present number of 500,000 small farmers in the homelands to 50,000, or at least to 100,000. "Excess" farmers would be persuaded to settle in the new townships in the homelands (see sect. D below), and selected farmers only would be allowed to lease viable land from their government. The South African Sugar Association was quick to take advantage of the new policy with regard to white agency participation in agriculture: it formed a Division of Bantu Affairs to work with government agencies and homeland leaders to bring 5,000 hectares of homeland land under sugar cane production, rising to 20,000 hectares later. A newly formed agricultural section of the Bantu Investment Corporation was also holding exploratory talks with private sector interests in the cotton industry. 108/

106/ Rand Daily Mail, 12 July 1973.

107/ Rand Daily Mail, 19 December 1973.

108/ SAIS, July-December 1973, cols. 273-274; also Financial Gazette, 20 July 1973.

127. According to information received by the Working Group, it appears that in general, the picture of the homelands is one of subsistence farming, with little production of cash crops for the market, a small proportion of commercial livestock sales, inefficient methods, low yields compared with white agriculture, overstocking of the land leading to serious soil erosion and declining land productivity, and increasing population pressure. 109/ In the 1960s there had been an unfavourable change in the relationship between homeland population growth and border area and homeland industrial growth. It was expected that foreseeable employment creation would fall far short of the numbers resettled in the homelands. 110/ The potential economic viability of the homelands was open to serious doubt. If viability was regarded as the ability to fund recurrent budgetary requirements and provide their populations with an above-subsistence standard of living, the picture was described as "bleak". It was further aggravated by population removals. 111/

128. The Working Group has available to it official statistics provided on aspects on economic development in the bantustans. The amounts provided in estimates of expenditure for homeland governments for the financial year 1973/74 were given in the House of Assembly in October 1974 as follows: 112/

| | <u>Rand</u> |
|-----------------|-------------|
| Transkei | 55,980,000 |
| Ciskei | 17,163,500 |
| Bophuthatswana | 22,080,250 |
| Lebowa | 22,670,000 |
| Venda | 7,570,750 |
| Gazankula | 8,177,840 |
| KwaZulu | 47,699,000 |
| Basotho-Qwaqwa | 2,867,200 |
| Ovambo | 5,740,610 |
| Kavango | 2,853,500 |
| Eastern Caprivi | 1,811,975 |

109/ G.G. Maasdorp, "Economic development strategy in the African homelands: the role of agriculture and industry", paper given at the 44th Council meeting of the South African Institute of Race Relations, May 1974, p. 12.

110/ Ibid., p. 24.

111/ Ibid., p. 29.

112/ House of Assembly Debates, 4 October 1974, col. 647.

Estimates by the South African Bantu Trust were:

| | <u>Rand</u> |
|-------------------|-------------|
| Republic | 97,480,000 |
| South West Africa | 13,505,000 |
| Caprivi | 1,355,000 |

The Bantu Investment Corporation, a government-created body which controls economic development in six homelands (not including the Transkei and Ciskei, for which see below) invested R11,304,000 during the fiscal year ending March 1973. Private capital in the bantustans for that year totalled R4,556,000. 113/ For the first time in recent years, the Government provided detailed statistics on production in the agricultural, mining and industrial production sectors of the various bantustans. These statistics show that combined production in the homelands had increased over the years as indicated below: 114/

| <u>Sector</u> | <u>Amount of production</u> (in million rands) | | <u>Increase</u> (percentage) |
|-------------------------------------|---|------|---------------------------------|
| Agricultural (pastoral and crop) | 1968: | 16.7 | 90.0 |
| | 1972: | 31.7 | |
| Mining | 1966: | 32.0 | 97.0 |
| | 1970: | 63.1 | |
| Industrial | 1966: | 8.8 | 34.8 |
| | 1970: | 11.9 | |

While the figures supplied by the Minister show an increase in production in the majority of the bantustans, they also show that in a number of bantustans production actually fell, as noted below: 115/

| | <u>Year</u> | <u>Value</u> (rand) | <u>Decrease</u> (percentage) |
|---------------------|-------------|------------------------|---------------------------------|
| <u>Vendaland</u> | | | |
| Crop production and | 1968 | 1,570,602 | 80 |
| pastoral production | 1972 | 304,618 | |
| <u>Gazankulu</u> | | | |
| Crop production | 1968 | 331,448 | 14.5 |
| | 1972 | 283,380 | |
| <u>Transkei</u> | | | |
| Pastoral production | 1968 | 752,393 | 30 |
| | 1972 | 525,838 | |

113/ House of Assembly Debates, 8 February 1974, cols. 35-36.

114/ House of Assembly Debates, 18 February 1974, cols. 114-116.

115/ House of Assembly Debates, 18 February 1974, cols. 114-116.

129. Nevertheless the increase in production must be taken in relation to the vast increase in population in the reserves, as a result of the "endorsement" and removal policy of the South African Government.

130. There are 3.5 million cattle in the homelands. During 1973 only 41,000 were sold, earning less than R5 million for their African owners. Barriers to cattle farming include the operation of monopolistic rings which white buyers have formed to dictate prices at homeland cattle auctions. 116/ The Bantu Investment Corporation was reported to be introducing an "intervention price" aimed at reducing the effects of these dealer rings. 117/

(e) Employment opportunities

131. According to information available to the Working Group, the large flows of migrant labour from the homelands are indicative of the extent to which these areas are unable to provide job opportunities for their residents. It has been estimated that some 630,000 African males aged between 15 and 64 are migrants employed in "white" areas; this represents over one third of the working-age men normally resident in the homelands. 118/ Figures were disclosed in Parliament of the amount spent in various homelands on the creation of employment opportunities: 119/

| <u>Homeland</u> | <u>Amount spent</u> (rand) | <u>Job opportunities</u> |
|-----------------|-------------------------------|--------------------------|
| Bophuthatswana | 4,888,000 | 2,293 |
| KwaZulu | 4,415,000 | 597 |
| Basotho Qwaqwa | 116,100 | 46 |
| Lebowa | 1,144,800 | 432 |
| Venda | 211,200 | 70 |
| Gazankulu | 523,600 | 119 |
| Swazi | 121,500 | 136 |
| Transkei | 4,874,000 | 615 <u>120/</u> |
| Ciskei | 592,000 | 638 |

132. For the Transkei, Chief Kaizer Matanzima estimated a gap of 57,508 employment openings between the number of entrants to the labour market and the number of those seeking work. 121/

116/ Financial Mail, 23 November 1974, pp. 809-

117/ Financial Gazette, 18 January 1974.

118/ G.G. Maasdorp, "Economic development of the homelands", South African Institute of Race Relations, May 1974, p. 7.

119/ House of Assembly Debates, 8 February 1974, cols. 35-36.

120/ In the case of the Transkei and Ciskei, the expenditure was incurred by the Xhosa Development Corporation.

121/ Debates of Transkei Legislative Assembly, 1973, pp. 165-171, reported in Survey of Race Relations, 1973, pp. 180-181.

133. The creation of employment opportunities in the homelands is closely bound up with the government policy of decentralization of industry under which (white) industry would be encouraged towards so-called border areas within commuting distance of, but not necessarily inside, a homeland. The effect of the first decade (1960-1970) of the decentralization policy has been to increase the proportion of manufacturing employment in border areas and in homelands from 11.8 per cent to 12.8 per cent, an increase of a mere 1 per cent. It had been calculated that industries employing 16,000 Africans could decentralize each year, but decentralization could not keep up with homelands job creation requirements.^{122/} According to figures issued by the Managing Director of the Bantu Investment Corporation, the short-term outlook for new industrial investment in the border areas and homelands appeared bleak. The statement said that about 60,000 employment opportunities needed to be created annually; this required annual capital investments for the homelands costing R160 million, with about half that amount contributed by private investors. Nothing near this level of investment has been attained so far. ^{123/}

(f) Foreign investment

134. As indicated in the previous report of the Working Group (E/CN.4/1135, para. 86), there were indications during 1973 that foreign financial investment would be permitted in the homelands, subject to South African Government approval. The Bantu Law Amendment Act No. 7 of 1973 accordingly contained provisions permitting homeland governments to raise loans, in consultation with the Minister of Finance for the Republic and on such conditions as the Minister might determine (E/CN.4/1135, para. 66(b)).

135. It was disclosed in mid 1974 that "around twelve" foreign investors had put R7.25 million into the homelands over a period of four years. The Bantu Investment Corporation had acted as agent and had matched the investment figure with a further R6 million. The investment had all been carried out through the BIC, run by a white board. The details are as follows: ^{124/}

^{122/} Financial Mail, 18 January 1974, pp. 165-166.

^{123/} Financial Mail, 10 May 1974, statement by Dr. Adendorff, managing director, BIC.

^{124/} Financial Mail, 12 July 1974, pp. 123-125. For further details of foreign investment in the bantustans, see SAIS, July-December 1973, col. 273; Star, 15 September 1973; Financial Mail, 24 August 1973; Financial Gazette, 19 October 1973.

Homelands foreign investors

| <u>Local company</u> | <u>Plant</u> | <u>Investor (not necessarily direct)</u> |
|-------------------------------------|---------------------------|---|
| Vereeniging Cons. Mills | Thaba'nchu (planned) | Western Group, Canada |
| SA General Electric | Babalegi (in progress) | Gen. Electric, United States |
| Nat. Brushware Pty. | Babalegi | Bissel Inc., United States; AG Asus, Switzerland |
| Sthn Confectionery Pty. | Babalegi | Private United Kingdom shareholders |
| Supersonic Radio and TV Co. Pty. | Seshego | ITT, New York; and Standa Telephones and Cables, London |
| Bus Bodies Letaba Pty. | Letaba | British Steel Corp. |
| Peter Hartmann SA Pty. | Sithebe | Hartmann AG, Zurich |
| Sectional Poles Africa Pty. | Babalegi | AEG Telefunken, Germany |
| Pumalanaga Sawmills Pty. | Sibasa | East Asiatic Co., Copenhagen |
| Bulwer Timbers Pty. | Bulwer | East Asiatic Co. |
| Chalwyn Sales | Sithebe | Private United Kingdom shareholders |
| Mattilix 1959 Pty. | Sithebe | Private United Kingdom shareholders |

(g) Poverty

136. From evidence available to the Working Group, studies continue to show that there is widespread poverty and misery in the homelands. In the Transkei and the Ciskei, 88 per cent of households were considered to have an income below the local poverty datum line. The figure for the Umlazi urban area was 50 to 55 per cent. Acute poverty with high rates of malnutrition and infant mortality were encountered in the Ngutu, Waschbank and Umbumbulu areas of KwaZulu, as well as in the other homelands. ^{125/} Dr. Trudi Thomas said there were thousands of undernourished in the Ciskei, starved physically and starved emotionally. Widespread poverty and destitution, unemployment, childhood malnutrition, illegitimacy and desertion are some of the norms of rural Ciskeian society, she said. The solution was to provide employment and living wages

^{125/} G.G. Maasdorp, "Economic development of the homelands", South African Institute of Race Relations, May 1974, p. 9. See also Financial Mail, 18 January 1974, p. 166.

which did not separate family members. 126/ A sociologist found in a survey of the cash incomes of 150 families that an average family of seven members had to make do on less than R10 a month, with supplements from crops and cattle. She had calculated the local poverty datum line 127/ to be about R85 a month. 128/ In the Xura location near Lusikisiki in the Transkei, more than 500 people had no water and were being forced to buy it for up to R2.50 a drum. The only water borehole in the area was not functioning and women were having to walk a distance of eight kilometres to draw water from the nearest river. 129/

(h) Health and medical facilities

137. From the evidence received by the Group there is a complete lack of public health and hygiene facilities in the homelands. For example, the latrines are primitive, there is no underground system and water supply is at a minimum and inadequate and there is no lighting. It was announced that as from 1 April 1973, the Department of Bantu Development would begin a gradual takeover of all mission hospitals prior to handing over control and financing to the homeland governments. The process would take place over a period of years, beginning in the Transkei, where a Department of Health had been created. There were 21 mission hospitals in that territory. 130/ Hospitals in Umtata and Butterworth were being divided into white sections falling under the Department of Health and African sections controlled by the Transkei government.

138. The documentation handed in by Mr. Brooks (Southern Africa Information Service of the International Defence and Aid Fund, col. 277) provided evidence of continuing conflict between the Republic and homeland government in this area, however. Mr. A.N. Jonas, Transkei Minister of Health, appointed Dr. Charles Bikitsha, a black South African doctor, who has worked in Britain since 1939, as medical superintendent of Butterworth hospital, only to find himself overruled by the Department of Health in Pretoria, which appointed Dr. R.E. Joynt, a white doctor, as superintendent of the white section of the hospital. On 1 August 1973, Dr. Joynt had taken up his post and Dr. Bikitsha was still in London awaiting a visa to travel to South Africa. In a compromise, described by the press as a "climb-down" by the Transkei government, a white doctor became "interim superintendent" until the hospital could be divided into black and white sections.

139. The following statistics were furnished by the Deputy Minister of Bantu Development in reply to questions in the Assembly. 131/

126/ "Their doctor speaks", Rand Daily Mail, 29 June 1974.

127/ A calculation based on subsistence needs - food, fuel and clothing, but not including shelter, and therefore a low minimum level which is frequently questioned as inadequate by South African sociologists.

128/ Rand Daily Mail, 25 May 1974.

129/ Rand Daily Mail, 9 May 1974.

130/ Star, 27 and 28 March 1973. See also Survey of Race Relations 1973, pp. 350-351.

131/ House of Assembly Debates, Questions and Answers, 9 February 1973, col. 46.

Institutions operating in the homelands:

| | |
|-------------------------|--------|
| Mission hospitals | 93 |
| Other hospitals | 12 |
| Clinic centres | 543 |
| Number of hospital beds | 23,908 |

Medical and health personnel serving in the homelands:

| | <u>White</u> | <u>African</u> |
|------------------------|--------------|----------------|
| Medical practitioners | 45 | 9 |
| Nurses and midwives | 586 | 10,725 |
| Dentists | 4 | - |
| Chemists and druggists | 26 | 4 |
| Physiotherapists | 18 | 26 |
| Radiographers | 36 | 40 |
| Health inspectors | 26 | 11 |
| Health assistants | - | 72 |

(j) Education

140. According to figures disclosed in Parliament in February 1974, the following were the numbers of pupils enrolled and teachers employed by each of the homeland governments: 132/

| | <u>Pupils</u> | <u>Teachers</u> |
|----------------|---------------|-----------------|
| Ciskei | 192,881 | 3,617 |
| Bophuthatswana | 314,601 | 5,415 |
| Basotho Qwaqwa | 19,906 | 364 |
| Lebowa | 346,303 | 5,795 |
| Gazankulu | 94,623 | 1,441 |
| Venda | 88,157 | 1,534 |
| KwaZulu | 514,170 | 8,558 |
| Transkei | 478,326 | 8,452 |
| Total | 2,048,967 | 35,176 |

132/ House of Assembly Debates, 3, 22 February 1974, cols. 148.

141. Questioned on the extent of technical training institutions in the homelands, the Minister of Bantu Education said these fell under the jurisdiction of the various homeland governments. 133/ There were two technical schools in KwaZulu. In the Ciskei, proposals for a technical school had been approved and funds would be made available. For the Transkei there were plans for a technical college section at the existing technical school in Umtata. Technical schools were planned in Lebowa, Gazankulu, Venda, Basotho Qwaqwa and Bophuthatswana.

142. The number of agricultural advisers being trained in the homelands were: 134/

| | |
|----------------|-----|
| Lebowa | 140 |
| KwaZulu | 122 |
| Bophuthatswana | 86 |
| Transkei | 93 |

143. In this connexion attention is invited to paragraphs 94-95 of the Group's interim report as contained in document E/CN.4/1135 of 4 February 1974.

133/ House of Assembly Debates, 3, 22 February 1974, cols. 143-144.

134/ House of Assembly Debates, 2, 12 February 1974, col. 53.

D. CONDITIONS OF AFRICANS IN "TRANSIT CAMPS"

1. Background information

144. The historical background of "transit camps" or "resettlement villages" was outlined in a previous report of the Working Group (E/CN.4/1020/Add.2, paras. 65-105). It will be recalled that these are areas set aside within the homelands to receive Africans excluded from the "white" areas in accordance with the Government's policy of removing "superfluous Africans, i.e. Africans superfluous to labour needs. (The report of the Department of Bantu Administration and Development for 1971 once more confirmed this policy when it announced that "during the year more and more stress was laid on the settlement in the homelands of non-working Bantu from the White areas in the Republic".)

145. It was stated in the Working Group's 1974 interim report (E/CN.4/1135, para. 98) that those marked down for resettlement are: (a) Africans who have been ejected from the white farms, when too old or infirm to work; (b) Africans who have been cleared from the "black spots"; (c) landless African families from the reserves; (d) men, women and children "endorsed out" of the urban areas as unproductive; (e) wives and families of men serving prison sentences; and (f) former political prisoners, after serving their sentences. The previous year's interim report of the Working Group (E/CN.4/1135, para. 99) added to these categories a considerable proportion of those labour tenants and squatters turned off white farms in accordance with the Government's policy of abolishing the labour tenant system and converting farm work to a system of full-time labour. (For estimates of the extent of removals, see para. 103 above.) As stated in this report of the Working Group (E/CN.4/1135, para. 101), the resettlement schemes should also be seen in the context of the Government's expressed intention of eventually transforming all African labour in the "white" areas into migrant labour. This policy involves replacing workers living in white areas with their families with workers entering on annual contract only, leaving their families in a "homeland".

146. A massive programme of hostel building for single migrant workers in the industrial centres of the country, notably the Witwatersrand and Cape Town, is laying the basis for the institutionalized pattern of separating productive workers from their social base in the family.^{135/} Families deported to homelands where they have no home find themselves "resettled" under government schemes.

2. Summary of legislation in force

147. Previous reports have quoted the various laws authorizing the uprooting of Africans and their removal to resettlement areas, among them the Bantu (Urban Areas) Consolidation Act, 1945 (see E/CN.4/1050, paras. 160-162).

148. Also relevant is the Bantu Laws Amendment Act of 1964, which amended the Bantu Trust and Land Act, No. 18 of 1936, to provide for the abolition of labour tenants on white farms, and laid down one year as the basis of contract for migrant workers. The act also lays down a compulsory fortnight per year to be spent by every migrant worker in his "homeland".

^{135/} "Hostels for SA's urban workers", Africa Bureau Document, Paper 6, June 1973.

149. The Bantu Law Amendment Act No. 7 of 1973 (referred to in E/CN.4/1135, para. 66) contained provisions simplifying the procedure for the forced removal of African populations under the Bantu Administration Act of 1972).

3. Analysis of evidence received and available information

150. Several witnesses referred to the forcible removal of whole communities from areas declared "black spots"; to the fact that the victims of the removals were those considered to be redundant on the labour market; and to the plight of people dumped without services in the resettlement areas. Mr. Nokwe (RT. 163) for instance, referred to "the mass removal of Africans to dumping grounds like Dimbaza" as an aspect of "genocidal" activity by the racist régime.

151. Mr. Leballo (RT. 169) said the removal of Africans to bantustans was part of the policy of confining people to economically non-viable areas so they would submit to recruitment as cheap labour for the mines and industry. The policy was nothing new, but it was being intensified. He detailed several recent removals.

152. Mr. Sibeko (RT. 154) referred to the forcible removal of whole communities from traditional homes which have been arbitrarily declared "black spots" in the so-called white areas. He testified about the removal of 12,000 Africans from Doornkop, a rural area near Middelburg in the Eastern Transvaal, when armed police compelled people to resettle at Bothashoek in the Lebowa bantustan, several hundred miles from their old homes. Mr. Sibeko cited press reports dating from 27 June 1974, which described the removal, including photographs, submitted as exhibits, of women and children waiting to be moved from Doornkop by police and government trucks, and the scene in Bothashoek where they were dumped. Bulldozers had been used to level the homes of African families uprooted from Doornkop. Mr. Sibeko stressed that the victims of the removals were Africans considered obsolete on the labour front; old men and women, widows weighed down by family responsibilities, and orphans, the sick and the infirm.

153. Mr. Nozwane (RT. 167) told the Group he had seen "dumping grounds" in the Ciskei of people who had been removed to the homeland areas.

154. Mr. Smart (RT. 156) gave evidence on the concern felt by Amnesty International for the plight of people sent to the resettlement areas. The organization's terms of reference directed their interest to former political prisoners who had been banished to these areas after serving their sentences (cf. para. 70 above). The normal difficulties facing anyone in a resettlement area were poor living conditions, the lack of educational and medical facilities, and a high rate of unemployment which, together with the lack of good farming land, caused widespread poverty and malnutrition. These difficulties were compounded in the case of newly released and subsequently banished men who were liable to arrive in the resettlement area to find their families in a state already approaching destitution. He drew attention to the difficulties present in any attempt to communicate effectively with people in the resettlement areas, due in part to police surveillance. The witness cited a number of instances of ex-political prisoners sent to the resettlement areas.

155. According to a recent study of evictions, Uprooting a Nation, 136/ evictions from the rural areas constituted the bulk of mass removals. The Northern Transvaal, Northern Natal and the Western Cape are the areas most severely affected. The plans for the consolidation of the homelands will involve the moving of at least half a million people in Natal and the Transvaal from one rural area to another - many of them for the second time. Apart from extending the migrant labour system, the removals have the effect of transferring on to the newly created bantustan administration the problems of unemployment, overcrowding, poverty and resettlement, together with the resulting social problems created by the economic and political conditions determined by "white" South Africa.

156. Since the last report of the Working Group, the following removals have come to the notice of the group:

(a) On 5 September 1973 the village of Makopole Mampuru, near Groblersdal, was surrounded by South African police, who informed the people that they were being moved to a settlement in the Lebowa homeland, 40 miles away. The 2,000 villagers were transported to the Steelpoort River area of Sekhukhuniland in government lorries. 137/

(b) At the end of June 1974, 12,000 Bapedi were evicted from their farm in the Transvaal. 138/ Chief Moikangwa claimed that he had a deed to the land, which was given to the Bapedi chief in 1905, and refused to move; but the Chief Bantu Affairs Commissioner said that those who resisted would be handed over to the police. Police moved in and demolished homes, including that of Chief Albert Ramaube, who had to be removed by force.

(c) Also in June, families of the Banogeng tribe who owned land at Rietfontein in the Transvaal were moved to Bophuthatswana. Their chief said they had been given no chance to harvest their crops and that promised compensation had not been paid. 139/

(d) Fifty Tswana families were moved from three trust farms near Ventersdorp in July as part of a scheme to involve 800 families. They were resettled at Masebudule, 60 kilometres from Zeerust, Sekhukhuniland. A woman was quoted by a newspaper as saying "They put us in a bag like troublesome cats and we didn't know where we were going to be dumped." 140/

136/ Uprooting a Nation: The Study of Three Million Evictions in South Africa (London, Africa Publications Trust, March 1974). Following A Place Called Dimbaza, referred to in E/CN.4/1135, para. 105, this is the second publication in a series of studies on the mass removal of population in South Africa.

137/ Uprooting a Nation, p. 4; Rand Daily Mail, 8 September 1973.

138/ Financial Mail, 5 July 1974; The Times, 2 July 1974.

139/ Rand Daily Mail, 13-15 June 1974.

140/ Rand Daily Mail, 18 July 1974.

(e) A total of 110 families of 181 adults and approximately 545 children from an area called Riemvasmaak in the Western Cape, where they had been settled for some 60 years, have been moved variously to areas in the Ciskei and Damaraland in Namibia. They were people classified as "Bantu" in 1958 and were resettled from their original area because it was "an isolated black spot". During July 1973, 40 families were moved, 12 during December 1973, and 41 during February 1974. 141/

(f) The largest single population removal scheme to date is liable to involve 25,000 to 30,000 Africans in Grahamstown in the Eastern Cape, and 5,000 residents of the Fingo Village. The latter has been declared a Coloured group area, so that the Africans from the village, like the Grahamstown African population, will be removed to Committees Drift in the Ciskei, which is a settlement scheme planned for up to 200,000 people. According to the Deputy Minister of Bantu Administration, planning of Committees Drift had reached an advanced stage by the beginning of 1972 and would be finalized by 1973. A 1974 press report stated, though, that the Government appeared to have abandoned plans to establish an industrial area. The Xhosa Development Corporation had known of no industries that were to be sited in Committees Drift and had concluded it would be a resettlement township. 142/

157. One South African newspaper summarized the conditions from which and to which three of these groups have been removed, as follows: 143/

Removal and resettlement centres

BAPEDI (NORTH SOTHO)

Removed from:

Doornkop Farm near Middelburg. About 420 Bapedi families, some landowners and some tenants. Removal of Bapedis merely first phase. After Bapedis, Ndebele and Swazi tenants will follow. Total move will involve some 16,000 Africans. Move carried out in spite of Bapedi opposition.

Facilities available:

Arable land and freehold tenure.
Houses: Self-built. Some brick.
Latrines: Self-built, self-dug. Most enclosed, zinc, brick, mud.
Water: Dam.
Churches: Yes, self-built.
Clinic: No, but Middelburg 15 km. away.

Removed to:

Resettlement centres at Bothashoek Praktiseer (near Burgersfort) and Illogotlou (near Groblersdal). All in Lebowa.

Facilities provided:

Arable land: No, but possible ownership of small township plots.
Houses: Single-roomed corrugated iron huts and tents for bigger families.
Latrines: Zinc-enclosed pits with seats at Bothashoek and Praktiseer.
Bucket system at Illogotlou. Sewage disposal system breaking down under impact of numbers there.
Water: Communal taps.

141/ House of Assembly Debates, 4, 27 February 1974, col. 197. See also The Times, 14 January 1974.

142/ Financial Mail, 5 July 1974, pp. 21-22

143/ Rand Daily Mail, 29 July 1974.

Shops: Small cafes-cum-grocers.
Schools: Yes, but old.
(Compensation: Promised by Government.
People say they know nothing about it,
except what they have read in press.)

Churches: None at Bothashoek. Source of
grievance to Chief Seth Ramaube.
Shops: One small one at Bothashoek.
Bigger shops at Praktiseer and Illogotlou.
Clinics: One shared by Bothashoek and
Praktiseer. Before resettlement was
complete daily number of patients had
doubled (45 to 90). One near Illogotlou
but not officially responsible for that
area.
Schools: Two primary at Bothashoek. One
primary, one secondary at Praktiseer.
One primary at Illogotlou.
Rations: Yes. For three days. Mealie meal,
powderveg soup and milk.

TSWANAS

Removed from:

(a) Rietfontein Farm near Lichtenburg.
150 families of Banoneng tribe. Pretoria
says they moved voluntarily. Elected
leader Freddie Mosiane denies adamantly.
Supported by people.

Facilities available:

Arable land and freehold tenure for some.
Houses: Self-built. Some brick, some mud
and Dung. Quality varies.
Latrines: Self-built and self-dug.
Most enclosed.
Water: Wells.
Clinic: No.
Churches: Three
Shops: No. Shopping at Lichtenburg.
School: Yes, primary.

Removed from:

(b) Trust farms near Ventersdorp.
50 families moved already. Another 150
scheduled to be moved.

Facilities available:

Arable land: Yes.
Houses: Self-built. Varying quality.

Removed to:

(a) De Hoop between Lichtenburg and
Mafeking.

Facilities provided:

Arable land: Yes, but some already under
cultivation by earlier Banogeng "settlers".
Houses: Corrugated iron huts and tents.
Latrines: Zinc-enclosed pits, not seats.
Only put up after people moved in.
Water: Communal taps. Six for 150 families.
Flow weak. When one used, supply to
others diminished.
Churches: None, source of grievance.
Clinic: No.
Shop: One, very small.
School: Yes, primary. An improvement
(Compensation: Paid. People dissatisfied.
They say they were led to expect more.
Leader has called for inquiry into
amounts paid and method of payment.)
Rations: No.

Removed to:

Masebudule, 60 km from Zeerust. (No
public transport between two.)

Facilities provided:

Arable lands: No.
Housing: Tents only. People had to put
them up themselves. Problem for

Latrines: Self-built. Most enclosed with seats.

Clinic: No, but doctor at Indian township in Ventersdorp.

Churches: Yes.

Water: Dams.

(Compensation: People know nothing about it, but are hoping.)

families whose men were working in cities at time of move.

Latrines: None. Ground hard and stony.

Some families without shovels, picks.

Water: Share dams with people there already.

School: One, primary. Already used by Masebudule villagers. Three classrooms only.

Clinic: No. Zeerust nearest town.

Churches: Yes. There for original villagers.

Rations: No.

Economic conditions and employment opportunities

158. Lack of opportunities for local employment remains the most immediate economic problem for inhabitants of all the resettlement areas. The following statistics relating to employment in three resettlement townships have been compiled from information made available by the Minister of Bantu Administration and Development. 144/

| | <u>Ilinge</u> | <u>Sada</u> | <u>Dimbaza</u> |
|---|---------------|--------------|-----------------------------|
| Total population | 10,098 | 14,682 | 8,486 |
| Number of undertakings providing employment | 2 | 5 | 1 (and three being erected) |
| Number of employed: | | | |
| Males | 16 | 180 | 3 |
| Females | 245 | 704 | 30 |
| Range of wages: | | | |
| Males | R5.50-R30 pm | R5.50-R60 pm | R20 pm |
| Females | R4.50-R18 pm | R5.00-R50 pm | R20 pm |

159. In response to a question on the number of working population, the reply from the Minister was: "This information is not readily available and the inquiry which would have to be undertaken is deemed to be unjustified." To a question concerning the number of unemployed of employable age, the reply was "These particulars are no longer kept by my Department and are not readily available". 145/

160. The above information thus refers to newly created employment. In regard to Dimbaza it had previously been reported that 400 men were employed at wages averaging between £8 and £10 a month. 146/

144/ House of Assembly Debates, 27 February 1974, cols. 193-195.

145/ House of Assembly Debates, 27 February 1974, cols. 193-195.

146/ A Place Called Dimbaza (Africa Publications Trust, 1973), p. 8.

161. A previous report (E/CN.4/1111, para. 126) recorded the rations available to "indigent persons". In the Dimbaza resettlement camp in the Ciskei homeland hundreds of people did not receive their ration entitlement for October 1973 and were left desperate for food. ^{147/} It was later reported that the withdrawal of rations had been due to "an administrative misunderstanding". ^{148/} By then rations had been restored to only a minority of the families whose supplies had been stopped. ^{149/} According to the Minister of Bantu Development, food rations had been supplied to 2,099 persons in July 1973, but after this date supplies were discontinued to 781 because of "various reasons such as a person qualifies for a pension under one of the statutory pension schemes, is placed in employment, or leaves the area". Persons whose rations were stopped could reapply. The rations, said the Minister, were not determined "in relation to monetary value". The ration scale had been determined after consultation with the Department of Health, and the Minister claimed it complied with World Health Organization standards.

Health

162. Mr. Sibeko (RT.154) said that in the instance of the removal of people from Doornkop, near Middelburg in the Eastern Transvaal, to the Lebowa bantustan, no facilities had been provided for basic human requirements such as sanitation, water, the purchase of goods and health facilities. The result was the high rate of kwashiorkor and other malnutrition diseases in the bantustans. And an anonymous witness (365th meeting) added: "In these camps you would be shocked to see the type of food I don't think even pigs would be able to eat such food!"

^{147/} X-Ray, January 1974, p.2.

^{148/} Rand Daily Mail, 9 November 1973.

^{149/} House of Assembly Debates, 22 February 1974, col. 135.

E. FURTHER INVESTIGATION OF GRAVE MANIFESTATIONS OF APARTHEID PRESENT
IN THE SITUATION PREVAILING IN THE REPUBLIC OF SOUTH AFRICA

163. It will be recalled that, in accordance with resolution 2 (XXIV) of the Commission on Human Rights, the Ad Hoc Working Group of Experts submitted to the Commission at its twenty-fifth session a report (E/CN.4/984/Add.18) on the question whether the situation prevailing in the Republic of South Africa revealed elements of the crime of genocide as defined in the 1948 Convention on the subject.

164. The Working Group has continued in its reports (E/CN.4/1020/Add.2, paras. 106-158; E/CN.4/1050, paras. 184-210; and E/CN.4/1111, paras. 128-146) to assemble information on grave manifestations of apartheid and to consider whether or not the situation in the Republic of South Africa contains elements of the crime of genocide.

165. The testimony received by the Group during its 1974 hearings contained further evidence on grave manifestations of apartheid, especially in relation to the migrant labour system, which destroys family life, removes the worker's dignity as a human being, keeps wages at poverty level and discards the weak, the sick and the old as "unproductive labour units" (see sections C and D above). Other information under this heading included evidence on new threats to civil liberties, including freedom of expression, on the suppression of opposition to apartheid, and education, health and other social matters.

166. Discussion on evidence of elements of the crime of genocide centred on the analysis of apartheid as designed systematically to maintain the labour force in a state of poverty, that is, to keep the labour supply plentiful and cheap. Mr. Nokwe in his testimony (RT. 163) stated that in South Africa an average of 400 in every 1,000 babies die before reaching the age of one year, which he described as a "most effective method of genocide without gas chambers"; and he drew attention also to the resettlement schemes where "ragged, hungry-looking children or bent old women sit outside waiting for death" because they are classified as "unproductive elements".

167. All these factors coupled with the testimony referred to in the succeeding paragraphs reveal basic elements of the crime of genocide as defined in the 1948 Convention on Genocide and the Convention on the Suppression and Punishment of the Crime of Apartheid.

168. In the opinion of Mr. Albie Sachs (RT. 156) features of South Africa's official policies correspond to the definitions of genocide. He cited the deportation of whole populations; the denial of rights to certain population groups; and the factors of poverty, disease and early death. But he did not think that the aim of apartheid could be seen as extermination: "the main objective of apartheid is not to kill off the black people of South Africa but to keep them alive to maintain them as a working population to service the economy". He felt that forced labour rather than genocide could be seen as essential to the apartheid system; though in so far as those who did not contribute to the economy were sent to their deaths in rural slums, elements of genocide could certainly be shown to be present.

169. Mr. Joel Carlson (RT. 174 (II)) found the migrant labour system "worse than slavery; at least a slave was regarded as an asset and was preserved, but a migrant labourer is not regarded as an asset; when he get sick he is simply dismissed and replaced by somebody else". He called this the "theoretically most perfect system of labour exploitation yet devised".

170. This theme of people being regarded as less than human, as units of production, mere numbers in a register was constantly referred to in testimony. An anonymous witness (365th meeting) for instance stressed the denial of humanity in a system which treats people as "labour units". He described how an official may be unable to understand a worker's name and arbitrarily call him by another which duly goes down in the court register and "that is how hundreds and hundreds of people have lost their background with their parents, wife and children".

171. Many witnesses raised the point that, contrary to certain efforts by the South African Government to present itself abroad as modifying apartheid, apartheid in recent years has in fact been intensified. Mr. Sachs (RT. 156) identified a trend towards "modernizing" apartheid, that is "maintaining white supremacy in a more modern, a more systematic and a more efficient form", so that in fact "controls in relation to the economy, in relation to security, have been intensified rather than reduced". And Mr. John Ennals (RT. 157) expressed the opinion that "at this stage apartheid is probably more deeply entrenched than ever before". He pointed out also that the rapid expansion of foreign investments in South Africa (cf. also written testimony, "The role of Western investment and the apartheid environment", handed in on behalf of the Anti-Apartheid Movement) "not only strengthens apartheid but increases the number of people who benefit from it".

172. As in previous years, witnesses once more made reference to racial discrimination in the fields of health, education and homes (Group Areas Act provisions, etc.). Mr. Hirson (RT. 150) talked of the strict racial segregation in higher education and the rigid control over students maintained in the black colleges which are exclusively white-controlled; and also of the racialism in the substance (e.g. the history textbooks) of the teaching material in both black and white schools. Mr. Adebe (RT. 175) said that the education offered to an African leaves him with "his mind distorted"; it is "an education that makes you remain half a man, a fourth-grade human being under the South African system". The syllabus for "Bantu education" is created by white people and has, he pointed out, now been "mentally destroying" the black man for 20 years (i.e., since the implementation in 1954 of the 1953 Bantu Education Act).

173. Mr. Sibeko (RT. 154) drew the attention of the Working Group to the assassination of the national organizer of SASO, Mr. Abraham Tiro, while in exile in Botswana. He was killed by a bomb "mailed by South African agents of BOSS", according to the witness. Mr. Tiro had been active in student politics since 1972, when he was expelled from the University of the North. He was again expelled from a teaching post in Soweto High School in 1973, when he became a full-time SASO organizer. He fled with four colleagues after the SASO bannings in September 1973 and was due to preside over the Second National Conference of the black South African Students' Union in Gabarone in June. 150/

174. Further information is available to the Working Group on the suppression of student protest in the "white" and "black" universities. Following the disturbances at the "Coloured" University of the Western Cape described in the preceding report (E/CN.4/1135, paras. 119-124), the Van Wyk Commission issued its report in March 1974.

It found no grounds for student grievances except in relation to the university's lack of autonomy and the discriminatory salaries paid to Coloured staff; it recommended that all disruption of classes, interference with staff, incitement of disruption or any other action aimed at disrupting the normal functioning of the university be made illegal. 151/

175. Resulting from what has been stated above, "many" students expelled from Fort Hare (tribal) University in August 1973 were readmitted in 1974 but had to repeat their 1973 courses; 152/ five students were expelled from the Rand College of Education in February 1974. 153/ Eleven students were arrested and more had their names taken in Johannesburg while distributing pamphlets at the start of the NUSAS campaign for the release of all South African political prisoners in May. 154/ Police also raided the offices of the SRC of the University of the Witwatersrand. 155/

176. Figures published in the International Defence and Aid Fund's Southern Africa Information Service (SAIS), July-December 1973, handed in as written evidence, indicate once more the racial discrimination behind South Africa's approach to education. A Labour Party spokesman produced the following sums for the school book allowance per pupil in 1970: R6.30 per white pupil, R2.40 per Coloured pupil, and 40c per African pupil. 156/

177. Mr. Carlson offered some statistics on health in South Africa to highlight the stark facts behind racialism in practice (RT. 174 (II)). He said that in some areas of the Bantu homelands 50 per cent of the children died before they reach the age of 10, and that in general the death rate among African children is 25 times that amongst whites; that tuberculosis is ten times as common among Africans as whites and is increasing; and that whites have one doctor for every 455 people - one of the highest doctor-patient ratios in the world - while blacks have one doctor to 18,000 of population, or only one to 100,000 if black doctors alone are counted, as fewer than 12 of these qualify every year.

178. That these discrepancies in the health conditions of black and white are institutionalized by official policy is illustrated by further information made available to the Working Group. It is the Transvaal Hospital Department's policy to provide: 5 beds for every 1,000 white population; 4 beds for every 1,000 Coloured population; 4 beds for every 1,000 Asian population; and 3 beds for every 1,000 African population. 157/ Ten African hospitals in the Transvaal are so overcrowded that up to 96 per cent of patients sleep on the floor or in makeshift beds. 158/

151/ Cape Times, 1 March 1974.

152/ Cape Times, 6 February 1974.

153/ Rand Daily Mail, 23 February 1974.

154/ Rand Daily Mail, 7 May 1974, 29 May 1974.

155/ Cape Times, 31 May 1974.

156/ Cape Times, 11 August 1973.

157/ Rand Daily Mail, 23 May 1974.

158/ Cape Times, 25 June 1974.

179. Mr. Sibeko (RT. 154) drew the attention of the Group to the "cold-blooded killing of normal family life" among Africans living in urban areas, as they are progressively classified as "migratory labour" and their families systematically expelled. He cited (quoting from a report in the Rand Daily Mail, 26 June 1974) the example of a family of seven children expelled first from their home in Soweto, then from a one-roomed house in Alexandra township. The husband and wife were offered separate accommodation in single-sex hostels, but no solution was offered for the children.

180. Mr. Sibeko also stated that the Group Areas Policy was forcing out of their homes in Alexandra many Africans who had invested their life's savings in a property which they hoped would provide home or income for their old age. They were now faced with a future awaiting "death and a pauper's funeral" in a bantustan.

181. According to further information available to the Working Group, the total number of families (a) disqualified under the Act from occupying their previous homes, and (b) resettled in Group Areas, up to 31 December 1973, was as follows: 159/

| | <u>White</u> | <u>Coloured</u> | <u>Indian</u> | <u>Chinese</u> |
|--------------|--------------|-----------------|---------------|----------------|
| Disqualified | 1,648 | 73,758 | 38,678 | 1,233 |
| Resettled | 1,549 | 49,145 | 29,230 | 71 |

182. An anonymous witness (365th meeting) drew attention to the operation of the laws on residence that prevent husbands and wives from living together if they do not belong to the same "ethnic grouping", which he said even affect Africans from different "tribal" groupings. Further information before the Group shows in addition that during 1973, 493 persons were prosecuted and 304 convicted under the Immorality Act prohibiting sexual intercourse between black and white. 160/

183. Testimony and information drew the attention of the Group to further restrictions on the freedoms of expression, assembly and protest. As evidence of "additions to the complex legal web of repression and racial discrimination in South Africa", Mr. Niall MacDermot (RT. 187) drew attention to two new repressive laws passed in the period under review - the Affected Organizations Act, No. 1 of 1974, and the Riotous Assemblies (Amendment) Act, No. 30 of 1974 - and to the civil liberties implications of a case currently before the South African courts in which a former Minister of Justice is suing a private citizen for "defamation" following publication of a newspaper article attacking Government policy on the subject of capital punishment.

184. The Affected Organizations Act prohibits any organization named by the Minister of Justice as "affected" from receiving any financial assistance from abroad - penalties for offences being fines up to R10,000 or five years or both for a first offence, double for subsequent offences. Mr. MacDermot stated that the organizations apparently threatened were those under investigation by the Schlebusch Commission on Internal Security, such as the Christian Institute, the South African Institute of Race Relations, and the National Union of South African Students,

159/ House of Assembly Debates, 18 February 1974, col. 104.

160/ House of Assembly Debates, 15 February 1974, cols. 89-90.

all of which have depended to a large extent upon foreign support. According to the International Commission of Jurists, "virtually any organization of which the Government disapproves can be declared 'affected'"; and Mr. MacDermot saw the Act as primarily aimed at inhibiting the free flow of ideas. (RT. 187)

185. The Riotous Assemblies (Amendment) Act gives further powers to magistrates and police to ban gatherings and prohibit particular persons from attending a meeting; and extends the definition of a gathering to include a meeting of only two or more persons held in public or in private. This power was used to ban demonstrations throughout the country during the state visit of the Paraguayan dictator, Alfredo Stroessner, in April 1974. Mr. MacDermot said that this law too was "quite clearly" another weapon in the campaign to reduce to impotence the few lawful bodies that remain opposing apartheid within the country.

186. On the case *Pelser v. South African Associated Newspapers and van Niekerk*, Mr. MacDermot handed in a written report by the American lawyer William J. Church, who had been sent to observe the trial by the International Commission of Jurists and the United States Lawyers Committee for Civil Rights under the Law. The case arises from a newspaper article by Professor Barend van Niekerk, an established opponent of capital punishment and critic of apartheid, commenting on the Government's grant of a reprieve to only one (white) of two men (the other of whom was black) sentenced to death for a murder (see para. 44 above). The Minister of Justice at the time of the reprieve, Mr. Petrus C. Pelser, brought a civil action for defamation, although no persons, only the Government as a whole, had been criticized, and the principle is recognized in South African law that "the State cannot sue for defamation" (document by William J. Church, p.7). Mr. Church concludes that the purpose of the current case, although it appears to be a private civil action, is in fact to subvert the principle that the State cannot be defamed (ibid., p.8), and that "the Government is in fact seeking protection from criticism (ibid., p.13).

187. According to further information available to the Working Group, a bill introduced to Parliament in September 1974 constitutes another threat to free expression. This is the Defence Amendment Bill, apparently drafted in response to a resolution adopted by the South African Council of Churches sanctioning conscientious objection, which makes it a crime punishable by up to ten years' imprisonment for a churchman to counsel conscientious objection to a member of his congregation or to preach on the subject. 161/

188. The International Defence and Aid Fund Southern Africa Information Service, July-December 1973, handed in as written evidence by Mr. Brooks, reported on a projected Publications and Entertainments Bill, to extend the existing censorship of books, films, etc. A Commission of Inquiry of 13 had been appointed in July 1973 under the Deputy Minister of the Interior, following criticisms of "ineptitude" and

161/ Report of the Special Committee on Apartheid (Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 22 (A/9622), annex I, p.19).

"inconsistency" in the working of the Publications Control Board by a Select Committee. The evidence given to the Select Committee was published in September 1973, after which the Government banned publication of the Select Committee's report, "or any attempt to influence the Commission". The Chairman of the Commission has defended the work of the Board and urged an extension of censorship. 162/

189. During 1973 the Publications Control Board prohibited 855 publications and 34 other objects, including films. 163/

190. According to information before the Working Group, bannings under the Suppression of Communism Act continued, as in previous years, to be used against a number of opponents of apartheid. Figures from the Department of Justice show that on 30 June 1974, 186 people were banned under the Act, 31 of them white. 164/

191. A paper prepared by the South African Institute of Race Relations and published during the period under review 165/ gave a total for those listed since 1951 as named "Communists" under the Act as 459: 188 of them white, 43 Coloured, 57 Asian and 171 African. Of these, 132 were also subject to banning orders. The total number of persons banned up to the end of April 1974 appeared to be 1,240: 139 white, 84 Coloured, 104 Asian, 913 African. "At least" 98 of these notices have been renewed once, 35 twice, 13 three times and 7 four times or more. The author notes a steady increase since 1966 in two-year orders, usually served on persons completing "fairly minor sentences" under security laws. In addition, "at least 52" five-year orders have been served on ex-prisoners convicted of more serious offences (see paras. 71 and 72 above). The author's total for current orders was 206. She could produce no comprehensive statistics on persons subjected to house arrest but estimated that "at least 109 persons", and probably many more, have been subjected to house arrest.

192. Among the recent banning orders, detailed in the Defence and Aid Fund's Southern Africa Information Service for the period July-December 1973, are the names of Yusuf Cachalia (ban renewed December 1973), who has now been under restrictions for 20 years; of two members of the Natal Indian Congress; two members of SASO; four members of the Black Peoples' Convention; one member of the Black Community Programme; the President of the non-racial South African Amateur Swimming Federation, and a former National Youth Chairman of the Coloured Labour Party.

193. The Information Service also records that 152 applications for passports were refused and 18 passports withdrawn during 1973. Among those denied travel facilities were members of the Christian Institute and SPROCAS, who refused to testify before the Schlebusch Commission. 166/

162/ Government Gazette, No. 3976, 13 August 1973; Rand Daily Mail, 21 August 1973; Sunday Times, 12 August 1973, 30 September 1973; Star, 6 October 1973, 22 December 1973.

163/ House of Assembly Debates, 19 February 1974, col. 105.

164/ Rand Daily Mail, 30 July 1974.

165/ "Suppression of Communism Act: notes on action taken against persons", by Muriel Horrell, RR58/1974.

166/ SAIS, July-December 1973, cols. 267-270.

II. NAMIBIA

INTRODUCTION

194. The illegal processes whereby South Africa has steadily extended its jurisdiction over Namibia have been described in the 1974 report of the Working Group.^{167/} This report drew attention to the Development of Self-Government for Native Nations in South West Africa Amendment Act, No.20 of 1973, which enabled the State President of South Africa to grant "self-governing" status to "homelands" without recourse to parliament; and the establishment of the "multiracial" Advisory Council for South West Africa by Mr. Vorster.^{168/} An earlier report also discussed the South West African Affairs Act, No.25 of 1969, which carried further the illegal incorporation of Namibia into South Africa by greatly extending the fields in which the South West Africa Administration had no jurisdiction.^{169/} Despite the advisory opinion given by the International Court of Justice, repeated resolutions of the United Nations calling for the withdrawal of its administration, the contacts made by the Secretary-General of the United Nations between February 1972 and December 1973, and the appointment of the first full-time Commissioner for Namibia, Mr. Sean MacBride, in January 1974, South Africa has fully maintained its illegal occupation of Namibia. During the period under review it has continued to apply apartheid measures to the Territory, notably by further consolidation of the "homeland" structures and the frequent recourse to the range of repressive legislation illegally applied to the Territory in order to suppress political activity by the African population.^{170/}

195. The laws specifically affecting capital punishment, the treatment of political prisoners, the situation of the Africans in the "native reserves" or "homelands", and the control of labour are discussed in detail in the corresponding sections of this chapter.

196. The State of Emergency proclaimed in Ovamboland under Proclamation R17 on 4 February 1972 remained in force throughout the period under review.^{171/} In October/November 1973 an estimated 100 men and women previously detained under the emergency powers by the South African police force were handed over to the tribal courts in Ovamboland, where they were sentenced to public floggings of up to 30 strokes of the makalani palm by the tribal police. Sworn affidavits by the victims containing details of the trial procedures and the actual punishments are summarized in the sections of this report dealing with political prisoners and grave manifestations of apartheid, colonialism and racial discrimination. The fear of further reprisals for political activities by the tribal authorities in Ovamboland, and the announcement of the establishment of a "border militia" to be recruited from youth in Ovamboland, led to the exodus of approximately 2,000 Africans across the border into Angola from June to September 1974, from where most found their way eventually to Zambia (see section D below).

^{167/} See E/CN.4/1135, para.195.

^{168/} E/CN.4/1135, paras.196, 198-201, 245-250, 300-307.

^{169/} E/CN.4/1020/Add.1, paras.2 and 3.

^{170/} See Security Council proceedings of 24 October and 15 December 1974 relating to Namibia.

^{171/} Government Gazette, No.3377. For a summary of the emergency powers, see E/CN.4/1111, paras.149, 164 and 192.

197. The South African Government significantly increased the scale of its illegal military presence in the Territory during the period under review by a new deployment of units of the South African Defence Force in the Caprivi Strip and along the northern border with Angola. This was officially confirmed in June by the South African Minister of Defence, Mr. P.W. Botha, during a visit to the Caprivi Strip in the company of the chiefs of staff of the Defence Force, the Army and the Navy and a party of South African newspapermen.172-173/

198. Further developments during the period under review were the detention of the leadership of the South West Africa People's Organization (SWAPO) and of the SWAPO Youth League inside the country, some of whom were held incommunicado for long periods under the provisions of the Terrorism Act. These are mentioned in the appropriate sections of this report.

199. During September, the Nationalist Party (the ruling party of the whites in Namibia) formulated a statement calling for a "multiracial" conference to be attended by the leaders and representatives of the different "ethnic groups" to discuss the constitutional future of the Territory. The proposals, however, ruled out participation by political organizations with a cross-ethnic composition, such as SWAPO. According to information available to the Working Group, the proposals were rejected by the SWAPO leadership in Lusaka, as well as by SWAPO leaders inside Namibia, and by the Namibia National Convention.174/

A. CAPITAL PUNISHMENT

1. Reference to some relevant laws

200. As stated in the previous reports of the Working Group,175/ the South African laws providing for capital punishment have been illegally made applicable to Namibia. Among these laws are the Sabotage Act (General Law Amendment Act, No.76 of 1962) and amendments to it, and the Terrorism Act, No.83 of 1967. According to information available to the Working Group, provision made in the General Law Amendment Bill currently before the South African Parliament for a death sentence imposed by the high court to be carried out at a designated place appointed in accordance with the law is applicable to Namibia. This would enable a supreme court or high court established in any of the "homelands" with the power of imposing a death sentence, to carry out executions in that particular area.176/

172-173/ South African Digest, Pretoria, week ended 21 June 1974. See also para.257 of the present report.

174/ "SWAPO rejects Vorster overture", Africa, November 1974, p.46. See also "Namibia: political developments during 1973/1974", paper by Roger Murray, Friends of Namibia Committee, for the NGO Conference on Southern Africa, Geneva, 2-5 September 1974.

175/ E/CN.4/1020/Add.1, para.5; E/CN.4/1050, para.215; E/CN.4/1111, para.150; E/CN.4/1135, para.202.

176/ Windhoek Advertiser, 15 October 1974.

201. Figures for persons condemned to death and executed are not published separately for Namibia and are included in the totals for the Republic and South West Africa.

2. Analysis of the evidence received by the
Ad Hoc Working Group of Experts

202. Witnesses Mr. Katjavivi (RT.151), Mr. Jiriange (RT.171) and Mr. Katjivena (RT.187) referred to the intensified policy of repression by South African police and troops in northern Namibia and the Caprivi Strip since 1973: various cases of arbitrary violence and killings had been reported. In particular, information had been supplied to London from people in Ovamboland of the shooting of Rauma Ndishishi, Andreas Namene and Mathews Joseph, among others. Such regular, small-scale and individual killings, reported regularly to the SWAPO offices in Lusaka and London in letters and by refugees, were now being supplemented by a policy of mass killings of civilians in areas where the SWAPO military units operated. These killings and other criminal acts were not new, but part of a general system of terrorism in force throughout the territory.

203. An official inquiry by the Windhoek Senior Prosecutor into the death of Mr. Benjamin Ekanjo, aged 19, of Katutura, during a police raid on 16 August 1973, 177/ confirmed that the boy had died of a bullet-wound. Constable Hendrik Botha, of the Police Security Branch, gave evidence that on the night in question he and five other police officers had tried to arrest several Africans attending a meeting in a private house. They had been resisted, so he had then taken up a post outside the window to prevent people escaping. A group of Africans had approached him from the other side of the house; after three warnings he had fired a shot in the direction of one man, who had then run on past him. Next day he was taken to the body, which was lying in a chicken run on the other side of a high fence. 178/

177/ See E/CN.4/1135, para.208.

178/ Windhoek Advertiser, 19 October 1973; see also written testimony submitted by Mr. Katjavivi, appendix A, "Political Development in Namibia, May/October 1973", p.4.

B. TREATMENT OF POLITICAL PRISONERS AND CAPTURED FREEDOM FIGHTERS

1. Summary of some relevant laws

204. As indicated in preceding reports of the Working Group, the South African security laws that provide for severe penalties of imprisonment and for detention without trial for anti-apartheid activities and political offences have been made specifically applicable to Namibia.^{179/} These include the Prisons Act, No. 8 of 1959, and the General Law Amendment Act, No. 101 of 1969. In addition, there are certain proclamations which concern Namibia exclusively:^{180/} in particular, Proclamation R17 of 1972, which made Ovamboland subject to emergency law, and Proclamation R304 of 1972, extending the powers of the South African Police Force in northern Namibia.^{181/} A previous report of the Working Group (E/CN.4/1050, paras. 264-267) described the incorporation of the South West African Police Force into the South African police, which body is accordingly authorized to exercise the powers entrusted to the former by the laws of the Mandated Territory. The Commissioner of the South African police has the command, superintendence, and control of the force in Namibia as well as in South Africa, subject to the direction of the Minister for Police.

205. Three types of police currently operate in Namibia. In addition to members of the South African police stationed in, or seconded to, Namibia, who are heavily armed, using military vehicles and helicopters, there are the municipal police under the control of the white urban authorities, and the tribal police in Ovamboland, under the control of the tribal authorities and not subject to departmental regulations or public scrutiny.^{182/}

2. Analysis of the evidence received by the Ad Hoc Working Group of Experts

206. The evidence presented to the Working Group can be analysed under several headings: (a) information concerning recent arrests and the numbers of political prisoners; (b) allegations concerning torture, and the cruel, inhuman and degrading treatment of political prisoners; (c) allegations concerning violations of the right of the accused to a fair and public trial and procedures for complaints and redress.

207. The Working Group examined the evidence analysed below in the light of the international standards embodied in the following instruments: the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Standard Minimum Rules for the Treatment of Prisoners and the Geneva Convention.

^{179/} See E/CN.4/1020/Add.1, chap. XIV, para. 9.

^{180/} See E/CN.4/AC.22/12 for details of the Native Urban Areas Proclamation, No. 56 of 1951, which provides that any magistrate or Native Affairs Commissioner may declare a "native" residing in an urban area "idle or disorderly" and order his arrest and detention prior to expulsion. See also E/CN.4/1050, paras. 261-263, for details of the Native Administration Proclamation, No. 15 of 1928, and Government Notice No. 6 of 1930, delineating the functions of chiefs and headmen.

^{181/} See E/CN.4/1135, para. 252.

^{182/} See E/CN.4/1135, para. 210, and relevant sections of the present report.

(a) Information concerning recent arrests and the number of political prisoners

208. Mr. Jiriange (RT.171) and Mr. Hishongwa (RT.180) referred to the large number of Namibians arrested and detained, many of them in the wake of the successful SWAPO boycott of the elections in Ovamboland of August 1973.^{183/} There were many cases of people taken from their homes by the police; nobody, including their families, had information as to where they were being held or whether they were still alive. Mr. Jiriange said that over 2,000 Namibians were currently detained at prisons in South Africa and Namibia: on Robben Island, in the Windhoek gaol, and in various other places. Mr. Hishongwa said that South Africa had admitted to holding 25 members of the SWAPO Youth League without trial, and had given an "official" estimate of 300 as the total number of SWAPO members arrested; he said the number actually ran into thousands. Following the elections, political meetings organized by the SWAPO Youth League were held in many parts of the country; over 20 "illegal" rallies had been held in urban centres such as Windhoek, Walvis Bay and Swakopmund, and open demands for South Africa's immediate evacuation of Namibia were made. Statements were issued to the press reiterating the claim for independence and encouraging people to act. The names of 99 Africans arrested and detained during the aftermath of the elections, 79 in Ovamboland and 20 in Windhoek, had been sent by the Youth League to the SWAPO London office. An additional 58 people whose names were not known had also been arrested.^{184-185/} A number of those named as arrested in Ovamboland were among detainees subsequently handed over to the tribal authorities, on whose orders they were publicly flogged (see section D below).

209. Mr. Hishongwa (RT.180), together with Mr. Vigne (RT.151) and Mr. Kaudjue (RT.166) referred in particular to the arrests of members of the SWAPO Youth League and their subsequent trials under the provisions of the "Sabotage Act". Of those arrested, some had been sentenced, others acquitted, and some remained in detention. Of the 12 speakers at the Youth League rally of 12 August 1973, 11 had been detained by the end of September.^{186/} On 12 November the trial began of Jeremiah Ekandjo, 26, the Youth League chairman; Jacob Shindika Nghidinua, 22, the vice-chairman; and Martin Kapawasa, 22, at the South West African Supreme Court, sitting in Swakopmund. It was alleged that they had incited people at the Windhoek rally to injure or kill their opponents and take up arms against the whites, so threatening public safety, law and order. They were sentenced to eight years' imprisonment each by the judge, who said they had incited 2,000 people to commit acts of violence.^{187/}

210. According to information available to the Working Group, Eliakim Andreas, another of the arrested speakers from the 12 August rally, was remanded in custody until 21 January 1974 on charges of inciting people to burn their pass books when he appeared in court during November. At the Swakopmund Regional Court in January he was cleared of the first charge of promoting racial hatred but found guilty of

^{183/} See also E/CN.4/1135, paras. 253-257.

^{184-185/} Written testimony of Mr. Katjavivi, appendix A, "Political developments in Namibia, May/October 1973", p. 10.

^{186/} See E/CN.4/1135, paras. 229, 232.

^{187/} SAIS, July-December 1973, cols. 419-420.

incitement to destroy passes and sentenced to three months' imprisonment. He was sentenced to an additional three months for tearing up his own pass in the dock; he had told the magistrate he was not "born with a pass" and would not carry one.^{188/} David Shikomba, 23, Secretary of the Youth League, was arrested during January, after four months as a fugitive from the police in Ovamboland. He appeared before the Supreme Court at Swakopmund in March on charges under the Sabotage Act relating to a speech made at the 12 August meeting. The trial was a sequel to that of November; the main charge alleged that he had exhorted the gathering to kill, or seriously assault, SWAPO's political opponents. He was found guilty on 15 March of inciting his audience to take up arms against the whites and was sentenced to six years' imprisonment.^{189/}

211. Mr. de Beer (RT.151) said the pass laws and the permit system were a powerful political weapon in the hands of the South African authorities; refusal to grant permits for travel from one town or area to another was used as a means of disrupting political organization by Africans and preventing political consultation by leaders resident in different parts of the country. A meeting of the Namibia National Convention planned for Rehoboth in January had to be postponed because delegates had not been given permission to attend. Mr. Jiriange (RT.171) said that anti-colonialists were deported en masse from the urban areas to the "homelands".

212. According to information available to the Working Group, action initiated in 1973 against "loiterers and vagrants" by the police continued in the period under review.^{190/} In January, Brigadier W. Louw, the Divisional Commissioner of Police, said that more than 3,000 Africans, most of them Ovambos, had been repatriated to their "homelands" by the end of 1973 from Walvis Bay and Windhoek. On 30 April 1974, Brigadier Louw told a news conference that 700 Africans had been repatriated from urban areas since the start of the year.^{191/}

213. Mr. de Beer (RT.151) referred to the political use of the pass system on 13 January 1974 when 156 Africans - 122 men, 22 women and 12 children - had been arrested at a police road block between Windhoek and Rehoboth, where a SWAPO meeting was planned. At Windhoek central police station 127 people were detained and subsequently charged with attempting to travel without valid permits. It was reported that most had been sentenced to a R5 fine or 10 days in gaol, while others had been repatriated to Ovamboland. David Meroro, the National Chairman of SWAPO, who led the party, was released after paying the R5 "admission of guilt" fine.^{192/} Mr. de Beer said that Ezriel Taapopi, acting chairman, and Joseph Kashea, acting secretary, of the Youth League, were also among those arrested. Mr. Taapopi subsequently appeared in the Windhoek Magistrate's Court on a charge of obstructing a policeman who had searched his home in December for his pass. The case was dismissed by the magistrate on 24 January, who described the actions of the police in searching without a warrant as a serious infringement of Taapopi's rights.^{193/}

^{188/} Windhoek Advertiser, 25 January 1974.

^{189/} Windhoek Advertiser, 14 March 1974; Cape Times, 16 March 1974.

^{190/} See E/CN.4/1135, paras. 224-226.

^{191/} Windhoek Advertiser, 8 January 1974, 30 April 1974.

^{192/} Windhoek Advertiser, 14 January 1974; Guardian, 15 January 1974.

^{193/} Rand Daily Mail, 25 January 1974.

214. According to information available to the Working Group, 141 men and 45 women were arrested in Katutura on 17 January in the course of a dawn house-to-house search, by municipal police in riot equipment, for typewriters, duplicators and documents. The raid was described as a "mopping-up operation" by the Administrator, Mr. B. J. van der Walt, against those present "illegally" in Katutura.^{194/} There were reports of further arrests of Youth League members in January but precise information was lacking as the press had been barred from their "customary and traditional" source of details of police activities, the office of the Divisional Commissioner of Police, on 16 January. It was announced that statements about the arrests of Africans would in future be issued only by Mr. van der Walt.^{195/}

215. Mr. Katjavivi (RT.151), together with Mr. Hishongwa (RT.179) and Mr. Jiriange (RT.171) referred to the arrests of Mr. David Meroro and nine other SWAPO office-bearers or members of the Youth League in February and their subsequent detention under section 6 of the Terrorism Act, which permits suspects to be held indefinitely, without access to legal representation, visitors, clothes or contact of any kind with the outside world, except for the Minister of Justice or an authorized official. According to information available to the Working Group, the sequence of arrests was as follows: Mr. Thomas Komati, public relations officer for the Youth League; George Isak Henga, Joseph Kapangwa and Lot Zacharias, members of the Youth League, at Ondangwa, Ovamboland, on 29 January; Ezriel Taapopi, Benjamin Nanalambo, SWAPO executive member, Windhoek, Daniel Shiwangurula, SWAPO branch secretary, Walvis Bay, Shihepo Iibili, member of the Youth League in Windhoek, and Axel Johannes, the SWAPO acting secretary in Windhoek, between 1 and 5 February in Windhoek and Walvis Bay. The arrests were reported by Mr. Meroro, who said the police had refused to tell him where or why the men were being held. Mr. Meroro was arrested at his home by security police early on 7 February; both his general dealer store and home in Katutura were searched systematically and documents removed, and the police refused to give reasons either to relatives or to the press.^{196/} The information that the men were being held under the Terrorism Act was given in a statement by Mr. B. J. van der Walt, who revealed that Joseph Kashea, a Youth League member, was also being held. It was subsequently announced by the Administrator that no further statements (in connexion with police action against possibly subversive activities of the SWAPO Youth League) would be made. With regard to detainees, only the security police head office in Pretoria would in future make statements.^{197/} According to reports, Youth League activity continued in defiance of the arrests; a public rally was organized at Katutura, and the audience was urged not to be deterred by the arrests. The new acting vice-chairman, Mr. Shindabih Mashalaleh, stated: "The police will have to gaol the whole of Namibia in order to break us."^{198/}

^{194/} Windhoek Advertiser, 18 January 1974.

^{195/} Windhoek Advertiser, 16/29 January 1974.

^{196/} Windhoek Advertiser, 11 February 1974; Africa Bureau Fact Sheet, No.35, April 1974.

^{197/} Windhoek Advertiser, 12 February 1974; Star, 16 February 1974.

^{198/} Star, 16 February 1974; Windhoek Advertiser, 25 February 1974.

216. According to information available to the Working Group, the police action came in relation to a decision by SWAPO inside the country to achieve the removal of the South African presence by the end of the year. Commenting on the Security Council resolution to end the dialogue between the United Nations and South Africa, Mr. Meroro said on 12 December: "We will have to rely on our own efforts. We will peacefully stand up and demand our freedom for all the world to see". He said that opposition would be mainly directed against the bantustan system and that public meetings would be organized to force South Africa to quit the Territory. On 20 December, SWAPO published the decisions of its three-day conference at Walvis Bay: the organization of meetings and demonstrations throughout Namibia; the establishment of SWAPO offices in eight towns; a demand for the abolition of Proclamation R17; and an appeal to Namibian youth to join the Youth League.^{199/}

217. Mr. Kaudjue (RT.166), together with Mr. Ngava (RT.167) and Mr. Katjavivi (RT.151), referred to the series of trials and the sentencing of those held under the Terrorism Act. On 30 July, Mr. Ezriel Taapopi and Mr. Joseph Kashea were sentenced to five years' imprisonment, with three years of the sentence conditionally suspended. They were found guilty of inciting the external wing of SWAPO to commit public violence in Namibia by writing a letter to Mr. Sam Nujoma, President, in Lusaka. They gave notice of their intention to appeal but were refused bail pending leave to appeal by the Supreme Court on 23 September. Mr. Thomas Komati was released on bail on 11 June, having been held incommunicado since 31 January; he was charged with causing malicious damage to property at a court hearing in June; in August he was let out on bail. Mr. David Meroro was released on bail at the end of July, after continuous solitary confinement since his arrest; at a Windhoek court appearance on 3 September he was charged with possessing five editions of a banned publication, "The African Communist". The trial was adjourned until 14 October and then further adjourned until January 1975. Mr. Axel Johannes and Mr. Lot Zacharias appeared in the Gobabis regional court on 16-17 September, charged with attempting an unlawful exit from Namibia; following evidence given for the prosecution by another detainee, George Itak Itenga, the case against Axel Johannes was dismissed, and Lot Zacharias was given 21 days' imprisonment, suspended for three years. Bail was granted by the Windhoek high court on 24 September, after having been refused by the magistrate at Gobabis. Mr. Benjamin Namalambo was released from prison on 6 June without being charged. Diplomatic observers from Britain, the United States, Sweden, West Germany, and a representative of Amnesty International were present at the Meroro hearings, and the Amnesty International representative was also present during some of the other trials.^{200/}

218. It will be recalled that reference was made in an earlier report of the Working Group (E/CN.4/1111, para. 175) to the detention of Mr. Brendan Simbwaye, founder member of the Caprivi African National Union, from 1968 onwards in southern Namibia. It was reported that he had been allowed to return to the Caprivi in 1972 in order to meet the United Nations special envoy to Namibia, Dr. Alfred Escher. But he had subsequently disappeared from Katima Mulilo, having been taken away in a police car before the arrival of Dr. Escher, and no news of his subsequent whereabouts had been received.^{201/}

^{199/} SAIS, July-December 1973, No.16, col. 418.

^{200/} Namibia News, June-July 1974, vol. 7, Nos. 6-7; and August-October, vol. 7, Nos. 8-10.

^{201/} Star, 14 September 1974.

219. Mr. de Beer (RT.151) referred to the continuing restriction of Mr. Nathaniel Mahuiriri, the acting vice-president of SWAPO, under the provisions of the Suppression of Communism Act. He had been banned since November 1972 and the order would not expire until May 1977, at which time it could be reimposed. He was confined to the Kuisebmond area of Walvis Bay, except when he went to work at a factory just outside the area; he could not attend any political or educational gatherings of more than two people, or enter any school or place of work other than his own.

220. On the number of Namibian prisoners on Robben Island, Mr. Vigne (RT.151) said that there were 35, the bulk of them brought there after the Pretoria trial of 9 February 1968. However, unconfirmed reports of several deaths meant that the exact number could not now be known for certain.^{202/}

221. Mr. Katjavivi (RT.151) and Mr. Vigne (RT.151) referred to the serious situation of the Namibian prisoners on Robben Island. Reports from the families of some of the prisoners had referred to the death in detention of Mr. Petrus Shilenge on 8 March 1974 and his subsequent burial in Cape Town. Two other men were known to be gravely ill. Mr. Jonas Shimuefeleni had kidney trouble, which would prove fatal without urgent transplant; and Mr. Njabula Tshaningura was almost blind from a previous illness. Neither had been allowed to leave the island for treatment.^{203/}

(b) Allegations concerning torture and cruel, inhuman and degrading treatment of political prisoners and detainees

222. Several witnesses testified to the use of torture against political prisoners and their cruel, inhuman and degrading treatment while under detention. Witnesses Mr. Carlson (RT.174 (II)) and Mr. Vigne (RT.151) recalled the ill-treatment and torture of the Namibians arrested in 1966 and subsequently tried at Pretoria in 1968.^{204/} The 37 accused were held in solitary confinement for periods of up to 18 months under the Terrorism Act (cf. para. 259 above); in addition, 180 witnesses were likewise held for long periods. As Mr. Vigne reminded the Group, the Terrorism Act has retrospective provisions to apply to actions alleged to have been committed long before the passing of the Act itself. This Act also places no time-limit on the period during which both accused and witnesses would be held by the police until they provided "satisfactory answers". Mr. Carlson referred to the statement of Mr. Herman Ja Toivo, one of the 37 accused, currently serving a 20-year prison sentence on Robben Island. He was interrogated at the security police headquarters, Kompol, in Pretoria by Captain (now Colonel) Swanepoel, Captain van Rensburg and Lieutenants van Rensburg and Ferrera. The methods of torture ranged from interrogation combined with solitary confinement, through various forms of beatings to torture by electric shock. On one occasion the prisoner had been suspended, blindfolded, from a hot water pipe continuously for four days and beaten and given electric shocks. Such treatment caused Ja Toivo, and all the other prisoners eventually, to write signed confessions, though these were not introduced at the subsequent trial after their validity, as not being made voluntarily, had been challenged by the defence. Mr. Carlson also referred to the torture of a

^{202/} See E/CN.4/1111, para. 169.

^{203/} See also para. 226 of the present report.

^{204/} See also Joel Carlson, No Neutral Ground (London, 1973) Davis-Poynter, Chapter X (handed in as evidence).

mathematics teacher from a Lutheran mission school who had been handcuffed, suspended by a rope and an iron band from a pole so that he could touch the floor only with the tips of his shoes, punched in the stomach or across the face for three hours, and had his beard and moustache pulled out. Similar treatment had been meted out to Mr. Gabriel Mbindi, a 68-year old Namibian, with the honorary title of SWAPO Treasurer in Windhoek. After five months' detention in Windhoek as a "terrorist", he was taken to Pretoria where he was strung up and beaten. On the basis of notes submitted in Ovambo to other prisoners, affidavits were filed in support of a writ of habeas corpus; and the police offered to let Mbindi go if his application was withdrawn. He was released in Windhoek, following the evidence of a doctor that he had found two perforations of the inner ear. Mr. Mbindi had subsequently decided to file an affidavit recounting his torture: "They have done to me more than I will ever suffer again. They cannot do this and escape with it."

223. Mr. Jiriange (RT.171) said that Namibians held prisoner by the South African authorities were tormented to the point of insanity or simply tortured to death; political prisoners were denied medical treatment and satisfactory food. He quoted from a letter received a year previously from one of the prisoners on Robben Island, sentenced to life imprisonment. The writer stated that he had been interrogated for two weeks in Pretoria central prison before transfer to the Kompol, where he was assaulted by beatings and electric shocks following a cold shower, and suspension upside-down from the ceiling.

224. Mr. Garoeb (RT.165) introduced four material witnesses of South African brutality in Namibia. Mr. John Ja Otto (RT.165, also his written testimony) referred to his torture during solitary confinement following his arrest on 1 December 1966. Brutality in the form of several beatings had already begun during his flight from Windhoek to Pretoria. On 6 December he was transferred from Pretoria central prison to Kompol and interrogated by Captains Swanepoel and Erasmus. He was forced to strip naked and to run around a table holding up a broom, while the policemen present hit him with sticks, hose pipes and various objects. He was then blindfolded, handcuffed and suspended from a hot water pipe, and electric shocks were applied to his penis. He was forced to open his mouth while those present spat into it, and suspended from a pole between two desks with his wrists handcuffed to his ankles. In between he was asked to make a statement about SWAPO military training. On one occasion he had attempted to grab a revolver to commit suicide with. He had been kept in solitary confinement for five months, during which time he was allowed out into the corridor for two minutes' exercise a day. The food was hard-cooked porridge and black coffee without sugar, and occasionally hard-boiled mealies. In February 1968 he had been given a five-year suspended sentence; he had not been allowed to live in Windhoek and had gone to Ovamboland, where he had subsequently occasionally been maltreated by the security police until his departure via Angola in June 1974.

225. Miss Ndakundana Shiluwa (RT.165, also her written testimony) said she had been assaulted while serving a three-month gaol term at Grootfontein by a police agent with an iron bar, ostensibly for counting her clothes in English. She had been sentenced by the Ondangua magistrate on 15 August for holding an "illegal" political meeting. The assault took place on 8 September, causing injuries leaving a scar on her right arm. A colleague sentenced with her, Frieda Williams, had five teeth knocked out by a female "drunkard" brought into their cell; her face had remained swollen for a week, but she had not received any medical treatment while in gaol. Sleeping arrangements consisted of dirty, torn blankets and a

cement floor; food of hard maize porridge or soft mealies; one visitor a month was allowed. Mr. Andreas Muukwawo (RT.165, also his written statement) said that he had been held from 3 to 24 October in a cell at Ondangwa. The cell consisted of corrugated aluminium sheets; since there were many in the cell, there were insufficient blankets, and some had to sleep on the cement floor. Food consisted of hard maize porridge without either meat or gravy; toilet facilities consisted of one bucket; and they had not been allowed outside for exercise. Mr. Muukwawo and the fourth witness, Miss Othilie Nangolo (RT.165, also her written statement) testified to their public flogging by the Ovamboland tribal authorities (see section D below).

226. Mr. Vigne (RT.151) and Mr. Katjavivi (RT.151) referred to reports that had been received of the deterioration of conditions of Namibian prisoners on Robben Island (cf. similar evidence on deterioration of the conditions of the South African prisoners, paras. 63 and 64 above). The text of a letter from a group of prisoners written in 1969 had been released by SWAPO in London during 1970; it testified to forced labour, lack of medical treatment, the weakening diet and lack of contact with lawyers or other visitors. Reports by prisoners who had since finished their sentences corroborated this evidence and spoke of a clear impression that the overworking of Namibian work bands was a deliberate policy, as was the total isolation of the Namibians from the other prisoners. In July 1973 a further statement from South African prisoners had been smuggled out of the island, again referring to the bad effects of the new diet scale and the withdrawal of study facilities, and indicating the existence of a "war of nerves" between the prison officials and the politicals on the island.205-206/ It had been found difficult to alleviate the situation of the Namibians; complaints, later incorporated in the 1969 letter, had been made on the occasion of the visit by a Red Cross commissioner. But when the commissioner had laid them before the South African Government, it had made a pretence of remedying the situation, making use of the occasion to publicize its claim to humane prison conditions. So the Namibians had decided to forgo the possible advantages of a second Red Cross visit the following year in order to prevent a recurrence of this cover-up operation.

227. Mr. Kaudjue (RT.166) gave evidence of torture following his arrest in December 1973 for demonstrating against the expulsion from the Lutheran Theological Seminary in Ovamboland of a lecturer from Germany. He was detained for two months without appearing before a magistrate, during which time he was given electric shocks and beaten with clubs. He was released in January without being formally charged and warned not to demonstrate against the government again.

228. Mr. Vigne (RT.151), together with Mr. Katjavivi (RT.151) and Mr. Kaudjue (RT.166), drew attention to the torture of the SWAPO members detained under the Terrorism Act during 1974, and particularly to the case of Mr. David Meroro.

205-206/ Subsequently published in the Guardian, 22 March 1974.

Mr. Vigne said that reports had been received of his extremely harsh treatment during five months solitary confinement. The South African authorities appeared to believe that he was a key figure in a link-up between what was known as "external SWAPO", the official SWAPO organization outside Namibia, and the internal organization. He was alleged to be involved in a planned military action or insurrection within the territory. Mr. Katjavivi referred to a report in the London Observer 207/ according to which: "He is reported to have been severely brutalized by the police and, in poor physical condition before his arrest, is now said to be in a desperate state". Mr. Kaudjue said that when one of Mr. Meroro's daughters went to the prison to take him some clean clothes, there was blood on a white shirt among the dirty clothes he had given her.

229.. According to information available to the Working Group, a recent confidential report submitted to SWAPO details the prison and interrogation experiences of all the SWAPO leaders brought to trial after the police swoops of January-February 1974 and expresses the opinion that these constitute a prima facie pattern of consistent and gross violations of human rights.208/ Kashea, Taapopi, Itenga, Zacharia, Johannes and Komati had all given evidence on oath, and Meroro was about to do so, of their sensory deprivation in solitary; to such a degree that Taapopi, Kashea, Meroro and Komati had spoken of their sense of "incipient madness". Mr. Meroro had spoken of being manacled and hoisted up and down by a rope over a cell window. Zacharia and Itenga had sworn to electric shocks. Several had placed their experiences in affidavits; the interrogators were in some cases identified; and in two cases - Captains Griebenau and Botha - there were photographs available.

230. Mr. Meroro, who is aged 57, was released on R200 bail during July and restricted to the Windhoek urban area. His trial on charges of possessing banned literature opened at the Windhoek magistrate's court on 3 September; the defence advocate said that Mr. Meroro would give evidence that he had been deprived of sleep and food, hit repeatedly, and forced to stand during the interrogation while in the hands of Griebenau and other members of the security police. These allegations were denied in court by Captain Griebenau. At the resumed hearings on 14 and 15 October, Mr. Meroro said he had been arrested by Captain Jan Griebenau of the Windhoek security police; other officers present at his interrogation were a Major Schoon of Pretoria and Captains Coffie and Booyson. He was questioned on 8 and 9 February, during which time he was kept standing, not allowed to go to the toilet, and given nothing to eat. Numerous questions were asked, including a demand for information about the people "going to the borders" and "Number 17". He had been hit in turn by these officers and other policemen he did not know until his nose bled, causing him to lose a lot of blood. A rope had been tied to his hands and pulled through the window of the cell, lifting his arms high above his back until he could hardly stand; he was raised and lowered four times. After this

207/ Observer, 30 June 1974.

208/ Confidential report to SWAPO, part three, September/October 1974, chap. V, "Political trials" (mimeographed).

he was not assaulted again but was subsequently transferred to a cell at Strijdom airport, where he was kept in solitary confinement for six weeks and never allowed out for exercise. He suffered from insomnia and hallucinations, during which he saw a charging rhinoceros and a mamba snake. A Windhoek psychiatrist, Dr. Twomey, had given treatment for severe tension on a first visit on 3 July; on a subsequent visit on 12 July, he had found Mr. Meroro vague in his replies; Mr. Meroro had said this was due to his assaults following his arrest.209/

231. Both Axel Johannes and Lot Zacharias submitted affidavits dated 14 August in their application for bail at the Windhoek high court in September. Axel Johannes had been interrogated at the same time as David Meroro, by some of the same interrogators; his treatment had been similar, with severe assault and solitary confinement. He had attempted to drown himself in the lavatory at the security police headquarters in Windhoek, but had been too weak to continue the attempt. Lot Zacharias stated that he had been given electric shocks on a number of occasions and physically assaulted. During the course of their trial, George Itenga, who appeared as a prosecution witness, said he had been given electric shocks while blindfolded, at Gobabis. He had been held in solitary confinement at Windhoek state prison, Strijdom airport and Rehoboth. He had been similarly assaulted in Windhoek; the police had attempted to force him to admit that Daniel Shiwangurula, another of the detainees, had sent him to the border. On 14 August, a statement had been taken from him and he had been told to give evidence at the trial on 9 September. None of his evidence was contradicted in the court.210/

232. During the bail application hearing of Ezriel Taapopi and Joseph Kashea on 23 September pending their leave to appeal before the Windhoek Supreme Court, allegations of police maltreatment were contained in affidavits submitted by the defence. The judge said that there had been no opportunity for reply by the police211/ and rejected the applications.

233. Detention conditions of "terrible loneliness" leading to hallucinations were described by Thomas Komati, in an affidavit presented to the magistrate's court in Windhoek in an application for his conviction on a charge of defacing government property to be set aside. He said that apart from fortnightly meetings with the magistrate, he was not allowed out of his cell during six months' detention in solitary confinement. The only food was mealie meal and a water bucket, replenished every four or five days, for drinking and washing. After some weeks hallucinatory experiences began; he recalled friends, family and political conversations. On one occasion he had taken a spoon and inscribed "One Namibia, One Nation" on his

209/ Times, 4-5 September 1974; Windhoek Advertiser, 15-16 October 1974; Namibia News, August-October, vol. 7, Nos. 8-10.

210/ Confidential report to SWAPO, chap. V.

211/ Confidential report to SWAPO, chap. V.

cell wall; this had led to his charge. Alma Hannon, a lecturer in the Department of Psychology at the Witwatersrand University, stated in an affidavit that the description was consistent with hallucinatory experiences.^{212/}

234. According to information available to the Working Group, further allegations of torture against detainees were made by the churches during the period under review.^{213/} In April, Bishop Johannes de Vries, president of the Evangelical Lutheran Church and a vice-president of the Evangelical Lutheran Ovambo-Kavango Church, disclosed that a series of meetings had been held with Mr. Vorster by eight church leaders the previous year, on claims of torture by detainees during 1972. A list of 37 Africans prepared to testify to an impartial commission had been given to Mr. Vorster, who had promised a full inquiry into the matter, provided secrecy was maintained. In August 1973 the churchmen had received a letter from the Prime Minister's Department stating that a thorough investigation had been made and the claims found to be groundless. The Bishop had now chosen to reveal these contacts because it was the belief of the church leaders that nothing had been done and none of the 37 had been asked to testify. He said torture of detainees was undoubtedly continuing and called for the establishment of an independent commission of inquiry to investigate the allegations. The call was supported by the Reverend Richard Wood, the Anglican Bishop, who said that sworn affidavits could be produced in support of the allegations. The torture consisted of electric shocks, beatings, the holding up of heavy stones, and confinement in unbearably hot huts. Mr. Vorster subsequently denied that he had failed to investigate the allegations properly.^{214/}

(c) Allegations concerning violations of the right of the accused to a fair and public trial and procedures for complaints and redress

235. Evidence presented to the Working Group concerning the trial procedures of those arrested during the period covered stated that in many instances the rights of the detainee had been manifestly violated. Arrests under the emergency powers in force in Ovamboland, and under the provisions of the Terrorism Act, had left those detained without recourse to law, since they were specifically barred from consulting a legal adviser, except with the prior permission of the Minister of Justice. Many of the arrests had taken place in parts of the Territory which are remote, or inaccessible.

236. Reference has been made above to the conditions of those brought to trial following their detention under the Terrorism Act. Mr. Katjavivi (RT.151) said that when Ezriel Taapopi and Joseph Kashea appeared in court on 10 June, the defence drew attention to their weak physical condition. The men had only just been released from solitary confinement and had met their lawyers for the first time on the morning they were to appear in court; the trial was postponed until 17 June.

^{212/} Namibia News, June-July 1974, vol. 7, Nos. 6-7.

^{213/} See E/CN.4/1135, paras. 237-240.

^{214/} Sunday Times, Johannesburg, 14 April 1974; Rand Daily Mail, 15 and 20 April 1974.

C. CONDITIONS OF AFRICANS IN THE "BANTU HOMELANDS"

1. Background information

237. The system of "native reserves" devised by the German administration before the mandate period, and subsequently taken over and extended by the South African administration, has been described in an earlier report of the Working Group; the implications of the "homelands" policy as established by the "Odendaal Commission" of 1964 have likewise been described. 215/ The 1974 report of the Working Group summarized the legislation enacted since February 1973 in relation to the continued establishment of "homelands" for so-called "native nations" in accordance with the provisions of the Development of Self-Government for Native Nations in South West Africa Amendment Act, No. 20 of 1973. 216/

2. Summary of recent legislation

238. Most of the legislative enactments introduced during the period under review were an extension or consolidation of the legislative process analysed in the previous report of the Working Group.

239. Proclamation R241 of 1973 amended certain provisions of Proclamation R348 of 1967 (Chiefs, Headmen, Chiefs' Deputies and Headmen's Deputies) in accordance with an accompanying schedule. Notably this provided powers to the Native Commissioner to reach a decision on criminal and civil appeals, if these had not been judged by an appeals body within his area of jurisdiction within 90 days; and to issue in respect of any person sentenced to imprisonment a warrant for his detention in gaol, whether or not criminal jurisdiction had been conferred upon him under section 7 of the Native Administration Proclamation, No. 15 of 1928. An amendment authorizing the South African police force to "render assistance to any Native Commissioner" was inserted. 217/

240. Several enactments of the Kavango and Eastern Caprivi "homelands" were approved by the State President of South Africa and subsequently proclaimed during the period under review. Enactment No. 3 of 1973, Kavango Legislative Council (Trading and Licensing Enactment of Kavango), provided for the control of business and trading undertakings of members of the "Kavango nation"; 218/ Enactment No. 1 of 1974, Eastern Caprivi Legislative Council (Appropriation Enactment), voted a sum of money to the expenditure account of the Revenue Fund for the financial year ending 31 March 1975; 219/ Enactment No. 2 of 1974, Eastern Caprivi Legislative Council (Taxation Enactment), provided for the levying of a general tax of R2 and income tax, consisting of an amount equal to 1 per cent of taxable income, with effect from 1 April 1975. 220/

215/ See E/CN.4/1020/Add.1, chap. XV, paras. 29-36; and A/8723/Add.2, paras. 11-40.

216/ See E/CN.4/1135, paras. 245-252.

217/ Government Gazette, No. 4059.

218/ Government Gazette, No. 3999.

219/ Government Gazette, No. 4287.

220/ Government Gazette, No. 4287.

241. Regulations made in terms of the Rehoboth Gabet Affairs Proclamation of 1928, and amendments to it, were enacted by government notice to provide for the election of seven members of the Advisory Board of the Rehoboth Gabet to be held in September 1974. 221/

242. A series of proclamations brought into effect the provisions of the Coloured Persons in South West Africa Education Act, No. 63 of 1972, the Basters of Rehoboth Education Act, No. 85 of 1972, the Nama Persons in South West Africa Education Act, No. 86 of 1972, with effect from 1 January 1974. Additionally, a series of regulations, framed under the main act, were published in accompanying schedules to all three acts. These provided for such matters as the appointment and conditions of service of teachers; the admission of persons to, the control of pupils at, and their discharge from state schools; and the suspension of, or infliction of other penalties on the pupils of such schools. 222/

3. Analysis of evidence

(a) Political rights and police powers

243. Mr. Katjavivi (RT.151) referred to the situation in northern Namibia and the constant harassment of the population by police, troops (South African) and tribal authorities (see also para. 202 above). Troops were being used not only against SWAPO combatants but also against the unarmed population of the area in order to demoralize them. The following forms of repression had been reported in Ovamboland: arbitrary arrests by the tribal authorities, closing down of shops and restaurants, ordering people to live in different areas, seizure of money, assaults; the training of a new tribal police unit at Ongongo in Ovamboland, whose members were armed and "trigger-happy"; the issuing of identity cards by the tribal authorities in Ovamboland. SWAPO members had refused to carry these cards, which were a pre-condition for obtaining a job or receiving medical treatment. Mr. Katjavivi further stated that there had been a concentration camp in existence since mid-1973 at Omidamba near the Ruacana Falls on the Angola-Namibia border. The Ovambo "homeland" authorities had recently decided to establish a special camp for SWAPO leaders, where they could be detained indefinitely; this decision had been taken at the same meeting of the Ovambo Legislative Council in June 1974 at which the establishment of black military units was discussed. Mr. Katjavivi said the South African presence in the territory depended entirely on the armed forces there; they had attempted to impose Bantustans against the resistance of the population in order to strengthen the illegal occupation. It was official policy to demote chiefs who allied themselves to the liberation struggle, and hand-pick from among the tribal leadership individuals who were prepared, for a variety of motives, to work in the Bantustan structure.

244. The firearms issued to the tribal police were for the guarding of the Ovambo Chief Minister and tribal chiefs and were not aimed at "threatening the public", according to a statement of the Ovambo Minister of Justice, delivered during a passing-out parade of men trained by the South African police in January. 223/ It was also reported that 10 specially selected Africans from Ovamboland were to

221/ Government Gazette, No. 4338.

222/ Government Gazette, No. 4073. See also E/CN.4/1111, para. 147.

223/ Windhoek Advertiser, 8 January 1974.

begin a Defence Force instructors' course in July 1974, the same that whites underwent, in Pretoria. The trainees would train others on their return to Ovamboland, under the control of the South African Defence Force. 224/ The Johannesburg Star reported details of "naked intimidation, unlawful assault and arbitrary detention to stamp out political opposition" by the Ovambo tribal police. White officials, the article alleged, were turning a blind eye to a reign of terror. 225/

245. Reference was made by several witnesses to the exodus of Africans from Ovamboland across the border into Angola during June-September 1974 (this is discussed in section D below), arising from the present policies pursued by the South African authorities.

246. Mr. Katjavivi (RT.151) and Mr. Katjivena (RT.187) referred to the announcement by the South African Government of the stationing of units of the Defence Force in the Caprivi Strip and along the northern border. According to information available to the Working Group, the transfer of control from the military police to the army began in March 1973. The current operations in the Caprivi were described as a "hearts and minds" campaign with a military and political character, since the "goodwill" of the inhabitants would have to be won. Eighty per cent of the operation depended on the civilian aspects of development in the area, according to a statement by the Defence Minister, Mr. P. W. Botha. The men of the permanent force were to take over command of the various bases in the area, supplemented by national servicemen and African trackers. Commandant Minnaar Fourie said that since 19 April 1971 10 men of the South African police had been killed and 46 wounded by land mines. 226/

(b) Forced removals of the African population

247. Mention during testimony to the Working Group of "concentration camps" (Katjavivi, RT.151) appears to refer not to transit or resettlement camps but rather to police overflow camps or police emergency arrangements for the detention of prisoners.

248. Several witnesses referred to the forced resettlement of individuals and groups in the "homelands". Mr. Ngava (RT.167) said he knew of two kinds of removals: of African workers, when they became too old to work, from Windhoek and other places in the "police zone" to the "homelands"; and of young persons removed to a distant locality because of their political activity. People were moved not only for these reasons but in order to increase the population of the "homelands" artificially. There were settlements, consisting mainly of repatriated persons, in the Ochinene, Kakrara and Okombahe reserves.

249. Mr. de Beer (RT.151) said it was the South African Government's intention to increase the population of the reserves and rural areas to provide a basis for the Bantustans. The idea was to move all Africans not working in the towns and not already settled in reserves to their designated "homeland", often by using economic inducements to get them to move, with the intention of buying up the land vacated. Those that became economically useless in towns such as Windhoek were not put in the

224/ Rand Daily Mail, 27 June 1974.

225/ Star, 11 May 1974.

226/ Star, 16 June 1974; South African Digest, week ended 21 June 1974.

care of an old-age home but were uprooted from their life-long place of residence and sent to reserves where they had never been before. There had been an old-age home in Windhoek, but this was now used as a transit camp for aged people who were being sent through to the reserves. This was a concerted attempt not only to divide the African population along tribal lines but to consolidate white control over the best farming land and productive areas. The reserves were scattered about on the edge of this area: what the Government called "Hereroland" the Hereros said they had never lived in it, as it would not support their large herds of cattle and would cause them to lose the little wealth they had. At the end of 1973, a small group of people were forcibly moved from Riemvasmaak in the Cape Province to "Damaraland" without consulting the inhabitants of the latter. It was reported that a group of Damaras had settled in the Cape some 60 years previously, and the move would cause family divisions, as some children had been classified as "Coloureds". 227/

250. According to information available to the Working Group, some 29 per cent of the African population of 650,000 would have to be resettled if the Bantustan policy were to be fully implemented. Some 95 per cent of the Damara and 75 per cent of the Herero lived outside their designated "homelands". Of the 150,000 Africans living outside the existing reserves, approximately 44 per cent were in urban areas, and 56 per cent were in rural areas, where they worked on white-owned farms. 228/

(c) Personal freedom and freedom of movement

251. Mr. de Beer (RT.151) referred to the restrictions on the freedom of movement by Africans in the "native reserves". They were generally restricted to these areas, unless they receive work-seekers' permits, entitling them to enter an urban area to look for employment. People could not visit the reserves without permission; this was used particularly to frustrate the work of the churches in Namibia: an average of one permit a month was refused to church workers desiring to travel to another reserve to carry out their church duties. The Anglican Suffragan Bishop of Damaraland, the Reverend Richard Wood, was not allowed to enter Ovamboland, where he had 40,000 church members. In June 1974, permission to enter Ovamboland had also been refused to the Anglican Bishop of Bloemfontein, the Right Reverend Frederick Amore. An Ovambo Anglican priest, Reverend Philip Shilengo, had been ordered off the mission property of Odibo by the Kwanyana tribal authority, which meant he was unable to discharge his duties as Archdeacon at Odibo.

252. According to information available to the Working Group, the principal of the Otjimbingwe paulinium, Pastor Klaus Eicholz, was served with an expulsion order in March 1974. He was the only white member of the Executive Council of the Evangelical Lutheran Church in Namibia. 229/

227/ Sunday Times, 18 November 1973.

228/ Uprooting a Nation (London, Africa Publications Trust, March 1974), p.31.

229/ Windhoek Advertiser, 29 March 1974; Lutheran World Federation News Service, 17 and 25 April 1974.

(d) Economic opportunities

253. Mrs. Herbertson (RT.155, also her written testimony) said that the poor conditions in the reserves were aggravated by the official policy of providing no more than minimal employment opportunities, thus forcing men to seek work in the white sector of the economy. In Ovamboland, the rate of unemployment was estimated at 70 per cent, although this was disguised in official statistics by classifying those unemployed as "subsistence farmers". Every family in Ovamboland, and in other reserves, was dependent on cash income for at least a part of the year; men who could not work had no alternative but to stay at home and tend their livestock. Work on the land was slow and laborious; there were no tractors; oxen and ploughs could be afforded only by a few. Major crops included corn and mealies, with ground-nuts, peppers and beans as secondary crops. If the rains failed, there was a severe shortage of food, and few families could afford to pay cash to supplement their needs. In Ovamboland, a rapidly increasing population meant that land within the reserve was extremely scarce. The various concerns of the Bantu Investment Corporation (BIC) which purported to further the economic development of the "homelands" had established projects employing only 587 Africans (and 93 whites) in the whole Territory and had made a total of 20 loans to Africans since its inception in 1959. The situation was worse in the other "homelands", although the population was less dense; those living in "Hereroland" and "Damaraland" could only scratch a bare living out of the sand. Apart from general trading stores, there was no employment for local people in these areas. In Damaraland, the company mining in the area (the ISCOR tin mine at Uis) brought in Ovambo contract workers rather than using local labour. Within all the reserves there was no internal market on which to sell surplus crops, and Africans could not trade in cattle outside the reserves. Apart from the minority who found work in business or administration, the only means of earning cash was by becoming a migrant worker. All these facts disclose that there are no meaningful economic opportunities for the Namibians.

254. According to information available to the Working Group, expenditure by the South African Bantu Trust Fund, responsible within Bantu Administration for current expenditure and capital development within the "homelands", amounted to R10.4 million and R2.3 million for Namibia and the Eastern Caprivi respectively (during the 1972/1973 financial year). The largest expenditure was on buildings, irrigation and water supply, and Bantu townships. 230/

D. GRAVE MANIFESTATIONS OF COLONIALISM
AND RACIAL DISCRIMINATION

255. It will be recalled that the Commission on Human Rights decided, in resolution 21 (XXV) adopted at its twenty-fifth session, that the mandate of the Ad Hoc Working Group of Experts should include an investigation of grave manifestations of colonialism and racial discrimination present in the situation prevailing in Namibia. In accordance with that resolution, the Ad Hoc Working Group submitted a preliminary report (E/CN.4/1020/Add.1, paras. 1-70) to the Commission at its twenty-sixth session, followed by a further report (E/CN.4/1050) submitted at the twenty-seventh session.

256. In its 1974 sessions the Working Group continued to consider whether the situation revealed elements of the crime of genocide and other manifestations of the application of apartheid to Namibia.

(i) Massacres and violations of the right to life

257. Mr. Katjavivi (RT. 151) and Mr. Hishongwa (RT. 180) referred to the killing of civilians by South African troops in the Caprivi Strip during October 1968 and the subsequent flight of refugees to Zambia and Botswana. The area had been strafed and bombed, then troops had moved in with fixed bayonets, with the result that 63 people had died, 350 had been arrested, and 2,000 forced to flee the area. Of the hundreds of babies that accompanied their parents in the flight to Zambia, 53 died of starvation and disease on the way. Indiscriminate bombing of other peaceful villages in the area had also occurred, and many Namibians had lost both homes and relatives.

258. Witnesses Mr. Ngava (RT. 167) and Mr. Sanden (RT. 186) said that the South Africans had poisoned water holes in areas where they thought the freedom fighters were operating. Water holes were now regularly guarded by SWAPO soldiers so that a warning could be given if South African troops landed by helicopter to poison the water.

259. Regarding the massacres at the Caprivi Strip the Working Group had the following information:

- M. Sanden (RT. 185) and M. Spee (RT. 186) testified to a further massacre in the Caprivi Strip, which they said had occurred during September 1973. They had originally been invited by SWAPO to visit the areas of the Caprivi under guerrilla control in 1972, but it was not until December 1973 that the arrangements for such a visit, the first of its kind, had been finalized. In January 1974 they reached Caprivi as journalists/film makers, representing the Swedish Broadcasting and Television Corporation, and travelled for a month with a SWAPO force. They were taken to the remains of a village in the Kalanga district which according to their SWAPO guides had been destroyed and its inhabitants massacred by South African troops in September 1973. There were clear remains of the village in the form of huts, and cooking facilities; they had found approximately 25 to 30 skulls, and skeletons and bones were scattered over a wide area of the village. As they had arrived three months after the start of the rainy season, the grass had grown over very quickly, and it had been necessary to move the skulls from their original location in order to photograph and film them. Colour slides of the remains were additionally furnished to the Working Group as evidence, and the witnesses said that the film they had prepared would be generally available after it had been shown on the Swedish Television network.

They had also taken photographs of several grenades found at the village, and they took one canister home with them and submitted it to the Swedish High Command for identification. On the basis of the photographs, the grenades were said by the publication War Monthly, in London, to bear a close resemblance to a range of smoke grenades listed in Satory, a French arms catalogue, or to a United States grenade of circa 1950-1960. In Lusaka, they had interviewed the sole survivor of the massacre, Mr. Aaron Hangula, aged 74, through interpreters provided by SWAPO. He had been forewarned by SWAPO soldiers of an attack in the area planned for 18 September. During the attack, two whites had died and several guerrillas had been wounded. The next day, South African soldiers had arrived and killed 105 villagers, by pouring petrol over them. He had been found by the soldiers, tortured in an attempt to make him reveal the whereabouts of SWAPO units, and left to die in the bush. He had subsequently been found unconscious by SWAPO soldiers. This account was confirmed by Mr. Nanyemba, the SWAPO Secretary for Defence, who said that the massacre had been a reprisal action. The South Africans had arrived by helicopter, dropping petrol and smoke grenades and percussion bombs. They had then entered the village with fixed bayonets and killed the survivors. The witnesses said they were prepared to visit the area again, along with an impartial commission of investigation, in order to identify the village, which had been reached after a walk of two days from a SWAPO base inside the Caprivi Strip.

According to information available to the Working Group, a party of 18 foreign and 13 South African journalists took part in a two-day investigation in the Caprivi Strip. They travelled in helicopters provided by the South African Air Force and were accompanied by the Commissioner-General for Eastern Caprivi and the head of the South West African Division of the Department of Foreign Affairs. The journalists had been flown over an area between the Zambezi and Chobi rivers, and the officials accompanying them had pointed out that no visible signs of a massacre, in the form of evacuated villages or destroyed huts, could be seen. Inhabitants of the villages where the party landed said they were not aware of the presence of the South African security forces, although they knew of the existence of SWAPO. Reports said they were evidently wary of the sudden descent of a large helicopter-borne force; at Sikosi village, for example, the party had arrived in a convoy of three-ton trucks with six armed soldiers to a vehicle. 231/

Following the transmission of a part of their film on a Swedish Television news programme in August, they had received a telex from the South African Minister of Defence, Mr. P. W. Botha, denying the massacre. Both witnesses were subsequently invited, through the South African Legation in Stockholm, to visit the area at the South Africans' expense, in order to point out the scene of the massacre to the party of journalists that was to visit the Caprivi Strip at the invitation of the South African Foreign Minister, Dr. Hilgard Muller. The invitation had been accepted, providing it included the United Nations Commissioner for Namibia, Mr. Sean MacBride, a Namibian guide chosen by the two witnesses under the protection of the United Nations Commissioner, and the right to use film equipment. These conditions were rejected by Dr. Muller in a statement on 18 August as "irrelevant" and as having been introduced for "political considerations".

(ii) Floggings

260. Several witnesses referred to the arbitrary sentences of public flogging imposed on detainees handed over by the South African police force to the tribal authorities in Ovamboland. Mr. Katjavivi (RT. 151) and Mr. Alexander (RT. 188) provided direct evidence of the pattern and manner of the floggings in the form of copies of the sworn affidavits of the individuals involved. ^{232/} The floggings were the punishments for "crimes" which were not crimes in any tribal law or South African law, and the procedures as a result of which the punishments were inflicted bore no relation to any real legal procedure. In most of the summary trials by the tribal courts, mere membership of SWAPO sufficed as a punishable offence; other "crimes" were the singing of SWAPO songs; using the name Namibia; or wearing a SWAPO flag or emblem, or simply a shirt in SWAPO colours; ceasing to work, or striking; causing unrest; or wearing a knife at a tribal gathering. A few instances are given below.

Nathaniel Homateni: "When I emerged from the police station I found a number of tribal policemen waiting. I, together with Frans Nangutuuka, was taken to the tribal offices at Ondangwa." They were asked then if they were members of SWAPO, to which their answer was yes. "We were told not to answer back, and if a victim tried to emphasize his right to defend himself he was told that asking questions entailed an increased number of strokes."

Spener Shigwele: "The Tribal Secretary stood up and stated that I had been found guilty because I had sung SWAPO songs and had contributed ... 20 cents ... to the funds of SWAPO. He then said that the court was sentencing me to receive 15 strokes with the palm cane."

Philip Alwendo: "He answered that I had been sentenced ... to receive 15 strokes of the makalani cane ... for being a member of SWAPO and also because I had attended gatherings of SWAPO and allowed my café to be used as a meeting place for SWAPO members."

Franz Nangutuuala: "The Secretary, Julius, reading from a piece of paper, stated that I had been charged and found guilty of participating in SWAPO activities. He also said that on the 15th of August 1973 I had thrown stones at a South African police vehicle. This was a lie. Thirdly, I had a shirt that indicated I am a member of SWAPO ... He said I had been found guilty of these acts and my punishment was to receive 15 strokes. He ordered that my shirt should be taken from me. When he said this, some headmen clapped their hands and some of those present, including the Prime Minister of Owambo, Eliphas, laughed."

The lack of any formal charges against those arrested, with no opportunity to speak or call witnesses in their own defence, no chance of legal representation,

^{232/} Written testimony of Mr. Katjavivi, appendix C. "Affidavits by flogging victims", ISMUN, "Floggings in Namibia" (Geneva, July 1974).

the arbitrary increase of the sentence in the middle of its execution, were all irregularities from normal legal procedure occurring individually or in different combinations, as illustrated below:

George Ngesheya: "When the court passed its sentence I requested an opportunity to speak but was denied this. No witnesses were called in the proceedings and I was at no stage informed by the Commission of any offence whatsoever."

Augustinius Kasepa: "I was taken into a hall. I found myself in front of Chief Eliphas and five other persons. I asked no questions as I had been warned beforehand that if I asked questions I would be more severely punished."

Manjo Ja Manyu: "None of us was given any opportunity to defend ourselves. Had I been given an opportunity, I could have called witnesses in order to prove my alibi."

261. Mr. MacDermot (RT. 187) said that the proceedings could not be called a trial; there was no charge, no plea, no defence and no lawyers. The victims were merely told on the basis of a police report that they had committed an offence and that they were to be flogged. They were not told of any right to appeal, or given any opportunity to appeal; those who had asked to be allowed to appeal had just been taken and flogged. A petition to the Supreme Court in Windhoek by Bishop Auala of the Ovambo-Kavango Lutheran Church and Bishop Wood to have a permanent ban placed on the floggings had been rejected, together with leave to appeal against the decision. This was subsequently granted by the Chief Justice, who had to be satisfied that there would be a reasonable prospect of success on appeal. On 13 June, the South West African Supreme Court refused to grant a temporary interdict to suspend the flogging pending the outcome of the appeal, on the ground that "such temporary relief may seriously hamper the administration of justice in Owambo and would far outweigh any consideration of hardship on individuals, who are in any event not precluded from applying to this court where they are personally affected". The court contended that it was essential to permit floggings to continue - which as Mr. MacDermot pointed out, might yet be found illegal under their own laws. The International Commission of Jurists had itself written a letter to the South African Minister of Justice, suggesting that some way should be found to suspend floggings pending the determination of their legality by the Court of Appeals. He had replied that this was asking him to interfere "improperly in the administration of justice" by the courts. A reply had been sent detailing the administrative actions that could be taken to halt punishments until there was an effective right of appeal and the legality had been determined.

262. Mr. Rubin (RT. 151) said that Bantustan officials had been permitted under administrative authority given to them by an illegal régime to impose floggings. The justification given by the South African Government was that as these were administrative acts they were not subject to criticism by the courts.

263. According to information available to the Working Group, the South West African Supreme Court subsequently, on 19 November, ordered a temporary ban on public floggings and set a maximum of 10 strokes until 22 February 1974, by when the tribal authorities had to show why the ban should not be made permanent. The

decision came in response to a petition by Thomas Komati, who had been given a flogging of 30 strokes, supported by Bishops Auala and Wood. On 22 March, following a number of postponements, the South West African Supreme Court rejected petitions by the church leaders for the floggings ban to be made final. A state attorney had been appointed to appear for the tribal authorities, and the court had received the sworn affidavits of victims. The application was rejected on the ground of legal technicalities - that neither Bishops Auala or Wood had locus standi or the right to intervene; that Komati had no right to appeal as he had already been flogged; that the interdict was unnecessary since there was a right of appeal to a tribal appeal court. It also refused leave to appeal against the decision, but this was overruled by the Appellate Division, which granted leave to appeal in May. Further applications for a provisional interdict were also refused, as was leave to appeal against this decision. 233/ It was reported that two men, John Kalola and Salom Ndeulita, had received floggings of 16 and 20 strokes respectively following the lifting of the temporary interdict in March. 234/ In September, the Ovambo Minister of Justice, Chief Mukundji, said that steps were being taken to eliminate the "annoyance" of "interference" in the criminal procedure of Ovamboland's tribal courts. In future, women were to be spared from corporal punishment, and an appeal council for Ovamboland was to be created. Such a body would serve as a partial counter-measure against possible future applications for interdicts and unfavourable foreign criticism. A person disagreeing with the judgement of a tribal court could lodge an appeal with this body, which would consist of a chairman, with the legal qualifications of a magistrate, and a maximum of seven other persons. 235/

264. Mr. Alexander (RT. 188) said that two affidavits by Mr. David Shihepo effectively refuted the claim made by the Department of Bantu Administration on 13 November 1973 that the floggings in Ovamboland were "absolutely a tribal matter and it is an old custom of the tribe". Mr. Shihepo was born in 1885 and since 1912 had been attending sessions of the Kwanyama tribal court, where he had become familiar with the tribe's law and custom. Flogging had never been imposed prior to the 1940s, and then only on the instructions of a Commissioner of Native Affairs by the name of Hahn. It had been meted out to persons convicted of crimes, but the number of strokes did not exceed six, even for serious offences. Tribal sentences imposed traditionally the payment of fines, inter alia by the payment of cattle, or for certain offences, death. The acts of ceasing to work or striking were not offences in terms of tribal law, and there was no tradition in Kwanyama law and custom to make the fomenting of political unrest a criminal offence.

265. Mr. Smart (RT. 156) said that the South African authorities had sought to render political organizations opposed to apartheid ineffectual by detaining their officials and passing on released detainees to the tribal police; public floggings had become an almost routine method of punishing peaceful political opponents.

233/ ISMUN, op.cit., p.4; Windhoek Advertiser, 22 March 1974.

234/ Star, 6 April 1974; Windhoek Advertiser, 11 April 1974.

235/ Windhoek Advertiser, 8 September 1974.

Despite its over-all control of political and economic life the South Africans maintained, however, that they could not intervene. Mr. Rubin (RT. 151) said all the "homelands" were subordinate organizations; whether they were "self-governing" or not, they were subject to overriding South African legislation.

266. Mr. MacDermot (RT. 187), Mr. Alexander (RT. 188) and Mr. Katjavivi (RT. 151) testified to the collusion of the South African police in the floggings, the extreme brutality of the floggings, which left victims unconscious and badly bleeding, and the potentially fatal injuries caused. Mr. MacDermot said that the tribal courts were clearly under the domination of the South African security police and were prepared to act on a report from them containing only hearsay evidence. Mr. Katjavivi said that many of the victims had been hit not only with the flat side of the makalani cane, but also the sharp side; in most cases they had been forced to undress completely. Mr. Alexander referred to statements made by victims in their affidavits:

Spener Shigwele: "Nakwafila ordered me to remove my trousers and underpants ... He ordered me to lie over a chair placed in the middle of the hall ... The blows were agonising and there were long pauses between each ... After striking a number of blows, Nakwafila then changed the position of the cane and struck me with the narrow side. This side cut into my body and I bled."

Franz Nangutuuala: "I was ordered to strip. I was naked and then ordered to lie over the chair ... I told them I was not well as I had been severely beaten on the day of my arrest by the South African police. I said I was innocent and there was no need to punish me in any way ... I was held down by tribal policemen. The blows were horrifying and he struck me not only with the flat end, but also with the narrow side of the makalani branch. I bled and screamed in agony ... After I had received 15 blows, members of the tribal authority shouted that I should get some extra strokes. Whereupon Nakwafila started to hit me again, and then I lost consciousness."

Nathaniel Homateni: "I loosened and pulled down my trousers and took my underpants down so that they were below my knees ... I am 47 years of age and felt deeply degraded and humiliated ... The pain was terrible and produced open injuries. By the eighth stroke I lost consciousness." 236/

267. Witnesses Andreas Muukwano (RT. 165, also his written statement) and Othilie Nangolo (RT. 165, also her written statement) gave direct evidence to the Working Group of their flogging experiences. Mr. Muukwano was sentenced to a flogging on 25 October 1973 of 16 strokes, after a council of Ndonga chiefs had discussed his case without him being represented. He was charged in a statement read out to him with being a member of SWAPO, an opponent of the Bantustan, and of writing articles that called on workers to strike and exposed maltreatment of Africans by the South African authorities. After his flogging he could hardly walk and had to be carried to a hospital; he subsequently spent two weeks in bed, unable to sit up at all.

268. Miss Othilie Nangolo said she was given a flogging of six strokes in front of a crowd of 1,000 people, together with two other nurses. She had not been completely undressed, but most of her heavywoollen clothing had been "removed towards her head". The person administering the flogging was holding the cane with both hands; she had become unconscious after the second stroke, and had hardly been able to walk afterwards. She had been taken home by friends, where she attended to her wounds herself, as a trained nurse. She had difficulty in walking for a week, and the pain had remained for a month afterwards.

269. Not all of the victims had been taken straight to hospital for treatment. Mr. Augustinius Kasepa was forced to walk to his lodgings to fetch R2 to pay a tax, although he had fallen to the ground unconscious immediately after his flogging. Mr. Katjavivi (RT. 151) said the after-effects of the floggings were potentially lethal. Dr. Bernard May, a physician who had examined Franz Nangutuuala, had said in an affidavit that the injuries had led to necrosis and separation, and there was a danger of spreading cellulitis which could cause death. There was also the danger of supervening septicaemia, an infection of the blood considered to be very dangerous.

270. Several witnesses referred to the exodus of Namibians into Angola from June onwards; among them were Mr. Shindjoba (RT. 160), Mr. Haikali (RT. 160) and Mr. Hishongwa (RT. 180). The exodus was said to be the result of the repression in the north and the fear of renewed floggings.

271. The Ad Hoc Working Group of Experts also actually saw signs of injuries on the bodies of witnesses who had been tortured.

(iii) Economic exploitation through multinational corporations

272. Mr. Vigne (RT. 151) referring to the role of the multinational corporations with respect to the economic exploitation of the Namibian people, said that they do not only exploit the wealth of Namibia and have an attitude of total detachment from the workers, but that they positively support the South African Government in a number of ways. For example, they control and administer the South African contract labour system, and enforce the South African policy on the workers. The reports of the Council of Namibia to the twenty-ninth and thirtieth sessions of the General Assembly, (A/9024 and A/9624) describe the recent activities of the multinational corporations in Namibia. The percentage of the participation of South African companies in those multinational companies is listed in detail in Annex I of the document A/9024. Document A/9624 contains a guide to foreign companies operating in Namibia.

273. The activities of the multinational companies include: mining; extracting basic metals and diamonds; prospecting of base minerals; exploration of petroleum; prospecting and marketing; fishing; agriculture; construction and manufacture; banking; services and others. The Cunene River Basin Scheme is one of the many projects of the multinational companies operating in Namibia.

(iv) Cultural oppression

274. Commenting on the cultural rights of Africans in Namibia and South Africa, Mr. Jiriange (RT. 171), said that there were no museums of African culture and no theatres where Africans can perform and establish their cultural identity. There is no law in South Africa which says that the blacks have no right to have their own

cultural development, but the conditions are such that it is almost impossible for Africans to develop their own culture because the Government does not encourage it. In the whole of Windhoek, for example, there is only one hall for Africans, although there are a number of halls for whites. Visiting circuses and other entertainment customarily performed three nights for the whites and one for the blacks.

275. Regarding the level of education in Namibia, Mr. Ngava (RT. 167) who was being prosecuted under the Terrorism Act said that his defence counsel was white because of the insufficient number of qualified blacks in Namibia. The same witness called for more study opportunities for Namibians. Mr. Jackson Kandjue (RT. 166), who was a student at the Theological College in Namibia testified that he was arrested because he had demonstrated against the expulsion of one of the lecturers from the college 237/ who had helped him to study.

(v) Other manifestations

276. Mr. Katjiyena (RT. 187) also said that a significant factor was news of a decision by the South African Government to draft young SWAPO members into a militia, to be sent to fight against other Namibians. According to information available to the Working Group, between 500 and 600 men and women fled across the border in the month of June. John Ya Otto, who was among the first to leave, said the main reasons had been the general brutality by the tribal police and the suppression of political opposition. The exodus comprised most of the Namibians in Ovamboland with some degree of training or education - teachers, nurses, clerks, post office workers, mission employees and vocational students. It was initially reported that approximately 150 refugees had been detained by the Portuguese authorities in Angola, and it was feared that they would be returned to Namibia. Subsequently, refugees had been questioned but then allowed to proceed by road to Zambia, or via the Benguela railway through Zaire. The South African Government had asserted that SWAPO was luring people over the border for "terrorist training". Mr. Jannie de Wet, Commissioner-General for the Indigenous People, said that an "unknown subversive organization" had arranged the crossing. The Ovambo Minister of Justice, Chief Mukundi, warned Namibians that the punishment for illegally crossing the border was a R4,000 fine, or a year in gaol, while the death sentence could be imposed for inciting people to undergo training constituting a threat to law and order. The claims were refuted in a SWAPO press release of 21 June, which said the allegations were an attempt to divert attention from the crimes being committed against the Namibian people. The key to the flight lay in a secret instruction of 18 June to the Ovamboland government by Pretoria, calling for the recruitment of a border force, which had been leaked to SWAPO activists. By mid-September 1974, it was reported that an estimated 2,000 people had crossed into Angola, although the number said to have arrived in Zambia was much smaller, around 700. 238/

277. Most of the witnesses considered that the over-all practice of government by South Africa in Namibia, including the treatment inflicted on political prisoners and those detained under the emergency regulations and the Terrorism Act, the policies

237/ For an account of expulsion of students and lecturers in Namibia, as well as other information on education in the territory, see E/CN.4/1135, paras. 277-279.

238/ Star, 29 June 1974; Guardian, 19 and 26 June, 2 and 3 July, 17 July 1974. Confidential report to SWAPO, part three, September/October 1974, chap. VII (mimeographed).

on trade union rights, the living conditions and system of recruitment of African workers, and the conditions of Africans in the "native reserves", were grave manifestations of colonialism and racialism and violations of human rights. Several witnesses drew particular attention to the situation in northern Namibia, the brutal floggings policy of the Ovamboland tribal rulers, and the exodus of large numbers of young Namibians across the northern border into Angola. Reference was also made to the massacres in the Caprivi (see section A, above).

278. Mr. Albie Sachs (RT. 156) made the point that in terms of international law all persons captured in Namibia "are being held illegally, because the administration is illegally running the country"; and that Namibian prisoners tried in Pretoria or held on Robben Island were also victims of a form of international kidnapping, itself probably an offence against international law.

279. Mr. Katjavivi (RT. 151) said that torture and trial had become the order of the day; these conditions were the direct outcome of South Africa's continued presence. They had been suffered by Namibians for many years; 1974 was the seventieth anniversary of the German war of extermination in 1904. Mr. Katjivena (RT. 187) said that, despite the emergence of new trends on the international scene, the situation in Namibia was a deteriorating one. Mr. Jiriange (RT. 171) mentioned several kinds of violations of human rights in Namibia; the experience of forced labour, the denial of freedom of expression and opinion, the right of equal protection under the law, and the right not to be subjected to degrading punishment. South Africa was encouraging the tribal authorities to inflict punishments on its opponents.

III. SOUTHERN RHODESIA

INTRODUCTION

280. The process by which the rebel régime unilaterally and illegally proclaimed the independence of Southern Rhodesia from the colonial Power, the United Kingdom, on 11 November 1965, and adopted a so-called constitution, is covered in detail in documents E/CN.4/AC.22/13, paragraphs 1-11, and E/CN.4/1020/Add.1, paragraphs 72-74. On 17 November 1969, the Southern Rhodesian "Parliament" adopted a new "constitution", together with a "Land Tenure Act" and an "Electoral Act", certain provisions of which are treated as entrenched clauses in terms of the "constitution". The two acts were analysed in a previous report of the Group (E/CN.4/1020, paras. 369-373) and the "constitution" in an addendum to that report (E/CN.4/1020/Add.1, paras. 73-74).

281. As the Group noted in its 1973 report (E/CN.4/1111, para. 232), the settlement proposals negotiated between the United Kingdom Government and the rebel régime in November 1971 239/ provided for the acceptance of the 1969 "constitution" as the basic governing instrument of an independent Rhodesian republic. Despite their overwhelming rejection by the people of Rhodesia as a whole, 240/ the British Government left the proposals "on the table". However, after the change in government in Britain in February 1974, the incoming Prime Minister, Mr. Harold Wilson, stated in the House of Commons on 4 July that all previous settlement offers by the British Government to the rebel régime were now cancelled.

282. As in previous reports the Group has emphasized in (E/CN.4/1111, para. 231; E/CN.4/1135, para. 327), although the United Kingdom has consistently refused to take measures sufficient for the restoration of lawful government in Southern Rhodesia, the territory remains in international law, in terms of British legislation and the relevant resolutions of the United Nations, a British Crown Colony to which all international conventions signed and ratified by the United Kingdom are also applicable.

283. During the period under review, the rebel régime has consistently failed to present proposals acceptable to the African majority. After nearly 10 months of negotiations between the rebel "Prime Minister", Mr. Ian Smith, and the President of the African National Council, Bishop Abel Muzorewa, constitutional changes offered by the régime were described by the ANC Central Committee, which unanimously rejected them, as "virtually those of 1971". 241/ At the same time the steady escalation of the guerrilla war has led the régime to attempt to bolster his authority, particularly in the operation zones, by means of further repressive legislation and executive action.

239/ Rhodesia: Proposals for a Settlement, Cmdd 4835.

240/ Rhodesia: Report of the Commission of Rhodesian Opinion under the Chairmanship of Lord Pearce, Cmdd 4964.

241/ Moto, 8 June 1974.

284. It should, however, be noted that a number of political developments might lead to the possibility of a settlement of the situation in Southern Rhodesia. Thus, in December 1974, negotiations were begun in an attempt to find a solution to the constitutional problem. On 4 December 1974, a conference was held at Lusaka (Zambia) and was attended by Presidents Kenneth Kaunda of Zambia, Julius Nyerere of the United Republic of Tanzania, Seretse Khama of Botswana, the Prime Minister of Rhodesia, Ian Smith, and the leaders of the three main black movements in Rhodesia, namely, Bishop Abel Muzorewa, President of the African National Congress of South Africa (ANC), Joshua Nkomo, President of the Zimbabwe African National Union (ZANU) and Reverend Ndabaningi Sithold, leader of the Zimbabwe African People's Union (ZAPU). 242/ For the first time since the unilateral declaration of independence of November 1965, the Ian Smith "government" agreed to direct talks with the leaders of the African nationalist movements. On 11 December 1974, an agreement on a cease-fire in Rhodesia was signed, thus clearing the way for a conference to be held in the near future to discuss means of settling the constitutional problem.

242/ Mr. Nkomo and Reverend Sithold, who had been imprisoned in Rhodesian jails for about ten years, had been released on parole so that they might take part in the Lusaka conference.

A. CAPITAL PUNISHMENT

1. Summary of relevant legislation

285. The legislation sanctioning capital punishment in Southern Rhodesia was analysed in detail in the Group's previous report (E/CN.4/1020/Add.1, paras. 75-77). It will be recalled that the principal relevant law is the Law and Order (Maintenance) Act, which establishes the possible death penalty for a wide range of offences and lays the onus of proving innocence upon the accused.

286. The Law and Order (Maintenance) Amendment (No. 2) Act (No. 44 of 1973), promulgated on 8 November 1973, increased the maximum penalty to life imprisonment or death for attending a course "for the purpose of furthering a political object by the use of various unlawful means" or encouraging someone to attend such a course, and for harbouring or failing to report actual or suspected "terrorists" (sects. 23A, 48B). It also gave extraterritorial effect to a number of provisions (para. 251). It should be noted that in terms of the Criminal Procedure and Evidence Act, all those over the age of 15 are liable for the death penalty. 243/

2. Analysis of the information and evidence received by the Working Group

(a) Information concerning capital punishment sanctioned through the judicial process

287. The Group noted in its previous report (E/CN.4/1135, paras. 331, 333, 337) that the illegal régime appeared to have resumed the execution of those under sentence of death as a matter of policy. During the period under review, capital punishment has continued to be widely used, in particular against captured freedom fighters. In the 32 instances between January 1973 and mid-September 1974, identifiable from press reports, 244/ in which the death penalty was invoked for political offences, all of them in connexion with the guerrilla war, sentence was carried out in all but seven, five of which were commuted on appeal to life imprisonment. The outcome in the remaining two cases is unknown.

288. However, the secrecy with which, as several witnesses testified, the régime surrounds trials of those accused of "security" offences makes a reliable estimate of the numbers of death sentences and executions impossible. Mr. Makonese (RT.162) said that secret executions have been regular; in 1968, for instance, when the hanging of three freedom fighters was made public, information was received that some 35 had been hanged secretly in Salisbury maximum security prison (see also E/CN.4/1111, para. 238). A British political prisoner, Mr. C. Hewitson, said after his release on 8 January 1974, having served eight months, that while in gaol in Salisbury he had himself counted 20 hangings. 245/

243/ Rhodesia Herald, 12 June 1974.

244/ Rhodesia Herald, various dates; summarized for 1973 in Southern Africa Information Service (SAIS) submitted as written testimony by the International Defence and Aid Fund.

245/ Guardian, 18 January 1974.

289. It has not been possible to verify whether any of those reported in evidence to the Working Group in 1972 (E/CN.4/1111, para. 237) to be under sentence of death have since been executed. However, a witness who wished to remain anonymous, said that three of those sentenced some years previously for possessing arms had been executed early in 1974. The fact that these executions were not reported in the press leaves the fate of the remainder less than certain.

290. The following are those cases between November 1973 and September 1974 in which, according to press reports, the death sentence was imposed and carried out for political offences, arising in each instance out of the guerrilla war. It will be noted that in several cases the alleged offences were not offences against the person, and that in most cases execution followed within weeks of conviction or the loss of any subsequent appeal (Mr. Makonese, RT. 162; and press reports).

(a) On 14 December 1973, two Africans were hanged in Salisbury prison. Mr. Hatituduzi Guvamatanga, a former teacher in the Gokwe district, who was described as the leader of a six-man FROLIZI patrol, was sentenced to death on 21 September on each of two counts, to one of which, the possession of arms, he had pleaded guilty. On the other, the murder of a farmer, Mr. A.H. Joubert, on 30 March 1973, he stated that he had shot Joubert in self-defence after the latter had fired at him. Mr. Rivers Peter Chimunondo was found guilty and sentenced to death on 26 September on three counts: the murder of Mr. L. Jellicoe on 4 February; looting and setting fire to a store; and setting a land-mine which destroyed a military vehicle. It was not alleged by the prosecution that the accused was at the scene of the murder, but only that he had common purpose with those responsible (SAIS, cols. 176, 178, 460-462).

(b) On 1 March 1974, two Africans were hanged in Salisbury prison. Mr. Lovemore Dube was found guilty and sentenced to death on 9 November for alleged acts of terrorism and possession of arms of war. An unnamed African was found guilty and sentenced to death on 6 December for his part in a guerrilla attack on Nyansewe farm on 25 April 1973 (SAIS, cols. 177, 462; Rhodesia Herald, 2 March 1974).

(c) On 19 April, Mr. Lovemore Fanny Gombe was hanged in Salisbury prison, having been found guilty of the murder of a headman on 17 August 1973, and on three counts under the Law and Order (Maintenance) Act of committing a series of offences in July and August which, the prosecutor claimed, amounted to a "one-man terror campaign" (SAIS, col. 459; Rhodesia Herald, 31 January 1974, 1-3 February 1974, 23 April 1974).

(d) On 7 June five of the nine unnamed Africans who had been sentenced to death on 5 March for possessing arms were hanged on Salisbury prison. At least five of the nine were teenagers: one was 18, three 17, and another 19. On appeal, the sentences of four of the latter were commuted to life imprisonment. The prosecution alleged that the nine were part of a guerrilla group which clashed with a unit of the Rhodesia African Rifles in Sipolilo district on 22 June 1973 (Rhodesia Herald, 26 and 28 February 1974, 1, 2, 5, 6 March 1974, 17 May 1974, 8 June 1974; Cape Times, 8 March 1974).

(e) On 21 June, Mr. Neveson Mutandiro and Mr. Cuthbert Phiri were hanged in Salisbury prison, having been found guilty and sentenced to death on 29 March on charges of possessing arms and committing acts of terrorism. According to reports, Mr. Mutandiro said that the two men were in a 19-strong guerrilla patrol which was attacked by Rhodesian and South African forces on 19 September 1973 in the Mount Darwin area (Rhodesia Herald, 28-30 March 1974, 23 June 1974).

(f) On 16 August, Mr. Eriya Taruvinga Nyambesi was hanged, having been found guilty and sentenced to death on charges of murder and sabotage. The prosecution described him as a "fringe member of a terrorist band" of eight which had planted a land-mine which had subsequently exploded under a vehicle (Rhodesia Herald, 24, 25, 28 May 1974, 27 July 1974; Times, 17 August 1974).

(g) On 30 August, the elder of two African teenagers, 15 and 17 years old, was hanged at Salisbury prison. They had been found guilty on four counts of murdering Mr. and Mrs. E. Fletcher and police reservist P. Rouse in mid-February 1974, and of firing on a pick-up truck on 13 January (Rhodesia Herald, 5-7, 12 June 1974, 31 August 1974).

291. In the current series of trials, the executions of only two of those known to have been sentenced to death between February 1973 and September 1974 have not yet been reported in the press. In this case two former guerrillas, who had deserted from their group in 1970 and had since been working as domestic servants, were sentenced to death under the Law and Order (Maintenance) Act in Bulawayo High Court on 26 March 1973 and lost their appeals against sentence on 28 May (SAIS, cols. 178-9). Although several further trials on charges under the act took place in August and September 1974, no further death sentences were reported.

(b) Information concerning the death of persons in suspicious circumstances while in prison or police custody

292. Several witnesses testified to the deaths of a number of people in prison or police custody under suspicious circumstances. In some of these cases, notably that of Mr. Leopole Takawira (Mr. Nkomo, RT. 153; Mr. Mukono, written testimony submitted at the 356th meeting, p. 1), Mr. Michael Chacha (Mr. Nkomo, RT. 153), who was said to have died en route to Mpilo hospital in Bulawayo; and Mr. Mashawira (Mr. Mnangagwa, RT. 165), who it was alleged died under torture in Salisbury central police station in 1965, reference was made in testimony to the Working Group in 1972 (E/CN.4/1111, para. 239).

293. According to information received by the Group, the following new cases came to light during the period under review:

(a) Three political prisoners, Mr. Peter Mabena, Mr. Phillimon Nyakabavu and Mr. Johnson Sigodo Dube, died in prison (date and place unstated) (Mr. Moyo, memorandum dated September 1973 submitted as written testimony at the 341st meeting, p. 3).

(b) Two prisoners at Khami prison, names given as Pumulo and Mabuki, died allegedly as the result of deliberate neglect by the prison doctor, the former in Mpilo hospital from tuberculosis, the latter in his cell from a stomach ailment (Mr. Mandizha, RT. 152).

(c) Mr. Mukanganga-Nyashanu (RT. 153) and Mr. Mhangagwa (RT. 165) both referred to the death of a prisoner as a result of torture. The latter case was said to have taken place at Khami prison, and the prisoner, whose name was given as Ken Zira, was said to have been one of a party of six brought in from the battle area only the night before his death.

(d) Mr. Kenneth Chisanga, a long-term detainee held at Gwelo, died on 15 January 1974 of cyrrhosis of the liver. Mr. Smart (RT. 156) said that it had been alleged by a number of detainees that one major cause of death was the failure of the prison doctor to give effective treatment. According to Mr. Mandizha (RT. 152) the doctor also refused to send Mr. Chisanga to a hospital. He was eventually released from detention and sent in an ambulance in a state of coma to his home in Rusape, where he subsequently died (see also Guardian, 1 February 1974).

(e) Mr. Mukanganga-Nyashanu (RT. 153) stated that Mr. Sami Mukahiwa Chiumbe was beaten to death on the morning of 3 March 1973 near a Mazoe police station by two African detective sergeants and a European detective officer, who had arrested him the day before in the Gutsa transit camp.

(f) It was revealed in a police statement on 5 April that Mr. A.T. Tambo from the Chiweshe Tribal Trust land, who had been arrested by "security forces" on 31 January, was shot dead on 4 February while attempting to escape from his escort. This version was released only after relatives complained that he had been beaten to death by troops (Rhodesia Herald, 6 April 1974)

(g) Between 4 and 12 January 1973, Mr. Jackson Ndaramba died in police custody. He had been taken, together with all the other men from his village, after a land-mine explosion in the Silverberg area to a nearby police camp, where he was severely beaten under interrogation. He was never seen alive again, and on 12 January a police helicopter landed in his village to announce his death. Subsequent explanations by the "government" have proved self-contradictory; specialists have faulted the official cause of death (the dislocation of an old neck fracture by a sharp turn of the head); and the régime has refused either to return the body or to hold any public inquiry. 246/

(c) Summary execution of freedom fighters

294. Mr. Musikavanhu (RT. 152) said that during 1973 and early 1974 security forces summarily shot about 20 or 25 freedom fighters and that the practice is continuing; and he suggested, as did Mr. Nkomo (RT. 153) that this was done to avoid the publicity arising out of formal trials (see E/CN.4/1111, para. 241). Mr. Makonese (RT. 162, and written testimony submitted at the 353rd meeting, p. 4) said that some of the captured freedom fighters are "tried in the bush" and shot by "security forces" on capture. Eye-witness accounts 247/ suggest that "security forces" give a low priority to the capture of guerrillas alive, and that in some cases the latter may not be given proper opportunity to surrender. In the so-called "no-go areas" in the north-east, from which the African population was being removed en masse (see paras. 338-353 below), it was reported that the "security forces will have the right to shoot any stranger on sight". 248/

246/ Guardian, 2 July 1974; Dossier on alleged torture of prisoners circulated by Church leaders in Rhodesia, 22 August 1974, draft statement No. 31.

247/ See Daily Telegraph, 16 November 1973; Times, 16 August 1974.

248/ The Times, 11 January 1974.

B. TREATMENT OF POLITICAL PRISONERS
AND CAPTURED FREEDOM FIGHTERS

1. Summary of relevant laws

295. A comprehensive review of both the historical background and relevant legislation was given in the 1973 report of the Working Group (E/CN.4/1111, paras. 242-252). The Law and Order (Maintenance) Act, frequently amended, lays down a wide range of political offences and, together with the numerous regulations issued in terms of the State of Emergency, renewed on 20 June 1974, 249/ confers substantial decree-powers upon the rebel government. Other major pieces of security legislation which remains in force include the Unlawful Organisations Act (No. 55 of 1972) and the Departure from Rhodesia (Control) Amendment Act (1972).

296. During the period under review major changes were made to certain sections and enabling powers of the Law and Order (Maintenance) Act. The Amendment (No. 2) Act (No. 44 of 1973), promulgated on 11 November, empowered the "President", in accordance with a resolution of the House of Assembly, to give any provision of the Preservation of Constitutional Government Act extra-territorial effect; declared sections 29, 31, 37, 44, 48, 48A, 36, in so far as it relates to arms of war, and 48B to have extraterritorial force (section 48C (I)); increased the maximum penalty under sections 23A and 48B to life imprisonment or death (see para. 286, and under section 48A (acts of "terrorism" in Rhodesia or a "neighbouring territory") from 30 years or death to life imprisonment or death; and provided for forfeiture of property as an additional penalty (sect. 49A (I)).

297. Regulations published on 8 February 1974 (CNL40-74) 250/ confer wide powers as "protecting authorities" in the war zone (see paras. 341-344) including authority to arrest without warrant in terms of these regulations or the African Affairs Act, and to detain for 60 instead of 30 days, upon not only "Security Forces" but also Ministry of Internal Affairs staff down to District Officer level (sects. 31(3), 47(1a)). The "Minister of Justice" may also convene a magistrate's court anywhere without prior notice of time or place (sect. 52A (1)). The offence of "terrorism" now includes "threatening to endanger the public safety or to disturb or interfere with public order in Rhodesia" (sect. 2). The Magistrates Courts Amendment Act (No. 33 of 1973) empowers regional magistrates to impose sentences of up to 10 years' imprisonment or a \$2,000 fine "in cases involving public violence"; unlike High Court judges, they are not required to sit with assessors.

298. The Prisons Amendment Act (No. 38 of 1973) specifies that sentences of imprisonment now imply "with labour" unless otherwise indicated; and that "prison officers" may take all necessary steps to preserve the "health and wellbeing" of prisoners, with or without their consent.

249/ Rhodesian Parliamentary Debates, House of Assembly, 20 June 1974 (hereafter Parl. Deb.)

250/ Amending the Emergency Powers (Maintenance of Law and Order) Regulations (GN 739-73), for which see RT. 154 IDAF, written testimony, pp. 2-3; SAIS, July, December 1973, cols. 182-183.

2. Analysis of information received

(a) Information concerning the number of prisoners and captured freedom fighters

299. Mr. Moyo (written testimony submitted at the 341st meeting, p. 1) stated that because of the secrecy in which political offenders are arrested, tried and imprisoned, it was not possible to determine their precise number. It will be recalled that on the basis of evidence submitted by Amnesty International the preceding report of the Group (E/CN.4/1135, para. 345) estimated the number of detainees to be about 250 in October 1973.

300. Information received by the Group suggested that the numbers in all categories have increased during the period under review. The February issue of the official organ of the Zimbabwe African Peoples Union listed 288 names of political prisoners, detainees and restrictees, and stated that those under detention and restriction orders numbered 291. ^{251/} In the same month James Wardlow, citing "reliable sources", put the number of detainees at 351, about 40 of whom were held at Gwelo, 120 at Whawha, 90 at Khami, 46 at Gonakudzingwa, and the remainder in Que Que, Marandelas and Salisbury. It was reported ^{252/} that 190 Africans had been detained under "ministerial orders" during 1973. Mr. Moyo (RT. 150) said there were then (July 1974) about 400 people officially detained, the majority of them, according to Mr. Smart (RT. 156), since 1972. According to International Trade Union News (15 September 1973), 65 of those in detention in September 1973 were trade union leaders, including the recently arrested leadership of the Agricultural and Plantation Workers' Union. Lists issued by the Anti-Apartheid Movement, London, in October 1974 indicate that 390 known political prisoners and detainees were then being held: in Gwelo (43), Salisbury Remand (48), Whawha Detainees Section (230), Buffalo Range (6), Que Que (11), Wankie (2), Marandelas (2), Chikumbi (9), Mtoko (1), Gatooma (1) and Khami (37) prisons.

301. Reports in the Observer estimated the number of long-term political prisoners in February 1974 to be "at least 270" and in June "about 350". In addition, unspecified but large numbers of people have been tried and sentenced in connexion with the guerrilla war, in many cases to long periods of imprisonment. It was reported ^{253/} that the 1974 report of the BSA Police revealed that in this category "nearly 1,200 people had been arrested" in 1973. In addition, according to press reports, thousands are arrested without warrant and detained for varying periods.

302. In June 1974 it was reported that many of the top-ranking detainees held at Gonakudzingwa had been moved in great secrecy to other centres. Mr. Makonese (written testimony submitted at the 353rd meeting, p. 4) said that Mr. Joshua Nkomo, Mr. Joseph Msika and Mr. Clement Machachi were now being held at a new camp in the Buffalo Range "built into a mountain"; and Mr. Mukono (written testimony submitted at the 356th meeting, p. 1) said that Rev. Ndabaningi Sithold and members of the ZANU Central Committee were moved to Connemara prison, near Que Que. ^{254/}

^{251/} Observer, 3 February 1974; also S. Ndlovu, ZAPU director of information, in Morning Star, 3 May 1974.

^{252/} Daily Telegraph, 13 December 1973.

^{253/} African Research Bulletin, August 1974, citing Radio Salisbury, 28 August 1974.

^{254/} Described by an anonymous witness (351st meeting) as "Komoro mine", 20 miles from Gwelo.

(b) Allegations concerning cruel, inhuman or degrading treatment of political prisoners, captured freedom fighters and those in police custody

303. Information available to the Group suggests the continuing widespread use of torture and degrading treatment by the police and prison authorities of those in their custody, particularly alleged political offenders (see E/CN.4/1111, paras. 261-73). Mr. Mukanganga-Nyashanu (RT. 153), a detainee released on 31 March 1974, considered that the incidence of such torture had increased with the escalation of the guerrilla war.

304. According to Mr. Makonese (written testimony submitted at the 353rd meeting, p. 4) the methods of torture employed include "beating with naked fists, batons, rubber hammers, application of electric shocks, needles to pierce tips of fingers, pliers for pulling out finger nails, pinching and crushing testicles, lit cigarettes to burn ears and lips, subjection to solitary confinement in either darkened or brightly lit cells with abnormal temperatures".

305. Mr. Mukanganga-Nyashanu (RT. 153) said that while detained at Beatrice prison, a "farm detention centre", during 1964 and 1965 he was forced to do painful exercises and to stand facing a blank wall during a lengthy interrogation. ^{255/} In 1966 at Goromonzi police lock-up, he was subjected to electric shocks, a flashing lamp, ^{256/} beating with a rubber hammer, and the piercing of his left wrist, which remained paralysed for three years, with an 18-inch needle. Both Mr. Mhangagwa, from personal experience (RT. 165), and Mr. Nkomo (RT. 153) described the use of electric illusions - an "electric snake" - in darkened cells. Mr. Mhangagwa (RT. 165) said that while in Salisbury central prison his torturers used a machine which repeatedly inserted needles into his fingers, interfered with his sexual organs, ^{257/} and beat and pierced with drawing pins the soles of his feet. Mr. Mandizha (RT. 152) stated that Mr. Peter Mutsvuku, who when he saw him in Khami prison was unable to walk, he had the soles of his feet burned with fire.

306. The testimony of those witnesses who had undergone imprisonment suggests that beating is the commonest form of torture. Mr. Mhangagwa (RT. 165) described how he was hung head down from a bar and then beaten with long wooden batons simultaneously by several police officers, ^{258/} with great severity. He said that similar treatment caused the death of one of his fellow-prisoners. Mr. Mandizha (RT. 152) said that he had been beaten on several occasions whilst a political prisoner in Khami prison.

307. Several witnesses testified to having observed or been told of the beating of prisoners or suspects. Mr. Nkomo (RT. 153) names three prisoners, Mr. John Mbedsi, Mr. Norman Mapena and Mr. Reginald Mabachi, the last of whom had broken ribs, as having suffered severe beatings in 1964; and three others, Mr. Nhamburo, Mr. Mzimela and Mr. Manyika as having been "beaten up with baton sticks by prison guards" during

^{255/} See also testimony of Mr. Makonese (RT. 162).

^{256/} See also testimony of Mr. Nkomo (RT. 153).

^{257/} Ibid.

^{258/} See also testimony of Mr. Mandizha (RT. 152); and E/CN.4/1111, para. 268.

1967 in Gwelo prison, as a result of which one lost some of his teeth and another lost all his teeth. Mr. Kote (RT. 168) said that while in Khami prison he had seen captured guerrillas who had been severely tortured, some of whom were "crippled". 259/

308. Mr. Mutasa (RT. 156) considered solitary confinement, of which he underwent nine months, to be a form of torture; and several witnesses testified to its general use against political prisoners. According to Mr. Mandizha (RT. 152) and Mr. Mhangagwa (RT. 165) incoming prisoners at Khami were normally held in the single cells in "B" hall. For two years (1965-1967) they were not allowed out for more than a few minutes each day; nor were prisoners permitted to speak to each other. Mr. Mutasa (RT. 156) stated that while himself detained at Sinoia prison in 1971, a captured guerrilla serving a long sentence was being held incommunicado and allowed only 30 minutes' exercise per day. 260/ Mr. Mukanganga-Nyashanu (RT. 153) said he was held in solitary confinement both at Goromonzi and in gaol for some time thereafter, despite serious mental disorientation following torture. Mr. Moyo (written testimony submitted at the 341st meeting, p. 3) stated that some detainees held in prisons, who unlike "convicted" prisoners are not put to work, had not been allowed outside for eight years.

309. Mr. Makonese (RT. 162) said that Goromonzi detention camp and Beatrice prison, Salisbury, specialized in the use of torture as an aid to interrogation (see E/CN.4/1111, para. 270). Mr. Mandizha (RT. 152) referred to a "head punching section", Mr. Mhangagwa (RT. 165) to "the butcher house underground" (A-20), both in Salisbury central police station. Several witnesses stated 261/ that the principal object of this systematic use of torture was to extract information concerning clandestine military or political activity.

310. According to press reports of trials connected with the guerrilla war, between January and September 1974 no fewer than 16 defendants in 10 separate trials challenged, without success, the admissibility of statements made by them to the police on grounds of duress (see E/CN.4/1135, para. 350). Alleged torture methods used included electric shocks and beatings with fists, sticks and hosepipe. In their covering letter to the dossier containing 10 instances of alleged ill-treatment of Africans by "security forces", released on 22 August 1974, 11 church leaders stated that "the cases show a pattern of persisting deliberate illegal conduct by certain members of the security forces" and "include examples of prolonged and brutal assaults upon innocent people, beatings upon the face and body with sticks, kicking with boots, and the use of electric shocks"; nor were any of the victims subsequently charged. 262/ Despite repeated requests during 1973 and 1974, the "government" has refused to set up an independent inquiry into the allegations.

259/ See also testimony of Mr. Mhangagwa (RT. 165) and Mr. Mandizha (RT. 152).

260/ See also testimony of Mr. Kote (RT. 168) and Mr. Mangwende (RT. 157).

261/ See especially testimony of Mr. Mukanganga-Nyashanu (RT. 153).

262/ See also allegations by Mr. R. Sadomba in House of Assembly Debates, 7 December 1973, and 27-28 March 1974.

311. Several witnesses testified to the use of degrading treatment in prisons. At Khami - "the most notorious prison in Rhodesia" - Mr. Mandizha (RT. 152), a former inmate (1965-1972), said that beating was the order of the day, as a routine instrument of discipline; 263/ that very little time was given for ablutions; 264/ that prisoners were refused access to adequate water supplies, and in large cells were forced to drink from the fouled lavatories; that in most situations they were not permitted to talk to each other; that they were either overworked or denied exercise altogether; that despite the extreme climate, at times they were denied the use of their blankets, with which instead they were required to "decorate" their cells. Mr. Mhangagwa, a fellow political prisoner at Khami (1966-1972), said (RT. 165) that all the prisoners' clothes were taken away at 3.30 p.m. and returned at about 8 a.m. the next day. Mr. Nkomo, a political prisoner, then a detainee, at Gwelo prison (1967-1971), described (RT. 153) the humiliating strip-search to which returning prison working parties were regularly subjected. 265/

312. Mr. Silongoma (testimony given at the Lusaka University Hospital, RT. 189), who had been undergoing treatment since April 1973 in the psychiatric ward of the Lusaka University Hospital, spoke of the use on his person of such means of torture as electric shocks (in particular on the skull) and of the insertion of metallic objects in certain parts of his body. Mr. Tamai (RT. 189) stated that he had been wounded when his village had been bombed by the Rhodesian air force and that his right leg had had to be amputated.

(c) Allegations concerning the ill-treatment of political prisoners and captured freedom fighters in the matter of accommodation, food, clothing, medical care, and other amenities

313. Mr. Moyo (written testimony submitted at the 341st meeting, p. 3) stated that captured freedom fighters are not treated as prisoners of war, but as criminals, and that detainees held in prisons are subjected to substantially the same treatment as sentenced political prisoners. 266/ The testimony of former prisoners suggests that routine harassment is a normal part of prison discipline (see para. 311) in particular the rule of silence in working parties, the continuous lighting of cells, knocking up at regular intervals during the night, and restrictions on access to available facilities. Mr. Nkomo (RT. 153) said that the superintendent of Gwelo prison refused to make copies of prison regulations available to prisoners. Mr. Mandizha (RT. 152) said that prisoners with complaints were denied access to the visiting magistrate on his monthly inspection.

263/ See E/CN.4/1111, paras. 265-266.

264/ See also testimony of Mr. Mhangagwa (RT. 165).

265/ See also testimony of Mr. Mandizha (RT. 152); and E/CN.4/1111, para. 264.

266/ See also testimony of Mr. Mandizha (RT. 152).

(i) Accommodation

314. Several witnesses testified to the overcrowded conditions in prison accommodation. Mr. Mukanganga-Nyashanu (RT. 153) said that the length of the six single cells at Goromonzi was less than his own height (5 ft.7 in.), and that in Gwelo prison space was really congested, with about 8 to 10 inmates per cell; Mr. Nkomo (RT. 153) said that while in the same prison he shared cell 24 with 10 others. Mr. Mandizha (RT. 152) said that in "A" hall of the Maximum Security Section, Khami prison, he and many others were placed in "tiny" single cells, but that in "B" hall there were cells that held either 4 or 30 men each, as well as single "punishment" cells.

315. The testimony of former inmates at the Group's sessions suggests the general denial of basic facilities to prisoners by the responsible authorities. In several prisons bedding consisted, irrespective of climatic changes, of a grass mat and two or three thin blankets, in some cases dirty or lice-infested, with no pillow or pyjamas. Mr. Mandizha (RT. 152) said that apart from bedding, prisoners in the single or 4-man cells at Khami were given no more than a mug and a chamber pot; in the 30-man cells a single lavatory, which was often dirty. The unprotected windows allowed rainwater to collect on the cell floor, which warders would prevent them from clearing out. Mr. Mukanganga-Nyashanu (RT. 153) said his rheumatism was caused by dampness in his cell at Gwelo - latrine buckets overflowed periodically onto the floor; 267/ and Mr. Mandizha (RT. 152) said that many inmates at Khami contracted tuberculosis. 268/ According to the testimony, prisoners are refused proper access to amenities that do exist - lavatories (Mr. Mandizha, RT. 152; Mr. Nkomo, RT. 153; Mr. Mnangagwa, RT. 165), drinking water (Mr. Mandizha, RT. 152) and opportunities for exercise - as a matter of routine discipline.

316. According to a press article by Mr. Peter Niesewand, the uncertainties and hardships of imprisonment in a detention camp can cause psychological as well as physical illness to inmates. The article cited the case of Mr. Joel Ndlovu, held for much of his 10 years as a detainee at Gonakudzingwa, who was admitted to Mpilo hospital in July 1973 suffering from "vertigo, depression and chest pains". 269/

317. It was suggested in evidence that conditions for "30-day detainees" - those arrested without warrant - were worse than in other branches. A recently built "tribal" prison at Chitsa business centre, said to hold several prisoners at once, was described in October 1973 270/ as "a square block measuring about 8 feet", unlighted, with "two small holes just under the flat roof", and no toilet.

(ii) Food

318. Mr. Mnangagwa (RT. 165) and Mr. Mandizha (RT. 152) said that the standard diet consisted solely of maize porridge, beans or peanuts, 2 ounces of meat and black coffee. Mr. Moyo (written testimony submitted at the 341st meeting, p. 3) said that in addition to meat and coffee, the scale 3 (African) diet in maximum

267/ Ibid.

268/ See also testimony of Mr. Smart (RT. 156).

269/ Guardian, 26 November 1973.

270/ Moto, 6 October 1973.

security sections, where political prisoners and detainees are held, consists of relish, vegetables ("usually") and off-cut meat ("irregularly"). Mr. Mandizha (RT. 152) said that detainees at Whawha camp were permitted to grow their own vegetables. Mr. Mukanganga-Nyashanu (RT. 153) said that when he arrived in Britain in April 1974 after his release from nearly 10 years' detention, doctors found evidence of malnutrition, and a dentist that his gums and teeth had been affected by poor diet.

(iii) Clothing

319. According to the testimony (Mr. Moyo, RT. 150; Mr. Mandizha, RT. 152; Mr. Kote, RT. 168; Mr. Mhangagwa, RT. 165), prison clothing consists of a "crow's feet" uniform or shorts and vest; prisoners go barefoot, except for rubber-tyre sandals sometimes issued during the winter.

(iv) Medical care

320. Several ex-prisoners made specific allegations of negligence, sometimes deliberate, on the part of prison medical authorities. Mr. Smart (RT. 156) said that permission to transfer a detainee to hospital has to be granted by the "Minister of Law and Order". 271/ Mr. Muganganga-Nyashanu (RT. 153) said that he was not treated for the mental illness which resulted from the torture he underwent at Goromonzi, that he was refused treatment at Gwelo hospital without written authority from his prison superintendent, and that in March 1974, after complaining of glaucoma at Mpilo hospital, he was turned over to a police doctor who refused treatment. 272/ He also stated that in Gwelo prison, the doctor, who visited fortnightly, would only see those on the list drawn up by prison officers, some of whom were unqualified; 273/ and that subsequent treatment depended on the sanction of the superintendent.

321. When available, the quality of medical care was said by witnesses to be poor. Medical facilities at Gonakudzingwa, according to Mr. Moyo (written testimony submitted at the 341st meeting, p. 4), amounted to no more than "a small clinic packed with sleeping pills". Mr. Mukanganga-Nyashanu (RT. 153) and Mr. Mandizha (RT. 152), who were imprisoned respectively at Gwelo and Khami, said that as a general rule the wrong drugs were prescribed - the latter was given castor oil on complaining of chest pains - and that since prison regulations forbade prisoners to refuse treatment, serious after-effects often resulted. Former inmates of Gwelo and Khami prisons alleged that prison doctors in both discriminated against political prisoners and detainees, in one case to the extent of refusing treatment altogether.

322. In a number of cases in which death or serious illness resulted, witnesses and press reports alleged that the inadequacies of medical treatment were a major contributory factor. Notable amongst the cases cited are those of Mr. Michael Chacha, Mr. Kenneth Chisanga and Mr. Shadrack Chipanga (see para. 293).

271/ See also testimony of Mr. Mukanganga-Nyashanu (RT. 153), Mr. Moyo (written testimony submitted at the 341st meeting, annexes 5-6).

272/ See also testimony of Mr. Nkomo (RT. 153).

273/ See also testimony of Mr. Mandizha (RT. 152).

(v) Prison labour

323. Mr. Moyo (written testimony submitted at the 341st meeting, p. 3) said that African convicts are given "manual and menial work" carried out in working parties under armed guard"; at Khami, according to Mr. Mandizha (RT. 152) and Mr. Mhangagwa (RT. 165), this included stone-breaking and maize-stripping, for each of which fulfilment of the quotas set for each prisoner required strenuous exertion. For the former, according to Mr. Mhangagwa, no protective gear, particularly goggles, was issued, except during visits by Red Cross representatives. However injuries resulted from stone-breaking operations in the absence of protective gear.

(vi) Other amenities

324. Mr. Mukanganga-Nyashanu (RT. 153) said that visitors were not allowed at all at Goromonzi, not even the Red Cross, and at Gwelo and Salisbury remand prisons only with the permission of the Special Branch; also, visitors would sometimes be arrested for interrogation. At all prisons except Gonakudzingwa (now closed), the only contact permitted was through glass screens and, usually, by monitored telephone. According to information received by the Group, prison authorities have at times been obstructive of visits, even by close relatives (anonymous witness, 358th meeting; anonymous witness, 350th meeting; Newsbrief Rhodesia 1973, November 1973; Guardian, 8 June 1974; Moto, 15 June 1974).

325. According to information available to the Group, new standing orders, introduced on 8 February 1974 at Gwelo and probably also at other prisons, have vested unrestricted powers of censorship over all communications mentioning educational matters in the senior prison chaplain at Bulawayo, whose authority extends to several midlands prisons. These powers have allegedly been used to ban applications by detainees for educational courses and the ownership of related literature. Mr. Smart (RT. 156) said that education for "D" class prisoners was permanently suspended at Khami prison in 1971.

326. Mr. Mhangagwa (RT. 165) said that in Khami prisoners were "completely cut off from the outside world", 274/ and that incoming and outgoing letters, of which only one a month is permitted per prisoner, were heavily censored. Several witnesses testified to the denial or obstruction of common privileges, such as gifts of money or food.

(d) Allegations concerning the right of an accused to a fair trial

327. According to information received by the Group, many of the political trials in 1973 and 1974 in connexion with the guerrilla war have been held in conditions of secrecy by "ministerial order" (usually in terms of section 403A of the Criminal Code), sometimes with only the section of the act on which the charges were based and the sentence being revealed. Previous reports of the Working Group (E/CN.4/1050, paras. 366-368; E/CN.4/1111, paras. 282-284; E/CN.4/1135, paras. 352-354) have given details of the censorship of trial proceedings, detention without trial under "ministerial orders" or the State of Emergency, the inadequacies of the detainees' review tribunal, and the weighting of the judicial procedure against the accused; and witnesses again testified on each of these points.

274/ See also testimony of Mr. Nkomo (RT. 153).

C. CONDITIONS OF AFRICANS IN "NATIVE
RESERVES" AND "TRANSIT CAMPS"

1. Summary of relevant legislation

328. The 1970 report of the Working Group (E/CN.4/1020/Add.1) outlined the historical background to the situation of the rural areas reserved for Africans; and together with the 1971 report (E/CN.4/1050) analysed in detail the principal legislation in force. Succeeding reports have noted few major changes since.

329. Few legislative changes have occurred during the period under review. The African Councils Amendment Act (No. 50 of 1973) was intended, according to the "Deputy Minister of Internal Affairs", to give chiefs "executive and administrative powers by warrant over African councils" (section 4), thereby consolidating their authority. In August 1974 the "Minister for Lands", speaking on the Natural Resources Amendment Bill, announced that penalties for offences under the Act were to be stiffened. 275/

330. Amendments to the Emergency Powers (Maintenance of Law and Order) Regulations (GN739-73), issued on 8 February 1974 (GN140-73), radically extended the executive and judicial powers of the Administration in specified areas. The "Minister of Law and Order" may now declare any district commissioner a "protecting authority" (section 3(I)), in whom is vested authority to destroy or confiscate any crop or animal, centralize food distribution, and regulate the movement and "safe-keeping and control" of stock (sections 16B(1-3), 16C(1), 4(2)a, 11, ...); to prevent the entry into a "protected area" of anyone not "ordinarily resident" there (section 13(1)); to conscript labour (section 16A(1)); and to take "such steps as he may consider to be necessary or expedient" to ensure compliance with his orders (section 48(6)). The Emergency Powers (Identity Books) Regulations (GN615-28/6/74), supplementing regulations issued in November 1973 (GN1136) ordering all Africans living in six north-eastern districts to apply for new registration books, empowered the "President" to declare any area "specified", within which all Africans between the ages of 12 and 60 inclusive would be required to possess and carry identity documents.

2. Analysis of information and evidence received

(a) Economic and social conditions

331. The previous report of the Working Group (E/CN.4/1135, paras. 357-361) pointed out that the Land Tenure Act (1969), still the cornerstone of "government" policy, 276/ divided the land area equally between the European and African populations; that the African reserved area was fragmented into 164 separate Tribal Trust Lands (TTLs) and 71 African Purchase Areas (APAs); and that the better agricultural land, particularly on the central highveld, was predominantly within the European sector.

275/ Rhodesia Herald, 12 December 1973, 31 August 1974.

276/ See Rhodesia Front: Principles and Policies, September 1973, pp. 6, 24.

332. According to available information, the rural African population faces continued impoverishment, with production in the TTLs valued in 1974 at less than 5 per cent of the gross national product. 277/ Mr. J.R. Sly, deputy president of the Associated Chambers of Commerce of Rhodesia (ACCOR), said in July 1974 278/ that more than two thirds of families in TTLs produced insufficient food in a "below-normal season". The Natural Resources Board report for 1973 said that "continuing destruction of natural resources in some of Rhodesia's tribal areas had reached near disaster levels at which even a subsistence economy could be sustained only with difficulty". 279/ It was reported in November 1973 that, whereas in the (European) Norton Intensive Conservation Area the annual yield for maize was 47 bags per hectare and for cotton 1,247 kg per hectare and the cattle density 31 per hectare, on the neighbouring Mondoro TTL the figures were, respectively, less than 5, less than 700, and 63. The former was described as "large contoured crop lands surrounded by spacious grazing lands supporting a good cover of grass and palatable vegetation"; whereas "large parts of the tribal areas are almost bare of vegetation and prone to erosion", and stock consisted of "emaciated cattle". The provincial agricultural officer for Manicaland said in August 1974 that more than 200,000 ha of the TTLs in his province alone was exhausted beyond natural recovery, and that the situation was similar elsewhere. 280/

333. Expenditure on the reserves appears to have a low priority in state planning. Most of the large increases in expenditure announced in the 1973 and 1974 budgets have been allocated directly to "security" measures. And financial assistance where available has gone to white farmers: in 1972 "short term credit loans" to white farmers amounted to \$85 million, by December 1973 \$19.8 million was reserved for drought relief, and in June 1974 a generous loan and subsidy scheme for the less prosperous European farming areas was announced. On the other hand, "development" work in the reserves continues to depend on locally financed self-help projects, and drought relief is allocated to African farmers only "where they are able to show that they have input costs". In the TTLs this relief is available only through stock sales and "food for work" programmes. 281/

(b) Administrative and political conditions

334. It will be recalled that in the wake of the Pearce Commission report, the illegal régime prepared and legislated for a policy of apartheid-style "provincialisation" and in March 1973 announced their intention to establish "parliaments" for Mashonaland and Matabeleland. 282/ According to information received, 283/ the "Ministry of

277/ Rhodesia Herald, 5 April 1974; also E/CN.4/1135, para. 373.

278/ Rhodesia Herald, 22 July 1974.

279/ Rhodesia Herald, 3 July 1974, a view supported by Mr. G.P.S. Lowe, president of ACCOR, at its annual congress (quoted in Star, 18 May 1974).

280/ Rhodesia Herald, 19 November 1973, 13 August 1974.

281/ Press reports; Newsbrief Rhodesia '73, November 1973; SAIS, cols. 437-439.

282/ See E/CN.4/1111, para. 293; E/CN.4/1135, para. 370; International Defence and Aid Fund, The Rhodesia-Zambia Border Closure, January-February 1973, Special Report No. 1, p. 3.

283/ SAIS, July-December 1973, col. 464; Moto, 1 December 1973.

Internal Affairs" stated in November 1973 that regional authorities, to which limited powers of local government were to be delegated, had been set up in two of the seven provinces, Mashonaland North and Matabeleland South. It was said that members had been chosen by the two Provincial Assemblies of Chiefs - one, a chief, from each district, one from the chairmen of the APAs, and one from the chairmen of councils in the TTLs - and had completed a month's course at Domboshawa, the main government training centre.

335. During the period under review, the "government" continued to strengthen the authority of chiefs in local administration and its own hold over the chiefs. Following the "major" policy reversal announced by the "Minister of Internal Affairs" (see E/CN.4/1135, para. 371), it was alleged 284/ that "a number of councils have had their warrants changed" to replace the election with the appointment of members by chiefs or district commissioners (DCs). At the same time the régime granted extra judicial powers to a number of chiefs, passed the African Councils Amendment Act (see para. 329), allowed them to appoint "deputy chiefs" at their own expense, and doubled the salaries of the 26 members of the Council of Chiefs. In return, certain chiefs have lent themselves to government propaganda exercises and have harassed opposition political activity. 285/ Mr. Makonese (RT.162) and Mr. Kote (RT. 168) again made the point that chiefs are not elected in the traditional manner but appointed by the régime (see E/CN.4/1135, paras. 364-367).

336. The régime has delegated extensive powers of enforcement to "tribal land authorities" in terms of its land conservation legislation. The "Deputy Minister of Internal Affairs" stated in August 1973 that, on government instructions, chiefs and headmen enact and implement as local by-laws specified conservation measures. Thus, by the end of 1973 many had adopted without alteration the Tribal Land Authorities (Model) (Grazing and Cultivation) By-laws (GN809, 17 August 1973), which gave them authority to prohibit cultivation or grazing in specified areas (section 3 (1)), and to force the compliance of non-co-operators within a declared improvement scheme area (section 4 (3)) or of occupiers generally with its conservation standards. Offenders face the confiscation of their land or livestock (sections 5(2-3), 7) and a maximum penalty of a \$100 fine or three months' imprisonment.

337. In October 1973, Mr. Lot Dewa, MP, alleging the arbitrary and indiscriminate abuse of judicial sanctions by government agents, gave details of several instances during 1973 in Belingwe district, where between 1 January and 22 August as many as 74 Africans were convicted under the Natural Resources Act. 286/ In one case, summonses were taken out, without previous warning, on the same day that a Lands Inspector toured the area concerned to specify the repairs necessary; and nine Africans, six of them women (legally accountable in the absence of their husbands), sentenced by magistrates to a \$20 fine or one month in gaol 12 days before the Inspector's stated deadline, even though some had completed and all had started the required repairs.

284/ Moto, 8 September 1973; Parl. Deb., 30 November 1973

285/ Radio Salisbury, 7 September 1973; Parl. Deb., 30 November 1973; Moto, 3 and 10 November 1973.

286/ Parl. Deb., 22 August 1973; L. Dewa, article in Moto, 6 October 1973.

(c) Mass population removals

338. In the 1973 report of the Working Group a distinction was made between the two forms of "transit camps"; the "resettlement areas", often situated on inferior land, to which Africans were being moved from so-called "European" land in conformity with the Land Tenure Act; and "labour camps" for the rural unemployed.

339. Little further information has been received by the Group on these two phenomena. Mr. Molife (RT. 150) said that upon the discovery of uranium in an area designated for African occupation (Dorowa), it was immediately reclassified as "European" and the inhabitants moved out. A witness who wishes to remain anonymous (350th meeting) said that removals under the Land Tenure Act (No. 55 of 1969) were still being carried out. Mr. Molife said that periodic police harassment has forced the Tangwena people from their lands into the mountains. In a statement to the African weekly Moto (16 February 1974), Chief Rekayi Tangwena said that "the authorities are worrying my people" and alleged that "his followers' huts were being burned and innocent people being arrested, for refusing to leave their 'inheritance'". As a result, according to Mr. Molife (RT. 150) and Mr. Mangwende (RT. 157), the peoples' children, taken away in July 1972 (E/CN.4/1111, paras. 290, 307; E/CN.4/1135, para. 383), remain in the custody of the Department of Social Welfare, without education or adequate welfare facilities. The Department itself stated in May 287/ that "only three" children had been claimed, and that "107 are housed in various institutions at government expense."

340. The "Minister of Internal Affairs" admitted 288/ that the possible establishment of "labour camps" had been considered, but had been rejected as not yet necessary. However, both Mr. Makonese (RT. 162) and an anonymous witness (351st meeting) characterized the recruitment of men from "protected villages" (see below) as forced labour.

341. During the period under review, in response to the escalation of the guerrilla war, the rebel régime has begun a third and more radical resettlement scheme, entailing the forced removal of much of the African population in the north-eastern war zone into fortified "protected villages", described by a number of witnesses as "concentration camps". A "security force" statement in July 1974 289/ claimed their object was "to deprive terrorists of their vital contact with the civilian population"; and a "senior Internal Affairs official", according to a report by Mr. Angus Shaw in August, 290/ admitted that "there is no question that our future success against terrorism in the north-east depends on it". Although no official statement has yet been issued (testimony of anonymous witness, 351st meeting), the DC for Shamva said in September 291/ that these villages might become permanent.

287/ "Secretary for Internal Affairs", letter in Rhodesia Herald, 25 May 1974.

288/ Rhodesia Herald, 28 January 1974.

289/ Daily Telegraph, 25 July 1974.

290/ Rhodesia Herald, 11 August 1973.

291/ Testimony of anonymous witness (351st meeting); Sunday Mail, 8 September 1974; Rhodesia Herald, 9 September 1974.

342. It will be recalled that the Group's previous report (E/CN.4/1135, para. 402) described the creation of the first "no-go" zone on the north-east border and the evacuation of its inhabitants. The "Minister of Finance" announced in his budget speech in July 1973 the provision of \$1 million (the following year \$2.6 million) for the clearing of a "security corridor" along the border, said in a later report to comprise an area approximately 200 by 10 miles. Mr. Ian Colvin described the Zambezi escarpment in December as "a vast sterile area of 'dead' villages and bare maize patches cleared to security forces to deny terrorists rest or refreshment". 292/ According to the régime, over 8,000 people, of whom over 6,000 passed through a transit camp at Gutsa during June and July, were "resettled" from the area between June and December 1973, half of them into three "protected villages". An unofficial estimate put the number of those displaced at 15,000 to 20,000, not all of whom were provided with alternative land. An African MP, Mr. Ronald Sadomba, alleged that some had been given no notice, but "just told to move out by the soldiers". 293/

343. At the same time, according to press reports, the régime has been building fortified camps and "protected areas" along the Mozambique border. By early June 1974, two of the first three held 4,000 people, with a total expected intake of 6,000; three further "protected areas" were to accommodate another 15,000 by October. According to Mr. Shaw, 294/ "if all goes according to plan, the entire population of Rhodesia's Zambezi Valley will have been resettled in 'protected areas' by the rains this year".

344. On the adjacent highveld, the "Minister of Internal Affairs" stated in February 1974 295/ that Africans were to be "encouraged to move together into larger villages", protected by "strong points", an alarm system, and an armed militia, as well as "fortified sub-stations", for armed Ministry officials. Although this policy seems to have been implemented in the Mount Darwin district, on 24 July the régime embarked on "Operation Overload": the compulsory resettlement of the entire population of the Chiweshe TTL, estimated officially at 46,940 unofficially at 60,000, into 21 "protected villages" within the reserve, to be completed by 15 August. 296/

345. Three days after the death of a district assistant on 29 January 1974, according to an anonymous witness (351st meeting) and press reports, "security forces" closed all institutions in part of nearby Madziwa TTL and mounted a "massive" sweep through the area. On 15 February 110 inhabitants from the Musiwa kraal, as well as a Salvation Army headmaster and a chief, were arrested and held at Bindua police station; and on 29 March its entire population of 255 (21 men, 47 women and 187 children) was deported to the Luti TTL near Beit Bridge 400 miles away, as a "punishment for

292/ SAIS, July-December 1973, col. 471; Christian Science Monitor, 22 February 1974; Daily Telegraph, 13 December 1973.

293/ Rhodesia Herald and Times, 10 January 1974; Christian Science Monitor, 22 February 1974; Parl. Deb., 7 December 1973.

294/ Rhodesia Herald, 11 August 1974.

295/ Rhodesia Herald, 27 February 1974, 6 June 1974.

296/ Rhodesia Herald, 25 July 1974, 15 August 1974; Daily Telegraph, 25 July 1974.

assisting terrorists and for rehabilitation purposes". Mr. Makonese (written testimony submitted at the 353rd meeting, p. 3) said that in all 1,100 people had been deported from the Centenary, Mount Darwin and Mukumbura districts to the Beit Bridge and Hippo Valley area between January and March 1974. In March, the authorities refused to disclose where the inhabitants of the recently destroyed Masawi kraal in Shamva had been resettled as "not in the public interest". 297/

346. On 7 September it was announced 298/ that the entire population of Madziwa TTL (about 16,500) had been given until 30 October to move into 10 "protected villages", two of which already held 3,000 people. Mr. David Holden reported 299/ that in all by early October there were "believed to be 30-40 protected villages" with "around 100,000 inhabitants".

347. In none of the cases of forced resettlement described above were the inhabitants given any option but to leave their land. In the "no-go" areas thus created, as the "Minister of Internal Affairs" himself confirmed, standing crops are destroyed and cattle sold, with the proceeds being repaid only "where the owner could be identified". 300/ It was reported 301/ that Africans in Madziwa were to be allowed to keep their cattle; but also that already by mid-August the remaining Chiweshe cattle were "suffering" from inferior pasture; and that at one resettlement camp (Zunga), established in 1973, tsetse fly prevented the people from keeping their cattle. Mr. Mukanganga-Nyashanu (RT. 150) said that the authorities distributed rations, but in insufficient quantities.

348. The régime also refused to pay compensation for the houses Africans were compelled to abandon, except where destroyed in execution of orders. The "Deputy Secretary for Internal Affairs" admitted in August that "the cost factor is so high that everybody shied away from it". Many Chiweshe people are said to have owned "sturdy brick farmhouses", and, according to Mr. Sadomba, some in Madziwa were worth \$5,000. 302/

349. Eye-witness accounts suggest that conditions inside the early resettlement camps were harsh. Mr. Sadomba alleged 303/ that at one time nearly 6,000 people were being kept in a 2-acre space at Gutsa, with only three taps for water; and that with only two African orderlies on duty a measles epidemic had been killing four or five children a day. After a visit to one village on 11 December 1973, Mr. Henry Miller

297/ Bulawayo Chronicle, 21 March 1974.

298/ "Operation Overload 2", Sunday Mail, 8 September 1974; Rhodesia Herald, 9 September 1974.

299/ Sunday Times, 6 October 1974.

300/ Rhodesia Herald, 29 March 1974; see also testimony of Mr. Mukanganga-Nyashanu (RT. 153), and Rhodesia Herald, 10 February 1974.

301/ Sunday Mail, 8 September 1974; Guardian, 29 August 1974; Parl. Deb., 7 December 1973.

302/ Rhodesia Herald, 15 and 31 August 1974, 26 September 1974; International Herald Tribune, 28 August 1974.

303/ Parl. Deb., 7 December 1973.

said 304/ that it held about 1,500 people and that "the houses resembled carports, with the open sides covered with hessian". Mr. Mukanganga-Nyashanu (RT. 153) said that an inmate had told him that in one all families, no matter how large, were given single-roomed huts, that the village had only one tap, and that a combination of malnutrition, insanitary conditions and disease was killing children at the rate of 10-15 a day.

350. The first journalist to be allowed to visit the deported Madziwa village in Diti TTL, four and a half months after the event, said 305/ that the new village was situated in a "flat area of mopani scrub", according to Mr. Makonese (RT. 162) more arid than their home area, and that although everyone now had sleeping huts, store-rooms and kitchens were still being built. The "government" had offered neither compensation nor assistance with construction. The water supply consisted of a "nearby borehole", the nearest store was "a few kilometres away", and the school 8 km distant, complaints about which officials countered by pointing out that some pupils had to come even further.

351. According to information received by the Group, conditions in the "protected villages" in Chiweshe TTL during and after the mass removals were, in the words of two eye-witnesses, "appalling". 306/ The areas of 11 were given officially as 50 acres, of nine as 100 acres, and of the biggest, with 4,500-5,000 inmates, as 110 acres, giving an average population density of 30-38 per acre, each family, irrespective of size, being allotted a 15 sq m plot. "Rhodesian church groups" were reported at the end of August 307/ to have said that the villages were "not yet built", with "many" Africans "sleeping in the open", despite the bitter cold of the highveld winter. According to Mr. Holden, "missionaries say many of these villages are like concentration camps"; and although the majority of the inhabitants were reported to have built rudimentary accommodation by early September, a month later it appeared that many "still sleep on the bare earth for lack of shelter". Eye-witnesses, including Mr. A.T. Mungate, an African MP who lived in one of the villages, claimed that building materials were not provided, that some did not have the money to purchase such materials, and that some were too old to rebuild their homes. 308/

352. Mr. Mungate alleged that six weeks after the Chiweshe resettlement had been completed, most villages had no proper water supply; in one there were three taps for 3,000 people; in another women had to walk up to 3 miles a day to fetch water.

304/ Guardian, 13 December 1973; see also Rhodesia Herald, 11 August 1974.

305/ Rhodesia Herald, 13 August 1974; Guardian, 13 April 1974.

306/ Rhodesia Herald, 7 August 1974; Guardian, 4 October 1974; Morning Star, 10 September 1974.

307/ Guardian, 29 August 1974

308/ Sunday Times, 6 October 1974; Rhodesia Herald, 21 July 1974, 24 August 1974, 7 and 26 September 1974; Guardian, 4 October 1974.

Three weeks earlier, DC Johnson admitted 309/ that three villages still lacked boreholes, while other holes were idle for lack of pumps. Water was by then being pumped to seven villages, but was said at one, Bari, to be dirty, and the inhabitants were digging wells. Visitors supported the reported views of church sources, who claimed that the removal had been "organized in haste, without provision for any of the needs of the relocated people"; only 60 per cent had even temporary lavatories by early September. In Chiweshe and Madziwa TTLs it was reported that military operations and the removals forced the closure of some schools and double-streaming in others. According to the "Deputy Secretary of Internal Affairs", the resettlement camps were "expected to get first aid posts" and "eventually" clinics. A fortnight later, Senator Dr. Alves alluded to reports, subsequently denied, that typhoid had broken out in Chiweshe "protected villages". 310/

353. Between November 1973 and June 1974 cholera quarantine restrictions on African reserves were in force throughout wide areas of the north-east and east of Southern Rhodesia, and several of the original orders had to be reimposed in April and May 1974. Despite the fact that by December 1973 79 cases, including six deaths, and two months later 321 cases, with 32 deaths, had been reported, the régime did not at any stage organize a mass vaccination campaign. 311/ Three months after the lifting of the quarantine order, the "Minister of Health" admitted that further outbreaks had occurred in the Chipinga and Chiredzi areas; and according to one report, in Manicaland there had been 35 cases and two deaths so far. 312/ It will be recalled that the 1972 report of the Secretary for Health (RR28/73) warned of a "very alarming increase in the incidence of typhoid fever (for Africans, 1,991 cases with 32 deaths) as a result of contaminated rural water supplies. This underlines the very great danger which threatens the rural communities of this country in the event of cholera reaching Rhodesia."

309/ Rhodesia Herald, 7 September 1974.

310/ Rhodesia Herald, 15 August 1974, 7 September 1974; Radio Salisbury, 30 August 1974.

311/ SAIS, July-December 1973, col. 474; Moto, 5 January 1974; Zambia Daily Mail, 2 November 1973, 9 February 1974; Times of Zambia, 17 December 1973; testimony of Mr. Mukono (written testimony submitted at 356th meeting, p. 2).

312/ Rhodesia Herald, 9 September 1974.

D. GRAVE MANIFESTATIONS OF COLONIALISM AND RACIAL DISCRIMINATION

(a) Repressive actions against African political parties

354. The rebel régime possesses blanket powers to restrict, ban or outlaw the political activities of individuals and organizations under a series of enactments, principally the much-amended Law and Order (Maintenance) Act and the "State of Emergency", and their subsidiary regulations. Previous reports of the Working Group (E/CN.4/1111, para. 306; E/CN.4/1135, paras. 387-394) adduced evidence of systematic harassment by the régime of the only African opposition party it granted "legal" assistance, the African National Council (ANC). A ban on all political meetings in APAs and the "European" area (except in halls) was in force throughout the period (RN1356-7, 1819-20-73). Interviewed in To the Point (22 September 1973) "Prime Minister" Smith claimed that a "large number" of ANC members were "associated with the terrorist incursion". During the trial in August 1974 of five men, including the secretary and former chairman and vice-chairman of an ANC branch, on charges of operating a guerrilla recruiting cell in Salisbury, for which each was sentenced to 25 years, the much-publicized evidence of an "African undercover detective" seemed to be a clear attempt to link the ANC organization to the guerrilla struggle. 313/

355. It will be recalled (E/CN.4/1135, paras. 388, 391) that a large number of ANC leaders were detained during August 1973. On 20 June 1974 Dr. Edson Sithole, ANC publicity secretary and ex-detainee, was redetained, having recently been appointed by Bishop Muzorewa to his negotiating team for talks with Mr. Smith. According to available information, detention without warrant has been used regularly against ANC officials and sympathizers. Seven ANC men were held for nearly two weeks during November 1973 - and told by the police there was "nothing extraordinary about it" (Moto, 24 November 1973); six branch officials were being held at Sipolilo police station in mid-March 1974 (Moto, 23 March 1974); a number of officials, some at district and provincial level, were rounded up during May, with 16 still being held on 15 May (Moto, 4, 11, 18 May 1974); and about 20 officials from the south-west were arrested during October (The Times, 17 October 1974). Similarly, petty infringements of criminal law have been invoked against ANC representatives: Mr. Sithole was held for several hours and fined for failing to carry his registration book (SAIS, col. 466); Mr. J. Mangwende, a former ANC executive member, was refused permission to break his restriction order to attend the funeral of his murdered son (Moto, 1 December 1973); and Mr. N. Gumbo, ANC district treasurer for Umtali, was sentenced to a \$10 fine or 20 days in gaol for tying posters advertising an ANC meeting to trees without the town clerk's permission, a practice he said he had carried on since 1962 (Moto, 27 April 1974).

356. According to information received, few meetings associated with the ANC have escaped official obstruction. In urban areas, where political gatherings can legally only be held in halls, restrictive hiring conditions (see RN100-18, January 1974; GN185, 1 March 1974), bureaucratic obstruction and, in the last resort, a ministerial banning order forced the cancellation of many. In the TTLS policy seems to be, as the DC for Essexvale told an ANC delegation after refusing permission for a meeting, "that government law did not allow such meetings to be held ..." (Moto, 13 July 1974); in some, notably Tjolotjo, chiefs have used their local powers not only to ban all

313/ Rhodesia Herald, 9 and 13 August 1974; Daily Telegraph, 15 August 1974.

meetings but to hinder organizational work, 314/ even apparently to rig elections. Mr. J.M. Khabo, a tribally-elected MP, alleged that he had failed to get his nomination papers for the 30 July election signed, as required, by a chief, that one had told him he had been instructed not to sign anything until a meeting on 1 July, and that on 2 July another told him to "forget about Parliament. The whole four of you in Matabeleland will not be re-elected". 315/

357. It was reported in August 1973 that a confidential blacklist, specifying as recipients the ANC and several opposition leaders and as donors a number of foreign organizations, had been sent to banks with instructions for any foreign transactions to be reported to the Special Branch. 316/. Restrictions on foreign travel were said to be such that "it was virtually impossible for a member of a politically active anti-Smith family to leave by ordinary means" (Observer, 20 January 1974). Requests for the return of Bishop Muzorewa's passport, notably to enable him to attend the presentation ceremony for his United Nations Human Rights prize, were constantly refused.

358. Throughout the period under review, a series of trials took place in connexion with the guerrilla war, of some people charged with acts of terrorism or possessing arms, and others for assisting or failing to report guerrillas. In those reported between July 1973 and August 1974 317/ over 70 per cent of the more than 100 convictions resulted in prison sentences of five years or longer.

(b) Repressive measures against the African population

359. During the period under review, the "government" assumed extensive new powers, principally through regulations under the Law and Order (Maintenance) Act and the "Emergency Powers", to regulate wide areas of everyday life and repress all forms of opposition in the war zone. It should also be noted that Internal Affairs staff down to district officer level are empowered to mete out summary punishment in fines up to \$50 or, if the offender is under 19 years old, eight cuts, on anyone in his presence considered to be engendering "feelings of hostility" towards him or exposing him to "contempt, ridicule or disesteem" (section 52 B (1) a, (4)). It was reported in August 1974 that new Emergency Powers (Civil Defence) Regulations would give "extensive powers" to mayors to help "maintain essential services in emergencies" - including "widespread strikes". 318/

360. Information available to the Group indicates a further intensification of repression in the north-eastern war areas. On 21 February 1974 the "Minister of Internal Affairs" announced the creation of a hand-picked village militia under government command; arms training for African district assistants, groups of whom were already reported to be mounting night patrols of villages in the Mount Darwin

314/ Moto, 13 July 1974, 20 and 27 April 1974, 15 June, 1974, 13 November 1973.

315/ Rhodesia Herald, 17 July 1974.

316/ Guardian, 14 August 1973.

317/ SAIS, July-December 1973, cols. 460-463; press reports.

318/ Rhodesia Herald, Radio Salisbury, 30 August 1974.

area; 319/ and the establishment of a "push-button" early-warning system linking villages to "security force" posts. The mere failure to activate this alarm when guerrillas were alleged to be in the neighbourhood would constitute a serious offence. Descriptions of "protected villages" suggest that all are surrounded with security fencing, in some cases flood-lit; and that most are fortified and manned by several Internal Affairs staff, some of them seconded National Servicemen, by 20 or so African district assistants, over 1,000 of whom had been trained by early September 1974, and at times by police or army detachments. Twelve-hour night curfews have been in force in wide areas; and in some "protected villages" not only were inhabitants reported to require official permission to leave the camps, but also, according to Mr. Sadomba, a number of visitors to Gutsa transit camp were refused entry and instead subjected to prolonged interrogation. 320/

361. A number of allegations have been made of atrocities committed by "security forces" against the African population, not all of which can be recorded here. One of a number of such allegations made by Mr. Sadomba in March in the "House of Assembly" was that during December 1973, while interrogating an African woman as to the whereabouts of a guerrilla, two South African policemen, named as Quinn and Visser, "took the child from her back and cut its throat". (Rhodesia Herald, 28 March 1974). Mr. Mukono (RT.165) brought before the Group alleged victims - a mother and child, and a 9-year-old girl - of two separate atrocities in which Rhodesian forces surrounded the villages and fired on the inhabitants. Typical of several reported incidents was the case when, according to their own statement (Guardian, 1 June 1974), "security forces" killed four African civilians, two of them women, and wounded two others, who walked into an ambush set for guerrillas. In another, 321/ it was officially admitted that in April a "light aircraft", having been fired on, "immediately attacked" a group on the ground, said to be near a guerrilla patrol but in fact consisting of seven African children, tending cattle, aged between 6 and 13 years, killing three and wounding the rest. The statement described the incident as a "normal operational hazard" and gave no assurances against repetition. The chairman of the Catholic Justice and Peace Commission alleged that no attempt was made to inform the children's parents, whose village was no more than a few hundred yards away; and that the body of one was not returned to his mother until five days later - the first news she was given of his fate - and even then at a place some distance away. In a third, citing "eye-witnesses", it was alleged that four out of five look-outs posted in a tree by a farmer were killed by a Rhodesian patrol, who mistook them for guerrillas; and that the remaining African workers were sworn to secrecy while the casualties were counted as "terrorists" - a practice said by several witnesses to be commonplace in such cases. 322/

319/ Daily Telegraph, 27 February 1974.

320/ Guardian, 13 December 1973; Zambia Daily Mail, 14 December 1973; Parl. Deb., 7 December 1973; Rhodesia Herald, 6 June 1974.

321/ Rhodesia Herald, 15 and 22 June 1974; Sunday Times, 16 June 1974.

322/ Zimbabwe News, May 1974, p. 23; Mr. Mukanganga-Nyashanu (RT.153) testified to one such case (see para. 293 (e) above).

362. According to testimony received by the Working Group, the illegal régime has invested considerable effort in a programme of indoctrination and intimidation of Africans in rural areas. Mr. Mukono (RT. 165) claimed that atrocities attributed to "terrorists" were in fact perpetrated by the "security force" itself: and it was alleged ^{323/} that Special Branch men "masquerade as freedom fighters" in the war zone. A former government employee who worked in the war zone stated in March 1974 that Rhodesian soldiers were deliberately terrorizing and shooting villagers to discourage support for freedom fighters. ^{324/} Leaflets have been distributed showing photographs of shot "terrorists", the text of one of which began: "These men have died because they have helped the terrorists who are fighting our soldiers." ^{325/} The corpses of alleged guerrillas are regularly put on public display: in one case in April local parents are said to have been held at a school for five hours, then forced to file past the bodies of seven "terrorists". ^{326/} In April the régime announced rewards of up to \$5,000 for different classes of information concerning freedom fighters (Daily Telegraph, 19 April 1974). Propaganda film shows and tours by chiefs and pro-government Africans have been staged repeatedly in rural areas. Conversely, confidential instructions distributed to whites in a Salisbury suburb warned them to "check on all new employees. Check the loyalty of your Africans. Encourage your labourers to report stray Africans"; and during March African workers on tobacco farms were reportedly being "screened" by "security forces". ^{327/} Examples of the censorship of undesirable information include the sentencing on 23 October 1973 of Mr. T.M. Wild, former editor of the Students Union newspaper, to three months' imprisonment, suspended for one year, for publishing certain articles in the May issue; and the banning for three months on 26 September of the African mass circulation weekly, Moto, which has generally supported ANC policies. ^{328/}

(c) Discrimination on political, religious or racial grounds

363. An anonymous witness (350th meeting) stated that in terms of the 1969 "constitution" and related legislation (see para. 280) 79,846 whites, but only 6,938 Africans, 1,516 Coloured and 1,352 Asians, were registered voters. ^{329/}

364. Whereas Africans form 96 per cent of the total population, planned expenditure for 1973/1974 on African education, at \$24.1 million, was only a fraction above that for the European sector (see E/CN.4/1135, paras. 406-407). Mr. Lot Dewa, an African MP

^{323/} Zimbabwe News, May 1974, p.22

^{324/} Zambia Daily Mail, 25 March 1974

^{325/} Copies reproduced in Guardian, 2 July 1974; Zimbabwe News, February 1974, pp. 6-8; Sunday Times, 11 March 1974.

^{326/} Dossier, draft statement No. 28.

^{327/} Guardian, 5 December 1973; Daily Telegraph, 26 March 1974.

^{328/} SAIS, July-December 1973, col. 463; Financial Times, Daily Telegraph, 27 September 1974; Guardian, 28 September 1974.

^{329/} In 1972, it was estimated that Rhodesia had a total population of 5,690,000 including more than 5 million Africans, about 270,000 Europeans and nearly 280,000 Euraficans and Asians.

and headmaster, points out 330/ that while European education is free and compulsory, Africans have to pay for tuition, equipment and buildings; that staffing and enrolment quotas are set for each school by the Ministry; and that admissions to each grade are restricted to a narrow age-band, to qualify for which applicants often find difficult for lack of the required documentation. Mr. Molife (RT.150) also testified to the bottle-necks that deny qualified students further education. Dr. J. Hanks, a University of Rhodesia lecturer, said in May 1974 that 56 per cent of African adults are "functionally illiterate"; while "according to Miss A. Sanderson, director of the Adult Literacy Organisation of Rhodesia, 70 per cent of the African people in Rhodesia cannot read or write". 331/ The "Minister of Education" stated in August 1973 that 72 double sessions were then in operation in government schools, and that only seven new primary schools were planned for 1974 (Moto, 1 September 1973); since then, a number of schools have been closed in the north-east.

365. The Group's previous report (E/CN.4/1135, para. 410) described in detail repressive government action against African students at the University of Rhodesia following campus demonstrations in August 1973. At the end of the year 106 students many of whom had been amongst the 115 to have already served terms of imprisonment, were banned from approaching within 20 km of Salisbury, and thus prevented from returning to the university, for a period of three years (RN 1767, 1826 of 1973, 19 of 1974). Banning orders against nine were lifted in February, and against 69 temporarily to enable them to sit examinations. It was reported that "some 60" students had been forced to flee Rhodesia since August 1973. 332/ Similar action was taken in July 1974 against African secondary school students when the "Secretary for African Education" threatened to close Goromonzi secondary school and readmit students "on a selective basis" if "unrest" continued. On 5 July police with dogs had stood guard, with no disturbances visible, while nine alleged "ringleaders" were expelled after "complaints about bad food and worms in their gruel". 333/

366. The "Minister of Health" admitted in March 1974 that only 10-15 per cent of state expenditure on health was allocated to preventive medicine. During the serious malaria epidemic in the eastern lowveld in the same month, it was reported that one government-run rural hospital, staffed by five African medical assistants, had received only one visit from a doctor during the previous six months, despite treating an average of 99 patients a day; and that only curative pills had been supplied to the nearby mission hospital until a direct appeal to Salisbury. 334/ The report of the "Secretary for Health" for 1972 described the "morbidity and mortality pattern" for Africans as "more or less characteristic of developing

330/ Moto, 9 March 1974; see also testimony of Mr. Nkomo (RT. 153).

331/ Rhodesia Herald, 11 May 1974; Moto, 23 March 1974, also 26 January 1974.

332/ Guardian, 1 October 1974; see also testimony of Mr. Mangwende, the former president of the Students' Union.

333/ Sunday Mail, 7 July 1974; Rhodesia Herald, 12 July 1974; Moto, 20 July 1974; see also SAIS, ccl.473.

334/ Rhodesia Herald, 9 March 1974; Star, 7 March 1974; Rand Daily Mail, 8 March 1974; Rhodesia Herald, Chronicle, 9 March 1974.

countries". In the same report, the Medical Superintendent of Gwelo hospital, which on 1 December 1973 doubled its fees for Africans, stated that efforts at cost reduction focused on a "tight control of out-patients" (who were stopped altogether at Mpilo hospital, Bulawayo, on 3 September 1973), "a strict selectivity of admissions, and prescription only of such treatment as was strictly necessary ...". At Gwelo, out-patients were said to be given no more than a day's supply of medicine at a time; the standard fee was payable at each visit, which might require a wait of several hours. One Salisbury doctor was reported in July 1974 to charge \$3 per attendance: "Thousands" of Africans were said to die because they could not afford the necessary treatment. 335/

367. Mr. Moyo (written testimony submitted at the 341st meeting, p.2) and Mr. Nkomo (RT.153) stated that prisoners are classified by race rather than by crime, and that European and Coloured prisoners (grades A and B), irrespective of the nature of their convictions, are allowed substantial comforts and privileges.

368. The Citizenship of Rhodesia Amendment Act (No. 48 of 1973), which added offences under the Defence Act to the schedule of offences which constituted grounds for deprivation of citizenship, and the Defence Amendment Act (No. 56 of 1973), which added territorials and reserves to Defence Forces as military personnel who are denied the right of appeal on religious grounds against military service, were part of a concerted campaign against white conscientious objectors, particularly Jehovah's Witnesses, of whom 56 had been convicted by September 1973 (SAIS, cols. 469-470) and a further 15 during January and February 1974.

369. In the year to October 1974, the régime deported several people ostensibly on political grounds, including in October 1974 Mrs. Barbara Harvey, who worked for the Centre Party for two years; and prohibited several more from entering the country, including in October 1973 Mr. Adam Raphael and in November Mr. A. de Crespigny, newly appointed head of the Political Science Department, University of Rhodesia. 336/

370. At the Synod of Bishops in Rome, Bishop Donal Lamont was reported to have said that "the Government's racial policy seriously restricts the freedom of both the Catholic and the other Christian churches there" (Times, 3 October 1974). In January 1974 the "government" banned seven missionaries from the Swiss Bethlehem Fathers from entering the country to work in Gwelo diocese, reportedly claiming that missionaries influence Africans against the "government", that some have been guilty of "immoral" acts, and that the Catholic weekly, Moto, was anti-government and made people "disloyal". It was also reported that 15 members of the United Methodist Church had been prevented from entering; that seven from the United Church of Christ and two Methodists had been deported; and that a "high-powered committee composed of senior officials and Cabinet Ministers" had been set up regarding entry permits for missionaries. 337/ On 6 June 1974 the "government" published a standard form of lease for missions in the TTLs (RN 957-974), one section of which listed conditions for cancellation without notice so wide as to include almost any opposition political activity, whether by act, word or association.

335/ Parl. Deb., 24 August 1973; Moto, 8 September 1973, 1 December 1973, 20 July 1974.

336/ SAIS, July-December 1973, col. 467; Guardian, 15 October 1974.

337/ Times, Guardian, Daily Telegraph, 24 January 1974; Moto, 26 January 1974, 2 February 1974.

371. According to information received by the Group, the rights of individuals have been violated in the case both of foreign nationals in Southern Rhodesia and of Rhodesian citizens abroad. Fr. Valverde (RT. 149 (II)) said that on crossing the frontier into Rhodesia he and two colleagues were detained and interrogated, their luggage and papers were confiscated, and they were forced to sign an order expelling them from Rhodesia; one of the group was given 24 hours to leave, the others were sent by Rhodesian military aircraft to Tete, Mozambique, and handed over to the Portuguese secret police. In a statement issued on 16 October 1974, the Botswana High Commission in London alleged that Mr. Ethan Dube, a ZAPU official, had been kidnapped by two armed white men and a black man from a house in Francistown, Botswana, four days previously while on a short visit. Police arriving shortly afterwards found "extensive bloodstains" on the floor and on a car outside. A later statement said that the kidnappers had "entered Southern Rhodesia near the Rhodesian police station at Mphoengs", and placed responsibility for this and a similar abduction in March 1974 - in which an African Rhodesian school-teacher, Mr. Joel Mthimkala, "disappeared" - on "agents of the illegal régime". 338/

IV. ANGOLA, MOZAMBIQUE, GUINEA-BISSAU AND THE CAPE VERDE ISLANDS

General introduction

372. By virtue of article 1 of the Constitution of Portugal of 1933, as amended, the African Territories under Portuguese domination were 'overseas provinces'. After 25 April 1974 the Programme of the Armed Forces Movement, which was given legislative form in Act No. 3/4 of 14 May 1974, proclaimed (No. 8, para. A, chap. B) the principle that the solution to overseas wars was political and not military. On 24 July 1974 a new Constitutional Law was promulgated, the operative part of which reads as follows:

"Article 1

"The principle that the solution to the overseas wars is political and not military, as contained in No. 8, paragraph A, chapter B, of the Programme of the Armed Forces Movement, implies the recognition by Portugal, in accordance with the United Nations Charter, of the right of peoples to self-determination.

"Article 2

"Recognition of the right to self-determination, with all its consequences, includes the acceptance of independence for the Overseas territories and the abrogation of the corresponding part of article 1 of the Political Constitution of 1933.

"Article 3

"It is within the competence of the President of the Republic, after consultation with the Junta of National Salvation, the Council of State and the Provisional Government, to conclude agreements relative to the exercise of the right recognized in the preceding articles." 339/

373. Guinea-Bissau declared its independence on 27 September 1973. It was recognized by the OAU and a certain number of States.

374. In a memorandum dated 3 August 1974, 340/ handed to the Secretary-General during his visit to Lisbon from 2 to 4 August 1974, the Portuguese Government inter alia pledged full co-operation with the United Nations in the implementation of the provisions of the Charter, the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the relevant resolutions concerning the Territories under Portuguese administration, and affirmed its recognition of the right of self-determination and independence for all overseas Territories under its administration. It also pledged full support for the territorial unity and integrity of each territory and declared that it would oppose any secessionist attempt or attempts of dismemberment from any quarter. The memorandum also contains sections dealing specifically with Guinea-Bissau, the Cape Verde Islands, Mozambique, Angola, and São Tomé and Príncipe, in which the Portuguese Government has attempted to take account of the individual circumstances of each Territory.

339/ A/9697, annex.

340/ A/9623/Add.1 (part I), para. 24.

A. ANGOLA

1. Political and constitutional developments since 25 April 1974

375. In conformity with the general provisions of Portugal's new Constitutional Law of 24 July 1974 and the declaration made by President Spínola on 27 July 1974, the policy of the Portuguese Government with regard to Angola was defined as follows by that Government in its memorandum of 3 August 1974:

"The Government of Portugal fully recognizes the right of the people of Angola to self-determination and independence and is prepared to implement the decisions of the United Nations in this regard. It intends to make contact promptly with the liberation movements so that formal negotiations may begin as soon as possible". 341/

376. In July 1974 a "provisional government of the State of Angola", composed mainly of army personnel, was appointed by the Portuguese Government.

377. Members of the Portuguese Government, including the Minister for Foreign Affairs Mr. Mario Soares, and members of the provisional government of Angola repeatedly declared that they intended to negotiate with the three major liberation movements in Angola - FNLA, MPLA and UNITA - with a view to forming a new provisional Government, composed of representatives of those three parties, which would organize elections for a constituent assembly. 342/ These negotiations are taking place.

378. According to the latest information available at the time of writing this chapter, a common front has been formed by the Mombasa Conference (Kenya).

379. Despite these political and constitutional developments, certain elements of the white population, disapproved by the Portuguese Government, create tension and from time to time acts of violence which caused a number of victims.

380. In December the Portuguese Minister for Inter-territorial Co-ordination said that the next stage in Angola would be the establishment of a provisional government made up of technocrats in charge of various departments and headed by a High Commissioner appointed by the President of the Portuguese Republic, assisted by a collegial body of Secretaries of State without portfolio, composed of the representatives of the three liberation movements on a basis of equality. It was envisaged that the new government would possess at the outset all legislative and executive powers relative to the Territory, thereby putting an end to the political and administrative dependence on Lisbon (see A/PV.2305 and A/AC.109/PV.989).

381. According to the latest information available to the Working Group, Angola will obtain its independence on 11 November 1975. 343/

341/ A/9623/Add.1 (Part I), para. 25.

342/ See, for example, the Financial Times, 5 September 1974; Le Monde, 17 September 1974.

343/ International Herald Tribune, 16 January 1975.

2. Analysis of evidence

(a) Capital punishment; violations of the right to life

382. The Ad Hoc Group of Experts heard no testimony relating specifically to the sentencing of persons to capital punishment by a judicial or administrative authority, following a trial for a criminal offence provided for by law, or concerning the execution of such sentences. The Portuguese Penal Code does not provide for capital punishment, but articles 26 et seq. of the Code of Military Justice contain provisions relating to the application of this punishment for certain crimes committed in time of war.

383. On the other hand, testimony was given concerning the inhuman murder of political prisoners and captured freedom fighters by members of the special police (PIDE, DGS) or by the commandants of concentration camps. For example, Mr. Paiva Domingo da Silva (RT.178) stated that he had witnessed the following atrocities: persons detained in the Miçombo concentration camp, on being suspected of attempting to escape, were shot and disembowelled; in 1961, in a prison or police station at Luanda, a member of PIDE named Sabino killed several friends of the witness, including Mr. Fabian Pasqual and Mr. Andrião Salvador; on 12 May 1961, at the prison of São Pedro da Barra two other officers of PIDE, named Valdemar and Antonio, killed 96 prisoners after piercing their hands with wire; finally, certain prisoners were transfixed by sabres while others were burned alive after being compelled to drink petrol. According to the witness, the police officers who committed those murders had said that they wanted to "liquidate" the Africans.

384. Mention must also be made of the massacres of Africans committed from time to time by extremists, such as those from 11 to 15 July 1974 (see paras. 400-404 below).

(b) Treatment of political prisoners and captured freedom fighters

385. The prisoners generally agree that after 25 April 1974 witnesses were released (Mr. Manuel Cordeiro, RT. 176, and Miss Sebastião, RT. 178).

386. The testimony heard concerning the treatment of political prisoners therefore relates entirely to the period prior to 25 April 1974. However, it seems, according to some statements, that former political prisoners are still subject to special surveillance by the authorities (Mr. José Neto, RT. 176).

387. Several witnesses spoke of torture and cruel or inhuman treatment inflicted by the special police (PIDE, DGS) on political prisoners. All witnesses who spoke of these matters said that they had been beaten repeatedly for several days by fist-blows, kicks and sticks. Many of them stated that they had been whipped or else beaten with the all too familiar palmatoria. (Miss Sebastião, Mr. da Silva and Mr. de Mezquita Octavio, RT. 178). Added to it at times was beating with a stick fitted with a hook (Mr. José Neto, RT. 176).

388. It was mentioned that detainees had their nails torn out (Mr. Dos Santos, RT.176) or burned (Mr. Tukayana, RT. 178).

389. Several witnesses said that they had undergone the so-called "statue" torture which consists of being compelled to stand still for several hours and even several days (Mr. José Neto and Mr. Dos Santos, RT. 176; Mr. de Mezquita Octavio, RT. 178).

390. One of the most atrocious types of torture reported, which involved the death of the victims, took the form of pouring petrol over the detainee or forcing him to hold in his mouth a paper soaked in petrol and burning him alive (Mr. da Silva and Mr. Cristóvão, RT. 178).

391. When the phase of interrogation by the special police was over, the prisoners were generally transported to prisons or concentration camps, such as the frequently mentioned camp of São Nicolau, the prison at São Pedro da Barra, or even outside Angola, the Tarrafal prison. None of them, however, were convicted after a trial before a court. The charges against them were not even stated, nor was the probable duration of their detention.

392. In these prisons and camps, according to several witnesses, the prisoners endured harsh and often cruel living conditions. Repeated mention was made of the excessive numbers of prisoners in small badly ventilated cells (Mr. José Neto, RT. 176; Mr. Julio, Mr. da Silva and Mr. Assis Neto, RT. 178). At least at certain periods the prisoners received only bread and water and they had to get that water from the toilet bowl (Mr. José Neto, RT. 176). The food, essentially beans and "mealie", was tasteless and of little nutritional value (Mr. da Silva and Mr. Julio, RT. 178). Medical treatment was inadequate or non-existent (Mr. de Mezquita Octavio and Mr. Tukayana, RT. 178).

393. It was stated that in these camps or prisons political prisoners and persons sentenced for offences under ordinary law were held together, with no distinction being made (Mr. de Mezquita Octavio, RT. 178).

394. The detainees had to perform hard labour, such as carrying stones and sawing large trees. (Mr. José Neto, RT. 176; Mr. de Mezquita Octavio, RT. 178). The sole purpose of this work was to tire out the detainees but in most cases their services were rented out to settlers and payment was made to PIDE.

395. Offences against prison discipline were severely punished - for example, by solitary confinement. According to several witnesses, the guards had the habit of preventing any protest by terrorizing the detainees by setting fierce dogs on them (Mr. José Neto, RT. 176; Mr. da Silva, RT. 178). Escape attempts at the São Nicolau camp were punished by death by shooting and disembowelling (Mr. da Silva, RT. 178).

396. According to certain witnesses, there was theoretically an appeal procedure against abuses by the prison staff, but that it was a completely illusory safeguard. (Mr. de Mezquita Octavio, RT. 178).

397. During its visit to a freedom fighters' camp, the Ad hoc Working Group of Experts heard reports from some fighters who had previously been captured. Mr. Nkenda (testimony given in a freedom fighters' camp in Kinshasa (RT. 190)) reported on the torturing of all the freedom fighters who had been captured. Mr. A. Jones (RT. 190) stated that he had been tortured and forced to eat a piece of his own flesh. Other prisoners had also been forced to eat the flesh of a National Front fighter who had been beaten and killed on Christmas Day 1969.

398. Several witnesses stated that delegates of the International Red Cross had visited certain camps and prisons, but that the prison staff had been warned in advance and had presented the delegates with a completely false picture of the treatment of detainees. (Mr. José Neto, RT. 176).

399. The witnesses named certain PIDE officers or camp commandants, whom they accused of having carried out acts of torture or ill-treatment: PIDE subinspector Alipio Vieira, At Luanda, was accused by Miss Sebastião of being her torturer (RT. 178) and by Mr. Julio (RT. 178) of having tortured Mr. José Alberto Pinho; PIDE subinspector Pinto de Almeida was accused by Mr. Cristóvão (RT. 178) of having tortured Mr. Bernardo Julio; and the director of the São Nicolau camp, João José Baltazar de Lima, was accused by Mr. Assis Neto (RT. 178). According to the witnesses, none of these persons is now living in Angola; they have taken refuge elsewhere, perhaps in South Africa. The arrest of a number of PIDE officers was reported in the press. It was said in general that no PIDE officer had been imprisoned in Angola since 25 April 1974 (Mr. Manuel Cordeiro, RT. 176).

(c) Grave manifestations of colonialism and racial discrimination

(i) Massacres of Africans

400. The representatives of FNLA and MPLA in their opening statements to the Ad hoc Group of Experts expressed their deep concern about the acts of intimidation and brutality, culminating in massacres of Africans, which had been committed in Angola after 25 April 1974 by groups of white extremists (Mr. Abrigada, of FNLA, RT. 176; Mr. Larra, of MPLA, RT. 178). These atrocities were continuing and were intensifying. Mr. Abrigada said that, according to some sources, about 1,500 Angolans had been massacred since 25 April, and Mr. Larra believed that an average of 10 Africans were being killed every day since mid-July by the colonialists in Luanda.

401. According to several witnesses, these incidents were the product of systematic action by groups of white terrorists, composed of members of the colonialist lower middle class (taxi-drivers, shopkeepers, etc.) whose aim was, perhaps, to establish a régime on the pattern of Ian Smith's régime in Rhodesia and who generally possessed a considerable number of firearms. One of the witnesses drew attention to the establishment of a colonialist terrorist movement called RUA (United Angolan Resistance), which was composed largely of taxi-drivers, ex-soldiers and ex-policemen, and was led by a certain captain of the reserve, José Mendoza Jr., its weapons being supplied by South Africa and some large colonial companies (Mr. Macedo). According to the same witness, two South African bombers and other war material had been sent to Luanda in April to support the movement but General Costa Gomes, a member of the Junta, had ordered the return of the aircraft to South Africa. Nevertheless, in spite of the hopes expressed by the Angolan population, the government authorities had not ended the activities of this terrorist group.

402. According to all the witnesses, in contrast with the well-armed colonialist organizations, the black population had no firearms at all.

403. Some witnesses gave details about the massacres which occurred in July 1974 in the urban area of Luanda following the death of a white taxi-driver (Mr. Damião, Mr. Domingo and Mr. Sampaio, RT. 177; Mr. Tukayana, RT. 178). The witnesses categorically denied the version given by the colonialist groups, which was that this taxi-driver, whose body was found on the morning of 11 July in an African neighbourhood in Luanda, Kazenga, had been strangled by blacks. They emphasized how improbable that version was, in view, in particular, of the fact that death had occurred about one o'clock in the morning, and that white taxi-drivers never agreed to take African passengers or to go into African neighbourhoods at night. It seemed much more likely that the murder had been committed by another white, perhaps because of amorous rivalry (Mr. Tukayana). After the murder was discovered on 11 July, armed bands of whites spread terror and massacre in the African neighbourhoods, killing more than 10 people and injuring about 40. After these events, on 12 July, several Africans

went to the São Paulo hospital to look for the bodies of three of the victims and carried them to the Governor-General's residence. The police then surrounded the demonstrators and beat them (Mr. Tukayana); according to some witnesses, the police also opened fire, causing further casualties (Mr. Sampaio). On 15 July a large peaceful demonstration of Africans took place on the occasion of the burial of some of the victims of the disturbances of 11 and 12 July. It is reported that the army fired on the crowd and several demonstrators were killed, estimates varying from 12 dead (official figure) to about 30 dead (Mr. Tukayana). A Spanish journalist who was present was said to have taken photographs of the massacre, but the soldiers are said to have beaten him, confiscated his camera and exposed the film (Mr. Sampaio, Mr. Tukayana). Mr. Sampaio, who said he had witnessed several of the events which took place between 11 and 15 July, mentioned atrocities such as an attack by a group of whites on an ambulance carrying African wounded and the murder of those wounded people. According to Mr. Damião, the number of dead and wounded was much higher than the official estimates, and the hospitals were overflowing; he cited the figure of 50 dead and 200 wounded each day at the university hospital. A witness who was heard at a closed meeting (355th meeting) stated that about 220 Africans disappeared during that period in July. Mr. Damião stated that groups of white terrorists attacked Africans at night, even in their houses, in the suburb of Sambizanga, and kidnapped blacks and killed them secretly in a forest belonging to Petrangel, the Angolan oil company.

404. The witnesses all stressed that at the time of those incidents the government authorities took no effective action against the terrorist groups and often gave them a free hand. According to a witness heard at a closed meeting (355th meeting), a commission of the Portuguese Government was in Angola investigating the massacres, but the conclusions of that commission were not known.

(ii) Discrimination in education and in access to government employment

405. Mr. Manuel Cordeiro stated that the schools attended by African children were badly equipped, often with no desks or lavatories. According to the same witness, access to university education was legally available to Africans but there were substantial obstacles which made those laws almost entirely illusory: very few scholarships were granted to Africans; Africans at the university were constantly suspected by the police of having subversive ideas and often arrested; they could not, in fact, apply to the law faculty, as the subject was considered too "political". According to Mr. Julio (RT. 178), the history of Angola was not taught at all in the schools, whose curricula did, however, include the history of Portugal.

406. Access to government employment was theoretically open to Africans, but it was very difficult for them, in practice, to be allowed to enter for the competitive examinations for the intermediate and higher grades. It was only since 25 April that some Africans had been admitted to the higher posts. There was also a disparity in salaries for equal qualifications and work (Mr. Manuel Cordeiro).

(iii) Discrimination in housing

407. Mr. Manuel Cordeiro (RT. 176) said that the dwellings built in the African suburbs were both badly equipped and much too expensive, having regard to the resources of Africans; for example, an African family having an income of about 1,000 escudos might have to pay a rent of as much as 500 escudos. Mr. Manuel Cordeiro believed that the aim of the Government's urbanization plans was to settle Africans in those suburbs which were farthest from the centre of the city. In Lusaka the Ad hoc Group of Experts had the opportunity of seeing slides showing the inadequate facilities in African suburbs and the special luxuries in the white areas (Rwanda).

(iv) Discrimination in medical treatment

408. Mr. Manuel Cordeiro (RT. 176) said that he had witnessed practices which discriminated against African patients at the Don João III Hospital in Luanda: generally, because blacks could not afford the better rooms, they were placed in a common ward in which the conditions of hygiene left much to be desired. Mr. da Mata (RT. 176) also gave evidence to that effect. He also alleged that a practice existed which was a very serious violation of the Africans' human rights: some doctors, including Dr. David Santos, carried out dangerous medical or scientific experiments on blacks, and in many cases they died as a result of those experiments.

B. MOZAMBIQUE

1. Political and constitutional developments since 25 April 1974

409. In the memorandum of 3 August 1974 mentioned in paragraph 359, the section concerning Mozambique reads as follows:

"The Government of Portugal fully recognizes the right of the people of Mozambique to self-determination and independence and is prepared to implement the decisions of the United Nations in this regard. In furtherance of this declaration of principle the Government of Portugal, which previously had established contacts with the representatives of FRELIMO, will take immediate steps to enter into negotiations with FRELIMO with a view to accelerating the process of independence for the Territory." 344/

410. While the negotiations with the Portuguese Government were in progress, the leaders of FRELIMO made several statements outlining their position on various political and constitutional issues. In a telegram of 2 September 1974 345/ addressed to the Chairman of the Special Committee on the Situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, the President of FRELIMO affirmed its determination to win complete independence for Mozambique and stated that FRELIMO was the only legitimate representative of all the Mozambican people, without distinction of colour, ethnic origin or religion. FRELIMO, in conclusion, proclaimed its respect for human rights, including the rights of Portuguese people living in Mozambique.

411. On 7 September 1974, following the negotiations at Lusaka, the representatives of the Portuguese Government and FRELIMO signed an agreement 346/ providing that the complete independence of Mozambique would be proclaimed on 25 June 1975. During the period of transition, from 7 September 1974 to 25 June 1975, new governmental structures would be created, including a High Commissioner, appointed by the President of the Portuguese Republic, a transitional Government, appointed by agreement between FRELIMO and the Portuguese State, and a Joint Military Commission, appointed by agreement between FRELIMO and the Portuguese State. It was laid down, inter alia, that the High Commissioner would ensure "respect for mutual guarantees, namely, those subscribed to in the Universal Declaration of Human Rights" (para. 4 (d)), and that the transitional Government would be responsible, in particular for "the defence and safeguard of public order and the safety of persons and property" and would guarantee "the principle of non-discrimination on the grounds of race, ethnicity, religion or sex" (para. 5 (c) and (f)). The parties also undertook "to act jointly in order to eliminate all vestiges of colonialism and to create true racial harmony" (para. 15).

344/ A/9623/Add.1 (part I), para. 24.

345/ A/9623/Add.1 (part II), annex V.

412. Despite political and constitutional developments, disturbances were promoted by white elements of the population in Mozambique and particularly in Lourenço Marques. 347/

2. Analysis of evidence

(a) Capital punishment; violations of the right to life

413. As Father Valverde pointed out in his testimony (RT. 149 (II)), capital punishment is not permitted by Portuguese criminal law, at least in periods when a state of emergency has not been declared. However, a number of witnesses reported murders and massacres perpetrated by the Portuguese authorities, of which African civilians were the victims.

414. Father Valverde said that he had seen the bodies of victims, mainly women and children, of four massacres which occurred near his mission in Mukumbura, province of Tete, from May to November 1971. The total number killed was about 100 (see para. 420 below). Mr. Nkwalembu (RT. 158) said that he had fled from Mozambique after his father and mother had been burned alive in one of those massacres.

415. Pastors Andrié and Morier-Genoud (RT. 184) gave details about the death in prison in 1972, after police interrogation, of three members of the autonomous Presbyterian Church of Mozambique, including its head, Pastor Manganhela. Although the official theory had been suicide, many circumstances gave rise to the belief that the victims had been beaten to death (see para. 418).

(b) Treatment of political prisoners and captured freedom fighters

416. The statements made (Father Valverde, RT. 149 (II)); Mr. Andrié and Mr. Morier-Genoud, (RT. 184) deal mainly with the Machava prison in Lourenço Marques.

417. Evidence was given of systematic torture by the police with the view to making prisoners confess. Father Valverde, who was imprisoned for 20 months in Machava prison, stated that all African detainees with whom he had been able to make contact had told him that they had been severely beaten with the palmatoria and whipped with thongs made of hippopotamus skin. According to Pastors Andrié and Morier-Genoud, it was an everyday occurrence at Machava to see prisoners return from the interrogation room covered with blood after being beaten.

418. Mr. Andrié and Mr. Morier-Genoud described the arrest and detention of 60 members of the Presbyterian Church of Mozambique in 1972 on the charge, made several months after their arrest, of having sent to FRELIMO funds collected from congregations during religious services. Three of the persons arrested died in prison: Mr. José Sidumu, in July 1972; Pastor Manganhela, President of the Council of the Synods on 11 December 1972; and another member, Mr. Cardoso Mtamela. The official version was suicide and, in the case of Pastor Manganhela at least, there was a letter in which he said he had ended his days, but that letter was not signed. Moreover, some doctors are reported to have refused to sign the certificate giving suicide as the cause of death. Finally, according to the written statements of one Mr. Thompson to the Council for the Missions in Switzerland, he himself, having been held in the cell adjoining that in which Pastor Manganhela was interrogated, had heard the police beat the victim in order to force him to sign the document. The pastor's last words were that, even if he had to die, he would not sign. It would seem, therefore, that the pastor's death should be attributed to torture, after 45 days of intensive interrogation,

347/ The information contained in this paragraph is based on press articles; see, in particular, Le Monde, 10 and 11 September 1974; The Guardian, 13 September 1974; The Sunday Times, 15 September 1974. See also para. 421 et al.

from 7 a.m. to midnight, and six months of solitary confinement, which had exhausted the victim physically and mentally. According to Mr. Thompsen, during the 10 months he spent at Machava prison, about 50 prisoners died and their bodies were thrown in a common trench. In the case of Mr. Manganhela, an autopsy and judicial inquiry were ordered, probably for fear of protests by the churches, but the conclusions of the inquiry were never published.

419. Leaving aside the question of torture during interrogation, living conditions in Machava prison were very harsh, the worst treatment being meted out to African detainees; they often had to sleep on the floor with only two blankets (Father Valverde and Mr. Morier-Genoud) and their food, which was different from the whites' food, was insipid and of no nutritional value (Father Valverde). The disciplinary punishment for attempts to escape or mutiny was deprivation of food and drink, and solitary confinement; Father Valverde himself, as a punishment for having given certain information on prison life to a consul, was sentenced to spend nine months without speaking in a cell measuring 2 metres by 2.5 metres.

(c) Grave manifestations of colonialism and racial discrimination

Massacres of Africans

420. Father Valverde (RT. 149) said that he had seen the bodies of victims of four massacres of Africans which had taken place near his mission at Mukumbura, in the province of Tete, in May, September, October and November 1971. He had seen the bodies of women and children burned alive with fire-bombs. In all, the massacres had resulted in about 100 deaths. The massacre in September 1971 was not perpetrated by Portuguese forces but by the Rhodesian army. In that connexion, Father Valverde stated that at the time there was continual mutual assistance, in a variety of forms, between the Portuguese and Rhodesian police forces: exchange of information about suspects, right to cross the frontier to pursue guerrillas, etc. Father Valverde and other priests from his mission appealed to the Portuguese bishop of Tete and the military and police authorities to stop these atrocities, but their efforts were fruitless. In fact, Father Valverde was subsequently imprisoned without trial for 23 months.

421-422. The Commission of inquiry on the reported massacres in Mozambique, in its report to the General Assembly (A/9621), noted that at a further stage of the colonial war, the civilian population became a victim of increasingly violent repression by the Portuguese colonialist authorities. To prevent the spread of support for FRELIMO among the African population, the Portuguese colonialist authorities adopted a policy of aldeamentos (fortified villages). The policy was introduced in Mozambique in the late 1960s and was increasingly intensified from 1969 on. By August 1973 there were already nearly 1 million Africans in the districts of Cabo Delgado, Miassa and Tibe regrouped into 895 aldeamentos. The Commission concluded that the establishment of aldeamentos was the source of untold hardship. The transfer of the entire population of a village under the most primitive conditions and the lack not only of facilities, but of the necessities of life in these new population centres caused many deaths as a result of exhaustion, hunger and disease. The Commission also reported that it was completely satisfied by evidence which proved that on 16 December 1972, Portuguese troops under the leadership of agents of DGS, surrounded the villages of Chawola, Juwau and Wiriyaumu, entered the villages, killed everyone in sight and in the process, destroyed the villages. The number of victims was estimated at over 400 in the three villages.

423. In its interim report (E/CN.4/1135) the Ad hoc Working Group of Experts included a written testimony, submitted by Father Blanc Cesar Bertulli concerning the massacre in the villages of Wiriyamu and Juwau, in the Tete province, which took the lives of 400 to 500 people. The testimony described in detail the brutal manner in which the villages were attacked and the people were killed. The interim report also included testimonies from other sources which confirmed the aforementioned massacres. In addition the report contained other testimonies concerning massacres at a smaller scale which took place in other villages such as Jaco, Xidecanda, Angonia and Mukumbura during the period 1970-1973.

424. During its meeting in Geneva in January 1975 the members of the Ad hoc Working Group of Experts saw a film showing some places where the massacres took place in Mozambique.

Violent resistance by white extremists to the independence of Mozambique

425. On 7 September 1974, the day when the representatives of the Portuguese Government and FRELIMO signed the agreement providing the complete independence of Mozambique, in Lourenço Marques 348/, a group of white extremists took over the "Radio-Clube" station and issued appeals to the population to continue the struggle against the FRELIMO "murderers" and "communism". According to the press, these insurgent groups, composed largely of ex-soldiers, were led by armed clandestine extremists' organizations, the "Dragons of death" and "FICO". It was learnt in the days that followed that the insurgents categorically rejected the Lusaka agreements, were planning to establish a new provisional government and had released a large number of former members of the PIDE force who had been in detention since 25 April 1974. Tension developed very quickly between these European extremists and the African population. Violent clashes occurred in African neighbourhoods, leaving, according to official estimates, about 100 dead and 200 wounded, and about 2,000 whites left for South Africa from Lourenço Marques. However, after the Portuguese Government and the FRELIMO authorities had firmly condemned the insurgents and made appeals for calm and racial harmony, the insurgents surrendered on 10 September to the regular police forces.

C. VIOLATIONS OF HUMAN RIGHTS BY THE PORTUGUESE AUTHORITIES IN GUINEA-BISSAU AND THE CAPE VERDE ISLANDS

1. Political and constitutional developments since 25 April 1974

426. In the memorandum of 3 August 1974 mentioned in paragraph 359, the Portuguese Government made the following statement concerning Guinea-Bissau and the Cape Verde Islands:

"(3) Guinea-Bissau

"(a) The Government of Portugal is ready to recognize the Republic of Guinea-Bissau as an independent State and is prepared to enter forthwith, into arrangements with the Republic of Guinea-Bissau for the immediate transfer of the administration;

^{348/} The information contained in this paragraph is based on press articles; see, in particular, Le Monde, 10 and 11 September 1974; The Guardian, 13 September 1974; The Sunday Times, 15 September 1974.

"(b) Accordingly it will give its full support to the application of Guinea-Bissau for United Nations membership.

"(4) Cape Verde Islands

"The Government of Portugal fully recognizes the right of the people of the Cape Verde Islands to self-determination and independence and is prepared to implement the decisions of the United Nations in this regard.

"In accelerating the process of decolonization in the Cape Verde Islands the Government of Portugal is prepared to co-operate closely with the competent organs of the United Nations." 349/

427. During the same month, following the Algiers negotiations, Portugal formally recognized the independence of Guinea-Bissau. Guinea-Bissau, which was already a member of several specialized agencies, was admitted to the United Nations at the opening of the twenty-ninth session of the General Assembly in September 1974. The question of the Cape Verde Islands, however, was still not finally settled. 350/ It is recognized that the Cape Verde Islands are part of Guinea-Bissau.

428. On 14 August 1974 at Dakar, before questioning the witnesses from Guinea-Bissau, the Ad hoc Group of Experts heard Mr. Abilio Duarte, a member of the Executive Council of PAIGC. Mr. Duarte stated that, despite the cessation of hostilities and the impending accession of Guinea-Bissau to independence, the people of Guinea-Bissau believed it necessary to submit to the United Nations evidence concerning violations of human rights committed by the colonialist authorities of Portugal before 25 April 1974. It was important that the world should know the full gravity of those violations and the extent of the suffering endured by the people of Guinea-Bissau, both in order to establish the truth for history and to provide a better understanding of the appeals for international co-operation which that people might have to make with a view to removing and overcoming the consequences of colonialist oppression (RT. 179).

2. Analysis of evidence

(a) Capital punishment; violations of the right to life

429. Several witnesses (Mr. Soares de Carvalho, Mr. Sampa, and Mr. Mago, RT. 179) stated that political prisoners had died as a result of torture inflicted by PIDE or of very hard forced labour which they had had to perform (see paras. 433-436 below). The Portuguese Penal Code does not provide for capital punishment, but ~~there are~~ there are provisions in the military Code of Justice (articles 26 et seq.) concerning the imposition of that penalty for certain crimes committed in wartime.

349/ A/9623/Add.1 (part I), para. 24.

350/ On this subject, see inter alia the resolution adopted on 5 April 1974 by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (A/9623/Add.1 (part I), annex II, B), and the letter dated 20 May 1974 addressed to the Chairman of the Special Committee by the Permanent Observer of Guinea-Bissau to the United Nations (ibid., annex IV).

430. Mr. Delgado (RT. 188), speaking on the economic under-development of the Cape Verde Islands, attributed the cause mainly to the colonial regime and recalled in this connexion that it was for this reason that the Territory in the past had suffered from famine and hunger which had caused the death of 50,000 people.

431. This witness also spoke of the inhuman working conditions imposed on migrant workers from the Cape Verde Islands on the plantations of the island of São Tomé, which had led to the death of several workers, including children (see para. 437 below). ^{351/} Mr. Soares de Carvalho and other witnesses also spoke of numerous deaths caused by the inhuman working conditions of forced labour in Guinea-Bissau, particularly around 1940.

432. Mr. Delgado also stated that, as a result of arbitrary police repression of peaceful demonstrations in the Cape Verde Islands after 25 April 1974, people had been seriously injured and at least one had been killed.

(b) Treatment of political prisoners and captured freedom fighters

433. Several witnesses described torture and cruel or inhuman treatment to which they or their comrades had been subjected during police interrogation.

Mr. Soares de Carvalho (RT. 179) declared that one of the commonly practised tortures was to hang prisoners by their feet, which often caused their death. According to Mr. Mago (RT. 179), at the concentration camp of Tite in 1962 several political prisoners had been exposed outside the buildings continuously with their feet and wrists tied, and had received as food only rotten left-overs; many of them had died as a result of this treatment. Mr. Delgado (RT. 180) said that he had for several days endured the "statue" torture, which is also mentioned in the testimony of Mr. Barry (RT. 179). The latter refers to the case of one Utana Sucubaia, his cell-mate, whose ears had been cut off by the Portuguese. According to Mr. Soares de Carvalho, one of his friends, Duarte Marques de Veida, died as a result of electric shock torture inflicted by PIDE. Most of the witnesses also mentioned beatings with fists, kicking, whipping, and beating with palmatoria.

434. It appears that after interrogation prisoners were systematically placed in solitary confinement in narrow cells for periods for several weeks (Mr. Delgado) and could remain there up to a year (Mr. Mago).

435. After interrogation and torture by PIDE the detainees were summarily "sentenced" by the police, without trial or conviction, to variable periods of imprisonment in prisons or camps such as the Galinhas Island camp in Guinea-Bissau and the Tarrafal camp in the Cape Verde Islands. In both these camps, according to the statements, prisoners were often crammed into narrow cells with no beds (Mr. Soares de Carvalho and Mr. Sampa, RT. 179). The food was often rotten, prepared with rancid oil and uneatable, to such a point that there was a hunger strike in Tarrafal in 1966 or 1967 (Mr. Soares de Carvalho). Disciplinary punishment was cruel and often took the form of flogging the detainees.

436. Several witnesses referred to the exhausting work prisoners had to do, for example, carrying enormous pieces of wood or heavy stones, in addition to the necessary agricultural work to provide food for themselves.

^{351/} See also the report prepared by the Ad Hoc Group of Experts in pursuance of Economic and Social Council resolution 1796 (LIV). (E/CN.4/AC.22/CRP.6 and Add.1-6).

(c) Grave manifestations of colonialism and racial discrimination

(i) Practices similar to slavery and forced labour

437. Mr. Sampa (RT. 179) and Mr. Delgado (RT. 180) gave detailed evidence about the system of forced recruitment of Africans and the working conditions of migrant Cape Verde workers in the island of São Tomé. 352/

(ii) Cruel treatments

438. Mr. Barry (RT. 179) stated that, during the time he was detained, he saw a prisoner whose ears had been cut off. On his arrival at the prison his condition had been such that he could not walk, as a result of the torture he had undergone. Mr. Barry also described the atrocious methods of torture used on the prisoners. In particular, he reported the case of a prisoner who had been tortured to death. He also stated that some prisoners of the Muslim faith had been forced to drink wine and eat pork.

(iii) Discrimination in education

439. Mr. Mago (RT. 179) and Mr. Delgado (RT. 180) stated that there was very patent discrimination against African pupils. For example, they alone, like their African teachers, had to clean the classroom, as whites refused to do that work. According to Mr. Delgado, until 1970 there were in Guinea-Bissau only 14 Africans who had had university education. The number was higher in the Cape Verde Islands, because the Portuguese had always utilized the predominantly half-caste population of that archipelago to fill intermediate-level posts in the colonial administration throughout the Portuguese empire.

440. Both witnesses stressed that the curricula at all levels, being geared to "assimilation", completely ignored African history and civilization and were in no way suited to the need and aspirations of the people. African cultural traditions (songs, dances, etc.) were systematically disparaged by the authorities.

(iv) Discrimination in medical treatment

441. According to Mr. Sampa (RT. 179), blacks endured discriminatory practices in medical treatment, particularly in the very few hospitals which existed in Guinea-Bissau and the Cape Verde Islands. Because they were forced to yield place to whites on waiting-lists, many Africans died because of not receiving treatment in time. In other cases - such as that of a mother and her young children, of which Mr. Delgado spoke - they were simply put out of the hospital before they had recovered. Hospital care was not free, except for people who had no work and whom the colonial administration certified as being entitled to public assistance. Once an African had any income, however, small, which could be assessed in monetary terms, he had to pay for medical treatment.

442. According to the written statement of a former teacher, read by Mr. Delgado (RT.180), she had seen in a hospital children with swollen abdomens, suffering from serious malnutrition, lying on the ground in completely unhygienic conditions.

443. According to Mr. Delgado, the official statistics of the Ministry for Overseas Finances, published prior to 25 April 1974, indicated that for a population of 280,000, there were in the whole of the Cape Verde archipelago only 19 doctors, 53 nurses, 37 paramedical assistants and 367 hospital beds.

352/ For an analysis of this evidence. see the report mentioned in foot-note 351.

(v) Discrimination in the armed forces

444. According to Mr. Barry (RT. 179), who had been conscripted into the Portuguese colonial army, Africans of all ranks were discriminated against. In particular, black soldiers did almost all the menial work of the military camps. In disciplinary matters, if a Portuguese soldier and an African soldier were involved in an incident, the word of the former was generally taken and the African was punished. In certain units composed exclusively of blacks there were black officers, but their rank was never higher than captain.

(vi) Massacres of Africans

445. Mr. Delgado (RT. 180) affirmed that during the period he spent in a Portuguese army cadets' school in Mafra, the students were given instructions and training in which they were urged to massacre the civilian population in villages blindly. "Shoot on sight at anything that moves" was the principal rule in their manual of anti-insurrection warfare.

446. This witness also declared that, even after 25 April 1974, at Praia, the capital of the Cape Verde Islands, the police had fired on demonstrators celebrating the advent of the new régime and calling for independence. The repressive action, which took place on 1, 3, 18 and 19 May 1974, left at least one dead and several seriously injured, some of whom had not been properly cared for in the hospital.

V - CONCLUSIONS AND RECOMMENDATIONS

A. SOUTH AFRICA

1. Conclusions

- (1) South Africa regularly inflicts physical and mental torture on its political prisoners. It has become an "administrative practice". Apart from getting information it is meant to intimidate those who suffered it and those who heard about it.
- (2) The number of executions has increased. Non-whites are much more numerous than whites among those on whom sentences of death have been carried out. Similarly the number of death sentences passed for a given crime. For example in cases of rape, death sentences are far greater among non-whites than the trifling number of death sentences passed on whites.
- (3) There is a factor of racial discrimination behind sentencing policies in South African Courts.
- (4) There is an increase in the number of persons killed by police in 1973 over 1972 (74 : 117).
- (5) The internal disciplinary measures in prisons, in particular in Robben Island have been strengthened; the system of supervision of persons having served sentence has been expanded.
- (6) More and more trials against organizations being opposed to the apartheid policy have been introduced.
- (7) The Judiciary collaborated with the Executive, in particular in the implementation of the racist security laws.
- (8) Affidavits at the disposal of the Group show that torture and cruel or degrading treatment of detainees and political prisoners still are common features. Torture teams are reported to have been built up.
- (9) The "private" or the "farm gaols" in which labourers at the farms are placed for disciplinary reasons are widespread and are inhuman places, far away from any control; they are as slave-like institutions.
- (10) The homelands system is a means for segregation; it is not more or no less than a form of the policy of apartheid. Its enforcement has kept down black numbers in "white" areas. In reality, the homelands do not at all ameliorate the living conditions of Africans; the health facilities, the educational facilities, the occupation and employment facilities or lack of them prove the clear discrimination against the black people.
- (11) The consolidation plans in regard to homelands contribute to strengthening the apartheid policy. Homelands are targets of foreign investments but the job facilities of black people have not increased.

- (12) Transit Camps have been enlarged and form the most inhuman method of population movement and freedom of movement in modern times. The Group found that the following group of persons are brought into these camps: (a) landless African families from the reserves; (b) Africans who have been cleared from the "black spots"; (c) Africans who have been elected from the white farms, when too old or infirm to work; (d) men, women and children "endorsed out" of the urban areas as unproductive; (e) wives and families of men serving prison sentences; and (f) former political prisoners, after serving their sentences.
- (13) Thousands of Africans are put under the forced removal schemes; family disruption is one of the inhuman consequences of this scheme. Part of the South African Press reports quite openly on the inhuman conditions of forced removals.
- (14) Also the migrant worker-system is in the eyes of the Group a grave manifestation of apartheid. This system leads to family disruption. Another feature of apartheid is the frequency of banning orders.
- (15) Students of the Cape Town University are reported to have been gravely discriminated. Student organizations are suspended.
- (16) The Group states with regret that none of the recommendations contained in previous reports have been respected by the South African authorities.

2. Recommendations

- (17) The Group reiterates its previous recommendations regarding the inhuman and degrading treatment suffered by persons arrested and detained solely because of their opposition to the South African government's policy of apartheid.
- (18) A special study on farm gacds should be made in order to ascertain the extent, magnitude and illegal nature of its opposition and to expose the dehumanizing and depersonalization of the black individuals.
- (19) Another special study should be undertaken to investigate the historical process of the separate homelands policy and bring up to date the situation, political, civil, economic, social and cultural, in those areas. This study should also explain what the Government of South Africa actually intends to do through its plans and projects.
- (20) A seminar should be organized at a suitable location in Southern Africa for the purpose of focussing attention on (i) economic and cultural exploitation of the blacks in South Africa and Namibia and (ii) prison conditions in the South African jails including in particular the notorious Robben Island maximum security prison. Invitations should be extended in particular to the appropriate and competent United Nations organs, and to OAU, Amnesty International, International Commission of Jurists and others concerned, NGO's of Black South African and ex-prisoners. The results of the seminar should be communicated to the Human Rights Commission for study.
- (21) The Group should inquire into the student movements in South Africa and Namibia and report in detail the effects of the policy of discrimination and repression followed by the South African government.

- (22) The Working Group submits hereunder the conclusions and recommendations arising out of its investigations in 1973 and 1974 and recommends the Commission on Human Rights to request the Secretary-General to transmit the same to the Ministers of Foreign Affairs of Member States.
- (23) The Group recommends that a study should be made which would show the harmful effects of the policy of apartheid on the African family.

B. NAMIBIA

1. Conclusions

- (24) There is not the slightest sign that South Africa gave up its illegal occupation of Namibia, a territory under United Nations responsibility. On the contrary, the application of apartheid laws is strengthened, the racial discrimination intensified, the resolutions of the United Nations - the only legal competent body over Namibia - disrespected.
- (25) The State of emergency, proclaimed since 1972, is still in existence. Many hundreds of persons were arrested under the emergency powers.
- (26) The public flogging against which world wide protest arose was one of the most ~~shocking~~ features of punishment against opponents of apartheid policy in Namibia. The flogging is executed by strokes ranging from 10 to 30. The public flogging inflicted upon men as well as women has no justification whatsoever. It is contrary to African tribal custom and tradition and all international standards of human rights and treatment of prisoners.
- (27) In the Caprivi Strip forced removal and military occupation still go on. Killing in the area is reported. The consequence is the flying of many thousands of Africans into Zambia and Angola.
- (28) Political prisoners are sent to South African jails, for example, to Robben Island.
- (29) Report has been received about the present detention of 2000 Namibians in South Africa and Namibia, the arrested persons belonging to the SWAPO, detainees have been reported for being tortured.
- (30) The pass system is used for political suppression.
- (31) Reports have been received that the showing of Namibian Symbols and the use of the name "Namibia" are sufficient grounds for being persecuted, including the infliction of flogging.
- (32) Fair trial for political detainees is not guaranteed: no charge, no plea, no defence and no lawyers guaranteed.
- (33) The Bantu Homelands policy in Namibia has not changed but instead intensified. The same methods are used as in South Africa.
- (34) A massacre in the Caprivi Strip has been reported. Hundreds of people have been reported killed and a village destroyed. The facts have been officially denied by the South African government.
- (35) The Group regrets to state that none of the recommendations contained in previous reports have been respected by the South African authorities.

2. Recommendations

- (36) The Group reiterates its recommendations made in the last report.
- (37) Since no action appears to have been taken on the recommendations made in the last report, the attention of the South African government which continues the illegal occupation of Namibia should be drawn to them once again.
- (38) Recommendations contained in the last report as well as this report should be transmitted to the Chairman of the Council on Namibia and the Commissioner for such action as they may deem fit.
- (39) The attention of the world press should be brought to the fate of the Namibian political prisoners who have been illegally transferred from South Africa to the Robben Island prison and violations inflicted upon them contrary to the standard minimum rules of the treatment of political prisoners. Emphasis would be laid upon the degrading conditions prevailing in these prisons.
- (40) The infliction of public flogging (an inhuman and illegal act) on men, women and adolescents should receive greater attention in all the relevant United Nations bodies. Suitable resolutions be adopted so as to bring international pressure on the South African government including pressure from States friendly to it. This may be considered as one of several measures aimed at bringing this cruel and barbaric form of punishment to an end. An anti-torture day may also be chosen and inaugurated all over the world.
- (41) Now that Angola is on the threshold of independence, the Interim Government be requested to afford all protection and help to Namibians fleeing from continued persecution from the South African Police and military forces illegally operating in Namibia.
- (42) A world-wide seminar be organized exclusively devoted to the large-scale violations of human rights that are taking place daily in Namibia. At this seminar denial of human rights in all their aspects should form the general theme and particular attention be given to political, economic, social and cultural exploitation of Namibians by the illegal regime of South Africa and by foreign economic and commercial interests.
- (43) The Group recommends that a study should be made to reveal the harmful effects of the policy of apartheid on the African family.

C. SOUTHERN RHODESIA

1. Conclusions

- (44) The forms of apartheid policy in Southern Rhodesia are widespread. There is no change in the policy of the racist regime.
- (45) Negotiations between the representatives of the black population and the regime have stagnated.
- (46) Capital punishment has continued between January 1973 and September 1974. 32 sentences were pronounced; 25 were executed. The sentences were pronounced in particular on the captured freedom fighters.

- (47) New previous unreported cases of death in suspicious circumstances came to light. Summary execution of freedom fighters is reported.
- (48) The number of political prisoners and captured freedom fighters has increased.
- (49) Widespread torture and degrading treatment of politically suspected persons by the police and prison authorities have been reported.
- (50) The "Reserves" policy has continued. Mass population removals still go on. The fate of the Tangwena tribe and of the children belonging to this tribe are still a course of serious concern.
- (51) Also in Southern Rhodesia the system of "protected villages" - first established in African territories under Portuguese domination - was introduced and practised. Furthermore "no-go-areas" were created, in which crops and houses were destroyed. The keeping of cattle was allowed only partially. The newly created settlements are reported in very poor condition as far as living facilities are concerned. The resettlement policy tends to be genocidal in nature.
- (52) The freedom of assembly and of speech for opponents of the regime is restricted or-prohibited.

2. Recommendations

- (53) The Group recommends that the Government of the United Kingdom, as the administrating Power, should intercede with the Southern Rhodesian authorities and should take up the cases of persons sentenced to death so as to stop the execution of any death sentence.
- (54) The Group recommends that the United Kingdom, as the administering Power, should institute a judicial inquiry into the deaths which have occurred in suspicious circumstances in prisons or at police stations.
- (55) The Group recommends once more that the United Kingdom, the administering Power, should institute an inquiry into the summary execution of freedom fighters captured by the minority illegal security forces.
- (56) The Group recommends that the Republic of South Africa should refrain from supporting the security forces of the illegal regime of Southern Rhodesia and that the United Kingdom should demand that South Africa withdraw its troops from Southern Rhodesia.
- (57) Liberation of all political prisoners is of utmost priority and there should be no interference with the activities and freedom of movement of those who have been released.
- (58) All peoples must enjoy freedom of movement without any restrictions and must in no case be kept in so-called "protected" villages.
- (59) General amnesty for all political prisoners and persons convicted for political reasons and also for persons living abroad should be declared.
- (60) Freedom of peaceful assembly and of speech should be restored for all.

- (61) The state of emergency should be ended immediately.
- (62) The Group recommends that a study should be made to reveal the harmful effects of the policy of apartheid on the African family.

D. ANGOLA, MOZAMBIQUE, GUINEA-BISSAU AND THE CAPE VERDE ISLANDS

1. Conclusions

- (63) During the period of the mandate of the Group important political changes in regard to the territories under consideration took place. Portugal recognized formally the independence of Guinea-Bissau and of the Cape Verde Islands. The full independence for Mozambique and Angola was announced. In these two countries majority provisional governments have been formed.
- (64) A member of the Executive Council of PAIGC stated that the people of Guinea-Bissau believed it necessary to submit to the United Nations evidence concerning violations of human rights committed by the colonialist authorities of Portugal before 25 April 1974.
- (65) Captured freedom fighters and families of freedom fighters have been subjected to brutal, inhuman and savage methods of torture; families have been uprooted from their traditional villages and settled in strategic centres and peace camps; deaths under suspicious circumstances have been reported; villages suspected of having given shelter to geurillas or knowing the movement of freedom fighters have been decimated.
- (66) Reports of massacres in the Tete area have been submitted; the Group has not investigated these investigations in full because the General Assembly in its resolution 3114 (XXVIII) appointed a Commission of Inquiry to carry out an investigation of the reported atrocities.
- (67) Because of negotiations concerning the independence of Angola and Mozambique racial disturbances initiated by white extremists, ~~disowned by the Portuguese government,~~ have occurred in these two territories. Many hundred deaths and casualties have been reported. No exact figure can be reported. According to numerous eye-witnesses the black people had no firearms at all. In Angola the massacres have been investigated by Portuguese authorities. The outcome of these investigations is not known to the Group, even though two requests to the Portuguese authorities have been made.
- (68) Discrimination in housing, in education, in access to government employment and in medical treatment all by fact and not by law is reported.
- (69) Discrimination in the armed forces consisted of allotting menial work to the Africans and in disciplinary measures. The rank of black officers in units composed exclusively of blacks was in subordinate levels and in any case never higher than Captain's rank.

2. Recommendations

- (70) The competent United Nations bodies should be still vigilant as to the main recommendations expressed in the previous mandate of the Group as long as territories under consideration have not reached complete independence.
- (71) Strategic centres and peace camps should be dissolved if not done yet. People should have factual means to regain and restore their traditional settlements.
- (72) Members of the PDE and military forces having allegedly committed crimes against humanity should be prosecuted by competent bodies.

VI ADOPTION OF THE REPORT

The present report has been approved and signed by the members of the Ad Hoc Working Group of Experts, namely:

Mr. K. M'Baye
President-Rapporteur

Mr. H. Diaz Casanueva

Mr. Felix Ermacora

Mr. Branimir Jankovic

Mr. A. S. Mani

Mr. N. M. Rattansey

Annex 1

G/SO 234 (13-3)

6 January 1975

Sir,

I have the honour to inform you that the Ad Hoc Working Group of Experts established under resolution 2 (XXIII) of the Commission on Human Rights, is now meeting at the Palais des Nations, Geneva, to complete and adopt the reports prepared following the mission of investigation which it carried out in Africa in August 1974. These reports are to be submitted to the Commission on Human Rights at its thirty-first session in February 1975 and to the Economic and Social Council at its fifty-eighth session in April 1975, in accordance with the relevant resolutions adopted by these two bodies.

By its resolution 19 (XXIX) adopted on 3 April 1973, the Commission on Human Rights decided that the Ad Hoc Working Group of Experts should continue carefully to observe and survey further developments concerning the policies of apartheid and racial discrimination present in the situation prevailing in Angola, Mozambique and Guinea-Bissau and resulting from the actions of the Portuguese régime in these territories, to give particular attention to situations which interfere with human rights in Guinea-Bissau, to remain active and vigilant in its observation of colonial and racially discriminatory practices and to submit a report on its findings to the Commission not later than at its thirty-first session.

In its resolution 1796 (LIV) of 18 May 1973, the Economic and Social Council requested the Ad Hoc Working Group of Experts to continue to monitor the system of recruitment of African workers, as well as the disparities in wages between black and white workers, in the African Territories under Portuguese domination, and to submit a report to the Economic and Social Council not later than at its fifty-eighth session. Moreover, in its resolution 1868 (LVI) of 17 May 1974, the Economic and Social Council invited the Ad Hoc Working Group of Experts to remain active and vigilant at all times and to report to the Commission on Human Rights, at its thirty-first session, on any events constituting serious violations of human rights and requiring urgent investigation that might occur in the Territories under Portuguese domination.

Under its mandates from the Commission on Human Rights and the Economic and Social Council, the Ad Hoc Working Group of Experts wishes to know whether the Portuguese Government has any observations to make or information to communicate concerning the matters to be dealt with by the Group in the reports it is required to submit.

His Excellency
Mr. Mario Soares
Minister for Foreign Affairs
Ministry of Foreign Affairs
Largo Rilvas
LISBON 3
Portugal

E/CN.4/1159

Annex 1

page 2

If such should be the case, the Ad Hoc Working Group of Experts would be grateful to your Government if such observations or information could reach it as soon as possible and, in any case, before 17 January 1975, when the Ad Hoc Working Group is to complete its work and adopt its reports.

Accept, Sir, the assurances of my highest consideration.

Branimir Janković
Vice-Chairman and Acting Chairman
of the Ad Hoc Working Group of
Experts of the Commission on
Human Rights.

Annex 2

Pass Laws and Prisons - How Whites Maintain
Racial Supremacy in South Africa

by

Joel Carlson

Joel Carlson
10 Grace Court North
Great Neck, N.Y. 11021

The case of Herman Ndhlovu and his children was just another case. It was not particularly tragic, just an everyday occurrence. It is this fact that makes it significant, and these circumstances which will ultimately lead to the destruction of the white supremacist régime. The society will then be rebuilt with blacks and whites living together as equals in the same land.

Today there is inequality, injustice, and racial discrimination. This is not unusual, for all over the world societies are imperfect. South Africa is distinct and separate. South Africa is unique, because the white rulers have constructed their society, their laws, their religion, their philosophy and their daily way of life in a manner which perpetuates white domination and black subservience. No other society in the world has such laws or seriously proposes racial discrimination as the normal way of life.

Herman Ndhlovu's wife had just died. His four-room house was of the largest kind erected by the authorities for blacks to rent but not own. Ten members of the family lived in the house, having no other home. His youngest daughter, Adelaide, was bright and received good reports from her teachers and school principal, so all the family helped to pay for her schooling. Her twin brother, Wellington, having reached 16 years of age, obtained his pass and was given work. The trouble came when the local superintendent of the black ghetto of Soweto, Johannesburg, refused to give Adelaide the necessary document for her to take to the government pass office to get her pass. This white official exercised complete control over the lives of all the residents of "his location". He refused to believe that Adelaide was born in Soweto. Ignoring what Herman Ndhlovu said, ignoring the letters Herman painstakingly collected from all the teachers and school principals, the official said Adelaide must leave her father's house. He warned her that to stay there would result in her arrest. Moreover, he refused to tell her where to go, other than to say, "Go where you came from".

My legal advice was sought. Once again, we obtained copies of the letters Herman had submitted. Herman Ndhlovu and his sister who was present at Adelaide's birth, swore affidavits deposing to the fact that Wellington and Adelaide were twins born to Herman's wife, Sussanah. The birth was in Pimville, Soweto. In addition, Herman deposed to the places he had lived in over the last twenty years and produced rent receipts. Finally, the clergyman gave a letter that the parents had registered the twins in his church register which could be produced. However, as there is no compulsory registration of births for blacks, her parents did not register Adelaide's birth with the authorities.

I knew government policy was strictly enforced by the local municipalities even though the city council had always been, and still is, run and controlled by the official opposition party. Blacks are not given rights to be in urban areas. They are there "on sufferance" - as labour units, not as people. Wellington was a productive labour unit; Adelaide fell into the category of "non-productive labour unit" - that is, the old, the sick, the children and the unemployed. The superintendent was following policy and exercising his discretion about Adelaide. The maxim of such officials is, "When in doubt, endorse the Bantu out". (This meant black people are compelled to leave the urban areas if they are not working for whites.)

At 2 a.m. on Saturday morning, the municipal police - called blackjacks - stormed into Herman Ndhlovu's house and searched it. They arrested Adelaide for failing to produce a pass on demand. Everyone else produced theirs. Adelaide cried; she was frightened by these men who handcuffed her and forced her to come with them. She was a pretty girl and scantily dressed when the police left with her. Herman protested,

promised to bring her to the superintendent's office at 8 a.m., but in vain. The Superintendent had warned her to leave the area. She had disobeyed his order. Now, said the police, she would be punished.

For the rest of that night, Adelaide was walked around with a few score of people all handcuffed to each other and herded from house to house, street to street until 8 a.m., when they arrived at the municipal offices. At 9 a.m., the Superintendent arrived. He dismissed Herman and his complaints. Herman rushed in to see me. By the time he reached me, the municipal offices were closed. All nearby police stations claimed they had no knowledge of the whereabouts of Adelaide. All claimed they were very busy and I knew this to be true.

On Monday we found out where Adelaide was being sent and I rushed to the Courthouse. After some fifty cases had been dealt with Adelaide's case was called. I appeared and explained the position. The prosecutor asked for a remand as he had no instructions. It was granted to him and the case, like so many before, was remanded for two weeks. Unlike the others, I applied for bail, which Adelaide was entitled to as a right. All the others remanded never had this right explained to them, nor was bail granted to them. The court officials would be swamped if all those entitled to bail were given it. Adelaide was bailed out on fifty dollars and, after spending a long weekend in jail, she was free again. Free until her next arrest. Pending the trial, the superintendent rearrested her five times. In this way, Adelaide learned that for blacks, South Africa is a prison.

After a trial lasting three days, the Judicial Officer acquitted Adelaide and accepted that the preponderance of the evidence submitted to him convinced him that Adelaide was born in Fimville, Soweto, Johannesburg. I asked for a written judgment and was given one which I submitted to the Chief Municipal Officer, together with the usual affidavits. He refused to accept that Adelaide was born in Johannesburg and endorsed her out. After two years litigation, no conclusion was reached, but I persuaded the government authorities to issue a pass book to Adelaide. She had not received permission to remain in Johannesburg when I left South Africa in 1971.

Adelaide's case is no different from Joshua and Elizabeth Dhlamini. They married, registered the marriage, and lived together and had two children. The police stopped Mrs. Dhlamini on the street and arrested her, with her 3-year old son and suckling baby. Although it was true that Mr. Dhlamini had the right to live, work, and remain in Alexandra Township, a black ghetto north of Johannesburg, his wife came from a rural area and never obtained permission to live with her husband. When I quoted the words of the marriage ceremony to the official, begging him not to put asunder this couple joined in holy matrimony, he remonstrated with me. As a lawyer, he reminded me, I should know the law. Joshua and the children could remain in Johannesburg but not the wife. The wife served two periods of imprisonment and then returned to live with her parents.

Pass laws and the migrant labour system of Apartheid give South Africa the most sophisticated slave society yet practiced. Labour units are not precious, as slaves were, so they can be dispensed with and be replaced. Unskilled migrant labour channelled to employers for a fixed time period remains cheap, unskilled and poor. Arrests of black people helps supply the prisons with enough prison labour for hire for all the needs of white employers.

In 1969, the shadow Justice Minister, Mr. M. Mitchell, revealed that in the previous parliamentary year, 1,777,662 Africans were arrested under the Pass Laws. (Rand Daily Mail, 20 April 1969).

Pass laws are the key to the political, economic, and social domination by whites over black people. Simply because Africans are the most numerous and are the largest source of labour supply, Pass Laws apply more rigorously to Africans than to coloured, or Asian people. But all black people are controlled, fingerprinted, classified, regimented and documented.

The British first introduced the Pass Laws at the Cape. As the authorities were obliged, under orders from the United Kingdom's Parliament, to abolish slavery, Her Majesty's Governors at the Cape carried out orders despite local white opposition. This contributed to the Afrikaners leaving the Cape in the Great Trek during the 1830s.

As soon as diamonds and gold were discovered, local regulations were supplanted by State Laws. Cecil John Rhodes had his government enact the Glen Grey Act of 1886. Introducing the legislation, he said "the natives" would be compelled to pay a labour tax so that the authorities could

"... remove natives from that life of sloth and laziness, teach them the dignity of labour and make them contribute to the prosperity of the State, and make them give some return for our wise and good government."

[emphasis mine]

In 1884, he repeated that need for "natives" to leave the reservations and work, and told the House of Assembly in Cape Town

"We want them to get hold of those young men and make them go out to work It must be brought home to them that in the future nine-tenths of them will have to spend their lives in daily labour, in physical work, in manual labour."

In 1893, the Chamber of Mines, a mineowners' group dominated by Cecil John Rhodes, a millionaire mining magnate, set up the "Native Labour Department". Its objectives were specifically to ensure an adequate and cheap supply of native labour. This was accomplished by the strict enforcement of the Pass Laws, and the creation of recruiting organizations which channelled the flow of black workers, compelled to seek work, into the mines.

In 1885, the Chamber of Mines drafted Pass Laws for the Transvaal and they were enacted that year. The recruiting organization was also directed to ensure enough labour for the Transvaal and Mozambique and to take "active steps for the gradual reduction of native wages to a reasonable level".

Not satisfied with the Native Labour Department, the Chamber of Mines set up a recruiting organization in 1896 that remains operative to this day - namely, the Witwatersrand Native Labour Association. By 1899 the Chamber succeeded in recruiting a labour force of 99,000 men. It boasted that it had reduced wages over the period of 1889 to 1899, and its boast was true. */

*/ The following figures are all given in dollars. South Africa had parity with the pound sterling until the late 1960s and then changed the name of its currency to "Rands": 2 Rands = \$1 sterling. I am taking 1 Rand at roughly \$1.50, but today's price of gold on the London Bullion market is about \$190 an ounce which would give the Rand an extra 20 to 40 cents. For the sake of easy conversion rates, I am using R1. = \$1.50.

Whereas Africans received \$117 per annum in 1889, these annual wages had fallen to \$87 in 1897. By 1901 the annual wage for African mine workers had fallen again to \$54.

Pass laws and recruiting organizations were the way of life for black workers in the white society. The workers were housed in vast compounds: brick-and-concrete dormitories with 12 to 90 in each separated section, a concrete bunk, common sleeping, eating, shower and toilet facilities. Workers lined up to be fed, and mealie pap was shovelled onto their tin plates. They were depersonalized and dehumanized. They made up 90 per cent of the labour force and still do, to this day.

A survey conducted by Dr. Francis Wilson, economics lecturer at the University of Cape Town, showed that during the 50 years between 1911 and 1967, white miners' wages increased by 70 per cent while black miners' wages decreased 0.01 per cent.

The Student Representative Council at the same University set up a Wage Commission to study the position of miners' wages. In 1974 its findings were published. Among other facts, it disclosed that for 1972 the total wage bill for black miners in the gold mines, was \$138,500,000. In the same year, the pre-tax profits for the gold industry was \$873,000,000, or 63 per cent greater than in 1971. With the further increase in the price of gold, mining profits have again increased. However, the 1972 profit increase over 1971 is more than double the total black miners' wage bill.

The mining industry which has contributed so much to the accumulation of wealth in South Africa, also established the pattern for other white employers. What is so bad about the migrant labour system? The Secretary of Bantu Administration and Development gave the answer in September 1971.

"However, no individual person can claim the right to live here [in the white urban area] permanently. He is here exclusively on account of his labour and not in a permanent context which can give him access to rights which whites can have in labour, economic or political and other fields." [Mr. I.P. van Onselen]

The system breaks up family life. Husbands and wives are separated. Men and women, married or single, are forced to live in separate hostels, under appalling conditions. Women and children are forced to remain at home in the rural areas and are left insecure. They are dependent for their support on their absent breadwinner sending money back home. The children are fatherless for eleven months of the year. Nor can the families gain entry to the urban areas. The law forbids this. Wives are powerless if husbands, in their loneliness, fall prey to the counter-attractions of the city and reduce or stop the allowance usually sent home. Lonely men are easily tempted into prostitution - both male and female - and illegitimacy, adultery and bigamy are the results. Compound life for men has led to homosexuality. Previously unknown to tribal Africa, it is growing apace in the urban labour barracks.

Migrant labour ensures that black workers remain poor, unskilled and cheap. No job is kept long enough to learn any skills. In a Spro-Cas Background Paper on Migratory Labour, lawyer-researcher John Kane-Berman stated that in July 1972, there were at least 1.5 million African migrant workers in South Africa and Namibia. Taking families into account, this involves some 6 million people.

Nyanga, Langa and Guguletu house 56,000 male workers in compounds at the Cape. Further hostels were built in 1972 in Alexandra, Johannesburg for 40,000 men and 20,000 women.

How did this situation come about in South Africa? The white man conquered the black man and then enslaved him in a system of law.

When the United Kingdom conferred independence and sovereignty on the whites in South Africa, Keir Hardie the opposition leader in Great Britain said, in the British Parliament in 1909:

For the first time we are asked to write over the portals of the British Empire: 'Abandon hope all ye who enter here.' This Bill lays it down that no non-white can ever aspire to membership of parliament. To rob them of the franchise is a very short and a very small step. This is a Bill to unify the white races, to disfranchise the coloured races, and not to promote union between the races in South Africa, but rather to embitter still further their relationships.

These prophetic words rang true as the whites slowly eroded away every single black right to vote, over the years.

In 1946, General Smuts enacted the Electoral Consolidation Act 46 of 1946. Section 3 restricted the franchise to "white persons".

In 1961, Parliament enacted the Republic of South Africa Act No. 32 of 1961 and sections 34 and 46 restricted the legislature to "white persons" and Section 59 vested overriding authority in Parliament. However, in 1934 the acting Chief Justice of South Africa, Mr. Justice Struiford, said in *Sachs vs Minister of Justice* - 1934 A.D. 11 at page 36:

..... Parliament may make any encroachment it chooses upon the life, liberty or property of any individual subject to its sway, and that it is the function of the courts of law to enforce its will.

In 1913, South African whites enacted the Land Act No. 11 of 1913. This law reserved for whites 87 per cent of all the land, while Africans were allowed to gain occupation of the remaining 13 per cent in reservations. The present South African Prime Minister told this Parliament now sitting, that the Africans are entitled to the full 13 per cent and he has promised that the white man will keep his word. It must be noted here that the land apportionment is in inverse proportion to the population classification. South African census statistics classify 3,960,000 whites and some 19,000,000 blacks (made up as follows):

| | |
|-----------|------------|
| African | 16,217,000 |
| Coloureds | 2,144,000 |
| Asians | 668,000 |

The total population is, therefore, 22,989,000. In terms of the Population Registration Act No. 30 of 1950 as amended, people are racially classified. Upon this classification flows all their rights - or lack of them.

Section 1 defines "Bantu" (black); a "white person" and a "coloured person". The last-named is simply one who is not a "white person" or a "Bantu". Section 5 establishes a race classification "procedure". This procedure and the presumptions made, are as primitive in practice as they are in concept. I can testify to this, as I have handled many such cases. Section 19(1) presumes that a person who, in appearance, is obviously a member of an "aboriginal race or tribe of Africa" is a Bantu (black), unless it be proved that he is not in fact and not generally accepted as such. Race definitions are incorporated into other legislation by reference to this Act.

A "white person" is a person who, in appearance, obviously is a white person and is not accepted as a coloured person, or is generally accepted as a white person.

Section 4 requires that all persons permanently resident in South Africa must be registered.

The Bantu (Abolition of Passes and Coordination of Documents) Act 51 of 1952 is, of course, designed to do exactly the opposite of what its name implies. It does not abolish, but establishes a streamlined new procedure commonly called a Pass. This pass is divided into 5 Sections (as illustrated). And every African must produce it on demand. And all parts of it must be in order at all times. One out of every four Africans are estimated to be arrested every year: Professor Barend Van Niekerk - Law Justice Society: Report of the Spro-Cas Legal Commission (Johannesburg, 1972). In a peaceful year with no major disturbances, 1971, the Commissioner of Police in his annual report, refers to close on one million Africans being prosecuted (as opposed to the larger figure of those arrested). The largest number were for:

| | |
|---|---------|
| "Curfew Regulations" | 136,118 |
| "Documentation Offences" (i.e., passes not in order) | 282,684 |
| "Influx Control Offences" | 159,122 |
| "Tax Offences" (not producing current tax receipt on demand) | 105,576 |
| "Trespassing" | 178,085 |

The black population makes up the overwhelming majority of a half-million prisoners each year. In South Africa, the daily average prison population is over 91,555, and the black and the white population in all South Africa totals 22 million.

While South African sources claim 52 per cent of the Africans reside in rural areas, and 48 per cent in urban areas, yet Africans in urban areas still outnumber whites. And they always will, for even after 20 years of Apartheid, 53.5 per cent of the Africans live outside the "Bantu homelands" as the homelands lack the carrying capacity to sustain the growing African population.

The Bantu Urban Areas Consolidation Act 25 of 1945 as amended, requires that all Africans in an urban area must show that they are entitled "to be, remain, reside and work in the area," or suffer arrest, imprisonment, and being endorsed out of the urban area (Section 10). The onus is on the African to provide such proof. Since the Bantu Labour Regulations of 1911, Africans are compelled to accept employment or suffer prosecution for a criminal offense. In 1968 the Bantu Labour Regulations appeared in Government Notice 74 of March 29. These regulations provide that no African, upon becoming a contract worker, may henceforth enter into a contract for longer than 12 months. Employers would be foolish to invest in such a migrant labour force and workers live their lives in poverty. In 1972, 80 per cent of Africans were earning less than was required for them to subsist. The figure has steadily increased over the years. Figures for infant mortality and death from malnutrition and other preventable diseases, have also increased. The wage gap increases, too.

In 1973 the South African Institute of Personnel Management surveyed wages and reported that white wages per month averaged \$476.80, while black wages per month averaged \$59.60. Thus, overall, there is an 8 to 1 gap between white wages and black wages. The gap has increased over the years as blacks are prevented from learning skills and forming unions. The average white income per capita is 14 times that of the average African: \$133 per month for every white - \$9.80 per month for every African.

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- A. Labour Bureau, Efflux and Influx Control and Registration
(For official use only)
- B. Employer's name, address and signature.
- C. Union Tax.
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- D. Bantu Authorities Tax.
(For official use only)
- E. Additional particulars (including concessions in respect of
curfew, Native law and custom, etc.)
(For official use only)

The Mines and Works Act No. 27 of 1956 excludes blacks from obtaining "certificates of competency" even if the mines are in black reservation areas. The Factories Machinery and Building Works Act No. 22 of 1941 enforces racial separation in factories. The Industrial Conciliation Act No. 28 of 1956 defines an "employee" to exclude blacks and precludes them from the collective bargaining process. Section 77 of this Act reserves certain jobs for a particular racial group. The Apprenticeship Act No. 37 of 1944 excludes blacks from training opportunities.

The list of such laws is too long to enumerate and examine in this brief article, but the above serves to demonstrate the power of the law to keep whites supreme and blacks subservient. Before any meaningful change could be brought about in South Africa, all these Apartheid, white supremacist laws would have to be repealed. Only a black parliamentary majority would do that, and blacks will have to fight to win the right to vote.

For those blacks in South Africa who have suffered the harsh penalties of the Apartheid laws, especially the majority of the offenders, the pass law offenders, what happens to them in prison?

Prison labour replaced slave labour and began in the Cape soon after slavery was abolished. In 1860 black prison labour was used in the Cape Town docks and on the roads. This was extended to the farms at the Cape and in 1889 the Commissioner of Prisons reported that all available prison labour at the Cape was used by wine farmers. This continued on through the years until the Great Depression in the early 1930s. The Prison Commissioner began reporting that extensive use of prison labour was being employed by private individuals. This was especially the case on farms. Farm wages were always low and working conditions always of the worst sort. For this reason, farmers could not obtain all their labour needs. More and more they turned to the prisons for cheap black unskilled labour. To buttress the farm labour work pool, the Department of Prisons introduced the "Sixpenny scheme" in 1934 (prisoners were compelled to work on farms and earned ten cents for each day worked).

In 1947, at Fordsburg Bantu Commissioner's Court, the "Voluntary Scheme" was begun. I worked in the Court and tried to expose the scheme to the press, but I was called a Communist by the then Editor of the Rand Daily Mail. Later, in conducting my law practice, I exposed the scheme by bringing over a score of Habeas Corpus applications to Court. This is the way the scheme worked, as outlined in General Circular 23 of 1954. It said:

Paragraph 1. It is common knowledge that large numbers of natives are daily being arrested and prosecuted for contraventions of a purely technical nature.

Paragraph 2. These arrests cost the state large sums of money and serve no useful purpose.

Paragraph 3. The Department of Justice, the South African Police and this Department have therefore held consultations on the problem and have evolved a scheme, the object of which is to induce unemployed natives now roaming about the streets in the various urban areas to accept employment outside such urban areas. [See p. 59, No Neutral Ground, Thomas Y. Crowell, 1973]

Under the scheme, described more fully in my book, the following is a typical description of the working conditions and is an extract from sworn testimony not contested by the farmer who, while denying the truth of it, declined to enter the witness box to contest it.

Of his first day at the farm, [Josiah, the labourer] said: 'When I arrived at the field I saw Potgieter sitting on the hood of his Ford car, watching all the workers in the field. Soon after I started working two of the boss-boys, Abram and Philip, approached me and asked whether I had any money. I said no I had not. They beat me all over the head and body with the knobkerries which they carried. My mouth started to bleed, I fell to the ground, and one of them kicked me all over my head with his booted foot. All this time Potgieter was there - I saw him when I got up again. I also saw that the two boss-boys beat up the other new workers also and then they just beat everyone as they walked among them.

These beatings occurred regularly and I noticed that whenever Potgieter arrived at the place where we were working, and honked his horn, the boss-boys immediately started moving among us and hitting out at anyone within striking distance with their knob-kerries. Potgieter would also shout, 'Slaan hulle dood'. [Beat them to death].

At first I wanted to retaliate when I was beaten but the ones that had been there longer than me warned me not to do so. I was told that one of the boss-boys killed a man in November, hitting him over the head with a knob-kerrie. The dead man's grave was pointed out to me.

I have seen it happen that when my fellow workers who were beaten or who had fainted for want of water on a hot day, were lying unconscious on the ground, the boss-boys Abram and Philip passed water into their mouths and invited us to urinate in this manner to revive the unconscious men. At other times, those who had fainted were further beaten even by Potgieter himself who came and said they were only faking and did not want to work. [No Neutral Ground, pp. 83-84]

Some 80 per cent of the prisoners sentenced to six months or less were induced to serve their sentences on farms and earn 9 pence for each day worked.

In 1947, a "farm jail" was built at Bellville in the Western Cape. Under the "farm jail system" local farmers provide the land, the building costs of jails and residences for jail staff. This is arranged between a cooperative of farmers who provide the capital in the form of shares which are determined by the number of labourers used by the farmer. These farmers also provide, if necessary, transportation of prisoners to and from farms and for the provision of watchmen on the farms, at the rate of 15 to 50 cents per day per prisoner. The Department of Prisons met the running expenses of the jail.

With the "Voluntary Scheme" and the "farm jail system," the Prisons Department provided cheap black labour to farmers who were chronically short of labourers. This shortage was further exacerbated by the rapid industrial growth after World War II.

After the Government came to power in 1948, it increased the availability of prisoners to farmers. The farm labour system used long-term prisoners and its "success" was demonstrated over the years by its increasing use among farmers. In 1966, there were a total of 23 farm jails accommodating 6,000 long-term prisoners. Numerous Court reports tell the long and familiar story of unscrupulous farmers' maltreatment of these prisoner-labourers who had no legal recourse to anyone with whom they could register their complaints. It is virtually a system of slave labour. The prisoner may be a slave for a long time, but he will eventually be able to leave his conditions of slavery. However, one slave is quickly replaced by another, so that the farmer is assured of a continuous supply of such labour.

In 1959, the Director of Prisons complained at Riverdale in the Cape, that "farmers want labour from us, but we cannot supply it all, but we are doing everything in our power to meet the emergency". In 1963, when the farmers at Klapmuts decided to ask for a "farm prison," they were told that the waiting list for "farm prisons" was over 30.

As observed by the Wages Commission of the Student Representative Council at the University of Cape Town, in its report:

In the Eastern Transvaal a shareholder estimated that the right to use prison labour had increased the value of the farm by between 2 pounds sterling per morgen in 1952. In 1965 in the Western Cape the right to use prison labour was estimated at 500 pound sterling per prison labourer. A prison share bought for 1,000 pound sterling was sold recently for 2,000 pound sterling. [Emphasis mine]

The South African Institute of Race Relations calculated that "the total cost to farmer is estimated to be 40 cents a day per worker" [including amortization of the capital costs]. Clearly, prison labour is the cheapest available labour for farmers.

The use of prison labour has long been condemned by the ILO, and many countries have enacted laws prohibiting the importation of the products of such labour. An example of such a prohibition is to be found in the United States Tariff Act of 1930, which prohibits the importation of the products of prison or indentured labour. It is a provision never before enforced. Since 1971, we sought to expose the prison labour system now in force in South Africa and finally, in 1974, the United States Attorney General in Alabama and the attorney for the United Mine Workers Union, took action to prevent the United States from importing coal (2,500,000 tons) from South Africa. Because the South African Master and Servants Act, nearly 100 years ago, provided penal provisions against black unskilled workers, and it and similar laws applied to black coal miners, it was proper to ask the court to prohibit these imports. To thwart this action, the South African Minister of Justice rushed legislation through Parliament to repeal the penal provisions. According to the Star of 9 November, this action "appears to have thwarted one of the most ingenious and dangerous" attacks yet made against South African trade with the United States.

This attack could well be followed by other trade unions and other governments. South Africa's use of prison labour is a violation of the fair competition spirit of the General Agreement of Trade and Tariffs. Prison farms provide farmers and police and Prisons Departments with a vested interest in crime. It is obvious that farmers who build a "farm jail" costing £25,000 sterling, are not going to be satisfied when there are not enough prisoners to fill it. It is there to be filled by prisoners who are compelled to work. In the Cape, a recent advertisement of a farm for sale read, "Price 120,000 pounds sterling, includes winery sheds and 10 convicts". The migrant labour and prison farm labour system is the most sophisticated and most firmly established slave labour system in existence today.

The system is fundamentally in conflict with the United Nations Bill of Human Rights. All countries trading with South Africa must be made aware of the basis upon which their trade is based. In very many countries, laws exist nationally to prohibit such trade. Trade unions should be made aware of the forms of labour existing in South Africa. No trade unionist should handle South African goods.

South Africans quickly reacted to one small threat from the United Mine Workers Union in the United States, by amending nearly 41 laws and regulations. The fight against Apartheid, against a system which is a crime against humanity, must be fought on all fronts. Every act of support of Apartheid, whether political, social or economic, helps Apartheid to survive and inhibits change. The community of nations in the United Nations, organized labour, and the world community, only needs a little inspiration to find ways and means of isolating and of bringing an end to the cruel system of white supremacy. To know that evil exists and to do nothing about it, is to condone and support it. To bring change requires determination, resistance, courage; and even sacrifice. Change will come only if we act to bring it about. We shall persevere and we shall overcome and restore peace, freedom, and justice for all the people in South Africa.

(signed) Joel Carlson

Annex 3

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