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VIOLATIONS OF HUMAN RIGHTS IN SOUTHERN AFRICA

PROGRESS REPORT OF THE AD HOC WORKING GROUP
OF EXPERTS PREPARED IN ACCORDANCE WITH
COMMISSION ON HUMAN RIGHTS RESOLUTION 6 (XXXIII)
AND ECONOMIC AND SOCIAL COUNCIL DECISION 236 (LXII)

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INTRODUCTION

1. At its thirty-third session, the Commission on Human Rights, by its resolution 6 (XXXIII), adopted on 4 March 1977, decided to renew the mandate of the Ad Hoc Working Group of Experts set up in accordance with its resolution 2 (XXIII) of 6 March 1967. This decision was approved by the Economic and Social Council in its resolution 2082 A (LXII) of 13 May 1977.
2. By its resolution 6 (XXXIII), the Commission on Human Rights decided that the Group would be composed of the following experts, acting in their personal capacity: Mr. Kéba M'Baye (Senegal), Chairman-Rapporteur, Mr. Branimir Janković (Yugoslavia), Mr. Amjad Ali (India), Mr. Annan Arkyin Cato (Ghana), Mr. Humberto Díaz Casanueva (Chile) and Mr. Felix Ermacora (Austria). In the course of its meetings in July and August 1977, the Ad Hoc Working Group of Experts agreed that Mr. B. Janković would continue to serve as Vice-Chairman.
3. In the same resolution, the Commission decided that the Ad Hoc Working Group of Experts should continue to study the policies and practices which violate human rights in South Africa, Namibia and Zimbabwe (para. 14).
4. The Commission also requested the Group to institute an inquiry in respect of any person who has been guilty in Namibia of the crime of apartheid or of a serious violation of human rights, and to bring the results of that inquiry to the attention of the Commission on Human Rights (para. 4).
5. Moreover, the Commission, having noted with interest the recommendations set forth in the Declaration and Programme of Action adopted by the International Seminar on the Eradication of Apartheid and in Support of the Struggle for Liberation in South Africa, held at Havana from 24 to 28 May 1976, decided that the Ad Hoc Working Group of Experts should evaluate all the aspects of that Declaration and Programme of Action and should submit specific proposals to the Commission at its thirty-fourth session (para. 7).
6. The Commission also decided to have itself represented by members of the Ad Hoc Working Group of Experts at the World Conference for Action against Apartheid to be held in 1977, pursuant to General Assembly resolution 31/6/G (para. 8).
7. Pursuant to this decision of the Commission, Mr. F. Ermacora and Mr. H. Díaz Casanueva, members of the Ad Hoc Working Group of Experts, represented the Commission at this conference, which was held at Lagos (Nigeria) from 22 to 26 August 1977.
8. Finally, the Commission requested the Group to submit a report on its findings to it at the thirty-fifth session at the latest, and to submit a progress report to it at the thirty-fourth session (para. 15).
9. For its part, the Economic and Social Council, in its decision 236 (LXII) adopted on 13 May 1977, requested the Ad Hoc Working Group of Experts to continue to study allegations regarding infringements of trade union rights in the Republic of South Africa and to report thereon to the Commission on Human Rights and to the Council at such times as it might consider appropriate.

10. It should be noted that the Economic and Social Council, in its decision 237 (LXII) of 13 May 1977, also decided to transmit to the Ad Hoc Working Group of Experts, for consideration and report to the Council, the specific allegations regarding infringements of trade union rights in the Republic of South Africa made by the International Textile, Garment and Leather Workers' Federation and the International Confederation of Free Trade Unions (ICFTU). Pursuant to this decision, the Group prepared a report containing its findings on the question which will be submitted to the Economic and Social Council at its first regular session, 1978. However, the Group presents in the present report some of the findings insofar as they fall within the more general framework of questions relating to trade union rights in South Africa.

11. Moreover, the Economic and Social Council, by its resolution 2082 A (LXII), decided that the Ad Hoc Working Group of Experts, in conjunction with the Special Committee against Apartheid, should examine the treatment of prisoners in South Africa, Namibia and Zimbabwe, including the deaths of a number of detainees, as well as police brutality during peaceful demonstrations against apartheid in South Africa since the Soweto massacre of 16 June 1976, with a view to submitting a report. The Council also decided that the reports of the Group should be brought to the attention of the General Assembly without delay.

12. To give effect to that decision, the Group prepared, in July 1977, for the first time and in collaboration with the Special Committee against Apartheid a special report in which, having regard to the limited time available, it endeavoured to deal more specifically with the brutality of the South African police since the Soweto massacre of 16 June 1976 and the treatment of persons in police custody and deaths of detainees since that date.

13. This special report was submitted, by Mr. F. Ermacora on behalf of the Group, to the Lagos World Conference for Action against Apartheid. It was then brought to the attention of the General Assembly at its thirty-second session and circulated in document A/32/226.

14. Concerning the treatment of prisoners in South Africa, Namibia and Zimbabwe, the Ad Hoc Working Group of Experts has in the present progress report re-used the data contained in its special report, supplementing them in the light of additional relevant information it has received concerning the Republic of South Africa, and has also dealt with the question insofar as it concerns Namibia and Zimbabwe. Moreover, the Group has included in the present report all the material it regarded as coming within the mandate entrusted to it by the Commission on Human Rights in its resolution 6 (XXXIII) and by the Economic and Social Council in its decision 236 (LXII).

15. The present progress report was prepared by the Group at meetings held at the United Nations Office at Geneva from 16 to 24 January 1978. It is based on information, in the form of oral statements and written communications from individuals or organizations concerned, gathered by the Group in Geneva and London from 25 July to 3 August 1977. In addition, with the assistance of the Secretariat, the Group engaged in a systematic search and analysis of documents of the United Nations and the specialized agencies, official gazettes and reports of relevant parliamentary debates, publications by the International Defence and Aid Fund for Southern Africa, newspapers and magazines of various countries and works

dealing with matters relevant to its terms of reference. The Group also had the benefit of the assistance of consultants who are experts in southern African matters. Finally the Group attended the showing of a film and slides on incidents in Soweto and other places in South Africa.

16. In preparing its progress report, the Group took account of the basic international standards relating to its activities, as enumerated in its earlier reports, particularly in the report it submitted to the Commission on Human Rights at its thirty-third session (E/CN.4/1222).

17. The Ad Hoc Working Group of Experts will not be formulating any conclusions and recommendations in this progress report, but proposes to continue its past practice of presenting them in its final report, which is to be submitted to the next session of the Commission on Human Rights in 1979.

I. SOUTH AFRICA

Introduction

18. The principal developments in the Republic of South Africa during the period under review have centred round (a) continuing massive repression of student and other popular protests and demonstrations that followed the 16 June massacre in Soweto in 1976, which was described in some detail in the previous report of the Group (E/CN.4/1222, paras. 49-55, 246 et seq.), and (b) the so-called independence of the Transkei, formalized on 26 October 1976, which was also described in the same report (paras. 180-183), and the reaction among urban Africans to the deprivation of South African citizenship not only for those Transkeians in the Transkei but also for over 1 million "Transkeians" living outside the Transkei. This reaction has had profound consequences for the Government's "homeland" policy in general, since the only "homeland" after the Transkei to have accepted the Government's offered "independence" is Bophuthatswana, most of the rest having made clear rejections of the policy during the past year (see paras. 233-238 below).

19. The Group in its present report has paid particular attention to various aspects of the above developments that appear to involve flagrant violations of human rights as defined in the conventions and declarations of the various bodies of the United Nations, including (i) the detention, interrogation and torture of children and young persons following the student uprisings; (ii) the death in detention of 24 persons between June 1976 and September 1977, and the evidence of torture under interrogation in these and other political cases; (iii) the conditions of Africans in the Transkei since "independence"; and (iv) the consequences for urban Africans of the South African Government's policy of "independence" for the "homelands". These questions are dealt with in the relevant sections below.

20. These developments are also viewed by the Ad Hoc Working Group of Experts in the context of evidence of South Africa's increasingly aggressive "defence" policy. In addition to noting annual "defence" expenditure of over R2,000 million, 1/ the Group has noted press reports indicating that South Africa "might be planning to test a nuclear bomb" 2/ and a report submitted to the House Sub-Committee on Africa of the United States Congress that a "secret arsenal" of military equipment has been built up in the Republic in defiance of the international arms embargo imposed by the United Nations. 3/ This report, prepared by Mr. Sean Gervasi, an American economist, shows that South Africa's military equipment is a great deal more comprehensive than the figures published, for instance, by the International Institute for Strategic Studies in London. He found, for example, that the number of combat aircraft in the South African Air Force

1/ £1,100 million in 1976 (Guardian, 16 July 1977).

2/ Guardian, 25 August 1977.

3/ Security Council resolutions 181 (1963) and 182 (1963).

is more than four times the figure given by the Institute. 4/ The report also shows that although, according to the United States Arms Control and Disarmament Agency, South Africa received £210 million worth of military equipment between 1965 and 1974, a Stockholm research organization estimates that between 1963 and 1975 South Africa imported nearly £600 million worth of war materials. Mr. Gervasi concludes that "the arms embargo is in fact non-existent". 5/

21. The Group has also noted the implications for further internal political repression in the decision of the South African Government, announced in July 1977, to institute border patrols along all the Republic's borders with black States. The decision has been described as a "political watershed", and "the formal birth of the garrison or laager state". Press reports of the decision recalled the words of General Magnus Malan, chief of the South African Defence Force, earlier in 1977: "In our particular situation it has long become clear that our strategy for survival can only be a total strategy. I would refer you once again to the problem of reconciling democratic principles with the total strategy ... Even so I must emphasize that the overriding consideration is survival." 6/

22. The Group also recalls that in May 1977 a South African plan, with the code name COBRA 77, for a full-scale invasion of the neighbouring state of Angola, was exposed in a South African newspaper. 7/

23. Parallel with the political strategy to encourage "independence" for the African "homelands", a further trend has developed in South Africa in the period under review, towards what the Minister of Defence, Mr. P.W. Botha, has called a "Swiss canton system" of government. This plan is reported to involve changes in the present constitution to incorporate rights for Coloureds and Indians to control internal affairs "in their respective areas". In August the Prime Minister, Mr. Vorster, had talks with Coloured and Indian "leaders", and within the ruling Nationalist Party, on proposals (i) to elevate the existing Coloured and Indian councils to a status "equal to that of the White Parliament"; (ii) to create a multiracial "super cabinet" or presidential council elected by an electoral college drawn from the three parliaments; and (iii) to create an executive president to head the presidential council. Whites will control the presidential council. It has been said that this plan, combined with the plan to make every African a citizen of a "homeland" rather than of South Africa itself, is aimed to "leave whites as the majority race in South Africa". 8/

24. Observers have seen Mr. Vorster's surprise decision to call a general election in November 1977 rather than in 1979 as an occasion for the present Government to demonstrate white support for the new constitutional proposals, in the light of present international pressure for change in South Africa following

4/ International Institute for Strategic Studies, The Military Balance 1976-77, (London, 1977).

5/ Sunday Times, 10 July 1977.

6/ Guardian, 16 July 1977; World, 13 July 1977.

7/ Sunday Times (Johannesburg), 29 May 1977.

8/ Guardian, 19 August and 22 August 1977; Rand Daily Mail, 21 September 1977; Le Monde, 3 August 1977.

the series of deaths in detention (see the relevant sections below) and the Anglo-American attempts at a settlement in Southern Rhodesia (see chap. III below). 9/

A. Capital punishment

1. Reference to some relevant laws

25. The South African laws in force that provide for the death penalty have been reproduced in previous reports of the Ad Hoc Working Group of Experts (notably E/CN.4/1020, paras. 73-81, and E/CN.4/1111, paras. 40-43); and particular attention has been drawn to the Sabotage Act (General Law Amendment Act No. 76 of 1962) and the Terrorism Act (No. 83 of 1967) (see E/CN.4/1135, para. 18, and E/CN.4/1111, paras. 42-43).

26. During the period under review no further legislation has been passed to reduce or extend the circumstances in which the death sentence may apply. The General Laws Amendment Act introduced in May 1977 into the first Transkei parliament to meet since the territory's so-called accession to independence, however, in repealing in that territory all South African security legislation up till then in force in the Transkei, retains the death penalty for "terrorism" and for "harbouring and helping terrorists". At the same time the Transkei Act defines as a treasonable act, punishable by death, any refusal to recognize the country's "independence", or advocating that it should be part of another country (i.e., that it should be reincorporated into South Africa). 10/

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

27. The report of the Commissioner of Prisons for the period 1 July 1975 to 30 June 1976, 11/ published on 30 April 1977, showed that 178 persons had been under sentence of death during the period, of whom 21 had had their sentences commuted, 8 had made successful appeals, 2 had been retried and 1 had committed suicide; 60 had been executed - 56 for murder, 1 for murder and robbery and 3 for rape. Of the 86 awaiting execution on 30 June 1976, 2 had been sentenced for participation in "terrorist" activities, (see chap. II below).

28. The Group once more notes the exceptionally high number of executions carried out in the Republic, and in particular the high proportion of Africans on whom death sentences are passed. Of 109 death sentences passed in the 1975-1976 period, 69 were on Africans (one of whom was a woman), 14 on Coloureds and 3 on Whites.

9/ Guardian, 21 September 1977, quotes Mr. Vorster's speech announcing the election and referring to "certain governments and influential world organizations" which have "taken the view that they have a right to prescribe as to how we should run our country". He went on to say that the Government had already "spoken out against this tendency", but that "the time has come ... for the electorate too to add their voices to this protest". See also Le Monde, 5 August 1977.

10/ Rand Daily Mail, 13 May and 17 May 1977.

11/ Report of the Commissioner of Prisons of the Republic of South Africa for the period 1 July 1975 to 30 June 1976 (RP 46/1977).

B. Massacres and violations of the right to life with particular
attention to police brutality following the Soweto uprisings
in June 1976

29. The massacre of unarmed schoolchildren in the African township of Soweto by South African police on 16 June 1976 was described in the previous report of the Group (E/CN.4/1222, paras. 49-51 and 246). In a special report prepared in pursuance of Economic and Social Council resolution 2082 A (LXII) and submitted to the General Assembly at its thirty-second session, the Group described the mass arrests, shootings and other brutalities committed by the police in Soweto and other places since June 1976 (A/32/226, paras. 16-35). The information contained in that report illustrates the contempt of the South African police for African lives and certain provocative methods used to incite the crowds to the violence which gave rise to acts of brutality. The following paragraphs are based essentially on the contents of that report.

30. As regards the Soweto massacre of 16 June 1976, Miss Nkosazani Dlamini (456th meeting) stated that the demonstration against the use of Afrikaans as the medium of instruction in primary schools was essentially peaceful. However, although not in danger, the police reacted savagely by shooting at the crowd, killing five schoolchildren, according to Government estimates. In fact, according to the statements of eyewitnesses, 300 persons were killed during the first two days of demonstration.

31. Explaining how the Soweto unrest spread to all the schools in the country, the same witness described a solidarity strike called by the students of the University of Natal, where she herself was a medical student. The police intervened brutally, using dogs. Students were injured, some very seriously. The witness, a member of a medical team in a Durban hospital, related the following incident: "In a secondary school in Durban there was a demonstration of solidarity with the Soweto dead. Although the principal did not call the police, he himself took some of the schoolchildren, whom he regarded as instigators, to a police station." The witness herself had observed that one of the two schoolchildren subsequently taken to hospital had a broken jaw and the other an arm in plaster.

32. Professor J.J.F. Taljaard, a specialist in pathology, and Dr. H. Bukhofze, both of whom were working at Johannesburg Hospital, appeared on 13 October 1976 before the Cillie Commission. They supplied the following details concerning Africans who were killed in the area of Johannesburg: 12/ (a) the autopsies conducted on the 229 persons killed between 18 June and 18 August 1976 revealed that two thirds of them died from bullet wounds and the others from multiple injuries, some of which were inflicted by knife; (b) in the area of Johannesburg and West Rand alone, 80 of the 229 persons killed were struck from the back, 42 from the front and 28 from the side; (c) 224 of the victims were black, 3 coloured and 2 white; one was under 10 years of age, 88 were under 20 years of age, 69 were between 20 and 30 years of age, and 46 were over 30 years of age.

12/ A Survey of Race Relations, 1976 (South African Institute of Race Relations, December 1976), p. 85.

33. Several witnesses commented on the appalling number of victims since the events at Soweto. The figures put forward exceed, in any case, those generally acknowledged by the South African authorities. One witness, Mr. Eric Abraham (458th meeting), a former reporter in South Africa, said that "it is virtually impossible to give an objective and exact estimate of the persons injured or killed since 16 June 1976. In all, hundreds of persons died, but we cannot say precisely how many hundreds; similarly, there were thousands of injured, but we cannot be sure of the number".

34. Estimates of the total number of dead and injured published by the press or taken from other information sources remain very vague, but the large figures generally advanced are an indication of the scale of police brutality during the demonstrations.

35. With regard to the methods employed by the police against demonstrators, the accounts of witnesses are in agreement that since the events at Soweto the police have no longer resorted to baton-charges or tear-gas canisters but instead have fired into the crowd using sub-machine-guns and rifles loaded with buckshot. Mrs. Jan Marsh (457th meeting) stated that during the early demonstrations the police had used automatic revolvers and rifles; in one particular case, a policeman had asked one of his men to fire a sub-machine-gun in a semi-circular movement; as a result, four persons had been killed.

36. The Group saw film of the Soweto uprising which clearly illustrated the scope and intensity of the brutal acts committed by the police at Soweto. ^{13/} It observed that many of the persons killed by the police received bullets in their backs. Even more amazing, the police opened fire on and killed a number of persons who were on their way to the funeral ceremonies of the victims of earlier demonstrations. The film also revealed the growing resistance of the black population to racial oppression. What began as a peaceful protest launched by schoolchildren developed into a nation-wide uprising against the apartheid system.

37. All the evidence gathered by the Group indicates that the police resorted to massive acts of violence and fired at the crowd at random and without warning. Mr. Drake-Koka (458th meeting), who lived through the events at Soweto, gave the following eyewitness account of what happened on 16 June 1976:

"I saw a police contingent arrive ... go towards some schoolchildren who were walking through the streets in a procession; they were carrying signboards and placards and were completely unarmed ... The police ordered the schoolchildren to disperse, but they had no loudspeakers and could not make themselves heard properly ... Suddenly they fired into the crowd, killing two schoolchildren in front of me ... A small girl was hit by a bullet deliberately fired at a house close to No. 800 Melomeaku Street."

38. Mrs. Jan Marsh (457th meeting) and Miss Dlamini (456th meeting) also drew the attention of the Group to the fact that the police had used weapons and fired at the crowd indiscriminately. In some cases the police had fired systematically

^{13/} A film and slides of the incidents in Soweto were shown by the publications service of the International Defence and Aid Fund.

into the crowd and those immobilized by their injuries had been arrested and accused of taking part in the demonstrations. The police had continued to shoot even when students, their arms aloft to show that they had no weapons, carried placards reading: "We are not fighting, we beg you not to fire, we are demonstrating peacefully".

39. Slides taken during a demonstration of solidarity with Soweto held in Cape Town show clearly that the police fired at the crowd using buckshot in order to hit and injure several persons at once. According to Mrs. Jan Marsh (457th meeting), Major D.J. Kril explained the effectiveness of the method as follows: "A jet of buckshot enables us to hit and injure between 20 and 40 persons simultaneously. Then, all we have to do is to arrest them when they arrive at a hospital or clinic for medical treatment - it's like hitting two birds with one stone".

40. This method of arresting demonstrators in hospitals was described by some of the witnesses. In her testimony, Miss Dlamini (456th meeting), who was present at several demonstrations, stated that she had heard a policeman say: "We shoot at them and then we arrest them in hospital when they go to receive treatment." Mrs. Jan Marsh (457th meeting) observed that many persons had died from their injuries owing to negligence, because they had not received treatment in time. In some cases policemen waited at the hospital entrance to arrest people, sometimes even killing them at the time of their arrest.

41. Describing incidents which occurred in Johannesburg in August 1976 after a general strike of all workers had been called, Miss Dlamini (456th meeting) observed that the police had recruited from the black population some Zulus living in a hostel for single persons for the purpose of starting a brawl among the strikers and thus providing an opportunity for the police to intervene. She said that the police had intervened and six people had been killed. Approximately 100 injured persons, most of them young, had received treatment at Baragwanath Hospital for bullet and knife wounds and injuries inflicted by other weapons. 14/

42. In a recently published work on the events at Soweto the author describes the same incident as follows:

"A widespread strike movement was launched at Soweto on 23 August 1976 on the initiative of the students' representative council. Two days beforehand, schoolchildren distributed in Soweto and other townships in the Johannesburg area leaflets urging the workers to strike on 23, 24 and 25 August. These leaflets carried as their heading the watchword 'azikwelwa', a Zulu term which means 'no transport'. On 23 August, at dawn, the police besieged the black city. For three days, the trains were three quarters empty and the bus-stations were almost deserted. For the first time, the offices, shops and factories in the white city learnt to manage without black workers. Between 60 and 80 per cent of the workers struck. Some industrial sectors, such as the clothing industry, were completely paralysed. The press and television hastened to explain that the success was due to a campaign of intimidation waged by a handful of agitators. Although intimidation admittedly played its part, it was not the sole factor. The truth is that the adults were persuaded to join in by the young people, who were

14/ This information was also reported by the correspondent for Le Monde at Johannesburg on 26 August 1976.

better organized. And the savagery of the repression and the thousands of arrests were a contributing factor. The strike of blacks frightened whites far more than the rioting within the confines of these townships, to which whites never go. The police, enraged, shrank from nothing to crush the movement. At Soweto, policemen opened fire on young people caught inciting workers to strike. To discredit the movement, the police recruited 'allies' from among the black population. At their instigation, approximately 100 Zulus from a workers' hostel pillaged the district of Orlando, in Soweto, where the June riots had begun. According to the official version, this incident was a settlement of accounts between strikers and non-strikers. That day, however, numerous witnesses heard a policeman admonish the Zulus: 'You were told to attack only troublemakers. If you continue to damage administrative buildings, we shall be forced to intervene against you'." 15/

43. The body of evidence concerning the role of the police in confrontations between black groups was completed by the testimony of Mr. Drake-Koka (458th meeting), who stated, inter alia, that the arming of black soldiers was a new phenomenon which had resulted in the massacre of black workers by armed black policemen acting at the instigation of the police. The same procedure had been used to curb peaceful demonstrations organized by children in a number of South African schools.

44. During the period under review, according to information before the Group, unrest has continued throughout the country, the main demonstrations that resulted in fatalities being those in Soweto (sporadically throughout the year), in Cape Town (particularly in September, November and December 1976) and in Port Elizabeth and Pretoria. The anniversary of the Soweto massacre was marked by a stay-at-home on the Rand and demonstrations in other urban cities in June 1977 when a total of 11 persons are known to have been shot by police. On 29 July 1977, the police killed a black woman during disturbances at Soweto. The victim, a 19-year-old student, was killed by a bullet in the head. The police had attacked and pursued some schoolchildren who were holding a meeting at a school in Orlando, a district of Soweto. A number of young persons injured themselves by jumping out of windows to evade the police. Brigadier Gerber, the head of the Soweto police, maintains that one of his men was stoned when tearing down posters and was "forced to extricate himself" by using a gun. According to numerous witnesses, the policeman was in no danger when he aimed and fired at a group of schoolchildren, killing the student. 16/ In September 1977, news was still being received of deaths due to police action.

45. In the light of the abundant and concordant testimony set forth above, the Group concludes that the South African police is continuing to react brutally and without regard for human life. The Group found that the following methods had been used by the police in putting down demonstrations:

15/ Paul Bernetel, ed., Les enfants de Soweto (Paris, Stock, 1977), pp. 27 and 28.

16/ Le Monde, 13 July 1977; The Times, 1 August 1977; International Herald Tribune, 2 August 1977; The Guardian, 30 July 1977.

"(a) To disperse black demonstrators the police no longer used batons, rubber bullets or tear-gas but instead fired FM-rifle-bullets, which explode in the bodies of the victims and cause immediate death. Subsequently, these bullets were replaced by buckshot, which, although less deadly, can blind and mutilate, especially when used against children.

"(b) No warning was given before the police fired systematically into the crowd, even when it consisted of very young children and the demonstration was visibly peaceful.

"(c) The police made systematic arrests of injured persons who could not have escaped anyway. Several witnesses stated that the police frequently prevented passers-by from taking the injured to hospital. Moreover, the police transported a number of injured persons from hospital to prison.

"(d) On many occasions the police incited the crowd to violence, particularly at Soweto and at Johannesburg, where Zulu workers living in a hostel were used by the police to attack demonstrators". 17/

C. Treatment of political prisoners and detainees

1. Reference to some relevant laws

46. Legislation governing detention without trial, security legislation that makes an extraordinarily wide range of political acts punishable by law, sometimes by extremely heavy penalties, and the laws governing the conditions of prisoners in goal have all been described in previous reports of the Ad Hoc Working Group of Experts (see in particular E/CN.4/1159, para. 50; E/CN.4/1187, paras. 30-32).

47. The Group in its previous report (E/CN.4/1222) drew attention to the provisions of the new Internal Security Amendment Act, No. 79 of 1976, which amended the Suppression of Communism Act (now called the Internal Security Act, 1950) and extended once more the conditions in which a person might be detained indefinitely without trial (see E/CN.4/1222, para. 70). This Act has been used extensively in the mass arrests that have been taking place throughout the year following the Soweto uprisings that began in June 1976. Under this Act, the principle of preventive detention is introduced for the first time into South African legislation: the Minister, if he "is satisfied that any person is engaging in activities which endanger or are calculated to endanger the security of the State or the maintenance of public order, ... may direct that this person be detained in custody in a prison area for a specified period" up to a year. 18/

48. In May 1977 the Minister of Justice told the House of Assembly that he had issued regulations on the treatment of detainees held under the Internal Security Act. They were to be treated as prisoners awaiting trial, with the proviso that no person should have access to them, except with the permission of the officer in command of the prison, and that they were not to communicate in writing with anyone outside the prison, without similar permission. 19/

49. An important law passed during the period under review that is likely to affect the treatment of political prisoners and detainees is the Indemnity Act, No. 13 of 1977, which bars all civil and criminal proceedings against the State, or any person in the service of the State, or any person acting under the authority or approval of such a person, by reason of any "act, announcement, statement or information advised, commanded, ordered, directed, done, made or published" by such a person. This law is retrospective to 16 June 1976 and operates even to terminate proceedings already started. 20/

50. Another far-reaching Act, the Criminal Procedure Act, No. 51 of 1977, replaced a controversial bill withdrawn in 1973. The Act provides for the interrogation of accused by judges and judicial officers before the commencement of a trial, thus forcing the accused to reveal the basis of his defence, and allows the court to draw an adverse inference from silence; it also provides inter alia for retrial of prisoners on the same charge when charges have been

18/ Summary taken from Torture in South Africa? (The Christian Institute of Southern Africa, April 1977).

19/ House of Assembly Debates, 11 May 1977; Rand Daily Mail, 11 May 1977.

20/ Written evidence submitted by Mr. Niall MacDermot on behalf of the International Commission of Jurists.

dropped for lack of evidence; for a single bail application, which cannot be renewed if rejected; for prisoners who are awaiting trial to have their visitors restricted to family or friends, at the discretion of the police and prison authorities; for the detention of witnesses for the duration of a trial. The Act also states that convicted prisoners may be called as witnesses only at the discretion of the court, and widens the immunity of police to shoot to kill people escaping or evading arrest. 21/

51. The Lower Courts Amendment Act, No. 91 of 1977, provides inter alia for extension of the jurisdiction of magistrates' courts in criminal cases, and in particular to security cases involving the Sabotage Act and the Terrorism Act. Although the Act restricted magistrates to passing 10-year sentences, they would in fact be able to deal with offences involving the death sentence, simply referring them to a judge for sentencing, according to a Member of Parliament who criticized the bill in April 1977. He said that the implications of the bill were far more serious when read in conjunction with the Criminal Procedure Bill: "It tips the scales of justice away from the individual and heavily in favour of the State and could be a dangerous measure". 22/ The relatively heavy sentences passed by magistrates in South African courts were referred to by Mr. Michael Carlisle of the International Commission of Jurists in his evidence before the Group (see para. 88 below).

52. A Police Amendment Bill before Parliament in March 1977 makes it illegal to sketch or photograph detainees or fugitives who have escaped from custody. A Prisons Amendment Bill legalizes sketches and photographs of prisoners up to 30 days after conviction. 23/

53. A Community Councils Bill was introduced in Parliament in May which will legalize tribal or Makgotla courts in African townships and also set up "community guards". Observers see the move as an attempt by the Government to impose "traditional" authority over student militants and others. Under the Native Administration Act of 1927, powers of chiefs and headmen may be delegated to chosen township authorities and include the power to administer corporal punishment to men under the age of 30. 24/

54. The Group has also taken note of the Bantu Laws Amendment Act, No. 119 of 1977, which doubles fines for pass law offences, raising the fine for being

21/ Summary of the Criminal Procedure Bill provided by the International Defence and Aid Fund Information Service, DEFA; Rand Daily Mail, 1 February 1977.

22/ Rand Daily Mail, 25 April 1977.

23/ Rand Daily Mail, 5 March 1977.

24/ Guardian, 16 May 1977.

illegally in an urban area from R50 to R100 or three months' imprisonment. 25/ According to information before the Group, a total of 250,030 Africans were arrested under the pass laws in 1976 alone. 26/ These laws have been identified by the Government's own Viljoen Commission of Inquiry into the Penal System as a continuing source of political conflict, and the Commission recommended in February 1977 that the pass offences be "depenalized".

55. The Transkei's Public Security Act (see also para. 26 above), while repealing Proclamation R400, which contains provision for detention without trial, retains not only provision for indefinite detention without trial as in South Africa's Terrorism Act, but also the banning of persons by administrative decree and the outlawing of "communism", as in South Africa's Internal Security Act, the banning of the African National Congress and the Pan Africanist Congress, as in South Africa's Unlawful Organisations Act, and heavy penalties, including the death penalty, for such offences as "harbouring and helping terrorists" and "statements or acts causing hostility between population groups", defined in a similar way to the terms of the Terrorism Act. 27/

25/ Rand Daily Mail, 9 March 1977; Cape Times, 9 March 1977.

26/ Rand Daily Mail, 5 March 1977.

27/ Rand Daily Mail, 13 May and 17 May 1977.

2. Analysis of information and evidence received

(a) Treatment of detainees

56. The Group's previous report (E/CN.4/1222) made reference to the mass arrests and detentions that took place in connexion with the series of uprisings and popular demonstrations that started in Soweto in June 1976. The report made the point that no official figures were available for total numbers of arrests or detentions, though estimates in September/October 1976 suggested that the figure of those detained under the security laws was already at least 300 (ibid., paras. 78-79) and that the number of those arrested for various offences in connexion with the disturbances ran into thousands (ibid., paras. 79 and 251).

57. Information before the Group indicates that arrests on an extraordinary scale have been continuing throughout the period under review. Official figures available to the Group reveal that 336 people were in detention on 26 May 1977 (figure given by the Minister of Justice in the House of Assembly) 28/ under security legislation, 230 of them held under the Terrorism Act, 13 under the Criminal Procedure Act (sect. 22(1)(B), the 180-day detention clause, which provides for arrest without warrant), 73 under the Internal Security Act (sect. 12(B), which provides for arrest of potential witnesses).

58. The Minister told Parliament in February 1977 that detainees under the Terrorism Act had been held for a total of 10,002 days during 1976 and of the 96 eventually charged, 48 had been held for more than 150 days each. 29/

59. The Minister also told Parliament in February 1977 that a total of 118 persons (117 Africans and one white) had been detained under the Internal Security Act during 1976, and that 92 of these were still detained on 31 January 1977. Three of these had been in detention since 13 August 1976. 30/ Four persons had been redetained under other security legislation after being released from detention under the Internal Security Act. 31/

60. In addition, 30 people had been detained in the Transkei under Proclamation R400 during 1976, of whom 25 were still in detention on the date of the territory's "independence" on 26 October 1976. 32/ The Group understands that included among these detainees are "most of the Transkei Opposition New Democratic Party". 33/

61. The Group received from witnesses appearing before it in its 1977 hearings a variety of documents prepared by organizations such as the South African Institute of Race Relations (handed in by the International Commission of Jurists),

28/ Star, 1 June 1977.

29/ The World, 2 February 1977.

30/ House of Assembly Debates, 25 February 1977.

31/ House of Assembly Debates, 17 March 1977.

32/ House of Assembly Debates, 25 April 1977.

33/ The World, 26 April 1977.

the International Defence and Aid Fund and the African National Congress, listing the names of detainees, compiled from press reports and from relatives and friends of detainees. The South African Institute of Race Relations published a list of 471 persons in detention on 25 March 1977. In the period since 1 January 1976, 366 persons who between them had spent 50,314 days in detention had been released without charges being brought against them. Of those in detention on 25 March, "at least 34" were "identifiable as school pupils, 49 as university students, 23 as teachers, 16 as being associated with SASO or the Black Peoples' Convention, 5 as Churchmen and 5 as journalists". In addition, "46 have appeared as State witnesses in security trials or are being held in connexion with trials in which they are not the accused". A total of 135 persons had been detained in terms of the preventive detention section of the Internal Security Act and subsequently released before December 1976. The Institute states that its list "cannot claim to be complete". ^{34/} The International Defence and Aid Fund has since then listed the names of a further 61 persons detained between mid-March 1977 and 26 June 1977. ^{35/}

62. Witnesses appearing before the Group emphasized that exhaustive lists of arrests and detentions were virtually impossible to compile, both because under security legislation the Government is not compelled to name detainees and because of the unco-operative attitude of police and prison authorities to inquiries about individuals arrested. Mr. Terry (459th meeting), giving evidence on behalf of the Anti-Apartheid Movement, referred to "many people on whose whereabouts simply no evidence can be obtained". Mr. Drake Koka mentioned the case of a student leader, Daniel Mutsisi, whose whereabouts were unknown at the time of his evidence, and whose parents were unable to get any information from the police; and press reports before the Working Group detail similar cases, including that of a father of two students apparently detained under the Terrorism Act who is still trying to trace the whereabouts of one of them, Philip Moloto, more than a year after his arrest in July 1976; ^{36/} a mother trying to trace her daughters Naomi (15) and Leslie (13) Baloi, who "disappeared on a Sunday afternoon in November"; and another father trying to find his daughter (aged 11) and niece (aged 8) allegedly picked up in a police vehicle around the same time. The Rand Daily Mail reported in November 1976 that "the disappearance of children and adults after police raids on Reef townships has resulted in a frantic search of police stations and prisons". ^{37/} Further information before the Group confirms that many people are afraid to go to the police about relatives who have disappeared for fear of being detained themselves. Seventeen NICRO (National Institute for the Care and Rehabilitation of Offenders) centres in Soweto have been helping such families where they can. ^{38/} The Christian Institute, in its paper South Africa - A Police State?, published in September 1976 (quoted by the International University Exchange Fund), reflected the general confusion about figures for arrests and detentions:

^{34/} Administration of Security Legislation in South Africa, January 1976-March 1977, Research Department, South African Institute of Race Relations.

^{35/} Focus, No. 11, July 1977.

^{36/} Rand Daily Mail, 10 November 1977.

^{37/} Rand Daily Mail, 10 November 1976.

^{38/} The World, 17 March 1977.

estimating that on 10 September "300 people are believed to be in detention", it added "hardly a day goes past without the detention of at least one further persons ..." and went on to make clear that the figure of 300

"includes only those detained under the security laws of South Africa. However, since the student protests on the 16th June this year, the additional figure, quoted by pressmen and reporters for the number of people arrested allegedly in connection with the ensuing trouble throughout the country, is said to be at least 2,600. This figure can be contested, however, on the basis of individual reports in the press which suggest a much larger number of people arrested, many of whom have been held for weeks, having had bail applications refused and then been inexplicably released without being charged". 39/

63. Although under South African common law a child under the age of 14 is presumed to be incapable of criminal intent, this principle does not seem to have been tested in any of the cases to date. The Working Group has been struck by the high proportion of young people, including small children, who appear to have been among those detained during the period under review. The South African Institute of Race Relations estimates "at least 84" schoolchildren under detention in March 1977 (see para. 56 above). In addition, the Group has before it reports that the Civil Rights League in Cape Town released a list on 7 July 1977 of 39 names of youths, most of those whose ages were known being apparently teenagers, detained in Cape Town since January 1977, and not released, charged or used as witnesses in any trials. Dr. K. R. Hughes, Chairman of the League, said that it was feared that the list of names might be inaccurate and that many more may be held about whom there was no information. 40/ The witness Mrs. Marsh (457th meeting) also handed in evidence contained in the International Defence and Aid Fund's publication Focus, of May 1977, that "at least 150" children under 16 years old had been detained over the past six months. An investigation by a South African newspaper in April 1977 revealed that many of these, aged as young as 10 or 12, had been held for several months. Lawyers believed that at least 300 children had been detained since June 1976. Most of the child detainees had been held under the Terrorism Act, which specifically excludes the usual safeguards to protect the interests of minors. The investigation found that dozens of children, barely in their teens, had been kept in solitary confinement; that in one Port Elizabeth trial one of the accused turned out to be seven years old; that one lawyer alone had recently handled cases involving 91 children under 16 who had been detained, including children of 10, 12 and 13 years. Some of them had spent five months in solitary confinement. The lawyer commented that the children were being held under the most stringent security law in the land, yet they were being charged, if at all, with relatively minor offences. Many were being used as State witnesses against older youths. 41/

39/ South Africa - A Police State? (Christian Institute of Southern Africa, 20 September 1976).

40/ Cape Times, 7 July 1977.

41/ Sunday Express, 24 April 1977; Focus, No. 10, May 1977, p. 12.

64. Nearly every witness before the Group drew its attention to the alarming increase in the use of torture in the interrogation of "suspects, both political and non-political", in the words of Mr. Niall MacDermot of the International Commission of Jurists. As Mr. MacDermot and others pointed out, the "sharp increase in the number of deaths of persons in custody ... is itself striking confirmation of torture practices".

65. A written submission from the International University Exchange Fund^{42/} and the Christian Institute of Southern Africa's South Africa - A Police State? made the point that South Africa has been listed by Amnesty International as one of the countries using torture against prisoners "on a disturbing scale". The document listed the following methods, all taken from court testimony by political detainees in court during the year 1976:

"Hung from rafters by a rope around the neck

Forced to stand for long periods without sleep

Compelled to lift weights above the head for extended periods, sometimes wearing shoes lined with pebbles

Holding the head under water in a toilet basin

Threats of assault and death

Tied by the hands above the head so that your feet barely touch the ground

Stand blindfolded for five days and nights

Solitary confinement for unlimited periods

Handcuffed through legs

Hold the "imaginary chair" with hands outstretched

Hit with karate blows

Stand barefeet on the edge of bricks for long periods of time

Struck on the genitals

Electric shock treatment sometimes applied to genitals

Deprivation of sleep

Kicked

Denied the opportunity to go to the toilet

Blindfolded, gagged, tied to a tree, given electric shock treatment and assaulted."

^{42/} "Violations of human rights in southern Africa" (E/CN.4/NGO/198, 10 February 1977).

66. Mr. Martin Ennals, giving evidence on behalf of Amnesty International (459th meeting), reiterated that organization's conviction that "laws like South Africa's so-called Terrorism Act of 1967 were framed in such a way as to invite abuse and intimidation of detainees", and reported that Amnesty had in the past year (i) made an appeal to the South African Minister of Justice to establish a public and independent inquiry into security police methods and the treatment of political detainees; (ii) asked permission to send a mission of medical doctors to South Africa to investigate conditions of detention and the physical state of those detainees and former detainees; (iii) appealed to the Minister, following the visit of members of the press to Robben Island, that the press men be also allowed to visit John Vorster Square police station and other detention centres. All these appeals were rejected.

67. Mr. Ennals drew the attention of the Group to various disturbing aspects of the conditions in which detainees were being held. He stressed the length of time of detention, frequently ending without any charge being laid against the detainee, and cited the cases of Tembani Phantsi, who was released in March 1977 after spending 513 days in detention; of Thandisizwe Mazibuko, Thomas Manthat and George Wauchope, all released the same month, who had been detained for 238, 253 and 279 days respectively - Mr. Wauchope, a leading member of the Black People's Convention, having been redetained in June 1977.

68. Mr. Ennals also went into the evidence that had emerged during the inquests on some of the men who had died in detention and allegations during political trials indicating the nature and scale of the torture methods being used. Beatings, strangulation, sensory deprivation and electric shocks all appeared regularly in sworn statements from witness boxes and from the dock. So did descriptions of threats of death (John Nene and Anton Xaba, for instance, both told the court during the trial in Pietermaritzburg of 10 persons charged with being members of the African National Congress, that they had been told that they would be thrown to their deaths from the upper window of the security police building); and emotional pressures such as that used against Tenjiwe Mtintso, who was told her child had died (and was also slapped, punched and partially suffocated with a wet towel) and described the experience at the inquest on Mapetla Mohapi.

69. Mr. J. P. Rao, addressing the Group on behalf of the United Nations Special Committee against Apartheid, said that the evidence presented in several trials, which he outlined in some detail, and the accounts by many detainees after their release "show that torture and brutal attacks against people in police custody, and coercive methods to extract 'confessions', form a general pattern in the régime's gaols". He cited the carefully documented accounts in the Christian Institute's Torture in South Africa, dated April 1977, and evidence from Rev. Paul Oestreicher, chairman of the British Section of Amnesty International, who had made a trip to South Africa and Namibia and received affidavits from former prisoners "showing that torture had become part of the system". Mr. Oestreicher, said Mr. Rao, had "charged that there had been cases where people have been systematically tortured to provide information, and others where it had been used purely for intimidation". 43/

43/ Quoted from The Times, 30 October 1976.

70. Mr. Rao went on to point out that a number of the assaults and beatings reported were against juveniles. He quoted the case of about 100 high school pupils from Lenasia, the Indian suburb outside Johannesburg, who had been picked up in groups by the security police in May 1977, two months after allegedly attending a meeting with Soweto students and joining the students' movement. On 29 May an angry group of parents and teachers charged that the pupils, mostly between 14 and 19 years old, had been beaten up during interrogation, some so badly that they needed medical treatment. A doctor who had treated several pupils stated that his own son had been repeatedly punched on the head and in the stomach, and that his head had been bashed against a wall. 44/ Further accounts of torture of children appear in a publication of the African National Congress of South Africa, which has been made available to the Group. 45/

71. Mr. Drake Koka handed in to the Group extracts from affidavits sworn by six students of Morris Isaacson High School in Soweto who were arrested, interrogated and tortured in October 1976. The students, aged between 18 and 20 years, described being beaten on the face, being beaten on the body with a sjambok (hide whip), being made to strip and having a wet sack placed over the head, being "strangled", having lights flashed at them, being given electric shocks, sitting on an imaginary chair for two hours. Several boys had scars, and one boy had lost his hearing in one ear as a result of the assaults. 46/

72. The Group has had before it information about a 10-year-old boy arrested on 1 November 1976 and held in Modder B prison until 9 December, when he was released on bail, apparently as a result of publicity in the Rand Daily Mail. His mother claimed in an affidavit that the child had been assaulted by police at the time of his arrest and that when she visited him in gaol his face was so bruised that he could not eat. Major General Kriel, Deputy Commissioner of Police in charge of riot control, had said earlier that bail had been opposed on the ground that the child was to be charged with sabotage. 47/

73. Another juvenile, variously described in the press as 14, 15 or 16 years old, Mbuyiselo Nyathi of Forbes Grant Secondary School, called as a State witness in the trial of Mr. Steve Biko for obstructing the course of justice or alternatively subordination to perjury, described in court how he had been kept in solitary confinement from 7 March to 10 April 1977. He told the court that he found solitary confinement "upsetting and confusing", and that he had been told by police that he would be released if he gave evidence, but that if he departed from his police statement he would be arrested. He also described being assaulted by a security officer and hearing loud screams from nearby rooms during a previous detention in 1976. 48/

44/ Rand Daily Mail, 30 May 1977.

45/ African National Congress, Repression, Torture and Death in South Africa (London, 1977), pp.18-19.

46/ A/32/226, para.38. "Prison torture in South Africa: statement from students from Morris Isaacson High School", written submission handed in by Mr. Drake Koka, 2 August 1977.

47/ Rand Daily Mail, 3 December, 4 December, 9 December, 10 December 1976.

48/ The World, 3 April, 7 April, 10 April 1977; Rand Daily Mail, 6 April, 7 April 1977.

74. Witnesses also referred to the South African authorities' callousness in denying information about the whereabouts and condition of detainees to their families. Examples before the Group include that of Mr. Patrick Gaboutlwelwe, whose wife has been repeatedly refused permission to see him although he has been in detention for 127 days, so that she cannot be sure even that he is still alive; 49/ two daughters, Margaret and Salome, aged 16 and 14, of Ms. Lena Mawela, who disappeared on 2 May when their mother was detained and who have not been heard of since in spite of intensive inquiries by their grandmother; 50/ and Ms. Virginia Mashinini, mother of student leader Tsietsi Mashinini who is now abroad, whose children have been told only that she is "somewhere in Standerton". None of her family has been allowed to see her since she was arrested three months ago. 51/

75. In another case before the Group a husband and wife have been arrested and detained, leaving their four children alone and without support, and the children have allegedly been told by security police that the parents will not be released until their brother, Frans Ranoto, a former student at Orlando West High School who has fled the country, surrenders to the authorities. 52/

76. An affidavit placed before the Group by Amnesty International was signed by Mr. Nat Serache, who described torture during three separate periods of detention between 14 September 1976 and 4 April 1977. Mr. Serache was told that the police were "tired of interrogating terrorists", was given electric shocks and had pliers applied to his testicles. He was eventually made to sign a number of forms which he was unable to read, the sergeant telling him: "If you mention these forms we are going to eliminate you." 53/ He named a Sergeant Hendrik Prinsloo, a Lieutenant Human and another Sergeant Prinsloo as his torturers.

77. Ms. Oshadi Phakathi, in a signed statement handed in by Mr. Mike Terry, described her arrest in Soweto on 16 June 1976 and detention for three days without food or drink, for part of the time in a cell so crowded that the women could not lie down. Among them were three schoolgirls from Soweto, with torn and bloodsoaked clothes, who described being brought to gaol in a van full of dead and wounded and seeing seriously wounded people "walked on" by booted policemen "until they were dead". Ms. Phakathi stated that she heard fights and screams throughout the nights of 16 and 17 June from the men's cells, and gun shots followed by appeals from the men for the dead to be removed. She saw many corpses in the prison yard and before the doors of the cells. During a subsequent detention, Ms. Phakathi heard a 12-year-old girl cry all night because she was locked alone in a cell; after the women prisoners staged a protest they were told that the child had been released. They later found out that she had not been released until a week later but had been interrogated and forced to incriminate other

49/ The World, 23 May 1977.

50/ The World, 25 May 1977.

51/ The World, 10 May 1977.

52/ The World, 21 February 1977.

53/ Affidavit signed by Mr. Serache before a Commissioner of Oaths in Botswana, 25 April 1977.

arrested students. Ms. Phakathi herself was assaulted and had electric shocks applied to her waist and breasts until she signed a document prepared by the police and a series of backdated receipts "that gave the impression that I was on the police payroll". 54/

78. The Group's attention was also drawn by the witness Mr. Eric Abraham to the detention and torture of numbers of black journalists, most of whom, he pointed out, had been involved in reporting police brutalities during the disturbances in the black townships since June 1976. Mr. Abraham named Mr. Joe Thloloe, President of the Union of Black Journalists, still in gaol in August 1977; Mr. Nat Serache (see para. 76 above); and Ms. Tenjiwe Mtintso, reporter on the Natal Daily Despatch (see para. 73 above).

79. The Group has noted that throughout the period under review, accused and witnesses in political trials have repeatedly given evidence in court alleging torture under interrogation. Press reports of these trials provide further evidence that the victims of torture have frequently been young persons, school pupils and students. A Mr. Charles Mazibuko, for instance, aged 18, charged with 10 others with arson and public violence, described being shown Mr. Maurice Mokoena, who was "bleeding from the mouth. He had a rag tied round his neck and was crying". A Sergeant Prins told Mr. Mokoena to explain to the accused what had happened to him. "He told us we should tell the truth or otherwise we would be killed." 55/

80. The International University Exchange Fund handed to the Working Group a document containing further evidence on torture under interrogation of two of the accused in the SASO trial (see E/CN.4/1222, para. 99). An affidavit by Belinda Martin, handed in by the Women's International Democratic Federation, described being beaten and kicked by policemen and policewomen, being forced to drink out of a toilet bowl, and being forced to stand on dry ice for eight hours until she fainted and was bleeding from the bowels and retching. She starved for three weeks. An affidavit by Rubin William Hare described being knocked down, beaten about the body and head and threatened with death. He named "Spyker" van Wyk as having threatened to "pump 14 bullets into me", and to drive a 6-inch nail into his penis. 56/

81. Details of torture of accused and witnesses also emerged during the trial of the Pietermaritzburg Ten (see para. 101 (b) below), leading to six of the men filing a suit for R40,000 against the Minister of Police for maltreatment while in detention. It was in connexion with this trial that Joseph Mdluli was being

54/ Signed statement dated 25 July 1977, transmitted by Ms. Oshadi J.E. Phakathi of the Christian Institute of Southern Africa, Utrecht, Holland.

55/ Rand Daily Mail, 25 February 1977.

56/ International University Exchange Fund, "Who are the real terrorists? A document on the SASO/BPC trial", United Nations Centre against Apartheid, Notes and Documents, No. 9/77, March 1977. (The South African Students' Organization (SASO) and the Black Peoples' Convention (BPC) are components of the Black Consciousness Movement.)

questioned at the time of his death (see E/CN.4/1222, para. 43). The accused, Cleopas Ndhlovu, John Nene, Vusimusi Magubane and Harry Gwala, all gave lengthy evidence on physical assaults, electric torture, throttling and long periods of interrogation; and Anton Xaba was threatened with being dropped out of a window, a policeman commenting that he "ought to know how Timol died" (Ahmed Timol, who died by falling from a tenth floor window in 1971). Other witnesses alleging torture included Michael Gumede (weights tied to his testicles); Frans Kunene, whose fingers were beaten with a sjambok until he lost all his fingernails and who was rearrested on a charge of perjury after he gave his evidence about torture in court; and Harry Nxasana, who gave the leading evidence for the State then was recalled by the defence after his wife had submitted an affidavit saying that she believed he had been tortured into making his statements. He told her he had been "nearly killed" in detention. In court Mr. Nxasana confirmed the facts in his wife's affidavit and described being hooded and throttled, rolled from side to side "like a tug of war", and being hit on the head, in the stomach and the solar plexus. Linda Gwala, 17, son of Harry Gwala, also gave evidence of interrogation during which he was given a drug, after which he remembers nothing. "Some time later he awoke to find himself lying on a refuse heap in a nearby township. As he had been kidnapped by three unknown men for this interrogation he had no way of knowing by whom he had been held." ^{57/} The African National Congress believes that this story indicates that the South African security police are experimenting with "truth" drugs for interrogatory purposes. ^{58/}

82. Similar charges of merciless torture of both accused and witnesses have been made during the trial of the Pretoria 12 (see para. 101 (b) below). Paulina Mohale, the only woman accused, was admitted to hospital in December 1976 following interrogation. She is believed to have been dropped from a second floor window. Ian Rwaxa was so badly beaten that when he was taken to his home to show security police something he had apparently hidden there, he was forced to wear a hood to hide his injuries (Focus, March 1977). Twice, he told the court, he had lost consciousness. On one occasion he was taken into another room to see the accused Mosima Sexwale naked, bound and shivering on the floor, and on another he was shown Lele Motaung, who was unable to sit down after the torture he had been through. Rwaxa withdrew his evidence on the ground that it had been extracted under torture but asked Mr. Justice Davison to grant an order protecting him from police retaliation. The judge said he was unable to grant such an order. ^{59/}

^{57/} Anti-Apartheid Movement, The trial of the Pietermaritzburg Ten (London, 1977; Rand Daily Mail, 5 October, 10 October, 12 November, 4 December, 14 December 1976, 22 February, 24 February, 25 February, 12 March, 23 March, 12 May 1977; The World, 10 December 1976.

^{58/} African National Congress, op. cit., pp. 27-28.

^{59/} Free the Pretoria Twelve Campaign, "Free the Pretoria 12" (London, Anti-Apartheid Movement, August 1977).

(b) Treatment of political prisoners

83. According to information before the Ad Hoc Working Group of Experts, the average daily prison population in the period 1 July 1975 to 30 June 1976 was 94,861, of whom 71,694 were Africans. Sentenced prisoners in custody on 30 June 1976 included 5,020 juveniles, 3,284 of them Africans, and 2,870 children, 2,624 of them Africans. 60/ During 1976 a total of 250,000 Africans were arrested for offences under the pass laws and influx control. 61/

84. The official figure for convicted political prisoners serving sentences on 1 January 1977 was given as 310, 62/ 183 convicted under the Sabotage Act, 106 under the Terrorism Act, 20 under the Internal Security Act, and one under the Unlawful Organisations Act. At the end of April 1977 a figure of 383 political prisoners was issued following the special press visit to Robben Island (see para. 72 below), 370 of them on Robben Island of whom 130 were arrivals over the past year. 63/ Since then Focus estimated that at least another six had been convicted, making the total by July 390. 64/

85. Mr. Rao, in his address on behalf of the Special Committee against Apartheid, quoted the figures published by the South African Institute of Race Relations (SAIRR) in December 1976: 65/ a total of 4,200 people charged with offences relating to the uprisings since June 1976, of whom 1,381 had been convicted, 927 of whom were children and juveniles under 18. Of these, 528 had received corporal punishment, involving five to eight cuts with a cane. Of the adults, 182 were gaoled. Mr. Rao added that the figures for floggings might be higher than the SAIRR estimate: Weekend World of 3 October 1976 had reported that more than 200 youths had been sentenced to cuts for attending an illegal gathering in Port Elizabeth the same week. Figures for floggings had not been published by the Ministry of Justice.

86. According to information before the Group the report of the Commissioner of Prisons for the period 1 July 1975 to 30 June 1976 states that in this period 2,251 persons had received a total of 11,938 strokes. Separate figures were not given for juveniles, but a total of 2,870 children had been in prison during the period and 5,020 sentenced juveniles were in custody on 30 June 1976.

60/ Report of the Commissioner of Prisons of the Republic of South Africa for the period 1 July 1975 to 30 June 1976 (RP 46/1977).

61/ House of Assembly Debates, 4 March 1977, quoted in Focus, No. 10, May 1977.

62/ House of Assembly Debates, 14 April 1977.

63/ Guardian, 27 April 1977; Rand Daily Mail, 27 April 1977; Focus, No. 10, May 1977.

64/ Focus, No. 11, July 1977.

65/ A Survey of Race Relations, 1976 (South African Institute of Race Relations, December 1976).

87. Mr. Rao also quoted the SAIRR report published in June 1977 stating that between July 1976 and May 1977, 110 people had been sentenced to a total of 666 years under security laws, 94 under the Sabotage Act and 11 under the Terrorism Act. The Institute listed 39 youths under 18 years of age as having received mandatory five-year sentences, and found that half of those charged were under 25. 66/

88. The witness Mr. Michael Carlisle (454th meeting), speaking on behalf of Mr. Niall MacDermot of the International Commission of Jurists, also analysed the same SAIRR document. He pointed out that "courts appear to be conducting themselves in a judicial manner, in that they acquit as well as convict, at least procedurally. The iniquity lies in the laws the Justices are forced to administer". But he drew attention to inconsistencies in sentencing as between judges and magistrates. "Magistrates, unlike judges, who are assured of permanent tenure, are public servants dependent on the State for the furtherance of their career." Magistrates, accordingly, tended to make "harder" judgments than did judges. In illustration Mr. Carlisle quoted the case of Mr. Archibald Kabane, tried in the Rand Supreme Court in front of Mr. Justice Hiemstra, who said in sentencing: "If I had a free discretion I would have sentenced you at most to one year in gaol. I am sorry that the Explosives Act compels the court to pass a minimum sentence of three years." He also quoted Mr. Justice Eloff, who at Springs Special Court acquitted John Matonkonyane and Kenneth Dhlamini of the murder in Soweto in June 1976 of Dr. Leonard Edelstein. He said that the statements which formed the evidence connecting them with the murder had not been made freely. And Mr. Carlisle further quoted Mr. Justice Theron, in the case of John Hoffman, Jaiwoodien Parker and Ismail Jackson, who criticized section 6 of the Terrorism Act because it had the effect of "tarnishing" the witnesses' evidence. Mr. Carlisle contrasted these judgments with maximum sentences imposed by magistrates. He also drew the attention of the Group to what he called "the dignity and conviction with which defendants address courts and face inevitably severe penalties".

66/ Security and Related Trials in South Africa, July 1976-May 1977
(South African Institute of Race Relations, 1977); Star (Johannesburg),
4 June 1977; Sunday Times, 5 June 1977.

Robben Island

89. In April 1977 a group of 25 members of the press, South African and foreign, was the first such group to be taken to visit the Robben Island prison where 370 (at that time) black political prisoners were held. Since they were given no advance warning of the visit, they had no opportunity to consult files in advance and were forbidden to speak to any prisoners, and all reports on the visit had to be cleared by the Prisons Department before publication. 67/

90. The visit took place immediately after the President of the International Red Cross visited the Island, in accordance with the agreement that allows the Red Cross to visit the prison annually and to speak to prisoners but not to publish its findings. The President particularly reported that: "We think the absolute lack of communication between the prisoners and the outside world - no newspapers, no radios, visits once a month - are very severe." 68/

91. According to further information available to the Group, the official total of prisoners on Robben Island may be less than the actual figure. Mr. Mac Maharaj and Mr. Indres Naidoo, who recently escaped from South Africa after serving 12½ and 10 years on Robben Island respectively, estimate the true number to be nearer 600. Mr. Maharaj, who was released in November 1976, told Anti-Apartheid News 69/ that when he left the Island the prisoners were divided into three groups, each completely cut off from the others. Two of these groups were composed of large cells and the third of 30 single-cell units, in which Nelson Mandela, Walter Sisulu, Govan Mbeki, Ahmed Kathrada (i.e., all the prisoners serving life sentences) and Mr. Maharaj had been held. Conditions in these cells, said Mr. Maharaj, were grim, the men being locked up alone for 15 hours on weekdays and 17 hours at weekends and holidays. Up to 1973 they worked in lime quarries, then at the seashore collecting seaweed and debris. Recent reports suggest that the lime quarries have been reopened. "The inability of the authorities to provide meaningful work flows from its general punitive approach to the treatment of prisoners." They try to break the spirit of the single cell prisoners by their isolation. Though physical assaults and other atrocities committed against prisoners in the mid 1960s no longer take place, conditions are worse in other respects: isolation from the outside world has been intensified, limited contacts with families interfered with, and mounting pressure put on prisoners to work harder. Prisoners are constantly charged with petty misdemeanours and deprived of so-called privileges such as letters or study facilities. Attempts are also made to foster racial hostility among African, Coloured and Indian prisoners.

92. The Group also has before it information that the Minister of Justice has again reiterated his policy that no prisoners serving life sentences on Robben Island will ever be released. 70/

93. Two cases of applications made by Robben Island prisoners to the Supreme Court in Cape Town in the period under review resulted in findings that the prison authorities had acted in excess of their powers. In December 1976 Petrus Motsau

67/ Cape Times, 27 April 1977; Focus, No. 10, May 1977.

68/ Cape Times, 26 April and 3 May 1977.

69/ Anti-Apartheid News, September 1977.

70/ Rand Daily Mail, 27 April 1977.

appealed against a sentence by Major P.A. Zandberg to 10 days' spare diet for falsely alleging that a note made on his medical file was a forgery - he had refused work on the grounds of a medical finding that he should not be made to work standing because he had flat feet; the court found that the State had not proven that the allegation was malicious. 71/ In the second case nine "black consciousness" prisoners, including Mr. Saths Cooper (see E/CN.4/1187, para. 39) were charged with refusing to obey orders to work in the prison's lime quarry. The magistrate found that the order to work was unreasonable under the conditions imposed. 72/

94. The prisoners were refused permission to consult their lawyers about their allegation that they had been assaulted by warders, who had set guard dogs upon them so that many prisoners were bitten. 73/ The Minister of Justice denied that anyone had been bitten, claiming that the officer involved had "instructed staff members in charge to use the dogs to speed up the work" but that the dogs were not turned loose. 74/

95. In May 1977, Mr. Nelson Mandela faced disciplinary charges for "insolent or disrespectful behaviour towards a member of the prison service or any other person employed in the prison or towards an official or other visitor to the prisons". A friend said he had called a warder a "pig". 75/

Pretoria central prison

96. White political prisoners in Pretoria central prison complained in August 1977 before Mr. Justice Curlewis that they were denied newspapers and certain books and that periodicals were censored and letters and conversations restricted to permit only household or domestic matters and "general trivia". Their application for greater access to news was dismissed and the judge told them that they were extremely well off and lucky to be incarcerated in South Africa. 76/

97. Pretoria central prison authorities have also refused permission to Susan Rabkin to show her baby, Franny, born in goal, to her husband, David Rabkin, who is serving a 10-year sentence under the Internal Security Act. 77/

98. Political prisoner Jeremy Cronin, serving a seven-year sentence under the Terrorism Act, was reported to have been denied permission to see his wife, Anne Marie, dying of cancer in a Johannesburg hospital. 78/

71/ Cape Times, 14 December 1976.

72/ Focus, No. 10, May 1977.

73/ Cape Times, 12 March and 18 March 1977; Rand Daily Mail, 31 March 1977; Focus, No. 9, March 1977, and No. 10, May 1977.

74/ Rand Daily Mail, 1 March 1977.

75/ The Times, 19 May 1977; Rand Daily Mail, 19 May and 24 May 1977.

76/ Rand Daily Mail, 6 August 1977.

77/ Sunday Times, 24 October 1976.

78/ Cape Times, 23 March, 24 March 1977.

Johannesburg Fort prison

99. According to information before the Group, the conditions of prisoners awaiting trial at the Fort Prison, Johannesburg, were the subject of a court hearing in March 1977 when five prisoners alleged that they were being kept in solitary confinement for refusing to squat on the floor whenever a prison warder, Ackerman, walked into their cell. They argued that the gesture was degrading and an affront to their dignity and self-respect. The men also said they had been forbidden visits from relatives and access to newspapers and reading matter - normally allowed to prisoners awaiting trial. 79/

(c) Some recent political trials

100. According to information and evidence before the Group, the period since June 1976 has seen an unprecedented number of political trials. In January 1977 Mr. J. Kruger, Minister of Justice, announced that 52 trials were pending. 80/ The South African Institute of Race Relations listed 11 political trials before the courts in the second half of 1976 in its yearbook, 81/ and noted in addition that by 30 October 1976, 397 persons had been convicted in trials arising from the 1976 disturbances among youth and students and that further trials involving 2,915 accused were still under way. By December 1976, 25 persons had been convicted of sabotage in security trials arising from the disturbances and a further 74 persons were still facing sabotage charges. The Institute also analysed 72 trials proceeding during the period January-May 1977 in its pamphlet on security and related trials (see para. 92 above). 82/

101. Among the most significant recent trials brought to the attention of the Group are the following:

(a) The SASO "terrorism" trial (see E/CN.4/1222, para. 99), which ended in December 1976 with the sentencing of six of the accused to six years' imprisonment and three of them to five years. At the time of sentencing most of them had already been held in goal for a period of more than two years, a large part of it in solitary confinement (see para. 85 above). In a document before the Group the International University Exchange Fund commented on Mr. Justice Boshoff's judgement that he

"made it clear that he convicted the nine accused as 'terrorists' on the basis of expressions by them of the political frustrations and attitudes of the blacks in South Africa and more particularly of the Black Consciousness Movement. The precedent has now been created for terrorism to be equated not only with physical violence but also with the expression of thoughts, ideas and desires for liberation. This judgement also equates the expression of perception by blacks in South Africa of the white power system as being murderers, exploiters, fascists, robbers, rapists and enemies as an act of 'terrorism'." 83/

79/ The World, 18 March 1977.

80/ Guardian, 26 January 1977.

81/ A Survey of Race Relations, 1976 (South African Institute of Race Relations, December 1976), pp. 127-146.

82/ Security and Related Trials in South Africa, July 1976-May 1977 (South African Institute of Race Relations, 1977).

83/ International University Exchange Fund, "Who are the real terrorists? A document on the SASO/BPC trial", United Nations Centre against Apartheid, Notes and Documents, No. 9/77, March 1977.

(b) The trial of the "Pietermaritzburg Ten" was drawn to the attention of the Group by Mr. Mike Terry, giving evidence on behalf of the Anti-Apartheid Movement (459th meeting). He handed in a document summarizing the trial, which ended on 25 July 1977 with the conviction of nine of the accused, five of them sentenced to life imprisonment, one to 18 years, two to 15 years and one to 7 years. The tenth was acquitted. The five given life sentences - Themba Harry Gwala, John Vusimusi Nene, Mathew Mokholeka Meyiwe, Anton Ndoda Xaba and Zakhele Elphas Mdlalose - had each already served political terms on Robben Island. The nine were all sentenced under the Terrorism Act and the Internal Security Act for allegedly establishing an "escape route" for African National Congress recruits to leave the country, through Swaziland, for training abroad, and for allegedly recruiting 43 young people for such training. Two of the accused had been abducted from Swaziland at the time of their arrest by South African security police. 84/ Details of torture of several of the accused and of the main State witnesses appear in paragraph 86 above. The accused argued that the purpose of the recruiting was for trade union organization, with the aim of reactivating the South African Congress of Trade Unions. The Anti-Apartheid Movement commented that "the State totally failed to prove any of the main allegations against the accused". 85/

(c) The trial of the "Pretoria Twelve" was also raised by Mr. Terry. He said that this had been described as "the most important political trial in South Africa since the Rivonia Trial in 1964". 86/ The accused are Mosima Gabriel Sexwala, Naledi Tsiki, Lele Jacob Motaung, Simon Samuel Mohlanyaneng, Elias Tieho Masinga, Martin Malefo Ramokgadi (released in 1973 after serving an 11-year sentence on Robben Island), Joe Nzingo Gqabi (released in 1975 after serving a 12-year sentence on Robben Island), Petrus Mapogoane Nchabeleng and Nelson Letsaba Diale (both of whom have served 8-year sentences on Robben Island), Michael Mpandeni Ngubeni (who has served a 12-year sentence), Jacob Gaohakala Seatlholo, and Miss Paulina Mamgotla Mohale. All 11 men, when they appeared in court on 9 May 1977, were in leg irons and, despite objections, they were still wearing them in July. They were charged under the Terrorism and Internal Security Acts, and the State alleges that they were members of the African National Congress, the South African Communist Party or the liberation army, Umkhonto we Sizwe, and that they between 1962 and 1977 "wrongfully and unlawfully conspired to overthrow the Government of South Africa by violent means or by means which envisage violence". Both accused and witnesses claim that they have been tortured under interrogation (see para. 87 above) and Michael Ngubeni was requested by his defence counsel to be sent for mental observation. The main State witness, Ian Rwaxa, retracted his evidence in chief on the second day of the trial, saying that he had given it under torture (see para. 87 above). In the words of the Anti-Apartheid Movement:

"Rwaxa's enormously courageous exposé of police methods was a major setback for the State in the trial ... His fear of police retaliation was confirmed, however, when ten days later the State applied to recall him because they claimed he had changed his mind about some of the allegations he had made in court ... There are grave fears for Rwaxa's life while he remains in the hands of his torturers, in complete isolation and unprotected from their brutal attention."

84/ Focus, No. 5, July 1976.

85/ Anti-Apartheid Movement, "The trial of the Pietermaritzburg Ten" (London 1977); Rand Daily Mail, 26 July 1977.

86/ Free the Pretoria Twelve Campaign, op. cit.

Several more State witnesses told the court that their evidence had been extracted from them under duress: one of them, Elias Tsimo, who has himself served a sentence on Robben Island, described having been shown a picture of the hanged body of the man arrested with him, Dr. Nabaoth Ntshuntsha (who died in detention in January 1977, see para. 120 below). 87/

102. Mr. Donald Woods, editor of the Daily Dispatch, was acquitted in December 1976, on appeal, on charges under a clause of the Criminal Procedure Act empowering magistrates to ask journalists to name their informants and to sentence them to up to 12 months' imprisonment if they refuse to do so without "just excuse". 88/

103. Mr. J.P. Rao, Rapporteur of the Special Committee against Apartheid (450th meeting), commenting on trials being conducted during the period under review, quoted Mr. Martin Garbus, the American lawyer who attended various South African political trials, including that of the Pretoria 12, for the International League for Human Rights, as describing them as "elegant façades covering one of the most vicious police states in the world". 89/

(d) Bannings

104. The names of 151 persons banned under the Internal Security Act, 1950 (formerly the Suppression of Communism Act) were published in the Government Gazette in August 1977. 90/ In addition, the Minister of Justice told Parliament that on 31 December 1976, 24 notices under section 5(1)(e) of the Act were operative and a further 122 under section 9(i). 91/ According to the Sunday Times of 6 March 1977, 60 persons were banned in the previous three months alone. 92/ Twenty-eight trade unionists were banned in the period under review.

105. Among those banned during the period under review was Mrs. Winnie Mandela, wife of Nelson Mandela. In June 1977 she was banished from her home in Soweto to "the Brandfort Bantu residential area" in the Orange Free State, where she is given an allowance of R100 per month and a house without electricity, running water or sewage. Her 16-year-old daughter, who went with her, told reporters that "the security police visit us three or four times a day". Mrs. Mandela was active on the Black Parents' Committee in Soweto during the disturbances in 1976. 93/

106. Dr. Mamphela Ramphele, medical superintendent of Zanempilo Clinic near Kingwilliamstown, was banned and then banished to an area in the Northern Transvaal in May 1977. Dr. Ramphele was an Eastern Cape executive member of the Black Community Programme and one of the doctors who did a post mortem on Mr. Mapetla Mohapi, who died in police detention in 1976. 94/

87/ Ibid.; Rand Daily Mail, 10 May 1977.

88/ Guardian, 1 February 1977.

89/ Rand Daily Mail, 23 July 1977.

90/ Particulars published in terms of section 10 ter of the Internal Security Act, 1950 (Act 44 of 1950), Government Gazette, No. 1518, 5 August 1977.

91/ House of Assembly Debates, 1 February 1977.

92/ Sunday Times (Johannesburg), 6 March 1977.

93/ Guardian, 5 July 1977.

94/ Rand Daily Mail, 2 May, 4 May, 12 May 1977.

107. In June 1977, Father Smangaliso Mkatshwa, secretary of the Catholic Bishops' Conference, was served with a five-year banning order in Pretoria. He is under house arrest for 12 hours per day, confined to the magisterial district, and banned from receiving visitors. 95/

108. In June 1977 a Johannesburg magistrate found that Miss Sheila Weinberg had contravened her banning order by having lunch with a single other person. She received a nine-month suspended sentence. Until recently a "gathering" under the Act had been assumed to mean three or more persons. This ruling, against which Miss Weinberg is appealing, will affect all banned persons and isolate them even further. 96/

109. A Northern Sotho chief from the Northern Transvaal, Chief Laynas Mashile, is still in banishment at Lady Frere in the Transkei (see para. 224 below) after 15 years. He was banished from his home in Bushbuckridge, Transvaal, for his opposition to the imposition of "Bantu Authorities", which transferred powers from the chiefs to paid officials of the Bantu Affairs Department. He has turned down the Government's present terms for releasing him from banishment - his renunciation of the chieftainship and moving to the Bantu "homeland" of Lebowa. 97/

(e) Cases brought against agents of the security forces

110. The following cases involved members of the police:

(a) Three men, Mr. Naidoo, Mr. Titus Mahlangu and Mr. Soni Philomen Mahlangu, sued the Minister of Justice and were awarded a total of R1,600 damages when they alleged that they had been assaulted and electrically shocked by four detectives attached to the Housebreaking Section of the Pretoria Central Police in January 1976. Mr. Titus Mahlangu had a firearm pressed against his head, and he and Mr. Soni Mahlangu were both threatened with violence if they did not "confess". 98/ Mr. Soni Mahlangu was subsequently fired from his job in the Department of Bantu Administration by his boss, a Mr. Pretorious, for being "clever" in suing the Minister. 99/

(b) Three policemen, Johannes Loring, Lourens van der Merwe and Johan Martin Enslin, appeared in court in Johannesburg in March charged on 17 counts of assaulting Africans, pointing firearms at them and damaging their property. The policemen allegedly asked for the passes of three Africans, received them, then hit each man in the face. They also tore up the permit from the employer of one of the men and demanded money to let him go. Other incidents involved threatening to shoot a man, thrusting his head in the boot of a car and hitting him, kicking another man, dragging another along the ground, burning another in the face with hot wax and firing a gun at another. 100/

95/ The World, 6 June 1977.

96/ Sunday Express (Johannesburg), 19 June 1977.

97/ Weekend World, 13 March 1977.

98/ Rand Daily Mail, 28 August 1976.

99/ Rand Daily Mail, 15 February 1977.

100/ Rand Daily Mail, 19 January, 15 March 1977.

(c) Two policemen, Johannes van der Merwe and Johannes Pienaar, were fined in March for injuring three men whom they had pulled out of a car; two of the men were kicked unconscious and the third, a one-armed man, had fractured ribs and a collapsed lung. 101/

111. More cases were expected to arise from police repression of the demonstrations in Soweto and elsewhere but for the retrospective working of the Indemnity Act (see para. 44 above). 102/

101/ Rand Daily Mail, 9 March 1977.

102/ Sunday Times, 21 November 1976.

D. Deaths of detainees

112. As regards the death of political prisoners while being held in detention, the Ad Hoc Working Group of Experts has regularly reported on this matter. In its last report, the Group recorded details of the post mortem following the death of Mr. Joseph Malub some 24 hours after his arrest in March 1976, and noted that five further political detainees had died in detention in the following six months, including the former SASO leader, Mr. Mapetla Mohapi (E/CN.4/1222, paras. 42-43).

113. According to information before the Group, the South African authorities have maintained an attitude of callous indifference to the deaths. In March 1977, General van den Bergh, Chief of the Bureau of State Security (Boss), said on South African television that he was "of the opinion that no police action had anything whatever to do with a detainee's decision to commit suicide." And after the death of Mr. Stephen Biko (see paras. 120-125 below) in September 1977, Mr. Kruger, Minister of Justice and Police, told a political meeting: "Biko's death leaves me cold" and went on to talk about "the democratic right to starve to death". 103/

114. Comprehensive figures for deaths in detention since the mass arrests that have been taking place ever since June 1976 have not been officially published. Several witnesses before the Group stressed the difficulty in arriving at any estimate of the numbers involved, in view of the fact that under the Internal Security Act, 1950 (cf. E/CN.4/1222, para. 70) the Government is obliged to announce neither the fact of detention nor the names of those detained. It was therefore almost impossible to ascertain whether a person who had "disappeared" was in hiding, had escaped the country, was in detention, or had been killed either during the public disturbances or while in the hands of the police.

115. The Minister of Police told the House of Assembly on 23 March 1977 that 11 persons detained under security laws had died in detention since January 1976, 7 from suicide and 4 from natural causes. 104/ However, the Group has had before it detailed evidence of 24 cases in which persons detained under the security laws have died, apparently while under interrogation by the security police, or as a result of such interrogation, between June 1976 and September 1977 (see para. 119 below).

116. According to information before the Group, the South African Minister of Justice has consistently refused a Judicial Commission into the question of suicide among political detainees. At a press conference held in February 1977 he specifically denied that there was inadequate supervision of detainees to prevent them from committing suicide, and stated that there were various reasons for the suicides, some of them psychological, but that in other cases the detainees were "following the instructions of the Communist Party". 105/ He

103/ Star, 12 March 1977, International Herald Tribune, 15 September 1977, Le Monde, 17 September 1977, Observer, 18 September 1977.

104/ House of Assembly Debates, 23 March 1977; The World, 24 February 1977.

105/ Rand Daily Mail, 22 February and 24 February 1977.

was unable to explain why, in the words of the Rand Daily Mail, "Blacks carry out the claimed Communist Party death orders whereas Whites have not". 106/

117. In March 1977 the head of the Bureau of State Security, General Henrick van den Bergh, specifically exonerated the police from blame for the deaths of detainees in custody. 107/

118. The Group has been informed of the death in detention of the following 22 political prisoners between 1963 and 1971: 108/

Bellington Mape	September 1963
Looksmart Ngudle	September 1963
James Tyitya	January 1964
Suliman Saloojee	September 1964
Negeni Gaga	May 1965
Pongolosha Hoyo	May 1965
James Hamakwayo	1966
Hangula Shonyeka	October 1966
Leong Yun Pin	November 1966
Ah Yan	November 1966
Alpheus Madiba	September 1967
J.B. Tubakwe	September 1968
Unidentified male	Date not known; death disclosed in January 1969
Nichodemus Kgoathe	February 1969
Solomon Modipane	February 1969
James Lenkoe	March 1969
Caleb Mayekiso	June 1969
Michael Shivute	June 1969
Jacob Monakgotla	September 1969
Imam Abdullah Haron	September 1969
Mthayeni Cuthsela	January 1971
Ahmed Timol	October 1971

119. Official figures given by the Minister of Justice admitted to six deaths in detention during 1976, five of them allegedly by "suicide"; 109/ and a further six in the first two months of 1977. 110/

106/ Rand Daily Mail, 26 February 1977.

107/ Guardian, 8 March 1977.

108/ "Torture in South Africa", Christian Institute of Southern Africa, op. cit.; Repression, Torture and Death in South Africa, publication of the African National Congress, 1977.

109/ House of Assembly Debates, 22 February 1977.

110/ House of Assembly Debates, 22 March 1977.

120. According to information available to the Working Group, however, 13 political prisoners died in detention during 1976 alone; and between the death of Mr. Joseph Mdluli in March 1976 and the end of September 1977, a total of 24 detainees have died, some of whom were detained under security legislation and others under other legislation on charges arising out of the 1976 uprisings. In most cases, the official announcement has referred to "suicide" (by hanging or by falling from a window), to death "by natural causes", or to being shot "while trying to escape". The cases that have been brought to the Group's attention are listed below.

Detainees under security legislation

- (1) Mapetla Mohapi, aged 25, former organizer for SASO and a leader of the Black People's Convention, died 5 August 1976 in detention in Kingwilliamstown. Police said he had hanged himself. The magistrate, after an inquest protracted through six months, declared that Mr. Mohapi had died of "suffocation" for which no "act of commission or omission by any living person" was responsible. 111/
- (2) Luke Mazwembe, 32, a member of the Western Province Workers' Advice Bureau, died on 2 September 1976 two hours after being detained in Cape Town. Police said he had hanged himself. A post mortem, performed at the request of his family, found that he had died by strangulation, and the inquest was postponed indefinitely. 112/
- (3) Dumisani Mbatha, 16, detained in Johannesburg on 23 September 1976, moved to Modder B prison, then to East Rand Hospital, and died two days later. The result of the post mortem was that he had died from "natural causes".
- (4) Ernest Mamasia, 35, arrested on 16 November 1976. His family was told on 18 November that he was dead. According to the police he had "hanged himself".
- (5) Wellington Tshazibane, 30, arrested on 9 December 1976 after an explosion at the Carlton Centre, Johannesburg. On 11 December his family was told that he had died by hanging. The inquest found subsequently that he had "committed suicide". 113/
- (6) George Botha, 30, a Coloured teacher, died on 15 December 1976, five days after being detained under the Sabotage Act. According to the police, he had "thrown himself down the stairs at the police station" at Port Elizabeth. In spite of evidence from a Government pathologist that the body had a number of wounds on it caused before his death, the court found at the inquest that nobody was to blame. 114/

111/ Rand Daily Mail, 9 July 1977.

112/ Cape Times, 28 January 1977.

113/ Focus, No. 11, July 1977.

114/ Rand Daily Mail, 6 and 12 May 1977.

(7) Dr. Nabaoth Ntshuntha, 43, arrested on 14 December 1976 under section 6 of the Terrorism Act, died on 8 January 1977. Police said he had hanged himself. In this, as in several other cases, an independent pathologist engaged by the detainee's family to perform a post mortem refused to do so on the grounds that major incisions had already been made on the body, so that accurate determination of the cause of death was no longer possible.

(8) Lawrence Ndzanga, 52, detained, together with his wife, Rita, on 18 November 1976 under the Terrorism Act. He was charged on 28 December and was said to have died of a "heart attack" while awaiting trial at Johannesburg Fort prison on 9 January 1977.

(9) Elmon Malele, 61, arrested on 7 January 1977, reported to have died in a nursing home of a "stroke" on 20 January. The post mortem was conducted before the family were able to arrange for an independent pathologist to be present. The inquest found in July that Mr. Malele had died of natural causes and that no one was to blame for his death. 115/

(10) Matthews Mabelane, 23, died on 15 February 1977, according to the police after having thrown himself from a tenth floor window of police headquarters at John Vorster Square, in an attempt to escape. Mr. Mabelane had been detained under section 6 of the Terrorism Act when returning to South Africa from Botswana, where he had fled in 1976. Matthews, who was the son of Rev Philip Mabelane, was at school in Soweto until his flight to Botswana. 116/ The inquest found that he had fallen "accidentally". 117/

(11) Samuel Malinga, 45, arrested in Johannesburg on 31 January 1977 and transferred to Pietermaritzburg. His wife was not informed of the move, but when she finally contacted the Pietermaritzburg police she was told he was in the intensive care unit of the local hospital. He died on 22 February of "pneumonia".

(12) Aaron Khoza, 45, detained under section 6 of the Terrorism Act in Krugersdorp on 9 December 1976. Transferred to Pietermaritzburg on 1 March 1977 and found dead, according to the police, in his cell on 29 March. At the inquest it was alleged that he had hanged himself using two shoelaces and a jacket, the cause of death being asphyxia, consistent with hanging. The magistrate found that Mr. Khoza had committed suicide and that nobody was to blame for his death. 118/ Mr. Khoza was a member of the Young African Religious Movement, which had been giving relief to families who had suffered death or distress as a result of police action following the 1976 uprisings. 119/

115/ Rand Daily Mail, 14 July 1977.

116/ Rand Daily Mail, 16 February 1977.

117/ Focus, No. 11, July 1977.

118/ Rand Daily Mail, 13 July 1977.

119/ Focus, No. 10, May 1977.

(13) Phakamile Mabija, 27, detained in connexion with the stoning of buses during a bus boycott in Kimberley that started on 26 June 1977. He was church warden of the Anglican parish church of St. James, Kimberley, and a full-time church youth worker. He died on 7 July, the day before he was to appear in court under the Riotous Assemblies Act, and is alleged to have fallen from the sixth-floor window at the Transvaal Road police station. Mr. Mabija's mother said at the inquest that a white detective had told him "Say goodbye to your family, you will not see them again". The Grahamstown Diocese Synod of the Anglican Church has called for a judicial inquiry into the circumstances of Mr. Mabija's death. 120/

(14) Elijah Loza, 59, Cape Town trade unionist of long standing, detained under the Terrorism Act on 27 May 1977 and held in Paarl. He was transferred to Tygerberg hospital on 8 July in a coma and died on 2 August, according to the police because he had had a stroke. His ex-wife and daughter claimed that he had been assaulted by police while in detention. When Mrs. Loza visited him in hospital she found him unconscious and "in bad shape". The inquest magistrate found that no one was to blame for his death. 121/

(15) Dr. Hoosen Mia Haffeejee, 27 died within four hours of his detention in Brighton Beach police cells, Durban, on 2 August 1977. Police claimed that he was found hanging in his cell by the leg of his trousers. He had been detained under the Criminal Procedure Act in connexion with an investigation under the Terrorism Act. The official post mortem found that his death was consistent with hanging, but an independent post mortem conducted in Pietermaritzburg after his funeral there found 25 abrasions on the body, as well as burn marks.

(16) Himathal Jamnadas, 30, died at Point prison on 13 August 1977. No further details are known.

(17) Bayempin Mzisi, 62, detained under the Terrorism Act, was allegedly found hanging in Brighton Beach prison cells, Durban, on 15 August 1977.

(18) Stephen Biko, 30, founding president of the South African Students' Organisation (SASO) and a key figure in the rise of "black consciousness", whom many South Africans hoped to see as leader of a free South Africa, died in detention in Pretoria on 12 September 1977, allegedly as a result of a "hunger strike" which had started seven days before. Mr. Biko had had four previous spells in detention and had been restricted by a government ban to his home in Kingwilliamstown, Cape, since 1973; according to the police he had been arrested there in connexion with the drafting and distribution of pamphlets which incited "arson and violence". Mr. Biko had been examined by a doctor on 7 September who "could not find anything wrong with him", but on 8 September he was transferred to a hospital, then back to a police station in Port Elizabeth on 11 September, after which he was sent on 12 September to Pretoria, where he was treated by a district surgeon and died the same night. 122/ Mr. Donald Woods,

120/ Focus, No. 12, September 1977; Rand Daily Mail, 3 August 1977; Cape Times, 18 July 1977.

121/ Focus, No. 12, September 1977.

122/ Guardian, 14 September 1977; International Herald Tribune, 14 September 1977.

editor of the Daily Dispatch and a friend of Mr. Biko, revealed afterwards that Biko had warned him before his detention that "if ever he was detained, and if he died in detention, and if one of four specific causes of death was alleged, I would know it to be untrue. The four were self-inflicted hanging, suffocation, bleeding or starvation".

Detainees and political prisoners held under other legislation

(19) William Tshwane, student, arrested with other Soweto students on 25 July 1976. His father was told of his death on 14 October, by which time the body had already been buried. The police said he had been shot while fleeing arrest and the inquest verdict was "justifiable homicide".

(20) Jacob Mashabane, 22, a student, detained during the disturbances in Soweto. Died "by hanging" on 5 October 1976. Inquest found that he had committed suicide and that no one could be held responsible for his death. 123/

(21) Fenuel Mogatusi, died on 28 September 1976 at the Johannesburg Fort prison, allegedly of "epilepsy". His sister denied he had any history of epilepsy.

(22) Edward Mzolo, died on 9 October 1976 in Johannesburg. No details.

(23) Thabo Mosala, died on 18 November 1976 at Butterworth, Transkei, after being held under proclamation 400. He was "found dead" - no further details. 124/

(24) Twalimfene Joyi, detained in Umtata, Transkei, under proclamation 400. No details on date or circumstances of death. 124/

The case of Stephen Biko

121. The death of Mr. Stephen Biko shocked the black community and gave rise to renewed demands for an official inquiry into the deaths of blacks in detention under the security laws. It evoked a profound reaction and outpouring of tributes throughout the world. 125/

122. It intensified domestic and international pressures on the South African Government. Many governments officially expressed regret at the death of Mr. Biko and underlined the abuse of human rights and the evil of racial discrimination in South Africa. 126/

123/ Observer, 18 September 1977.

124/ The two who died in the Transkei subsequent to 26 October 1976 were technically outside the jurisdiction of the South African Government.

125/ Jeune Afrique, No. 879, 11 November 1977.

126/ International Herald Tribune, 16 September 1977.

123. Mr. Biko's funeral, held in Kingwilliamstown on 25 September, was attended by 15,000 mourners. In an unprecedented gesture, 13 Western States sent senior diplomatic representatives to the funeral to pay respects to the fallen leader. On 13 September 1977 the Chairman of the Special Committee against Apartheid issued a statement expressing his shock at the death in detention of the "outstanding leader of the black consciousness movement" and charging the apartheid régime with "a crime against the oppressed people of South Africa and, indeed, against the United Nations". 127/

124. Demands for a full and impartial investigation into the circumstances surrounding Mr. Biko's death came from all parts of the world.

125. On 23 September, a meeting was organized at the United Nations Headquarters by the African Group of States to pay tribute to the memory of Mr. Biko. In a statement read at the meeting, the Secretary-General said:

"I wish to associate myself with the tributes to the late Mr. Stephen Biko and to express my deep shock at his death in detention.

"Mr. Biko was not even 30 years old when he died but he left a deep mark on the South African scene as a leader of the 'black consciousness movement' and by his vision of an egalitarian society in South Africa.

"He was not only respected by the black people of South Africa, especially the youth, but made a great impression on liberal-minded South Africans, as well as many people from other countries who had occasion to meet him.

"That is why there is today so much grief, and so much resentment, both in South Africa and abroad...

"I would hope that the grave concern expressed over the death of Stephen Biko will persuade the South African authorities to desist from their present course - in the interest of the future of all the people of South Africa." 128/

127/ "Steve Biko (1948-1977). Fighter against apartheid and apostle of black consciousness", United Nations Centre against Apartheid, Notes and Documents, Special Issue, October 1977.

128/ Ibid.

126. Furthermore, at its thirty-second session, the General Assembly, by its resolution 32/65 of 8 December 1977, having taken note of the report of the Ad Hoc Working Group of Experts on deaths of detainees and brutality in South Africa since the Soweto massacre of 15 June 1975 (A/32/226), strongly condemned in particular the arbitrary arrest, detention and torture which led to the murder of Stephen Biko by agents of the racist minority régime of South Africa. By the same resolution, the General Assembly demanded that the minority apartheid régime of South Africa: (a) release all political prisoners without pre-conditions, (b) lift all banning and house arrest orders imposed on opponents of apartheid and (c) put an immediate end to the indiscriminate use of violence against peaceful demonstrators against apartheid and to the persistent recourse to torture of political detainees. The General Assembly further expressed its conviction that the martyrdom of Stephen Biko and all other nationalists murdered in South African prisons and the ideals for which they fought will continue to enrich the faith of the peoples of southern Africa and other parts of the world in their struggle against apartheid and for racial equality and the dignity of the human person.

127. The Group has no reason to believe that this list of deaths in detention is exhaustive for the period under review. As Mr. Martin Ennals (459th meeting) pointed out in his testimony before the Group, "there have been reports of disappearances and it is in Amnesty's experience a grave situation when people start to disappear".

E. Forced removals of population

128. According to information before the Ad Hoc Working Group of Experts, the mass removals of African population from "black spots" and urban areas into the so-called "homelands" have continued throughout the period under review. The Minister of Bantu Administration and Development gave the figure of 258,632 as the total number of persons removed from "black spots" since 1948 up to 31 December 1976. 129/ This figure indicates a total of nearly 68,000 persons removed in the past two years, since the figure given in 1975 was 190,794 (see E/CN.4/1187, para. 26). The Minister also told Parliament that a total of 7,337 Africans had been removed to "homelands" from the five main urban centres of Witwatersrand, Cape Peninsula, Pretoria, Durban and Bloemfontein during 1976 (these were mainly persons "endorsed out" under influx control regulations. 130/

129. The Group recalls that official figures do not reflect by any means the total number of persons removed, which the South African Institute of Race Relations estimated in 1972 as some 1,820,000 between 1960 and 1970 alone (see E/CN.4/1159, para.103) and which one witness before the Group has thought to be near a total of 3 million by 1976 (E/CN.4/1222, para.57).

130. The Group also notes that in recent years removals have involved not only Africans moved from "black spots" in areas scheduled as white, but also from one "homeland" area to another. In the period under review the Minister told Parliament that 5,400 families, comprising 37,900 persons, who had opted not to accept Transkei citizenship on "independence", had been moved from the Transkei to two resettlement areas in the Ciskei at Pavet-Bushby Park and Thornhill. 131/

1. Conditions in resettlement areas

131. Previous reports have carried accounts of conditions in the resettlement areas in various "homelands" where housing, water supplies, work, toilet facilities, food supplies and social amenities have been unsatisfactory or non-existent (see, for instance, E/CN.4/1222, para.59), leading to malnutrition, sickness and death among the "removed" populations. During the past year, according to information before the Group, a health crisis had arisen in the resettlement area of Thornhill in the Ciskei, where 30,000 people, mainly from the Transkei (see para.42 above) have been resettled. According to one press report, about five African children were dying there each day in January 1977. 132/ In February 1977 Dr. Barbara Seidel, the only medical practitioner in the area, told a press reporter that when she came to Thornhill on 3 January 1977 she had counted 109 freshly dug graves, and that since then she knew of 51 deaths, 30 of the dead being children. She added that this figure did not include the dead who

129/ House of Assembly Debates, 9 March 1977.

130/ House of Assembly Debates, 15 February 1977.

131/ House of Assembly Debates, 11 March 1977; see also para.205 below.

132/ The Times, 11 January 1977.

have been "simply wrapped in a blanket and buried in a hole in the ground". ^{133/} The doctor complained that food and medical supplies promised by the Ciskei Government in January had still not been delivered in April 1977 and foretold that in the coming winter "cold and hunger will drive the inhabitants of the area to desperation". ^{134/} She was forced to resign her post in March 1977 and told that she would be allowed to practise in South Africa in future only if she treated white patients only. ^{135/} Chief Lennox Bebe, Chief Minister of the Ciskei, blamed the Department of Bantu Administration for the conditions at Thornhill. He said that the Department had not fulfilled its undertaking to provide proper facilities for the people leaving the Transkei. ^{136/}

2. Removals of urban squatters

132. In its previous report (E/CN.4/1222, para.62) the Group made reference to the Prevention of Illegal Squatting Act of 1976, which compels landowners to inform the local authority of any squatter structure on their land. An Amendment Act passed in May 1977 did away with a requirement that a landowner should give notice of his intention to demolish any structure on his land.

133. A witness, Mr. Eric Abraham (458th meeting), handed in a copy of the Southern African News Agency bulletin entitled "Focus on squatters", ^{137/} claiming that the issue of squatters has "suddenly become very topical and urgent" in the South African press and in Parliament and the City and Divisional Councils. The bulletin pointed out that for years there have been hundreds of thousands of squatters in and around the main urban areas (about 250,000 in the Cape Peninsula alone), and concluded that the reason that the issue had come to public attention was that "for about twelve months now the squatters in the Peninsula have been organizing". The bulletin described the squatters' situation as having been

"created by the apartheid system ... They have been arrested, beaten, imprisoned, endorsed out, have died of malnutrition and disease, seen members of their families die, seen their homes and possessions bulldozed and burnt. Yet they stay on. Why? Because they are people who prefer to illegally seek work and live in the squatter camps of an urban area with some hope of survival rather than to die legally of starvation in a government reserve. They are also people who though they may be legally in the urban areas as 'work units' refuse to live in the government single hostels and strive to create a family life in the camps."

^{133/} Cape Times, 22 February 1977.

^{134/} Rand Daily Mail, 4 April 1977.

^{135/} Rand Daily Mail, 20 April 1977.

^{136/} Rand Daily Mail, 11 January 1977.

^{137/} Southern African News Agency (SANA) bulletin, April 1977.

134. According to information before the Group, squatters' homes have been systematically demolished outside Johannesburg and Cape Town during the period under review. In November 1976 bulldozers moved into the "shanty town" of Kliptown on the West Rand and destroyed 30 homes and possessions; protesters were threatened with arrest. ^{138/} In July and August 1977 mass demolition took place in the Cape Peninsula in squatter camps at Table View (38 shanties destroyed, 90-100 people homeless); Modderdam Road, near the University of the Western Cape (housing between 11,000 and 20,000 Africans), ^{139/} Werkgenot and Unibel (involving another 6,000 to 7,000 persons). ^{140/} Although squatter representatives in the Modderdam Road Committee had requested the authorities not to deport the families of African workers to the "homelands" but to preserve the community by offering alternative accommodation, ^{141/} the move has been seen as "part of a stricter interpretation of Government policy on African people in the economy" and of other general restrictions on employment of migrant workers. The Divisional Inspector of Labour in the Western Cape, Mr. G. D. van den Berg, said he had impressed government policy on employers because of the steep rise in unemployment in the region which was a "white and Coloured preferential area". ^{142/}

135. Information before the Group suggests that the issue of deported squatters from Cape Town has already been a cause of tension with the new "government" of the Transkei. Some 70 per cent of the squatters in the Cape are Xhosa, already deprived of their South African citizenship by the Status of Transkei Act (see para.193 below) and defined as Transkei citizens. However, the "Prime Minister", Chief Kaizer Matanzima, has frequently reiterated his stand that "we cannot allow these people to settle in the Transkei unless we are given land for them". No land has been offered, and the "Foreign Minister", Mr. Digby Koyana, flew to Cape Town in August to complain that "the Transkei will not be used as a dumping ground". ^{143/}

136. However, other information suggests that most of the squatters have not accepted the offered travel passes to a "homeland" and have instead "disappeared" into surrounding urban areas to swell the already overcrowded conditions in black urban housing or to squat elsewhere. ^{144/}

^{138/} The World, 14 November 1976.

^{139/} Rand Daily Mail, 10 August 1977; The Times, 13 August 1977.

^{140/} The Times, 13 August 1977; Guardian, 20 August 1977.

^{141/} Cape Times, 7 July 1977.

^{142/} Cape Times, 25 July 1977.

^{143/} Rand Daily Mail, 12 August 1977.

^{144/} The Times, 13 August 1977.

3. Removals of rural Africans

137. According to information before the Group, removals of rural Africans in accordance with land consolidation of the various "Bantu homelands" have continued during the period under review. In government trucks escorted by police, residents of Zone Six, Ga-rankuwa, were forcibly removed in November 1976 from their homes to make way for buildings for the new medical university. Non-Tswanas were resettled outside the "homeland", and Tswanas given empty houses in other Zones. They told the press that they had been moved against their will. 145/

138. In September 1976, a tribe of 45,000 Bakolobeng people were forcibly moved from Rooirantjiesfontein in the Western Transvaal, from land which it had occupied for 100 years, to land at Deelpan, 74 kilometres away, which the chief described as "a swampy, uninhabitable wasteland". Their homes were bulldozed, their goods bundled on trucks, and the people were left with their belongings in an area flooded by rain, with only shacks for shelter. 146/ They complained of inadequate compensation for lost land and buildings. The tribe had fought for 40 years to remain in their village, but were eventually forced to move after a final removal order was signed by the State President in July 1977. 147/ After an angry meeting of protest, 148/ the people were told by the local Bantu Affairs Commissioner that "even if they waited until horses grew horns, they would still have to go". 149/ When the move ultimately took place, the shacks provided proved so small and uncomfortable that many people and their belongings spent their nights in the veld. 150/

145/ The World, 12 November 1976.

146/ Star, 18 September 1976; Rand Daily Mail, 4 October 1976; The World, 12 September 1976.

147/ Rand Daily Mail, 9 July 1977.

148/ Rand Daily Mail, 10 July 1977.

149/ Rand Daily Mail, 9 September 1977.

150/ The World, 17 September 1977.

F. Situation of black workers

1. In the agricultural sector

139. The farm labour system has been described in detail in the two previous reports of the Ad Hoc Working Group of Experts (E/CN.4/1187, paras. 130-172, and E/CN.4/1222, paras. 184-213). In these reports it has been shown not only that agricultural workers are the largest single group of workers in South Africa and at the same time the most poorly paid, but that the Republic's discriminatory land policy, combined with the pass laws which control African entry into the urban areas, force African workers to seek work in the most undesirable sectors, i.e. in the mines and on the farms (E/CN.4/1222, paras. 184, 188).

140. Figures for employment in agriculture were provided in the Group's previous report (E/CN.4/1222, para. 185) and no subsequent figures have been published. In the most significant study of farm labour to take place in recent years, participants identified several trends in agricultural employment: (i) the gradual decline of the labour force as a whole; (ii) increasing use of migrant as distinct from regular settled labour on farms; (iii) a parallel exodus of African workers from agriculture to the towns and, as this is stemmed by influx control, to the homelands; (iv) a tendency towards underemployment and unemployment in agriculture, suggesting that by 1980 there will be a surplus to the extent that 22-26 per cent of the black labour force will be underemployed or unemployed. 151/

141. The methods of recruitment of black agricultural workers were described in the two previous reports of the Group (E/CN.4/1187, paras. 134-144; E/CN.4/1222, paras. 186-191), including the establishment of "aid centres" in recent years to deal with pass offenders and "help find employment" for them as an alternative to imprisonment. Witnesses before the Group in 1976 suggested that these centres would be used to channel "redundant" labour from the cities to the farms (E/CN.4/1222, paras. 190 and 211).

142. During the period under review information has been made available to the Group that prosecutions under the pass laws dropped between 1970 and 1975 from 621,400 to 360,900 per year, a development largely attributed to the establishment of the aid centres. 152/ During the period 1973-1975, 437,645 Africans were referred to aid centres and 336,475 of these were "kept out of jail" according to figures released by the Department of Bantu Administration - that is, they had charges against them withdrawn, were sent to one of the

151/ Papers presented by Natrass, Knight and others to a conference on farm labour organized in Cape Town in September 1976 by the Southern Africa Labour and Development Research Unit, published in summary in Social Dynamics (a journal of the Faculty of Social Science, University of Cape Town), vol. 2, No. 2, 1976, pp.97-102.

152/ Rand Daily Mail, 29 January 1977.

"homelands", or were found suitable employment. ^{153/} No breakdown of these figures to show how many were found employment was available, but in June 1977 the Minister of Bantu Administration and Development said that of 228,248 Africans referred to aid centres in 1976, 38,544 were returned to "homelands", 20,871 were helped to find employment in the area concerned, and 91,631 were "not prosecuted". In addition 46,927 Africans reported voluntarily to aid centres, of whom 8,172 were sent to "homelands". ^{154/}

143. In a previous report of the Group (E/CN.4/1187, paras. 135 and 145) reference was made to the Masters and Servants Laws passed in the nineteenth century to keep farm workers under the strict control of their employers. Though these were repealed in 1974, evidence before the Group shows that many African workers still remain virtually "captive" on their farms. According to the Financial Mail, "for all the difference it [the repeal of the Masters and Servants Laws] has made, it might just as well never have happened". ^{155/} The paper quotes a study ^{156/} done in the Citrusdal valley in the Cape among Coloured, and some African, farm workers. These workers and their families are described as "almost totally dependent" on their white employer, the foundation of their dependence being the fact that "they only have a place on the farms in return for their labour". Some of the mechanisms to ensure that they have no escape are:

- (i) Debt. Workers buy at farm shops, where credit is freely available, but their earnings are "so low that they cannot earn enough to repay them". Some farmers told the researcher that they "intentionally let a worker get into debt in order to tie him to their employment";
- (ii) Payments in kind. Accommodation, water, firewood and rations paid as wages in kind give the farmers "control over parts of their workers' lives", and the ceremony of giving "brings together workers and farmers in the relation of supplicant and provider", and obscures the conflict of interest between employer and employee;
- (iii) Women. Since the breadwinner's pay is so low, women are forced to accept casual work, but without the farmer's permission they may not seek it on any farm but his own.
- (iv) Children. Children are expected to do whatever work they are given in return for a plate of food, sweets or old clothes. They go to school until the age of 13 or 14, after which they are expected to work, though they are too young to get employment elsewhere;

^{153/} Ibid.

^{154/} Rand Daily Mail, 3 June 1977.

^{155/} Financial Mail, 1 October 1976.

^{156/} Paper by Jan Theron of the South African Institute of Race Relations, for the Southern Africa Labour and Development Research Unit's farm labour conference, Cape Town, September 1976.

- (v) Education. Farmers do not encourage this nor do they offer skilled training or skilled work to any who may acquire skills;
- (vi) Lack of alternatives. The pass system - one worker who wanted to move told the researcher that the farmer would not endorse his pass - and lack of urban accommodation for families make it difficult for a farm worker to move.

Additional factors keeping wages down and workers submissive are the use of paroled men from the local gaol as labourers (see para. 134 below) and the continuation of the "dop" system whereby farm workers are given rations of strong wine daily. Even youths in their early teens are given the "dop".

144. Further confirmation of the difficulty farm labourers encounter when they wish to leave the land was given in a press interview with the chief directors of the Bantu Administration Boards in the Orange Free State, one of the key farming areas in South Africa, in January. The report concluded: "There is virtually only one way for an African farm labourer to leave the employ of a platteland farmer, if he lives on the land with his family - by migrating to the homelands with his family". The directors confirmed that a worker who was head of a family on a farm would not be allowed to become a contract worker in a mine and leave his family behind on the farm. The family would then be squatters and it was unfair to ask the farmer to look after them. Many labourers had migrated from the platteland to the Basotho homeland of Qwaqwa, where they could leave their families and return as contract labourers because "they want to avoid working on farms". 157/ The director of the South African Agricultural Union confirmed that there was an agreement between the Union and the mining industry that the mines would not recruit platteland Africans registered as agricultural workers. Before a labourer could become eligible for the mines he would have to be signed off by his employer. 158/

145. On the other hand, evidence before the Group shows that labourers may be expelled from farms in a summary way which takes no account of length of service or - since the abolition of the labour tenant system (see E/CN.4/1187, para. 139) - of rights of tenure. In another paper available to the Group the writer describes the eviction of tenant farm workers from Natal farms since 1970:

"Africans who had been tenant workers, growing crops, grazing cattle and goats, working for half the year, sometimes for a bag of mealie meal or R2-R3 a month, now lost the right to plough and keep stock and received instead a monthly wage of R6 to R12. They were warned that they would not be allowed to seek alternative employment.

"...

157/ Rand Daily Mail, 18 January 1977.

158/ Rand Daily Mail, 22 January 1977.

"... farmers were evicting workers without notice, often by levelling their homes with tractors or burning them down. (BAAB [Bantu Affairs Administration Board] officials, who theoretically had been instructed not to act against evicted tenants until alternative accommodation had been found, were sometimes on hand to see huts demolished by farmers before the tenants had been settled elsewhere.) Once the labourer had been evicted he would be expected to pay stock rent - from R1 to R3 per head per month - for the stock left behind. ... Muil found the use of child labour, widespread beating of workers and evictions which followed political ... meetings.

"He provided case histories of men who, having lived on that land for generations, were served with eviction orders and had nowhere else to go. The few remaining Black Spots were crowded and dwindling, the men had no industrial or commercial skills to sell as migrants (and anyway would not have been able to house their families)."159/

146. An example of such eviction in the period under review was described in a South African newspaper in March 1977. A hundred Africans had been living for four weeks in makeshift homes in the veld after being evicted from a Natal farm by its new owner, a Mr. Joseph Agliotti. Six children were seriously ill after exposure to cold and rain, one of them in a coma. After he had bought the farm Mr. Agliotti, accompanied by two white policemen, two African policemen and an interpreter, as well as the district dipping inspector, had made every labourer kneel in front of him while he "opened their eyes with his fingers". He told the people not to plough, he would bring them a tractor. No tractor came, the people planted rather than miss the growing season, but when the crops were growing he served them all with notices to quit. They received no rations while they were there. Then Mr. Agliotti threatened to kill them if they did not leave. He brought a gun, fired shots into the air and killed four dogs with it. 160/

147. A complaint was published in another newspaper in January, from a doctor, unnamed, who said that he was "tired and disgusted with Vaal Triangle residents who dismissed their black workers the moment it was learned that they were sick". He said he had a number of cases on his files of African employees sacked as soon as their employers were told that they were sick and could do only light work. One of his patients, a farm worker named Paulus Chawe, said that he was a farmhand and when he gave his employer the doctor's letter to say that he was being treated for a serious heart condition he was told to leave the farm, where he had worked for two years. He was told that if he did not leave the farm the boss would call the police. 161/

159/ Tim Muil, in Social Dynamics, vol. 2, No. 2, 1976, p. 109.

160/ Sunday Times (Johannesburg), 20 March 1977.

161/ Rand Daily Mail, 19 January 1977.

(a) Wages and working conditions

148. According to information available to the Group, South African agricultural wages are now actually lower than those paid in many other African countries. In a study published by the Centre against Apartheid, the authors conclude that "despite the fact that South Africa's agriculture and the South African economy as a whole are more industrialized than most African countries, wages for African agricultural labourers have not been allowed to compete with urban African wages, and have been kept artificially low. This is in contrast to the situation in many African countries since independence where rural wages have been forced up by the rapid wage increases of urban workers". Wage differentials between urban and agricultural workers in the United Republic of Tanzania (1.65:1) are contrasted with those in South Africa (3.76:1) to show that "African agricultural labourers in South Africa get perhaps half of what they might receive if they did not live in an apartheid society". 162/

149. Working hours recorded by the same studies were as long as 11 1/4 hours per day in midsummer in the Cathcart district, and an average of 62 hours a week in Dealesville. Housing also varied, from (some) farmer-built brick houses with toilets, running water and electricity in Bonnievale, Cape, to worker-built shacks with dung floors and no toilet facilities in Dealesville.

150. Educational facilities on farms were found in the study to be almost entirely confined to the first years of primary school. The schools, built on farmers' land, are established entirely at the farmers' discretion, though with a State grant for the buildings. They are managed by farmers' nominees, and the Bantu Education Department is responsible for syllabus and teachers. Drop-out rates are very high: of 105,773 who entered the first year in 1971, 63,226 or nearly 60 per cent had dropped out by 1974. Only 8.6 per cent of all African children in farm schools in 1974 were in Standard 4 (fourth year primary) or higher grades. Fewer than one in 20 children complete their primary education at farm schools. In 1972 only 30 per cent of African children aged 5-14 living in white rural areas were enrolled in farm schools. Under 49 per cent of Coloured children of the same age in white rural areas were enrolled in farm schools in 1975. 163/ Children often had to walk long distances to get to school (some 11.2 km per day), schools were overcrowded, had high pupil-teacher ratios and lacked elementary facilities. 164/

151. Researchers commented on efforts by farmers to improve conditions in order to keep Coloured workers, who are not constrained by influx control to remain on farms. But according to one study, carried out in the Elgin District, "there is

162/ Diana Ellis and Julian R. Friedman, "The depressed state of the African population under apartheid in the Republic of South Africa: A comparative analysis", (United Nations Centre against Apartheid, December 1976) Notes and Documents, No. 24/76, pp.14-15.

163/ Timothy Plaut, in Social Dynamics, vol. 2, No. 2, 1976, p. 139.

164/ Ibid., p. 140.

as yet no pressure to improve the condition of African migrants", who expressed "strong resentment against the migrant system and also expressed dislike of working on farms. They were vocally hostile to the long hours, poor wages and conditions and almost unanimously stated that they would prefer to work in town ... The chief resentment against the contract system is that it prevents them from seeking or returning to work in town, and many had previously worked in town." 165/ Comparative wages in an area of the eastern Transvaal for farm workers and miners were 75c per day on a farm and R1.55 per shift at the nearby Phalaborwa mine. 166/

(b) Convict labour

152. The Minister of Prisons told Parliament in June 1977 that 4,233,800 "units of prisoners" had been hired out to private people, including farmers, between July 1975 and June 1976. He confirmed that, as in the past, payment was made by employers (between 24c and R1.90 per day per prisoner); none of this money was paid to the prisoners themselves. 167/

(c) Child labour

153. An investigation by a South African newspaper into "abuses in the child labour system" revealed the presence of young boys as potato pickers in the eastern Transvaal. The boys were recruited mainly in the Transkei and were paid R1 a day. One labourer complained: "I am thinking of running away from this farm. I am not happy at all. The treatment is terrible. We start work at 4.00 a.m. and stop at 6.00 p.m." 168/

(d) Assaults on farm labourers

154. Five women fled from a north-eastern Transvaal farm after allegedly being beaten by two "boss-boys" with sjamboks. They showed weals on their bodies and claimed that the men had failed to hand over the R10 a month they were supposed to be paid as labourers. They said they had been brought to the farm under contract by a white man to dig potatoes. 169/

165/ A.J. Petersen in ibid., p. 122.

166/ Roger Godet, in ibid., p. 119.

167/ Rand Daily Mail, 9 June 1977.

168/ The World, 24 April 1977.

169/ The World, 17 April 1977.

2. In the urban (industrial and other) sector

(a) Wages and working conditions

155. Previous reports of the Group have shown that, although black wages in South Africa have risen considerably since 1973 and the ratio of white over black wages diminished in many industries, the gap between white and black earnings expressed in cash terms continues to widen (cf. E/CN.4/1222, paras. 106-113). Information before the Group indicates that this trend has continued through the period under review.

156. The Thirteenth Special Report of the International Labour Organisation concludes that the gap is widening even in those sectors of the economy where African wage rises have been highest, and offers the following figures as evidence:

"... in mining, while the ratio of White to African earnings dropped from 100:5.5 to 100:11.9 between 1972 and 1975, the gap increased from R4,524 to R6,522 per annum. Similarly, over the same period, in manufacturing, while the ratio of 100:16.8 changed to 100:20.8, the gap rose from R3,564 to R4,848 per annum. In construction and in the retail trade the same type of movement took place. In the former the ratio improved from 100:16.1 to 100:20.4, but the gap deteriorated from R3,744 to R4,860 per annum; in the latter, the slight improvement in the ratio from 100:29 to 100:30.6 saw a widening of the gap from R1,440 to R1,932.

"Increases in wages within the building industry granted in May 1976 meant that the minimum wage for White journeymen rose from R2.07 to R2.21 per hour while the minimum for Africans rose from R0.53 to R0.56. Not only were the rates of increase different (6.76 per cent for Whites and 5.8 per cent for Blacks) but the hourly wage gap rose from R1.54 to R1.65.

"Even where percentage increases granted to Africans were larger than those accorded to other groups - as in the insurance and building-society divisions in the financial and commercial sector - the gap during the year widened significantly. Thus, for building societies, an increase of 8.7 per cent for Whites and of 11.1 per cent for Africans still resulted in the gap growing from R2,640 to R3,384 per annum; while even an increase of more than double for Blacks - 21.6 per cent as against 10.6 per cent for Whites - by insurance companies meant that the average annual gap in wages rose from R4,224 to R4,476. In banks, where Whites received twice as large an increase as Africans (14.2 per cent compared to 7.1 per cent) the difference rose from R3,324 to R4,068. The over-all gap in average household incomes in fact widened between 1970 and 1975 from R4,344 to R6,552 per annum, with the average White household disposing of 8.5 times that of the average African household (and 2.9 times that of the Coloured and 1.9 times that of the Asian family).^{170/}

^{170/} International Labour Office, Thirteenth Special Report of the Director-General on the Application of the Declaration concerning the Policy of Apartheid of the Republic of South Africa (Geneva, ILO, 1977), pp. 17-18.

157. An analysis in the South African press 171/ of a wages study published by the South African Institute of Race Relations in the period under review shows that blacks "still ear., on average, only 22 per cent of what whites in South Africa are paid". The narrowest income gap is in insurance, banking and the retail trades, where blacks get up to 31 per cent of the income of whites and the largest in mining, where whites earn R707 per month and blacks R82 on average - blacks constituting 90 per cent of the work force. This gap persists in spite of a 20 per cent increase in black miners' wages in 1976. The worst paid sector of those studied was the hotel industry, where 63 per cent of the work force are African: the average wage was R54 per month and the percentage increase over the past 12 months was 6 per cent for Africans and 8 per cent for whites. "The earnings statistics also show that the Government boast of closing the wage gap between Black and White is largely a myth."

158. The South African Congress of Trade Unions, in its memorandum to the 1977 International Labour Conference, produced a table showing that the rate of exploitation of black and white miners together had increased by 61 per cent between 1972 and 1975. 172/

Index of the rate of exploitation of mine workers
on the gold mines (black and white)

	A	B	C	
	Working profits (R million)	Total wage bill (R million)	Rate of exploitation (C = A/B) *	
1972	521.3	274.2	1.80	100
1973	986.0	351.1	2.80	156
1974	1 578.2	456.6	3.45	192
1975	1 320.0	600.5	2.89	161
* Index: 1972 = 100.				

In June 1977 it was announced that there might be no wage rises for black mine workers in the current year. 173/

171/ The World, 16 February 1977

172/ South African Congress of Trade Unions, Economic Crisis in South Africa (London, 1977), p. 11.

173/ Financial Mail, 10 June 1977.

159. According to information before the Group, wage rises for black workers have in any case been largely negated by the current high rate of inflation in South Africa which, according to the economist Julian R. Friedman, whose study 174/ was handed in as evidence by Mr. Rao, Rapporteur of the Special Committee against Apartheid "in many cases actually contributed to a decline in the real income of Africans".

160. The same point is made in the ILO's Special Report 175/ which states that while the rate of inflation declined from the 13.9 per cent of the previous year to approximately 11.9 per cent in the annual period ending 30 June 1976,

"it will be noted that few of the wage increases ... were such as would result in an increase in real wages. There was evidence that, if anything, the cost of living for blacks rose at a slightly higher level than that for other groups. No official estimates exist in this regard but the 'Household Subsistence Level' established by the Institute for Planning Research at the University of Port Elizabeth showed that in Johannesburg the increase between October 1975 and October 1976 had been 12.5 per cent and stood at R134.67 per month for a hypothetical family of six persons. This is meant to represent the minimum necessary for subsistence and the 'minimum effective level' is said to be 50 per cent higher.

"The average earnings in various sectors showed that in 1975 a large number of Black employees earned well below both of these figures, as the following table indicates:

174/ Julian R. Friedman, "Basic facts on the Republic of South Africa and the policy of apartheid", United Nations Centre against Apartheid, Notes and Documents, No. 8/77, April 1977.

175/ International Labour Office, op. cit., p. 18.

<u>"Sector or industry"</u>	<u>Average earnings</u> <u>in 1975 a/</u> (rands per month)
Mining*/	74
Manufacturing	117
Construction	104
Retail trade	79
Banks	151
Building societies	120
Insurance	169
Wholesale trade	98
Central government services	111
Local authorities	94
Railways	96
Farms*/ b/	14

*/ Cash wages only; payments in kind not included.

a/ Calculations made on the basis of statistical releases, in A Survey of Race Relations in South Africa 1976, pp. 278-279, 304-306, 308, 310.

b/ Figures for 1973-1974 from the Department of Statistics, quoted in Economist Intelligence Unit, Quarterly Bulletin on Southern Africa, July 1976, p. 10."

161. A comparison in January 1977 between the Consumer Price Index (compiled by the Department of Statistics on the movement of costs in an average white household) and a survey of the monthly budget of a black family of five living in Soweto, conducted by the Johannesburg Chamber of Commerce, confirms that inflation is hitting blacks more heavily than whites. According to the Chamber of Commerce survey, the monthly Soweto budget rose from R122.27 in November 1975 to R137.276 in November 1976 - an increase of 12.6 per cent. The consumer price index rose by only 10.4 per cent over roughly the same period. The industrial editor of a Johannesburg newspaper commented: "Sharply rising costs of food, housing, light, transportation and education are the main items which pushed up the black family's spending". 176/

162. A further survey published by the Chamber of Commerce in June 1977 "put the Soweto 'breadline' for May at R152 per month, and calculated that it had risen by a staggering 10.3 per cent between last November and February - the highest rise in six years". The Financial Mail, commenting on the figure, points out that the most recent Department of Statistics figures show average wages of R54 in the hotel trade, ranging up to R141 in the manufacturing industry, and says: "If one accepts that business should be aiming at about R200 a month, there's a long way to go." 177/

176/ Rand Daily Mail, 28 January 1977.

177/ Financial Mail, undated, June 1977.

(b) Unemployment

163. Estimates of black unemployment - since no official statistics are kept in South Africa 178/ - diverge widely, but economic observers in the country and outside it confirm that it is rising, and likely to continue to do so well into 1978. 179/ Figures for white, Coloured and Indian workers indicate unemployment rates of 0.3 per cent, 0.4 per cent and 0.9 per cent respectively. 180/ However, it is estimated that the proportion for Africans may be as high as 20 per cent of the total economically active population, 181/ a figure arrived at by a study conducted at the University of Cape Town in August 1976. A further study, undertaken for the Federated Chamber of Industries, arrives at a total of 550,000 unemployed, "at least 10.9 per cent of Africans in urban areas". 182/ This figure was expected to increase by a minimum of 9,000 to 10,000 per month. The Minister of Finance told Parliament in February 1977 that urban and rural unemployment among blacks had increased by 100,000 between mid 1973 and mid 1976. 183/

164. The South African Congress of Trade Unions (SACTU) argues that the unemployment crisis should not be seen simply as a function of the present decline in the South African economy but that black unemployment is in fact a result of an economic growth policy that involves mechanization, and thus the destruction of jobs as well as their creation. Employment is in fact declining - from 705,000 African workers employed in 1975 to 703,500 in October 1976: in the construction industry alone, 10,200 jobs "were destroyed between 1975 and October 1976", and drops have occurred in the footwear, wood and cork, furniture, rubber products, machinery, motor and other industries. SACTU points out that even in the "boom years" 1960-1974, "black unemployment did not fall below 19 per cent of the total number of potentially economically active workers". 184/

165. Information before the Group indicates that the Government is dealing with the problem of black unemployment by simply "exporting" it to the bantustans. The Financial Mail 185/ noted four developments: the tightening up of implementation of the Environment Planning Act (see para. 151 below); the tightening up of the pass laws, as exemplified by the Bantu Laws Amendment Bill (see para. 49); the application of the pass laws to Transkeians on the ground of citizenship (see para. 193); and the campaign against squatters in the Cape - which it suggested amounted to a policy of "export the unemployed to some or other Bantustan". The paper quoted figures to show that though convictions under the pass laws had diminished in 1976 (see paras. 122-124 above), there

178/ Cf. International Labour Office, op. cit., p. 13.

179/ Ibid.,

180/ Ibid.,

181/ Ibid., and South African Congress of Trade Unions, op. cit., p. 4.

182/ International Labour Office, op. cit., p. 13.

183/ Ibid., p. 14; House of Assembly Debates, 7 February 1977.

184/ South African Congress of Trade Unions, op. cit., pp. 4-5.

185/ Financial Mail, 18 March 1977.

is evidence that prosecutions are increasing; it quoted the opinion of Black Sash president, Ms. Sheena Duncan, that pass laws "can be used for the political control of the whole black population and give the police force the ability to arrest people for pass law offences when there is no other charge which can possibly be brought against them". And SACTU, too, concludes that

"the apartheid régime controls black unemployment through the rigid enforcement of the pass laws. Unemployed African workers are deported from the industrial centres to the reserves. This strategy for control has taken on two new forms in the recent period:

increasing the penalties for contravention of the pass laws and taking action against squatters' movements;

forcing through a programme of 'independence' for the Bantustans to force workers to take up documents making them foreigners in South Africa." 186/

166. Various social consequences of high unemployment have been noted in the South African press. In May 1977 the Financial Mail recorded a growing number of abandoned babies in Durban and a growing demand for the services of foster mothers so that African women could go out to work. A Black Sash Advisory Office worker in Durban, who said that the office was being "inundated with black job seekers", added: "One of the biggest problems is getting the UIF [unemployment fund, see para. 149 below] benefits to which they are entitled. Too many employers are disregarding the law by ignoring their obligations, and officials seem to be using every device possible to avoid paying out from the fund." 187/

167. The SACTU document already referred to alleges that the burden of unemployment benefits, like unemployment itself, is currently being shifted by the South African Government to the bantustans. It points out that all Transkeians have lost their right to unemployment insurance benefits, regardless of the contributions they have already made to the Unemployment Insurance Fund. SACTU also points to a South African newspaper report that the UIF is "paying out a tiny percentage of the people who should be drawing from it - only 11,000 a month - while the urban jobless number is nearly 700,000". SACTU claims that

"through their contributions black workers in South Africa helped to boost the Unemployment Insurance Fund to the level of approximately R200 m by the end of 1975. And yet for most African workers, contributions are little more than a tax to be used for the benefit of the organized workers, who are constantly fighting to raise the maximum level of contributions so as to include people like bank managers ... Instead of being used for the benefit of the poorest workers, when it is most needed, the colossal sums accumulated are being used by the Public Debt Commissioners to invest in industries in the Bantustans, where appalling wages are paid; and for providing cash for armaments. 188/

186/ South African Congress of Trade Unions, op. cit., p. 6.

187/ Financial Mail, 6 May 1977.

188/ South African Congress of Trade Unions, op. cit., pp. 7-8.

(c) Job reservation

168. The ILO Special Report notes the continued application of job reservation in favour of white employment and the reversal of an apparent earlier trend to relax it. It quotes the Minister of Labour as reiterating his belief in job reservation on more than one occasion during the period under review. At the end of 1975, the report adds, there were at least 24 determinations in force, and at least two others were gazetted in 1976. 189/ SACTU in its report to the ILO comments, "As soon as white workers are threatened with redundancy, those black workers who advanced to semi-skilled jobs during the boom are retrenched in order to prevent the displacement of the white workers". 190/

169. The Environment Planning Act is being strengthened by an Amendment Bill read a second time in March 1977, to enable the Government to enforce its ruling of a ratio of 2.5:1 between African and white employees in urban areas. Employers who exceed their quota run the risk of prosecution. The Financial Mail, commenting on the Government's move to close the loopholes of the Act, said: "It also shows that the Government's belief that South Africa's problems will be solved by shunting Africans to the Bantustans has not been eroded". 191/

170. In February it was announced that all existing permits for employing blacks in semi-artisan work in the building industry in the Transvaal were to be withdrawn "as a result of white unemployment". The move will affect some 550 men, who will in the words of the white Witwatersrand Master Builders' Association director, be "dismissed or demoted". 192/

171. White engineering workers demanded the withdrawal of a circular by the Steel and Engineering Industries Federation proposing the employment of Africans in certain semi-skilled grades in newly created jobs. A press report at the time said that the dispute could lead to Africans presently employed in semi-skilled categories in the industry losing their jobs. 193/

172. Moves were promised in March by the Administrator of the Cape, Dr. L.A.P.A. Munnik, to clamp down on blacks living in white areas, by issuing "occupation permits" to domestic servants. He proposed introducing legislation to this effect in the provincial council. 194/

173. Mr. David Hemson (457th meeting) handed in an extract from the evidence taken by the House of Commons Committee Investigating Wages and Conditions of African Workers Employed by British Firms in South Africa, showing job grades according to race of the employees of A.E. & C.I. Ltd. The document showed no white employees below skilled grades and no black workers above semi-skilled grades, in a total work force of 1,608 whites, 284 Coloureds, 53 Asians and 8,589 Africans. 195/

189/ International Labour Office, op. cit., pp. 14, 15.

190/ South African Congress of Trade Unions, op. cit., p. 8.

191/ Financial Mail, 25 March 1977.

192/ Star (Johannesburg), 12 February 1977.

193/ Financial Mail, 25 February 1977.

194/ Cape Times, 16 March 1977.

195/ Proceedings of the Expenditure Committee (Trade and Industry Sub-Committee), 23 May 1973, p. 275.

(d) Training of black workers

174. An amendment to the Bantu Employees' In-Service Training Act (No. 86 of 1976) 196/ was passed in 1976 to extend the legal provision for vocational training of Africans to include private centres, if approved by the Secretary for Bantu Education; and to enable the Minister to impose a levy on employers to defray the expenses of running the training centres. Considerable controversy has grown up among whites about the establishment of the training centres: they have been underemployed (at the largest, Boithusong, which serves the Free State and Northern Cape, only 1,600 men have been sent for training by their employers in 18 months); 197/ and according to Assocom (the Association of Chambers of Commerce) there is emphasis in the wrong areas. While 3,369 students enrolled in 23 black schools teaching 16 trades, there were only 520 jobs available in these categories, while 8,628 jobs existed for whites. 198/ The director of the Boithusong centre, however, describes the training scheme as "the crux of internal defence". He said that such training was essential in providing a basis for pay increases which would help create a black middle class. And such a middle class was imperative if South Africa was to withstand a Communist onslaught. 199/

175. A study published by the Southern Africa Labour and Development Research Unit at the University of Cape Town found that 100 firms surveyed were prepared to employ nearly 500 African trained technicians immediately, if they were available. Most of the demand was in engineering skills, but in 1974 only 40 students were enrolled at African colleges for advanced education as engineering technicians, and in the period 1965-1974 there were only 43 passes in the four-year course. One of the problems, according to the study, is the low number of matriculants (43,308 in 1973), especially in mathematics and science. 200/

(e) Living conditions of African workers

176. Black discontent with urban conditions, especially those for migrant workers, has once more been drawn to the attention of the Group. A study published in the period under review examines the subject of conflict on South African mines. It found that the migrant labour system maximized control of the labour force and payment below its cost of reproduction. In this sense it was functional to mining capital. "However", the report concludes, "it seems that when the physically and psychologically harmful effects of the compound system are added to the tension which arises from the dangerous work done day after day, pressures develop which the system cannot contain." 201/

196/ Summarized in A Survey of Race Relations, 1976 (South African Institute of Race Relations, December 1976), p. 359.

197/ Star (Johannesburg), 16 April 1977.

198/ Rand Daily Mail, 18 February 1977.

199/ Star, (Johannesburg), 16 April 1977.

200/ Cape Times, 3 January 1977.

201/ Barney Horner and Alice Kooy, Conflict in the South African Mines 1972-76, Southern African Labour and Development Research Unit of the University of Cape Town (reported in Rand Daily Mail, 27 October 1976).

177. Conditions in the single-sex compounds for migrant workers have been examined in a number of articles in the press. One writer estimated that the total number of African men currently living in compounds, on mines and in city areas, "is probably 1 million"; 50,000-odd live in government compounds in Soweto alone; another 500,000 or more live on mine compounds. A smaller number of women are now living in similar single-sex barracks. Mine compounds may house 10,000 men:

"Conditions in some of them can only be described as degrading and inhuman. I recently visited a compound at City Deep gold mine ... In one room there were 24 men, sleeping on double-decker concrete bunks, devoid of privacy. In the middle of the room was a coal stove, around which some of the men huddled for warmth. Clothes were hanging from wires stretched across the room. Apart from the stove, there was no light in the room. Nor were there any tables and chairs. There were no private cubicles in the lavatories either: in one lavatory, I saw places for about 20 men to sit side by side." 202/

178. In a survey of accommodation for black migrant workers in the Cape Peninsula, the Southern Africa Labour and Development Research Unit of the University of Cape Town concludes that the "average" type of accommodation "does not cater for the basic living needs of a human being". The buildings were damp, inadequately ventilated, cold and draughty, and provided no privacy. The workers were "genuinely dissatisfied with their living conditions". 203/ The sheds housing 15,000 railway workers contravened "basic housing standards". The Nyanga hostels (built in 1968) leak in summer, have no kitchen facilities and 60 people share two toilets and two cold water taps. 204/

179. Complaints to a Financial Mail reporter visiting bachelor hostels in Soweto in April 1977 included terrorization by police, bedbugs, dirt and lack of cooking or feeding facilities. 205/

180. The condition of old workers, no longer "productive units", in the absence of pension or welfare schemes, was examined in a press article in April. The paper found that "scores of elderly black people from the urban townships are living under horrifying conditions in stormdrains, abandoned motor cars, and disused mines", to evade being endorsed out to "homelands" as redundant to the labour supply. No facilities exist to care for them in the cities, and in the "homelands" there are only 13 institutions for such old people, with a long waiting list for each. Others are housed in "transit camps", one of which the reporter describes as a disused mine compound with concrete bunks, no heating or hot water, and "food covered with flies". They pay R25 per month. No medical care is available. A social worker described an 80-year-old woman who had walked back to the city from the "homeland" to which she had been sent - over 100 kilometres. 206/

202/ John Kane-Berman, writing in the Financial Times, 15 October 1976.

203/ David Selvan, "Housing conditions for migrant workers in Cape Town, 1976", reported in Cape Times, 17 December 1976,

204/ Ibid., reported in Rand Daily Mail, 5 January 1977.

205/ Financial Mail, 15 April 1977.

206/ The World, 24 April 1977.

G. Infringements of trade union rights

181. The Economic and Social Council at its sixty-second session, recalling its resolution 1997 (LX) of 12 May 1976 (see E/CN.4/1222, para. 268), has once more, in its decision 236 (LXII) of 13 May 1977, requested the Ad Hoc Working Group of Experts to continue to study allegations regarding infringements of trade union rights in the Republic of South Africa, and to report thereon to the Commission on Human Rights and to the Economic and Social Council at such times as it may consider appropriate. The present section of the report has been prepared in response to this request, in respect of (a) the suppression of trade union organizing rights and (b) the persecution of workers because of their activities, especially as a consequence of strike action.

1. Suppression of the right to organize trade unions

182. Mr. David Hemson (457th meeting), himself a banned South African trade unionist who had held various positions in African unions, prefaced his testimony by making the points: first, that "we cannot separate politics from economics in a discussion on trade union rights" and that workers and trade unionists in South Africa understand that the repression of the liberation movements over the past 20 years has been "closely connected with the rate of capital accumulation in South Africa"; second, that one cannot separate the action of the State from that of the employers over questions of industrial rights - for instance, the suppression of strikes; and third, that foreign companies, which include the mining companies and employers of some 70 per cent of African workers in industry, play a considerable role in collaborating in the destruction of African trade unions and the suppression of the right of African workers to strike.

183. Mr. Drake Koka (458th meeting) handed in as evidence the memorandum of the Black Allied Workers' Union (BAWU) prepared for the sixty-third session of the International Labour Organisation in June 1977. This memorandum, too, stressed that "in the South African context, trade union problems and questions [cannot] be considered apart from or outside a political context", and that BAWU's aim is "to bring about change in the labour system, in view of a political change".

184. Mr. Hemson also stressed that industrial rights of black workers had to be seen in close relation to their rights in urban areas, and that the "rights of African workers are being viciously undermined by the independence of the Transkei and Bophuthatswana homelands", which were depriving urban workers of their rights of residence in urban areas, and "striking at the heart of the struggle of African workers for full proletarianization and urban residence".

185. The witness described the situation of African trade unions, which are legal in terms of the Bantu Labour Relations Regulation Act of 1973 but which, in terms of the Industrial Conciliation Act, may not be "registered" as having the status in common law of "voluntary associations". They have the right to sue and to be sued, and even, if the council agrees, to appear at the industrial councils established in terms of the Industrial Conciliation Act. But they have no right of collective bargaining nor any other of the statutory rights of trade unions.

186. According to the Thirteenth Special Report of the ILO, handed in on behalf of the ILO by Mr. J.-P. Arlès (452nd meeting), demands for the recognition of African

trade unions increased during 1976 and the membership of the unions increased by between 21,000 and 40,000 to represent between 80,000 and 100,000 workers.207/

187. Mr. Hemson said that the Bantu Labour Relations Regulation Act of 1973 (which amended the Bantu Labour (Settlement of Disputes) Act of 1953) was a move "to make black trade unions in South Africa irrelevant and ineffective". In terms of this Act companies are enabled to set up works committees and liaison committees on a racial basis and not to recognize the non-racial unregistered trade unions, whose struggle is to cut across all racial divisions in the working class. He quoted the example of the British-owned company Smith and Nephew which in 1974 signed one of the first agreements recognizing one of the unregistered unions, the National Union of Textile Workers. The witness himself had played a part in negotiating the agreement, and handed in documents dealing with the dispute. In 1977 the company had decided not to continue to recognize the union but to try to force the workers to join works or liaison committees on a racial basis.

188. According to the Thirteenth Special Report of the ILO, some 2,681 works and liaison committees under the Bantu Labour Relations Regulation Act were reported to have been registered by the end of 1976, representing more than 650,000 workers.208/

189. According to information available to the Group, an Act to further amend the Bantu Labour Relations Regulation Act (an earlier version of which was shelved in 1976 - see E/CN.4/1222, paras. 283-284) was published in March 1977. This introduces for the first time a provision for African workers to negotiate "binding" wage agreements with employers, but only through the works and liaison committee system. It makes no provision for industry-wide bargaining (a clause dropped from the 1975 draft) but provides for co-ordinating liaison committees to represent committees working for the same employer. These will be prime negotiators of agreements but will operate only at factory level. The Financial Mail commented that "the Bill could still be interpreted as an attempt to pull the rug from under the unions' feet. And on a purely practical level, the scheme seems unworkable. The engineering industry alone could have some 300 separate agreements working at the same time".209/ It seems in any case that the agreements will not be gazetted, as Wage Determinations and Industrial Council agreements with registered trade unions are, and that it will not be a criminal offence for employers to abrogate them. Workers, according to a spokesman for the Department of Labour, may bring civil action against a defaulting employer.210/

190. The witness Mr. Hemson drew the attention of the Group to moves currently being made in South Africa by, among others, foreign-owned firms whose policies were

207/ International Labour Office, op.cit., p.9; House of Assembly Debates, 14 June 1976; Financial Mail, 30 July 1976.

208/ International Labour Office, op. cit., p.8; House of Assembly Debates, 7 February 1977.

209/ Financial Mail, 1 April 1977.

210/ Financial Mail, 8 April 1977.

being presented as sympathetic to African trade unionism, to promote "company unions" through the works committee and liaison committee system set up through the Bantu Labour Relations Regulation Act. Authorities in the United States and EEC countries who were encouraging these moves, he said, "do not aim at creating authentic and independent trade unions but rather at securing the maximum participation of black workers in the internal systems of representation, and the exclusion of national organizations of workers". Where black unions had tried to write the recognition of unregistered trade unions into the constitution of works committees, the Department of Labour had intervened (unlawfully) to stop them. He quoted the Heinemann Electric Company strike in 1976 (E/CN.4/1222, para.287) in which workers specifically demanded the recognition of their union, the Metal and Allied Workers' Union (MAWU), rather than participation in works committees, and the police were brought in to baton charge the workers.

191. He also drew particular attention to the clause of the proposed Bantu Labour Relations Regulation Amendment Bill (see para. 171 above) which will make it illegal for members of works committees to communicate decisions of the committees to outsiders - in other words, to trade unions. He pointed out that this clause specifically contravenes the ILO Recommendation on the Rights of Workers, which states that there shall be no discrimination against trade union organization and that internal forms of representation shall not be used to repress trade union organization.

192. Mr. Hemson gave evidence on the banning of trade union publications and workers' newspapers. He recalled that Abasebenzi, in Johannesburg, Omanana, in Cape Town, and Workers' Unity, the organ of the South African Congress of Trade Unions, had all been banned and that books necessary for trade union organization and working class organization had been seized by the State and banned, and said that there were threats of banning against other labour publications. He handed in documentary evidence on the banning of certain issues of the South African Labour Bulletin.

193. The South African Congress of Trade Unions, according to its written testimony,^{211/} concludes that "African workers fighting for independent unions are aware that the insistence on these committees [works and liaison committees set up under the Act] by management and the government is an attempt to divert the struggle for full trade union rights". SACTU puts forward, inter alia, the following demands: (i) the immediate recognition of the right of all workers to form and join trade unions of their choice; (ii) the unconditional right to strike for all workers in support of their demands.

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

194. Mr. David Hemson outlined some of what he called the "multiple legislation" in South Africa relevant to the right to strike:

(a) Under the Industrial Conciliation Act, 1956, strikes are absolutely forbidden in certain industries, for instance in essential services defined in terms of the Act. These definitions cover, inter alia, local authorities, and

^{211/} South African Congress of Trade Unions, Economic Crisis in South Africa (London, 1977), p.14.

section 70 of the Act provides that if there is a strike of local authority employees the Minister of Labour or any person authorized by him may carry out certain functions of the authority at the expense of the local authority. The Act also prohibits strikes whose object is "to achieve some purpose unrelated to the terms or conditions of employment" (i.e. political strikes);

(b) The Bantu Labour (Settlement of Disputes) Act of 1953 prohibited all strikes and lockouts of African employees. Amendments in 1973, however, were allegedly intended to place African workers in the same position as other racial groups as far as the right to strike was concerned, but Mr. Hemson went on to argue that this is not actually so. Prohibitions against striking are similar to those in the Industrial Conciliation Act, except that strikes "to achieve some purpose unrelated to the terms or conditions of employment" are not specifically banned, though sympathy strikes are. But the penalties for African workers for participating in illegal strikes are considerably higher than those under the Industrial Conciliation Act which covers all other races. African workers may be liable to a fine not exceeding R1,000 or imprisonment for a period not exceeding three years, or imprisonment without the option of a fine, or both imprisonment and a fine. In fact, the witness said that as far as he knew only one attempt had ever been made to have a "legal" strike of African workers - at the Pilkington Company at Springs in the Transvaal (see para. 185 below) - and this had been repressed by both employer and State action;

(c) The Riotous Assemblies Act, No. 17 of 1956, makes it an offence for any person to "trespass on property in order to induce any worker thereon to unlawfully cease work or to refrain from returning to work"; and also makes it an offence for any person employed in "essential service" "wilfully and maliciously" to "break his contract of employment, knowing or having reasonable cause to believe that the probable consequence will be to deprive the community of these services". This Act, said Mr. Hemson, has been used on many occasions against striking workers;

(d) The Internal Security Act, 1950 (previously the Suppression of Communism Act) defines "communism" to include "any doctrine which aims at bringing about political, industrial, social, economic change by unlawful acts or omissions", and if workers by striking contravene the terms of labour legislation they lay themselves open to prosecution in terms of this Act (as happened, resulting in convictions, in 1961);

(e) The General Law Amendment Act of 1962 (the Sabotage Act) defines sabotage to include "any wrongful and wilful act which inter alia injures, puts out of action, obstructs, tampers with" any of the following: "supply or distribution of light, power, fuel, foodstuffs or water, postal, telephone or telegraph service, free movement of traffic, any movable or immovable property of a person or of the State" - which again, the witness pointed out, "seriously further restricts the right to strike in South Africa", since almost any serious strike must cause dislocation of a kind that might come under the definitions of the Act;

(f) The Terrorism Act of 1967 makes it a criminal offence to do any act or conspire to do any act with the intention of endangering the maintenance of law and order - which could apply in particular to general political strikes, and which, according to the witness, has already been used in the prosecution of militants involved in the organization of general strikes in 1976.

195. Mr. Hemson went on to deal with the extent of police intervention in strikes in South Africa. "The presence of police summoned by employers," he said, "enables capitalists to take the most extreme measures to smash collective action in the country. Whatever the employers decide upon is carried out by the police. I can remember an instance when there was a strike at a textile factory in Pinetown near Durban, and the police officer came to the manager of the firm concerned and said to him 'What do you want us to do? Tell us what to do'. Then I was removed from the area."

196. Repression of strike action also takes the form of mass dismissals, a particularly powerful sanction in times (as now) of high unemployment. At the end of a week the workers may simply find their passes "signed off", which means that they may also be endorsed out of the urban area altogether.

197. Another form of repression of strike action, used on a wide scale against those who participate in mass general strikes or stay-at-homes, such as occurred during 1976, is docking of pay - wages are simply deducted from workers who participate in strike action. Other information available to the Working Group confirms the use of this strategy in relation to the stay-at-home called in September 1976 to protest at the Soweto massacres and subsequent student arrests. A spokesman for an employers' organization is quoted as saying that it was "necessary to make workers feel an immediate financial pinch ... in order to get them back to work". Of nine major employers checked in Johannesburg on whether they were paying workers who stayed home, only one (the University of the Witwatersrand) said that it was.^{212/}

198. Mr. Hemson quoted as examples of repressive action taken against strikers during his experience in South African trade unionism a strike at Alucal Aluminium Company (a subsidiary of Alcan Aluminium) in 1973, when the military were used to take over the plant to break the strike; and a strike at Stewarts and Lloyds, Durban (a British company), also in 1973, when prison labour were brought in to carry on production during the strike. He said that in many cases in his experience pickets have been arrested under the Riotous Assemblies Act and other legislation. And he referred to the shooting and killing of African miners on strike - 115 killed and 773 injured between September 1973 and June 1976 - many of whom were foreign nationals. Strikers in the mining industry get much higher sentences for going on strike than do workers in the manufacturing and service sectors.

199. The Thirteenth Special Report of the ILO states that a total of about 50 strikes took place in the first six months of 1976 and that over the year up to the end of 1976 "it would seem that a higher proportion than in the previous year of known strikes occurred in plants with works or liaison committees".^{213/}

^{212/} Financial Mail, 17 September 1976.

^{213/} International Labour Office, op.cit., p.8; South African Digest, 29 October 1976.

200. The report stated that 250 African workers in the abattoirs of Durban were dismissed for striking during the period under review.214/

201. According to additional information available to the Group, riot police were called, with guns and tear-gas equipment, when 500 African bus drivers and 96 Indian and Coloured drivers struck over the breakdown of a pay agreement. The deputy town clerk read the relevant sections of the Riotous Assemblies Act, dealing with deprivation of essential services and penalties for contravention of up to five years' gaol. The strikers returned to work.215/

202. Police were also called to a strike over pay at a bag-dealing company, Tetron, of Kroonstad, and 20 men were arrested. More than 30 women were dismissed and 70 others resigned in sympathy.216/

203. The Special Report of the ILO also describes a strike at the Armourplate Glass Factory, Springs, Transvaal (Armourplate is owned by the British Pilkington Glass Company), the first legal strike by black workers in terms of the Bantu Labour Relations Regulation Act and reported to be the longest strike in South African history,217/ lasting from 6 September 1976 into the second week of November. When strikers arrived after the beginning of the strike to collect their previous week's pay, they were locked out and refused their pay packets unless they produced their reference books for "signing off".218/ The strikers were members of the Glass and Allied Workers' Union, which had been called in by the works committee when the management had sacked three men in spite of an agreement with the committee that a four-day week should be introduced as an alternative to redundancies.219/ Later in July, 27 strikers were arrested and fined R50 each, or 75 days' imprisonment, under the Riotous Assemblies Act for picketing.220/ The works committee applied to a magistrate for permission for seven workers to picket but permission was refused. All efforts by the union to initiate negotiations with the management were apparently ignored, and attempts were made by the firm to employ and train new workers to replace the strikers.221/ An attempt by an Institute of Industrial Relations director to settle the dispute failed, and the strike ended when the union announced that it would not advise its members to seek re-employment at the factory, on the grounds that strikers should expect victimization and dismissal after they had been used to train new staff. The union accused the management of attempting to intimidate workers' representatives, notably when the works committee chairman, Ephraim Mabena, visited the factory on the morning of the strike and was confronted by the manager and "three strangers", all of whom kept revolvers in front of them throughout the meeting. The firm had refused to meet the union at any stage.222/

214/ International Labour Office, op.cit., p.7; Star, 4 September 1976.

215/ Rand Daily Mail, 3 September 1976.

216/ The World, 6 October 1976.

217/ International Labour Office, op.cit., p.7.

218/ Rand Daily Mail, 8 September, 17 September 1976.

219/ Financial Mail, 10 September 1976.

220/ Rand Daily Mail, 25 September 1976.

221/ Financial Mail, 8 October 1976.

222/ Financial Mail, 12 November 1976.

3. Communications from the International Textile, Garment and
Leather Workers' Federation and the International
Confederation of Free Trade Unions

204. At its sixty-second session, the Economic and Social Council, by its decision 237 (IXII) of 13 May 1977, transmitted to the Ad Hoc Working Group of Experts, for consideration and report to the Council, the allegations regarding infringements of trade union rights in the Republic of South Africa made by the International Textile, Garment and Leather Workers' Federation and the International Confederation of Free Trade Unions. The text of the communications from these two organizations and of the reply of the Republic of South Africa is set out in document E/5930.

205. The allegations concern the arrest, banning or death in detention of the following trade unionists in May and November 1976:

Arrested

June-Rose Nala (National Union of Textile Workers, Natal)

Obed Zuma (National Union of Textile Workers, Natal)

Zora Mehlomakhulu }

Alpheus Ndude }

Helford Ndzotyana }

David Sikobi }

(Western Province Workers' Advice Bureau, Cape Town)

Banned

Eric Tyacke (Secretary, Urban Training Project, Johannesburg)

L. Douwes-Dekker (Chairman, Urban Training Project, Johannesburg)

Jean Tyacke (Administrative Secretary, Urban Training Project, Johannesburg)

Sipho Kkubeka (Metal and Allied Workers Union, Johannesburg)

Gavin Andersson (Acting Secretary, Metal and Allied Workers Union,
Johannesburg)

Jenny Curtis (Industrial Aid Society, Johannesburg)

John Copelyn (Secretary, Trade Union Advisory and Co-ordinating Council,
Natal)

Mike Murphy (African Transport Workers' Union)

Jeannette Murphy

Chris Albertyn (African Textile Workers' Union)

Alpheus Mthethwa (Metal and Allied Workers' Union, Natal)

N. Ndlovu (Metal and Allied Workers' Union, Natal)

Pat Horn (Institute for Industrial Education)

Charles Simkins (Institute for Industrial Education)

Judy Pavish }

Jeremy Baskin }

John Frankish }

(Western Province Workers' Advice Bureau, Cape Town)

Deaths

Luke Mazwembe (Western Province Workers' Advice Bureau, Cape Town)

206. With respect to the death of Mr. Luke Mazwembe, according to the information supplied to the Group Mr. Mazwembe died in detention less than two hours after he had been detained on 2 September 1976. (See also E/CN.4/1222, para.44, and paras.112-127 of the present report).

207. The Group studied the allegations contained in the communications in the light of the relevant international standards concerning infringements of trade union rights, of the relevant South African legislation and of information supplied by the representative of the International Confederation of Free Trade Unions. The report of the Group containing its conclusions and recommendations will be submitted to the Economic and Social Council at its sixty-fourth session.

H. The "Bantu homelands" policy

208. The situation and historical background of the "Bantu homelands" have been the subject of examination by the Ad Hoc Working Group of Experts in previous reports (see notably E/CN.4/1050 and E/CN.4/1187, paras. 93-97). In the last report (E/CN.4/1222), however, the Group decided to consider the question of the "homelands" in relation to the right of peoples to self-determination as defined and developed by the United Nations. This approach was considered to be relevant in the light of the claims of the South African Government to be off ring the "homelands" "political independence".

209. During the period under present review one "homeland", the Transkei, has acceded to this so-called "independence", and legislation to enable a second homeland, the Bophuthatswana, has been passed by the South African Assembly. Consequently, Bophuthatswana acceded to a so-called independence on 6 December 1977 (see paras. 225-227).^{223/} The offer has not been accepted by any of the other 10 or 11 projected "homelands" (see paras. 233-238 below).

210. The Group proposes in the present report, as in report E/CN.4/1222, to examine the economic, political and social situation in the "homelands", the real aims of the "homelands" policy and the future outlook in the light of the principles of the right of peoples to self-determination as incorporated in the Declaration on the Granting of Independence to Colonial Countries and Peoples, and set out in the 1977 report (E/CN.4/1222, para. 125). These principles will be applied in particular to the situation of the Transkei and its claim for recognition as an independent and sovereign State.

1. Summary of relevant legislation

211. The laws relating to the setting up and development of the "homelands" have been described and analysed in previous reports, including E/CN.4/1020, E/CN.4/1111 and E/CN.4/1135. In particular the legislation in preparation for the Transkei's "independence" was described in the Group's last report (E/CN.4/1222), notably the Status of the Transkei Act, No. 100 of 1976, which declared the Transkei "a sovereign and independent State"; provided that any Republic law in force in the Transkei at the time of "independence" should continue in force until repealed by the Transkei Parliament, including all treaties, conventions and agreements binding on the Republic; and defined a Transkei citizen to include not only anyone born in the Transkei or of Transkeian parents, but also "every South African citizen who is not a citizen of a territory within the Republic of South Africa ... and speaks a language used by the Xhosa or Sotho speaking section of the population of the Transkei, including any dialect of any such language" or anyone who is related to such a person, or is culturally or otherwise associated with any member or part of such population (E/CN.4/1222, para. 130). All Transkei citizens defined in this

^{223/} Guardian, 6 December 1977; Le Monde, 8 December 1977; The Times 6 December 1977; International Herald Tribune, 7 December 1977.

Act were to cease to become South African citizens. The report also drew attention to the Transkei Constitution Amendment Act, No. 3 of 1976, which changed the composition of the Legislative Assembly so that it was composed of five paramount chiefs, 70 chiefs and 75 elected members (E/CN.4/1222, para. 132).

212. Among legal measures passed during the period under review in connexion with the "independence" of the Transkei are a series of 53 agreements between the South African and Transkei authorities, notably one on the employment of Transkei citizens in the Republic 224/ which provides that no citizen of the Transkei engaged in the Transkei for employment after 26 October 1976 (Transkei "independence" day) may enter the Republic to take up employment unless he complies with South African laws and regulations relating to admission to, residence in and departure from the Republic; and he must also be in possession of a written contract attested in the Transkei in respect of such employment.

213. A draft Constitution, known as the Republic of Transkei Constitution Act, 225/ was passed by the Transkei Parliament after 26 October. It contains similar provisions on the composition of the legislative assembly, and similar definitions of citizenship to the South African Acts referred to above, with the exception that the wording of the Transkei Act says that Xhosa or Sotho speaking peoples and those "culturally or otherwise associated with any tribe resident in a district of the Transkei may apply for registration and become a citizen of Transkei".226/

214. An Internal Security Act, named the General Laws Amendment Act, was passed in the Transkei during the period under review.227/ The Act had the effect of repealing Proclamation R400 under which the Transkei had been under a state of emergency for 16 years, and other security legislation in force in the Republic (see para. 26 above). But it included provisions for indefinite detention without trial; banning of persons by administrative decree; outlawing of the African National Congress and the Pan Africanist Congress; banishment by chiefs, and the death sentence for harbouring and helping "terrorists" as well as for "refusing to recognise the Transkei's independence" or advocating that it "should be part of another country".228/

215. The Status of Bophuthatswana Act, 229/ passed in June 1977 by the South African Parliament, provides for "independence" of the "homeland" of Bophuthatswana on similar terms to those applying to the Transkei. The citizenship provisions contain a clause, however, stating that "A citizen of Bophuthatswana may renounce his Bophuthatswana citizenship after independence on conditions agreed upon between the Government of the Republic of South Africa and the Government of Bophuthatswana, and in a manner prescribed by the Government of Bophuthatswana".

224/ Rand Daily Mail, 25 October 1976.

225/ Republic of Transkei Constitution Act, No. 3 of 1976.

226/ As the Rand Daily Mail, 12 August 1977, points out, any freedom to opt for, or renounce, Transkei citizenship under the Transkei Act is of little value to persons already deprived of South African citizenship under the South African Act.

227/ Rand Daily Mail, 13 May 1977.

228/ Rand Daily Mail, 13 May and 17 May 1977; The Times, 16 August 1977.

229/ Status of Bophuthatswana Act, No. 89 of 1977, Government Gazette, 1 July 1977.

216. A Financial Arrangements with Bophuthatswana Act^{230/} at the same time provides for payments to the Bophuthatswana Government by the South African Government of amounts equal to the taxes paid by Bophuthatswana citizens in the Republic, among other sums, and for the transfer of certain State property.

217. A Proclamation under the Bantu Homelands Constitution Act, 1971, established a High Court of Bophuthatswana.^{231/}

218. A Homelands Constitution Amendment Bill was read in Parliament in April, empowering "homeland" governments to request that they be declared "internally autonomous". It amended the existing Act of 1971 which provides for only "self-government" or full "independence". An internally autonomous homeland would have its own chief executive as well as legislature, with authority over all internal affairs; only foreign relations would be excluded from its authority.^{232/}

2. Violation of the right of all peoples
to the exercise of sovereignty

219. The Group noted in its last report (E/CN.4/1222, paras. 134-138) the following points made by witnesses: that the "independence" of the Bantu homelands in no sense involved a transfer of power from white hands to those of the majority but the delegation of power to a hand-picked group of collaborators; that it in fact consolidated apartheid by dividing the black population on a tribal basis and, since all the bantustans comprise fragmented land, on a territorial basis as well; and that it in effect deprived Africans of political rights by removing those in the developed areas and substituting illusory rights in a mere 13 per cent of the country.

220. The Minister of Bantu Administration gave Parliament in March 1977 the following figures for the estimated total area of land allocated for the "homelands";^{233/}

Ciskei	533,000 hectares
KwaZulu	3,100,000 "
Venda	650,000 "
Gazankulu	675,000 "
Lebowa	2,200,000 "
Swazi	370,000 "
Ndebele	75,000 "
Bophuthatswana	3,800,000 "
Basotho Qwaqwa	48,000 "

In February 1977 he said that almost 17 per cent of white-owned land scheduled for the "homelands" (914,296 hectares) had still to be purchased.^{234/}

^{230/} Financial Arrangements with Bophuthatswana Act, No. 93 of 1977, Government Gazette, 1 July 1977.

^{231/} Proclamation R76 of 1977.

^{232/} The World, undated; Guardian, 19 April 1977.

^{233/} House of Assembly Debates, 9 March 1977.

^{234/} Rand Daily Mail, 9 February 1977.

The Transkei

221. Witnesses before the Group reinforced all these conclusions in relation to the illusion of "independence" of the Transkei. Mr. J.-P. Arlès (452nd meeting) handed in the Thirteenth Special Report of the Director General of the International Labour Office drawing the Group's attention to its conclusions about the real motivation behind "homeland independence";

"The homelands are an instrument of the manpower policy which has accompanied apartheid and buttress it in a number of different ways. They provide a means of reducing the proportion of Africans to Whites within the White-controlled 87 per cent of South Africa; at the same time their existence is the basis for excluding Africans from the acquisition and enjoyment of the rights which are enjoyed by Whites in those areas. Thus, the official view that Africans are to be regarded as temporary residents outside the homelands has enabled the Government to suggest that restrictions on basic rights are not imposed on grounds of race but because African workers are foreigners who are present as migrants in White areas.

"...

"It follows that the so-called independence of the Transkei may be regarded as a device by which the manpower policies of separate development may be served, so as to make even more explicit within the South African legal system the absence of South African Government responsibility for migrant workers from their new 'State'." ^{235/}

222. A paper by Mr. John Gaetsewe, ^{236/} handed in by Mr. Rao (450th meeting), declared that 26 October 1976 "will enable the South African Government to legitimize the system of migrant labour with all the misery and hardship this entails ... No longer will Africans from the Transkei who work in so-called 'white' South Africa have any legal claims to rights there".

223. Mr. David Hemson (457th meeting) set before the Group an analysis of class formation and ideology in the Transkei, ^{237/} which concluded that

"the independence of the Transkei is seen essentially as an aspect of state intervention to restructure relations of exploitation within the broad South African social formation ... One of the main political purposes of the Bantustan policy is to sow racial division amongst the African proletariat, and in this capital and the state are assisted by a collaborationist Africanist bourgeoisie - itself fractured into Xhosa, Tswana, Zulu, etc."

^{235/} International Labour Office, op cit., pp. 21-22.

^{236/} John Gaetsewe (General Secretary of the South African Congress of Trade Unions), "South African Bantustans: How the so-called 'independence' of the Transkei will affect the African workers", United Nations Centre against Apartheid, Notes and Documents, No. 28/76, October 1976.

^{237/} Duncan Innes and Dan O'Meara, "Class formation and ideology: the Transkei region", Review of African Political Economy, No. 7, September-December 1976.

224. The following information affecting the question of the right to sovereignty is available to the Working Group:

(a) South African law continues to operate in the Transkei, unless repealed. Among the laws specifically condemned by the United Nations as repressive which apply in the Transkei are the Immorality Act and the Mixed Marriages Act;^{238/}

(b) Those South African security laws that have been repealed have been replaced by similar legislation, the General Laws Amendment Act, providing for detention without trial, the outlawing of the African National Congress and the Pan Africanist Congress, and the death penalty for "terrorism", as also for a new offence - advocating that the Transkei abrogate its "independence" (see para. 181 above). Mr. Cromwell Diko, opposition leader in the Transkei Parliament, accused the Matanzima government of having "taken what the Afrikaners have done against the black men and put it here";^{239/}

(c) The General Laws Amendment Act has already been used to detain the leader of the opposition Democratic Party, Mr. Hector Nkomo. The Party has opposed acceptance by the Transkei of the South African Government's offer of "independence". Nine other men who had previously been detained without trial and released in April ^{240/} were detained under the same law in August. The Transkei government has also continued to hold Chief Leynas Mashile, banned by the South African authorities in 1964 and banished to the Lady Frere district of the Transkei. When the Transkei became "independent" Chief Mashile applied to be allowed to return home, but the Transkei Department of Foreign Affairs turned his application down. The South African Minister of Bantu Administration stated that "the circumstances which necessitated his removal still prevail". A Southern African News Agency bulletin, handed in to the Group by Mr. Eric Abraham (458th meeting) commented that "the incident is a clear indication of the pseudo-independence of the Transkei ... in the light of the statement of Minister Botha it is difficult to see that this is not an instruction"; ^{241/}

(d) Land (see E/CN.4/1222, para. 135, for a summary of the fragmentation of all the homelands) remains a centre of contention, both between the South African and Transkei governments and between the Transkei and other "homelands". Mr. Matanzima has threatened "war" with South Africa if the territory of East Griqualand is handed over to Natal and not to the Transkei; and in March the Transkei parliament unanimously proposed that the Transkei negotiate with the South African authorities on the annexation of the Ciskei, presently a separate self-governing "homeland". The Ciskei ruling party is divided on this issue, especially since in 1976 the Ciskeian territory Herschel and Glen Grey was given to the Transkei and 50,000 people left the district rather than join the Transkei and were settled in the Thornhill resettlement camp in the Ciskei (see para. 130 above); ^{242/}

^{238/} The World, 29 May 1977.

^{239/} Rand Daily Mail, 24 May 1977.

^{240/} Guardian, 16 August 1977.

^{241/} SANA Comment, May 1977.

^{242/} SANA Comment, May 1977; BBC Monitoring Service, 29 March and 12 March 1977.

(e) "Independence" involves a continuation of the Transkei's economic dependence on South Africa (see paras. 228-233, 235-243 below);

(f) The Transkei has no armed forces of its own, except some 500 soldiers all armed and equipped by South Africa and under the orders of South African officers. The Commander of the Transkei Defence Force is Brigadier Phil Pretorius, who with 30 other white South African officers has been training Transkei soldiers with South African army units since 1975;243/

(g) 1.2 million "Transkeians", or some 45 per cent of the total number of people declared Transkeian citizens at "independence", live outside the Transkei in "white" South Africa. These have, without consultation, been stripped of all their rights as citizens of South Africa (see para. 178 above), and evidence before the Working Group indicates that these city Africans see "independence" as a "climax to a long process of stripping Africans of the claim to be equal citizens of a richer society which they have helped to build".244/ Pressure to take out Transkeian citizenship is expected to intensify in the light of the statement by the Minister of Bantu Administration that "persons who identify themselves with their own black nations are much more welcome here in the White area than those who deny or hide their relationship with a Black nation of their own". He claimed that such persons would in future be given preference with respect to jobs, housing, having dependants with them, freedom of movement, hospitalization, transport, schools and sport.245/

Bophuthatswana

225. The Group has noted that negotiations for the "independence" of Bophuthatswana, which was the only other "homeland" to accept the offer in principle, and whose accession to so-called independence was proclaimed on 6 December 1977, have been fraught with conflict over the "citizenship" clause of the proposed constitution (see para. 197 above). A letter signed by all seven members of the Bophuthatswana "cabinet", which was transmitted to the South African Government in May 1977, stated that unless the clause declaring all Tswana-speaking blacks (two thirds of whom live in white-designated areas of the country) citizens of the new "homeland" was amended, the "homeland's" decision to opt for independence "will be frustrated, as we are not prepared to accept independence at all costs".246/ A clause providing that Tswanas may renounce citizenship on conditions yet to be agreed between the South African and Bophuthatswana governments was inserted and the Act was passed (see para. 215 above), leaving the issue in effect unresolved.

226. When the so-called independence of Bophuthatswana was proclaimed, the Secretary-General of the United Nations made a statement in which he expressed his opposition to the bantustan system because of its obvious injustice for the black population of South Africa.

243/ Rand Daily Mail, 15 September 1976; Daily Telegraph, 31 March 1977.

244/ The Times, 25 October 1976; John Kane-Berman, writing in The Black Sash, August 1976, pp. 19, 20; Rand Daily Mail, 15 October 1976.

245/ John Kane-Berman, writing in The Black Sash, August 1976, pp. 19, 20.

246/ Rand Daily Mail, 28 May 1977; The Guardian, 2 June 1977.

227. Training for Bophuthatswana's security force, the National Guard, started on 28 February 1977 and by 6 December the Guard is expected to comprise 221 officers and men "under the command of South African defence force soldiers as long as Bophuthatswana keeps the invitation open". The highest rank so far achieved by a Tswana is sergeant, but Commandant van Niekerk, who heads the training programme, told the press that "If Chief Mangope wants me to, I can have a general ready by December." Recruits receive the standard South African Defence Forces education programme, which includes "instruction in communism".^{247/}

3. Exploitation of black workers

The Transkei

228. Documents handed in by the witnesses J.-P. Arlès, R.P. Rao and David Hemson (see paras. 203-204 above) all stressed that the dependence of the Transkei on migrant labour would not be diminished by "independence", Mr. Gaetsewe's document pointing out that it is increasing.^{248/} He argued that the lack of viability of the "homelands" is a corner-stone of South Africa's apartheid policy, as it has been since the original creation of the African reserves, to ensure the flow of cheap labour into the white economy.

229. According to information before the Group, including a recent economic study handed in by Rev. Michael Scott,^{249/} mass poverty associated partly with shortage of land but particularly with the persistence of the migrant labour system, which keeps the men of working age out of the "homeland" economy, remains endemic to the Transkei. The study concludes: "In diet, in life expectancy, in leisure time, in the ability to escape from production only for reproduction, the mass of people are worse off than their ancestors were 300 years ago, whatever the Transkei Development Corporation may claim in its advertisements". The study found that 67 per cent of households in the area studied were headed permanently by women; that over 70 per cent of all families earned less than R600 per annum, while nearly 7 per cent had no cash income whatsoever; that 8.4 per cent had no agricultural supplement to their feeding or income while only another 8.4 per cent produced enough food to feed their families every year. The infant mortality rate among Africans in the Transkei is 216 per thousand - compared with 95.48 per thousand among Africans in Johannesburg and 20.6 per thousand among whites in Johannesburg.^{250/}

230. The ILO's Thirteenth Report demonstrates the extent of "homeland" dependence on migrant labour by comparing gross national product generated within the "homeland" with income from migrant labour. In the case of Transkei the internal

^{247/} Citizen, 22 June 1977; Rand Daily Mail, 20 June 1977.

^{248/} Gaetsewe, op.cit., p.1.

^{249/} Jeff Leeuwenburg, Transkei: A Study in Economic Regression (London, The Africa Bureau, January 1977).

^{250/} Figures taken from "Implications of apartheid on health and health services in South Africa" by a group of black doctors in South Africa, United Nations Centre against Apartheid, Notes and Documents, No. 18/77, June 1977.

economy contributes less than half the total gross national income and the figure for all the "homelands" together indicates that over-all internal economies generate less than a quarter of the total gross national income.^{251/}

231. The Government's homeland policy has not substantially altered this dependence, nor does it show signs of doing so. The ILO Report shows that in the Transkei, as in Lebowa, Vhavenda and Gazankulu, the economically active males at any one time active outside the territories (i.e. as migrants in the white economy) actually outnumber the economically active males within them - and this figure applies to the population normally resident within each "homeland", not to the 45 per cent (in the case of the Transkei) normally resident in "white" areas. Between 1960 and 1975, the South African Government's development plans have created jobs in and around the Transkei for only 12,935 (166,000 for all the "homelands" together). By contrast the number of migrant labour contracts attested in the Transkei was 243,144 in 1975 alone (816,328 in all the "homelands" together).^{252/}

232. The report went on to show that lack of educational opportunities, application of the colour bar in industry (which in 1975 in the case of 18 industrial council agreements - negotiated with white trade unions - and three wage determinations, as well as the colour bar provisions of the Mines and Works Act, do apply in "homelands" and border areas), and lack of provision to facilitate negotiation with African trade unions and application of the South African Industrial Conciliation and Wages Acts in the border areas, keep wages low where opportunities do exist. Wages in "homeland" and border areas may average as much as 64 per cent below those paid in the main urban centres.^{253/}

233. Low wages, and the discouragement of African trade unions, have actually been used by the Transkei government as an attraction to overseas investors, and in 1975 Chief Matanzima told a London seminar that "The relationship between management and labour in the Transkei is, and will remain, tranquil. The all-take-and-no-give trade unionism which bedevils industry in so many parts of the world is something the Transkei cannot afford and my government will not tolerate it".^{254/}

Bophuthatswana

234. In Bophuthatswana, Chief Mangope has made clear that his aim is the establishment of a black entrepreneurial class, by "economic development with the aid of, and in partnership with whites". He plans to "bring in white businessmen, chain stores and supermarkets as partners", and says that his government is prepared to waive the limitations on the length of time a white enterprise may operate under the agency system. Of the trading businesses already established through the Bantu Investment Corporation and the Bophuthatswana National Development Corporation, comprising 224 individual shops, factories and offices, 24 have been sold to Tswana businesses.^{255/}

^{251/} International Labour Office, op.cit., pp.30-31.

^{252/} Ibid., pp.36-37

^{253/} Ibid., pp.39-42.

^{254/} Gaetsewe, op.cit., p.4.

^{255/} Financial Guardian, 24 June 1977.

4. Obstacles to the right to freely pursue economic development

The Transkei

235. The witness Mr. J.-P. Arlès (452nd meeting) pointed out, as have previous witnesses before the Group (e.g. E/CN.4/1222, para. 139), that the effect of the situation of the Transkei, like the other "homelands", as a source of cheap labour for the white economy was to keep the "homeland" economy greatly dependent upon that of South Africa: it was characterized by relatively weak internal development, very reduced employment opportunities and little expansion or growth.

236. The study handed in by Mr. Hemson 256/ showed that since 83 per cent of the Transkei's male labour potential was employed as migrant labour outside the region, the main burden of agricultural production fell on the women, who had the double tasks to perform of reproductory and productive labour. This made for low productivity and transformed the household as a whole from a mode of peasant production into a servant of capital - i.e. of the employer of the migrant wage-labourer.

237. Land, the study also showed, is no longer effectively held in the traditional communal ownership but is subject to allocation by paid chiefs and headmen, who act as agents of government policy. This policy has in recent years been directed towards restructuring the agricultural economy to reduce drastically the total number of small farmers from 500,000 to 50,000. The result is to create large numbers of landless families, who have been forcibly removed, placed in resettlement areas and displaced to the towns.

238. A further plan is to develop ranching through the Xhosa Development Corporation, "with African participation". Since ranching requires large amounts of land and heavy capital investment, so, like the restructuring policy, it appears to be aimed at the emergence of a capitalist farming class while at the same time putting large numbers of smallholders off the already highly overpopulated land.

239. Industrial development, on the other hand, is able to absorb very few Transkeians within the territory. Only 47,500 males were employed in 1974, 20,000 of them by the Transkei government. Manufacturing industry employed only 4,050, most of them women.

240. The main instruments of industrial development are the Transkei Development Corporation and the Bantu Investment Corporation, both wholly State-owned corporations. However, "the major aim of these corporations, as stated by the Managing Director of TDC, is to protect white industrialists investing in the region. They therefore continually reproduce the Transkei region in its primary role as a reservoir of labour in the broad South African social formation". That is, they offer incentives to white industrialists in the shape of exemptions from

256/ Innes and O'Meara, loc.cit.

wage determinations under the Wage Act applicable in South Africa outside the "homelands" (except in regard to white employees, who retain their protection under South African legislation). Terms of loans offered to white entrepreneurs are more favourable than those offered to blacks. And in addition both the Transkei Development Corporation and the Bantu Investment Corporation are increasingly linked with white South African, particularly Afrikaner, capital. 257/

241. According to additional information before the Group, a new livestock tax has been imposed on the Transkei peasantry since "independence", apparently to meet a deficit of R37 million in the budget. This tax involves R10 for each head of cattle or donkey, R5 for each horse or mule, and R2 for each sheep or goat. At the same time the hut tax was raised from R1 per hut to R10. The South African Financial Mail commented that "If Letlaka (the Finance Minister) does not intend using the revenue gleaned from the peasants for new rural development projects, he is simply perversely choosing to squeeze the poor ... The new tax may have the effect of driving more Transkeians onto the migrant labour market." 258/

242. Information available to the Group shows that not only development programmes but the Transkei annual budget remain heavily dependent on Pretoria. Of the R136 million budget for 1976/77, only R22 million was to be raised from "domestic" revenues, the remainder all coming from South Africa, partly calculated as follows:

R35 million: duty on goods imported to South Africa but destined for the Transkei, plus tax paid by Transkeian companies;

R3.5 million: income tax paid to South African Revenue by whites and Coloureds employed in the Transkei;

R13.3 million: taxes paid to South African Revenue by Transkeians working in white-designated areas;

R18 million: the sum it was calculated that the Transkei was costing Pretoria to administer at the time (1963) it began self-rule.

243. "The rest", in the words of the Financial Mail, "is a straight hand-out." According to the Mail, Umtata is currently dependent on Pretoria "to the tune of R57 million a year to meet recurrent expenditure", and since this does not take into account either the cost to the Cape Province of administering white schools and hospitals in the Transkei, nor R24 million given in 1976/77 to the Transkei Development Corporation, "it looks as if Pretoria will continue spending at least R100 million a year on an independent Transkei". 259/

257/ Innes and O'Meara, loc.cit.

258/ Financial Mail, 25 March 1977.

259/ Financial Mail, 22 October 1976.

Bophuthatswana

244. According to information before the Group, Bophuthatswana, which became "independent" on 6 December 1977, is likely to be even more heavily dependent upon the South African Government for its economic development. It is presently divided into six separate pieces of land, none of which has a town large enough to function as a capital, the reason being that the "homeland" has been "carved out of" rural areas around existing urban areas of the Western Transvaal, Northern Cape and Orange Free State. A start on building a new capital was made in June 1977. Press reports indicate also that the "homeland" at the time also lacked a single functioning government department and essential services such as water and electricity supplies. Electricity was supplied by ESCOM, the South African electricity authority, to only one of the six sections of the "homeland". "This means that from December 6 ['independence' day] the country's water and electricity supply will be controlled by a foreign country". 260/

245. Only 10,000 industrial workers are employed within the "homeland", while 155,000 commute to work in the factories of "white" areas in Pretoria and Rustenburg. Although the territory will include the second biggest platinum mine in the world, the Impala mine, which is expected to yield some R20 million a year in tax revenue, the mine is owned and managed by South African capital and "the training of blacks will take so long they have guaranteed their white workers their jobs for life". There is no black engineer, no black lawyer and so great a shortage of teachers and schools throughout the "homeland" that classes may be as big as 100. There are only 63 kilometres of tarred roads. Only 10 per cent of the "homeland's" agricultural requirements are produced within it; and Tswanas spend 70 per cent of their earnings outside it. In 1975/76, Bophuthatswana raised only R12.5 million of her R72 million budget. The rest came from Pretoria. 261/

246. When confronted with the problem of repairing damage to schools and other buildings damaged during the uprisings since June 1976, the Bophuthatswana authorities decided to ask teachers to contribute R5 each towards rebuilding schools and to ask parents in certain areas to deposit R20 for every child before he or she was readmitted to school and sign a form undertaking to pay a pro rata share of any future damage, whether or not their child was involved. 262/

5. Obstacles to the right to freely determine political status

247. The Group's last report (E/CN.4/1222, paras. 156-168) listed the following obstacles to the right to freely determine political status in the "homelands": (a) enforced removals to bantustans; (b) the imposition of the bantustan system; (c) the system of political repression in the homelands; (d) the issue of Transkeian citizenship; (e) failure to consult by referendum.

260/ Rand Daily Mail, 20 June 1977.

261/ Rand Daily Mail, 20 June 1977.

262/ Financial Mail, 8 October 1976.

248. Developments during the period under review have served to reinforce the points made by witnesses at that time:

(a) Removals have proceeded during the period (see paras. 128-138 above), some of them actually resulting from discontent with the prospect of Transkeian independence (see para. 130 above);

(b) Not only have numbers of people hitherto living in the Transkei voted with their feet by leaving the territory, but information available to the Group suggests that the prospect of "independence" for Bophuthatswana is also unpopular enough to have affected recruitment to the territory's already impoverished services. Professional men, according to Dr. K.P. Mokhebo, superintendent of Bophelong Hospital in Bophuthatswana, "refuse to come to these areas because they will have nothing to do with the homelands policy". Black students and schoolchildren especially were "unanimously opposed to it"; 263/

(c) Reference has been made in paragraph 203 above to the continued repressive system in the Transkei since independence, the passing of legislation to include the main provisions of South Africa's Terrorism and Internal Security Acts, and the arrests of opposition leaders within the first few months of "independence";

(d) Reference has also been made in paragraph 188 above to the continued conflict over the citizenship provisions of the Status of the Transkei Act and the anger among urban Africans who feel that they have been deprived of their birthright in their own country by the South African Government and the present Transkei Government. The conflict over the citizenship clauses of the Transkei constitution was followed by a similar conflict over the Status of Bophuthatswana Bill in June 1977, to the extent that deadlock was believed to have been reached between the cabinet of Chief Mangope and the South African authorities (see para. 207 above); 264/

(e) No move has been made during the period under review to consult the peoples of any "homeland" on the question of independence by **referendum**.

6. Cessation of armed action and repressive measures

249. The Group's last report made reference to the transfer by the South African Government to the "homeland" authorities of repressive powers vested in the central government, including powers of detention without trial, banning and banishment. The use of these powers, including the passing of repressive legislation, banning, banishment and arrest of opponents, and the extension of the death penalty in the Transkei since "independence" have been described in paragraph 203 above. It has also been remarked that South African laws remain in force, including the Immorality and Mixed Marriages Acts.

263/ Rand Daily Mail, 20 June 1977.

264/ Rand Daily Mail, 28 June 1977.

250. The transfer of the Transkei division of the Bureau of State Security to the Transkei Government, together with the secondment of its white officers, was referred to in the Group's last report (E/CN.4/1222, para. 173). During the period under review a Transkei "army", exclusively under the control of white South African officers, has been set up (see para. 224 above); and similar moves have been made in relation to the so-called independence of Bophuthatswana (para. 227 above).

251. Reference was also made in the Group's last report (E/CN.4/1222, para. 64) to the rehabilitation centres planned for the "homelands". Though the Group has no information on the number and population of these centres, it has before it a report from the World Health Organization ^{265/} which suggests that the Proclamation of 1975 enabling them to be set up has serious implications for civil liberties. The report declares that the paragraph stating that "the inmates of an institution shall be detained therein for the purpose of improving their physical, mental and moral condition" by implication

"states that any African who does not observe, or does not accept the 'necessity for the laws of the country', i.e. the laws of apartheid, is mentally disturbed and in need of compulsory improvement of his 'physical, mental and moral condition'. This definition erases the distinction between the penal and the health care system in the African homelands and extends in a dangerous way the concept of rehabilitation".

7. Disruption of national unity and territorial integrity

252. According to information available to the Group, during the period under review the whole concept of "independence" for the "homelands" and the consequent fragmentation of South Africa has met with increasing opposition from within the "homelands", including the leadership. Chief Gatsha Buthelezi of KwaZulu, in a New Year statement, attacked the "balkanisation of South Africa" and foresaw a gloomy future for the country because the Government has "no intention to seek a political dispensation acceptable to most people in this country". He said that most Africans opposed apartheid-motivated independence, and that the mini-states envisaged by Pretoria would be independent in name only. ^{266/} In May 1977 he called on all Africans to join his new movement called Inkatha, which he claims already has 100,000 members, and said that "the majority of the people of South Africa have the right to form a government of the country". ^{267/}

253. Among other homeland leaders who have renounced the idea of "independence" for their territories is Mr. Kenneth Mopeli, Chief Minister of Basotho Qwaqwa, whose government proclaimed the day of Transkei "independence" a day of mourning for all Southern Sothos, a time to pray for the 40,000 Sothos who would now be "brutally enslaved in an independent Transkei". "It is a day of complete failure of separate development", the Qwaqwa government said. ^{268/}

^{265/} World Health Organization, "Apartheid and mental health care", United Nations, Centre against Apartheid, Notes and Documents, No.11/77, April 1977, pp. 22-23.

^{266/} Rand Daily Mail, 1 January 1977.

^{267/} Rand Daily Mail, 2 May 1977.

^{268/} Rand Daily Mail, 26 October 1976.

254. In March 1977 the Ndebele Peoples Front was formed to oppose the proposed Ndebele secession from the Bophuthatswana homeland. The South African Government's separate development includes the possibility of a separate "homeland" for the Ndebele people, but according to the Front "the attempt to form a homeland for the Ndebele people was not to the advantage of the people themselves". Mr. J. Ledwaba said that the scheme would involve moving from homes which had been theirs for a long time, and that certain Ndebele areas were completely surrounded by Bophuthatswana, which would make access from one to another very difficult. 269/

255. Also in March 1977 a Black Unity Front, representing both urban and "homeland" leaders, declared itself committed to work for a united South Africa - even at the risk of imprisonment of its leaders. One of these leaders was Dr. Cedric Phatudi, Chief Minister of Lebowa, who had been rumoured himself to have been on the verge of opting for "independence". 270/ Another spokesman, Dr. Sipho Nyamboezi, called on all "homelands" that had already opted for "independence" to renounce it and "become once more part and parcel of the entire country". 271/

256. The reluctance of the leadership of other "homelands" to follow those of Transkei and Bophuthatswana into "independence" has led the South African Government to propose a third form of association, a development from "self-government" not to full independence but to "internal autonomy". Legislation introduced into the South African Assembly in April 1977 (see para. 198 above) provided that an internally autonomous homeland should have its own chief executive and be "fully autonomous as far as its internal operations are concerned", having legislative authority over all internal affairs; only foreign affairs would be excluded from its authority, according to the Minister of Bantu Administration and Development. 272/

257. This plan was denounced by Mr. Mopele of Basotho Qwaqwa as "a cunning plan" of the central government to "force independence on those territories who are not prepared to ask for it". He added that "total internal independence means very little if the homeland is dependent on the central government treasury for more than 80 per cent of its financial sources". He said that the prerequisites for total independence included the complete amendment of the 1936 Native Trust and Land Act so that "homelands" could be drastically increased in size and patches of land could be consolidated "without fear or favour". 273/

269/ The World, 10 March 1977.

270/ Cape Times, 7 March 1977.

271/ Rand Daily Mail, 28 March 1977.

272/ Guardian, 19 April 1977.

273/ Rand Daily Mail, 1 February 1977.

I. Student movements

258. A summary of the history of higher education in South Africa, the segregation of university education by race, and the background to the rise of student movements among white and black students, including the growth of the Black Consciousness movement in universities and colleges, was given in the Group's interim report, in which the Group for the first time specifically studied the question of student movements (see E/CN.4/1187, chap.I, sect. D).

259. Following the outbreak of student uprisings in June 1976 and the unrest that spread among school and college students throughout the country, the Group in its last report included an analysis of the background to race discrimination in South African schooling and the imposition of the policy of "Bantu education" (E/CN.4/1222, paras.219-235).

260. During the period under review, student unrest has continued in the main urban centres and in the black universities. Details of the brutality used by the police throughout the period since June 1976 to suppress student demonstrations, of the extent of arrests and the treatment of students, among other detainees, in detention are given in chapter I of the present report and in the special report of the Group (A/32/226). A feature of the period has been the emergence as a considerable force in the country, of young people, particularly the school students of Soweto, whose campaigns have not only won political solidarity among the workers (for example, through stay-at-homes such as that following the Soweto massacre in 1976 (E/CN.4/1222, paras.247-249) and that called to mark the anniversary of the Soweto massacre in June 1977)^{274/} but also brought about the resignation of the politically ineffective Urban Bantu Council for Soweto,^{275/} as well as the resignation of a number of Soweto school boards, through their campaigns for "non-collaboration" with apartheid institutions and for the abolition of "Bantu education".^{276/}

1. Relevant legislation

261. The legislation relevant to university education in South Africa was summarized in a previous report of the Group (E/CN.4/1187, paras.176-188), as were the provisions of the Government's policy of Bantu education as they are applied in schools and colleges (ibid., paras.194-197).

262. No legislation has been passed in the period under review relevant to university or school education. The Group, has, however, taken note that the Bantu Employees' In-Service Training Act, No.86 of 1976 (see para.156 above) makes a break with previous policy in that it provides for the recognition of private establishments for industrial training of Africans not directly under the control of the Department of Bantu Education.

^{274/} Sunday Times, 12 June 1977.

^{275/} Ibid.

^{276/} Guardian, 27 July 1977.

2. Student campaign against the Government's policy of "Bantu education"

263. According to information available to the Group, student demonstrations have continued through 1977 277/ (see paras.29-45 above).

264. In May several Soweto schools boycotted classes, in support of the student representative council's campaign to end "Bantu education", force the resignation of the Urban Bantu Council and force the release of student detainees.278/

265. Black teachers, through the African Teachers Association of South Africa, which has branches throughout the country, came out in June in support of the students' demand for an end to "Bantu education". This means, according to the Secretary-General of the Association, Mr. Hamilton Dlamlenze, not only the dropping of the word "Bantu" from the title, as already agreed by the Government department, but also equal per capita expenditure on black and white pupils (at present it is the equivalent of £26 per black child and £400 per white child) and equal opportunity for black educationists to fill key posts in black education - including that of Minister of Black Education.279/

266. As the students' campaign against Bantu education mounted in July, five Soweto school boards had succumbed to their demands to resign by mid-month. Mr. Trofomo Sono of the student representative council accused the boards of encouraging tribalism. The next target of student campaigns was expected to be the proposed Community Councils with which the Government intends to replace the Urban Bantu Council which resigned in response to student pressure in May. The students are demanding not partial but full municipal status for Soweto.280/

267. Student boycotts to back these demands have been met, according to information before the Group, with threats by the Government to use police to clamp down on boycotters and close down schools unless students return to classes,281/ and arrests of students - "more than 170" on 16 August, 137 on 19 August - continued throughout the month of August.282/

3. Student movements in black universities

268. SASO leaders have in the period under review been making attempts to revive the organization's presence on the black campuses - it was banned from the universities of Fort Hare, the Western Cape and the North (Turfloop) in 1973 (see E/CN.4/1187, para.239), though it has remained a legal organization, and students have remained members on an individual basis. (A witness in 1976 gave the total SASO membership as around 2,500 out of a possible 6,000 and said that the reason the membership was not higher was that students feared being

277/ The World, 22 March 1977.

278/ Rand Daily Mail, 13 May 1977.

279/ Guardian, 25 June 1977

280/ Guardian, 4 July, 11 July, 27 July 1977; The World, 14 July, 15 July 1977.

281/ Rand Daily Mail, 5 August 1977.

282/ The Times, 17 August 1977; Guardian, 20 August 1977.

identified by the authorities as card-carrying members - cf. E/CN.4/1222, para.236). In April 1977 discussions were held at the University of the North among representatives of Turfloop, Fort Hare, Ngoye, Wentworth and the University of the Western Cape. Mr. Silume Sokupa, SASO's permanent organizer, said afterwards that the students had had a fruitful discussion about reviving SASO activities in the universities and had requested a meeting with the authorities. He said that in principle all the students still identified with SASO.283/

269. The Group has before it no indication that the ban on SASO has yet been relaxed on any black campus. In June the Rector of the University of the North, Professor Kgwere, confirmed the ban on SASO and on all political organizations on the campus. The ban on politics has created a deadlock between authorities and students that has caused a three-year delay in the election of a student representative council. In June 1977 the students staged a sit-in on campus to demand the immediate holding of elections, as the latest manifestation of what is now established as a long history of unrest at the university. In spite of the appointment of two official commissions into the affairs of the university (the Snyman and Jackson Commissions, see E/CN.4/1222, paras.221-225), and the appointment of Professor Kgwere as the first black Rector on the recommendation of the Jackson Commission, student discontent continues to simmer. One of the university council's first steps after Professor Kgwere's appointment was to ban the Black Academic Staff Association (BASA) (see E/CN.4/1187, para.235), which is seen as a further manifestation of the Black Consciousness movement.284/

270. Ms. Dlamini (456th meeting) in her testimony before the Group described the humiliating conditions for black students at the Medical School of the University of Natal, where she was studying. She pointed out that the University of Natal is a white university with only one school for blacks, the Medical School. "So the blacks don't stay on campus, they have got a separate campus which is on the grounds of the oil refinery". After the uprisings of June 1976 soldiers were sent to patrol the black residences on this separate campus, and the soldiers interfered with the students to the extent of coming into their rooms at night and forcing them into bed when they saw a light on, or stopping them from moving from one block to another. These activities were a serious hindrance to study in cases where a student wished to study late at night or to move to another block to consult someone else, as occurs when students co-operate over laboratory work and share books and equipment. When the students complained to the warden, Ms. Dlamini said, the warden said that the soldiers were there on the orders of the Minister of Police. Ms. Dlamini also said that the police have in any case powers to enter the campus, to demand the keys of individual students' rooms from the warden, and to enter the room of any student where they have reason to believe that unauthorized persons are "trespassing" - i.e. that the student has guests who have not specific permission to be there. Ms. Dlamini was herself arrested as a "trespasser" in this way when the police were searching the campus and she was found in the room of another student, where she was hiding because police were looking for her as vice-president of SASO. She described giving

283/ The World, 17 April 1977.

284/ Rand Daily Mail, 15 June 1977.

a false name and allowing herself to be arrested for trespass rather than betray her real identity. In a mass court appearance the following morning she was fined and subsequently able to escape the country.

4. Student movements in white universities

271. According to information available to the Group, the conflict between those who wish the white student organization to oppose apartheid and align itself as an ally of Black Consciousness and those who wish student politics to concern themselves exclusively with white unity continues to divide the National Union of South African Students (NUSAS), though the organization has been considerably weakened by the disaffiliation of several campuses in 1976 (see E/CN.4/1222, para.237) and the formation of a rival Federation of English-speaking Students on a white unity platform.^{285/}

272. Students at white universities continue, however, to engage in political, community and research activities which lead to harassment and arrests. In May 1977 five students at the University of the Witwatersrand were questioned by police when they distributed a pamphlet protesting at the banishing of Mrs. Winnie Mandela (see para.105 above) to black commuters in Johannesburg station.^{286/} In June five more students at the same university were arrested "in connexion with the unrest in Soweto", and police raided the office of the student representative council of the University of Cape Town just before the anniversary of the 16 June massacres.^{287/} Four students were arrested at the University of Natal for distributing leaflets on 16 June, and leaflets, banners and posters were seized in a police raid on the student representative council office.^{288/} Earlier in the year police attempted to intimidate Natal University students distributing leaflets printed by the Wages Commission of the student representative council to black workers in the Durban area. The leaflet described how the Unemployment Insurance Fund operates and how claims on it should be made.^{289/}

5. Apartheid in schools

273. The Administrators of the Cape and the Transvaal threatened to withdraw the registration of Roman Catholic church schools which have been declared "open schools" - that is, open to pupils of all races - after the decision of the South African Catholic Bishops' Conference in February 1976 to abolish apartheid in the church's private schools. In January 1977, 32 African, Coloured and Indian pupils were enrolled in the Holy Rosary Covent school, Port Elizabeth, and one Coloured pupil enrolled at St. Dominic's Priory, Port Elizabeth. Both schools had previously accepted white pupils only. At least two schools on the Rand (Transvaal) and two in Windhoek, Namibia, have also admitted Coloured pupils. The Administrators have warned the schools that "no private European school can function without being registered with the Provincial Administration", and that Education Ordinances of 1956 lay down conditions for the registration of private European schools, including the condition that "no non-European pupil may be

^{285/} Rand Daily Mail, 17 December 1976.

^{286/} Rand Daily Mail, 21 May 1977.

^{287/} Guardian, 13 June 1977; Morning Star, 15 June 1977.

^{288/} Natal Mercury, 18 June 1977.

^{289/} National Student, No.1, 1977.

admitted to a school for Europeans". Father Dominic Scholten, of the Education Department of the South African Catholic Bishops' Conference, stated that the church was "trying to create harmony by bringing young people together with no prejudice and no hang-ups ... Even the Government has asked us to take the children of Black diplomats from Malawi into our schools. The Government has set the pace. We should now allow our own black people in." Under the law, if the schools have their registration withdrawn, white parents may be prosecuted for failing to send their children to a registered school.290/

290/ Cape Times, 21 January, 22 January 1977.

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

1. New repressive laws

274. During the period under review, the South African Government has passed several new laws dealing with "security", extending the powers of the executive to take arbitrary measures and to suspend or suppress various civil rights in times of "emergency" or "public disorder". It has also introduced a bill to establish tribal courts in urban townships. A Newspaper Bill 291/ (brought to the attention of the Group by Mr. Niall MacDermot of the International Commission of Jurists, 454th meeting) to establish a "press code" and a press council to enforce it, and impose severe penalties for breaches of the code, was introduced into Parliament but not enacted.

275. The Defence Amendment Act, drawn to the attention of the Group on behalf of Mr. Niall MacDermot of the International Commission of Jurists (454th meeting), extends what the press has called "war-time powers" to deal with preventing or suppressing "terrorism" or internal disorder. The State President may invoke powers normally used only in time of war, such as the commandeering and evacuation of premises. 292/

276. The Civil Protection Bill, introduced in Parliament in April and later passed as the Civil Defence Act, gives sweeping powers to the Minister of Defence to declare a state of emergency and to take over provincial civil protection powers if in his opinion it appears that any "internal riots or disaster" are of such a nature that extraordinary measures are necessary. 293/

277. The Community Councils Bill introduces community guards in urban black townships and legalises the "makgotla" system of tribal justice that exists informally in some of them. To replace the Urban Bantu Councils it establishes new Community Councils, which will have some of the powers at present enjoyed by (white) local authorities established under the Bantu Administration Act of 1971. These are to be elected on a tribal basis and will have some links with "homeland" governments. The Black Consciousness movement, and especially the student representative council of Soweto, has rejected the tribal basis and limited powers of the new councils and demanded full municipal status for the urban townships (see para. 266 above). Punishments administered by the tribal courts are to include fines of up to R40 and corporal punishment for men under the age of 30. Ms. Helen Suzman told Parliament that the proposed courts would be "kangaroo courts" and that the idea of "public floggings" was abhorrent to human dignity. The Soweto Urban Bantu Council itself came out against tribal courts and at a meeting of delegates from councils representing Johannesburg townships, called by white officials in March, not a single black delegate defended makgotla courts. 294/

291/ Newspaper Bill, B82/77.

292/ Defence Amendment Act, No. 67 of 1977; Rand Daily Mail, 1 February 1977.

293/ Civil Defence Act, No. 35 of 1977; The World, 26 January 1977; Rand Daily Mail, 7 June 1977; Star, 23 April 1977.

294/ Focus, No. 12, September 1977; Guardian, 16 May 1977; Rand Daily Mail, 25 June 1977.

2. Harassment of journalists and the press

278. The witness Mr. Eric Abraham, who from September 1975 to November 1976 ran the independent Southern African News Agency (SANA) from Cape Town, gave testimony, written and verbal, on the victimization of black journalists in the year under review (458th meeting). He said that after the initial uprisings in Soweto more than 20 black newsmen were detained "to prevent them from reporting on the township violence". In addition, at least one foreign newsman (Denis Herbstein of the Sunday Times, London) was deported, others were refused visas, and a former Daily Dispatch reporter, as well as Mr. Abraham himself, were banned and house arrested. Some half dozen black journalists were still in gaol in August 1977. Mr. Abraham named the case of Peter Magubane, who was assaulted several times in Soweto when photographing police brutality, hospitalized and then detained for 123 days. In 10 years Peter Magubane has spent more than 700 days in detention, 588 of them in solitary confinement, and was banned (and therefore unable to work) between 1970 and 1975. Also named in Mr. Abraham's evidence were Mr. Nat Serache, arrested three times in 1976, on one occasion for his eyewitness reports of police provocation of migrant workers to attack demonstrators; Ms. Tenjiwe Mtintso, banned and crippled as a journalist, then detained; and Mr. Joe Thloloe, President of the Union of Black Journalists, detained since 1 March 1977. These cases, said the witness, illustrate the risks involved in the reports and photographs that came out of South Africa in 1976. White reporters were unable to enter the townships and black journalists had to risk their lives to get their stories.

279. According to information available to the Group, another black journalist, Mr. Jan Tugwana, detained at the beginning of July 1977, was the fifth journalist to be detained since February. 295/

280. Mr. Abraham described the steps taken by the South African Government to cripple his news service, SANA. In November 1975 his passport was seized on the eve of a trip to Europe to promote the agency. Soon afterwards SANA's Namibian correspondent, a British subject, was expelled from Namibia. In early 1976 every SANA document was banned by the Publications Control Board, making it an offence to distribute or possess SANA documentation. On 29 November 1976 Mr. Abraham was himself banned and house arrested by the Minister of Justice, after which SANA offices were raided by the police and every document removed.

281. Mr. Mike Terry (459th meeting) handed in a letter sent to the Anti-Apartheid Movement by Ms. Sheila Weinberg of the South African Human Rights Committee, announcing the banning of the HRC Bulletin by the Publications Control Board in April 1976.

282. In August 1977, according to further evidence before the Group, the Minister of Justice threatened to close the black newspaper The World unless it stopped publishing articles critical of the Government. The World is the country's biggest black newspaper, with a circulation of some 150,000, particularly in Soweto. 296/

283. Mr. David Hemson (457th meeting) handed in evidence of the banning of certain numbers of the South African Labour Bulletin under the Publications Act of 1974.

295/ Guardian, 2 July 1977.

296/ Guardian, 29 August 1977.

284. According to information available to the Group, a New Year message from the Ministers Fraternal of the Cape townships of Langa, Guguletu and Nyanga was banned in February 1977. The Ministers Fraternal represent the American Episcopal Church, the Catholic Church, the Church of the Province of South Africa (Anglican church), the Methodist Church of South Africa, the Moravian Church, the Presbyterian Church of South Africa and the United Congregational Church of South Africa. Their eyewitness report on "The role of riot police in the burnings and killings, Nyanga, Cape Town, Christmas 1976", handed in as evidence to the Group by the International University Exchange Fund, was also banned. 297/

3. Deportations and passport refusals

285. Among those refused passports in the period under review were: Mr. Karel Tip, former NUSAS President, found not guilty in December 1976 on charges under the Internal Security Act, 1950, and refused a passport to study in Holland, January 1977; Mr. Sipho Sepamla, a poet invited to visit Britain and the United States, refused a passport in March 1977; Mr. Herman Middleton, black sports administrator, refused a passport in April 1977 unless he gave a written undertaking that while abroad he would not do anything to prevent South African sportsmen or women from taking part in international sport; and Rev. Theo Kotze, Director of the Christian Institute in the Cape, refused a passport to visit Germany in June 1977 (Mr. Kotze's passport was seized in 1973 after he refused to give evidence to the Schlebusch Commission - see E/CN.4/1135). 298/

286. The Director of the Institute for Social Development at the University of the Western Cape, Professor Wolfgang Heinz Thomas, was deported in March 1977 to Germany. Professor Thomas had lived in South Africa for 22 years. He had recently led an investigation into squatter family life and conducted a study of conditions at the Modderdam squatter camp (see paras. 132-136 above). 299/

297/ Cape Times, 11 February 1977.

298/ Rand Daily Mail, 20 January, 7 March, 15 April 1977; Cape Times, 24 June 1977.

299/ Cape Times, 9 March 1977.

II. NAMIBIA

Introduction

287. A particularly significant development during the period under review has been the continuing attempts by South Africa to establish an interim "multiracial" government for the Territory on the basis of the constitutional proposals elaborated by the "Turnhalle constitutional conference", and the efforts made to sell those proposals to the international community as a genuine move towards decolonization and withdrawal from Namibia in conformity with the requirements of the United Nations resolutions on the issue. On 18 March 1977 the conference chairman, Mr. Dirk Mudge, also a deputy leader of the National Party in Namibia, announced that the conference had completed its task to the satisfaction of all 156 African, Coloured and white delegates, and had reached final agreement on the structure of a "three-tier" interim government for the Territory. The constitutional proposals were couched in the form of a petition to South Africa to establish an interim government to administer Namibia until a final transfer of administrative powers on 31 December 1978; it was originally intended for these to be ratified by the South African House of Assembly during its parliamentary session ending in June 1977, to enable a government to be set up during July. They contained no provision for national elections under international supervision, the release of political prisoners and detainees, the free return of exiles, or withdrawal of South African troops and police, which formed part of the minimum conditions for a negotiated settlement in Namibia set by the South West Africa People's Organization (SWAPO); instead the conference chairman indicated that elections would be held on an "ethnic basis", separately for each officially recognized "population group". The March constitutional document was rejected as inadequate and unacceptable by the internal and external leadership of SWAPO, leaders of the African churches inside Namibia, and anti-apartheid political parties such as the South West Africa National Union (SWANU) and groups forming part of the Namibia National Convention (NNC), as well as by the international community, including the Secretary-General of the United Nations, the United Nations Council for Namibia, the African group at the United Nations, member States of the European Economic Community and the governments of five Western members of the Security Council - Canada, France, the Federal Republic of Germany, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

288. This unequivocal rejection of the Turnhalle conference proposals was followed by a major diplomatic effort by the five Western Security Council members to persuade South Africa to drop its intention of establishing an interim government on a unilateral basis and make concessions which could enable a negotiated political solution within the context of Security Council resolution 385 (1976). A "contact group" of diplomatic envoys, including Mr. Don McHenrie, Deputy Permanent Representative of the United States to the United Nations, was established to conduct a series of meetings with the South African Government. Six meetings were held in Pretoria during April-June, including a visit to Windhoek to ascertain the views of SWAPO, church leaders and pro- and anti-Turnhalle political groups, and further meetings were held in August and September. To avoid the impasse that had resulted from the efforts by the former United States Secretary of State, Dr. Henry Kissinger, to convene a formal conference involving SWAPO, the South African Government and Turnhalle representatives, the Western/South Africa dialogue was on a bilateral basis, with full briefings on developments provided separately to SWAPO and, by South Africa, to the Turnhalle delegations. The elements of the attempt to negotiate an internationally acceptable formula for a

transfer of power from South Africa to a government of an independent Namibia involved the establishment of an alternative interim authority to the Turnhalle "three-tier" structure and provisions for the holding of national elections. In June 1977 Mr. Vorster formally announced the abandonment of an ethnically-structured interim government and his intention to appoint a neutral "Administrator General" for Namibia to rule over the Territory during an interim period leading to independence, in consultation with a special representative of the United Nations Secretary-General. The South African Government also agreed to the establishment of a civilian presence from the United Nations to monitor the holding of national elections to a constituent assembly which would devise an independence constitution for Namibia. The elections were to be held on the basis of adult universal suffrage, with the free participation of SWAPO and all political groups, but details of electoral arrangements were to be drawn up by the Administrator General.

289. The South African Government tabled legislation during June 1977 for the establishment of the new administrative system. The South West Africa Constitution Amendment Bill (amending the South West Africa Constitution Act, No. 39 of 1968) provided the South African State President with full executive powers to make and repeal laws for Namibia by proclamation, overriding those of the Administrator and the legislative assembly of the Territory. Subsequently, on 19 August, the State President proclaimed the establishment of the office and powers of the Administrator General and the appointment, with effect from 1 September, of Mr. Justice Marthinus Steyn, a member of the Orange Free State Division of the Supreme Court. His powers included the right to make laws by proclamation in the Official Gazette of the Territory, and to repeal or amend acts of Parliament applied to Namibia.^{1/} Following the appointment of Justice Steyn the present officials, including the Administrator, Mr. B. J. van der Walt, and the Commissioner General for the Indigenous Peoples, Mr. Jannie de Wet, were to resign their posts.

290. At meetings held in New York and Washington during August 1977 with representatives of the "contact group" and officials of the United States Administration, SWAPO's President, Mr. Sam Nujoma, accepted that the discussions were being held in good faith to achieve independence for Namibia in conformity with the resolutions of the United Nations. However, he reiterated that SWAPO would only agree to participate in national elections provided that they were directly supervised by the United Nations, that South African troops in Namibia were withdrawn prior to the elections, and that all political prisoners and detainees were released. Proposals for the establishment of a United Nations peace-keeping force were discussed during a further round of meetings held from 22 to 26 September in Pretoria. A statement issued by the South African Foreign Minister, Mr. Rolf "Pik" Botha, emphasized that South Africa regarded the presence of its troops as essential to the maintenance of "law and order" and would not leave a military vacuum in the Territory. South Africa, however, agreed to a partial phased withdrawal of its forces over a strictly defined period and reportedly accepted the principle of a United Nations force, but insisted in return that SWAPO should be prepared to reduce its military capability on a reciprocal basis involving the abandonment of its bases inside Angola.^{2/}

^{1/} Proclamations R180, R.181; Government Notice R1666 (Government Gazette, No. 5719, 19 August 1977).

^{2/} Financial Times, Guardian, The Times, 27 September 1977; Le Monde, 10 August 1977.

291. Nevertheless, information available to the Group outlines the continued military build-up of South African military forces in Namibia. Mr. P. W. Botha, South African Defence Minister, in a Government White Paper tabled in the South African Parliament on 1 April 1977, stated "We are today involved in a war, whether we wish to accept it or not. The need for a total national strategy involving all citizens and State departments has already been recognized by the Government. There are few, if any, government departments which are not concerned with one or the other aspect of national security".^{3/}

292. The rising cost of defence, as set out in the Defence White Paper, is estimated as follows:^{4/}

	1975/76	1976/77	1977/78
	(in millions of rand)		
Command and control			
Operating costs	76.6	92.9	112.8
Capital costs	23.7	3.1	62.2
Total	100.3	125.0	175.0
Landward defence			
Operating costs	223.3	283.3	424.9
Capital costs	238.6	361.7	482.2
Total	461.9	645.0	907.1
Air defence			
Operating costs	20.5	25.5	79.6
Capital costs	42.5	46.3	46.1
Total	63.0	71.8	125.7
Maritime defence			
Operating costs	26.3	31.5	33.3
Capital costs	59.6	130.7	198.8
Total	85.9	162.2	232.1
General training			
Operating costs	53.1	43.0	61.9
Capital costs	11.3	28.8	6.3
Total	64.4	71.8	68.2
Logistic support			
Operating costs	154.5	218.7	250.8
Capital costs	83.6	78.3	137.5
Total	238.1	297.0	388.3

^{3/} "Developments in the United Nations", Namibia Bulletin, No. 2/77, July 1977, p.13.

^{4/} Ibid., pp. 13-14.

	1975/76	1976/77	1977/78
Personnel support			
Operating costs	11.5	10.9	16.7
Capital costs	15.7	20.2	22.7
Total	27.2	31.1	39.4
General SADF support			
Operating costs	2.7	3.7	4.6
Total defence requirements			
Operating costs	568.5	709.5	984.6
Capital costs	475.0	698.1	955.8
Total	1 043.5	1 407.6	1 940.4
Cash voted (all departments)	1 043.5	1 407.6	1 711.7
Estimated % of State expenditure	15.0	17.0	19.0
Estimated % of GNP	4.1	4.9	5.1

293. According to the Rand Daily Mail the actual spending figure appears to be much higher than that reflected in the table above. The newspaper observed: "In real terms, South Africa's defence spending has been much higher each year than the Minister of Finance divulges in his budget speech. Last year, for example, the South African Defence Force got an extra R81 millions from special accounts for defence spending. This additional money was obtained from the Treasury and from the South West Africa Funds".^{5/}

294. Other sources of defence financing are also provided, such as the defence bond lottery and the R10 million defence bonds. Also not reflected in the defence budget are the R12,086,000 and R66,000 earmarked for the Bureau for State Security (BOSS) and the Parliamentary Internal Security Commission (PISCOM). Other relevant funds which are not reflected in the table above are the allocations to the Armament Corporation (ARMCOR) and to nuclear development programmes. Various other sources also exist which contribute to military funds. There are organizations which collect funds and other items for the soldiers in the operational areas. These include Die Suidkruis, the South African Defence Force Fund Group and the Anti-Terrorist Fund Organization.^{6/}

295. The Defence White Paper, after analysing the manpower requirements for the war machine, concludes that the Defence Force's manpower is under strain. It says that three possibilities are being considered: (a) the extension of the Permanent Force by the creation of additional posts and stabilizing employment by means of an incentive scheme; (b) the extension of the initial compulsory term of service for whites from 12 to 24 months; and (c) the extension of voluntary national service to white girls and other population groups, using such volunteer groups on the same basis as white servicemen.^{7/}

^{5/} Rand Daily Mail, 31 March 1977.

^{6/} Namibia Bulletin, No. 2/77, July 1977, p. 15.

^{7/} Ibid.

A. CAPITAL PUNISHMENT

1. Reference to some relevant laws

296. As stated in previous reports of the Group, the various South African security laws providing for the death penalty have been illegally made applicable to Namibia. The Terrorism Act, No. 83 of 1967, which was made retroactive to 1962 when it was introduced and which provides for the death penalty for a wide definition of "terroristic activities" on conviction, and the Sabotage Act (General Law Amendment Act, No. 76 of 1962) are increasingly employed to the exclusion of other legislation (see E/CN.4/1135, para. 18; E/CN.4/1111, paras. 42-43). The Internal Security Act, 1950 (formerly called the Suppression of Communism Act, 1950) as amended in 1976 (see chap. I, para. 47), which is applicable to Namibia, in addition makes it a capital offence for any person to undergo, or to encourage others to undergo, any form of "training" in order to achieve any of the objectives of communism as defined in the Act. It further provides for a possible death penalty in cases where past or present residents of the Territory are convicted of having advocated, whilst abroad, foreign intervention to effect change or to achieve the objectives of "communism". The death sentence is imposed on a mandatory basis for the crime of murder, except where extenuating circumstances apply. In cases where a death sentence is passed and upheld on appeal, a report is sent to the State President of the Republic, who may make a recommendation for clemency, as may also the Department of Justice. Figures for those condemned to death and executed are included in the total published for the Republic. As with South Africa, the majority of those sentenced to death are actually executed, save in exceptional circumstances, by the method of hanging. During the period under review, no further legislation has been passed which has been made applicable to Namibia that reduces or extends the circumstances in which the death sentence may apply.

2. Analysis of evidence and information received

297. The Swakopmund Terrorism Act trial of February-May 1976, which resulted in the death sentence being imposed on two men, Mr. Aaron Mushimba (SWAPO national organizer) and Mr. Hendrik Shikongo (SWAPO member). This trial was discussed in a previous report of the Group (see E/CN.4/1222, paras. 312-316). In this connexion it may be recalled that at its thirty-third session the Commission on Human Rights, having been informed by the representative of SWAPO that the two leaders were in danger of death before the law courts in South Africa, decided to send, on 15 February 1977, a telegram to the Secretary-General of the United Nations, requesting him to employ, in all urgency, whatever means he might deem most appropriate to save the lives of these two patriots. In a telegram dated 16 February 1977 addressed to the Chairman of the Commission on Human Rights, the Secretary-General stated that he fully shared the Commission's concern in this regard and had immediately contacted the South African authorities, adding that he would continue to follow the developments in this matter closely and take whatever action he appropriately could within the possibilities of his office.

298. Mr. Mushimba and Mr. Shikongo were subsequently acquitted after an appeal heard on 15-17 February 1977 by the Appellate Division of the Supreme Court of South Africa sitting in Bloemfontein. According to the information available to the Group, during the hearing the defence counsel argued that on the basis of the

special entry into the trial record granted by the Windhoek Supreme Court in June 1976 in the light of the evidence of a breach in the privileged relationship between attorney and client, the convictions and sentences of the appellants should be set aside. The Chief Justice, Justice Rumpff, who gave judgement on 17 March 1977, upheld the appeal and set aside the convictions and sentence of both men. They were released on the same day from Windhoek Central Prison and subsequently left Namibia for Zambia as they feared possible rearrest on other charges (see also para. 30 below). 8/

299. As reported previously (E/CN.4/1222, para. 317), the trial of seven SWAPO members on charges under the Terrorism Act alleging their involvement in the murder of four white people was due to commence on 30 August 1977 in the Supreme Court at Keetmanshoop. In the event, the defendants were tried separately and at the close of a two-week trial in the Windhoek Supreme Court, Filemon Nangolo (25) was sentenced to death on 14 September 1976 by Justice Frans Badenhorst, after being found guilty of murder on 14 counts. The defendant, who had been paralysed from the waist downwards in a shoot-out with police at the time of his arrest in April 1976, appeared in court in a wheelchair. His alleged companion in the murders, Kanisius Heneleshi, who had evaded capture, was subsequently mortally wounded in a gun battle with police and found dead in the veld outside Windhoek. In October an appeal on behalf of Nangolo was refused by Justice Badenhorst; he was not, however, executed until 30 May 1977, during which time he was detained in Windhoek Central Prison. The execution went ahead despite a number of representations to the South African Government by, amongst others, the British Ambassador in Cape Town on behalf of the five Western members of the Security Council. SWAPO appealed for intervention by the United Nations Secretary-General, the International Commission of Jurists and the International Committee of the Red Cross. The British Foreign Office, in an official statement, expressed "great regret on humanitarian grounds" for the hanging. In a statement issued in London, SWAPO said that "Nangolo's execution is to be regarded as murder" due to the illegal occupation of Namibia by South Africa, and that "Nangolo's actions, while not endorsed by SWAPO, must be understood in this context". 9/

300. As regards the fate of captured freedom fighters, it was stated before the Group by Mr. Abraham (453th meeting) and Mr. Ennals (459th meeting) that, though numerous SWAPO guerrillas had allegedly been captured according to communiqués issued by Defence Headquarters in Pretoria, only relatively few had actually been tried for direct participation in guerrilla activity, which suggested that they were being either held in indefinite detention or tried and executed in secret. There was a need for urgent international action to clarify the status of nationalist guerrillas captured by the security forces, since they were currently regarded by the authorities not as prisoners of war, which would provide them with the benefit of some protection in law, but as "terrorists". According to information available to the Group, SWAPO has demanded that all captured guerrillas belonging to its organization should be treated as prisoners of war.

8/ Cape Times, Rand Daily Mail, 19 March 1977; Windhoek Advertiser, 24 March 1977.

9/ SWAPO press release, L/8/77/60, 30 May 1977; Guardian, 31 May 1977; Daily Telegraph, 2 June 1977.

A SWAPO delegation participated in the work of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, held under the auspices of the International Committee of the Red Cross in Geneva (see also chap. I). In June 1977 the Conference added two new protocols to the 1949 Geneva Conventions; these had the effect of widening the definition of international war to include liberation struggles or "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right to self-determination" and to accord nationalist guerrillas prisoner-of-war status with the proviso that during each military engagement a guerrilla must distinguish himself from civilians by carrying weapons openly. In an address to the Conference Mr. Peter Katjavivi, SWAPO's Information and Publicity Secretary, formally welcomed the adoption of article 44 of the second new protocol and pledged that SWAPO would adhere to the Geneva Conventions. He stated that many captured guerrillas in Namibia had died as a result of the deliberate withdrawal of proper medical attention, and requested the International Committee of the Red Cross to investigate the whereabouts of captured guerrillas and ensure that they received the treatment to which they were entitled under the Geneva Conventions.

301. During the period under review four SWAPO members were brought to trial on charges under the Terrorism Act, accused of participating in "terrorist" activities - Benjamin Chrispus Uilenga (24), Ruben Hengula, Michael Shikongo and Lazerus Guiseb. Uilenga was accused of crossing into Namibia from Angola around June 1976 in the company of other guerrillas, with intent to break law and order and in possession of arms and ammunition. The charges against the other three were similar, although only Hengula was charged with entering Namibia; Shikongo, described as an active SWAPO supporter, and Guiseb, described as SWAPO secretary at Otjiwarongo, were accused of assisting Hengula. The defence counsel claimed that Uilenga qualified on four counts as a prisoner of war and should be tried before a military court since a "state of hostility" amounting to open warfare prevailed in Namibia. The Windhoek Supreme Court judge, J.J. Strydom, rejected this argument, which he said "fell flat judicially". The State Prosecutor, H.F. van der Zyl, asked for the death penalty to be imposed on all four men since those who were members of SWAPO had the same aims as trained "terrorists"; testimony as to SWAPO's allegedly violent methods and aims was given by P.A. Ferreira, who had presented similar evidence at the Swakopmund trial. The judge found all four guilty of the charges but in sentencing overruled the prosecution plea on the basis that SWAPO was not an illegal organization and therefore circumspection was required in sentencing. The four received prison sentences of 15, 12, 5 and 8 years respectively. A factor in the waiving of the death sentence on this occasion may have been that none of the defendants was charged with murder. 10/

B. Massacres and violations of the right to life

302. Mr. Abraham (458th meeting) referred to the deterioration of the situation in northern Namibia and the policy of arbitrary execution of civilians by the security forces. This involved suspected guerrilla sympathizers and SWAPO

10/ Focus, No. 12, September 1977, p. 8.

supporters who were rounded up en masse by South African Defence Force units for interrogation in the series of internment camps which had been set up adjacent to military camps throughout northern Namibia. There were regular reports by relatives of the disappearance of civilians in the northern areas and it was believed that few of those who went into military internment ever came out alive. The establishment of detention centres had been a measure adopted as a response to the escalation of the guerrilla conflict during 1976. The situation in Ovamboland had become worse since the Group's last report and the accounts published in the Guardian newspaper during August 1976 of the terror campaign being waged against the civilian population by members of the Defence Force. This information, based on the testimony of a serving soldier, Mr. Bill Anderson, and corroborated from other eyewitness sources by Mr. Abraham when researching the allegations for the newspaper, was discussed in the previous report of the Group (E/CN.4/1222, para. 352). Mr. Abraham said that these allegations had been corroborated by further accounts from Namibia and referred to a document which had been received in May 1977 by the International University Exchange Fund (IUEF), which contained details of shooting incidents and other atrocities allegedly committed by the Defence Force in the previous five months. In one incident, during a social gathering in Omuntele, Ovamboland, on 4 March 1977, the eyewitness source was amongst a crowd of 50 people at a public meeting place which had been surrounded by South African soldiers, who shot at those trying to run away. The informant was shot in the leg, another injured in the arms and a girl of 10 killed. The man wounded in the arms was thrown into the back of a truck and taken first to Oshakati hospital and then to Katutura. He had not been charged with any crime. Both of his arms were shattered and he had no feeling in his fingers. In another account some 15 women were allegedly shot dead by soldiers while picking fruit at Ongango during the last week of March 1977; their relatives who visited the mortuary were asked to pay R5 per body. A number of civilians were said to have been killed in Ombalantu, Ovamboland; they included Petrina Nakale (December 1976), Mutauala Shitualuka (January 1977) and Erastus Kornelius (February 1977). A young man in Ovamboland testified in a taped interview with a correspondent recorded on 21 January 1977 that many people had been killed by soldiers for giving food and water to the guerrillas. A letter sent to the Lutheran World Federation by a Namibian on 23 March 1977 listed 18 civilians said to have been killed or to have disappeared during the month of February at Okalongo, Edundja, Ombalantu and Okaimakanyama. 11/

303. According to information available to the Group, UNITA forces were taking part in the killing of civilians on Ovamboland. Reports from northern Namibia indicated that they were being used by South Africa to terrorize villages and commit acts of murder, rape and looting in both Namibia and Angola. UNITA troops had been re-equipped and trained by South African forces at bases inside Namibia and because they spoke the local languages were often disguised as SWAPO guerrillas during raids in a tactic to discredit SWAPO, similar to that employed

11/ South African News Agency bulletin, (SANA) May 1977/2.

in Southern Rhodesia by units of the "Selous Scouts". On 10 January 1977 UNITA forces had raided the village of Omundaungilo, arriving in a truck like those used by the South African Defence Force. Men were rounded up and taken away, women were raped and at least one person was killed in the incident. 12/

304. Two documents obtained by SWAPO revealed the policy towards civilians adopted by the South African Defence Force. A 90-page "Guide to psychological action" issued in August 1976 to all servicemen in the operational area specifies methods to be used in psychological counter-insurgency techniques. Civil disobedience is seen as part of a guerrilla insurgency rather than as a separate mode of political action, and the mixing up of violent and non-violent forms of opposition is used to justify the use of force against peaceful actions such as strikes, boycotts or demonstrations. Churches and church organizations are regarded as part of "the enemy". Servicemen are warned against assaulting "someone who might turn out to be the son of a headman", while the manual suggests the "display of deceased insurgent leaders to the population" as a method of gaining the support of civilians. The manual has been described as similar to the United States Army field manual on psychological warfare operations issued to United States forces in Viet Nam. 13/ A second army manual obtained by SWAPO and dated June 1971, entitled "Unconventional warfare operations in urban areas", details the circumstances in which soldiers should shoot to kill civilians. The soldier who opens fire is indemnified if he kills a civilian, and soldiers on sentry duty are told never to fire warning shots or attempt to wound since the presence of a soldier prepared to shoot to kill is in itself a powerful deterrent. The manual sets forth the right to kill in defence of all government property, including buildings, vehicles and equipment. Troops are warned not to exempt women from searches and told that children must not be regarded automatically as being innocent since they may have been trained by teachers and parents. 14/ It should be noted that in contrast to the situation in Southern Rhodesia, the South African authorities do not issue details of non-combatants killed as a result of army operations against guerrillas, so that unless specific statements are issued the only sources are civilian eyewitness accounts.

C. Forced removals of population

305. The Group has previously reported (E/CN.4/1222, paras. 324-328) the clearing of a one-kilometre "no-go zone" between Angola and Namibia and the establishment of detention centres attached to military camps. There was a mass round-up of civilians in the period subsequent to the extension of

12/ Ibid.; Namibia Bulletin, April 1977, p. 10.

13/ Sunday Times, 3 April 1977; SWAPO press release, 3 April 1977; New Society, 21 April 1977.

14/ Observer, 26 June 1977.

emergency regulations throughout northern Namibia in May 1976. According to information available to the Group, up to 50,000 civilians were forcibly removed from their homes in northern Namibia, while houses, shops, hospitals and other community facilities were closed down or destroyed and livestock and crops confiscated or burnt. Local residents were warned that anyone found in the depopulated strip or near the border fence would be shot on sight.

Mr. Sam Nujoma, President of SWAPO, described the situation in an address to the Security Council in which he said that communities had been uprooted and taken to concentration camps, villages had been destroyed, crops burnt and livestock confiscated. ^{15/} The reports of villages being evacuated have not been denied by South Africa; instead reference has been made to alleged intimidation by SWAPO guerrillas. It was reported that journalists had been conducted on an extensive tour of the operational area by General Jan Geldenhuys, commanding officer of the Defence Force in Namibia, in September 1977. At a base near the Angolan border in Ovamboland, the commanding officer said that intimidation by "terrorists" had been at least partially responsible for the complete desertion of villages by the Ovambos. In that area only two of about 40 villages were still inhabited. A correspondent for the Daily Telegraph commented on the situation as follows:

"Independent sources who have been in the border operational area speak of massive and sometimes ruthless South African military operations there, especially against the big Ovambo tribe, which is traditionally the mainstay of SWAPO. I could not check those claims, for my application as a staff correspondent of The Daily Telegraph for the necessary permit to travel to the area independently was peremptorily and without explanation turned down by the South African authorities (a fact which must make suspect some of South Africa's frequent and sometimes colourful claims about SWAPO activities in Ovamboland and the plight of refugees from Angola, both of which are generally displayed to tightly-controlled groups of correspondents flown in and out in a day)." ^{16/}

^{15/} "Repression in Namibia under South African occupation", SATIS/AAM Conference, London, 16 April 1977; Security Council document S/PV.1956, 28 September 1976.

^{16/} Rand Daily Mail, 12 September 1977; Daily Telegraph, 17 May 1977.

D. Treatment of Political prisoners and captured freedom fighters

1. Summary of some relevant laws

306. As indicated in previous reports of the Group, the South African security laws providing for severe penalties of detention and imprisonment for a range of "political offences", as well as those governing the position of prisoners in gaol, have been made specifically applicable to Namibia (see E/CN.4/1030/Add.1, para. 9). These include the Prisons Act, No. 8 of 1959, and the General Law Amendment Acts, Nos. 76 of 1962, 101 of 1969 and 94 of 1974. As described in the last report of the Group, the provisions of the Riotous Assemblies Act of 1956 were applied for the first time to Namibia during 1976 under the terms of the Internal Security Act (see E/CN.4/1222, paras. 332-333). In addition there are certain proclamations which concern Namibia exclusively, in particular proclamation R17 of 1972, which made Ovamboland subject to emergency law, proclamation R304 of 1972, extending the powers of the South African Police throughout the northern districts of Namibia, and proclamation R89 of 1976 ("Regulations for the Administration of Certain Areas in South West Africa") which provided for the exercise of emergency powers formerly conferred on members of the South African Police to members of the Defence Force in Ovamboland, Kavangoland and Eastern Caprivi. These provide the army with wide powers of arrest, detention and interrogation (E/CN.4/1050, paras. 261-263; E/CN.4/1135, para. 252; E/CN.4/1222, para. 334).

307. A previous report of the 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 under the laws of the mandated Territory. The Commissioner of the South African Police exercises the command, superintendence and control of the force in Namibia through the Divisional Commissioner of Police in Windhoek, subject to the directions of the Ministry of Police.

308. Three types of police currently operate in Namibia. The South African Police units stationed in, or seconded to, Namibia are heavily armed with military vehicles, jeeps and helicopters. They were mainly responsible for patrolling the Angola/Namibia border until June 1974, when these duties were assumed by units of the South African Defence Force. The security police have a large detachment of men on duty in Namibia and other special departments of police send in men as the need arises; their work is particularly concerned with the detention and interrogation of political prisoners. The municipal police, including African constables under European officers, are controlled by the white urban authorities and are mainly responsible for enforcing pass laws, influx controls, etc. So-called tribal police have been established under the control of the tribal authorities of Ovamboland and Kavangoland; since they fall under the aegis of "self-governing" homeland authorities, they are not subject to South African departmental regulations or any form of public scrutiny (see E/CN.4/1135, para. 210; E/CN.4/1159, paras. 243-244; E/CN.4/1187, para. 360; and relevant sections of the present report).

2. Analysis of evidence and information received

309. The evidence presented to the Group can be analysed under the following headings: (a) the numbers of political prisoners and recent arrests; (b) allegations concerning torture and the cruel, inhuman and degrading treatment

of political prisoners and captured freedom fighters; (c) allegations concerning violations of the right of the accused to a fair and public trial and procedures for complaints and redress.

(a) Numbers of political prisoners and recent arrests

310. Mr. Ennals (459th meeting) and Mr. Smart (459th meeting) referred to the blanket control exercised over the whole of northern Namibia and the Draconian emergency powers which enabled the arresting officer to hold detainees incommunicado at any place. For these reasons and because it was the policy of the South African authorities to withhold information concerning arrests and detentions, even from families, it was impossible to state accurately the total number of persons detained at any one time. Several hundred Namibians had been detained under the emergency proclamations during the preceding year. Accurate reporting was said to be made difficult not only by the secrecy over the identities of those detained but also of the location of the places of detention. Outsiders were barred from entering northern Namibia in order freely to investigate the location of places of detention and the conditions of those held. Proclamation R89 of 1976 specifically stated that "detainees may be held at places deemed suitable by the authorities".

311. According to information available to the Group, a number of SWAPO members were arrested during the period under review. In January 1977 five officials were arrested by the Outjo and Khorixas security police. Rev. Hiskia Ndjoze-Aunivi (SWAPO Organising Secretary), Mr. Riundja Kaakunga (Vice-Secretary-General) and Mr. Nashilongo Taapopi (Windhoek branch chairman) were amongst those detained after a public meeting for allegedly entering Outjo without legal documents. Mr. Frans Kandeke, of the Windhoek branch, was arrested on 29 December 1976 for not being in possession of a pass, taken to the police station for interrogation concerning his political activities, and subsequently taken to northern Namibia, where he remained in detention until February 1977. Mr. Simeon Mushigange was arrested in Otjiwarongo on charges of staying illegally in a white area. He was taken to Outjo to recover from wounds sustained in assaults by police and remained in custody until mid February. 17/

312. According to information available to the Group, Axel Johannes, SWAPO's regional secretary in Windhoek, and Victor Nkandi, a SWAPO member, were rearrested and detained in Ovamboland on 28 February 1977. The two men had completed one-year sentences for contempt of court after refusing to testify as State witnesses against the accused in the Swakopmund trial; they alleged they had been subjected to torture whilst held incommunicado for five months prior to the trial. Both men had been given notice that they would be "repatriated" to Ovamboland on their release, although their homes were in Windhoek; on the day of their release they were taken to Oshakati where they were rearrested and detained without any reasons given or charges made. On 15 July Mr. Nkandi appeared before the Windhoek Magistrates' court; no evidence was presented and he was remanded in custody until 27 September for a summary trial in the Windhoek Supreme Court; this was subsequently postponed until October. According to police sources he was to be

17/ Windhoek Advertiser, 20 January 1977, 1 February and 18 February 1977.

implicated as one of Chief Elifas's five co-assassins. It was reported that Mr. Johannes was to be brought forward once again as a State witness against Victor Nkandi. Both men were detained continuously in Oshakati following their rearrest. 18/

313. Three men were reported to have been sentenced to prison terms by the Windhoek Supreme Court on charges under the Terrorism Act for their part in Filemon Nangolo's activities. On 30 September 1976 Gabriel Willem and Karel Nampala were each sentenced to seven years, three suspended, for housebreaking. Solomon Mbango, one of seven originally charged, gave evidence for the State. On 14 October Marias Isak was found guilty under section 3 of the Act of aiding and abetting Filemon Nangolo and received an eight-year gaol term. There was no information on the fate of the two remaining defendants, Sacharia Nashandi and Risto Nakanyala. 19/

314. According to information available to the Group, Naboth Imene, an evangelist in the Ovambo/Kavango Lutheran Church, was sentenced to five years' imprisonment under the Terrorism Act on 18 July 1977, after being found guilty of aiding guerrillas in the Oniipa and Onyulaye areas of Ovamboland. He had written a letter requesting aid for the "men in the bush", and was arrested some nine months before the trial and held continuously in detention. 20/ A number of students were detained by police as a result of boycotts of examinations during the period under review (see paras. 359-361 below).

315. The Acting President of SWAPO, Nathaniel Maxuilili, was served with a further five-year banning order issued on 24 May 1977 in Cape Town by the Minister of Justice. Mr. Maxuilili, the only Namibian known to have been served with a banning order, was restricted to the Kuisebmund township in July 1972 shortly after the visit of Dr. Alfred Escher, the special representative of the United Nations Secretary-General. In terms of section 10(1)(a) of the Internal Security Act the Justice Minister, Mr. Kruger, stated that he was "satisfied you engage in activities which endanger or are calculated to endanger the maintenance of public order"; under its provisions Mr. Maxuilili is prohibited from entering certain places such as schools, factories and "Native" areas and compounds, cannot attend any social gathering or political meeting and is banned from writing or publishing any publication as defined by the Internal Security Act. Nathaniel Maxuilili was previously arrested in 1964 and sentenced to four months' imprisonment for organizing opposition to the "homeland" proposals of the Odendaal Commission; he was rearrested in 1966 and detained in Pretoria Central Prison, together with Hermann ja Toivo, for several months and was sentenced in mid 1967 to five years' imprisonment, all but one month of which was suspended. 21/

18/ Windhoek Advertiser, 15 July and 18 July 1977; The Times, 4 July 1977.

19/ Windhoek Advertiser, 15 September, 16 September and 30 September 1977.

20/ Windhoek Advertiser, 17 August and 19 August 1977.

21/ Windhoek Advertiser, 2 June 1977; Focus, No. 11, July 1977, p. 14.

316. In the last report of the Group the possible transfer of Namibian political prisoners from South Africa was referred to (see E/CN.4/1222, para. 345). During the period under review the Prisons Act of 1959 was amended in September 1977 by a proclamation in the Government Gazette. The notice stated that persons sentenced to imprisonment or referred to detention in the Republic might be received and detained in prison in Namibia until the expiry of their sentence. There was some speculation that this would involve initially Hermann ja Toivo and other prisoners on Robben Island, and that a transfer might be in preparation for their release prior to independence. 22/

(b) Allegations concerning torture and the cruel, inhuman and degrading treatment of political prisoners and captured freedom fighters

317. Mr. Abraham (458th meeting) and Mr. Ennals (459th meeting) referred to the extensive evidence available which indicated that the use of torture in the interrogation of political detainees by the security police had increased in the period under review and had now become institutionalized. It was used on a routine basis to extract "confessions" and to elicit information relating to their political activities. While allegations of torture had been consistently made in recent years, the use of both physical and psychological torture by the security police appeared from all available evidence to have become a standard interrogation procedure. Maltreatment, brutality and torture were also used on an extensive scale against civilians in Ovamboland and northern Namibia in order to gather information about the movements of SWAPO guerrillas and generally to intimidate the local population. The Group's attention was drawn to a number of documents received from sources inside Namibia which contained detailed allegations of the use of torture during the period under review.

318. Reference was made by Mr. Abraham (458th meeting) and Mr. Smart (459th meeting) to the establishment of military internment camps in Ovamboland where brutal interrogation techniques were regularly employed. The discovery of a major military-run internment camp at Oshakati was made in June 1976, following an eyewitness account by Rev. Lazerus Haukongo who had been detained there after his arrest by soldiers while he was on the way to a clergy meeting in Windhoek. He related how the camp consisted of three sections: reception, interrogation (usually by torture) and permanent internment (pending trial for allegedly aiding SWAPO guerrillas). Several other fellow detainees had told Rev. Haukongo of their torture whilst in the reception section and this had been corroborated by informants who had spoken to the relatives of detainees. The camp had since become notorious as a place where torture was practised on a systematic basis. Virtually every military camp had an internment centre attached to it and most had been established in the period May/June 1976 - known locations were at Inana, Ipenga, Ondangwa and Okalongo. Details of torture were contained in the document received by IULF (see para. 302 above). An Oshakati secondary school student, interviewed on 21 January 1977, had been arrested by the army on 12 December and taken to the internment camp for interrogation about his SWAPO membership - he had been informed on by an Ovambo government official. He described the camp as a round enclosure,

constructed out of tents and surrounded by barbed wire and floodlights. It was divided into enclosures holding 25-30 people, and the total number of those interned was about 200. He had been tortured for five days, during which time he had been given one cup of water only at 2 p.m. each day. At 7 a.m. every morning he had been given electric shock treatment and then tied up to a pole in the open from 12 noon to 7 p.m. He was blindfolded and could not see his interrogators, who had repeatedly beaten him about the body with sticks and cord. At the end of the five days he had been put in an enclosure with 25 other students and kept there until 1 January, when he was released without being charged. One woman who was pregnant had been tortured in a similar fashion and had died as a result. Food in the camp consisted of one cupful of maize-meal mixed with cold water three times a day; other food was not allowed, even when brought by relatives. Early in February 1977 soldiers had arrested a Mr. T. K. at his house at Endunja and taken him to Oshakati for interrogation about his brother, who was said to have crossed the border into Angola. He was detained for three weeks, subjected to electric shock treatment and beaten up, as a result of which one of his arms was broken and he had to be taken to the Oshakati hospital. In another transcribed interview with a former detainee, Mr. A. W. said he had been taken to Oshakati in a truck by soldiers from Onyanya, tortured by the application of electric shocks to the tongue; he was bleeding from one eye and had a broken tooth. He had also subsequently been hung by the wrists from the roof of a room from 1 p.m. to 8 p.m. at Onyanya over a seven-day period. There were several such allegations of electric shock and suspension torture in the documents. In another account a Mr. X. described how soldiers had tied him up with his hands behind his back. A rope had been attached to the stick and thrown over a tree and he had then been hauled off the ground so that the whole weight of his body was suspended from his elbows. He was left in this position for eight hours and, as a result, both his arms had been dislocated.

319. There had also been cases of rape by soldiers. In one incident a teacher at the Ongwediva primary school had been arrested and taken to the Okalongo military camp, a large base near the border, because she had received a letter from someone on Robben Island which had been intercepted by the police. She was detained for three weeks during which time she had been severely beaten up and raped by soldiers. On her release she was admitted to the mission hospital at Onanjokwe; her whole body was swollen, including her face, and the skin was split in many places from the beatings she had received.

320. Mr. Ennals (459th meeting) referred to the case of Miss Rauna Shimbode, a SWAPO member detained without charge in April and May 1977. She had been arrested in Windhoek, where she worked as an auxiliary nurse in the Katutura hospital, and taken to Oshakati police station, where she had been brutally treated over a period of several days: blindfolded, gagged, suspended by her wrists, soaked with water and subjected to electric shocks. When seen afterwards in Windhoek by an Amnesty International representative, she still bore the marks of rope burns on her wrists and electrode burn marks on her ear lobes. According to information available to the Group, Rev. Paul Oestreicher, Chairman of the British section of Amnesty International, reported at the end of a month-long private visit to South Africa in October 1976 that he had evidence of "widespread terror and almost totally uncontrolled violence being practised by South African security forces against the Ovambo people in Namibia". He described the violence as "a pillage of the civilian population" and described his sources of information as former detainees who had been tortured and later released and many Lutheran Church pastors. The commonest

form of torture was electric shock treatment, hooding and blindfolding, while people had also been tied to poles by the arms and legs and beaten while so suspended. 23/

321. Pastor Heinz Hunke, in a paper prepared in November 1976, "The cancer of torture in Namibia", stated that inhuman treatment, both physical and psychological, was taking place throughout Namibia, in prisons as well as out in the open, and he named those responsible as the regular police, investigating (security) police, and members of the South African Defence Force. He listed the places where torture took place as Oshakati, Ondangwa, Onuno, Ongongo (all in Ovamboland), Rundu (Kavangoland), Grootfontein, Tsumeb and Katutura. The methods of torture were said to include: being beaten when suspended by handcuffs and then being forced to sit out in the sun; being burnt with cigarettes; being hung by a chain fastened around the wrists with the feet just touching the ground for ten hours at a time; being punched and kicked on the body and head with rifle butts, chairs and sticks; being bound to a stick in a crouching position and then being stifled with a piece of tyre tube held over the nose and mouth; being tied up in this manner and dropped on the spine from a height of one metre; being tied up, hung upside-down and then given electric shocks; and water torture, where the victim is gagged with a cloth and subjected to partial suffocation by water poured through the cloth. The physical consequences were described as complete exhaustion, loss of consciousness, dislocation of the wrists, swollen tongues and burst lips, wounds and bruises over the whole body; the psychological effects as shame, humiliation, horror and readiness to subscribe to any statement which satisfied the torturer.

322. Reference was made to a "Joint statement on torture in Namibia" published in May 1977 by four church leaders - Bishop L. Auala, Evangelical Lutheran Ovambo/Kavango Church, Dr. J. L. de Vries, Evangelical Lutheran Church in Namibia, Rev. E. Morrow, Anglican Diocese of Damaraland, and Bishop R. Koppmann, Catholic Diocese of Windhoek. The statement alleged that increasing numbers of people were beaten whilst in custody and that the practice of torture, especially in northern Namibia, had reached "horrific proportions". The allegations were denied by Brigadier H. V. Verster, the divisional commissioner of police. 24/

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

323. Mr. Ennals (459th meeting) referred to the absence of any procedure of complaint or compensation for the victims of police brutality, including those held in connexion with court cases. The emergency proclamations in force in northern Namibia effectively indemnified the State and all its officials against civil or criminal prosecutions undertaken while the proclamations remained in force. Section 15 specifically forbade civil lawsuits, and section 16 prevented criminal prosecution for acts committed which were held to be in "good faith". In cases of doubt the onus of proof was on the complainant to show that a political act was not committed in good faith, which was in practical terms generally impossible. These security laws invited the abuse and ill-treatment of prisoners by the lack of redress available. This was a procedure which conflicted totally with the

23/ Guardian, 30 October 1976; Le Monde, 6 April 1977.

24/ The Times, 28 May 1977.

principles agreed by the United Nations in respect of the individual responsibility of persons for their actions in regard to the use of torture or other infringements of the Standard Minimum Rules for the Treatment of Prisoners. The difficulty of proving cases of torture was also referred to in the papers prepared by Pastor Hunke and the four leaders of the Namibian churches (see paras. 321 and 322 above). It was pointed out by Pastor Hunke that legal defence counsel who attempted to use evidence of torture in order to have compromising statements made by defendants and witnesses to the police dismissed as null and void found themselves in a precarious and difficult position. Although the legal position was clear, attempting to prove allegations made in court was extremely difficult, and if the defence were able to obtain a minimum sentence by not referring to the question of torture they would do so for humanitarian reasons. The church's advice for attempting to deal with the current experience of oppression was that detainees should report to a medical doctor immediately on their release, have a report drawn up on their physical condition and take this to a lawyer with instructions to sue the responsible minister of government for damages. If forced to make an untrue statement during interrogation because of intolerable torture, detainees should testify in court that their statement had been obtained under duress. While they were in detention, a doctor should be requested to examine any injuries and they should make an attempt to remember the names and identities of those carrying out the interrogations. Details should be given to any visiting magistrate. If the matter could not be brought to court, a detailed account should be given to an appropriate individual in the form of a sworn affidavit.

324. Mr. Smart (459th meeting) referred to the maladministration of justice which had taken place during the Swakopmund trial. The judgement given on 17 March 1977 by the Chief Justice in granting the appeal of Aaron Mushimba and Handrik Shikongo reflected a number of issues of major concern over the conduct of the trial. Inaccurate reporting by a portion of the press had created the impression during the case and its appeal that it was concerned with the murder of Chief Filemon Elifas; this was a totally incorrect impression and placed the accused, with the exception of Shikongo, in an unfavourable light. Referring to the special entries made on the record and alleged irregularities in the trial, the Chief Justice said that at the end of 1975 the defence had been placed in the hands of a Windhoek firm of attorneys, Lorentz and Bone. Mr. du Preez, a partner in the firm, who acted on its behalf in the case, was unaware that a certain Mrs. Ellis, a receptionist and telephonist with the firm, had been a police informer since 1972 and frequently supplied information to Captain Nel of the security police. She opened the post and had access to office files; she had approached the personal typist of Mr. du Preez and asked her to supply confidential information concerning the trial. This had included a statement by Mr. Shikongo, other trial documents, telex messages and a message in code from David Meroro, former SWAPO National Chairman now in exile. A partner in the firm, Mr. Smit, was also a friend of Captain Nel and acted as a police informer, and during 1975 he had tried to persuade a clerk with the firm to act as an informant in a civil case concerning the defence. A meeting of the partners was held on 20 May 1976, following which Smit and Ellis resigned. The Chief Justice said the complete exclusion of the privilege was a gross irregularity which would be difficult to exceed, and that because of the nature of the breach of the privilege of the appellants it had to be found that their protection both before and during the trial had totally disappeared through the actions of the

security police. The Chief Justice opened his case by stating that it was "fortunately unique in the history of South African law". Mr. MacDermot in his written evidence commented that while this might have been the first such case to come before a court, it appeared to be a practice of long standing. No action had been taken against the policeman involved, despite assurances by the Chief Justice and the Commissioner of Police, General Prinsloo, that the actions of Captain Nel would be investigated. According to information available to the Group, the Minister of Justice, Mr. Kruger, stated in the House of Assembly on 24 May 1977 that the investigation had been completed. In reply to a question by Ms. Helen Suzman of the Progressive Federal Party, the Minister said that no steps other than departmental had been taken, as those involved had not acted mala fide. 25/

25/ Security and Related Trials in South Africa, July 1976 - May 1977, (South African Institute of Race Relations, 1977), pp. 60-62; Cape Times, 19 March 1977; Windhoek Advertiser, 25 May 1977.

E. Situation of African black workers

325. Previous reports of the Group have examined the effects of the labour system in Namibia, including the system of recruitment of African migrant workers, the denial of trade union rights and the disparity in wages between black and white workers, and the evidence of low wages and poverty amongst Africans (E/CN.4/1222, paras. 385-390; E/CN.4/1187, paras. 376-379; E/5622, paras. 117-136; E/CN.4/1135, paras. 288-299). During the period under review, comprehensive studies of the black labour force in Namibia have been published 26/ and these have been extensively drawn on for the information analysed in this section.

326. The bulk of Namibia's 750,000 African population are dependent on the meagre incomes available from subsistence agriculture and the contract labour system, whose establishment and operation have been described in previous reports of the Group. According to the International Labour Office survey, South Africa's policies of exploitation of the human resources of the Territory comprise the system of discriminatory labour laws, based on those in force in the Republic, and the establishment of the "homelands" as segregated entities for each of Namibia's so-called "ethnic groups" as a means of safeguarding the supply of cheap labour to the white-owned and white-controlled commercial economy. A major result is that Africans have almost no opportunity for jobs outside the subsistence sector except as internal migrants from the "homelands" to other parts of Namibia where they are forced to take jobs on a temporary basis as allocated by the system of labour bureaux established since 1972 in Namibia. The majority of the African workers are largely unskilled, partly due to the discriminatory pattern of educational facilities, lack of vocational training, enforcement of the "Bantu Education" syllabus in government schools, and the reservation of many job categories for whites only. Africans are excluded from the definition of "employee" in the main law on industrial relations and therefore cannot defend their interests or seek to improve their wages and working conditions in legally-constituted trade unions. Within the contract system, black Namibians, even with qualifications, have no real choice in respect of their employment, since refusal to accept work offered by an employment bureau can lead to "repatriation" to a "homeland", or to a term of imprisonment. The absence of a free labour market means that the right to change jobs and unilaterally terminate a contract without its being a criminal offence - which was granted after the general strike by contract workers in December 1971 and the abolition of SWANLA (the government recruiting agency) - is severely limited in practice. Outside the "homelands" the enforcement of pass laws, influx controls and job reservation mean that even resident Africans in the so-called "Police Zone" (the southern two thirds of the country) are severely discriminated against.

1. Agricultural sector

327. The overwhelming majority of the black population are dependent on agriculture for their livelihood. In the absence of adequate official data, all figures relating to the employment structure of Africans can only be tentative. Out of a total estimated economically active population of 259,000 (including whites) as of 1970/71, 87,500 Africans (of whom 46,000 were Ovambo) were in subsistence

26/ International Labour Office, Labour and Discrimination in Namibia (Geneva, ILO, 1977); Anti-Slavery Society, The Workers of Namibia (London, 1977).

agriculture (33.8 per cent), while 36,500 Africans (including 10,000 Ovambos) were in modern agriculture (14.1 per cent). Some 70 per cent of the total African economically active population of 225,500 were engaged in agricultural activities. Out of an estimated contract labour force of 43,500 in 1970-1972, mainly Ovambo, 10,000 were in modern agriculture. The relatively small proportion of contract workers engaged in farming in the white-owned commercial agricultural sector was due to the fact that most farms had local labour available.

328. Subsistence agriculture is the main source of employment for Africans in the "homelands", especially in Ovamboland, but owing to poor rainfall in most areas, lack of good grazing areas, population pressure and absence of investment, the potential of agriculture is underdeveloped, with the result that large numbers have to leave the "homelands" as migrants. Apart from some cereal production in the north, subsistence activities are based on cattle and sheep rearing. Out of 60,000 households in Ovamboland, 34,000 have to earn a livelihood outside of subsistence agriculture. In Ovamboland some 40 per cent of the African population are required to live on 7 per cent of the total land area, with an average of 9.6 hectares available to each inhabitant compared to 2,008 hectares for the average rural white inhabitant.

329. Living conditions for farm workers are generally poor and the wages amongst the lowest in Namibia. In 1970/71, average cash wages were said to be in the R10-R25 a month range according to the Agricultural Census for that year. About 40 per cent of the black population within the "Police Zone" are estimated to live on white-owned farms and some two thirds of the regular work force are non-migrants and live in farm locations with families. In a survey of the conditions of farm labourers on 240 farms in various parts of Namibia carried out during 1972-1973, it was found that the average wage in cash was R12.26 a month. Wages varied with the type of worker and the work done (with contract workers, women and Bushmen were paid less than local workers), the length of employment on a farm, the geographical location and the size of the farm. The average wage on farms smaller than 10,000 hectares lay between R5 and R10, and on farms larger than 10,000 hectares between R10 and R15 a month. German-speaking farmers were found to pay higher wages than Afrikaans-speaking farmers. On farms in the south (mainly karakul sheep) wages were higher because rations were lighter. Daily rates for season workers were between 30c and 50c (Bushman women in Gobabis district were paid only with a blanket and skirt). Farm rations were given on most farms but often meat or milk were included only in southern districts. Housing varied from cow-dung "pondoks" in the north to cement houses in the south and corrugated iron huts. Houses with more than one room were exceptions and most locations did not have running water. Workers were allowed to keep only limited numbers of goats or cattle on about half the farms surveyed; migrant workers were generally not allowed to graze stock. Local workers in the south were predominantly Nama, in central regions Damara and Herero, and in the far north-east, Bushmen. Some 51 per cent of the farms employed migrant workers from the north but the numbers had been cut down since the 1971 strike, when many farmers had complained of workers leaving in groups. Seasonal workers from nearby African locations were widely employed, and families of resident male workers were employed for occasional work. 27/

27/ Bettina Gebhardt, "The socio-economic status of farm labourers in Namibia", SALDRU Farm Labour Conference, University of Cape Town, September 1976.

330. According to information available to the Group, wage levels appear in some instances to have risen by up to 100 per cent in the last three years, mainly to keep pace with rises in consumer prices, especially food. In 1976, according to figures produced by the South West Africa Agricultural Union, a white employers' association, the highest wage paid to a black farm worker was R27 a month for a livestock manager; other workers received little more than before: R12.50 for inexperienced workers and R15 after 18 months' service. In 1977 the Agricultural Union stated that the average cash wage paid to black workers in beef-producing areas was R24.37 and in sheep-producing areas R40.37 a month. These figures included all grades of workers, with a resulting distortion due to polarization at upper and lower extremes, while a high valuation of non-cash benefits was also made. However, skilled workers might receive as high as R50 a month from the largest farms, although wages of as little as R5 a month were still being paid on smaller farms. Agricultural workers were excluded from the 1976 minimum wage regulations; the highest agricultural wages are on a level with the lowest in industrial sectors such as mining.

2. Urban and industrial sectors

331. Working conditions and wage levels of Africans in urban and industrial locations are severely discriminatory, and in many cases enactments providing for the protection of workers against burdensome, unhealthy or hazardous conditions of employment apply only partly or not at all to non-white workers. The most important industrial sector is the mining industry, which employs 17,000 Africans of whom 12,000 are Ovambo migrant workers; other sectors are government services, which employ 19,000, manufacturing, which employs 8,500, and fishing, which employs 7,000. The majority of the contract workers employed in industrial centres such as Windhoek, Walvis Bay, Grootfontein, Luderitz and Tsumeb, together with those employed by mining companies in the remoter areas such as the Rossing mines at Arandis in the Namib desert, are required to live in labour compounds or "hostels", which are described as bleak concrete compounds housing in many cases several thousand workers at a time. One report described the Ovambo compound specially created for migrant workers in Katutura as follows: "Five thousand Ovambos are being housed in circumstances that would disgrace a 19th century prison ... A visitor can only be appalled at the compound's unrelieved bleakness, the barbed wire fences; the concrete bunks in dark overcrowded rooms in which up to 20 men sleep; the food being prepared with spades and pitchforks; above all the overwhelming stench of urine which hangs over the compounds." The compound, which was built to house 3,000 men, is grossly overcrowded; unlike Walvis Bay, where workers are provided with a cooked midday meal at the place of their employment by the municipality, in Windhoek there is no provision except for bread.

332. The Factories, Machinery and Building Work Ordinance of 1952 does not apply to mines or farms. These workers, together with domestic servants, employees in the hotel and restaurant trade and construction workers, are not entitled to benefits from the system of inspection, licensing and registration established under the Ordinance, which deals with hours of work, overtime pay and holidays. Africans from the north of the country (i.e. Ovambos) are specifically excluded from the provisions for paid leave, which is determined by contract. The health, safety, working and living conditions of mining workers are regulated by an entirely separate régime - the Mines, Works and Minerals Ordinance. Many of the jobs involving strict control over hazardous materials and machinery are restricted to whites, although the inspection system and procedures in respect of accidents appears to apply to employees of all races. In respect of compensation and welfare

services there is discrimination; under the system of compensation of the Workmen's Compensation Act of 1956 Africans in general are at a disadvantage due to their lower wage structure. In addition there is a separate method of calculating entitlements. In the case of a permanent disability of more than 30 per cent, Africans are given a lump sum payment with a prescribed minimum; all other workers receive a monthly pension for life of 75 per cent of their monthly earnings. Pension payments also reflect a discriminatory scale of payments as between the races; each of the acts provides that the Minister responsible may issue regulations separately in respect of different "classes" of persons; information available suggests that these are paid on a ratio of 4:2:1 to whites, Coloureds and Africans. Under South African legislation, increases granted in the 1976 budget were on a discriminatory basis; social pensions for whites were increased by R8 a month; for Coloureds by R4.50 a month; for Africans by R3.50 a month. With regard to old age pensions, amounts payable are R72 a month for whites, R38.50 for Coloureds, and R18.50 for Africans. Civil pensions for government employees were raised by 10 per cent, with a minimum of R25 for whites, R15 for Coloureds, and R12 per month for Africans. A survey carried out by a Turnhalle committee in 1975 found that about 12 per cent of the labour force was eligible for pensions: in order to qualify, workers had to be in permanent posts or to have had long service; and for the vast majority there were no pension opportunities.

333. Minimum wages for miners in 1971 were estimated to be R8.69 a month in 1971, while the average wage of a white shift boss was R375 a month. Wage levels have improved since 1971 and it was estimated that minimum monthly cash wages were R24.96 in 1973 and R29.12 in 1974 - less than half the poverty datum line (PDL) for Windhoek and the R15 a week estimated by government authorities in Windhoek as necessary for a man and his dependants to live "decently". Changes in wage levels need to be seen in the light of rises in the cost of living and inflation levels; no separate inflation levels are issued for Namibia, but in South Africa the food price index increased from a base of 100 in 1970 to 198.5 in February 1977, and the bulk of Namibia's food is imported from South Africa. An annual rate of 11 per cent inflation in the 1971-1977 period would probably be on the conservative side. In the 1972-1973 period the Windhoek PDL was estimated at between R60 and R81.25 a month; by 1977 this would have been increased to R91-R124 a month merely to retain the 1972-1973 position. The lower figure represented the amount estimated by the Windhoek Non-European Affairs Department as the minimum subsistence wage needed to support a family of unspecified size.

334. General figures for mining obscure the fact that wages differ widely as between employers. The Consolidated Diamond Mines at Oranjemund and the Tsumbe base-metal complex in the north-east pay the highest wages; other mineral operators, particularly small, local and South African-owned concerns, pay substantially lower rates. The notoriety of the labour system in Namibia seems on the available evidence to have caused mining concerns with international operations to seek to improve their image overseas by sanctioning higher wages. Minimum wages at Consolidated Diamond Mines before the strike were R27.30 a month, with the average at R43.52. In 1973 cash wages were reported to have risen to an average of R87, from a guaranteed minimum of R49 to a maximum of R208 a month. In 1975 the minimum wage was reported to have increased to R88.40 (it was not clear whether this included overtime payments, as with other figures officially provided) and the minimum in 1977, according to the company, was R102.50 a month. In return for these relatively high wages, workers at Consolidated Diamond Mines have to accept the isolation of the Oranjemund mine and the strict security provisions to prevent diamond thefts.

335. Despite the secrecy provisions of the South African Atomic Energy Act, considerable information is available on the situation of workers at the Rossing mine, in which the British company, Rio Tinto Zinc, has a 45 per cent interest. The company pays its black workers day rates, which work out at R136 for the lowest grade to R557 in the highest paid grade; as of 1977 almost three quarters of the 1,680 African workers were in the lowest grades, where they earned a maximum of R178 a month, and none were in the highest grades. Of the 680 salaried staff, there were no Africans and only six classified as Coloured. The minimum monthly wage for salaried employees was R300, the maximum R1,400. Single Africans paid R20 a month for board and lodging. Some 500 of the African work force were Damaras housed in houses at the Arandis township adjacent to the mine, where there were considerable health risks from the clouds of radium-bearing dust. The majority of the work force were housed in single-sex compounds and temporary camps erected by sub-contractors; conditions were described by one observer as the worst in Namibia, with 16-20 workers per room. At the 1977 annual meeting of the company, the chairman acknowledged the existence of these camps and described the conditions as "dreadful and appalling"; he promised improvements, and migrant workers have since been moved into European quarters at the mine. Mr. Abraham (458th meeting) referred to a strike at the mine; according to available information two strikes occurred there during 1976. On both occasions the main issues were the poor quality of the food provided to workers, company regulations prohibiting the removal of food to families in married quarters, and the need to start work before breakfast. Strikers' demands included equal eating facilities and compensation for dangerous work. The company agreed to meet representatives of the workers to negotiate over the grievances.

3. The public sector

336. Recommendations for the adoption of the principle of equal pay for equal work were made by a Turnhalle committee in July 1976 (see E/CN.4/1222, para. 385). It was expected, however, that the guidelines given would be followed only in the civil service and parastatal corporations, since the private and agricultural sectors were excluded from measures involving government enforcement. Even in the public sector, however, the only specific commitment appeared to be the offer of a "reasonable starting wage" to unskilled workers, over a period of 12 months. Commenting on these recommendations in the South African Parliament, Mr. Vorster indicated that they provided that the differences in salaries and wages existing merely on the basis of colour or race would be eliminated; that all inhabitants would be liable for taxation on an equal basis; that the practice of fringe benefits would be maintained and that a monetary value would be placed on them for the calculation of a worker's total cash earnings; that the principle of equal pay for equal work should apply for skilled workers where qualifications and experience were equal; that the salaries of skilled workers should be adjusted in phases as circumstances permitted; that coercive measures should not be introduced to force the decisions of the conference on the private or agricultural sectors.

337. It was reported in June 1976 that the new wage level for contract workers had reached R50 a month; this was later increased by $12\frac{1}{2}$ per cent in respect of Ovambo and Kavango workers. Differential rates of pay increases according to race were established for the public sector in July 1976. In its 1976 document, the Turnhalle committee divided workers into groups according to colour, sex and average earnings. According to this data, black unskilled workers earned average wages of R77.80 a month throughout Namibia; semi-skilled R120.45, and skilled R172. Salaries of black workers employed in professional, clerical and administrative work were said to be between R240 and R462 a month.

F. Conditions of Africans in the "homelands" ' .

1. Background information

338. The implications of the "homelands" policy as established by the implementation of the recommendations of the official "Odendaal Commission" of 1964 were described in a previous report of the Group (E/CN.4/1020/Add.1, paras. 29-36). Other reports of the Group have summarized the legislation enacted in the period since February 1973 in relation to the establishment of "homelands" for occupation exclusively by so-called "Native Nations" in accordance with the provisions of the Self-Governing for Native Nations in South West Africa Act, No. 54 of 1968, and the Amendment Act, No. 20 of 1973 (see E/CN.4/1135, paras. 245-252; E/CN.4/1159, paras. 237 et seq.).

339. During the period under review there appears to have been a significant change of emphasis and a redefinition of the "homelands" policy in line with the constitutional recommendations of the Turnhalle conference for a three-tier "interim government" structure. The final constitutional draft produced by the conference in March 1977 provided for the establishment of second-tier "representative authorities" corresponding to the existing "homelands" with wide "regional" administrative powers. The document stated that for the different "population groups" the "existing legally instituted authoritative bodies" were to be accepted as the representative authorities for those groups and the laws in terms of which they were established were to be retained as their constitutions until otherwise amended. The area of jurisdiction of the authorities was defined as "personal authority over all those persons who in terms of legislation were members of the population group for which the authority was established; legislative powers delegated to the representative authorities covered a wide range of activities, including agriculture, primary and secondary education, pensions and housing, traditional administration of justice, public works, administration of lower courts, local security and general law administration, traditional local authorities, finance and revenue. But powers over land and land tenure were extended only to land forming part of "traditional areas of land" and land owned by members of the population group concerned.

2. Summary of recent legislation

340. According to information available to the Group, the establishment of representative authorities and local authorities with control over townships (third tier authorities) has continued during the period under review, despite the decision not to formally implement the proposals for an interim government. This has involved legislative enactments to extend the existing or to create new "homeland" structures as appropriate. Despite the shift in emphasis noted above, to the population group as the focus of the representative authority or "homeland", the delineation of boundaries has remained as set out by the Odendaal Commission, even where a majority of the population group concerned reside outside the area set aside for their exclusive occupation.

341. Proclamation R208 of October 1976 provided for the "recognition" of Bushmanland as an "area for the Bushman Nation" and the establishment of a representative "advisory board". Bushmanland, defined as the area referred to in schedule C of government notice 1196 of 1970, was said to have been reserved and set apart for the exclusive use of and occupation by Natives under Proclamation 84 of 1969 (South West Africa). The advisory board was to consist of between 10 and 20 members elected from amongst voters at a meeting to be called for that purpose by the Bushmen Affairs Commissioner. Its seat was to be at Tsumkwe, its

objective to promote the welfare of the "Bushman Nation", with the power to make representations to the Minister of Bantu Administration and Development with regard to any matter affecting the material, spiritual, moral and social welfare of Bushmen. According to the 1974 population estimate, there were 26,000 Africans classified as Bushmen. 28/

342. A "Damara Representative Authority" for the "Damara Nation" was proclaimed in July 1977; there had previously been no form of "homeland" structure for Damaras. The representative authority was to consist of 46 members, 19 in respect of Damaraland and the remainder from other districts of Namibia where Damaras reside. The members were to be designated by persons representing the Damaras at the Turnhalle conference. The seat of the authority was initially to be Khorixas, subsequently amended to Outjo, with meetings at least once a year and proceedings in English and Afrikaans. The proclamation provided for the establishment of a revenue fund and an annual grant to finance activities from the State Revenue Fund of South Africa. Departments of government were to be: Authority Affairs and Finance; Community Affairs; Justice; Education and Culture; Works; Agriculture and Forestry; Health and Social Welfare. Salaries of R8,640 were payable to the chairman of the Authority, R7,200 to executive councillors and R2,520 to members of the Authority. 29/

343. A government notice of December 1976 provided for the appointment of a Commission to divide the Rehoboth Gebiet into six electoral divisions in terms of the Rehoboth Self-Government Act, No. 56 of 1976. A general registration of voters took place in January 1977, as a result of which 4,132 voters were registered. The total Rehoboth population in 1974 was estimated as 19,000. 30/

344. Proclamations 69 and 77 of April 1977 provided for the alteration of the area of the "Herero Nation" as defined in schedule B to government notice 1196 of 1970 and schedule E of government notice 2428 of 1972, and the addition of a further area to the "Ovambo Nation" as a result of the amendment of government notice 165 of 1977. 31/

345. Regulations published in June 1977 provided for the establishment and management of townships in "certain Native Areas", with effect in any area set apart as contemplated in section 4 of the South West Africa Native Affairs Administration Act, No. 56 of 1954. Chief Native Commissioners have jurisdiction in the townships, which can be established or abolished by order of the Minister of Bantu Administration. No person other than a member of the "Native Nation" in whose area of jurisdiction the township is situated has the right to be an occupant, save with the approval of the Native Commissioner, and no person may, except with the prior written permission of the Secretary of Bantu Administration, acquire ownership rights or obtain a deed of grant in respect of land in the township concerned. These regulations provided for the establishment of "third tier" local authorities as envisaged in the Turnhalle constitutional document. 32/

28/ Government Gazette, No. 5301, 8 October 1976.

29/ Government Gazette, No. 5682, 22 July 1977; Government Gazette, No. 5687, 27 July 1977.

30/ Government Gazette, No. 5654, 15 July 1977.

31/ Government Gazette, No. 5496, 7 April 1977; Government Gazette, No. 5522, 29 April 1977.

32/ Government Gazette, No. 5586, 10 June 1977.

346. There was further consolidation of the Nama "homeland" (see E/CN.4/1222, para. 364; E/CN.4/1187, para. 352). Regulations were gazetted for the village management board of Gibeon Town in terms of section 51 of the Establishment of a Nama Council, Tribal Authorities and Village Management Boards in Namaland Proclamation, R160 of 1975. Its powers included the right to order a person found "unlawfully" in the area to leave within 48 hours. Regulations were also published relating to appeals against convictions and sentences for offences against chiefs and headmen, with "offences" defined to mean any act or omission punishable according to Nama tribal law and tribal customs. Appeals may be made to a magistrate in whose area of jurisdiction the trial took place. 33/

347. Provision was made for the first session of every Coloured Council to be convened by the Minister of Coloured, Rehoboth and Nama Relations, and for there to be a session at least once in every six months, in terms of amendments to regulations made under the Establishment of an Elected Coloured Council for South West Africa Ordinance, No. 29 of 1966. 34/

3. Analysis of evidence and information received

(a) Political rights and personal freedoms

348. Mr. Abraham (written testimony) and Mr. Ennals (459th meeting) referred to the maintenance of the state of emergency in Ovamboland, Kavangoland and Eastern Caprivi in the period under review. Under the emergency proclamations of 1972 and 1976, public meetings of six or more persons are prohibited, any person can be prohibited from holding, attending or addressing any meeting, and it is an offence punishable by up to three years in prison for any person to make statements likely to have an effect of interfering with or subverting the authority of the State. Similar penalties were prescribed for participation in any boycott or refusing or neglecting to obey any lawful order issued by a chief or headman.

349. According to information available to the Group, there has been considerable pressure on the residents of the "homelands" to associate themselves with the Turnhalle conference. It was reported that leaders of the 11 tribal delegations to the conference had begun to issue "membership cards" with the objective of establishing what percentage of the population supported the Turnhalle. Each delegation had a book in which the names of all those taking cards were entered; on each card the words "We accept a peaceful solution as envisaged by the Turnhalle" were printed. There was evidence of the use of bribes and intimidation to persuade Namibians to accept the cards, and Turnhalle delegates had themselves reported that possession would facilitate a certain amount of freedom of movement". The leader of the Coloured National Independence Party, Mr. Charlie Hartung, a member of the Turnhalle delegation who subsequently became a leader of the Namibia National Front (NNF), a coalition of political and tribal organizations opposed to the Turnhalle which included SWANU and the Damara Council, alleged that "dirty methods and blackmail" had been used; old-age pensioners had been told that without the cards they might not receive pensions, while there had been offers of free travel to Windhoek and hotel accommodation at State expense. In Ovamboland

33/ Government Gazette, No. 5689, 29 July 1977; Government Gazette, No. 5565, 27 May 1977.

34/ Government Gazette, No. 5681, 27 July 1977.

similar cards were being sold for 50c each to indicate membership of a new political party, the National Democratic Party, set up by the Ovamboland Chief Minister and leader of the Ovambo delegation to the Turnhalle conference, Pastor Cornelius Ndjoba. Radio Ovambo had warned that anyone without a card was likely to be taken for a SWAPO supporter. 35/

350. It was reported that in August 1977 the Turnhalle conference carried out a 10-day campaign of "report-back" meetings in Ovamboland, including the operational area. Mr. Mokganedi Tlhabanello, SWAPO's publicity secretary in Windhoek, stated that SWAPO had not been able to hold a legal public meeting in the area since 1972 and that the emergency regulations should apply equally to the Turnhalle, which was another political party. According to information available to the Group, a "Turnhalle Fund for Elections" was established in 1976 on the initiative of Eben Van Zijl, deputy leader of the National Party. The official target was set at R500,000 to R1 million and advertised on Radio South Africa. A substantial contribution was made by Swantiter, the South West Africa Anti-Terrorist Fund, whose chairman declared that a Turnhalle election victory would effectively combat terrorism. 36/

351. It was reported that the supporters of the Damara Council, a constituent member of the Namibia National Front (NNF), had demonstrated on several occasions against the Turnhalle. During the opening ceremonies of the newly created Damara Representative Authority in Outjo in July, a demonstration by 600 people carrying anti-Turnhalle placards took place in the sports ground. Police in camouflage uniforms and with dogs were drafted in to maintain order. Mr. Simson Gobs, leader of the demonstration, said that demonstrators had been subjected to police searches for weapons at roadblocks outside the town. He denounced the members of the Authority as South African-appointed puppets and said they had not been elected by Damaras. In a previous election six years ago the Damara Council had won majority support and been officially recognized by the South African authorities; but this recognition had been withdrawn when its leaders opposed plans for Damara self-rule and refused to take part in the Turnhalle conference. At a subsequent "report-back" meeting in Outjo, speeches by Mr. Dirk Mudge and other Turnhalle leaders were drowned out by interjecting demonstrators who were estimated to outnumber pro-Turnhalle members of the 1,500 crowd by two to one. 37/

352. Dr. Benjamin Afrika, leader of the Rehoboth delegation to the Turnhalle, was reported to have temporarily withdrawn from the proceedings in July in protest at the announcement of the holding of elections in Rehoboth. In a statement Dr. Afrika said delegates had been led to believe that there would be no more "ethnic elections" in Namibia during the discussions with the five Western Powers on a negotiated solution for the Territory. The delegation subsequently agreed to return to the conference after its request for the postponement of the elections had been sent to South Africa. 38/

35/ Windhoek Advertiser, 12 November 1976, 31 December 1976, 13 January 1977.

36/ Rand Daily Mail, 4 August 1977; Star, 2 July 1977.

37/ Rand Daily Mail, 29 July, 30 July 1977.

38/ The Times, 16 July, 22 July 1977.

353. In a memorandum prepared by the Anglican, Catholic and Lutheran Churches in Namibia and circulated at the Maputo Conference on the Liberation of Zimbabwe and Namibia in May 1977, the situation in Northern Namibia was described as tense:

"SWAPO guerrillas operate in the wooded areas. There are thousands of South African troops here. These troops terrorise and intimidate the local population. If a vehicle has been blown up, or if footprints thought to be those of a guerrilla are found, the houses in the vicinity are set alight or searched, people are caught or beaten up. Many civilians have been kept in detention for weeks and months for allegedly having given food to what they call terrorists. The troops harass the local population but are not eager to follow the guerrillas. Former UNITA soldiers are also being used by the South African army inside Namibia. Regulation R1 allows this intimidation and the suffering continues."

Besides military activity, South Africa was said to be engaged in an extensive propaganda drive (mainly through Radio Ovambo) against SWAPO, communism and the churches. Illegal methods were used to force people to vote for the Turnhalle delegates; white officials and sympathisers of the South African Government had played a dominant role in regard to the Turnhalle; people showed little sympathy for the Turnhalle conference and its proposals were considered a bluff, like the "homeland" governments. 39/

(b) Health

354. It was reported that staff at Onandjokwe Lutheran Hospital had been searched at gunpoint by South African security police in April 1977. Dr. Thomas Ihuhwa, Sister Saimi Martin and her five-month-old baby and several others, including a patient, had been taken into detention; they were subsequently released and warned not to make any statements to the press. Earlier on the day of the arrests three armed and uniformed black soldiers - allegedly SWAPO guerrillas - had visited the hospital and one of them had requested treatment for a stomach ailment. The facility was left with only one doctor for the 350-bed hospital; hospital authorities complained to the local administration that the South African nursing council had asked the medical staff to treat all patients impartially. According to information available to the Group the health situation in most "homelands" is precarious. In Eastern Caprivi there was only one civilian doctor, no dentist and no veterinary surgeon. The 185-bed Katima Mulilo hospital is a military hospital, run by soldier doctors who visit clinics in outlying areas. 40/

(c) Economic opportunities

355. According to information available to the Group, in March 1977 a Caprivi Development Corporation was established with effect from 1 April in relation to Eastern Caprivi, with powers excluding those in connexion with mining and mineral affairs, and located at Katima Mulilo. 41/

39/ SWAPO press release, 18 May 1977.

40/ Lutheran World Federation, News Service, 20/77; Star, 8 October 1977.

41/ International Labour Office, Labour and Discrimination in Namibia (Geneva, ILO, 1977), p. 25; Government Gazette, Nos. 5466, 5467, 25 March 1977.

G. Impediments to student movements

356. The question of student movements was examined in the last report of the Group (E/CN.4/1222, paras. 396-407), which found that education in Namibia is based on concepts so restrictive and authoritarian as to deprive the African and Coloured population of the Territory of an education worthy of the name. There are no universities in Namibia, although there are a number of technical and theological institutions, as well as segregated high schools, where a student consciousness can be said to exist. These include the government-controlled Windhoek Augustineum, a combined high school, teacher-training and technical school; the Ongwediva Educational, Vocational and Training Institute in Ovamboland; the Paulinuum Theological Seminary and Martin Luther high school controlled by the Lutheran Church. The only black graduates are therefore from South African universities.

1. Relevant legislation

357. Previous reports of the Group have summarized the South African legislation affecting education for Africans and Coloureds in the Territory (see in particular E/CN.4/1187, paras. 388-389). The implementation of the 1958 Van Zyl Commission recommendations and the effects of the application of the Bantu Education Act, No. 47 of 1953, as amended, to the Territory in 1970 have been discussed. African education was transferred to the Department of Bantu Affairs and Administration, and that of Coloureds, Namas and Rehobothers to the Department of Coloured, Rehoboth and Nama Relations by the South West African Affairs Act, No. 25 of 1969. Teaching methods are based on the "Bantu Education" syllabus involving instruction in a "mother tongue" according to tribal group, and in Afrikaans. At secondary school English and German may be taken as other languages but the medium of instruction remains Afrikaans.

2. Analysis of information available

358. During the period under review there has been a substantial protest movement directed against the system of "Bantu Education", taking the form of examination boycotts and demonstrations and involving repressive measures by the South African authorities. Students and staff of the Martin Luther high school in Omaruru announced on 8 November 1976 their unanimous decision to suspend classes indefinitely in protest against "Bantu Education" and in solidarity with the Soweto students. At two government-run high schools in Khorixas, Damaraland, students refused to take their examinations and the Catholic high school at Tses, Namaland, was closed when students tore up their examination papers. Leaflets were circulated attacking the education system as the "instrument of the homelands policy". At one school in Damaraland, police were reported to have made a baton charge against a protest gathering of students with placards, and a number of students were admitted to hospital as a result of injuries sustained. Troops from the Otjiwarongo military training camp were reported to have been used. Examinations and classes were also boycotted at the St. Therese high school, David Goraseb high school, Petrus Kaneb secondary school and Okakarara high school in Hereroland. 42/

359. According to a statement issued in December 1976 by the Namibia Black Students' Organization (NABSO), which was first established during the period under review, some 70 per cent of the students at Okakarara had demonstrated with placards

42/ Windhoek Advertiser, 26 November 1976, 14 December 1976; Rand Daily Mail, 16 November 1976.

rejecting Bantu Education. The statement called for the release of all detained students and described the education system as the foundation of "racism and group identity". At a January 1977 meeting in Windhoek, NABSO called for a boycott of all government schools until the Bantu Education system was scrapped. It said that the recent concessions announced in Pretoria were inadequate.

Mr. Zedekia Mujoro, NABSO President, said NABSO members were determined to forgo education until their schooling measured up to international standards. He estimated the boycott would affect 60 per cent of black pupils in secondary schools throughout Namibia, due to reopen the following week, after the Christmas holidays. 43/

360. Students reported to be arrested included six detained in connexion with petrol fires at the Windhoek Augustineum which occurred in November 1976. Their arrest caused further boycotts of classes and protests; according to a statement issued in December 1976 by the Voice of the People, a Nama organization, Johannes Boois, Dawid Mazias, Samuel Makunda, Frederick Isak and Bernadus Petrus were being held in Katutura goal. One student, Eddie Goraseb, had also been removed from classes by police. A member of the Nama delegation to the Turnhalle conference, Mr. E. Kuhlmann, reported on 8 December that he had been forced to try and intervene with police on behalf of his nephew, Mr. Isak, after allegations of torture, including electric shocks. Mr. Kuhlmann had enlisted an attorney's assistance to see his nephew in custody and named a Lieutenant Nel as responsible for the torture, an accusation denied by the police; the claims of torture on Mr. Isak and Bernadus Petrus were described as nonsense by the Divisional Commissioner of Police, Brigadier Verster. Mr. Kuhlmann's attempts to have the students examined by an independent doctor failed because access by the doctor was denied on the grounds of his being a SWAPO member. There were several reports of the students having been seen at a hospital where they had been taken by police. Bernadus Petrus was reported to have been so badly assaulted that he could not eat or talk for several days. He had allegedly been tied to a chair and given electric shocks through an iron bar. The six appeared before the Windhoek regional court on 17 February 1977 charged with arson or, alternatively, conspiring to commit arson. The case was adjourned to 25 April. The chairman of the southern NABSO branch was reported under effective house arrest in December 1976, although no order had been served on him. Following incidents at the A.J. Steenkamp Nama school in Katutura during January 1977, in which windows were broken and political slogans written on blackboards, Windhoek's district commandant said that 16 boys and one girl aged between 9 and 15 had been arrested and were due to appear in court on 13 January. 44/

361. In the aftermath of the disturbances at the end of 1976 many students were reported to have fled Namibia. In January 1977 Colonel Koos Myburgh, chief of the police security branch, estimated that between 30 and 40 black students had fled to Botswana. Black political sources reported a much higher figure, 300, said to have crossed into Angola, Botswana and Zambia. Of these a number found their way to SWAPO centres in Zambia. In August 1977 Mr. Moses Garoeb denied that

43/ Windhoek Advertiser, 14 December 1976, 14 January 1977.

44/ Windhoek Advertiser, 24 November 1976, 2 December 1976, 18, 21 February 1977; Namibia News, vol. 9, No. 12 (December 1976); Daily Dispatch, 9 December 1976.

SWAPO had been responsible for abducting 110 children from a Catholic school; he said they had crossed the border voluntarily. The majority of exiles are believed to have come from the Martin Luther school and the St. Therese school in the south. Both were closed at the end of the 1976 academic year; the Martin Luther school reopened in February 1977, having dropped Afrikaans from its curriculum. 45/

362. Nama teachers were reported to have been dismissed from their jobs for disobeying a departmental order to return to work after they went on strike on 9 November 1976 in a demand for a salary structure in line with higher wages paid to Coloured teachers and the building of more Nama schools, including one in an urban area. Despite requests from the South West Africa Nama Teachers' Association, Mr. Hennie Smit, Minister of Coloured Affairs, had refused to meet a delegation and on 9 December all those still absent from work were informed that, due to misconduct, their services were no longer required. The strike continued for three months but in January the Association decided, owing to the financial pressures on the teachers, that its members could reapply for posts from which they had been dismissed. At a meeting with Mr. Smit at Gibeon the teachers were told that following a Cabinet decision they had no prospect of a wage rise due to the economic situation; they were also informed that the three months would be treated as unpaid leave. Those who reported for duty on 19 January would receive their full salary for the month and retain their pension benefits. 46/

363. Considerable pressure appears to have been brought on some teachers, including Captain Hendrik Witbooi, Chief of the Witbooi Namas and former principal of the Nama school in Gibeon. His post was filled by another teacher and he was advised to comply with the regulations establishing Nama authorities (see para. 346 above) if he did not want to lose his captain's salary. Captain Witbooi was one of four Nama leaders announcing their decision to join SWAPO in October 1976. Another Nama leader, Captain Stefanus of the Vaalgras, also received a warning from departmental officials. Students left the Gibeon and Tses schools in protest, demanding the reinstatement of the principals as well as changes in the system of Nama education. 47/

364. In January 1977 the Roman Catholic Church decided to open its schools to all races and urged the South West African Administration to amend the Education Ordinance forbidding racial mixing at schools. Coloured children were admitted to two private schools, St. Paul's Catholic College and Holy Cross Convent in Windhoek, in February 1977. The South West African Executive Committee discussed the move and subsequently announced the withdrawal of a R24,000 subsidy to the convent. The Catholic Church in West Germany was reported to have agreed to make up the amount. The Administration accused the schools of pre-empting decisions on education by the Turnhalle conference. 48/

45/ Windhoek Advertiser, 13 January 1977, 2 February 1977.

46/ Windhoek Advertiser, 10 December 1976, 5 January 1977.

47/ Windhoek Advertiser, 11 January 1977, 3 February 1977, 9 August 1977.

48/ Windhoek Advertiser, 8 and 9 February 1977.

365. According to information available, after-hours schools run by churches are providing tuition for students who have opted out of the education system. Several hundred students were reported to be studying for British General Certificate of Education examinations, with materials from correspondence schools. Tutoring was provided by high school students and graduates. Other programmes run by the Christian Centre Educational Trust, sponsored by the Anglican, Catholic and Lutheran Churches, include a university-level programme for students who have dropped out of South African universities because of post-Soweto disturbances. The project involves some 30 students and has been described as the future nucleus of a university, with plans to establish study facilities and laboratories for science students. A crash course in public administration organized by the Lutheran Institute for Social Advancement also involves 30 students, with lectures on political science, history, law and economics to train people for public service in an independent state. The course organizer, Mr. Daniel Tjongarero, is a graduate of the University of the North. 49/

III. ZIMBABWE

Introduction

366. The illegal and unilateral process by which the rebel régime proclaimed the independence of Southern Rhodesia from the colonial Power is covered in detail in documents E/CN.4/AC.22/13, paras. 1-11; E/CN.4/1020/Add.1, paras. 72-74. The so-called "new constitution", which was adopted by the Southern Rhodesian Parliament, and the various supporting Acts are analysed in previous reports of the Group (E/CN.4/1020, paras. 369-373, and E/CN.4/1020/Add.1, paras. 73-74).

367. The Group noted in a previous report (E/CN.4/1111, para. 232) that the illegal régime and the British Government negotiated "settlement" proposals in 1972. These were overwhelmingly rejected by the people of Rhodesia as a whole ^{1/} but were "left on the table" until the British Government cancelled all previous settlement offers on 4 July 1974. The Group emphasized that, 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 of 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.

368. As the Group has also stated in previous reports (E/CN.4/1187, paras. 453-455; E/CN.4/1222, paras. 432-433), a so-called "détente" policy was instituted in a speech by the South African Prime Minister in October 1974. A series of talks followed between the leaders of various sections of the African National Council (ANC) and the rebel régime. One attempt at settlement, at the Victoria Falls in August 1975, broke down when the régime refused to allow the ANC leaders free and unhindered access to their native land. Another attempt broke down in March 1976 "over one irreconcilable difference. The ANC's position was that a settlement in Rhodesia could only be reached on the basis of majority rule now".

369. In last year's report (E/CN.4/1222, paras. 439-443) the Group reviewed the proposals of Mr. Kissinger and the 1976 Geneva Conference. Mr. Kissinger's proposals, which were accepted by Mr. Smith in September 1976, provided for majority rule within two years, but included interim arrangements (with a Council of State and a Council of Ministers) that would provide for total white control of the police and the armed forces. These proposals were never discussed with the African leaders of any of the representative organizations, nor were they agreed by the leaders of the bordering African States. These proposals were discussed at length at a conference that was subsequently called by the British Government and held in Geneva in October, November and December 1976. Bishop Abel Muzorewa led the United African National Council (UANC) delegation, the Rev. Ndabaningi Sithole led a Zimbabwe African National Union (ZANU) delegation, Mr. Joshua Nkomo led the African National Council Zimbabwe (ANC-Z) delegation, and Mr. Robert Mugabe led the main ZANU delegation. The latter two leaders, whose movements have strong links with the liberation armies, formed a

^{1/} Rhodesia: Report of the Commission of Rhodesian Opinion under the Chairmanship of Lord Pearce, Cmnd. 4964 (London, HM Stationery Office)

Patriotic Front for the talks. The Patriotic Front has continued since that time. The Conference broke up in the middle of December and was never reconvened, despite a month's visit to southern Africa by the Conference Chairman. 2/

370. The new British Foreign and Commonwealth Secretary, Mr. David Owen, made two visits to southern Africa, in April and August 1977. Both were preceded by consultations with the United States Government. 3/ In the second case, Mr. Owen was accompanied by the Permanent Representative of the United States to the United Nations, Mr. Andrew Young. In both cases, the delegations visited Zambia, the United Republic of Tanzania, Botswana, Mozambique and South Africa, as well as Southern Rhodesia. 4/ In between the visits, diplomats (British and American) made an extensive tour of southern Africa to sound out opinions. On 1 September 1977 the British Government issued a document, Rhodesia: Proposals for a Settlement, 5/ drafted with the "full agreement of the United States Government" and after "consulting all parties concerned". These proposals have as their objective an independent Zimbabwe with majority rule in 1978, and include the following provisions:

(a) The new State would have a "democratically-elected Government with the widest possible franchise", a Bill of Rights based on the Universal Declaration of Human Rights, and an independent judiciary. This State would come into being after a six-month (maximum) transition period and economically it would be helped by a Zimbabwe Development Fund of \$US 1,000 million to \$US 1,500 million.

(b) The transition period would be administered by a British-appointed Resident Commissioner, who would have ultimate power. His main tasks would be to arrange for the holding of the first general election and the election of a President, and for dealing with the liberation army and the rebel Rhodesian army. He would depend on the present Southern Rhodesian police, commanded by an officer of his choosing, for civil order.

(c) A United Nations Zimbabwe Force would be established, whose role would include (i) the supervision of the cease-fire (a necessary pre-condition of the transition period); (ii) support for the civil power; and (iii) liaison between the Rhodesian white and liberation armies. The United Nations would also be asked to appoint a special representative to observe the progress to majority rule and to work with the Resident Commissioner

(d) The judiciary would remain as at present (except for the "Chief Justice"), both during the interim period and in the new Zimbabwe.

(e) The British Foreign and Commonwealth Secretary stated when the proposals were published that a major objective would be to appoint new officers to key military posts, to disband certain units (such as the Selous Scouts), and to discharge non-Rhodesian members of the Southern Rhodesian defence forces. Before

2/ Rhodesia Herald, 12 January 1977.

3/ Guardian, 2 April 1977.

4/ Sunday Mail, 17 April 1977; Guardian, 2 September 1977.

5/ Cmd. 6619 (London, HM Stationery Office, 1977).

the end of the transition period, a new Zimbabwe National Army would be formed. It would be open to all citizens but would be based on the liberation forces and include acceptable elements of the Southern Rhodesian defence forces.

(f) An amnesty for those involved in the rebellion is proposed. It is also proposed, for the sake of continuity, that the laws passed after UDI should initially be the laws of the new Zimbabwe. The many Africans (and few Europeans) convicted under the various highly discriminatory laws would also be released after review. It is not clear whether this amounts to a complete pardon or whether the pardon includes those who have been illegally executed during the period of rebellion. 6/

371. By the end of September 1977 none of the parties had given a final response to the proposals.

372. During the period under review, the illegal régime has sought to legitimize itself by passing a further amendment to the Land Tenure Act which removes certain minor discriminatory practices. For example, it allows public bars to serve alcoholic drinks to both races but puts no obligation on them to do so. Similar provisions permitting private institutions to accept Africans cover hospitals and schools. And European farming land may be sold to African farmers who can afford to buy it. 7/ Two of the African "Ministers" appointed in April 1976 resigned in December 1976 and formed the Zimbabwe United People's Organization (ZUPO). This party has three main objectives: to establish a "majority rule form of government", to "maintain law and order as a first and urgent priority", and to protect and develop the economy in its present form. 8/ It has been given clear support by the rebel régime, and four of the remaining five African "Ministers" are members of the party. It has also been allowed freely to recruit members and has not had its membership cards banned, as have the other African parties. However, there is no evidence that it has widespread support.

373. Twelve members of Parliament who were members of the Rhodesian Front opposed the relaxations of race discrimination incorporated in the amendments to the Land Tenure Act. They subsequently formed a new party. 9/ As a result, Mr. Smith called a new election and was returned, winning all 60 white rule seats. 10/ It should be noted that only 55,000 people voted in the election out of a total population of 6,600,000.

374. South Africa has continued to support the illegal régime by providing Southern Rhodesia with access to the Republic's sea and air ports in defiance of the economic sanctions imposed by the United Nations. As noted in last year's report (E/CN.4/1222, para. 435), the border with Mozambique was closed in

6/ Guardian, 2 September 1977.

7/ Guardian, 24 February 1977, 2 April 1977.

8/ Rhodesia Herald, 18 January 1977.

9/ Rhodesia Herald, 4 and 6 July 1977.

10/ Guardian, 2 September 1977.

March 1976, and since then all traffic has had to be routed via South Africa. This means that virtually all sanctions-breaking, particularly the provision of military equipment, arms and ammunition to the illegal régime now involves South Africa. South African Government officials and ministers have maintained close contact with the rebel régime. Some of the meetings have been public, for example those between Mr. Smith and Mr. Vorster in February 1977, 11/ in March 1977, 12/ and in April 1977, 13/ and between Mr. Smith and Mr. Botha (the South African Foreign Minister) in June 1977. 14/ The latter two also held a secret meeting in July which was revealed in a news leak. 15/ There have been other meetings before and since. As Mr. Botha said after the July meeting: "Our two Governments are in touch with one another and intend to remain in touch." 16/

375. During the period under review, the liberation war has continued and has expanded to cover most of the country. The result of the escalation of fighting has been particularly felt in a number of areas in which human rights are concerned: in an increase in lawlessness and brutality by the armed forces (see paras. 383-392 below); in an increase in attacks across the borders on Mozambique, and also on Botswana and Zambia (see paras. 393-413 below); in a further stiffening of the security laws (see paras. 440-442 below); in an increasing use of foreign mercenaries in the security forces and as private armed guards; and in the number of young men who are leaving the country to avoid being drafted into the rebel forces (see paras. 471-472 below).

A. Capital punishment

1. Summary of relevant legislation

376. The legislation purporting to sanction capital punishment in Southern Rhodesia was analysed in detail in a previous report of the Group (E/CN.4/1020/Add.1, paras. 75-77). In particular, the Law and Order (Maintenance) Act, with its many amendments, established the death sentence (often mandatory) for a wide range of offences and lays the onus of proving innocence upon the accused. The latest proposed amendment was given a first reading in the House of Assembly on 8 September 1976. It proposed the extension of the mandatory death penalty to the following offences: recruiting guerrillas; possessing arms of war; committing an "act of terrorism"; assisting guerrillas when not compelled to do so; failing to report the presence of a guerrilla (in cases where the accused is in a position of authority or special trust); and for

11/ Daily Telegraph, 10 February 1977.

12/ Radio Salisbury, 19 March 1977.

13/ Rhodesia Herald, 13 April 1977.

14/ Rhodesia Herald, 16 June 1977.

15/ Rhodesia Herald, 21 July 1977.

16/ Ibid.

giving misleading information about guerrillas or landmines. 17/ Although this legislation was subsequently dropped, 18/ its introduction is further evidence of the Group's view expressed in its previous report (E/CN.4/1222, para. 444) that this Act "has consistently been used to suppress African political activity, civil disobedience and all other forms of opposition to white supremacy".

377. Questioned at the beginning of 1977 as to how relatives of convicted men are told of an execution, the "Ministry of Justice" said: "Relatives are not advised prior to executions of the date or place of the execution. After the execution, such information is not withheld unless there is an order covering such disclosure. To date there has not been such an order." From a further attempted clarification, it is clear that the family must find out by asking. The wife of a condemned man, Mrs. Florence Gandiwa, was reported as saying that relatives visited the prisoners each Monday "because it is the only day we are allowed to visit them. It is indeed an unnerving day because we have learnt that executions take place on Mondays at dawn. Should we fail to see them we will know they have been executed." In certain cases, it is quite probable that relatives do not even know that an execution has taken place. 19/ The only recent case in which the execution of convicted men was publicly announced was that of eight Africans convicted of sabotage and attacking Europeans with hand grenades (see para. 380 (xi) below). Even then relatives of the condemned men were unaware of the time or the place of the execution. 20/ The new "Chief Justice" of Rhodesia, Mr. Hector MacDonald, has called for the executions to be publicised, for their deterrent value. 21/

2. Capital punishment sanctioned through the judicial process

378. According to evidence presented to the Group by Mr. Martin Ennals of Amnesty International, more than 60 political executions were carried out in Salisbury Prison during 1976 alone (459th meeting). Evidence presented by the International Defence and Aid Fund (457th meeting) gave a total of 104 people known to have been sentenced to death having lost their appeals (if any) since just before 21 April 1975. It can be assumed that they have all been executed.

379. Witnesses before the Group reiterated that full information about those charged in the courts and the outcome of their trials is difficult to obtain. Press reports are incomplete, and significant stages (including appeals and their outcome) are often not reported. Thus it can only be assumed that all those whose appeals failed have been hanged and that most of those sentenced to death, where appeals were not presented, have also been executed.

17/ Focus, November 1976.

18/ Rhodesian Parliamentary Debates, House of Assembly (hereinafter Parl. Deb.), 9 September 1976, col. 846.

19/ Rhodesia Herald, 15 January 1977.

20/ Rhodesia Herald, 18 January 1977.

21/ Radio Salisbury, 18 July 1977.

380. According to information supplied by the International Defence and Aid Fund (457th meeting), the following persons have been sentenced to death and are likely to have been executed since 1976:

- (i) Mashama Simbilisios, aged 37, Chairman of the Mtoko South branch of the ANC, convicted by a "special court" in Umtali on 26 May 1976 on charges of recruiting 45 people for guerrilla training - the first death sentence reported from a special court. Appeal dismissed at the beginning of August 1976. He was not accused of killing anyone himself;
- (ii) Godson A. Chinyadza, aged 21 convicted in Salisbury High Court on 4 August 1976 on charges of possessing arms of war. Details of appeal, if any, not known. In the attack resulting in the conviction, the only damage done was to a building;
- (iii) Cuthbert Mavunga, convicted on an unknown date by a special court on charges relating to guerrilla activity. Appeal dismissed on 31 August 1976;
- (iv) Lameck Makanei Mukwekwe, convicted by a special court at Inyanga in August 1976 on a charge of committing an "act of terrorism or sabotage" by warning a group of guerrillas of the presence of two district assistants. Appeal dismissed in September 1976. He was not involved in the attacks;
- (v) Basopo Munyama and Rodrek Tikabua, convicted by a special court in Umtali on 21 July 1976 on a main charge of inciting, aiding and abetting a group of guerrillas to execute two African police constables. Appeal dismissed at the beginning of November 1976. The attempt did not succeed and the two accused were only part of a fairly large group;
- (vi) Nyamwata Jani, convicted by a special court in Chipinga on 26 August 1976 on charges of recruiting three others for training. Appeal against conviction (only) was dismissed in November 1976. He did not appeal against sentence;
- (vii) Clements Sangasai, convicted by a special court in Mtoko in September 1976 on charges (details not known) relating to guerrilla activity. Appeal dismissed in November 1976;
- (viii) Kudzanayi Nyoka (or Nyiko), convicted by a special court in Mtoko in September 1976 on charges (details not known) relating to guerrilla activity. Appeal dismissed in November 1976;
- (ix) Stavros Tsavayo, convicted by a special court in Mtoko in September 1976 on charges (details not known) relating to guerrilla activity. Appeal dismissed on 29 November 1976.
- (x) Mathias Tafrenyika, convicted by a special court in Mount Darwin in September 1976 on charges (details not known) relating to guerrilla activity. Appeal dismissed on 29 November 1976;

- (xi) George Nyagu, Hozeah Gandiwa, Crispen Mushipe, Moses Tsanzi, Norman Mutovoni, Philip Nyagu, Frederick Muzikenyedze and Elias Madovi, all members of the UANC, were convicted by a special court in Salisbury on 30 August 1976 on charges of urban guerrilla warfare in attacks on places of entertainment and of sabotage of railway lines. A certain amount of damage was done but only one person was seriously injured. The accused were not represented by lawyers of their own choosing. Their appeals against sentence were rejected in December 1976 and they were executed on 17 January 1977 after appeals to Mr. Ian Smith and the "President" were rejected;
- (xii) Enoch Vera Kizito, convicted by a special court in Salisbury 1976 on charges of recruiting. Appeal dismissed in January 1977. Kizito had been vice-chairman of the youth branch of UANC in the Sinoia district. He was an ordinary member of a recruiting ring;
- (xiii) Moses Masuku Masina, aged 25, vice-chairman of the Luveve West branch of the Youth League of ANC (Zimbabwe). Convicted by a special court in Bulawayo on 15 November 1976 on multiple charges of feeding and harbouring guerrillas, failing to report their presence and recruiting 23 young Africans for guerrilla training. Appeal dismissed in January 1977. Petition to the "President" failed in March 1977. He was found not guilty of a charge of killing a policeman;
- (xiv) Chombile Shumba (or Chonile Shuma), aged 30, convicted by a special court in Gwelo on 17 September 1976 on charges of laying landmines and other acts of "terrorism". (He was not directly responsible for anyone's death.) Appeal reported dismissed on 8 January 1977. Vice-secretary of the Gwavamuntangwi Jindu branch of ANC (Zimbabwe);
- (xv) Enock Vera, convicted by a special court in September 1976 of recruiting five people to go to Mozambique to get guerrilla training. He lost his appeal on 7 January 1977. He was a vice-chairman of a branch of UANC. 22/
- (xvi) Bulonga Wiresi, aged 27, convicted by a special court in Salisbury on 16 November 1976 on a charge of laying a landmine in the Kariba area. Although the mine was detonated, no one was injured. Appeal dismissed on 8 February 1977;
- (xvii) Selayi Ndebele, convicted by a special court in December 1976 on a charge of possessing arms of war. Appeal dismissed on 25 January 1977. Believed to have been executed on 7 March 1977;
- (xviii) Crispen Kadenge, convicted by a special court in Salisbury on 2 December 1976 on charges of encouraging others to go for guerrilla training. Appeal dismissed in February 1977. Kadenge was described in the Rhodesian press as an official of a "political organization". The original trial had been held in camera. The only two "recruits" did not leave the country;

- (xix) Onesimo Simba Charamba, aged 21, and Jasper Mutambara, convicted by a special court in Chitedzi on 23 November 1976 on charges of possessing arms of war. They were not found to have used the arms. On 4 February 1977 an appeal was reported to have been dismissed;
- (xx) Gilbert Matasanhura, aged 23, convicted by a special court in Umtali on 26 November 1976 on the charge of possessing arms of war. No evidence was reported to show he used them. Appeal reported dismissed on 4 February 1977;
- (xxi) Rugari Mutambo (or Mutombo), aged 20, and Nicholas Mangura (or Mangweza), aged 21, convicted by a special court in Umtali on 26 November 1976 on charges of taking part in an unsuccessful guerrilla attack on the security forces. Appeal dismissed 3 February 1977;
- (xxii) Emanuel Mukondo, Naison Dhlwayo, Phillimon Jiriguru, Tafiyei Kanyama, Fosas Hawa, Andrew Chikuwa, Peter Davanyi and Madison Dzuda were all convicted of possessing arms of war and (in some cases) of guerrilla activities, at a special court in Bindura on 4 January 1977. They lost their appeals in early March 1977;
- (xxiii) Kephaz Ncube, convicted by a special court in Beitbridge on 3 February 1977 on a charge of exploding a device on a railway line. Also sentenced to life imprisonment for robbing a beerhall in Bulawayo, attempting to steal an official vehicle and firing shots at régime employees; and to 22 years for possessing arms of war. There is no evidence to suggest that he killed anyone. Appeal dismissed in March 1977;
- (xxiv) Twoboy Katani Dube, convicted on 9 February 1977 by a special court in Bulawayo. Death sentences were imposed on three separate charges (details not known) relating to guerrilla activity, and 24 years' imprisonment on four further counts. Appeal dismissed in mid-March 1977;
- (xxv) Davison Chandawana, aged 19, convicted by Salisbury High Court on 15 February 1977 on charges of possessing offensive weapons, including a landmine. He had been involved in two skirmishes with the security forces but had killed no one. Appeal dismissed on 14 March 1977;
- (xxvi) James Chirima, convicted by a special court in Bindura on 4 January 1977 on charges of possessing arms of war. Appeal dismissed at the end of March 1977;
- (xxvii) Plan Gwede, aged 20, convicted by Salisbury High Court on 18 March 1976 on a charge of murdering a white farmer; further sentenced to 26 years' imprisonment for committing a guerrilla act and possessing arms of war. Appeal believed to have been dismissed in April 1977;
- (xxviii) Sidney Kapumba (alias Seduce Mapondera) aged 24, convicted by Salisbury High Court on 16 February 1977 on charges of possessing arms of war. Appeal dismissed on 22 April 1977;

- (xxix) Dumosani Sehlelekile, convicted on an unknown date on charges of acts of terrorism or sabotage by laying landmines on a railway line and a road, possessing arms of war and "abducting" recruits for training. Appeal reported dismissed on 22 April 1977;
- (xxx) Kingwallace Chimbaba, reported by ANC (Zimbabwe) to be awaiting execution in Salisbury Prison on 17 May 1977. No other details.
- (xxxi) Jameson Kasili, convicted on an unknown date by a special court on charges of recruiting and encouraging others to go for guerrilla training. Appeal dismissed on 31 May 1977.
- (xxxii) Thomas Muroyi, convicted by a special court in Umtali on 4 March 1977 on charges of possessing arms of war. There was no evidence that he killed anyone. Appeal dismissed on 5 July 1977;
- (xxxiii) Milton Mandeyawiyike, aged 21, James Makaha, aged 23, and Baines Kasimbe, aged 19, convicted by a special court in Salisbury on 5 April 1977 on charges of possessing offensive weapons. Appeal dismissed on 15 June 1977. There was no evidence led to suggest that in any of the battles with the security forces they had killed anyone;
- (xxxiv) Martin Chiripunyanya, aged 20, convicted in a special court in Salisbury on 5 April 1977 on charges of murder and possessing arms of war. Appeal dismissed on 15 June 1977;
- (xxxv) Talphanos Moyo, convicted by a special court on 15 April 1977. Details of charges not known. Appeal dismissed on 23 June 1977. Petition for mercy addressed to the "President";
- (xxxvi) Mahlatini Sambulo Ndhlovu, convicted by a special court in Gwanda on 24 June 1977 on charges of recruiting and assisting guerrillas. He has appealed;
- (xxxvii) Robert Bhebe, provincial official in Umtali of ANC (Zimbabwe), convicted by a special court in Umtali on 14 March 1977 on charges of recruiting. Appeal dismissed 29 June 1977. Petition for mercy to the "President" was refused and Bhebe was executed on 13 July 1977;
- (xxxviii) Paines Zehama, aged 30, provincial official in Salisbury of ANC (Zimbabwe), convicted by a special court in Salisbury on 26 April 1977 on charges of recruiting and encouraging 24 young men to go for guerrilla training. Appeal dismissed on 29 June 1977. Petition to the "President" in hand;
- (xxxix) Rabson Mushonja (possibly also known as Gilbert Mushogo), aged 26, convicted by a special court in Salisbury on 7 April 1977 on a charge of possessing arms of war. In the appeal (in which an 18-year-old was successful but Mushonja was not), the "Chief Justice" said that there was no evidence that he was involved in atrocities or acts of terrorism. 23/ Appeal dismissed at the beginning of July 1977;

(xxxx) Isaac Mabika, aged 20, convicted by Salisbury High Court on 19 April 1977 on charges of possessing arms of war. He was caught after a battle with the security forces in which (according to the evidence) none of the members of the security forces was killed. Appeal dismissed at the beginning of July 1977;

(xxxxi) Lucas Tlou, convicted by a special court in Bulawayo on 7 July 1977 on charges of recruiting. Appeal noted.

381. During the period under review, 60 people are known to have been sentenced to death. In most cases those sentenced were not accused of causing the death of any person. Almost all the offences were those for which it was necessary for the accused to prove his innocence, not for the prosecution to prove his guilt. Of those sentenced, 52 were tried in "special courts", in which they had fewer safeguards than in the other courts (see para. 425 below). In the period under review, only four people had their death sentences commuted.

3. International reaction to the use of the death penalty by the rebel régime

382. A document handed in by the International Defence and Aid Fund for Southern Africa (IDAF) made the point that the executions "are illegal in terms of both British and international law and in effect constitute murder". 24/ Amnesty International in April 1977 called for an end to the use of the death penalty in Southern Rhodesia, and asked the British Government "to make the cessation of all executions a pre-condition for further Rhodesia settlement negotiations". 25/ According to evidence from the Anti-Apartheid Movement (459th meeting) two approaches have been made to the British Government (one with Amnesty International and the IDAF) to ask that reprieves be granted. So far there has been no clear action by the British Government along these lines. Furthermore, since the last report of the Group, the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, meeting in Geneva under the auspices of the International Committee of the Red Cross from 17 March to 10 June 1977, agreed to add two protocols to the 1949 Geneva Conventions. Guerrillas who differentiate themselves from non-combatants prior to an engagement are to be accorded full prisoner-of-war status. In its evidence (457th meeting), IDAF commented: "It is most unlikely that the Smith régime will take note of this new international agreement". In April 1977 the "Minister of Defence", Mr. Mark Partridge, said that the rebel government had "no intention of giving these murderers the status of soldiers ... They are scum and must be treated as such". 26/ There has been no subsequent change in attitude.

24/ International Defence and Aid Fund for Southern Africa, Ian Smith's Hostages: Political Prisoners in Rhodesia (London, December 1976).

25/ Amnesty International news release, 21 April 1977.

26/ Daily Telegraph, 2 April 1977.

B. Massacres and violations of the right to life

1. Non-combatant Africans killed by the security forces

383. Evidence given by Mrs. Phyllis Altman (457th meeting) of IDAF, described "the appalling and dreadful" conditions of non-combatants in Southern Rhodesia. In a separate paper presented to the Group, she commented that the Indemnity and Compensation Act (see E/CN.4/1187, para. 522, and E/CN.4/1222, para. 525) "removes from the judiciary the common law safeguards which ordinarily control the actions of the security forces and confers discretionary powers instead upon members of the Rhodesian Cabinet. It has been widely criticized, both in Zimbabwe and outside, for the protection it apparently gives to the military and police to commit atrocities unchecked by the prospect of legal proceedings". Thus, even if evidence is available to show that an innocent person has been killed, the defence that the killing was done in good faith ensures that the incident will not even reach the courts. The decision is an executive one made by one of the participants.

384. The Group has a large body of evidence to show that many non-combatants are being killed, threatened with death, or only narrowly escaping death. A report by the Catholic Commission for Justice and Peace in Rhodesia, for instance, states: "As the war becomes more intense, the Rhodesian Authorities' dealings with the civilian population become more violent and the distinction between armed insurgents and defenceless civilians is blurred". 27/ An English school teacher (Miss Bridget Parsons), who worked in Manyika province on the eastern border of Rhodesia, stated in an interview with the London Times that "The security forces are certainly responsible for far more civilian deaths than the guerrillas", and that they are much more feared by the people. 28/

385. According to Mrs. Altman, the rebel régime has imposed a dawn to dusk curfew along 500 kilometres of Southern Rhodesia's eastern border with Mozambique, 400 kilometres of its border with Botswana, and a 220-kilometre strip of the frontier with Zambia. "Offenders run the risk of being shot on sight by the security forces or a jail sentence of up to two years or a substantial fine. The most appalling atrocities have been committed by the police and the security forces ... in those areas where the dusk to dawn curfew operates".

386. There has been a partial admission by the rebel régime that non-combatants are being killed in the fighting. A press report in March 1977 quoted the rebel régime's official statistics to show that 4,027 people had lost their lives in the liberation struggle since December 1972. Of these, 1,394 were African civilians, of whom 216 had been "breaking the curfew", 210 were "running with or assisting" the guerrillas, and 2,266 were guerrillas. 29/

27/ Catholic Institute for International Relations, Civil War in Rhodesia: A Report from the Catholic Commission for Justice and Peace in Rhodesia (September 1976), p.41.

28/ The Times, 26 August 1977.

29/ Rhodesia Herald, 29 April 1977.

387. Among specific incidents known to the Group in which non-combatants have been killed by the security forces is one in April 1977 when four schoolchildren and a teacher were killed in an incident in the south-east of Rhodesia in the Sabi Tribal Trust Land. The security forces were informed that five guerrillas had entered the school and were grouping the children in the playground. The security forces then decided to attack the guerrillas (who made no attempt to use the children as hostages or shields). The children and the guerrillas tried to escape from the school buildings. A teacher was killed in one of the buildings, and four children were killed and another 12 injured when the security forces shot into the surrounding tall grass because they saw it move. 30/

388. In May 1977, 35 African civilians were killed in "cross-fire" at Dabwa kraal in Urungwe Tribal Trust Land. According to the official report, a meeting of 200 was being addressed by a guerrilla. The security forces (15 in number) were shot at by a sentry and the security forces responded. "Panic ensued with people running everywhere. After seven minutes the security forces ceased fire". Only one guerrilla was killed. The casualties consisted of 6 boys, 6 girls, 7 men and 16 women. Another 31 were injured and in hospital. Superintendent Carse (a police spokesman) commented that the guerrillas know that "if they have these meetings, they are reasonably safe. They know if they are mixing with the locals the security forces will hold back". The incident happened on 6 May but it was not until 9 May that the massacre was announced. 31/

389. According to a press report, a further report by the Catholic Commission for Justice and Peace was issued in 1977. This shows, for example, that three children and a teacher killed at Kadenga school on 18 April 1977 did not die in cross-fire between guerrillas and the army, as the official communiqué claimed. Children and teachers at the school maintain there were no guerrillas in the grounds. The killings were carried out by three white soldiers who landed at the school in two helicopters and immediately opened fire indiscriminately. 32/

390. In an interview with the London Times, Miss Bridget Parsons said she had heard of numerous reports of "contacts" between the Southern Rhodesian forces and groups of guerrillas in which the troops radioed for reinforcements and helicopters then flew in and shot at anything that moved. "The obvious reaction of women and children, at work in the fields, is to run when they see half a dozen choppers fly over. So they are killed". A white missionary estimated to Miss Parsons that over a hundred of his congregation had been killed in this way. 33/

30/ Rhodesia Herald, 29 April 1977.

31/ Rhodesia Herald, 10 May 1977; Radio Salisbury, 9, 10 May 1977.

32/ Observer, 4 September 1977.

33/ The Times, 26 August 1977.

391. The Group's 1977 report (E/CN.4/1222, paras. 469, 470) made the point that Africans (who usually do not have watches or timepieces) find it difficult to keep the curfew. At the Group's hearings in 1977 the witness Mrs. Phyllis Altman (457th meeting) said that they also find a problem in knowing where the curfew applies. Although it is announced by radio, in pamphlets and at meetings, "they draw a line in the middle of the veld and say that's the boundary"; consequently, the people often do not know where the boundaries are. Another witness, Dr. Selwyn Spray (452nd meeting), a doctor who was deported (see para. 469 below) from Mount Selinda hospital on the eastern border, also described the curfew regulations. He said: "Men, women and children have been shot to death if found breaking these regulations. They don't challenge if they see someone breaking the curfew regulations or if they find somebody walking about in the night. They simply shoot them. They don't attempt to challenge them, to question them, and so on. Near our Mission an elderly woman and a small boy were shot and killed as curfew breakers ... It was in the evening, quite dark, yet it wasn't dark enough they couldn't shoot".

392. There have been a number of atrocities committed against individual Africans and several attacks on Catholic missions resulting in the death of white missionaries which have been officially attributed to the nationalist guerrillas but which the guerrillas have repudiated. There have, for instance, been eleven cases in the period under review of Africans claiming to be "Terrorists" having committed offences ranging from obtaining money with threats to rape, indecent assault and malicious injury to property. In one case, the two accused abducted two girls and, after seducing them, carried out a number of assaults, including one on a youth they accused of being a "sell-out". ^{34/} The security forces do not in these cases issue any correction to their original communiqués attributing such acts to "terrorists", even after the investigation has shown that this was not so.

2. Attacks on other countries

(a) Alleged right of "hot pursuit"

393. The rebel régime has continued to claim the alleged right of "hot pursuit" across its international boundaries with Mozambique, Botswana and Zambia. In March 1977 General Walls (at the time Commander of the Rhodesian army) bluntly stated that Rhodesian troops would continue to carry out hot pursuit operations into neighbouring territories "where necessary". ^{35/} Two months later, in response to Zambia's declaration of a "state of war", Mr. Ian Smith stated that Rhodesia "might have no alternative but to mount pre-emptive strikes at the terrorist bases across the river". ^{36/} In practice (see paras. 399-402, 406-408, 412-413, below), civilian targets are often attacked.

^{34/} See Rhodesia Herald, 5 March, 20 May and 25 May 1977.

^{35/} Rhodesia Herald, 11 March 1977.

^{36/} Financial Times, 17 May 1977.

(b) Attacks on Mozambique

394. The Government of Mozambique addressed a letter on 22 June 1977 to the President of the Security Council transmitting a copy of a telegram dated 18 June 1977 from Mr. Samora Moises Machel, President of Mozambique, to the Secretary-General of the United Nations. The telegram referred to a systematic series of "violations, provocations and armed aggressions against those front-line States having common borders with Rhodesia". The telegram continued that as a result of this aggression against Mozambique, Zambia and Botswana, southern Africa had become a zone in which world peace and security were in jeopardy and which therefore constituted a permanent focus of tension. In the circumstances, President Samora Machel requested the Secretary-General to convene a Security Council meeting to study the situation. 37/

395. A copy of a statement made by President Samora Machel on 18 June 1977 in Maputo was enclosed with the letter of 22 June 1977. The statement referred to the decision of the Government of Mozambique on 3 March 1976 to comply fully with Security Council resolution 253 (1968) of 29 May 1968 to apply sanctions against the illegal régime of Southern Rhodesia. It said that Mozambique's decision to apply sanctions had been followed by continuing and increased acts of aggression against its territory and people. Those acts had caused heavy losses of life and injury to the civilian population of the country and the destruction of a number of settlements. In the circumstances, the Mozambican people required urgent material assistance from the international community. President Machel's statement reiterated his country's determination to intensify its efforts in support of the national struggle for freedom in Zimbabwe.

396. The Government of Mozambique reported to the Security Council that the direct damage to property amounted to over \$13 million. To this sum must be added the destruction in the Espungabera region in June 1977, estimated by the Government at \$515,000.

397. In response to the request received from the Government of Mozambique, the Security Council met on 28, 29 and 30 June 1977 and, at its 2019th meeting on 30 June, unanimously adopted resolution 411 (1977). Paragraphs 10, 11 and 13 of the resolution read as follows:

"The Security Council,

"...

"10. Requests all States, regional organizations and other appropriate intergovernmental organizations to provide financial, technical and material assistance to Mozambique in order to enable it to overcome the severe economic loss and destruction of property brought about by the acts of aggression committed by the illegal régime and to reinforce Mozambique's capacity to implement United Nations decisions in support of measures against the illegal régime in Southern Rhodesia;

37/ See document A/32/268-s/12413

"11. Requests the United Nations and its organizations and programmes concerned, including the Economic and Social Council, the Food and Agriculture Organization of the United Nations, the World Food Programme, the United Nations Children's Fund, the International Fund for Agricultural Development, the United Nations High Commissioner for Refugees, the United Nations Educational, Scientific and Cultural Organization, the United Nations Conference on Trade and Development, the United Nations Development Programme and the World Health Organization to provide assistance to Mozambique on a priority basis in implementation of the request contained in operative paragraph 10 above;

" ...

"13. Requests the Secretary-General to co-ordinate the efforts of the United Nations system and to organize immediately an effective programme of international assistance to Mozambique in accordance with the provisions of operative paragraphs 10 and 11 above."

398. Following the adoption of the resolution and in consultation with the Government, the Secretary-General appointed a mission to visit Mozambique with the following terms of reference:

(a) To consult with the Government on the extent of economic loss and destruction of property brought about in Mozambique by the acts of aggression committed by the illegal régime in Southern Rhodesia;

(b) To obtain an estimate of the financial, technical and material assistance required for Mozambique to overcome the loss and destruction referred to in subparagraph (a) and to reinforce Mozambique's capacity to implement United Nations decisions in support of measures against the illegal régime in Southern Rhodesia. 38/

399. According to the information gathered by the mission, since the independence of Mozambique on 25 June 1975, its territorial sovereignty has been repeatedly violated by the forces of the illegal régime in Southern Rhodesia. The number and severity of these attacks increased markedly after 3 March 1976, when Mozambique applied sanctions against Southern Rhodesia. Between March 1976 and March 1977 a total of 143 such attacks were reported in the three western provinces: 54 in Gaza, 33 in Manica and 56 in Tete.

38/ Ibid., p.6.

400. The mission was told that initially the attacks took the form of brief incursions involving no more than 50 men and directed against Zimbabwean refugees and others. Subsequently the attacks increased in scope and frequency. They became large-scale operations directed not only against the civilian population but also against vital economic and social facilities. The weaponry employed in the attacks became increasingly sophisticated. In addition to armoured vehicles, there was increasing use of aircraft, artillery and napalm bombs. Since May 1977, Mirage jets and 500 kilogram fragmentation bombs had been used.

401. The casualties and destruction as reported to the mission have been very serious. About 1,500 persons had been killed by the end of June 1977, two-thirds of these being Zimbabwean refugees. The towns of Mapai, Chioco, Massangena and Mavonde were levelled, leaving some areas without hospitals, schools, generating plants and other public facilities. Homes and factories were destroyed and many cattle were killed. Important transport and communications facilities were attacked: the tropospheric communications station at Chicualacuala was put out of action; several airstrips were made unusable and two strategic bridges - the Pungué bridge and the Messurize bridge - were severely damaged and made impassable; the railway to Chicualacuala was cut in several places; transport equipment destroyed included 3 locomotives, 38 waggons, 8 barges, 21 trucks and 35 buses, jeeps, tractors and heavy machines.

402. Because of the dangerous security situation in the region at the time, the mission was able to visit only one of the towns that had been hit worst, Mapai. The visit, made by helicopter, was on 20 July 1977. Mapai, with a population of about 2,000 persons, had been a centre for administration, trade and communications for the province. It was attacked six times between March 1976 and March 1977. It suffered a major attack between 29 May and 2 June 1977 but fortunately the loss of life was not high, as most of the people had already fled. The mission observed that all the modern buildings and numerous traditional dwellings had been totally demolished. Small arms, mortar, cannon and explosives had evidently been used judging from the large quantity of spent ammunition and explosives cases scattered throughout the township. The list of items destroyed included: the town's water, telephone and electricity distribution systems; vehicles belonging to the Ngala Transport Company which serviced the Mapai area; a road construction and maintenance plant; a warehouse; a general store; a hospital and first-aid station; a primary school; two administrative buildings; a service station; a passenger and goods transport depot; a flour mill and warehouse; approximately 25 modern dwellings; a large residential compound; a water storage tank. At the time of the attack Mapai as a road transport centre had assumed added importance for the people of the Gaza Province because the railway serving the province had already been breached at several points. The destruction of road vehicles thus left the whole area without any form of surface transport (road or rail). Two airstrips serving Mapai and one other at Chicualacuala were also made inoperative. 39/

(c) Attacks on Botswana

403. At the meeting of the United Nations Security Council early in January 1977 the Foreign Minister of Botswana detailed 36 violations of Botswana's territorial integrity. When these incidents first occurred, he said, they were directed at refugees from Southern Rhodesia. More recently they had been directed at Botswana nationals as well. As a result of these attacks the Botswana Government had been forced to divert funds urgently needed for its economic development towards defending itself. It had decided to spend an extra \$US 29 million over a four-year period on expanding the Botswana Mobile Police Unit. This unbudgeted sum was a large proportion of the total funds of this very small country. The Council took cognizance of "the urgent need [of Botswana] to effectively defend itself against attacks and threats by the illegal régime in Southern Rhodesia", and agreed to send a mission to assess the problem. 40/

404. The United Nations mission visited Botswana for two weeks in February 1977. They assessed the security, refugee and general economic and development situation. The Government of Botswana provided the mission with information relating to 53 separate incidents since 1966:

- | | |
|-------------|--|
| 1966 - 1969 | 3 incidents, in all of which the rebel régime's forces entered Botswana. |
| 1970 - 1973 | 9 incidents, in 8 of which the rebel régime's forces entered Botswana |
| 1974 - 1975 | 7 incidents, in six of which the rebel régime's forces entered Botswana |
| 1976 | 33 incidents, in 26 of which the rebel régime's forces entered Botswana. |

Nineteen of these incidents involved kidnapping, detention or death, and six involved destruction or damage to barns, stores and houses. The mission itself visited the border area and saw evidence of the destruction of houses and the damage from bombs and attacks. They interviewed some of the people living in the border area, who told of the problems caused by the security zone and the curfew on the Rhodesian side of an exceedingly ill-marked border. They considered it dangerous to water their livestock and cultivate their crops. As a result many people had left (to cause problems in Francistown) and others felt they would have to leave unless they were provided with increased protection from harassment by the forces of the illegal régime. The mission also visited and discussed the refugee camps. They were informed that some 12,072 refugees had entered Botswana from 1 January 1975 to 25 February 1977. Of these, 10,131 came from Southern Rhodesia. Although a large number were only transit refugees, some had remained for considerable periods of time. The numbers actually in the camps were very considerably in excess of their design and capacity, due to the rapid escalation of numbers. Furthermore, the refugees had caused problems to Botswana. They needed to be protected, they needed to be accommodated, they needed to be fed and, finally, the long-stay refugees were a potential problem in increasing employment. Botswana already found great difficulty in providing sufficient employment. 41/

40/ Objective: Justice, vol.9, No.1 (1977), pp.23, 24.

41/ Ibid., pp.24-26.

405. Professor Terence Ranger visited Botswana for Zimbabwe Medical Aid (ZIMA) in July/August 1977. He found that the conditions in the camps had worsened. In June 1977 there had been about 2,000 people in one camp designed for 150 people. 42/ The United Nations mission, apart from approving Botswana's actions in protecting itself with increased police spending, communications, fencing along the borders, and better facilities for refugees, called for international financial assistance to alleviate the effect of the situation caused by Southern Rhodesia's state of rebellion. 43/

406. One of the justifications used by the rebel régime for attacking Botswana is that guerrillas use Botswana territory for bases. In February 1977 a Rhodesian force entered Botswana to make an attack on an alleged guerrilla base in Maitengwe. The Rhodesian communiqué claimed that there had been a fight with Zimbabwe guerrillas in which a Rhodesian police inspector was killed. However, the Botswana President's Office stated that the home of Mr. Ndhlovu Shabalana, a Botswana citizen, had been attacked. He had returned the fire and injured two of his attackers, as well as being wounded himself. A neighbour called the Botswana police, who killed a Rhodesian police inspector when he took cover after being challenged. The Botswana statement called the Rhodesian claim that the Rhodesian inspector had been killed by "terrorists" as a result of a hot pursuit operation a "blatant fabrication". It said there were no freedom fighters in the village. 44/

407. In March 1977 two citizens of Botswana were charged under the Law and Order (Maintenance) Act with possessing arms. They had been captured in Botswana in December 1976. After considerable argument in the Special Court in Bulawayo, the Court President decided that the question whether the court had jurisdiction was one to be decided by the appeal court. He asked if the security forces had the right to enter another country without an extradition order. The court of appeal decided on 15 April that the Rhodesian courts did not have the right to try the men. As a result the Southern Rhodesian authorities returned the two men to Botswana, as well as another man who had not been charged, on 23 April 1977. 45/ The Southern Rhodesian law was subsequently changed so that nationals of other countries acting in another country and abducted in another country could be tried and found guilty of offences under the Law and Order (Maintenance) Act. 46/ In June 1977 an African member of the Selous Scouts was found guilty in Botswana of abducting (with others) the three Botswana citizens, as well as another man claimed by Botswana to be a Botswana citizen, though Southern Rhodesia did not agree that he was. He pleaded guilty to all the charges. 47/

42/ ZIMA news bulletin, September 1977; T.O. Ranger, "Visit to refugee camp, 26 July 1977, in ZIMA paper.

43/ Objective: Justice, vol. 9, No. 1, p.36.

44/ Sunday Mail, 20 February 1977; Rhodesia Herald, 24 February 1977.

45/ Rhodesia Herald, 22 March 1977, 16 April, 22 April, 23 April 1977.

46/ Rhodesia Herald, 11 June 1977.

47/ Radio Gaberone, 16 June 1977.

408. Further incidents continue to be reported. For example, five white Rhodesian soldiers attempted to put a road block on the Nata-Kasangula road in Botswana in June 1977. 48/

(d) Attacks on Zambia

409. In August 1976 the Zambian authorities were sufficiently concerned about the dangers along Zambia's border with Rhodesia to begin to evacuate and resettle border villages. According to a report in a Zambian paper (quoted in the Rhodesia Herald) many had already fled and had refused to return to the border area. 49/ Minor clashes continued into the middle of 1977.

410. In May 1977 the rebel Rhodesian régime sent a message to the British Government for onward transmission to the Zambian Government. In this the rebel régime threatened to make strikes against Zambian territory in order to attack the bases of the liberation armies. The British Foreign and Commonwealth Secretary sent this threat on to the Zambian Government with the comment: "I have drawn his remarks to your attention and in my view an escalation of the fighting by either side could have serious consequences". As a result of this message Dr. Kenneth Kaunda, the Zambian President, put his army on a war alert. 50/

411. In June 1977 a "Minister" in the rebel régime made a veiled threat to cut off supplies of power from Kariba. A clash between Rhodesian and Zambian forces occurred near the dam, and the "Minister of Combined Operations", Mr. Roger Hawkins, said that the Zambian Government "could well bear in mind that Zambia still draws a considerable proportion of her energy requirements from the hydroelectric power scheme at Kariba". He was forced to substantially withdraw his remarks the next day. 51/

412. The same month a Zambian woman was killed as a result of firing by the Rhodesian army across the Zambezi. She was the wife of the deputy police commissioner. 52/

413. In September 1977 President Kaunda of Zambia stated in a speech that three soldiers had been killed, three injured and two civilians hurt when Rhodesian aircraft dropped napalm in the Feira district on 21 August 1977. He warned that 12 Rhodesian troops had infiltrated with the object of causing havoc in the country. This attack had resulted in the imposition of a curfew in the major Zambian towns and cities in the south of the country. 53/

48/ Radio Gaberone, 17 June 1977.

49/ Rhodesia Herald, 17 August 1976.

50/ Financial Times, 17 May 1977.

51/ Financial Times, 8 June and 9 June 1977.

52/ Rhodesia Herald, 12 July 1977.

53/ Radio Salisbury, 11 September 1977.

C. Living conditions in rural and urban areas and
forced removals of population

1. Introduction

414. The historical background to the development of the African areas has been summarized in previous reports of the Group (notably E/CN.4/1030 and Add.1), and a comprehensive survey of the laws which affect Africans in these areas has also appeared in the following previous reports: E/CN.4/1020 and Add.1; E/CN.4/1050.

415. At the beginning of 1977 the rebel régime announced plans to modify the racial laws of the country. These were reported in the press as "radical" changes which would "basically dismantle the existing Land Tenure Act". ^{54/} The amendment in question reduced the reserved European area from nearly 50 per cent of the land to less than 0.5 per cent. However, virtually all the land that remains European is in the urban area. All the state-owned social facilities (such as hospitals and schools) remain segregated. The urban land remains segregated, although there is provision for local and central government (both totally white dominated) to change the designation of parts of it. The farm land, formally desegregated, still remains effectively "European" until there are Africans wealthy enough to purchase it. Finally, although places such as bars and hotels no longer need permits to allow Africans to enter them the proprietor has specific rights to refuse admittance to anyone he wishes. ^{55/}

416. In the Group's last report the generally discriminatory policy against Asians and Coloureds (who are for some purposes - such as army service and voting - considered part of the European population) was described (E/CN.4/1222, para. 485). This situation has not been altered in any material way by the above legislation, except where an urban area is specifically designated as "non-racial". ^{56/}

417. A detailed review of the distribution of the African and European population (at the 1969 census), divided by land category, was given in a previous report of the Group (E/CN.4/1135, paras. 357-362). Since that time the African population has risen from 4,880,000 in June 1969 to 6,340,000 in December 1976. During the same period the European population is estimated to have increased from 230,000 in 1969 to 273,000 in 1976. ^{57/} There is no detailed up-to-date information about the distribution of population in Southern Rhodesia, nor about the movements of African population brought about by the war. There is, however, evidence of increased urbanization. The population of the main towns has changed as follows: ^{58/}

	1969 (census)		December 1976 (estimate)	
	Number	% of total	Number	% of total
Africans	676 000	13.9	1 010 000	15.9
Europeans	181 800	79.6	224 300	82.2
Asians	8 200	91.5	9 300	91.2
Coloureds	12 620	83.3	18 300	83.6

^{54/} Daily Telegraph, 23 February 1977.

^{55/} Rhodesia Herald, 1 April 1977.

^{56/} Rhodesia Herald, 1 April 1977.

^{57/} Supplement to the Monthly Digest of Statistics, April 1977, table 1.

^{58/} Ibid., table 2.

The distribution of the African population by sex and age according to the different land and categories (again at the April 1969 census) was given in an earlier report of the Group (E/CN.4/1187, paras. 610 and 618). From this the excess of women and children in the Tribal Trust Lands (TTLs) compared to the European areas was clear.

418. Previous reports of the Group described the oppressive regulations covering the rural areas (E/CN.4/1159, para. 330, and E/CN.4/1222, para. 488). Under a new law, the National Registration Act, both men and women of all races over 16 years will have to be "registered" (at the moment only African males are registered). The registration was to start in April 1977. 59/ The document includes a photograph, fingerprints and a brief personal history. Everyone has to carry the document with him and if he loses it he has to pay for it to be replaced. 60/ In another addition, in January 1977, to the rebel régime's Emergency Powers Regulations the police and army are given powers to stop cultivation of maize (the staple food) and to control the grinding of it. They can also demand that the storage of maize in shops and other places be properly secured. (Often storage is in home-made huts, impossible to lock). They are able to close the beerhall at certain hours. They are also authorized to confiscate or destroy food supplies if they deem it necessary. 61/ These powers were further strengthened in June 1977 under the Emergency Powers (Maintenance of Law and Order) regulations. The amendment was the thirty-second to be made to the Act since July 1974. Among the many provisions are powers for the control and seizure of movable property and crops, imposition of compulsory work or service in the public interest, and control and regulation of supplies of food. 62/

2. The position of "Coloured" and Asian people in the urban areas

419. Despite the change in the law, Coloured people are still unable to live where they wish in European areas. In March 1977, a 25-year-old Coloured girl was barred from taking a flat even though she had paid a deposit, got the key and left her previous flat. The owner feared the European tenants would leave. 63/ In June 1977 a European who was trying to sell his house said that he found that the deeds stopped him from selling to anyone other than "persons of European descent". A Coloured applicant said that this was her third unsuccessful attempt to purchase a house. 64/

420. In September 1977 Salisbury City Council considered an application from a multiracial couple to live together in a European area. The couple had in fact left the country three months previously but their application was considered in principle and narrowly defeated. In the discussion it was revealed that there were about 30 multiracial couples who were forced to live there illegally because they had either not been granted or had not dared to apply for a licence. 65/

59/ Rhodesia Herald, 13 November 1976.

60/ Rhodesia Herald, 31 January 1977.

61/ Focus, No. 9, March 1977, p.7.

62/ Rhodesia Herald, 11 June 1977.

63/ Rhodesia Herald, 17 March 1977.

64/ Rhodesia Herald, 10 June 1977.

65/ Rhodesia Herald, 27 September 1976.

3. Conditions of Africans in urban areas

421. As with Coloureds and Asians, urban European areas will not become open to Africans until they are specifically declared non-racial. For this to happen the local council and the "Minister" have to agree. In March, the Bulawayo City Council agreed to ask for the whole of its area to be declared non-racial. 66/ However, in the case of Salisbury no such suggestion has been made. One councillor withdrew a motion to this effect in July 1977 because he believed it would fail. 67/ And even when areas are made "non-racial", individual houses may still be bound by restrictive covenants regarding the race of those who live in them. Some areas are covered with wholesale restrictions, so that large parts of a so-called "non-racial" area would still not be open to Africans, Asians or Coloureds. 68/ It was reported in May 1977 that residents in some of Salisbury's southern suburbs were moving to protect their properties against "infiltration by other races" because they feared the possibility of their area being declared "non-racial". 69/ At the same time a number of Africans had been offered, and had paid for, houses in areas still officially European. They had assumed that their position would rapidly be regularized. However, the "Minister of Local Government and Housing", Mr. W. Irvine, said that all those involved in such a sale could be prosecuted and the new African occupants evicted. 70/ In a report about the social effects of the Amendment to the Land Tenure Act, the Rhodesia Herald found that few Africans were taking advantage of it. A typical response was made by one African: "The whole thing is very vague. I don't know which places I am now allowed to visit. I don't want to embarrass my wife by taking her to a place and finding the management does not allow us in." In another comment a black member of Parliament said he did not want to mix with whites any more: "They now want to buy peace from the blacks." 71/

422. As described in a previous report (E/CN.4/1187, paras. 492-499) the policy adopted by the Salisbury City Council is the "Urban Plan", with the objective of protecting the central part of the city as a place "where European interests are paramount". The building of the Seki Township over 10 miles from Salisbury in Seki TTL is part of this policy. However, there is evidence that the township has been designed and built without coherent planning. For example, a resident wrote to the Rhodesia Herald in January 1977 to say: "As far as I am aware, the urgent needs of the people are: a shopping centre on the southern side of the township, a recreational hall for social entertainment, prompt removal of refuse, positive steps taken to stop roaming cattle, suitable shelters for approved vegetable vendors and schools catering for post-primary children." In response to this letter the Secretary for Internal Affairs said: "The facts put forward by your correspondent are basically correct." 72/ Similar dissatisfaction was reflected

66/ Rhodesia Herald, 16 March 1977.

67/ Rhodesia Herald, 6 July and 21 July 1977.

68/ Rhodesia Herald, 7 July 1977.

69/ Rhodesia Herald, 4 May 1977.

70/ Sunday Mail, 26 June 1977; Rhodesia Herald, 8 July 1977.

71/ Rhodesia Herald, 20 April 1977.

72/ Rhodesia Herald, 20 January 1977.

in a statement by a major Seki industrialist, who complained that the transport system was inadequate; the lack of a railway caused problems for the transport of goods as well as for the many who worked in Salisbury; and the postal system, the telephone system, the electricity system and waste removal were all very poor. 73/ In a move to take the burden away from the European purse, the "Minister of Housing and Local Government" is to join Seki with Zengeza and St. Mary Townships, all under an African Council. This Council would have considerable powers. According to a report in April, "Members of the council will be Africans and the mechanics and procedures for elections or nominations of members" were under discussion. Even if the members are elected, the scheme is one of separate development, with the burden of providing all the new facilities falling on the newly settled Africans themselves. 74/

423. Urban accommodation problems for Africans have been dramatically demonstrated by major squatting by Africans in locations around Salisbury. In January 1977 the problem began to reappear when a "plastic town" began to grow in Harari, 4 kilometres from Salisbury. 75/ This township was eventually dispersed, in the same way as the Derbyshire one, by relocating residents in a temporary shanty town in Zengeza. 76/ The Council has not had a recurrence of large-scale squatting because Africans are being moved on very rapidly. However, there are still large numbers who are not officially entitled to be in the city. According to one report, "many are squatting or lodging illegally in the townships or even European areas but there is no accurate estimate of their numbers". 77/

424. Shanty towns have also grown up in other areas. In Darwendale (62 kilometres from Salisbury) is a shanty town which has existed for 15 years. One person there said: "The whole problem is that a proper African township was never established. It's a ramshackle township with no planning and no orderliness. Rubbish is just dumped." 78/

425. The cost of dealing with squatters and providing the basic facilities in Zengeza has fallen on the part of the council budget which is provided by the Africans themselves. It has not been shared by the European ratepayers, by far the most affluent part of the community. 79/

426. Apart from the rise in rents, two other reasons have been adduced to explain the large squatter villages. The Secretary of the Commercial Workers Union, Mr. Albert Mugabe, stated that a reason for the shanty towns was the poor planning of African accommodation by the City Council: "For many years [it] has been

73/ Rhodesia Herald, 28 April 1977.

74/ Rhodesia Herald, 25 April 1977.

75/ Rhodesia Herald, 9 January 1977.

76/ Rhodesia Herald, 9 July 1977.

77/ Sunday Mail, 10 July 1977.

78/ Rhodesia Herald, 19 November 1976.

79/ Rhodesia Herald, 19 January 1977.

aware that it faces acute shortages of both single and married accommodation and has failed to take appropriate steps". 80/ Another reason was the disruption of rural life caused by the war of liberation. 81/

4. The Rhodesian "separate development" or "bantustanization" policy

427. According to information available to the Group the rebel régime has continued vigorously to promote the policy of "separate development", in both rural and urban areas, as detailed in previous reports (E/CN.4/1135, paras. 368-371, and E/CN.4/1222, para. 500). The essential core of the policy is to give the appearance of power to Africans by promoting African representative bodies of one kind or another without giving them any real power. This does two things: (i) it legitimizes the racial segregation of the country without removing real power from Europeans; and (ii) it provides a mechanism whereby the European population (which has a very high living standard) does not have to pay for the social and welfare facilities for the urban and rural African populations. An example of the development of urban African Councils was the proposed setting up of an African Council to cover the Seki-Zengeza-St. Mary complex referred to in para. 422 above.

428. The policy of "separate development" remained at the core of the policy of the Rhodesian Front, according to an official statement in September 1976. The statement said: (i) as Rhodesia must remain a single sovereign State, "the preservation of the integrity and security of the different communities who go to make up our nation is considered essential"; (ii) two communities were recognized - the white community (which included Coloureds and Asians) and the black community: "These communities must evolve within the universally accepted principle of community administration."; (iii) the administrative structure must devolve local decisions "while retaining those powers and functions generally associated with government". The black communities must have both tribal and non-tribal representation - "related to the areas where the different systems prevail". 82/

429. During the period under review, tribal courts have continued to be instituted and have been given greater and greater powers, as part of the policy of separate development. According to the "Minister of Internal Affairs", 146 tribal courts have been issued warrants in terms of the African Law and Tribal Courts Act of 1970, and 78 of these have been granted limited criminal jurisdiction. In addition, 49 chief's courts and 26 headman's courts continue to hold warrants from previous legislation. 83/ An amendment to the 1970 Act was introduced in February 1977. This gave tribal courts greater executive power to confiscate property in lieu of fines and to order the collection of rates of African Councils. These increases in the power of the chief's courts were thought to be inadequate by one chief in the Rhodesian Senate, who wanted the power to substitute alternative sentences (such as forced work) if fines were defaulted on. 84/

80/ Rhodesia Herald, 29 October 1976.

81/ Sunday Mail, 10 July 1977.

82/ Rhodesia Herald, 18 September 1976.

83/ Parl. Deb., 15 February 1977, col. 879

84/ Parl. Deb., 15 February 1977, cols. 878, 879; Rhodesia Herald, 3 March 1977.

According to information before the Group these courts are not respected by Africans in urban areas for cases other than family disputes or marriage problems (judgements concerning commercial contracts are rarely sought). And younger people tend not to initiate actions in tribal courts even in cases involving family law. 85/

5. Forced removal of rural Africans: removals as a result of land policy

430. There have been no examples reported during the period under review of people being moved as a consequence of land policy. However, a document before the Group, published by the Catholic Commission for Justice and Peace in Rhodesia, gives the case history of the Huchu people in relation to the various land acts. These people originally lived near to the Chilimanzi TTL in what was designated European land, which before the Huchu settled on it was totally virgin and unused. In the 1900s, they were told the land had been bought by a company called Central Estates but that they could stay as long as they were prepared to work for the European farmer. They became "vassals" of the owner. In the 1950s they were moved to the Hunyani Reserve, with the promise that they were now free of obligations. However, towards the end of the 1960s they were told they had to move again - to Silobela, halfway across the country. After considerable discussion their chief refused. Consequently, they were moved instead to an area north-east of Gokwe, an area a little south of Lake Kariba infested with tsetse fly, where they could not bring their livestock. They were told to form an African Council but they refused. Chief Huchu was deposed but the people refused to accept the new Chief Nemangwe and his Council. Despite a threat to shut down their schools and close off the bore holes for water, they refused to pay the rates levied on them. They are described as now "almost totally alienated" from the white administration. 86/

6. Conditions in the "protected and consolidated villages"

431. In previous reports of the Group the setting up of, and the conditions in, the so-called "protected villages" and the new "consolidated villages" were described (E/CN.4/1159, paras. 341-352; E/CN.4/1187, paras. 513-518; E/CN.4/1222, paras. 510-523). The rebel régime has continued to promote "protected villages" as a protection against "terrorism". According to the "Minister of Internal Affairs", Mr. B. H. Mussett, there were in June 1977 145 "protected villages", with another 32 planned by the end of the year. He stated that the average population was about 2,000, so that the total official population is about 300,000, with a further growth to about 350,000 expected by the end of 1977. In addition, he said that there were also 40 "consolidated villages". 87/ According to the Rhodesian Catholic Commission for Justice and Peace, the total number of "protected villages" is higher than the official estimates, at 203 (August 1977), with a total population (probably including "consolidated villages") of 580,000. 88/

85/ A. K. H. Weinrich, Mucheke: Race, Status and Politics in a Rhodesian Community (Paris, UNESCO, 1976).

86/ Catholic Institute for International Relations, op. cit., pp. 61-63.

87/ Radio Salisbury, 10 June 1977.

88/ Observer, 4 September 1977.

432. The witness Dr. Selwyn Spray gave an eyewitness account of the conditions in "protected villages" on the eastern border to the south of Umtali (452nd and 453rd meetings). He said that in Manicaland, especially along the eastern border, virtually all the Africans had been forced to go into the 21 "protected villages" which had been built. The way in which these were set up was as follows. First the military authorities decided that the establishment of such a village was necessary. Then the decision as to where the village was to be put was made by the Ministry of Internal Affairs. A fence was then built. Plots were allocated inside the fence and the people told to move. They were not provided with building materials or sanitary equipment, though water was provided. The witness said that the people refer to these places as concentration camps. They are surrounded with a high wire fence, topped with barbed wire, with a guarded gate. People are allowed out and in only outside of the normal curfew hours - except when there has been some military action. When this happens, they are not allowed out at all. They are searched when they leave - to make sure they carry no food for the guerrillas - and when they return, in case they carry home weapons from the guerrillas. Anyone who arrives after the curfew is not allowed in and is liable to be shot as a curfew breaker.

433. Dr. Spray gave evidence of the breakdown in social relations in the "protected villages". Often people were moved from homes where they had lived for two or three generations and found themselves suddenly forced to live in much closer proximity to each other than previously. He said that there had been some breakdown of sexual morals among young people. In particular, he had been told that some of the guards had forced some of the young women to sleep with them. He knew from his professional experience that there was a high incidence of venereal disease among the guards and this, he presumed, was associated with their activities in the "protected villages" they were supposed to guard. One of the few social activities available is drinking the traditional African brewed beer. He said he believed this had been encouraged by the rebel régime.

434. Finally, Dr. Spray gave evidence of malnutrition in the "protected villages" he was associated with. There had been an increase in nutritional diseases among small children. The curfew, combined with the concentration of people into villages, was particularly hard for subsistence farmers, who normally grew only sufficient food for their immediate needs, to adapt to. There was a programme to provide food for the "protected villages".

435. In a document before the Group, Dr. A. K. H. Weinrich described the situation in the "protected villages" in the north-east of the country, from research done at the end of 1974 and the beginning of 1975. She first clearly explains the historical development of the "protected villages", modelled on Malayan and Portuguese experience, from the first villages in 1973 to the present large number. These were first used to accommodate people from the Zambezi Valley on the Mozambique border. Since then they have been used to isolate Africans from the guerrillas. "Consolidated villages", which put together a number of scattered villages without the expense of a security fence and lights, have subsequently found favour although officials have admitted that they do not stop the people feeding the guerrillas. In the Chiweshe TTL all of the people have been placed in

the "protected villages". The main road through the TTL goes through all the villages. One of Dr. Weinrich's research assistants, who wished to visit Keep 21, had his papers inspected 41 times - once on entering and once on leaving each of the 20 intermediary villages. The living conditions are unhealthy. Each family has a stand which is 15 x 15 yards on which the family has to build its shelter and latrine and accommodate its chickens and small livestock. Particularly because of the inadequate toilet facilities, health conditions have become alarming. The most common diseases have been typhoid and diarrhoea. Many patients suffering from these and other diseases get virtually no medical care. The Salvation Army hospital and a small clinic are now overcrowded with those people who are able to get to them before the curfew is imposed. Dr. Weinrich states: "According to reports from several villages in Chiweshe, the death rate in Keeps seems to be much higher than it was in former villages. Most of those who have died are said to have suffered from stomach troubles, diarrhoea and dysentery." She also comments on the social problems, the lack of education, the collapse of agriculture (this was once one of the most developed tribal areas in Southern Rhodesia) and the destruction of the economic life of the country, because of which "a quarter of a million civilians have become dependent on the dole". She concludes: "The protected and consolidated village policy is a short-term policy designed by the Rhodesian Government (sic) to preserve a little longer the present privileged status of the white 'elite'." 89/

436. A Rhodesian newspaper article published in March 1977 effectively supports the views quoted above. Although the reporter was apparently sent to try to disprove criticism of the "protected villages" in Chiweshe and the article strongly disputes the statement that there has been starvation and that many children have died, it does accept that there has been an increase in malnutrition - which it said medical experts did not consider alarming. On the question of food production, it said that "food in the villages has become less because tribesmen have long distances to walk to their fields and the dusk-to-dawn curfew restricts the time they can spend cultivating. They also cannot keep a watch on their vegetables, which now often fall victim to wild animals. The amount of land being worked has subsequently become less and therefore fewer crops are available." 90/ In his evidence Dr. Spray (453rd meeting) commented: "Newsmen are absolutely not allowed into the 'protected villages' unless they are escorted by officials. And then they take them to a specific protected village of their (the white authorities) choice".

437. In another article on "protected villages" a photograph of the strongpoint of a village in the Chiredzi district is prominently displayed. This is very clearly a military fort, with firing platforms at intervals along the tall earth bank and towers at the corners. The Africans live outside, their so-called protectors inside. The newspaper makes clear that these forts have a military function and that an added protection for the forts are the Africans outside. If the guerrillas wish to attack they have the problem of trying not to kill their

89/ A. K. H. Weinrich, "Strategic resettlement in Rhodesia", Journal of Southern African Studies, vol. 3, No. 2 (April 1977), pp. 207-229.

90/ Sunday Mail, 6 March 1977.

fellow Africans in their assault on the fort. In fact one of the functions of the African villagers is to act as a human protection for the fort. 91/ In line with the military function of "protected villages" there has been a major recruiting drive for men for guard duty in them. In August 1976 it was announced that 2,600 men were required for this duty. They were being offered \$R60 per month as well as accommodation as a starting wage (compared with the Rhodesian average African wage of \$R43 without accommodation). Shortly after this - as reported in the Group's 1977 report (E/CN.4/1222, para. 515) - the job of "protecting" the villages was taken over by a guard force. In a report about the guard force at Keep One in Madziwa TTL, the guard commander was reported as saying: "The security measures at the Keep are far more stringent since we took over". The guard commander, Stuart Moffitt, was only 18 years of age, doing his call-up and responsible with his African guards and non-commissioned officers for 3,000 people. He described what the guard force did: "We carry out night patrols within the village as well as our other duties, such as sweeping for mines and sitting on observation positions. The night patrols are necessary, because even with the strict identification controls, terrorists (sic) have managed to get inside the fence." 92/

438. Some evidence has become available to the Group about the way people are forced to enter "protected villages". The "Minister of Internal Affairs", speaking in June 1977, admitted that "protected villages" must be forced on "some of the people". 93/ In a further report, in the Guardian, a spokesman for the rebel régime again conceded that some Africans were reluctant to leave their houses and go to one of the villages, "and they have to be persuaded. We have not had to resort to press-ganging or forcible moves. If somebody is being reluctant to move, it is a case of driving up to them and standing over them and saying 'Right, grab that sewing machine and put it on the truck. Do it because you're moving, like it or not.'" 94/ The rebel régime confirmed again in Parliament that no compensation is paid to Africans for loss of homes and property when they are moved. There is not even a guarantee that they will in due course be allowed to return to their former homes. Anything left behind that is likely to be of use to guerrillas may be destroyed or confiscated. 95/

91/ Rhodesia Herald, 23 June 1977.

92/ Rhodesia Herald, 24 August 1976, 14 February 1977.

93/ Radio Salisbury, 10 June 1977.

94/ Guardian, 7 April 1977.

95/ Rhodesia Herald, 16 July 1977.

D. Treatment of political prisoners and captured freedom fighters

1. Introduction and relevant legislation

439. A comprehensive review of the historical background and legislation relating to security and imprisonment without trial, notably the Law and Order (Maintenance) Act and its many amendments, has been given in previous reports (E/CN.4/1111, paras. 242-252; E/CN.4/1187, para. 521). The provisions of the Indemnity and Compensation Act were described in the Group's last report (E/CN.4/1222, para. 525). This indemnifies the actions of agents of the State, whoever they are, as long as they were done "in good faith" to suppress "terrorism".

440. New regulations under the Emergency Powers Act have been described in paragraph 418 above. Included are two provisions concerning the treatment of non-Rhodesians. A person who is not a resident of Rhodesia may be detained indefinitely without charge or may be charged in a Rhodesian court if he is suspected of assisting guerrillas, "irrespective of the circumstances in which the person concerned has entered Rhodesia or been apprehended". According to Focus, these two sections "would appear to amount to a carte blanche for the régime's security forces to indulge in 'hot pursuit' raids into neighbouring countries and to capture and abduct Zimbabwean exiles and refugees, and citizens of these countries themselves". They are designed to stop up the "loophole" by which two Botswana citizens were ordered by the courts to be returned to Botswana because they had been abducted by the Rhodesian security forces (see para. 417 above). 96/

441. In its last report (E/CN.4/1222, para. 528) the Group referred to a new bill which proposed to change court procedures. This bill, the Criminal Procedure and Evidence Amendment Bill (now Act), was finally passed by the Senate at the end of September 1976 without change, although the Senate agreed that it was inconsistent with the "Declaration of Rights". The Act followed the recommendations of the Courts Inquiry Commission of 1971, a number of which had not been implemented. The provisions of the new Act that most seriously threaten the rights of the accused in court concern the right of the accused to remain silent. The Act provides that if an accused person decides to remain silent at any stage in the pre-judicial and judicial proceedings, i.e. when being questioned by the police at the preparatory examination or in his final trial, then the fact that he refused to say anything or that he refused to answer any questions can be taken into account against him. If there is no preparatory examination and he is indicted directly before the High Court, then he must provide information on, and reciprocate, the summary of evidence held against him. Again, if he wishes to challenge a statement which he is alleged to have made then he must do so at the preparatory stage. (Many accused are not properly represented even at the final stage of a court case - an advocate being provided only "pro deo" - so may be in no position to understand their right to challenge at the preparatory stage.) If he does challenge then he must provide the reasons for his doing so. The Act also abolishes the right of the accused to make an unsworn statement (see para. 476 below). Finally, it provides that a person is not permitted to bring forward evidence which a Minister has decided will be injurious or prejudicial to the public interest. Supporting the Bill in the Senate, the "Minister of Law and Order", Mr. Hilary Squires, said that Rhodesia's criminal procedure "is in many ways weighted too heavily in favour of the accused". 97/ (In fact, a number of

96/ Focus, No. 11, July 1977, p. 11.

97/ Parl. Deb., 13 August 1976, cols. 675-684; Rhodesia Herald, 25 September 1976.

Rhodesian laws, in particular the Law and Order (Maintenance) Act, require the defendant to prove his innocence, rather than the prosecutor to prove his guilt.) The provision which one Senator considered to be inconsistent with the "Declaration of Rights" concerned the right of a "Minister" to refuse to allow a government document to be used in evidence. Although the Minister agreed that this might be inconsistent, he persuaded the Senate to pass the Bill because the clauses were "necessary in the national interest". 98/

442. The diplomatic conference on the humanitarian law of war, meeting in Geneva from 17 March to 10 June 1977, agreed to add two new protocols to the Geneva Conventions of 12 August 1949. The first protocol sets out a modern code of combat war and forbids starvation of civilians and destruction of crops. The definition of war is widened to include armed conflicts in which peoples are fighting against colonial domination and against racist régimes. The second protocol attempts to extend the Geneva Conventions to internal conflicts, such as civil wars and insurrections. Protection is to include the guerrilla fighter, who will be accorded prisoner-of-war status, with the proviso that during an action, or preceding it, he must carry his arms openly (to distinguish himself from civilians). 99/ The British Government abstained when the clauses in question were being considered. In Rhodesia a spokesman for the Ministry of Defence said that Rhodesia had always abided by the Geneva Convention in the past but could not recognize "terrorists" as combatants because they wore no uniforms, among other reasons. 100/ The "Minister of Defence", Mr. Mark Partridge, in a comment on the Geneva proposals, said: "These are not soldiers. They are scum and must be treated as such." 101/ However, the ANC (Zimbabwe) have issued a Declaration of Intent to ratify the new protocols. 102/

2. The workings of the courts

443. The "special courts" have been active during the period under review in trying cases involving political or guerrilla offences. In the first four months of their existence (end of May to beginning of September 1976) they dealt with 89 different cases. 103/ By the beginning of 1977 this number had increased to "more than 100". Of the cases, 29 had resulted in death sentences which had been confirmed on appeal. 104/ It should be noted that an appeal on the death sentence is automatic from a special court but not in other cases. The difficulty of obtaining proper representation and the summary procedure of the court (for example, the defendant may not get information about his charge until the beginning of the trial) were described in detail in last year's report (E/CN.4/1222, para. 527). The sentencing policy has come under scrutiny. A senior magistrate said that sentences in

98/ Rhodesia Herald, 23, 24, 29 September 1976.

99/ Focus, No. 11, July 1977, p. 8; Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Fourth session (Geneva, 17 March-10 June 1977).

100/ Rhodesia Herald, 26 April 1977.

101/ Focus, No. 10, May 1977, p. 5.

102/ ANC (Zimbabwe) news release, undated.

103/ Rhodesia Herald, 6 September 1976.

104/ Rhodesia Herald, 5 January 1977.

special courts were normally harsher than those passed in magistrates' courts, and that he found it difficult to adjust when he changed from one to the other. He also described the practice by the Attorney General of urging the special courts to pass heavy sentences, yet, if the reviewing judge reduced the sentence, of not supporting the original sentence. 105/ The magistrate also commented on the wide range of sentences. He cited five cases of people who failed to report the presence of guerrillas who were sentenced to 10 years' imprisonment, confirmed on appeal, and of another three who, for the same offence in very similar circumstances, had their 10-year sentences halved on appeal. 106/

3. Evidence of torture by the police

444. Evidence was presented by Dr. Selwyn Spray (452nd and 453rd meetings) on torture by the police. He said that in his estimation, torture was "more or less a routine in these local police stations ... There are so many stories about torture by relatives of people that I know that have been tortured during interrogation, so that I was more or less forced to conclude that it is a routine to torture". He said he thought it was more a punishment than to gain information. He understood that torture is generally managed by the Special Branch and by the CID. He said he thought that there was now less torture than previously (at least in the Chipinga police station), probably because the rebel régime has become more publicity conscious. The methods of torture ranged from crude beating up with fists, feet, hosepipes and sticks, to the more sophisticated tortures with electric shock (he thought more intimidating than physically damaging) and ducking people's heads into water. The problem with documenting cases was that many victims were kept in gaol until the evidence of torture had gone. Those who were let out often did not get medical attention because they were afraid of being picked up again.

445. Dr. Spray went on to give medical details of injuries suffered by seven African patients. He emphasized that they represented "a miniscule proportion of the incidence of ... torture in Rhodesia".

- (i) Man, aged 45, entered Chikore hospital 7 September 1976. He had been beaten severely by a European soldier about the head with a hand club and then later with a pipe by some African police. He was very badly bruised and had a slight skull fracture as a result of the attack;
- (ii) Schoolmaster, middle thirties. Arrested with his school on 29 March 1977 and was hit by a white soldier. He was then taken to Chipinga police station where he was stripped, lain on the ground and beaten and kicked by three African policemen. He was then stood up and his head was repeatedly hit against a wall. Finally, he was lifted by his head. He was kept for a further fortnight, with no medical treatment, and he suffered from severe spinal pains;
- (iii) Man, aged 50. He was beaten for a period of four days by both black and white police. He was beaten with a steel cable and a plastic hosepipe about the head and the trunk. This went on so long that the police got tired. He was kept in prison from 24 August to 31 October 1976. He lost the hearing of one ear;

105/ Rhodesia Herald, 2 February 1977.

106/ Ibid.

- (iv) Man, aged 50. He was beaten at the beginning of January 1977 on three occasions by between four and seven African police. They kicked him and beat him with both a hosepipe and a black metal instrument. On one occasion he was turned upside down and leant against a wall, resting with his full weight on his neck;
- (v) Primary schoolmaster, aged 37. Apart from some beatings, he was given electric shock treatment on five occasions in April 1977 from 220-volt mains. This interrogation was conducted by three white men and one black man;
- (vi) Man, aged 53. He was beaten up by the Rhodesian security forces in his village in February 1977. He was held on the ground and his head placed between his legs. He was repeatedly hit on the head, back and trunk with sticks until he was unconscious. This was done by Africans with their white superiors looking on. He was left lying, and his family (who observed the beatings) had to take him to Dr. Spray's hospital. It seems there might have been injury to his kidneys;
- (vii) Schoolmaster, aged 24. He was taken from his school in February 1977 by Rhodesian soldiers and beaten with sticks and kicked. He was given an interrogation during which he was again beaten with a hosepipe, slapped and kicked. At one point he was suddenly hit across the face with a hosepipe which landed on his right eye. Beatings were carried out by both African and European soldiers. Medical examination indicated that the right eye had been very severely affected. The man was examined at Harari hospital (near Salisbury) and the consultant passed his report to the Secretary of the Department of Health. Dr. Spray stated that the Secretary for Health had written to him to say he would contact the Rhodesian army about this case;
- (viii) Man, aged 63. Arrested 1 June 1976 on suspicion of feeding the guerillas. He was kept in Chipinga gaol and beaten daily by African police on instructions from European officers. He was hit with a stick as well as being kicked. Eventually he was brought to court, where he was acquitted.

4. Treatment of political prisoners

(a) Prison conditions

446. The Group has received evidence from several sources on the conditions in which political prisoners are kept. In evidence to the Group, Dr. Selwyn Spray (452nd meeting) said that when he was arrested on suspicion of providing medical supplies to the guerrillas, the other 23 members of the Mount Selinda mission staff were arrested at the same time. They were taken to Chipinga gaol. Some were kept in solitary confinement but most were put into open pens, about 25 ft. square, which consisted of concrete slabs with a high fence around them. Each would hold 15-20 people, with a roof in case it rained and a flush toilet. No beds were supplied, only a few blankets which were inadequate to keep out the cold. The cleanliness was not adequate (unlike Salisbury prison). The food consisted of maize meal and a relish of beans or (twice a week) meat. The food was placed on dirty plates, one between four Africans, and the quantity was inadequate. No

washing facilities were provided. He said that he had seen evidence of torture at the prison but did not believe that this was official policy. He said: "There does not seem to be a lot of control by the higher authorities of the lower authorities. The lower authorities are the ones that are responsible for this mistreatment". However, as has been indicated in paragraph 96 above, there is no evidence that the higher authorities have instituted any serious investigation into the many complaints against the prison service, the police and the army.

447. A paper and a letter from Khami prison were given in evidence by Mr. Mike Terry of the Anti-Apartheid Movement (459th meeting) and by Mr. Martin Ennals of Amnesty International (459th meeting). Khami prison is 18 miles west of Bulawayo and holds 673 prisoners (it should only hold 475), 95 per cent of whom are political prisoners. Many are long-stay prisoners. The documents complained firstly of the very bad medical conditions. The two medical orderlies (Mr. McLeod and Mr. Daniel Mpandi) did not take their jobs seriously and did not give out the drugs as they should. Whether a patient who was ill got the correct drug was apparently a matter of chance. A qualified doctor visited the prison periodically. He always started his examination by inquiring about the charge on which the prisoner was detained, and would then decide whether or not to examine him further. According to one of the letters, seven prisoners had died in the period 1973-1976 inclusive, of whom two died in their cells and the others shortly after getting to the hospital. The other cause of major complaint was the prison chaplain, Rev. Magara, who had almost complete control over the social side of the prison. He had refused to give prisoners the books they were entitled to, he did not help them to send letters, and he had obstructed the work of Christian Care so that the prisoners' families had lost the support they once had. Parcels which had been sent to the prison, and which he should have distributed, had gone missing. The documents also said that prisoners awaiting trial, and so unconvicted, had exactly the same conditions as the convicted criminals.

448. In his speech from the dock, handed in by Mr. Drake Koka, Bishop Donal Lamont described the conditions under which one of his priests was detained in Rhodesia. The man in question (an African) was subsequently released without charge of any kind. He had been arrested while conducting a church service. "A great steel door with two bars opened and inside, to my horror, I saw the priest standing bare foot on a cold cement floor. His shoes and socks had been removed. His belt, his watch, his rosary had all been taken from him. In one corner, near the door, four or five narrow slats of wood battened together close to the floor made what passed for a bed. The unfortunates had to sleep on that as if on rails. There were three blankets but no pillow and no mattress whatsoever. In a far corner of the room a square cement block about two-and-a-half feet high was built solidly into the wall. There was a hole in the centre and a push button at the side. This was the toilet. To use it the prisoner had to climb up and somehow try to squat. There was no table, no chair, no stool, nothing whatsoever to sit on. Food, consisting of porridge and beans, was brought to the prisoner at six o'clock in the morning, and he had nothing to eat until six o'clock in the evening". 107/

449. At a press conference held on 14 December 1977 after his expulsion from Rhodesia, where he had served an eight-month prison sentence, Father Paul Egli, a Swiss missionary, made the following statement about the conditions in which he had been held:

107/ Bishop Donal Lamont, Speech from the Dock (London, Kevin Mayhew, 1977), pp. 61-62.

"As you know, I was sentenced on 10 January 1977, at Bulawayo, to five years' hard labour. On 6 April 1977, the Salisbury Court of Appeals reduced the sentence to three years, two with suspension of enforcement. On the same day, I went to prison.

...

White detainees have privileges in Rhodesian prisons. The blacks wait on them, prepare the meals, wash the clothes, make the beds and clean the cells. The other five to ten white prisoners attacked me several times and I was assaulted by one of them on two occasions. I did not defend myself, and fearing reprisals I decided not to report the matter.

After 15 days I was transferred to the High Security Prison of Salisbury, where there were about 2,000 blacks, 35 persons of mixed blood and 70 whites.

...

On 22 June, I was taken from Salisbury to Marandellas, where I spent my last five and a half months in prison.

...

There are about 500 black prisoners in the Marandellas prison. About 100 of them are political prisoners who are being held indefinitely without trial.

The political prisoners are not separated from the others. The offences of which they are accused are somewhat similar to those which led to my indictment: they failed to warn the army of the presence of guerrillas or actively helped the guerrillas. Others were arrested when on the way to Mozambique and given very heavy sentences. There were about 40 young people among them, from 10 to 18 years of age, who were kept apart from the adult prisoners, but were left to their own devices, had absolutely nothing to do and were not even given the chance of educating themselves. The day before I left prison, about 40 children arrived at Marandellas. Several of them bore the traces of blows they had received. There were six girls in the group, and also an eight-year-old boy who was hardly able to carry the blankets and other things given to him on entering prison."

(b) Detentions

450. A report available to the Group and prepared by the International Defence and Aid Fund 108/ estimates that there are about 2,000 people detained without charge in Rhodesia at any one time, and another 841 convicted political prisoners. The report gives the names of 914 detainees, 637 people known to have been convicted of political offences, and 250 people whose status is not known precisely but 60 per cent of whom are thought to be detainees rather than convicted prisoners. The balance of detainees is made up by the many people who have been detained up to 30 days in local police stations or prisons (see paras. 95, 96 and 98 above).

108/ International Defence and Aid Fund for southern Africa, Ian Smith's Hostages: Political Prisoners in Rhodesia (London, December 1976).

451. In January 1977 Rev. Canaan Banana, who had become publicity secretary of the People's Movement, was detained under the Emergency Powers Regulations Act. He had the day before issued a strong attack on the rebel régime's rejection of Mr. Ivor Richard's proposal for a constitutional settlement. 109/

452. In April 1977 three more members of the People's Movement were detained. 110/ The newspaper report mentioned that a further member was known to have been detained earlier.

453. As has been noted, 24 members of the staff at the Mount Selinda mission were arrested and detained for a period. They were arrested on charges under the Law and Order (Maintenance) Act for failing to report the presence of "terrorists". The arrests were reported only because they were associated with the detention of Dr. Selwyn Spray prior to his deportation. 111/

454. In July 1977 the acting president of ANC (Zimbabwe) announced that between 100 and 150 officials of his party had been arrested during raids on the party offices. Confirming that "a number of arrests" had been made since the first wave, a police spokesman said: "The number of 150 is very high". He did not explicitly deny it. The Ministry of Law and Order said the arrests were "part of an ongoing exercise of the police duty to maintain law and order". 112/

455. Some idea of the callousness with which detainees and restrictees are treated is given by two cases reported in the Rhodesian press. In the first an ex-detainee, Tobias Manyonga, was required after his release to report to Machipisa police station. During the period 1 April 1975 to 28 January 1976 he did not do so. In his defence he said that when he went to the police station the constable told him to go away and not waste the police station's time. In finding him guilty the magistrate accepted that Manyonga was fobbed off but "one would have expected him to insist on seeing someone in authority". He believed that the defendant had taken advantage of the "lamentable lapse on the part of the authorities in not having a report there". Mr. Manyonga was also found guilty of associating with members of ANC (Zimbabwe) in January 1976 - which under his restriction order he was not permitted to do. He was sentenced to a fine of \$R 50 (or one month in gaol) and four months in prison, suspended for five years. He had already spent two months in gaol awaiting trial. 113/ In another case a detainee was sentenced to 90 days' imprisonment (50 of which were suspended) for trying to get his wife to smuggle 13 airmail letters out of the detention centre. The letters had been written by a number of different detainees. 114/

109/ Radio Salisbury, 26 January 1977.

110/ Rhodesia Herald, 2 April 1977.

111/ Rhodesia Herald, 16 June 1977.

112/ Rhodesia Herald, 3 July 1977; Guardian, 1 July 1977.

113/ Rhodesia Herald, 8 September 1976.

114/ Rhodesia Herald, 2 June 1977.

5. Arrest of politically involved people

456. A very large number of people have been arrested and convicted of political offences other than those connected with direct or indirect support of the freedom fighters. Some cases are described in paragraphs 505-506 below.

457. In January 1977 a man who urged his fellow workers to stay away from work over the Christmas period was found guilty of making a statement "likely to lead to the disturbance, disruption, hindering of or interfering with any undertaking, industry, trade or occupation or the carrying on thereof". His statement consisted of two handwritten documents. The company the accused worked for had no Christmas break, as most other firms had, and the accused objected to this. There is no evidence that he succeeded in getting his workmates to strike but the offence was seen as political rather than industrial by the magistrate: "If what you did was allowed to go unchecked, then we would end up wallowing in a morass of industrial anarchy, something no decent society, including the workers, can afford". The accused was sentenced to two years in gaol, 15 months conditionally suspended for five years, and banned from any political meeting for 18 months after his release. 115/

458. In a trial in January 1977 two youths were ordered to be caned for trying to organize a bus boycott. They were charged under the Law and Order (Maintenance) Act. 116/

459. In another trial in April 1977, 37 officials and supporters of ANC (Zimbabwe) were found guilty of attending a public meeting for which no authority had been given. The meeting was held in a private house. Twenty-seven men were each fined \$R 50 (or one month in gaol). The other 10 were each given a six-month gaol sentence, conditionally suspended for five years. On appeal, the suspended sentences were removed. 117/

460. In June 1977 three officials of the now disbanded Zimbabwe Reformed African National Council were charged under the Law and Order (Maintenance) Act. 118/
No report of the trial has yet been received.

6. Deportations and prohibited visitors

461. In the Group's last report (E/CN.4/1222, paras. 555-559) a certain number of cases of people deported or declared prohibited immigrants were reported.

462. During the period under review the cases of other persons have been reported to the Group. In February 1977 the chief photographer of the Rhodesia Herald was declared a prohibited immigrant. He had arrived in Southern Rhodesia the previous March. In December he had been restricted from every Joint Operations Centre in Rhodesia. In commenting he said: "I have no wish to knock Rhodesia. I came here with scepticism but over the months that mellowed into admiration for what had been achieved". 119/

115/ Rhodesia Herald, 8 January 1977.

116/ Rhodesia Herald, 13 January 1977.

117/ Rhodesia Herald, 3 April 1977, 20 May 1977.

118/ Rhodesia Herald, 24 June 1977.

119/ Rhodesia Herald, 25 February 1977.

463. In March 1977 Claus Tokvig, a reporter with Danish Radio, was refused entry to take part in a Rhodesia TV programme on "Rhodesia's image world-wide". He had been especially invited to take part. 120/

464. In May 1977 an American journalist was expelled because he refused to supply officials of the rebel régime with information gathered during his journalistic assignments. 121/

465. In August 1977 a staff reporter for BBC TV (Brian Barron), who was temporarily in Rhodesia, did not have his temporary work permit renewed. This was because of a report which the régime thought was tendentious.

466. A number of churchmen have also been deported or declared prohibited immigrants. The Bishop of Umtali, the Rev. Donal Lamont, pleaded guilty to four charges under the Law and Order (Maintenance) Act in September 1976 and was finally (after an appeal) sentenced to four years in gaol, three years conditionally suspended (see para. 476 below). He was served with an order to deprive him of his Rhodesian citizenship preparatory to deporting him. In announcing his decision the "Minister of Justice" said in the House of Assembly: "This step has been taken in order to remove him entirely from the local scene where his presence in prison, we are convinced, will only continue the focal point of tension which has built up around him". He was restricted to hospital while he contested the order to deprive him of Rhodesian citizenship. The hearing to decide whether there were grounds for depriving him of his citizenship - the actual decision being one for the "Minister of Internal Affairs" - took place on 16 March; the "Minister" received the report on 22 March, and issued an order depriving Bishop Lamont of Rhodesian citizenship on 23 March. The Bishop was put on a plane the same day. 122/

467. In June 1977 an American priest who had worked in the country for eight years did not have his temporary residence permit renewed. He too had to leave. 123/

468. Two missionaries who were given suspended sentences for not reporting the presence of guerrillas were declared prohibited immigrants in July 1977. One was a Roman Catholic priest and the other an Anglican teacher. 124/

469. Dr. Selwyn Spray, who worked for two years at a United Church of Christ mission near Umtali, was deported from Southern Rhodesia in June 1977. He fought the deportation order for nearly two months and finally simply ignored it, so that he had to be arrested and kept in prison before he was secretly placed on a plane bound for London. 125/

120/ Sunday Mail, 20 March 1977.

121/ Radio Salisbury, 11 May 1977.

122/ Rhodesia Herald, 25 February, 17 March, 23 March, 24 March 1977.

123/ Rhodesia Herald, 1 June 1977.

124/ Rhodesia Herald, 16 July 1977.

125/ Rhodesia Herald, 4 May, 21 June 1977; Guardian, 14 June 1977.

7. Travel restrictions on non-white Rhodesians

470. In view of the difficulties experienced by Africans in trying to leave their country, many of them have crossed the borders into Mozambique or Botswana without any papers. Many have been shot and killed. As has been reported in paragraph 387 above, both borders have long strips where curfews are in operation or "no-go" areas where any African is liable to be shot on sight.

471. The Group has received information from the Joint Council for the Welfare of Immigrants, London, about the plight of Asians and Coloureds from Rhodesia who are trying to evade call-up into the Southern Rhodesian army. A number of cases were presented showing the method of action by the British Government. It should be noted that there has been a slight change of policy since the first case described.

(a) Salim Desai left Southern Rhodesia in August 1976 to avoid military service. On entering the United Kingdom he said that he wished to study and that he would be supported by his father. He did not wish to do his call-up before he studied and, if possible, he did not want to do it at all. Because he had been to the United Kingdom previously and had tried to get a job, and because he had not fulfilled the very strict requirements for entering the United Kingdom to pursue further studies, he was not admitted and was returned to Salisbury. He was given call-up papers to enter the Rhodesian Army in December and returned again to the United Kingdom in March 1977. On this occasion he was allowed to enter after representations by Lord Avebury.

(b) Iqbal Chunara entered the United Kingdom in August 1976 with the dual intention of avoiding military service and furthering his education. He was refused leave to enter on the grounds that the immigration officer was not satisfied that he would leave the country after he had finished. This decision was upheld by the Home Secretary on the grounds that "his only objection to joining the Rhodesian army (apart from a natural desire to avoid being killed or wounded) was that it would affect his education and would be a waste of his qualifications". The Rhodesian army ~~has~~ called at his home on several occasions since he left. However, he was eventually allowed to remain in Britain after representations by Neville Sandelson, MP.

(c) Moosa Kara deserted from the armed forces of the rebel régime and crossed into Botswana. However, because the only passport he had was one offered by the rebel régime, he was refused entry into the United Kingdom in October 1976 and given a travel document to make the single journey back to Rhodesia. He went instead to Switzerland where he had made a formal application for a British passport. If he did go back to Rhodesia he would face a court martial.

(d) Geronimo D'Souza was refused entry into the United Kingdom on the grounds that there was reason to believe "that you are a serving member of the Rhodesian armed forces and you support the illegal régime in that country". He was admitted immediately when the Joint Council for the Welfare of Immigrants appealed his case.

472. The General Secretary of the Joint Council for the Welfare of Immigrants has made the following comment:

"We still regard it as totally unsatisfactory that the Government refuses to give a clear undertaking that any person liable to conscription by the illegal régime will be admitted temporarily to the United Kingdom.

In practice, the current policy means that the Government is unlikely to remove anyone where this would result in unfavourable publicity, but will not give an undertaking on which people can rely on leaving Zimbabwe and which, in the Home Office view, would thus encourage people to do so. Persons who then find their way to, most commonly, Geneva, Lisbon or Athens and apply for entry clearance overseas are unlikely to be granted it, and remain trapped in third countries, often with no means of support. While there is now an assurance that 'cases are reviewed on a ministerial level if there is any question of returning a Rhodesian citizen to Rhodesia', this does not appear to extend to persons who arrive, as most do, from intermediate points and who would therefore be removed back to somewhere other than Zimbabwe, even though this may compel their eventual return to Zimbabwe. Prolonged delays in the consideration of cases continue, and it is not always easy to obtain temporary admission (rather than detention) while a case is being considered, and even if someone is temporarily admitted they are unable to work to support themselves or claim social security during this period, which in two of our recent cases has amounted to eight and nine months". 126/

8. Treatment of freedom fighters

473. The cases of a number of freedom fighters sentenced to death have been recorded in paragraphs 378-381 above. In addition to the 44 freedom fighters sentenced to death, a further 16 trials have been reported in the press and radio involving a further 21 freedom fighters. In one trial the two defendants were acquitted of being involved in guerrilla activities but one man was found guilty of assisting guerrillas. Two other trials were not finally reported. The sentences in the remaining trials ranged between five years and life imprisonment (not counting sentences which were conditionally suspended). The distribution of sentences was as tabulated: 127/

<u>Sentence</u>	<u>Number of sentences</u>
3-10 years	5
11-15 years	4
16-20 years	1
21-30 years	3
life	4

474. From these cases it is quite clear that the courts in Rhodesia continue to deal with freedom fighters as common criminals. As pointed out in previous reports, the rebel régime has recognized no rights of freedom fighters under the Geneva Conventions of 12 August 1949 (see E/CN.4/1111, paras. 242-252; and para. 442 above).

9. Treatment of those who help or fail to report freedom fighters

475. According to information obtained by the Group, between August 1976 and July 1977 417 people (almost all Africans) were accused of recruiting or helping freedom fighters, or of not reporting their presence. Of these, four were not

126/ Letter from Ian Martin, General Secretary, Joint Council for the Welfare of Immigrants, London, 6 September 1977, enclosing relevant correspondence.

127/ Rhodesia Herald and Radio Salisbury, various dates between 7 August 1976 and 2 July 1977.

charged or their trial not proceeded with for one reason or another; the results of the trials of another 57 were not reported; the sentences on the conviction of a further 76 were not reported; and there may also have been trials which were either held wholly in camera or otherwise not reported. Two hundred and eighty were given sentences which ranged from caning or suspension of sentence for five years to life imprisonment. The sentences are tabulated below: 128/

<u>Sentence</u>	<u>Number sentenced</u>
0-5 years	139
6-10 years	90
11-15 years	41
16-20 years	3
Life	7

476. The most prominent person to be convicted by the rebel régime was the Roman Catholic Bishop of Umtali, Rt.Rev. Donal Lamont. At his trial in September 1976 he pleaded guilty to two counts of failing to report the presence of a "terrorist" and two counts of inciting others to do the same. He was initially sentenced to 10 years' imprisonment. This was subsequently reduced to four years, with three years conditionally suspended. 129/ He then had his citizenship removed and was deported (see para. 466 above). In a detailed unsworn statement before the court he described the incident as follows:

"I drove from Regina Coeli Mission to Avila in Inyanga North on 21 April, and shortly after arrival was informed that a letter had been handed into the Mission requesting medicines. I was shown the note, and as far as I can remember, it asked for anti-malarial tablets and medicines for diarrhoea. My recollection of the incident is that I was told that the letter had been delivered by a villager, a man, on behalf of what are in the summons called 'terrorists'. I was asked what ought to be done about it, and I replied that we ought to give medical aid to anyone who asked, and that the nurses should not argue about the matter. I have a distinct recollection of saying that as far as medical help was concerned, no missionary should inquire about the religion or politics of those who asked for help. I remember also saying that if the security forces came looking for medicines, they too were to be given whatever they needed and whatever the Mission could afford to give."

He also explained that to have reported the incident subsequently would have called the wrath of the security forces upon the whole of the local community. 130/

128/ Rhodesia Herald and Radio Salisbury, various dates from 7 August 1976 to 21 July 1977.

129/ Rhodesia Herald, 2 October 1976, 25 February 1977.

130/ Bishop Donal Lamont, op. cit.

477. A Rhodesian African who was deported from Botswana because he had lost his residence permit was found guilty of possessing offensive weapons and helping a "terrorist" and sentenced to life imprisonment. He had lived in Botswana since 1971 and had a business in Francistown. He had associated with the ANC in Botswana and had taken arms from there to his own kraal, although he was never associated with the use of the arms themselves. 131/

478. Seven rural Africans had their sentences for failing to report "terrorists" reduced to six months on an appeal, and their headman had his reduced to two years. The men had thought that the headman (Mr. Mandide Makavepi) had informed the authorities within the required 72 hours. However, he was old and infirm and had been unable to cross a river to make the report. He did eventually make the report, though not within the statutory period. 132/

131/ Rhodesia Herald, 29 March 1977.

132/ Rhodesia Herald, 1 October 1976.

E. Disparity between the wages and conditions of employment of black and white workers and discrimination against black workers

1. Introduction

479. Detailed analyses of black and white incomes have been made in previous reports of the Group (see in particular E/CN.4/1135, paras. 417-421; E/5622, paras. 137-160). There has been no legislation that significantly affects industrial relations or the employment of Africans in the period under review.

480. The witness Mr. J.P. Arlès of the International Labour Office (452nd meeting) told the Group that the following indications concerning the labour situation could be drawn from the preliminary findings of a study by ILO that was to be published shortly:

"the exercise of trade union rights and trade union freedoms has been systematically thwarted by the administrative and political measures taken by the authorities; the right to strike does not in practice exist; the labour legislation is discriminatory and minimum wages are established in an increasing dictatorial manner, and at extremely low levels; racial barriers prevent access to training and employment; white immigration is actively encouraged, thus blocking the promotion of Africans, and foreign Africans are forced to work on plantations at very low wages or else repatriate themselves at their own expense; ... thousands of prisoners are used as forced labour on farms or State enterprises ..."

481. A previous report of the Group (E/CN.4/1137, para. 555) referred to the introduction of the Agricultural Industry (Employees' Pension Scheme) Act. This scheme (which requires contributions from both employees and employers) has been opposed by many Rhodesian farmers. Although the scheme has been in operation since October 1975, it was reported in February 1977 that about 2,000 farmers still had not complied with it. It was only then decided to prosecute non-complying farmers. On 15 March it was announced that legal proceedings had been instituted against the 450 farmers (out of a total of 6,200) who had still not joined the scheme. 133/

482. In a supplementary budget designed to deal with problems caused partly by the liberation war, the "Minister of Finance", Mr. David Smith, increased the sales tax from 10 per cent to 15 per cent. He also (for the second year running) introduced a surcharge of 10 per cent on income tax. The Secretary General of the UANC, Dr. Gordon Chavanduka, attacked the measures because they were "intended to penalize the African people and force them to share the country's military burden. Because of our numbers, blacks pay more in sales tax than whites and it is ironic that the poorest section of the community should be forced to bear the burden of heavier taxation". 134/

133/ Rhodesia Herald, 16 February 1977, 16 March 1977.

134/ Africa Research Bulletin, vol. 14, 31 March 1977, pp. 4198-4199.

2. Condition of workers in the agricultural sector

483. Sixty per cent of the Africans live in the Tribal Trust Lands and are outside the main economic life of Southern Rhodesia. In a recent study on possibilities for development of the Rhodesian economy, it is pointed out that when the original prospects for mining in Rhodesia failed to fulfil their early promise the settlers put their energy into farming on a large commercial scale. The white farmers then found that, on the one hand, they needed to force local Africans from their own land to take labouring jobs in their farms, and, on the other hand, "the growing capitalist agricultural sector still faced competition from indigenous producers. Up to the 1930s and 1940s, therefore, the government introduced discriminatory measures making it difficult for tribal cultivators to market their own produce". 135/ The main lines of communications (roads and railways) accordingly tend to pass through the European designated areas rather than the African areas. The average consumption per head in the TTLs in 1974 has been computed at \$R 27.30. 136/

484. In 1976, figures for the work force and wages of Africans and Europeans in agriculture and forestry revealed not only that European incomes were nearly 30 times those of Africans but that the wage gap itself had more than doubled in the preceding ten years. 137/

	<u>Africans</u>	<u>Europeans</u>
Numbers	356,100	5,900
% of total in employment	38.5	4.9
Income per head (\$R)	201	5,918
Wages gap 1976 (\$R)		5,717
Wages gap 1966 (\$R)		2,630

485. The Group has found a great shortage of published work on the conditions, pay and views of agricultural workers in Rhodesia. Since 1964, however, the Agricultural and Plantation Workers' Union has sought to represent workers in this industry. These workers, as reported in the Group's last report (E/CN.4/1222, para. 578), are still subject to the Masters and Servants Act of 1901 and they have no trade union rights. At its conference in October 1976 the National African Trade Union Congress called on the authorities to allow agricultural workers to form trade unions "for the betterment of their jobs". 138/

135/ R. Riddell, "Alternatives to poverty", From Rhodesia to Zimbabwe, No. 1, August 1977.

136/ D. G. Clarke, The Distribution of Income and Wealth in Rhodesia (Mambo Press, 1977).

137/ Monthly Digest of Statistics, Supplement, April 1977, tables 6, 7.

138/ Rhodesia Herald, 25 October 1976.

486. One major study has however recently been published. ^{139/} The author, D. G. Clarke, shows that the provisions of the Masters and Servants Act are by no means unused. For example, he gives a table detailing the numbers of recorded offences under this Act in recent years. ^{140/}

<u>Offence</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>
Desertion	451	384	305	304
Insolence	6	22	12	2
Refusal to obey a lawful order	108	104	63	61
Drink	26	52	50	31
Other offences	130	77	113	91
Total	899	783	632	560

The Group recalls that these are criminal offences for which men can be fined (from a very meagre wage) or sent to prison. Despite the fact that South Africa has repealed an equivalent Act, the rebel régime stated to the "Commission of Inquiry into Racial Discrimination" that it had no intention of repealing or replacing the Act.

487. Mr. Clarke provides evidence to show that, despite their illegality and the consequent difficulties in organizing them, there have been a number of agricultural workers' strikes. Since 1970 the following stoppages have been recorded: 1970 - 29; 1971 - 19; 1972 - 42; 1973 - 47. ^{141/} He comments that conflict in an agricultural setting may well "be largely expressed ... by 'desertion', go-slows, insolence, malicious damage to property, arson, theft and absenteeism". ^{142/}

488. An important chapter is entitled "Welfare, social security and the quality of life for workers on farms". Dealing first with malnutrition, Mr. Clarke quotes a study by Professor H. Reed of the University of Rhodesia Medical School. He found that in the Macheke district, of all farm worker children who were sampled, 90 per cent were malnourished, some severely so. This finding has been confirmed in other areas by other medical workers. The reaction of the "Minister of Law and Social Welfare" was to say that Southern Rhodesia was no worse than other countries in this respect and that ignorance was the main cause. The study found that protein deficiency is a main cause; since protein is expensive it is often given only to the breadwinner, not to babies. ^{143/} Mr. Clarke visited a tuberculosis hospital in Chinamora TTL. He found that 75 per cent of the cases came from farm compounds and only 10 per cent from the TTLs. Most of the patients were aged 35-60 and were manual labourers. ^{144/} As far as education is concerned, Mr. Clarke concluded that "it is most probable (1) that many thousands of farm children do not go to school at all, (2) that this position may have deteriorated in recent years, (3) that farm children are relatively more deprived of education than any other group, and (4) that proportionately more farm schools and children therein have fallen under the aegis of the less-favourable unaided farm school system". He also showed that most farm children leave after the third year of primary

^{139/} D. G. Clarke, Agricultural and Plantation Workers in Rhodesia (Mambo Press, 1977).

^{140/} Ibid., table 45, p. 175.

^{141/} Ibid., table 46, p. 178.

^{142/} Ibid., p. 177.

^{143/} Ibid., pp. 104-105

^{144/} Ibid., pp. 106-107.

schooling. 145/ Finally, he comments on accommodation. He makes the point that the huts do not belong to the workers who live in them; tenants have absolutely no security of tenure:

"Many compounds are crowded, often dirty and during the rains become very muddy. Huts seldom have windows and much time is spent out of doors - in clement weather. There is little permanency about the pole and dhaka hut, which is often permeable during heavy rains. Fenced compounds provide a new dimension to the experience of enclosure, further delimiting in a precise way the exact area of the compound." 146/

489. There have been some cases in the period under review of assaults on African workers by their European employers, one of which resulted in the death of a man aged 65 years (see para. 497 below). Another, in which an employer shot an African worker is also reported below. In a third case, Mr. D. E. Micklem slapped his foreman three times in the face for not dealing with the farm tobacco correctly. As he did so his pistol fell from his pocket and accidentally discharged. The bullet hit the African foreman on the knee and lodged in his hip. The farmer was found guilty of being in possession of a firearm while behaving in a disorderly manner and was fined \$R 50. 147/

3. Condition of workers in the industrial sector and in urban areas

490. The extreme disparity between white and black incomes in Rhodesia has been dealt with in previous reports (especially E/CN.4/1135, paras. 417-421; E/5622, paras. 137-160). The relative incomes of Africans and Europeans in the year 1976 are tabulated below: 148/

	<u>Africans</u>	<u>Europeans</u>
Numbers	569,800	114,100
Total wages (\$R)	408,900,000	644,400,000
Wages per head (\$R)	717.6	5,648
Wage gap (\$R)	4,930	

491. Among the lowest paid workers are private domestic employees, who earn just over half the average of all urban and industrial workers. 149/ According to recent research available to the Working Group, 85 per cent of domestic workers earned \$R 12.25 per month or less in 1971. Since then the average domestic income has increased by only about 25 per cent. 150/

492. The reasons for the low level of black wages, especially in agriculture and domestic service, have been expressed in a document before the Group as follows:

145/ Ibid., pp. 118, 119.

146/ Ibid., p. 127.

147/ Rhodesia Herald, 1 February 1977.

148/ Monthly Digest of Statistics, op. cit., tables 6, 7.

149/ Ibid.

150/ D. G. Clarke, The Distribution of Income and Wealth in Rhodesia (Mambo Press, 1977)

"The gap between the beneficiaries of the current development process and the low-paid is perpetuated through various institutional mechanisms. Trade union wage bargaining is not allowed in the two poorest paid and largest employment sectors, agriculture and domestic service, while in the other sectors strike action is in practice illegal. Together with a highly discriminatory educational system and discrimination in agricultural marketing, labour policies ensure that only a small number of blacks become skilled workers, productive farmers or white-collar workers." 151/

493. There have been a number of protests against increases in the cost of basic commodities. In October the secretary of the Commercial Workers' Union, Mr. Albert Mugabe, deplored the increase in the price of bread. Bread had increased from 16c to 18c - an increase of 12 per cent. He pointed out that the African consumer price index had risen by more than 13 points between June 1975 and June 1976. 152/ It rose by another 18 points in the following twelve months. 153/ In November 1976 there was a boycott of buses in the Bulawayo area. Fares had been increased by 1c to 3c and as a result Africans walked to work in large numbers. The chairman of the (Bulawayo) African Townships Advisory Board said, after meeting the city council, "It is not a boycott. It is simply that people cannot afford the higher fares. Many must continue walking to work. They walk many miles, and when they reach their work they are finished - exhausted". He pointed out that this was the third recent increase in the cost of living. The other two were due to increases in rents and in electricity charges. However, Mr. Bill Irvine, the "Minister of Housing and Local Government", claimed that the boycott was political. He said that the increase had been taken into account in recent wage awards by industrial boards. 154/ In June 1977 an increase in bus fares in Salisbury was condemned by the area secretary of the African Trades Union Congress (ATUC), who said that the "large majority" of the bus passengers in Salisbury were the lowest paid workers, who to meet the increase "will obviously cut down on food". 155/

151/ R. C. Riddell and P.S. Harris, The Poverty Datum Line as a Wage Fixing Standard: An Application to Rhodesia (Mambo Press, 1975)

152/ Rhodesia Herald, 27 October 1976.

153/ Monthly Digest of Statistics, July 1977, table 5.

154/ Rhodesia Herald, 19 November, 26 November 1976.

155/ Rhodesia Herald, 15 June 1977.

494. Despite a statement by the "Minister of Labour" in January 1977 that unemployment was relatively low, there is evidence before the Group of chronic unemployment in Southern Rhodesia. The "Minister" said that 952 Africans had been made redundant in the latter half of 1976 but that he believed that these had since got jobs. 156/ However, it has been estimated that there has been a shortfall of 37,000 jobs a year for young African men and women reaching employment age between 1969 and 1975. Fewer than 30,000 jobs were created each year during this period - less than half the number required. 157/ In addition, a certain amount of unemployment is "exported" with the emigration of workers to South Africa. At the end of December 1976 there were 32,453 Africans from Southern Rhodesia working in South Africa, where they are earners of foreign exchange, since after the first three months 60 per cent of the earnings of all such workers has to be repatriated to Rhodesia. 158/ An industrial personnel consultant maintained that Rhodesian management was exploiting the country's high unemployment rate. He said that many managements had the attitude: "If you don't like it, there are plenty of applicants available for your job". 159/

495. In June 1977 Salisbury City Council postponed discussing a proposal to regrade about 200 of its employees. The result of this regrading would have been to halve their wages. The workers concerned worked on farms owned by the City Council and the lowest wages paid were \$R 56.22 a month. They were classified as municipal workers and not agricultural workers. The Council maintained that this was a mistake and that the workers should be reclassified to a grade with a minimum wage of \$R 20 a month. It was initially suggested that the workers should be given the option of other employment under the City Council, though this would involve losing the benefits of working on a farm (such as free housing and no travel). The Mayor of Salisbury, Councillor Roy Wright, in a carefully worded statement, maintained that "For some years they have been grossly overpaid in relation to farmworkers generally". No final decision has been reported. 160/

156/ Rhodesia Herald, 20 July 1977.

157/ R. Riddell, loc. cit., p.11.

158/ Rhodesia Herald, 20 July 1977.

159/ Rhodesia Herald, 4 November 1976.

160/ Rhodesia Herald, 9 June, 17 June, 27 June 1977.

F. Other serious violations of human rights resulting
from racial discrimination

1. Secret trials

496. In Rhodesia the "Minister of Justice" has wide powers in terms of section 403A of the Criminal Procedure and Evidence Act to impose as wide restrictions as he wishes on publication of matters relating to any trial. Many trials of a political nature are held with no spectators but the press present, and this is conditional on their refraining from publishing certain details (such as names, places, dates, etc.). In these cases only white reporters are allowed to attend. The "Minister" may restrict any information, including the nature of the charge and the facts of the trial. It is therefore very difficult to obtain details on such trials, especially if the defendant is found guilty and sent to prison or detained. No evidence is available as to whether or not any trials have been held wholly in secret during the period under review. The "Minister", however, used his powers in the trial of Dr. G. Chavanduka, who was acquitted of encouraging people to sing subversive songs. The court was asked to hold part of the trial in secret to protect police witnesses, but this was opposed by the defence on the grounds that the names of the witnesses had been posted on the court roll for all to see on previous occasions when the trial had been postponed and they had suffered no victimization as a result. Nevertheless, after a short adjournment, the prosecution obtained a certificate from the "Minister of Justice" requiring the court to go into secret session (except for the press) during the giving of evidence by the police witnesses. 161/

2. Excessive penalties for offences by Africans

497. According to a survey in Bulawayo referred to by a lecturer at the University of Rhodesia, himself an ex-magistrate, Europeans were fined about 28 per cent of their salary, while Africans were fined 127 per cent of theirs, for a range of offences. 162/

498. In the Group's last report (E/CN.4/1222, paras.604-607) the provisions of the Stock Theft Amendment Act were described, including that for a mandatory minimum sentence on conviction. In the year under review 12 cases involving 79 people have come to the attention of the Group. The details of the sentences given in court are detailed below. 163/

<u>Sentences</u>	<u>Numbers sentenced</u>
No details	2
Less than 9 years	7
9 years	65
More than 9 years	5

161/ Rhodesia Herald, 4 January 1977.

162/ Rhodesia Herald, 2 October 1977.

163/ Rhodesia Herald, various dates between 27 October 1976 and 14 July 1977.

In one appeal it was revealed that the Provincial Commissioner, Victoria, had imposed collective fines on tribesmen in the Chibi and Nyajena TTLs, in addition to the court sentences under the Act. In setting out his reasons the Provincial Commissioner (Mr. R.L. Westcott) said that although 93 people had been convicted of stock theft and 16 of possessing meat, the convictions and sentences were not having the deterrent effect required. He concluded: "The thefts can therefore be regarded as acts of terrorism and sabotage". The full details of the collective fines were not clear but two men were said to have paid five and six head of cattle respectively. 164/ Magistrates still express their disquiet at the high sentences they are required to impose. In one case a youth of 19 years was sentenced to 9 years, mandatory, while his accomplice, a youth of 18 years, was sentenced to 6 cuts and a suspended sentence of six months. The offence was the same but the magistrate said his hands were "tied by the law". 165/

3. Black education: disparity between black
and white facilities

499. Previous reports (including E/CN.4/1187, para.579; and E/CN.4/1222, para.608) have dealt with educational discrimination against black children in relation to white, including the fact that white children have, by law, to go to school until Form IV while there is no compulsory education for Africans, and that Africans pay a larger proportion of their income for schooling. The high cost of schooling in the face of poverty in the poorly paid sectors of the economy and in the TTLs makes for a very high drop-out rate among African schoolchildren. Further, secondary school places exist for only a small proportion of African children leaving primary schools. Below are tabulated the actual number and the theoretical number of children (assuming there were no drop-outs) in the various school classes for Africans and Europeans. 166/ (This is a crude comparison because (a) a substantial number of African children do not enter school at all, (b) there will be a natural fall-off between years because of death or migration, and (c) in the case of European children there has been very considerable migration over the 11 years concerned - a total of 119,054 immigrants and 86,164 emigrants. 167/

164/ Rhodesia Herald, 25 February 1977, 2 March 1977.

165/ Rhodesia Herald, 20 November 1976.

166/ Monthly Digest of Statistics, October 1974, table 12; July 1977, table 1; Supplement, July 1977, table 4.

167/ Ibid., July 1977, table 1.

	African			European		
	Actual	Theoretical	<u>Actual</u> <u>Theoretical</u>	Actual	Theoretical	<u>Actual</u> <u>Theoretical</u>
<u>Grade</u>	<u>Primary School</u>					
1	164 136	164 136	1.0	4 697	4 697	1.0
2	149 692	163 268	0.92	4 422	4 843	0.91
3	136 464	160 410	0.85	4 449	4 872	0.91
4	120 185	153 352	0.78	4 354	4 921	0.88
5	109 098	151 763	0.72	4 384	4 949	0.89
6	87 459	134 245	0.65	4 322	4 542	0.95
7	78 449	142 355	0.55	4 540	4 568	0.99
<u>Form</u>	<u>Secondary School</u>					
I	14 437	135 234	0.11	4 593	4 438	1.03
II	12 915	129 440	0.10	4 807	4 594	1.05
III	8 520	126 366	0.07	4 847	4 670	1.04
IV	6 880	122 620	0.06	4 721	4 799	0.98

500. The gross cost per pupil in 1976 for European children was \$R 502 and for African children \$R 26.6. 168/

501. Many of the schools in Southern Rhodesia were founded by missionary societies and were fully taken over by the Rhodesian authorities only when they had unilaterally instituted a reduction in the salaries of African teachers. Not all were handed over. In August 1976 the rebel régime closed down one of the oldest mission schools, at Chikore, under the Law and Order (Maintenance) Act, because it was deemed to be a threat to public order or safety. The action was taken following a petition by local Europeans, who claimed that the missionaries were actively supporting the guerrillas. No charges were ever preferred against the school teachers. The régime took over the school for Forms I and II children only, so those from Forms III and IV were to be moved elsewhere. 169/ The Anglican diocese of Mashonaland decided to hand over to the "government" 170 of its primary schools in 1977. No reason was stated for this action. 170/

502. Because of the shortage of places, the competition among African students to enter secondary schools is very great. The Provincial Education Officer for Matabeleland North said in March 1977 that only 15,000 out of 79,000 children who sat examinations to gain a place in a secondary school had been successful. 171/

168/ Monthly Digest of Statistics, July 1977, tables 4 and 35.

169/ Daily Telegraph, 18 August 1976.

170/ Rhodesia Herald, 11 August 1976.

171/ Rhodesia Herald, 22 March 1977.

In an attempt to meet the need, a private boarding school for Africans in the Darwendale area was started during the period under review. The school was not registered, however, and was closed after two days, stranding the 50 pupils. 172/

503. According to information available to the Group, more African students at the University of Rhodesia are supported by the World University Service (with funds from the British Ministry of Overseas Development as well as other supporters) than by the rebel régime itself. 173/ Some opposition was expressed in the Salisbury City Council to the gift of an annual grant to the University, because a councillor was upset by the political views of the African students. 174/

4. Violations of freedom of speech and association

Introduction

504. In a previous report (E/CN.4/1135, para.339) the Group made reference to measures taken by the illegal régime to restrict meetings in the TTLs. Administrative means are often used to stop meetings in the urban areas (E/CN.4/1159, para.356). In an earlier report it was stated that all meetings of a political nature were banned unless authorized by a white official, including meetings of under 12 people (E/CN.4/1187, para.584). That report also referred to legislation which stopped people who had been convicted of making "subversive" statements from either being quoted or going to meetings (*ibid.*, para.585). In the Group's last report the régime's decision to issue "D" notices, which prohibit publication of any matter, without appeal, was described (E/CN.4/1222, para.616).

(a) Examples of violation of the right to freedom of speech

505. Following a slight relaxation in the strict control of broadcast information on Rhodesian television in March, an episode of the weekly programme "Controversy", dealing with "The White Man in a Future Rhodesia", was shown in Salisbury but then banned from being shown in Bulawayo. The political reporter of the Rhodesia Herald said he understood that it had been cancelled on the instructions of the "government". The Rhodesian Broadcasting Corporation said in a statement that it had received representations that the views expressed would harm race relations. 175/

506. In a speech to the Rhodesian Guild of Journalists the "Minister of Law and Order and of Justice", Mr. Hilary Squires, threatened that the rebel régime might decide to control the press even more stringently than at present. He said: "On a public or Government level I do not think it is possible to tell all, or even if it were, that it would be desirable". He continued by saying that it was important that decisions should be announced with "effectiveness": "To receive the maximum result the decision must still be with the Government and not with the news media, as to how much should be made public, and at what point of time that should be done." 176/

172/ Rhodesia Herald, 14 June 1976.

173/ Guardian, 4 January 1977.

174/ Rhodesia Herald, 23 April 1977.

175/ Rhodesia Herald, 11 March 1977.

176/ Sunday Mail, 27 March 1977.

507. At the same conference the president of the Guild said that journalists would like to see an overhaul of the massive power at present controlling publication of information in Rhodesia. 177/

508. An appeal by the Southern Rhodesian Attorney General on a point of law made it clear that the ban on the Roman Catholic weekly paper Moto covered the printing of any "political" papers or publications by the Mambo Press. 178/

509. The Rhodesian Mission Press was banned in January 1977 from publishing anything except "religious or educational matter". This press had published the monthly paper Umbowo, which was also specifically banned. Umbowo covered both religious and political matters. 179/

510. In June 1977 an issue of an African newspaper, The Zimbabwe Times, was censored by the Rhodesian special branch. According to the editor, the police took the proofs, studied them for a day and then said the paper was not to be printed. They objected to three items: a headline about a shooting incident in Bulawayo, a letter from a reader, and an article calling for women to become politically involved. 180/

511. During the period under review, the following publications have been banned:

New Communist Manifesto (including future editions)

Ufahamu (all volumes)

Frente de Libertacao de Mozambique: Frelimo 181/

Letters from Salisbury Prison (N. Sithole) 182/

Muzungu, One Man's Africa (D. Topolski) 183/

Civil War in Rhodesia: A selection of press cuttings 184/

Civil War in Rhodesia, Catholic Commission for Justice and Peace 185/

In addition, the South African film "The Angola File" was withdrawn. 186/

(b) Examples of violations of the right to free association

512. In April 1977 the "Minister of Foreign Affairs", Mr. P.K. van der Byl, said that Robert Mugabe and Joshua Nkomo would not be allowed back into Rhodesia until

177/ Ibid.

178/ Rhodesia Herald, 6 January 1977.

179/ Rhodesia Herald, 22 January 1977.

180/ Rhodesia Herald, 11 June 1977.

181/ Rhodesia Herald, 12 August 1976.

182/ Rhodesia Herald, 21 February 1977.

183/ Rhodesia Herald, 8 March 1977.

184/ Rhodesia Herald, 21 May 1977.

185/ Radio Salisbury, 3 August 1977.

186/ Rhodesia Herald, 1 July 1977.

they "abandoned and repudiated terrorism". 187/ In July 1977 the "Minister of Law and Order" said that Rev. Ndabaningi Sithole still had a detention order on him and would not be allowed to return while he was associated with "terrorism". 188/

513. Previous reports have stressed the many restrictions on political meetings both in rural and urban areas (E/CN.4/1145, para.389; E/CN.4/1159, para.356; E/CN.4/1187, para.584).

514. In January 1977 the UANC was refused permission to hold a procession within sight of Mr. Ivor Richard, Chairman of the Geneva Conference, during his visit to Southern Rhodesia. 189/ In March 1977 the UANC was granted permission to hold a meeting of 5,000 people. However, it was made clear that the meeting would be subject to stringent police control. 190/ In June 1977 the part of the ANC supporting Rev. N. Sithole had a meeting banned. 191/

515. African students have in the period under review demonstrated their views in a series of peaceful processions held without the permission of the rebel régime. Students from the University of Rhodesia demonstrated against a proposal to call up Africans into the army. 192/ The students at St. Ignatius College, Chishawasha, made two attempts to demonstrate against the same proposal. As a result the school was closed and all the pupils were sent home. 193/

5. Threats to African family life

516. In an important study published by UNESCO, Dr. A.K.H. Weinrich has described in detail the social, economic and political life of an African suburb (Mucheke) of the small town of Fort Victoria in the centre of Rhodesia. The main study was made between 1967 and 1969. 194/

517. As is true on a gross scale in Rhodesia as a whole (see E/CN.4/1187, paras.598-626) there is a major imbalance in the sexes as between the surrounding country areas and Mucheke. In the sample taken by Dr. Weinrich (40 per cent of the whole) there were 632 households. Of the men, 135 were bachelors, 259 were married and had their wives with them, and 266 were married but had left their wives behind in the rural areas. Of their children, 979 lived in town with them, 837 stayed in the country, and 50 were at boarding schools. Women therefore far outweighed men in the rural areas around Fort Victoria and men outnumber women by more than two to one in the town. However, the imbalance of the sexes in Mucheke is less serious than in Salisbury. Dr. Weinrich comments on this: "These differences in the population structure of the two towns may be a reflection of a greater proportion

187/ Rhodesia Herald, 26 April 1977.

188/ Rhodesia Herald, 1 July 1977.

189/ Sunday Mail, 2 January 1977.

190/ Rhodesia Herald, 19 March 1977.

191/ Sunday Mail, 5 June 1977.

192/ Radio Salisbury, 30 July 1977.

193/ Rhodesia Herald, 6, 11 August 1976.

194/ A.K.H. Weinrich, Mucheke: Race, Status and Politics in a Rhodesian Community (Paris, UNESCO, 1976).

of married accommodation available to Mucheke Africans, for in Salisbury much money has been used to erect single men's hostels". 195/

518. Dr. Weinrich goes on to discuss how this disproportion between town and country is dealt with. She points out that four different kinds of "marriages" exist: (i) a simple exchange of bride-wealth between families (a traditional marriage) without registration, in which case the husband is not able to obtain married accommodation in the town; the researchers found examples in Mucheke of men who could not bring their wives with them; (ii) a traditional marriage with registration as either a potential or an actual polygamous marriage; (iii) a traditional marriage with registration as a monogamous union; (iv) a "mapoto" marriage, i.e. a temporary liaison centred around the cooking pot. Dr. Weinrich's assistants did not find many of these last but recognized that they missed many of them since the partners in these marriages are often illegal lodgers. For many women this is the only way to get a roof over their heads, and for many men (some already married) it is a way of getting someone to look after their clothes and do their cooking. The average householder had 3.5 dependants to support in the town and an equal number in the rural areas. Men not only supported people in the country for family loyalty reasons but also because they wished to keep their stake in the land. They intended to retire to the country. In a sense they were providing for their old age in a country where the African workers could look to no pension either from their work place or from the State. However, for women the result of the system was less secure. Dr. Weinrich ends her chapter by agreeing with another writer: "Longmore, in her study of Africans in Johannesburg, has gone so far as to claim that perhaps the greatest contribution of the western world to southern African towns is the single African woman". 196/

519. The rebel régime continues to claim that family limitation is the answer to Rhodesia's economic problems. The "Minister of Health", Mr. Rowan Cronje, called on employers to "make the effort to push the message that if a man earns \$R 70 his money will go further on four children, and they will all starve if he has eight children. Every employer means just that; the message must go to every house servant; not just the factoryhands". 197/ The major institution dealing with contraception is the Family Planning Association of Rhodesia. It operates with large grants from the authorities and it distributes supplies through the normal outlets of clinics in towns and in the country. However, it also supplies contraceptives in other contexts: in the first half of 1977 the Family Planning Association was supplying 230,000 condoms per month to organizations such as industrial concerns and ministries of the rebel régime, to give to their male employees. 198/ It has also started a drive to introduce contraceptives in the "protected villages" - starting with the 22 in Chiweshe but moving on to another 39 "protected villages" in the Mount Darwin area. 199/

520. The Tafara Residents' Association has expressed concern about children aged 5-10 selling cigarettes to the patrons of the beerhalls in the African township. The children are trying to make a little money. The Chairman of the Association said: "At beerhalls the children are exposed to whatever is going on. By letting them do this, we are teaching children to be crooks and thugs". 200/

195/ Ibid., pp.39-42.

196/ Ibid., pp.45-53.

197/ Rhodesia Herald, 21 August 1976.

198/ Rhodesia Herald, 27 June 1977.

199/ Sunday Mail, 17 April 1977.

200/ Rhodesia Herald, 9 March 1977.

IV. INTERNATIONAL ACTION CONCERNING VIOLATIONS OF HUMAN RIGHTS IN SOUTHERN AFRICA

521. The main purpose of this chapter is to comply with the request made by the Commission in resolution 6 (XXXIII) that the Ad hoc Working Group of Experts should evaluate all the aspects of the declaration and programme of action adopted by the International Seminar on the Eradication of Apartheid and in Support of the Struggle for Liberation in South Africa, held at Havana from 24 to 28 May 1976, and should submit specific proposals to the Commission at its thirty-fourth session.

522. However, in view of the fact that the Commission on Human Rights, in resolution 6 (XXXIII), decided to have itself represented by the Ad Hoc Working Group of Experts at the World Conference for Action against Apartheid, scheduled to take place in 1977 pursuant to General Assembly resolution 31/6/G (para. 8), and that Mr. H. Díaz Casanueva and Mr. F. Ermacora, members of the Ad Hoc Group, did represent the Group at the Conference, which was held at Lagos, Nigeria, from 22 to 26 August 1977, the Ad Hoc Working Group of Experts considered it desirable to include the evaluation of all aspects of the declaration and programme of action adopted by the International Seminar on the Eradication of Apartheid and in Support of the Struggle for Liberation in South Africa, held at Havana from 24 to 28 May 1976, in a general chapter entitled "International action concerning violations of human rights in southern Africa".

523. It should be recalled in this connexion that the World Conference for Action against Apartheid, which took place at Lagos in August 1977, was specifically requested to consider concrete measures for the implementation of the programme of action formulated at the Havana Seminar. The Group therefore thought it desirable to follow its review of the results of the Havana Seminar by an analysis of the texts adopted at the Lagos Conference, in order to formulate specific proposals in the context of the request made by the Commission.

524. The Group also considered that it would be useful to give the essential information in this report on the results of the International Conference in Support of the Peoples of Zimbabwe and Namibia, held at Maputo in May 1977, and of the World Conference against Apartheid, Racism and Colonialism in Southern Africa, held at Lisbon in June 1977.

1. International Seminar on the Eradication of Apartheid and in Support of the Struggle for Liberation in South Africa (Havana, Cuba, 24-28 May 1977)

525. The Havana Seminar, which was organized by the United Nations Special Committee against Apartheid, in consultation with the Organization of African Unity (OAU), was attended by representatives of Governments, the United Nations, the specialized agencies, liberation movements of southern Africa and other bodies concerned.

526. The discussions focused on the following five topics:

- (1) Review of recent developments in South Africa, and in southern Africa as a whole, and the manoeuvres of the South African racist régime;
- (2) Role of transnational corporations and other foreign economic interests in buttressing apartheid;
- (3) South African propaganda;

- (4) Analysis of the present stage of the struggle for liberation in South Africa, and consideration of international action;
- (5) Formulation of recommendations on:
 - (a) Co-ordinated strategy of action against economic collaboration with South Africa;
 - (b) Ways and means of counteracting South African propaganda;
 - (c) Increased assistance to the South African liberation movements in the light of the requirements at the present stage of their struggle for liberation.

527. The Seminar had before it a number of working papers dealing with the items on its agenda.

528. On completion of the Seminar's work, a declaration and programme of action were adopted by acclamation. 1/

529. In the declaration, the Seminar states that the supply of arms to South Africa and any form of military co-operation with the apartheid régime is "a hostile act not only against the people of South Africa and the Organization of African Unity but also against the United Nations and the international community", and that transnational companies and other foreign interests which aid the Pretoria régime "are accomplices in the crime of apartheid". The declaration further states that the front-line countries in Africa which have taken a firm stand against the white minority régimes have a right to seek and receive "all necessary international support against racist aggression". It condemns the growing support given to South Africa by its business partners and the increasing military, political and economic collaboration between the South African racist régime and Israel. It denounces South Africa's plot to confer "sham independence" upon the bantustan of the Transkei in October 1976 and invites all States to deny any form of recognition to this "political fraud". Lastly, the declaration commends African, socialist, non-aligned and other countries for the invaluable moral, political and material assistance given by them to the African liberation movements, and invites all Governments, organizations and peoples to join in concerted international action in support of the southern African liberation movements in this "crucial and final stage of the struggle for the total emancipation of Africa".

530. The programme of action, which the Seminar commends to "all freedom-loving Governments and peoples", consists of a number of sections dealing with the following questions: an arms embargo; economic collaboration; trade union action; South African propaganda; sports; assistance to the oppressed peoples of South Africa and the liberation movements; assistance to neighbouring States; political prisoners; and other recommendations.

1/ The declaration and programme of action were reproduced in a document submitted to the General Assembly at its thirty-first session under the symbol A/31/104. The programme of action was commended by the General Assembly and annexed to its resolution 31/6J of 9 November 1976.

2. World Conference for Action against Apartheid (Lagos, Nigeria,
22-26 August 1977)

531. In its annual report to the General Assembly at its thirty-first session, the Special Committee against Apartheid stated that the events that had occurred since the Havana Seminar had added great urgency to the development and implementation by Governments, intergovernmental organizations, churches, trade unions, anti-apartheid and solidarity movements and other non-governmental organizations of the programme of action adopted by the Seminar.

532. The Committee therefore expressed the wish that a world conference should be organized in 1977 to consider concrete measures for the implementation of the programme of action formulated at the Havana Seminar. It considered that the conference should make a thorough study of the threat posed by the militarization and the nuclear programme of South Africa to the independence of African States, to peace in the Indian Ocean and South Atlantic zones, and to the security of the people in southern Africa. It should adopt concrete measures for the discharge of the special responsibility assumed by the United Nations and the international community toward the oppressed people of South Africa. It should prepare recommendations, to be transmitted to the World Conference to Combat Racism and Racial Discrimination, 1978, to enable the latter to take decisive steps for the eradication of apartheid as a matter of utmost priority during the Decade for Action to Combat Racism and Racial Discrimination.

533. In response to the wishes of the Special Committee, the General Assembly, in resolution 31/6/G of 9 November 1976, authorized the Committee to organize a World Conference for Action against Apartheid in 1977 on the basis of the recommendations made in its annual report to the General Assembly 2/

534. The World Conference was held at Lagos (Nigeria) from 22 to 26 August 1977 under the auspices of the United Nations in co-operation with OAU and the Government of Nigeria. It was attended by representatives of 112 Governments, 12 intergovernmental organizations, 5 liberation movements, 51 non-governmental organizations and a number of prominent individuals.

535. On completion of its work, the Conference adopted by consensus the Lagos Declaration for Action against Apartheid, in which the Conference reaffirmed support and solidarity for the oppressed peoples of southern Africa and their national liberation movements, and the commitment of Governments and peoples of the world to take action to contribute towards the eradication of apartheid.

536. The Conference also pledged its full support to the legitimate aspirations of the South African people and urged Governments, organizations and individuals to provide all appropriate assistance to the oppressed people of South Africa and their national liberation movement in their just struggle for freedom and human equality. To that end, the Conference declared that the system of racist domination practised in South Africa must be replaced by majority rule and the participation of all the people on the basis of equality in all phases of national life, in freely determining the political, economic and social character of their society and in freely disposing of their natural resources.

2/ Official Records of the General Assembly, Thirty-first Session,
Supplement No. 22 (A/31/22), paras. 296-302.

537. The Conference rejected all aspects of the apartheid system, including the imposition of "bantustans", which divide the population, deprive the African people of their citizenship and inalienable right to self-determination, and deny them a just share of the wealth of the country. It stated that there can be no international co-operation with bantustans and other entities based on racism.

538. The Conference also called upon Governments and intergovernmental and non-governmental organizations to intensify the campaign for the further isolation of the Apartheid régime with a view to complementing the efforts of the South African people and their national liberation movement. It further called upon the international community to assist States which have been subjected to pressure, threats and acts of aggression by the South African régime because of their opposition to apartheid and implementation of United Nations resolutions.

539. The Conference appealed to all States and organizations for the cessation of any assistance or co-operation enabling South Africa to obtain nuclear capability, and called on the United Nations Security Council to take all necessary measures, under Chapter VII of the Charter, to ensure the full implementation of the arms embargo against South Africa.

540. Lastly, the Conference drew attention to the International Convention on the Suppression and Punishment of the Crime of Apartheid, endorsed the proposal to proclaim 1978 as International Anti-Apartheid Year, and appealed to all Governments and organizations to observe it in the spirit of the declaration.

541. For the purpose of preparing recommendations, the Conference had decided to set up a Commission to consider concrete proposals for further action to be taken on the basis of the programme of action adopted by the Havana Seminar.

542. The Commission stated its firm belief that the Programme of Action formulated by the Havana Seminar represented a new stage in the international campaign against apartheid and an event of paramount importance. It therefore decided to confine its deliberations to a review of the programme's implementation and proposals for further expanding and strengthening it. The Commission drew up a report containing recommendations for continuing action against apartheid and, in particular, intensifying political and material support for the oppressed people of South Africa and its national liberation movement and ensuring the implementation of United Nations resolutions on apartheid. Considering the importance of the conclusions and recommendations adopted by the Havana Seminar and by the World Conference in Lagos, the Ad Hoc Working Group proposes to the Commission on Human Rights that it adopt them.

543. The report of the Conference, containing the Lagos Declaration and the recommendations of the Commission (A/CONF.91/9) 3/ was brought to the attention of the General Assembly and the Security Council by the Chairman of the Special Committee against Apartheid (A/32/317-S/12434).

3/ United Nations publication, Sales No. E.77.XIV.2.

3. International Conference in Support of the Peoples of Zimbabwe and Namibia (Maputo, Mozambique, 16-21 May 1977)

544. By its resolution 31/145 of 17 December 1976, the General Assembly requested the Secretary-General, in co-operation with the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and the United Nations Council for Namibia, to organize an international conference in support of the peoples of Zimbabwe and Namibia at Maputo, in consultation with the OAU. It also requested the Special Committee and the Council for Namibia to report to the General Assembly at its thirty-second session on the results of the Conference.

545. In pursuance of that resolution, the International Conference in Support of the Peoples of Zimbabwe and Namibia was held at Maputo, Mozambique, from 16 to 21 May 1977. Approximately 500 representatives of States and organizations participated in the Conference.

546. Under the terms of resolution 31/145, the purpose of the Conference was to mobilize world-wide support for, and assistance to, the peoples of Zimbabwe and Namibia in their struggle for self-determination and independence. To that end, it was to seek to accomplish the following tasks: (i) review the present situation in Zimbabwe and Namibia with a view to promoting world-wide support for the peoples of those Territories in their struggle for self-determination and independence; and (ii) propose action to be taken in various fields by Member States, the United Nations, the specialized agencies and other organizations within the United Nations system and other intergovernmental and non-governmental organizations for the liberation struggle in those Territories.

547. On completion of its work, the Conference adopted by consensus the "Maputo Declaration in Support of the Peoples of Zimbabwe and Namibia" and the "Programme of Action for the Liberation of Zimbabwe and Namibia". 4/

548. In the declaration and programme of action, the Conference proclaims its support for the struggle of the Namibian people under the leadership of the South West Africa People's Organization (SWAPO) to achieve self-determination, freedom and independence in a united Namibia.

549. The declaration recognizes that the Namibian people have been forced to resort to armed struggle only after many years of arduous attempts to achieve those objectives by peaceful means, and affirms that the development of the armed struggle and the continued efforts of the international community have created positive conditions for a negotiated settlement. The declaration states that it is imperative that all freedom-loving forces in the international community give maximum support to the struggle of the Namibian people under the leadership of their sole and authentic liberation movement, SWAPO, for self-determination, freedom and national independence in a united Namibia. Lastly, the declaration reaffirms the responsibility of the United Nations Council for Namibia for administering Namibia until it achieves independence.

4/ The report of the Conference, to which are annexed the texts of the Declaration and the programme of action, was transmitted to the General Assembly and Security Council in document A/32/109/Rev.1-S/12344/Rev.1.

550. With regard to the liberation of Zimbabwe, the declaration reaffirms that there should be no independence before majority rule. It strongly condemns the colonial and illegal racist minority régime in Southern Rhodesia and denounces its brutal and repressive measures against the people of Zimbabwe. The declaration further notes that all the reasonable and meaningful proposals, in particular those made at the Geneva Conference on Southern Rhodesia (Zimbabwe), which would have secured a negotiated settlement for an independent Zimbabwe on the basis of majority rule have been totally rejected by the illegal racist minority régime. The Conference finally makes a solemn appeal to all States Members of the United Nations and intergovernmental and non-governmental organizations to intensify their assistance to the national liberation movements representing the people of Zimbabwe in their struggle for independence.

551. The programme of action calls upon Governments, the United Nations and non-governmental organizations to provide political, moral, material and financial support to the peoples of Namibia and Zimbabwe and their national liberation movements in their struggle to attain self-determination and national independence. It further calls upon the Security Council to impose, under Chapter VII of the Charter of the United Nations, a mandatory arms embargo against South Africa as an important step to ensure South Africa's compliance with United Nations resolutions and decisions on Namibia.

552. With regard to the measures advocated against the illegal racist minority régime in Southern Rhodesia, the programme of action requests Governments, inter alia, to refrain from any co-operation or collaboration with the illegal régime in Southern Rhodesia and to observe strictly the arms embargo against that régime. The programme of action calls upon the United Nations to widen the scope of sanctions against the illegal régime by including all the measures provided for in article 41 of the Charter of the United Nations. Lastly, it calls upon the specialized agencies and other organizations within the United Nations system to take all necessary measures in accordance with the relevant resolutions of the General Assembly and the Security Council to withhold any financial, economic, technical or other assistance from the illegal racist minority régime in Southern Rhodesia.

4. World Conference against Apartheid, Racism and Colonialism in Southern Africa (Lisbon, Portugal, 16-19 June 1977)

553. The World Conference against Apartheid, Racism and Colonialism in Southern Africa, held at Lisbon from 16 to 19 June 1977, was arranged by the Afro-Asian Peoples' Solidarity Organization (AAPSO) following a decision taken at a special international conference on solidarity with the people of South Africa, which was held at Addis Ababa in October 1976.

554. The first international preparatory meeting was held at Lisbon on 22 and 23 January 1977, during which an appeal was adopted which was subsequently endorsed at the second preparatory meeting on 23 and 24 April 1977.

555. More than 200 representatives (of United Nations bodies and national and international organizations) participated in the Conference, which adopted a general declaration, a programme of action and a number of additional actions.^{5/}

556. The general declaration is concerned with the situation in South Africa, Namibia and Zimbabwe:

(a) In the case of South Africa, it states that the Conference condemns the system of apartheid and reaffirms the legitimacy of the struggle to overthrow the régime. It "strongly condemns the imperialist countries which continue to supply genocidal weapons to the Vorster régime in order to enhance its repressive and aggressive capacity". It likewise condemns the bantustans and reaffirms its opposition to the so-called independent Transkei, pledging "to wage a world-wide campaign against any tacit recognition of this puppet creation as well as that of Bophuthatswana whose so-called independence is scheduled for 6 December 1977".

(b) As far as Namibia is concerned, it states that the Conference declares the illegal occupation of this Territory by South Africa to be a grave threat to international peace and security. The Conference considers that all United Nations Member States are morally and legally obliged to assist in the establishment of genuine and full national independence for Namibia in the shortest possible space of time. The Conference supports the attitude of SWAPO, as a true and authentic liberation movement in Namibia, in refusing to negotiate with South Africa on the transfer of political power to the Namibian people unless South Africa agrees to the conditions laid down in advance by SWAPO, including the release of all prisoners and a formal commitment on the part of South Africa to withdraw its army and police forces from Namibia.

(c) With regard to Zimbabwe, the Conference throws its full support behind the Patriotic Front as the sole and authentic representative of the people of Zimbabwe. The Conference invites all national and international forces opposed to apartheid, racism and colonialism in southern Africa to give their moral and political support to the Patriotic Front.

557. The Conference commends its programme of action to Governments, parliaments, international organizations, political parties, trade unions, women's and youth organizations, religious organizations, anti-apartheid movements and solidarity committees all over the world. The programme of action consists of sections dealing with the following questions: "Assistance to liberation movements", "Boycott of the racist régimes", and "Dissemination of information and other actions".

^{5/} The portion of the declaration concerning South Africa, as well as the programme of action and the additional actions, have been published in a document of the Special Committee against Apartheid (A/AC.115/L.467).

558. A number of additional actions concerning South Africa, Namibia and Zimbabwe were also adopted by the Conference:

"On South Africa

"1. To engage in active campaigns for the non-recognition of the bantustans and the non-reception of the bantustan leaders abroad by Governments and other organizations, and against investments in the bantustans.

"2. To campaign for the immediate ratification and implementation of the international convention defining apartheid as an international crime against humanity.

"3. To demand the expulsion of South Africa from the United Nations.

"4. To mobilize world public opinion for the release of political prisoners in South Africa."

"On Namibia

"1. To reject and categorically denounce all manoeuvres such as the so-called Turnhalle constitutional talks, through which the South African régime tries to impose its will on the Namibian people.

"2. To abstain from recognizing any régime or authority that South Africa could set up in Namibia and from contacts with it.

"3. To put an end to all consular representation in Namibia and to all the consuls' powers concerning Namibia.

"4. To abstain from taking any measures which could be interpreted as a recognition of the legitimacy of the illegal occupation of Namibia by South Africa.

"5. To stop the advertizing of professional positions in Namibia in newspapers, radio and TV."

"On Zimbabwe

"1. To take all possible measures against recruiting, gathering, financing and training mercenaries for the Rhodesian racist régime.

"2. To ensure invalidation of passports and other documents as far as journeys to Zimbabwe are concerned.

"3. To oppose all special schemes for the resettlement of the white Rhodesian racists in other countries, particularly Australia, where the resettlement of large numbers of racists will have a disastrous effect on the struggle of the black people in Australia against racist oppression."

V. INFORMATION CONCERNING PERSONS WHO HAVE BEEN GUILTY IN NAMIBIA OF THE
CRIME OF APARTHEID OR OF A SERIOUS VIOLATION OF HUMAN RIGHTS

559. In its resolution 6 (XXXIII) of 4 March 1977, the Commission on Human Rights requested the Ad Hoc Working Group of Experts to institute an inquiry in respect of any person who had been guilty in Namibia of the crime of apartheid or of a serious violation of human rights, and to bring the results of that inquiry to the attention of the Commission on Human Rights.

560. For the purpose of implementing paragraph 4 of resolution 6 (XXXIII) of the Commission on Human Rights, the Ad Hoc Working Group of Experts deemed it necessary, in the light of the mandate entrusted to it, to examine the following aspects: ratione temporis, ratione personae, ratione loci and ratione materiae.

561. Ratione temporis. The Ad Hoc Working Group of Experts considers that, although the elements of the crime of apartheid have long been taken into consideration by public international law and the policy and practices of apartheid have been condemned on various occasions as a crime against humanity, it is the Convention on the Suppression and Punishment of the Crime of Apartheid that provides a point of reference for a juridical definition of that crime. For this reason and also because the Convention entered into force as an instrument of public international law on 18 July 1976, the Group is of the view that that date, namely 18 July 1976, should be accepted as the starting-point for its inquiry.

562. Ratione personae. The Ad Hoc Working Group has determined that the expression "any person" should be interpreted as including all those persons listed under article III of the Apartheid Convention. The Group also considers that the expression "who has been guilty" should be understood as implying, within the meaning of the Apartheid Convention, all those persons against whom there are sufficient reasons for believing that they "have been guilty" or are suspected of being guilty of the crime of apartheid.

563. Ratione loci. Having regard to South Africa's illegal control over Namibia in defiance of the advisory opinion given by the International Court of Justice in 1971 and of the relevant resolutions of the Security Council and the General Assembly, the Group has taken the view that the expression "in Namibia" contained in the Commission resolution should be interpreted in its wider context to include those acts which have been committed against the Namibian people either in Namibia or in South Africa.

564. Ratione materiae. It will be recalled that, according to the provisions of article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid, ^{1/} the term "the crime of apartheid", which includes similar policies and practices of racial segregation and discrimination as practised in

^{1/} The International Convention on the Suppression and Punishment of the Crime of Apartheid was adopted by the General Assembly on 30 November 1973, in its resolution 3068 (XXVIII). It came into force on 18 July 1976.

southern Africa, applies to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

"(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

- (i) By murder of members of a racial group or groups;
- (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
- (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

"(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

"(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

"(d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

"(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

"(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid."

565. Notwithstanding the foregoing considerations, the Ad Hoc Working Group of Experts believes that the concept of "serious violation of human rights", unlike that of the "crime of apartheid", should be interpreted in its broadest sense, without regard to ratione temporis, ratione personae, ratione loci or ratione materiae.

566. The Group has drawn attention in its previous reports to acts of brutality and torture committed by the security police and units of the South African Army operating in Namibia. It should be noted, however, that, despite the abundance of allegations and testimony collected by the Ad Hoc Working Group of Experts in this respect, there have been few cases in which the persons accused of such acts have been identified by name.

567. It is on the basis of these considerations that the following list has been drawn up:

Case No. 1: Hendrik Botha. Judging from the information made available to the Group in 1974 and 1975, 2/ Mr. Hendrik Botha, an officer of the security police, is guilty of the murder of Mr. Benjamin Ekanjo, aged 19. On 16 August 1973, five police officers whom Mr. Botha was accompanying raided a house at Katutura, near Windhoek, where certain members of the SWAPO Youth League were holding a private meeting. Mr. Botha seems to have opened fire when the Africans attending the meeting resisted the police and so to have killed Mr. Benjamin Ekanjo. An official inquiry into the cause of Mr. Ekanjo's death confirmed that the boy had died of a bullet wound. In evidence given during the inquiry, Mr. Botha admitted having fired a shot in the direction of one of the Africans to prevent him from escaping.

Case No. 2: Captains Swanepoel and van Rensburg and Lieutenants van Rensburg and Ferrera. During its mission of inquiry to Europe and Africa in July and August 1974, the Group heard the testimony of Mr. Joel Carlson, who told it, with reference to a statement by Mr. Hermann ja Toiva, of the torturing of Mr. ja Toiva by Captains Swanepoel and van Rensburg and Lieutenants van Rensburg and Ferrera during his interrogation at the security police headquarters, Kompol, in Pretoria. Various methods of torture were employed, including beatings and torture by electric shock. Mr. Carlson also said that similar treatment had been meted out to other detainees, including Mr. Gabriel Mbindi, who was at the time honorary Treasurer of SWAPO in Windhoek. 3/

Case No. 3: Captains Jan Griebenau, Coffie and Booyson and Major Skoon. A confidential report submitted to SWAPO details the experiences in prison and under interrogation of all the SWAPO leaders brought to trial after the police sweeps in January and February 1974. 4/ Several witnesses who related their experiences in affidavits identified Captain Jan Griebenau as one of their interrogators. A Mr. Meroro said during his trial that he had been arrested by

2/ E/CN.4/1135, para. 208, and E/CN.4/1159, para. 203.

3/ E/CN.4/1159, para. 222.

4/ Confidential report to SWAPO, September/October 1974 (mimeographed).
See E/CN.4/1159, paras. 229-233.

Captain Griebenau, of the Windhoek security police, and that Captain Griebenau had been present at his interrogation, together with Captains Coffie and Booyson and Major Skoon. Mr. Meroro stated that during interrogation sessions conducted by Griebenau and the other members of the security police, he had been deprived of sleep and food, struck repeatedly, and forced to remain standing. The officers had hit him in turn and held him in the air by a rope tied to his hands until he was exhausted. (The participation of a Colonel Skoon in these acts of torture was mentioned by Mr. Beukes and Mr. Katjavivi in the evidence they gave to the Group during its mission of inquiry in June and July 1976.)

Case No. 4: General Gert Prinsloo and Brigadier H.V. Verster. In support of his testimony before it in July and August 1974, Mr. Joel Carlson provided the Group with a copy of his book, 5/ in which he states that General Gert Prinsloo and Brigadier H.V. Verster are responsible for various acts of torture committed by certain of their subordinates because of their opposition to any inquiry into allegations of torture and ill-treatment of political prisoners during their detention.

Case No. 5: Lieutenant Dippenaar. In support of their testimony before it during its mission of inquiry in June and July 1976, Mr. Beukes and Mr. Katjavivi provided the Group with a document describing the types of torture suffered by Mr. Reuben Hauwanga, SWAPO Secretary for Information, during interrogation sessions conducted by Lieutenant Dippenaar, accompanied by Colonel Skoon (who may be the Major Skoon mentioned in Case No. 3 above) and other members of the South African security police. The document states that Mr. Hauwanga suffered ill-treatment including beatings on the face and the rest of his body, suspension from the ceiling for six days without being allowed to sleep, and the administration of electric shocks to his fingers and toes. Mr. Katjavivi also referred in his testimony to the case of Ms. Kauna Nlalua, who had been tortured by Lieutenant Dippenaar. In addition, he mentioned that two persons who had appeared as State witnesses had testified in court about their mistreatment in prison. One of the prisoners, Mr. Nkandi, had been kept awake and beaten by a police colonel and Lieutenant Dippenaar for four days and nights. 6/

Case No. 6: Lieutenant Nel. According to information recently received by the Group, Lieutenant Nel is guilty of having tortured a young student, Mr. Frederik Isak, who was arrested following incidents at Windhoek Augustineum in November 1976. Mr. E. Kuhlmann, a member of the Nama delegation to the Turnhalle conference, protested to the police against its torturing by electric shocks of Mr. Isak, his nephew. He identified Lieutenant Nel by name as being responsible for this torture, an accusation which the police denied. Mr. Kuhlmann's efforts to have his nephew examined by an independent doctor were unsuccessful because access by the doctor was denied on the grounds of his being a member of SWAPO (see also chap. II, para. 360).

5/ Joel Carlson, No Neutral Ground, London, Davis-Poynter, 1973; see also E/CN.4/1159, para. 222.

6/ E/CN.4/1222, paras. 346 and 350.

VI. ADOPTION OF THE REPORT

568. The present report has been approved and signed by the members of the Ad Hoc Working Group of Experts, namely:

Mr. Kéba M'Baye
Chairman-Rapporteur

Mr. Branimir Janković
Vice-Chairman

Mr. Amjad Ali

Mr. Annan Arkyin Cato

Mr. Humberto Díaz Casanueva

Mr. Felix Ermacora