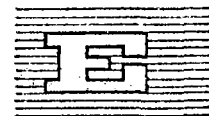
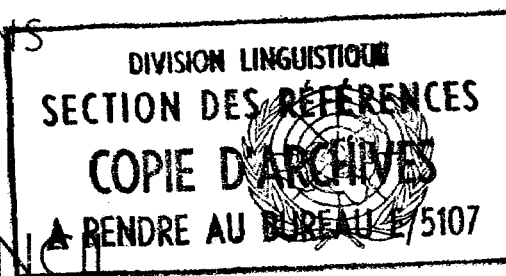


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SITUATION OF HUMAN RIGHTS IN SOUTHERN AFRICA
REPORT OF THE AD HOC WORKING GROUP OF EXPERTS

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INTRODUCTION

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

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

1. The original mandate of the Ad Hoc Group of Experts, established in 1967 under resolution 2 (XXIII) of the Commission on Human Rights, was to investigate charges of torture and ill-treatment of prisoners, detainees or persons in police custody in the Republic of South Africa. That mandate was later extended and enlarged by a series of resolutions of the Commission on Human Rights and the Economic and Social Council. Under its extended mandate, the Ad Hoc Working Group of Experts has investigated violations of human rights in southern Africa, particularly with regard to the treatment of political prisoners and other related questions, the enjoyment of trade union rights and the system of recruitment of African workers. It has submitted a number of reports on these subjects to the Commission on Human Rights and the Economic and Social Council.

2. At its thirty-first session the Commission on Human Rights, in resolution 5 (XXXI), adopted on 14 February 1975, decided that the Ad Hoc Working Group of Experts should continue carefully to observe and survey further developments concerning the policy of apartheid and racial discrimination present in the situation prevailing in Namibia and Southern Rhodesia.

3. In the same resolution, the Commission requested the Group to study the private gaol and farm gaol systems, the development of the separate homelands policy and its effects on the right to self-determination, as well as the farm labour system in the Republic of South Africa (para.13), and to study the consequences of apartheid as regards the African family and to inquire into the particular difficulties of the student movements in South Africa and Namibia (para.14). The Commission further requested the Group to submit a report on its findings to the Commission not later than at the Commission's thirty-third session and to present an interim report to the Commission at its thirty-second session (para.15).

4. In accordance with the latter provisions, the Ad Hoc Working Group of Experts submitted an interim report (E/CN.4/1187) to the Commission at its thirty-second session.

5. After considering the Group's interim report at that session, the Commission on Human Rights adopted resolution 8 (XXXII) of 4 March 1976, in which it assigned the Group an additional task, requesting it to evaluate all the aspects of the Declaration of Dakar and of the Programme of Action and to submit specific proposals to the Commission at its thirty-third session (para.5).

6. It should also be recalled that, by resolution 1216 (XLII) of 1 June 1967, the Economic and Social Council requested the Ad Hoc Working Group of Experts to investigate allegations regarding infringements of trade union rights in South Africa. That mandate was later extended by various other resolutions of the Economic and Social Council. Under decision 84 (IVIII) of 6 May 1975, the Economic and Social Council had transmitted to the Ad Hoc Working Group, for consideration and report to the Council, allegations by the International Confederation of Free Trade Unions regarding infringements of trade union rights

in South Africa (E/5638). Pursuant to that decision, the Ad Hoc Working Group submitted to the Economic and Social Council, at its sixtieth session, a report containing its findings on the matter (E/5767). After considering this report, the Economic and Social Council, by resolution 1997 (IX) of 12 May 1976, requested the Group to continue to study the question and to report thereon to the Commission on Human Rights and to the Council at such times as it might consider appropriate.

7. This report on the work accomplished by the Ad Hoc Working Group of Experts is submitted in accordance with the above-mentioned resolutions. It is based essentially on first-hand information in the form of oral statements and written communications from individuals or organizations concerned, gathered by the Group in the course of its mission of investigation in June-July 1976. 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 Information Service of 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 certain consultants who are experts in southern African matters.

2. Composition of the Ad Hoc Working Group of Experts

8. The members of the Ad Hoc Working Group of Experts, appointed by the Chairman of the Commission on Human Rights in accordance with Commission resolution 2 (XXIII), establishing the Group, and resolution 5 (XXXI), renewing the Group's mandate, are as follows:

Chairman: Mr. Kéba M'Baye (Senegal), Chief Justice of the Supreme Court;

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

Mr. Amjad Ali (India), Member of Parliament, New Delhi;

Mr. Annan Arkyin Cato (Ghana), Counsellor, Mission of Ghana to the United Nations, New York;

Mr. Humberto Díaz Casanueva (Chile), Professor of International Organizations, Rutgers University, and Professor of Spanish American literature, Columbia University, United States of America;

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

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

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

9. At two series of meetings held at the United Nations Office at Geneva from 28 to 31 July 1975 and 12 to 23 January 1976 with a view to organizing its work and preparing the reports to the Commission and the Economic and Social Council

mentioned in paragraphs 4 and 6 above, the Group decided upon procedures and arrangements for the mission of investigation that it proposed to undertake in Europe and Africa in order to gather information and collect evidence concerning recent developments in matters falling within its mandate.

10. In the course of this mission, from 14 June to 2 July 1976, the Group, assisted by members of the Division of Human Rights, heard witnesses in Geneva (14-15 June 1976), Dar es Salaam (18-19 July 1976), Maputo (22-23 June 1976), Lusaka (25-26 June 1976) and London (29 June-July 1976).

11. The Group then met from 10 to 21 January 1977 at the United Nations Office at Geneva to consider and adopt the present report.

2. Conduct of the investigation

12. As in the past, the Ad Hoc Working Group of Experts sought the co-operation of the Member States concerned and of interested organizations and individuals with a view to hearing the greatest possible number of witnesses capable of providing it with pertinent information. The measures taken by the Group in this connexion are described in paragraphs 13-32 below.

(a) Correspondence with Governments of Member States

13. On 8 April 1976, Mr. Marc Schreiber, Director of the Division of Human Rights, acting at the request and on behalf of the Chairman of the Ad Hoc Working Group of Experts, addressed a letter to the Ministers of Foreign Affairs of the United Kingdom of Great Britain and Northern Ireland, South Africa, the United Republic of Tanzania, Mozambique and Zambia, drawing their attention to the activities and mandate of the Working Group and inviting their Governments to co-operate in the fulfilment of its mandate. They were requested in particular to transmit any information relevant to matters covered by the mandate of the Working Group, including the names and addresses of persons or organizations willing to furnish such information, either orally or in writing.

14. The Governments of the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, Mozambique and Zambia agreed to co-operate with the Ad Hoc Working Group of Experts. On the other hand, no reply was received from the Government of South Africa, which implicitly refused, as in the past, to co-operate with the Group.

(b) Relations with the Organization of African Unity

15. On 7 April 1976, the Director of the Division of Human Rights, on behalf of the Ad Hoc Working Group of Experts, informed the Administrative Secretary-General of the Organization of African Unity of the Group's mandate and invited the Organization, as in the past, to co-operate with the Group in the fulfilment of its mandate.

16. On 11 June 1976, the Division of Human Rights also telegraphed to the Executive Secretary of the Co-ordinating Committee for the Liberation of Africa at Dar es Salaam, inviting the Committee to co-operate with the Group during its mission in Africa.

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

17. In a letter dated 12 April 1976, the Director of the Division of Human Rights, acting at the request and on behalf of the Chairman of the Ad Hoc Working Group of Experts, brought the mandate of the Working Group to the attention of various non-governmental organizations concerned with questions relating to human rights in southern Africa, and particularly many African liberation movements which had already co-operated with the Working Group during its previous missions of investigation. Follow-up cables were sent on 11 June 1976. The names of most of the witnesses heard by the Working Group were communicated by the organizations and liberation movements contacted in this way. Moreover, during the mission the Group and, on its instructions, the Secretariat maintained the closest contacts with these organizations and movements.

(d) Testimony heard

18. During its mission in June-July 1976, the Ad Hoc Working Group of Experts heard 54 witnesses, some of whom gave evidence about more than one country or Territory. Twenty witnesses were heard at closed meetings, at their request. The witnesses who gave evidence at public meetings, listed according to the countries or territories about which they spoke, are indicated below. The records of the testimony heard at public meetings are kept in the files of the secretariat of the Ad Hoc Working Group of Experts.

19. South Africa. Twenty-three witnesses were heard, five of them at closed meetings, in accordance with their request. The 18 witnesses who gave evidence at public meetings were the following: Mr. John Gaetsewe and Mr. Niall MacDermot (418th meeting, Geneva); Mr. Carlos de Angeli and Mr. Andrew Kailembo (419th meeting, Geneva); Mr. Claude Rossillon and Mr. Neville Rubin (420th meeting, Geneva); Mr. Mzimandile Piliso (421st meeting, Dar es Salaam); Mr. John Pule Motshabi, Mr. Modise Mampuru and Mrs. Kelebojili Chilwane (427th meeting, Lusaka); Mrs. Joyce Rankin, Mr. Allan Brooks and Mrs. Phyllis Altman (431st meeting, London); Mr. Jack Tarshish and Mr. Sambasnan Ramsamy (432nd meeting, London); Mr. John Ennals (433rd meeting, London); Mr. Malcolm Smart (434th meeting, London).

20. Namibia. The following 15 witnesses all gave evidence at public meetings: Mr. Niall MacDermot (418th meeting, Geneva); Mr. Nbende Evald and Mr. Shabashiki John Kahana (421st meeting, Dar es Salaam); Mr. Gottfried Tjizera (428th meeting, Lusaka); Mr. Nestor Shanyengana, Mrs. Frieda Williams and Mr. Joel Matheus (430th meeting, Lusaka); Mr. Peter Katjavivi and Mr. Hans Benkes, on behalf of Mr. Reuben Hauwange (432nd meeting, London); Mrs. Cathleen Wood, Bishop Richard James Wood, Mr. Cedric Thornberry and Mr. John Ennals (433rd meeting, London); Mr. Patrick MacEntee and Mr. Malcolm Smart (434th meeting, London).

21. Southern Rhodesia. Twenty-two witnesses gave evidence, 15 of them at closed meetings, in accordance with their request. The following seven witnesses gave evidence at public meetings: Mr. Niall MacDermot (418th meeting, Geneva); Mr. Arthur J.C. Patzanza (422nd meeting, Dar es Salaam); Mr. Hitler Hunzui, Mr. Noah Mvéngé and Mr. Isaac Nyathi (428th meeting, Lusaka); Mr. John Ennals (433rd meeting, London); Mr. Malcolm Smart and Mr. Gabriel Phineas Chisese (434th meeting, London).

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

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

or

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

23. The Chairman explained to each witness the purpose of the Group's mission and the various matters that the Group had been instructed to investigate. After hearing the witness's statement, the members of the Group put questions to him. In cases where the witness neither spoke nor understood any of the working languages of the United Nations, the Group had recourse to the services of locally recruited interpreters, who were required to take an oath or solemnly declare that they would do their utmost to interpret the testimony accurately.

24. In addition to the oral evidence, the Group received written communications and other documents relating to its investigation from persons who appeared before it and from other persons and organizations.

(e) Other activities of the Group during its mission

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

26. On 17 June 1976, the Group was received in Dar es Salaam by Mr. Isaac Sepetu, Junior Minister for Foreign Affairs of the Government of the United Republic of Tanzania.

27. In the course of its visit to Mozambique, the Ad Hoc Working Group of Experts had talks on 22 June 1976 with Mr. Marcelino dos Santos, Vice-President of FRELIMO and Minister of Economic Development and Planning. The exchange of views was mainly about the situation in Southern Rhodesia.

28. On 1 July 1976, the Group visited the Foreign and Commonwealth Office in London, where it had talks with the Under-Secretary, Mr. Norman Aspin, and other officials of the Commonwealth Office. Problems concerning southern Africa, more particularly the present situation in Southern Rhodesia, were discussed.

29. In addition, the representatives of two Governments made statements at the Group's meetings: Mr. Armando Panguene, Deputy Minister for Foreign Affairs of Mozambique, at the 423rd meeting on 22 June 1976, and Mr. Isaac Manda, Acting Permanent Secretary, Ministry of Foreign Affairs of Zambia, at the 427th meeting on 25 June 1976. Their statements are reproduced in annexes I and II, respectively.

30. During its visit to London, the Group, at the invitation of the representative of SWAPO, attended the showing of a film dealing with the situation in Namibia.

31. With a view to enlightening world public opinion and providing maximum publicity, in appropriate fashion, for its activities, the Ad Hoc Working Group of Experts held press conferences whenever it thought they were advisable in the context of its mission.

32. On 19 June 1976, following the events in Soweto, South Africa, the Ad Hoc Working Group of Experts issued the following statement:

"The Ad Hoc Working Group of Experts of the Commission on Human Rights shares the profound indignation and sorrow expressed by the Secretary-General of the United Nations, spokesmen of relevant United Nations bodies, as well as the Administrative Secretary-General of the OAU, over the brutal massacre in Soweto by the South African police of numerous Africans in a peaceful demonstration. This massacre, which is reminiscent of the Sharpeville massacre, is a further manifestation of the abhorrent apartheid system of the racist South African régime. The Ad Hoc Working Group of Experts appeals to the relevant United Nations bodies to condemn the South African Government over this massacre and expresses the hope that these organs will adopt all necessary measures to put an end to the apartheid system in South Africa."

C. BASIC INTERNATIONAL STANDARDS RELEVANT TO THE QUESTIONS
MENTIONED IN RESOLUTIONS 5 (XXXI) AND 8 (XXXII)
OF THE COMMISSION ON HUMAN RIGHTS

33. In preparing its report, the Ad Hoc Working Group of Experts took account of the basic international standards relating to its activities, as enumerated in its earlier reports, particularly in the reports submitted to the Commission on Human Rights at its thirty-first and thirty-second sessions (E/CN.4/1159 and E/CN.4/1187). In view of the information furnished in those reports, the international standards will be mentioned only briefly here, together with certain recent developments in this sphere. It should be noted that all the provisions contained in the basic standards which govern the activities of the Group prohibit any form of racial discrimination.

34. Certain new factors emerged in 1976 as regards certain international instruments concerning human rights, namely, the entry into force of the International Covenant on Economic, Social and Cultural Rights, on 3 January 1976, of the International Covenant on Civil and Political Rights and the Optional Protocol thereto, on 23 March 1976, and of the International Convention on the Suppression and Punishment of the Crime of Apartheid, on 18 July 1976.

35. In particular, the Ad Hoc Working Group of Experts took into account the international standards embodied in the following instruments:

Charter of the United Nations;

Universal Declaration of Human Rights;

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

International Covenant on Economic, Social and Cultural Rights;

International Covenant on Civil and Political Rights;

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

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

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

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

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

Convention relating to the Status of Refugees;

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

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

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

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

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

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

UNESCO Convention against Discrimination in Education.

36. The Group also took into account the recommendations of the International Conference on Human Rights held at Teheran in 1968, particularly resolution VIII, entitled "The importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights". Lastly, without prejudice to other provisions, the Group paid special attention to the following resolutions adopted by the General Assembly at its thirty-first session: resolution 31/6/A of 26 October 1976 concerning the so-called independent Transkei and other Bantustans; resolution 31/6/C of 9 November 1976 concerning solidarity with South African political prisoners; resolution 31/6/G of 9 November 1976 concerning the programme of work of the Special Committee against Apartheid; resolution 31/6/H of 9 November 1976 concerning economic collaboration with South Africa; resolution 31/6/J of 9 November 1976 concerning

the programme of action against apartheid; resolution 31/6/K of 9 November 1976 concerning investments in South Africa; resolution 31/6/I of 9 November 1976 concerning the situation in South Africa; resolution 31/33 of 30 November 1976 concerning adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist régimes in southern Africa; resolution 31/126 of 16 December 1976 concerning emergency assistance for South African refugee students; resolution 31/143 of 17 December 1976 concerning the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples; resolution 31/145 of 17 December 1976 concerning the International Conference in Support of the Peoples of Zimbabwe and Namibia; resolution 31/146 of 20 December 1976 concerning situation in Namibia resulting from the illegal occupation of the Territory by South Africa; resolution 31/147 of 20 December 1976 concerning the programme of work of the United Nations Council for Namibia; resolution 31/149 of 20 December 1976 concerning action by intergovernmental and non-governmental organizations with respect to Namibia; resolution 31/150 of 20 December 1976 concerning dissemination of information on Namibia and resolution 31/154 of 20 December 1976 concerning the question of Southern Rhodesia; as well as to the following resolutions adopted by the Security Council: resolution 385 (1976) of 30 January 1976 concerning South Africa's continued illegal occupation of Namibia, in which the Council demanded that South Africa should organize free elections in Namibia under United Nations supervision and control; resolution 386 (1976) of 17 March 1976 concerning the aggressive acts committed by the illegal minority régime of Southern Rhodesia against the People's Republic of Mozambique; and resolution 392 (1976) of 19 June 1976 concerning the wanton killings perpetrated by the South African Government against the African people in Soweto and other areas in South Africa.

I. SOUTH AFRICA

A. INTRODUCTION: NEW DEVELOPMENTS RELATING TO THE POLICY OF APARTHEID AND RACIAL DISCRIMINATION

1. Capital punishment

(a) Reference to some relevant laws

37. The South African laws in force that provide for the death penalty have been reproduced in previous documents 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).

38. 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 situation of capital punishment in the Transkei will not be changed by its so-called "independence" since (see para. 163 below) the laws of the Republic, including security laws, will continue to apply there unless they are repealed.

(b) Analysis of information and evidence received by the Ad Hoc Working Group of Experts

39. The Minister of Justice told the House of Assembly in March 1976 that 103 persons had been sentenced to death in South African Courts in 1975, of whom 21 had had their sentences set aside on appeal. Of the 82 persons awaiting execution, 77 had been sentenced for murder, three for rape and two for murder and robbery. 1/

40. The Minister of Justice told the House in April 1976 that 68 persons, 50 African men and 18 Coloured men, had been executed in 1975. 2/ The Group recalls that it has already noted in previous reports the exceptionally high number of executions that take place annually in the Republic (see, for example, E/CN.4/1159, para. 38, E/CN.4/1187, para. 18); and also notes that the figure for hangings in 1975 was almost double that for 1974 (36 carried out in 1974, see E/CN.4/1187, para. 19), reversing a trend noted in earlier reports (E/CN.4/1159, para. 39).

41. A witness, Mr. Jack Tarshish (432nd meeting), who was freed in 1975, having spent most of his 12 years as a political prisoner in Pretoria Central Prison, referred to the fact that during his period there up to 80 hangings a year took place at Pretoria Central, and to the "tremendous crash" of the traps as they opened, which "echoed throughout the prison", deeply affecting all those in the building. He described in particular the tension throughout the night in 1964 when three political prisoners, Vuyisile Mini, Wilson Khayinga and Zinakile Mkaba, prior to their execution, sang their defiance at their captors from the condemned cells only yards from his own.

1/ House of Assembly Debates, 30 March 1976.

2/ House of Assembly Debates, 20 April 1976.

2. Massacres and violations of the right to life

(a) Deaths in gaol or in police custody

42. According to information supplied by the Minister of Police to the South African Assembly on 21 May 1976, 3/ 92 persons died while in detention during 1975, 23 of whom had "committed suicide", nine died from injuries received while "attempting to escape", and six died while "resisting arrest". Only 25 were claimed to have died from "natural causes", and in many cases the cause of death was "not established" or "under investigation". According to the Rand Daily Mail, the published list of names suggests that most if not all the dead prisoners were black. 4/

43. Several witnesses drew the attention of the Ad Hoc Working Group of Experts to the death in detention of Mr. Joseph Mdluli, within 24 hours of his arrest by Durban security police in March 1976. According to Mr. Malcolm Smart (434th meeting), making his statement on behalf of Amnesty International, Mr. Mdluli was the twenty-third political detainee to have died in mysterious circumstances since 1963. Mr. Niall MacDermot, appearing on behalf of the International Commission of Jurists (418th meeting), Mr. John Pule Motshabi (427th meeting) and Mr. Mzimandile Piliso of the African National Congress (421st meeting), described how Mr. Mdluli was alleged by the police to have been "found dead in his cell" on 19 March 1976, although his wife and son state that he was in perfect health at the time of his arrest; how Mrs. Mdluli was refused permission to see his body until two days later, when she found his face bruised, his stomach dilated and wounds in his skull. A lawyer who protested at the circumstances of the post mortem, Mr. Griffiths Mxenge, was subsequently detained. Three months later four members of the Durban security police were charged with the culpable homicide of Mr. Mdluli. All the witnesses connected Mr. Mdluli's death with the methods of torture used by the police to extract information under interrogation (see para. 85 below).

44. Further information in the hands of the Group indicates that five more political detainees have died since this testimony was collected:

(i) Mr. Mapetla Mohapi, aged 25, a former senior official of the South African Students' Organization (SASO), was alleged by police to have been found hanged in his cell at Kei Road police station, near East London, on 5 August 1976, after being in police custody since 15 July 1976. 5/ Mr. Mohapi had had a previous period of 164 days in detention in 1974, after which he was released without charge; (ii) on 6 September 1976 the police announced that Mr. Luke Mazwemba hanged himself in his cell with strips torn from his blanket, within two hours of his detention. Mr. Mazwemba was a member of the Western Province Advice Workers Bureau, and was in good health when he was detained; 6/ (iii) Mr. George Botha,

3/ House of Assembly Debates, 21 May 1976.

4/ Rand Daily Mail, 27 May 1976.

5/ The Times, 7 August 1976.

6/ Information sheet of the African National Congress, September 1976; Guardian, 7 September 1976.

a 30-year old teacher, died on police premises on 16 December 1976. The police stated that he had jumped into a lift shaft from the top of the staircase, when being taken to an office for interrogation; 7/ (iv) on 11 January 1976, the police announced the suicide in prison of Dr. Nanaoh Nthunstsha as well as the death of Mr. Laurence Ndzanga who, according to the police spokesman, allegedly died after "fainting in his cell". 8/

45. Two other cases of deaths of Africans in gaol, which came before the courts in 1976, are seen by the Group as further evidence that the South African police and prison authorities set but little value on black lives. In one case the widow of Mr. Alfred Maphaphu is claiming compensation for the death of her husband in an allegedly overcrowded police cell, where he was detained in July 1974 on a charge of assault; 9/ in the other Mr. George Gideon Carstens, a prison warden in a Kroonstad gaol, is charged with the culpable homicide of Mr. Philip Mokwena, a prisoner. Mr. Mokwena had allegedly been struck with sticks and kicked by five gaolers on 17 September 1975. 10/

46. Another anonymous witness (422nd meeting) described police harassment of former political prisoners in East London and elsewhere. He described in particular the case of Mr. Tshikila, who had recently served a 10-year sentence on Robben Island, who was suddenly arrested together with his wife and children. Two days later his family were released, and a few days later he was announced by the police as having been shot while trying to escape. In another case, Mr. Montgomery, a former PAC member and political prisoner, was arrested with his family in Mafeking just before Easter 1976, and though the family was subsequently released he remained in gaol.

(b) Medical mistreatment of political prisoners

47. Mr. Jack Tarshish (432nd meeting) drew the attention of the Group to what he interprets as a deliberate policy of the South African security police to permit the treatment of serious illness among political prisoners only on the basis of "too little and too late". He detailed as an example the authorities' failure to provide him with medicine for his neurological illness, narcolepsy catalepsia, from 1963 to 1966, during which time he had attacks daily; their unwillingness to deal with his heart attack in 1970 so that he was left in great pain in his cell for over an hour, after which he was allowed to stay in hospital only for 17 days instead of what he understood to be the normal six weeks; their delay in treating mitral valve disease, diagnosed in 1971 and operated on only in May 1974, just before a visit from the International Red Cross; and their failure to remedy his subsequent condition - the wound would not heal, fragments of bone from the sternum kept emerging, and his face and legs swelled. On release from gaol in 1975 he was diagnosed as being "in severe congestive heart failure with ascites, hepatomegally, elevated venous pressure and early pulmonary oedema". Mr. Tarshish also quoted the case of Mr. Bram Fischer (see E/CN.4/1187, para. 53), who had a

7/ Guardian, 16 December 1976; Rand Daily Mail, 16 December 1976.

8/ Le Monde, 12 January 1977.

9/ Rand Daily Mail, 8 June 1976.

10/ Rand Daily Mail, 25 June 1976.

prostatectomy in July 1974 but treatment for cancer was begun only seven months later; who in September 1974 developed complications so that he was unable to walk, yet was refused a crutch until his fellow prisoners made him one themselves; who was refused a doctor after falling in the shower and fracturing his femur in November, so that treatment was delayed for 13 days, and even then he was not allowed to remain in hospital; and only in April 1975, a bare month before his death, was he allowed home on conditional release, in response to a world-wide outcry.

48. Mr. Tarshish also mentioned in his testimony that he understood that a prisoner on Robben Island was currently being offered what he called "the political treatment of the illness of political prisoners". Information has subsequently come to the attention of the Working Group that the father of Mr. Kholisile Roxo, a Robben Island prisoner, was given permission in May to nurse his son at home. Mr. Roxo was dying of cancer and already partly paralysed. 11/

(c) Massacres and deaths following public disturbances: the Soweto massacre and its consequences (see also para. 246 et seq.)

49. In June 1976 demonstrations started against the imposition of Afrikaans as medium of instruction in African schools. On 16 June 1976 police shot at unarmed schoolchildren and other demonstrators. According to official figures, 176 persons (including children) were killed and 1,139 wounded. The massacre was condemned by the United Nations Security Council in its resolution 392 (1976) of 19 June 1976. 12/ Witnesses saw the massacre in the context of the general contempt for black lives characteristic of the South African police: Mr. Piliso referred to the "sadism" of the police (421st meeting) and an anonymous witness (430th meeting, written testimony) to the arbitrary nature of the killings, which he felt could easily have been avoided but for the deliberate official policy on the handling of riots. He quoted a senior police officer who told the press "We fire into them. It is no good firing over their heads", and the Minister of Police and Justice, who said over Radio South Africa on 22 June that alternative anti-riot methods such as teargas, water cannon and rubber bullets did not deter black riots and hindered police mobility in densely populated areas. He contrasted this policy with police handling of a sympathy demonstration by white students of the Witwatersrand, where only baton-charges were used. Mr. Tarshish (432nd meeting) pointed out that the official estimate of 176 was likely to be an underestimate, and he quoted Chief Buthelezi as alleging the number to be nearer 700.

50. Several witnesses dealt with the causes of the strikes and demonstrations that led up to the massacre, pointing out that the issue of language teaching in schools was only the trigger, in the words of Mr. John Pule Motshabi speaking on behalf of the South African Congress of Trade Unions, "which sparked off the explosion" (427th meeting). The real issue is apartheid, and the uprising

11/ Cape Times, 17 May 1976.

12/ For an account of the massacre and its aftermath, see the report of the Special Committee against Apartheid, A/31/22/Add.1-S/12150/Add.1, 4 August 1976.

a revolt of town-dwellers against the conditions in which they are forced to live. These conditions are dealt with below in the section on the African family (paras. 253-263) and in the section on student movements (paras. 214-251).

51. Witnesses expressed their outrage in particular that the police had not only fired upon a peaceful demonstration but had fired upon schoolchildren, many of them of primary-school age, and that children were among the dead and wounded.

52. The Group has also before it reports of numerous further killings of black protesters by police over the three months following the massacre at Soweto. As the wave of demonstrations and strikes spread, first to Witbank, Middelburg and Carletonville in the Transvaal, then to Natal, the Eastern Cape and the African and Coloured townships outside Cape Town, the estimated death toll in the townships (published in the press) mounted to 219 (16 August), 13/ then 250 (20 August) 14/ and the killings continued well into September. 15/ The dead included an 18-year-old African youth shot by police at Witbank during riots arising from a boycott of classes when school reopened on 20 July 16/ - students were protesting at the closure of Soweto schools after the 16 June massacre (see section on student movements, para. 244 et seq. below); two men and a 15-year-old girl killed during disturbances in Soweto on 4 August; 17/ "at least one youth" shot dead in Soweto on 6 August; 18/ two youths shot dead in Alexandra on 9 August; 19/ 29 Africans shot in Cape Town on 11-12 August; 20/ "at least eight Africans shot" in Port Elizabeth on 18 August; 21/ 24 killed in the Western Cape at the end of August; 22/ and another 40 in Soweto. 23/ No official figure on the total number of the dead has been given. Similar massacres took place during December in Cape Province, causing the death of 90 Africans. 24/

53. The figure for the total number of wounded published in the press on 15 August was an imprecise "over 1,000", 25/ but this figure, like the total figure for those killed, reflects the extreme difficulty experienced by press

13/ The Times, 17 August 1976.

14/ Guardian, 21 August 1976.

15/ E.g., Guardian, 14 September 1976, 15 September 1976, Le Monde, 9 September 1976.

16/ Guardian, 22 July 1976.

17/ The Times, 6 August 1976.

18/ Rand Daily Mail, 7 August 1976.

19/ Daily Telegraph, 10 August 1976; Guardian, 10 August 1976.

20/ The Times, 14 August 1976.

21/ Guardian, 19 August 1976.

22/ Guardian, 1 September 1976.

23/ The Times, 3 September 1976.

24/ Rand Daily Mail, 7 December 1976; Le Monde, 30 December 1976.

25/ Observer, 15 August 1976.

reporters in obtaining more accurate information. Police declined to publish casualty figures, 26/ denied deaths, even though in one case a boy had died in a press reporter's car, 27/ prevented white pressmen from entering black areas altogether and threatened and assaulted black reporters, confiscated cameras and destroyed film, and by the end of September had made what The Times called a "systematic round-up" of African reporters who had been a main source of information on police repression in the townships. 28/

54. The Group has noted the appointment of Mr. Justice Cilliers as a one-man commission of inquiry into the Soweto massacre and the refusal of the Government to appoint any black members to the commission despite demands from Soweto leaders such as the Soweto Parents' Association for such representation, 29/ and the warning by Mr. Sydney Kentridge, one of the country's senior barristers, that the judge sitting alone would inevitably be regarded "especially by blacks as being somehow connected with the Establishment", 30/ as further evidence of the South African Government's continued disregard for black lives, including the lives of young people and children.

55. Examples of press reports concerning police disregard for the lives of children and young people during the recent disturbances were the following:

(a) Evidence of Miss Sophie Topsy Tema, reporter on the newspaper The World, to the government inquiry into the June riots: "Had it not been for the police, I believe there would have been no violence at all. That is my firm opinion." Describing an incident outside a school where Hector Petersen, aged 13, was shot dead, Miss Tema said: "The students were waving placards and singing 'God save our nation'. They shouted 'We don't want police here.' Suddenly a tear gas canister exploded in the crowd and the students began throwing stones. A white policeman in uniform then pulled out a revolver and aimed it at the students. ... The policeman then fired and more shots followed. The pupils then attacked the police." 31/

(b) Sworn statement by Eugene Vilakazi, former university student, to the Rand Daily Mail. Mr. Vilakazi described travelling by train to Soweto, where he got out: "Along the highway, we saw police in camouflage uniforms coming towards us in police vehicles. We heard the sound of bullets coming our way. I neither saw nor heard loudspeakers warning us to disperse. I started shouting at elderly people to keep calm. I wanted them to turn back along the road, but unfortunately two cars had come up behind us with police. We were caught in

26/ The Times, 7 August 1976.

27/ The Times, 5 August 1976.

28/ The Times, 5 August 1976; Rand Daily Mail, 7 August 1976; The Times, 25 September 1976.

29/ Star, 26 June 1976.

30/ Guardian, 29 June 1976.

31/ Guardian, 23 September 1976.

that situation. We could not move forward or backwards. Students stampeded off the road. Some of the women fell as the students stampeded. I tried to assist some women. The police stopped coming towards us in their vehicles, but they still kept shooting. One of the white policemen shouted 'shoot him'. I saw there was danger and I started running away. The bullets seemed to be concentrating on me. I then realized that a student I had met on the train was running with me. He was running just in front of me. Almost immediately he fell. I went to him and saw that he was shot through the back of the neck. The police had crossed over the highway. I started running again. I was exhausted. They shot me in the leg. I fell into a river. I lay near a big rock. A bullet hit the rock. They came towards me. I lay quite still. I heard one of them say: 'They are finished.' They went away." 32/

3. Forced removals of population

56. According to information received by the Group, forced removal of African populations continue to take place, as the Government proceeds to implement its scheme for territorial segregation of the races and the "consolidation" of the "Bantu homelands" (see sect. B below). This scheme is reflected in a recent Act relating to squatter camps promulgated on 30 June 1976 (see paras. 62 and 63).

57. Several witnesses testified to the resettlement operations, among them Mr. John Pule Motshabi (427th meeting), who emphasized the enforced removal from urban areas of aged men, women, widows, children, the infirm and the chronically sick, and those who were considered "unproductive". In addition, African communities living on white farms were declared to be "black spots" and removed to areas without schools, health and social services or employment openings. These removals, the witness said, were violations of human rights and the dignity of the individual. Mr. Motshabi estimated that no less than three million out of a total population of 21,450,000 had been uprooted, and it was impossible to state how many more people would be caught up in these mass removals of population. 33/ Dealing with the removal of Africans endorsed out of the urban areas, Mr. John Gaetsewe (418th meeting) said that about 35,000 people were endorsed out of the urban areas and sent to the bantustans each year. In 1973 alone, 92,000 people had been endorsed out of cities under the pass laws. Mr. Modise Mampuru (427th meeting) described the unsettling effects of repeated removals of the African population.

32/ Guardian, 24 September 1976.

33/ A previous report of the Working Group (E/CN.4/1159, 27 January 1975) detailed an attempt made in 1972 by the South African Institute of Race Relations to work out the total number of people removed and resettled under the Government's plans between 1960 and 1970. Working from official figures, projections, induction and estimates, it was calculated that 1,820,000 people had been moved. The breakdown included: abolition of labour tenancies on white farms; laws prohibiting squatters from living on white farms; elimination of "black spots" in rural areas; "endorsement out" of the urban areas under pass law offences and other laws; re-siting of urban townships in the neighbouring reserves. Consolidation of the homelands was expected to increase considerably the total number of Africans to be removed (see E/CN.4/1159, para. 104).

58. Mr. John Gaetsewe (418th meeting) produced evidence of the large-scale removals of the Indian and Coloured communities. The Department of Community Development, he said, had thus far moved 305,739 Coloured people, and a further 93,929 were waiting to be moved. Of the Indian population, 153,230 had been removed and a further 44,598 were waiting to be moved. Mr. Motshabi (427th meeting) gave similar evidence and indicated that this meant that one in eight Coloured people and one in every five Indians had had to move.

59. An anonymous witness testified (429th meeting) to the removal of Africans from areas they have occupied for decades and which have been productive, to areas which are often arid and underdeveloped. Little or no compensation was paid for old properties, and in the new areas they were expected to fend for themselves. The witness cited the instance of a removal of 2,035 people from Majeng near Warrenton in the Northern Cape to Vaalboshhoek 98 kilometres away, where the people were put into corrugated iron huts 10 foot square, where they could not till the soil because it was stony, and where their flocks died. The wage-earning men had to travel long distances to work and could not be with their families every night; the children became ill. On 15 February 1976 a group of people, mostly women, had walked the distance back to Majeng to camp on the site they had previously occupied. On the fifth day the police arrested the women and children for trespass, and they were taken to court. The magistrate suggested to their defence lawyers that they explore the question of alternative accommodation with the Bophuthatswana homeland government.

60. According to information available to the Group, the removal scheme from the Majeng Reserve near Warrenton referred to by the witness was a proposal of the Select Committee on Bantu Affairs which was debated in the House of Assembly during October 1974. The Reserve was to be excised from the scheduled area and the 270 Tswana families living there were to be removed to an area at Vaalboshhoek within the Bophuthatswana homeland about 70 kilometres away. 34/

61. An account of a recently established resettlement camp in the Ciskei described the conditions under which a community of 50 families, mostly elderly or very young, are living in a dry and barren area with very little water. The families were removed from Riemvasmaak, near Upington, which was considered a "black spot", to Welcome Wood. The people are desperately keen to work their land but they have no farm implements and insufficient water. There is no work available and no source of income at all. Rations are supplied by a church organization. 35/

Removals from "squatter" camps

62. A feature during the period under review has been the removal of populations from squatter camps. An anonymous witness (429th meeting) drew the attention of the Group to the Prevention of Illegal Squatting Bill, enacted by Parliament on 30 June 1976. Under this law the onus is on the owner of a piece of land to inform the local authority or the Department of Community Development of the erection of any squatter structure on his land, and failure to comply could result

34/ Survey of Race Relations 1975 (South African Institute of Race Relations, January 1976), pp.136-137; see also E/CN.4/1187, para.26 (e).

35/ Black Sash, vol.18, No.4 (February 1976), p.10.

in a fine or prison sentence. This law also contains a clause to the effect that an employer wishing to employ someone from outside his area has to obtain a certificate from the local authority, that is, the Bantu Administration Board, stating that proper housing is available. 36/

63. The witness traced the origins of the new measure to government attempts to demolish a squatter village outside Cape Town called Crossroads. 37/ This squatter camp was one of a number in and around Cape Town where, according to the former Deputy Minister of Bantu Administration, there were in all 90,000 Africans illegally in Cape Town, in terms of the Urban Areas Act (or the Bantu Consolidation Act). It was estimated that there were also about 200,000 Coloured persons squatting in and around the city because there were no houses for them. Several factors had contributed to the increase in the number of African squatters, among these (1) the serious housing shortage; (2) the displacement of labour by mechanization, so that workers had drifted from white farms to the city in the hope of finding employment; (3) the fact that the Western Cape was a Coloured labour preference area while, despite the official intention to reduce Cape Town's dependence on African labour, the city's demand for it had been increasing; (4) the migrant labour system provided that only male workers might enter the city and that they must live in compounds, so that migrant workers who brought their wives and children to the city had to erect shanty structures. The people at the Crossroads shanty town fell into these categories. Official policy had been to drive them from the area. In one incident, shanties in a camp at Wergemot were set on fire in the early hours of the morning and the owners fled in terror. As fast as shanties were demolished, new ones were erected. Demolitions were halted in mid 1975, when the Supreme Court granted two Crossroads residents an interdict restraining the Cape Peninsula Bantu Affairs Administration Board from breaking down their homes. In other instances, homes had been raided while the men were at work, and women and children put on trains bound for the Transkei and Ciskei; in many cases these families got off the trains at the first station after Cape Town and returned to the city. Numbers of the inhabitants had been prosecuted under section 11 of the Urban Areas Act (or Bantu Consolidation Act) for "harbouring" their own families, as the Government continued to regard the families of migrant workers as "superfluous appendages".

Removals to "rehabilitation centres"

64. Mr. Neville Rubin (420th meeting), representing the International Labour Organisation, cited the Director-General's Twelfth Report 38/ which had drawn attention to proclamation No.133 of 6 June 1975, which made special provision for the creation of rehabilitation centres for the reception, treatment and training of persons committed to these centres in terms of the Bantu (Urban Areas) Consolidation Act 1945 and the Bantu Labour Act 1964, and other statutes, under which people could be removed from various parts of the country to these institutions within the homelands. Mr. John Gaetsewe (418th meeting) likewise

36/ For an analysis of the Bill, see also Race Relations Journal, April 1976.

37/ Financial Mail, 11 June 1976 and 2 July 1976.

38/ Twelfth Special Report of the Director-General on the Application of the Policy of Apartheid of the Republic of South Africa (Geneva, ILO, 1976).

gave evidence on these rehabilitation centres, which he styled a network of forced labour camps and which he said would be used to re-educate pass offenders "in the tribal customs of their particular ethnic units", though such customs had long rubbed off in the process of industrialization of the African worker, so that this was one of the ways in which the Government was attempting to revive tribalism.

65. According to information available to the Ad Hoc Working Group of Experts, the rehabilitation institutions are to be established in the homelands after consultation with the relevant Bantu Authority. The inmates are to be detained "for the purpose of improving their physical, mental, and moral condition by (1) training in habits of industry and work; (2) reorientating them to the traditions, culture, customs and system of government of the national unit to which they belong; (3) generally cultivating in them habits of social adaptation in the community and of good citizenship including the fostering of an awareness in regard to the observance of, and the necessity for, the laws of the country". Persons committed to an institution would normally be detained there for three years. 39/

66. According to an analysis of "Mass removals and separate development" by Alan Baldwin, 40/ "something like two million Africans and half a million others, Asian and Coloured people, have already been removed; over half a million will be removed in the process of partially consolidating the Bantustans; and there are plans in the process of being acted upon which aim to resettle half the existing number of Africans now in the 'white' areas". This article details six categories of forced removals: (i) removals from the rural areas which result from the elimination of squatting and labour tenancies on white farms and the eradication of "black spots"; (ii) removals of former urban dwellers so that workers and their dependants are moved from towns in the vicinity of homelands into the homelands; in most cases there is a "twinning" arrangement between the "white" towns and the reserve townships. This is an extension of the Border Area principle; (iii) removals from the three major industrial centres of Pretoria, Durban and East London so that workers will commute from reserve towns to the industrial centres on a daily basis; (iv) removals from the Western Cape which has been designated a "Coloured Preference Area", which means that employers must use Coloured labour as a priority and Africans only when certain conditions are fulfilled. It is these removals which led to the large-scale resettlement of Africans from the Western Cape in such camps as Dimbaza, Sada and Ibinge, and in townships like Mdantsane and Zwelitsha near King Williams Town; (v) removals to consolidate the land units of the Bantustans; (vi) removals of individuals "endorsed out" of the urban areas.

39/ Survey of Race Relations 1975 (South African Institute of Race Relations, January 1976), pp.104-106.

40/ Journal of Southern African Studies, vol.1, No.2 (April 1976).

4. Treatment of political prisoners and detainees

(a) Reference to some relevant laws

67. 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 gaol have all been described in previous reports of the Working Group (see particularly E/CN.4/1159, para.50, E/CN.4/1111, and E/CN.4/1187, paras.30-32).

68. Furthermore, during the period under review, the Group found that two major new security bills had been introduced into the South African Parliament, once more extending the powers of government to investigate suspect persons and organizations, to declare organizations unlawful, ban publications and imprison indefinitely without trial. These bills - the Parliamentary Internal Security Commission Bill and the Internal Security Amendment Act - were drawn to the attention of the Working Group by several witnesses, and analysed at length by Mr. Niall MacDermot (418th meeting) and Mr. Malcolm Smart (434th meeting).

69. The Parliamentary Internal Security Commission Bill establishes a permanent Parliamentary Commission with inquisitorial powers similar to those exercised by the Schlegbusch Commission (see E/CN.4/1135, para.151). The Commission, of up to 10 Members of Parliament, will have the power to summon anyone to give evidence, and a refusal to appear or to answer questions will carry penalties of up to six months in gaol; and the Government is given powers to make regulations "for the preservation of secrecy". Mr. MacDermot, speaking for the International Commission of Jurists, described the proposals in the bill as amounting to a "legalized witch-hunt".

70. The Internal Security Amendment Act amends the notorious Suppression of Communism Act, to be known in future as the Internal Security Act, to empower the Minister of Justice, without reference to the Courts, to order the detention of any person for an indefinite period. According to Mr. Smart (434th meeting), detainees will not be informed of specific grounds for their arrest, but their cases will be reviewed annually by a committee, to which the Minister is not compelled to give his reasons, which will meet in camera, and whose advice the Minister is not required to implement. According to Mr. MacDermot's evidence (418th meeting) the Act also empowers the Minister to declare any organization unlawful if the State President finds that it "engages in activities which endanger the security of the State or the maintenance of public order", or to ban any publication, for similar reasons. Neither the fact of detention nor the names of detainees need be revealed; the Attorney General is given further powers to refuse bail and to hold prospective witnesses in solitary confinement, even after the expiration of the proceedings concerned. ^{41/} The Internal Security Act also abolishes the limits of fines and prison sentences that the courts may impose in terms of the Riotous Assemblies Act, and also extends the Act to operate in "South West Africa" (Namibia) (see chap.II, paras.331-332). ^{42/}

^{41/} For a further analysis of the Act, see Focus on Political Repression in Southern Africa (published by International Defence and Aid Fund for Southern Africa), No.5, July 1976, pp.14-15.

^{42/} Rand Daily Mail, 18 May 1976.

71. According to further information before the Group, the Johannesburg Bar Council attacked this Act and the Cape Bar Council declared that judges and not the Government should be entrusted with the decision whether to take away a man's freedom. 43/

(b) Analysis of information and evidence received

(i) Treatment of political detainees

72. As in previous years, no official figures have been released on the number or names of persons detained under the various security laws during 1975. At the end of April 1976, the Christian Institute published a report entitled Detention and Detente (set before the Committee by an anonymous witness, 434th meeting) listing by name 217 persons detained under the Terrorism Act and other security laws since the beginning of 1974. The report stated that at the time of publication there were at least 77 persons detained in South Africa plus another four in Namibia, 44/ but added that in both cases the figures were underestimates. Of the 217, only 39 were known subsequently to have been charged under the Terrorism Act, and only seven of these were found guilty and sentenced. Seven more are known to have been charged under the Suppression of Communism Act. Describing its report as "a catalogue of repression", the Institute alleges that "an estimated 61.8 years (about 22,566 days) have been 'borrowed' by the Government of South Africa from 217 people since the beginning of 1974. No compensation is given, no explanation is offered, and no guarantee that the State will not 'take' more of their time during the years that lie ahead ... The overwhelming majority are from the black community". The 39 people charged with "terrorism" had spent a total of at least 10 years in solitary confinement before being charged.

73. The first four numbers of Focus on Political Repression in Southern Africa, published by the International Defence and Aid Fund for Southern Africa and handed in as testimony by Mr. Alan Brooks on behalf of the Fund, provided details on the treatment of various detainees held during the period under review. 45/ The first issue reported "a heavy crackdown" on activists of the Black Peoples' Convention (BPC), the South African Students' Organization (SASO) and other black organizations in October 1975, and listed 11 persons detained under the Terrorism Act, bringing the total number of known detainees on 31 October to 67. Three of the 11 new detainees had already spent periods in detention since September 1974. It also reported that six former detainees, Mr. and Mrs. Mabandla, Mr. Barney Pitso, Mr. Revabalan Cooper, Mr. Mzimkhulu Gwentshe and Mr. Mapetla Mohapi, had issued summonses against the Minister of Justice for a total of R21,500 (about £12,500) for alleged assault and torture suffered in detention.

43/ The Times, 12 May 1976.

44/ Detention and Detente; see also reports in Star, 8 May 1976; Rand Daily Mail, 5 May 1976.

45/ Focus on Political Repression in Southern Africa, News bulletin of International Defence and Aid Fund for Southern Africa (hereinafter Focus), No.1, November 1975; No.4, May 1976.

74. The fourth issue of Focus reported an increase in the number of political detainees over the first few months of 1976 to "at least 88" in February, supplemented by additional arrests in March.

75. According to further information available to the Group, a further 45 persons were arrested under the Terrorism Act in May 1976, bringing the estimated total of persons detained on 19 May 1976 to 115. 46/

76. The Group has also noted that a number of the persons detained during the period under review are persons who had already served gaol sentences or periods of detention for political reasons. Such persons included Mr. Judson Kuzwayo, former member of the African National Congress, who has served a 10-year sentence on Robben Island, detained on 5 December 1975 and released in February 1976; 47/ two former members of the Pan African Congress who had served sentences on Robben Island, detained in May; 48/ Mr. Moses Ndulula, aged 80, also a former member of the Pan African Congress, who was released from Robben Island in 1971, also arrested in May; 49/ and Mr. Mzimkulu Gwentshe, detained on 30 April, who had twice served terms of detention without trial under the Terrorism Act. Mr. Gwentshe was one of those who had issued summonses against the Minister of Justice for alleged maltreatment under detention (see paras.73 and 90 (b)). 50/

77. The Group has also noted that a number of trade unionists have been among those detained in this period and an even more striking proportion of school and university staff and students (see para.88 and section D below). Among the trade unionists arrested in recent months, in addition to Mr. Harry Nxasana (see para.87 below), are Mr. Lendile Mfeti, Secretary of the Industrial Aid Society, a service organization to trade unions; Miss Junerose Nala, secretary of the National Union of Textile Workers (see also para.87 below); and Mr. Obed Zuma of the same union, all of whom were arrested in May; 51/ and among recent student and university staff detainees are Mr. Sabelo Neko, 21, a student from Soweto, arrested on 24 April; seven Soweto high-school students, aged between 18 and 22, arrested on 15 April on their way to Botswana for the Easter weekend; 52/ eight members of the South African Students' Movement, a high school students' body, arrested in the Eastern Cape in February; 53/ eight members of the University of the North, six staff and two students, detained in May; 54/ and one staff member of the University of Zululand and another of the University of Lesotho, Botswana and Swaziland, also detained in May. 55/

46/ Rand Daily Mail, 19 May 1976.

47/ Rand Daily Mail, 20 January 1976, 20 February 1976.

48/ Rand Daily Mail, 1 May 1976.

49/ Rand Daily Mail, 27 May 1976.

50/ Rand Daily Mail 19 May 1976.

51/ Rand Daily Mail, 19 May 1976; also evidence of Mr. Kailembo, 419th meeting.

52/ Detention and Detente (published by the Christian Institute), April 1976.

53/ Rand Daily Mail, 20 February 1976.

54/ Rand Daily Mail, 21 May 1976.

55/ Cape Times, 22 May 1976; Sunday Times, 23 May 1976.

78. These detentions were followed by a spate of arrests, some of them of very young schoolchildren, during and after the disturbances outside Johannesburg, Durban and Cape Town that started in Soweto on 16 June 1976. The Economist in September gave the figure of 254 "known to be held without trial", and a further 600 held in connexion with alleged criminal offences linked with the unrest. 56/ Three weeks after the June riots, it appears that a number of children detained then were still in prison - some of them as young as eight years of age. 57/

79. In October 1976 a document published by the Centre against Apartheid named 174 persons detained since June 1976, and mostly still in detention. In recent months the number of persons known to have been detained under South Africa's security legislation is over 300. Another 5,200 persons have been arrested on criminal charges arising from demonstrations. While some of them have been released and others brought to trial, many are still under detention for an indeterminate period without charges. Most are believed to be held in solitary confinement and are often subject to the most inhuman tortures, as shown by the recent death under detention of a young black leader, Mapetha Mohapi. 58/ The African National Congress published also in October 1976 information which indicates that at least 300 people have been detained without trial and over 5,000 arrested since 16 June 1976.

80. A feature of detentions in September 1976 was the number of journalists arrested - reported on 24 September to be 13 - most of them black and most of them reporters whose accounts had been a main source for newspapers nationally and internationally on police repression in the black townships. These arrests were condemned by the Union of Black Journalists and by the (white) South African Society of Journalists. 59/

81. Such information as is available on the arrests indicates that "almost all leaders of any standing with young black South Africans" had been detained by mid-August. 60/ Among those named in the press have been Mr. Steven Biko of King Williams Town, a SASO leader and assistant director of Spro-Cas black community programme; 61/ Mr. Leonardo Oppies, president of the student representative council of the University of the Western Cape; Mrs. Winnie Mandela, wife of ANC leader Nelson Mandela and a leading member of the Soweto Parents' Association; 62/, 63/ Mr. Joe Thloloe, president of the Union of Black Journalists

56/ Press release by African National Congress, London Office, September 1976: see also Sunday Times, 22 August 1976; Guardian, 28 August 1976, 13 September 1976; Economist, 11 September 1976.

57/ The Times, 9 July 1976.

58/ "Recent detentions in South Africa" Centre against Apartheid, Notes and Documents, October 1976.

59/ The Times, 25 September 1976.

60/ The Times, 18 August 1976.

61/ Ibid.

62/ The Ad hoc Working Group of Experts has taken note of the recent release of Mrs. Winnie Mandela on 10 December 1976 (Times, 10 December 1976).

63/ The Times, 14 August 1976.

and staff writer on Drum magazine; 64/ Miss Lindiwe Sisulu, daughter of Walter Sisulu; 65/ and Rev. Allan Handrickse, national chairman of the Coloured Labour Party, and his son Pieter, aged 17. 66/

82. According to information before the Group, recent detentions also include 11 persons held in the Transkei in June under the Transkei emergency proclamation R 400. Four were named in the press 67/ as Mr. V. Mrwetyana, editor of an outspoken weekly newspaper in Umtata, Mr. E. Mtshondi, a trainee diplomat, Mr. S. Mpendulo and Mr. P. Khumalo - although the Minister of Police refused to reveal names, claiming that "it was an operation by the Transkei police. They have asked us to help them and we have been able to give them some assistance". 68/
(See para.172)

83. Witnesses appearing before the Group as in previous years made repeated reference to the use of physical and mental torture by police during interrogation of detainees. Both Mr. Niall MacDermot (418th meeting) and Mr. Malcolm Smart (434th meeting) provided details of several examples as evidence that, in the words of Mr. Smart, "the terms of the Terrorism Act are set just so as to invite abuse and intimidation of detainees": that is, to make possible maximum pressure on witnesses, as much as on the accused, to provide statements required by the State. Mr. Smart pointed out that detainees who turn state witness may be allowed parole from detention, immunity from prosecution, or both, whereas detainees who refuse to testify may find themselves redetained at any time, charged with perjury, or sentenced for contempt of court. Both these witnesses referred also to the case of Mr. Raymond Suttner, a law lecturer at the University of Natal, who, according to information received by Amnesty International and others, was "physically and psychologically abused" following his detention in June 1975. He was tried and sentenced to seven and a half years' imprisonment in November after two other detainees testified against him, but no evidence was allowed concerning his treatment in gaol: as Mr. Smart points out "as a detainee who was held incommunicado it would have been his word against a mass of police denials, and it might have led to the imposition of a more severe sentence".

84. Mr. MacDermot described the treatment of defendants in the SASO/BPC trial (see E/CN.4/1187, para.58), who made detailed statements in Court. Mr. MacDermot made copies of the statements available to the Ad Hoc Working Group of Experts, and drew the attention of the Group in particular to the method of torture requiring the victim to place his back against a wall and maintain a sitting posture on an imaginary chair for several hours, to be followed by beatings if he fell, to other methods such as prolonged standing for eight hours or more, pinching and slapping the face and body, banging the head against a wall, and throttling, accompanied by foul insults and threats. Sathasaivan Cooper was lifted up and dropped several times on a concrete floor, causing an epileptic seizure, and a girl

64/ Guardian, 2 September 1976.

65/ Focus, No.5, July 1976.

66/ Guardian, 9 September 1976.

67/ Rand Daily Mail, 14 June 1976.

68/ Cape Times, 15 June 1976; Focus, No.5, p.10.

of 22, Belinda Martin, was deprived of food and drink for two weeks and compelled to drink the water from the toilet to survive. Mr. MacDermot named one of the interrogators involved in these cases as Spyker van Wyk, "so named for his claim to have driven a six-inch nail into the penis of a Jewish detainee".

85. Mr. MacDermot also quoted the evidence of the widow of Joseph Mdluli, who died within 24 hours of his detention in March 1976 (see para.43 above), that when she was eventually allowed to see his body there was "a severe swelling stretching across his forehead, his lower lip was bruised and cut and his stomach was dilated to twice its normal size. I lifted his head and saw two criss-cross cuts at the base of the skull near the back of his left ear. Watery substance was oozing from the wounds, which measured from 3 cm to 5 cm. The swelling on the head had subsided." The Group has noted (evidence of Mr. Smart) that four members of the Durban security police have since (June 1976) been charged with the "culpable homicide" of Mr. Mdluli, and expects to follow reports of his trial when it takes place.

86. An anonymous witness (429th meeting) gave evidence of personal experience of detention and interrogation following his arrest in connexion with the pro-FRELIMO rally in 1974 (see E/CN.4/1159, para.79). He said that he wanted to explain "that it is impossible to resist the kind of things they can do to a person". It was not a mere question of assault, which one can resist up to a point, but of being "psychologically overwhelmed", in a room some 3 x 2.5 metres, on a second floor, and at night behind closed steel shutters, which could be expected to absorb any noise of screaming. He was made to sit on an imaginary chair against a wall for hours at a time, then kicked and punched in that position. The witness reported that his friend, Mr. Mbeo, was able to tell him through the cell wall that at his first interrogation he had been beaten until his ears bled; he reported to a doctor who visited the cells that he had been kicked in the heart by one of his interrogators, causing a severe pain in that region. The doctor had merely noted the complaint, offered no treatment but apparently reported back to the police, because when next the witness was taken for interrogation he was abused by the police officer involved for having complained.

87. Mr. Andrew Kailembo (419th meeting) of the International Confederation of Free Trade Unions made the point that African trade unionists and those helping African workers to organize themselves had become "prime objects" of the new wave of repression since late 1975. Although the four trade unionists arrested last year (see sect. F below, paras.264, 294) had since been released, all without charge, in December 1975 Mr. Harry Nxasana, organizer of the Institute for Industrial Education in Durban and former organizer of the African National Union of Textile Workers, was arrested and believed to have been maltreated, although his wife, lawyer and doctor have all been refused access to him; and in May 1976, Junerose Nala and Obed Zuma (see para.77 above), both of the National Union of Textile Workers, were arrested. Miss Nala's mother was refused permission to send her any comforts, including a mattress and pillow, in spite of the fact that she was under medical treatment and due for a surgical operation at the time of her arrest. Mr. Motshabi added to this list the name of Mr. Harry Gwala, former secretary of the South African Railways and Harbour Workers' Union and a member of the SACTU local committee in Pietermaritzburg (427th meeting).

88. Two anonymous witnesses (430th and 421st meetings) drew the attention of the Group to the maltreatment of students, including school children, under interrogation, and one witness described the condition of some of them after torture as follows: "Most of our students who had undergone that treatment could not recognize us when they were brought by the police to point out some of us. They were sort of in a daze and some of them were nearly on the verge of being sort of insane, because they would scream when they saw some of us unexpectedly Even today there is one of our past presidents of the SASO movement who, when I left home, was taken to a mental asylum: he had lost his sanity." This man was named to the Group.

89. Several witnesses also drew special attention to the treatment of women in detention. The second anonymous witness mentioned in paragraph 88 above referred to a woman student who had lost her baby as a result of brutal treatment under interrogation, and to another woman who had been tortured and whose life was feared for, since no news had been heard of her since. And Mrs. Kelebojili Chilwane (427th meeting) named Lindiwe Sisulu, arrested while on holiday from university in Lesotho, and Esther Maleka as recent detainees. In a paper submitted as evidence by Mr. John Ennals on behalf of the Anti-Apartheid Movement, Ms. Dulcie September referred to the "political widowhood" suffered by so many South African women, particularly those whose husbands have been arrested or who have fled from arrest. Such women, she pointed out, are frequently taken in for interrogation themselves, and as in the case, for instance, of Mrs. Christina Boikgutso, assaulted when they fail to answer questions to the satisfaction of the police. 69/

90. The fourth issue of Focus detailed evidence given in Court alleging serious maltreatment of several detainees, including the case of Mr. Joseph Mdluli (see para.43 above) and the following:

(a) Mr. Harold Nxasana, detained 5 December 1975, whose wife applied on 15 April 1976 for an order that a doctor and the chief magistrate be permitted to see her husband and report to a judge. Mrs. Nxasana, following news that her husband had been severely beaten and received spinal injuries that had paralysed him, had been refused permission to see her husband on 13 April, the policeman saying jocularly that they had "killed" him.

(b) Mr. Mzimkulu Gwentshe (see para.73 above) claimed in court, where he is suing the Minister for damages, that he had been detained under the Terrorism Act from October 1974 to March 1975, and that he had been kicked and hit with karate blows during interrogation and made to stand with outstretched hands for long periods.

(c) Mr. Petrus Tshabala, acquitted on a charge under the Terrorism Act (see para.98 below), claimed for damages for an alleged assault by police at Mafeking, following which he spent 13 days in Klerksdorp hospital. 70/

69/ The Anti-Apartheid Movement, "Women under apartheid", Conference Paper F, p.3.

70/ Focus, No.4, May 1976.

(ii) Treatment of political prisoners

91. As in previous years, witnesses repeatedly drew the Group's attention to South Africa's extraordinarily high daily prison population. According to Mr. Kailembo (419th meeting), it is now over 100,000, and he calculated that if prisoners awaiting trial are included with sentenced prisoners, the total number of prisoners in South Africa per year is now 625,000. Focus, No. 1, handed in by Mr. Brooks, showed that the average daily prison population had increased from 90,500 in 1969-1970 to 98,821 in 1973-1974, and that short-term prisoners (sentenced for less than four months) accounted for four fifths of all those gaoled. Short-term prisoners are almost all Africans sentenced under the "pass laws", fundamental to the discriminatory apartheid system and thus, in the view of witnesses, political laws. A total of 218,982 African men and 50,003 women (total 268,985 persons) were arrested under the pass laws during 1975, the Minister of Police told Parliament in April. 71/

92. According to further information available to the Group, as at 1 January 1976, 255 persons were serving sentences under security laws, 225 of them Africans; nine persons had been convicted during 1975. 72/ The security laws listed at this time are the "Sabotage" Act of 1962, the Suppression of Communism Act, the Unlawful Organizations Act, the Terrorism Act, the General Law Amendment Act of 1972, the Gatherings and Demonstrations Act, and the Riotous Assemblies Act of 1974.

93. The Minister also told Parliament in April 1976 73/ that 283 persons were serving life sentences as at 31 December 1975, 32 of them for the offence of "terrorism" (17, all Africans) and "sabotage" (one white, one Asian, 13 African).

94. The Minister further confirmed in April 1976 that he had turned down the request from the Transkei "government" for an amnesty for Transkeian prisoners (which would include Nelson Mandela, Walter Sisulu and Govan Mbeki, all serving life sentences as political prisoners on Robben Island) to celebrate Transkeian "independence" on 26 October 1976. 74/ The Minister thus made clear once more that there is to be no change in government policy to allow remission of sentence for political prisoners.

95. A number of witnesses emphasized the arbitrary and inhuman treatment of political prisoners once their sentences had been served. Mr. Smart (434th meeting) reminded the Group that all political prisoners released either from Pretoria or from Robben Island in the past two years had either been banned under the Suppression of Communism Act, or banished to one of the "resettlement" areas. An anonymous witness (429th meeting) stressed the difficulty ex-political prisoners encounter in finding work, especially if they are banned from travelling or attending meetings.

71/ Rand Daily Mail, 2 April 1976.

72/ Answer to a parliamentary question given by the Minister of Justice, House of Assembly Debates, 18 February 1976.

73/ House of Assembly Debates, 7 April 1976.

74/ Rand Daily Mail, 10 April 1976.

96. According to further information available to the Group, a Pietermaritzburg attorney, Mr. Kader Hassim, now serving a sentence for "terrorism" on Robben Island, has had numerous difficulties put in his way by the prison authorities in his fight to resist being struck off the roll of the Natal Law Society. His lawyers have been unable to consult with him and have been forced to ask Mrs. Helen Suzman, MP, to intervene, preliminary to a possible appeal to the Supreme Court. 75/

97. During a non-governmental symposium 76/ on the situation of political prisoners in southern Africa, former political prisoners who addressed the symposium not only drew attention to the harsh realities of life for political prisoners but also described the repressive nature of the laws under which they, and many others, had suffered. They stated that detainees were subjected to torture on a routine and systematic basis during interrogation and were denied adequate recourse to legal protection or remedy.

(iii) Some recent political trials

98. According to information and evidence before the Group, the period under review has seen a spate of political trials, among which reference may be made to the Bernard Trevor Bloem trial; the Hamilton, Ramrock and Weimars trial; the NUSAS trial; the trial of the Pietermaritzburg Ten; the Petrus Tshabalala trial and the Pheto trial.

99. The Group has deemed it necessary to draw particular attention to the three following trials:

(a) The SASO "terrorism" trial, arising out of the pro-FRELIMO rally in September 1974 (see E/CN.4/1187, para.58), resumed in February 1976 after some of the nine accused had been held in detention for over a year. 77/ According to the latest information received by the Group, the final verdict was delivered in December 1976, sentencing six of the nine accused to imprisonment for a term of six years, and the other three to imprisonment for a term of five years. 78/

(b) "Journalists" trial. Six persons, five of them white, four of them journalists working on South African newspapers, and three of them British citizens, were arrested under the Terrorism Act in July 1976: Mr. Anthony Holiday of the Cape Times; Mr. Patrick Weech of the Rand Daily Mail; Mr. Harry Mashabela of The Star; Mr. Jeremy Cronin, a political science lecturer at the University of Cape Town; Mr. David Rabkin of the Cape Argus; and his wife, Susan Rabkin, who was six months pregnant. The British Consul was able to visit Mrs. Rabkin, but no access was allowed to Mr. Rabkin or Mr. Weech, also British citizens. The Rabkins were charged

75/ Post, 21 March 1976.

76/ A symposium on the situation of political prisoners in southern Africa took place at the Palais des Nations, Geneva, on 5 and 6 July 1976. It was organized by the Sub-Committee on Racism and Decolonization of the Special Committee of International Non-Governmental Organizations on Human Rights.

77/ Guardian, 2 February 1976.

78/ Star, 20 December 1976; Rand Daily Mail, 16 December 1976.

in September, together with Mr. Cronin, under the Terrorism and Internal Security Acts, with preparing or posting pamphlets on behalf of the (illegal) African National Congress and South African Communist Party. Mr. Rabkin was sentenced to nine years, Mr. Cronin to seven years, and Mrs. Rabkin to 12 months, 11 suspended. 79/

(c) Breytenbach appeal. Breyten Breytenbach, the prize-winning Afrikaans poet, was convicted in November 1975 under the Terrorism Act and sentenced to nine years' imprisonment. He was convicted of 11 "terrorist" acts committed on visits to the country and while abroad. 80/

(iv) Banning orders

100. Witnesses, notably Mr. Malcolm Smart (434th meeting), once more drew the particular attention of the Working Group to the policy of banning or banishing all political prisoners on their release from gaol after serving their sentences. The Working Group has been informed of banning orders made under both the Suppression of Communism Act and the Internal Security Act. Mr. Smart made reference to a comparatively new policy of banning former detainees on their release from detention, whether or not they have been tried and convicted. He mentioned several supporters of the black consciousness movement detained uncharged during 1974 and 1975 who were banned in September 1975 for five years each; and named two AFRO members, Johnny Ramrock and Weizman Hamilton, banned in May 1976 when they were released after a year in detention. He also named Lindelwa and Bridgette Mabandla, both detained in 1975, who were banned on their release and banished to a remote area of the Transkei.

101. An anonymous witness (430th meeting), a member of the South African Students' Movement, a movement of high school children, who had himself been banned, saw the banning of persons such as himself as hard to explain except in the context of a general policy of the Government to make the functioning of any anti-apartheid organization, particularly the black consciousness organizations, difficult or impossible. He explained how the banning order had forced him to leave the school where he was studying and seek work - only to find that the security police put pressure on his prospective employers to deter them from employing him.

102. The banning of trade unionists was stressed by several witnesses, including an anonymous witness (429th meeting) and Mr. Andrew Kailembo (419th meeting), who mentioned the case of Mr. Drake Koka, whose banning order seriously inhibits his work for the Black Allied Workers' Union.

103. Documents handed in by Mr. Ennals (433rd meeting) also drew attention to the number of women banned, many of them in addition subjected to house arrest. 81/ Mrs. Joyce Rankin (431st meeting) described how she was banned after being detained and twice charged and acquitted under the Terrorism Act, how the ban lost her her

79/ Rand Daily Mail, 4 August 1976; The Times, 30 July 1976; Guardian, 6 August 1976; Cape Times, 8 September 1976; The Times, 30 September 1976.

80/ Star, 13 March 1976; Focus, No. 1, November 1975.

81/ "Political victimization of women in South Africa", by Jen McClelland.

job as a journalist and prevented her from finding another (for instance because the order confined her to Orlando and thus prevented her from going into Johannesburg to work or seek work), and how she was refused an exit permit and had to leave the country illegally, leaving her two small children behind.

104. According to information supplied by the Minister of the Interior to Parliament in February 1976, 300 persons have been deported from the Republic during 1975, compared with 167 in 1974, and the estimated number of deportations for 1976 was 320. 82/

105. Among South Africans refused passports to travel abroad in the period under review were Mr. Robert Sobukwe, who was refused permission to take up an invitation to attend the inauguration of the President of Liberia; 83/ the poet James Matthews, invited to take part in a South African Writers' Workshop in Amsterdam; 84/ and Mrs. Fatima Meer, Durban sociologist, invited to give a series of lectures at the London School of Economics as Ginsberg Fellow. Mrs. Meer has been refused a passport three times in the past year. 85/

82/ House of Assembly Debates, 20 February 1976.

83/ Cape Times, 31 December 1975.

84/ Sunday Times, 16 May 1976.

85/ Cape Times, 10 July 1976.

5. Disparity between the wages of black and white workers
and the low wages paid to black workers

106. Witnesses before the Group testified to the fact that the disparity between the wages of black and white workers has continued to widen in the period under review, although wages for black workers have risen. 86/

107. Mr. Neville Rubin, appearing on behalf of the International Labour Organisation (420th meeting), referred to a study covering wages paid to 230,000 black workers employed in over 100 categories of jobs during the period September 1973-September 1974, which revealed that there had been increases of between 5 and 15 per cent in median wages, and of between 11 and 15 per cent in "upper quartile" wages. Nonetheless the continued growth in the disparity between wages of black and white workers which had been demonstrated in other surveys had been reproduced. The witness referred the Working Group to the Twelfth Special Report of the Director-General of the ILO, 97/ which documented this survey. The report

86/ The following figures, collated by the South African Congress of Trade Unions in their 1976 report to the International Labour Organisation, show declining ratios between black and white wages in certain industries but increasing gaps in earnings.

<u>Classification</u>	<u>Year</u>	<u>Average</u> <u>white</u> <u>earnings</u> [a/] (per annum)	<u>Average</u> <u>African</u> <u>earnings</u> (per annum)	<u>Ratio</u> <u>White: African</u>	<u>Earnings</u> <u>gap</u> (per annum)
Mining and quarrying	1960	R2,312.91	R148.35	15.59:1	R2,164.56
	1965	R2,909.34	R176.50	16.48:1	R2,732.84
	1970	R4,235.36	R215.55	19.72:1	R4,037.92
	1975	R7,793.00	R957.08	8.14:1	R6,835.92
Manufacturing	1960	R2,021.95	R371.27	5.45:1	R1,650.68
	1965	R2,695.09	R507.62	5.31:1	R2,187.47
	1970	R3,816.54	R660.26	5.78:1	R3,156.28
	1975	R5,880.97	R1218.63	4.83:1	R4,662.34
Construction	1960	R1,887.10	R340.97	5.53:1	R1,546.13
	1965	R2,981.69	R541.04	5.51:1	R2,440.65
	1970	R4,062.74	R639.42	6.35:1	R3,423.32
	1975	R5,863.15	R1167.59	5.02:1	R4,695.56
Central Government	1960	R1,598.92	R363.42	4.40:1	R1,235.50
	1965	R1,978.18	R452.92	4.37:1	R1,525.26
	1970	R3,336.77	R565.73	5.90:1	R2,771.04
	1975	R5,237.97	R1327.55	3.95:1	R3,910.42

Source: South African Congress of Trade Unions, calculated from South African
Bulletin of Statistics, 1974/75.

[a/ The current exchange rate is 1 rand = \$US 1.15.]

87/ Twelfth 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, 1976), pp.21-23.

concluded that despite the developments in the past two years and the incontrovertible evidence of a significant upward movement in black wages, the absolute level of minimum wages for unskilled workers remained low, and on average the white/black wage gap expressed in money terms continued to widen in nearly all sectors of the economy. The report also noted that while there had been an increase in the number of blacks who benefited from wage agreements, the over-all picture that emerged was that only a small proportion of the total number of Africans employed in the Republic were covered by such agreements. There were still major categories of employment, such as the mines, farming, all forms of State employment, including the railways and the postal services, and domestic service, which were constitutionally excluded from the machinery for establishing wage agreements. 88/

108. Mr. John Gaetsewe (418th meeting) said that it had been calculated that with an economic growth rate of 6 per cent a year it would require an absolute ceiling on white living standards to reduce the wage disparity to two to one by the year 2200. The witness produced a table illustrating the black-white wage ratios in the major industrial and service sectors. He drew special attention to the wages of domestic workers in private service and said that women domestic servants constituted one of the most exploited groups in the South African economy.

109. According to information available to the Ad Hoc Working Group of Experts, in nearly every sector of the economy for which the Department of Statistics publishes wage information, the white/black wage gap is widening if expressed in absolute terms, though narrowing if expressed as a ratio.

110. Calculations done on the basis of these figures from the Department of Statistics 89/ showed that the white/black absolute wage gap in the manufacturing sector ranged from R312 a month in the printing industry to as much as R433 a month in basic metals. Lowest black wage is in the wood and cork sector (R71). This industry also shows the greatest wage gap in ratio terms: the average white earns six and a half times as much as the average black. In the clothing industry the average black wage is R79 and the average white earns six times as much. The best paid whites are in the basic metal industries (R551), which sector also registers the largest white/black wage gap in absolute terms (R433).

111. The latest survey on Non-White Employment by Urwick-UAL International, 90/ based on the pay of 250,000 employees in 300 organizations, confirmed over-all percentage wage increases for Asians (16 per cent), Africans (20.6 per cent) and Coloureds (15.7 per cent) but noted that there were side variations in various occupational groups and job categories. At the lower end of the socio-economic scale, wages lagged far behind established desirable wage levels for workers in urban areas. At the higher skilled levels, the trend appears to be that the wage gap between Asians and Coloureds has narrowed noticeably over the previous year, while African salaries recorded a larger percentage increase of the total income than the other two black groups. But Africans working as general male clerks still earned about R40-50 less than their other non-white counterparts, which, the survey

88/ Ibid., p.24.

89/ Financial Mail, 16 January 1976.

90/ Financial Mail, 8 August 1975.

added, was a typical situation in this range of jobs. The fact that Africans were increasing their percentage share of income at this level of skills could indicate that employers were making increasing use of them in jobs previously filled by Coloureds and Asians.

112. A salary survey for African factory workers carried out in mid 1976 showed that pay increases had slowed over the previous six months. Thus average wages had increased by 8.8 per cent over the six months to March 1976 compared with 15.6 per cent for the same period a year earlier. The minimum wage increased by 8.75 per cent compared with 14.9 per cent for the previous period. The survey, conducted by Contact Personnel Services, showed that artisan pay increases were also slowing down. 91/

113. Even if current black wage increases continue, black earnings in Pretoria will not rise even to half those of whites by the end of this century, according to a study by the Pretoria University Bureau for Economic Policy Analysis. The study estimates that if 1975 prices are held constant, white earnings will grow from R1,550 a person a year in 1975 to R2,500 a person a year in 2000, while average black earnings in the same period will grow from R400 to R1,000. This means that white incomes would grow by 61 per cent and black incomes by 175 per cent by the turn of the century, but that the wage gap would remain wide. 92/

Poverty levels

114. Figures released by Market Research Africa 93/ show that the white/black income gap is becoming wider each year. In 1970 the average white household had R362 more to spend each month than the average black household. In 1975, however, that gap had widened to R546. According to the Johannesburg Chamber of Commerce, a family of five in Soweto, the largest black township in Johannesburg, needs about R129 a month to maintain itself at a minimum level; this was nearly R28 more than two years ago. 94/

115. A warning that any wage increases which urban blacks are managing to achieve are being more than cancelled out by mounting inflation was uttered by the director of the South African Institute of Race Relations, Mr. Fred van Wyk. The same statement warned that increasing black unemployment could cause even more friction between blacks and whites than the denial to blacks of political rights. 95/

Public service wages

116. In the public service the white/black wage gap was expected to be narrowed for the first time when new salary increases came into operation from 1 July 1976. 96/ Although the Government had committed itself several years ago to narrowing the white/black wage gap, figures provided by the chairman of the Public Service Commission showed it has actually been widening up to date. The new scales coming

91/ Financial Mail, 18 June 1976.

92/ Star, 1 May 1976.

93/ Financial Mail, 13 February 1976.

94/ Rand Daily Mail, 4 August 1976.

95/ Financial Times, 28 April 1976.

96/ Sunday Times, 9 May 1976.

into operation in mid 1976 would provide a 20 per cent increase for Africans and a 10 per cent increase for whites. The gap between white and African salary scales was expected to be narrowed from R730 to R768.

Mining wages

117. In the mining industry it was estimated that in spite of a sharp increase in black wages (which had more than doubled - from R208 to R565 a year - between 1971 and 1974) the pay gap between black and white miners had widened. 97/ The higher percentage increase in black wages meant that during the four-year period the ratio of white/black wages had dropped from 21:1 to 12:1. But the gap in actual money received in real terms had widened, according to Dr. Francis Wilson of the University of Cape Town. In 1971 the difference in average wages was R4,159 and in 1974 it was R4,641. The increased gap amounted to a 12 per cent widening in the wage gap on the gold mines.

118. From May 1976 the 18,000 white miners were due to receive pay increases of from R36 to R47 a month. The increase followed wage negotiations between the Chamber of Mines and the Council of Mining Unions. The previous adjustment for unionized workers on the gold mines had been one year ago. 98/ A month after this announcement, the mining industry increased pay rates for 440,000 African miners with pay rises ranging from 13.6 per cent a month at the lowest rates to 11.5 per cent at top rates. Shift pay for an underground novice rose from R2.20 a shift to R2.50 a shift, while the pay for the bulk of underground labour ranged from R3.60 a shift to R5.30 a shift. The pay rises do not affect about 90,000 black miners in mines other than the gold and coal mines governed by the Chambers of Mines agreement. 99/

Railway workers' wages

119. Figures released in the House of Assembly 100/ indicate average annual wages for the different groups of employees working on the railways as follows:

Whites	R6,097
Coloureds	R1,419
Indians	R1,524
Africans	R1,153

Workers employed by foreign firms

120. Mr. John Ennals (433rd meeting) said the latest survey of the situation had indicated that there had been practically no improvement at all in the wage rates paid to black workers by British and other foreign firms operating in South Africa. He considered that proper rates of pay and working conditions could only be ensured when workers had the right to negotiate with management. According to information

97/ Rand Daily Mail, 19 January 1976.

98/ Star, 8 May 1976.

99/ Star, 5 June 1976; Rand Daily Mail, 2 June 1976.

100/ House of Assembly Debates, 2 February 1976.

available to the Group, this record on the performance of British companies in South Africa is confirmed by a report issued by Christian Concern for Southern Africa (CCSA). Of a survey of 141 British companies with subsidiaries in South Africa, a substantial number were found to be still paying below the poverty datum line, which is a calculated criterion for a minimum income of a black family of five in an urban area. Nearly half the companies were paying below the minimum effective level (MEL) recommended by the Government. 101/

Reservation of jobs for whites

121. According to information available to the Group, black wage levels must be seen in the context both of the effects of the policy of reserving certain jobs for whites and of rising rates of unemployment among Africans. The Twelfth Special Report of the Director-General of ILO recorded some evidence of flexibility in the application of the industrial colour bar and the reservation of particular jobs to white workers only. Thus, towards the end of 1975 it was announced that Africans would, from 1 November, be permitted to do certain skilled and semi-skilled work in the building industry of the Transvaal. Strict controls over the ratio of African operatives to artisans would be applied, with surveys every three months to ensure that there was no white unemployment. It was further reported that whites in the industry would continue to be given preference and protection, including a R1 million unemployment fund to guarantee them full pay for 20 years. 102/

122. Recent trends, according to information available to the Group, indicate strong opposition to the modification of job reservation from registered (white) trade unions. In the steel and engineering industries, employers proposed the creation of new job and training opportunities for 270,000 workers. These proposals were tabled by the 33 employer organizations that constitute the Steel and Engineering Industries Federation of South Africa (SEIFSA). The unions, representing some 80,000 white and also Coloured workers, announced that they would fight the proposals "tooth and nail". 103/ The Minister of Labour assured the Confederation of Labour that future government labour policy would be planned in consultation with white trade unions, as the Government did not want a confrontation with white labour. The Minister said that white workers would have no reason to fear their work security would be endangered by the movement of black workers into better jobs. It was government policy that labour adjustments through the reallocation of work would only be done through co-operation with the white workers and their trade unions. He gave an assurance that job reservation would not be abolished. 104/

101/ Financial Times, 4 May 1976.

102/ Twelfth Special Report of the Director-General on the Application of the Policy of Apartheid of the Republic of South Africa (Geneva, ILO, 1976), p.18. See also Survey of Race Relations, 1975, pp.171-172.

103/ Rand Daily Mail, 8 May 1976.

104/ Rand Daily Mail, 4 June 1976.

B. THE "BANTU HOMELANDS" POLICY

123. Though the situation and history of the "Bantu homelands" have been the subject of examination by the Ad Hoc Working Group of Experts, notably in a previous report (E/CN.4/1050), which outlined the origins of the policy of "native reserves" and their constitution under the present Government as "Bantu homelands", the Group is now considering the question of these homelands in relation to the right of peoples to self-determination as defined and developed by the United Nations. This is particularly relevant in the light of the claims of the South African Government that it is offering the homelands "political independence".

1. Historical background

124. The historical background was summarized in the interim report (E/CN.4/1187, paras. 93-97). The legislative background is reviewed in paragraphs 126-133 below.

2. Effects of the separate homelands policy on the right to self-determination

125. The relevant principles incorporated in the Declaration on the Granting of Independence to Colonial Countries and Peoples are the following:

- (i) All peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory;
- (ii) The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights;
- (iii) All peoples have the right to freely determine their political status and freely pursue their economic, social and cultural development;
- (iv) All armed action or repressive measures of all kinds directed against dependent peoples shall cease;
- (v) Any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

The Group proposes to examine the economic and social situation in the homelands, the conditions of Africans in "transit camps", the real aims of the homelands policy and the future outlook in the light of these principles.

(a) Summary of legislation in force

126. The laws relating to the setting up and development of the homelands have been described and analysed in earlier reports of the Working Group (E/CN.4/1020 and E/CN.4/1111, paras. 104-109). These include the Bantu Homelands Citizenship Act, No. 26 of 1970, which makes every African a citizen of a homeland whether he lives there or not; the Bantu Homelands Constitution Act, No. 21 of 1971,

which enables the executive to set up legislative assemblies by proclamation instead of by Act of Parliament; and the Bantu Law Amendment Act, No. 7 of 1973 (described in the Group's report of 4 February 1974, E/CN.4/1135), which contains provisions to accelerate the consolidation of homeland land areas and gives homeland governments powers to raise loans, including development loans, abroad.

127. The Bantu Laws Amendment Act, No. 4 of 1976, 105/ amends a series of statutes relating to the administration of Africans. Clause 4 empowers the State President to proclaim the transfer of land and property to vest in the government of a self-governing territory. Introducing this bill in the House of Assembly, the Deputy Minister of Bantu Development explained Clause 4 as follows: "Owing to a lack of money and time, it will not be possible in the case of the Transkei, and perhaps in the case of other areas as well at a later stage, to buy and transfer all the land intended for a particular homeland before independence is granted. The amendment is intended to make it possible in such a case to purchase and transfer the balance of the land after a homeland has become independent." 106/ Clauses 7 and 8 transfer power to make regulations from the State President to the Minister. Clause 11 extends the definition of Minister to enable the Minister to delegate certain functions to officials of his department "in the interests of efficiency". Clauses 12 and 13 empower the Investment Corporation, development corporations and corporations to lend and borrow money and to promote the negotiation of loans.

128. The KwaZulu General Loans Act, No. 4 of 1975, published in the South African Government Gazette of 29 August 1975 (Government Notice 1656), provided for the raising of loans by the homeland government and the procedure for doing so. It is reported that homelands are permitted to raise their own loans, but only to the limit of their own sources of revenue. 107/

129. The Second Bantu Laws Amendment Act of 1974 dealt mostly with minor administrative matters, but clauses 1 and 10 dealt with security matters. Clause 1 dealt specifically with the Transkei and empowered the Transkei Legislative Assembly to take action where necessary against organizations presenting a danger to public safety, public peace, order and good administration. A further provision empowered the Transkei government to prohibit the membership of such an organization; it could further legislate for the restriction of any African to a particular place. Clause 10 sought to arm the rest of the bantustan governments with the same prohibition powers. The bantustans could do this in agreement with the Minister or Deputy Minister of Bantu Administration and Development.

130. During the period under review, several new laws were enacted in preparation for the cession of so-called "independence" to the Transkei. The Status of the Transkei Act, No. 100 of 1976, declares that "The territory known as the Transkei and consisting of the twenty-eight proclaimed districts (mentioned in Schedule A)

105/ Government Gazette, 17 March 1976.

106/ House of Assembly Debates, 3 February 1976, col. 537.

107/ Rand Daily Mail, 17 June 1975.

is hereby declared to be a sovereign and independent State and shall cease to be part of the Republic of South Africa". The law provides that any rule of law which was in force in the Transkei prior to the commencement of the Act, including the Transkei Constitution Act, 1963, shall continue in force until repealed or amended by the competent authority in the Transkei. All treaties, conventions and agreements binding on the Republic immediately prior to the commencement of the Act shall continue to be binding on the Transkei, but that government may renounce any such treaty, convention or agreement. Clause 6(1) declares that "Every person falling in any of the categories of persons defined in Schedule B shall be a citizen of the Transkei and shall cease to be a South African citizen." According to Schedule B of the Act, the categories of persons who are citizens of the Transkei and cease to be South African citizens are: (a) every person who was a citizen of the Transkei in terms of any law at the commencement of the Act; (b) every person born in the Transkei of parents one or both of whom were citizens of the Transkei at the time of his birth; (c) every person born outside the Transkei whose father was a citizen of the Transkei at the time of his birth; (d) every person born out of wedlock (according to custom or otherwise) and outside the Transkei whose mother was a citizen of the Transkei at the time of his birth; (e) every person who has been lawfully domiciled in the Transkei or a period of at least five years, irrespective of whether or not such period includes any period prior to the commencement of the Act, and, on application in the prescribed manner, has been granted citizenship of the Transkei by the competent authority in the Transkei; (f) every South African citizen who is not a citizen of a territory within the Republic of South Africa, is not a citizen of the Transkei in terms of paragraphs (a), (b), (c), (d) or (e) 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; (g) every South African citizen who is not a citizen of a territory within the Republic of South Africa, and is not a citizen of the Transkei in terms of paragraphs (a), (b), (c), (d), (e) or (f), and who is related to any member of the population contemplated in paragraph (f) or has identified himself with any part of such population or is culturally or otherwise associated with any member or part of such population. 108/

131. The Financial Arrangements with the Transkei Act, No. 106 of 1976, provides for the payment of certain amounts to the Transkei in respect of the 1976/77 financial year and after 31 March 1977; for the transfer of certain property to the Transkei; and for the payment of such amounts as would have been provided for out of funds of the Province of the Cape to be sent in or on behalf of the Transkei.

132. The Transkei Constitution Amendment Act, No. 3 of 1976, changed the composition of the Legislative Assembly of the Transkei. This had originally consisted of 64 traditional members or chiefs and 45 elected members. The new composition will be 5 paramount chiefs, 70 chiefs and 75 elected members, a basis of 50:50 representation compared with the previous basis of 58:42. Other clauses in the measure placed various forms of control, including over civil aviation, within the legislative and executive authority of the Transkei.

108/ For the controversy about the nature of Transkeian citizenship, see paras. 161-167.

133. The Appeals from the Supreme Court of the Transkei Act provided for appeals from the Transkei Supreme Court to be heard by the Appellate Division of the Supreme Court of South Africa, pending the establishment of its own Court of Appeal by the Transkei.

(b) Violation of the right of all peoples to the exercise of sovereignty

134. Mr. Allan Brooks (431st meeting), representing the International Defence and Aid Fund, lodged with the Ad Hoc Working Group of Experts a copy of a study on bantustan policy by Barbara Rogers. 109/ He stressed that, far from the independence of the bantustans signifying their right to exercise sovereignty, the policy did not involve the transfer of power from the white minority to the black majority in South Africa. It involved the delegation of white power to a hand-picked group of collaborators with the South African Government on a tribal basis. It was a false decolonization of what was essentially a colonial situation. The bantustan policy was a dangerous development because its appearance and reality were quite different. It appeared to be giving the African people rights of freedom and self-determination, whereas in reality the policy was taking away the right to freedom and self-determination of the African people.

135. An anonymous witness (434th meeting) told the Group that although South Africa wanted to demonstrate to the outside world that the homelands policy leads to self-determination, it does not in fact do so; instead, it consolidates the apartheid system. The subdividing of the black groups, he said, would also create hostility.

109/ Barbara Rogers, in Divide and Rule: South Africa's Bantustans (International Defence and Aid Fund, March 1976), concluded that the Transkei will be independent in name only and will meet none of the criteria for independence generally recognized in international law. It is to be almost entirely financed and run by the South African Government. Alexander Kirby, in South Africa's Bantustans: What Independence for the Transkei? (World Council of Churches, 1976), argues that the bantustans are not equivalent to independent States like Botswana, Lesotho and Swaziland, for these former British protectorates were never part of the Republic of South Africa and any contribution made to the creation of South Africa's wealth was made principally by individuals who went there to seek work. The protectorates as a whole had never had any claim on South Africa. This was the opposite of the case with the bantustans, which had made a direct and concerted contribution to the establishment of what is now the wealthiest nation in Africa, and one of the richest in the world. They were now being "endorsed out" of the wealth they had worked to create. Independence for the Transkei and the other nine homelands would amount not to the granting of real rights to their peoples, but to the permanent withholding of rights in South Africa itself. This publication concludes: "The independence on offer to the Transkei is a spurious form of decolonization on the terms and in the interests of the colonizer" (p.59).

136. Mr. John Ennals, representing the Anti-Apartheid Movement, presented the Group (433rd meeting) with a 14-page document on "The bantustan programme of the South African Government", 110/ which argues that the granting of political independence to the different tribal States has been dictated by the attempt of the apartheid régime to preserve white rule in the post-colonial world. It was part of a long-standing strategy that was an essential condition of the maintenance of white supremacy. The purpose included the denial to Africans of all political rights and the attempt in the 13 per cent of the territory reserved for African occupation to make tribalism rather than nationhood the basis of statehood, because the notion of a united African nation posed a threat to the white nation-state. The professed aim was to confer independence on a number of ethnically based States, but even within its own terms of reference the policy was full of anomalies which reflect the arbitrariness of racist white domination. The ethnic basis of the proposed States had been frequently changed, in regard both to the number of homelands and to the nomenclature of the so-called national units into which the African people were to be divided. Three instances were given of this:

(a) The original proposal at the time of the Promotion of Bantu Self-Government Act of 1959 proposed eight national units, though before this the Tomlinson Commission had envisaged seven Bantu States. Neither the seven nor the eight included as a separate entity the people of the Ndebele tribe. Today, under Pretoria's final proposals for the territorial consolidation of the bantustans published in March 1975, a homeland for the South-Ndebele is envisaged, though as yet it has no organs of administration and is literally no more than a geographical expression;

(b) The people designated as forming the Xhosa national unit, instead of forming one large national unit of 4 million people, are to be divided between two homelands - the Transkei and the Ciskei;

(c) The national units themselves are figments of the minds of the apartheid planners, being but loosely related to the actual social groupings which coexisted in pre-colonial times. The people designated the Xhosa, for example, comprise a large number of Nguni-speaking tribal groups including the Xhosa, Tembu, Bhaca, Mpondo, Mpondomise, Mfengu and so on. It is debatable whether there was ever a Xhosa nation as such. The pre-colonial tribal society provides no conceivable basis for the determination of statehood today. The invocation of ethnic criteria by the South African Government for its bantustan programme is simply an attempt to cloak the retribalization of the African people in the respectable garb of the self-determination of nations.

Just as there is no historical justification for the bantustans, the document questioned their geographical basis. Comprising 113 separate fragments of land, the bantustans are intended to be reduced to 36. The largest national units are to have the most fragmented States - 10 fragments for the 4,010,000 Zulus (1970 figures) five fragments (in two States) for the 3,930,000 Xhosas, six fragments for the 1,720,000 Tswanas. The three national units which are to have unified territories are also among the smallest: Swazi - 498,700; South Ndebele - 233,000; and the South Sotho who number 1.5 million, of whom barely 10 per cent live in the homeland of Basotho Qwaqwa.

110/ Published in Objective: Justice, vol. 8, No. 1 (Spring 1976), pp. 14-22.

137. According to information available to the Working Group, the shortage and the fragmentation of land in the homelands is a major cause of their chronic non-viability. Statistics given in the House of Assembly of the population density of nine homelands are as follows:

Ciskei	66.4
Transkei	47.2
Qwaqwa	50.7
Lebowa	50.1
Gazankulu	40.8
Swazi	56.7
Bophuthatswana	24.1
Venda	45.1
KwaZulu	68.5

The rest of South Africa - the so-called "white" areas - has a population density of 13.7. 111/

138. Questions asked in the House of Assembly elicited certain limited information on the total area of several of the homelands and of how many separate areas they were made up. Thus the Bophuthatswana homeland comprises 3.8 million hectares and consists of 19 separate areas; the Venda homeland comprises 650,000 hectares and consists of three separate areas; and the KwaZulu homeland comprises 3.1 million hectares and consists of 48 separate areas. 112/ When finally constituted, the three homelands would comprise six, two and ten separate areas respectively. 113/

(c) Alien exploitation

139. A number of witnesses, including Mr. John Gaetsewe (418th meeting), Mr. Mzimandile Piliso (421st meeting) and Mr. John Pule Motshabi (427th meeting), described the Bantu homelands as reservoirs of cheap labour for the white economy. Mr. Gaetsewe said they were also a dumping ground for the sick and the children and those who were redundant to the immediate needs of the industrial economy.

140. The memorandum of the Anti-Apartheid Movement, presented as part of the evidence given by Mr. John Ennals (433rd meeting), dealt with the economy of the bantustans and their subjugation to the economic interests of the country as a whole. Practically all the mineral-rich parts of the country have been carefully excised from the bantustans. Even the development corporations established by the Government to promote economic progress in the homelands served white interests rather than black. Since the formation in 1959 of the Bantu Investment Corporation, it has invested R77 million worth of capital - R43 million in white-owned enterprises, R20 million in Corporation-owned enterprises and only R14 million in African-owned enterprises.

111/ House of Assembly Debates, February 1975, cited in X-Ray, March-April 1976.

112/ House of Assembly Debates, 26 April 1976.

113/ Ibid.

141. Mr. Neville Rubin, for the ILO, told the Working Group (420th meeting) that the International Labour Organisation was engaged in a detailed study of the implications of the homelands for labour policy in South Africa as a whole, since the time when the homelands were known as "reserves" and acted frankly as a labour pool for the economy. Mr. Andrew Kailembo (419th meeting) said the bantustans aimed at providing a permanent source of cheap labour to white industries, some of which were sited on the bantustan borders to fulfil this purpose. African workers thus became migrants in their own country, without registered trade unions and the right to strike, and without legal means of improving their conditions or protecting their interests.

142. From information available to the Working Group it appears that the heavy dependence of all the homelands on the export of migrant labour to the "white" areas of the country means the subjection of these populations to alien exploitation. 114/

143. Separate development, according to a researcher on migrant labour, 115/ has firmly entrenched the migrant labour system as a way of life. It is estimated that the average working life in the modern sector of a migrant labourer is 19 years. The migrant is not allowed to take his or her family to the place of work. In the 34 years between the censuses of 1936 and 1970, the number of migrants grew at an average compound rate of 3.1 per cent a year. In 1946-1970 it grew slightly faster than the number of economically active Africans. By 1970 one in three African workers was a migrant, and male migrants constituted 59 per cent of the economically active African men in the so-called white areas. The same survey estimates that 70 per cent of migrant workers from the Transkei are employed in the low-wage sector (agriculture, mining and services, mainly domestic). Migrants from other areas are split about evenly between the relatively high-wage sector (manufacturing, commerce, the public sector) and low-wage jobs. The survey points out that the modern sector has "benefited substantially from the perpetuation of the migrant labour system". It has not had to divert resources from directly productive investment to housing migrants and their families in the "white" areas. It has also held black wages at a lower level than would otherwise be the case since employers have been able to pay their migrants less because their families stayed behind in the reserves. The survey added: "Great as the benefits to the white-owned economy may be, from the perspective of the bantustans the story is very different. For every five men working in the rural areas in the bantustans there are six away from home working as migrants." The system is thus draining the bantustans of their best manpower.

114/ Several general publications on the bantustan policy consider that bantustan "independence" serves the interests of white people, not black, and that the white régime needs to win the world's acceptance of the Transkei's independence for its own economic and political reasons. Alexander Kirby, in South Africa's Bantustans: What Independence for the Transkei? (World Council of Churches, 1976), states that, economically, international acceptance of the bantustans means acceptance of the existence of permanent reservoirs of migrant black labour, whose people will always be accessible to the demands of the white economy on its terms (see the next section). The bantustans are therefore integral to the apartheid policy's continued success.

115/ Jill Nattrass, of Natal University's Department of Economics, read a paper to the conference of the Economic Society of South Africa which was cited in Financial Mail, 19 September 1975.

144. On the question of investment in the bantustans, Mr. Andrew Kailembo (419th meeting) said that the International Confederation of Free Trade Unions (ICFTU) had vigorously condemned investment promotion campaigns by the South African Government on the grounds that financial commitments in the way of investment in the bantustans would be a subsidy for further deportations to the homelands and the exploitation of a captive labour force, and would perpetuate the poverty and dependence of the bantustans, with their rapidly increasing populations in small and ~~badly~~-eroded reservations. According to information available to the Group, the attempts by the Bantu Investment Corporation to accelerate investment in the bantustans have stressed low homeland wages and a docile work force as investment attractions, along with low interest rates for loans and nominal plant rentals. 116/

(d) Obstacles to the right to freely pursue economic development

145. Mr. John Pule Motshabi (427th meeting) said the land tenure system in the homelands was not conducive to economic farming. The land is controlled and apportioned in small uneconomic lots, of one or two hectares, by chiefs and headmen, and yields are miserably low.

146. Mrs. Kelabogile Chilwane (427th meeting) told the Group that, since there was not enough land in any reserve to support its normal population, land allotment was a troublesome problem, aggravated by the resettlement in the reserves of Africans from the cities and white farms. African women in the reserves suffered even more than their menfolk. Allocation of land was an administrative act and could not be challenged in a court of law, and women seeking an allotment would usually receive only half the allocation made to a married man.

147. The memorandum of the Anti-Apartheid Movement, submitted as part of the evidence of Mr. John Ennals (433rd meeting), said that in recent years South African government spokesmen had clearly indicated that economic viability was not regarded as a precondition for the independence of the bantustans. They were to begin life in a condition of economic subordination to South Africa, from which they would never escape. It was an essential condition of the existence of the homelands that they remain underdeveloped and reliant on the export of manpower for bare survival, since otherwise - that is, if they were capable of providing employment and wealth sufficient to support the "national units" allocated them - they would cease to be pools of migrant labour supplying the apartheid economy.

148. Information available to the Group confirms that the "independent homelands" scheme involves no real alteration in the profound economic dependence of the African areas on the industrialized white economic "core". No ~~steps~~ towards "development" of the homelands have thus far begun to alter this central fact.

149. The first comprehensive review of bantustan economic data by the Department of Statistics reveals that for all the reserves together, annual net domestic product per capita is only R64, or just over R5 a month. Excluding the share of non-Africans, the figure is only R4 a month. Workers in border areas earn a total of R318 million a year, or R41 per capita. Migrants earn R857 million a year (R86 per capita) but only a minor part of this is remitted to the homelands. The nine homelands together produce manufactured goods for sale worth only R15 million a year, and agricultural produce for sale totalling R13 million a year. The detailed figures for 1973/74 are as follows:

Key figures 1973/74 117/

	<u>Agriculture</u>	<u>Manufacturing</u> (millions of rand)	<u>Total</u>	<u>Per capita</u> <u>net domestic</u> <u>product a/</u>
Ciskei	0.4	0.2	26.7	R66
Transkei	5.1	3.8	75.9	69
KwaZulu	4.0	2.8	75.6	53
Bophuthatswana	1.0	5.9	97.7	113
Lebowa	1.6	1.4	43.6	49
Venda	0.3	0.4	7.4	38
Gazankulu	0.3	0.2	9.4	48
Swazi area	0.2	-	3.0	37
Qwaqwa	-	0.1	2.4	53
TOTAL	13.0	14.9	341.8	64

a/ Including non-Africans' share (on average 23 per cent) as well as non-market production, such as gathering firewood.

150. According to a team of development economists of the Bureau for Economic Research, 118/ the expected annual increase in black manpower in 1977-1980 is 220,000: 105,900 in the common area and 114,100 in the bantustans. But in 1973-1975 the average number of new job opportunities for bantustan residents rose by a mere 65,286 (36,858 of them in border industrial areas). This represents only 65.2 per cent of the labour supply. The balance of nearly 28,428 could be seen as the annual average increase in the supply of migrant workers, which figure may be greatly boosted in the next few years by the expected slowing of the rate of job creation in the bantustans and border areas, while at the same time there are serious doubts about migrants being absorbed in common area jobs. The Financial Mail comments that the bantustan economies may never get off the ground while the magnet of the industrial centres is so powerful. 119/

117/ Financial Mail, 11 June 1976.

118/ Cited by Financial Mail, 2 July 1976.

119/ Ibid.

Transkei

151. An official study of the Transkei economy 120/ establishes the following:

- (a) That the Transkei can provide jobs for fewer than 25 per cent (395,000) of its population of 1,645,000;
- (b) That an estimated 350,000 work elsewhere as migrants and make by far the largest contribution (70 per cent) to the territory's income;
- (c) That although gross national income (GNI) increased by a healthy 343 per cent between 1960 and 1973, gross domestic product (GDP) is steadily declining as a proportion thereof. Thus in 1960 GDP accounted for 44 per cent of GNI, but in 1973 it accounted for only 26 per cent. The implication is that the Transkei is becoming more and more dependent on the earnings of migrant workers;
- (d) That each year 26,300 people come on to the labour market in the territory. Despite the fact that the Transkeian government increased expenditure on the provision of jobs from R8.7 million in 1972/73 to R36.1 million in the 1974/75 financial year, only 3,559 black jobs had been created up to 31 March 1975. These jobs had been created by white entrepreneurs acting as agents for the Xhosa Development Corporation. This total was expected to rise to 8,000, but would still be less than a third of the annual target of 26,300. The report in question concluded that internal savings are minimal as a consequence of the high dependency burden, and "the generation of capital from domestic sources takes place with great difficulty";
- (e) That plant production does not meet the internal demand for food in the Transkei, and staple food has still to be regularly supplemented from the rest of South Africa;
- (f) That in 1965/66, 62 per cent of the Transkei's total revenue came directly from the South African Treasury. By 1974/75 the share had risen to 77 per cent.

152. Of the estimated record budget for the Transkei of R135.7 million (an increase of R33 million over last year), R93 million will come from South Africa, indicating how heavily the Transkei will lean on South African aid. 121/ The Transkei Constitution Act allows for up to 15 government departments, and numbers of these, although taken over by the Transkei, will have to be financed by South Africa. The Transkei had contributed R28 million of the total budget,

120/ Bureau for Economic Research re Bantu Development.

121/ World, 29 April 1976.

the bulk - R22 million - coming from Transkei revenue sources. The sum of R14 million, which was the shortfall in the homelands requirements, had been secured in the shape of foreign loans, according to the Chief Minister, Paramount Chief Kaiser Matanzima. The overseas source was not disclosed, nor the terms of repayment. ^{122/} It was subsequently disclosed that the principal loan of R12 million was in fact for the Xhosa Development Corporation, though the proceeds would be for immediate use in the Transkei. The loan was being managed by two international banks, one British, one American (Hill Samuel and the Dow Bank). ^{123/}

KwaZulu

153. In the case of KwaZulu, despite the job-creation efforts of the Bantu Investment Corporation (BIC), the territory has become more, not less, dependent on income earned outside the bantustan. ^{124/} Between 1960 and 1973, income earned in KwaZulu itself rose 132 per cent to R80 million, while the income of Zulus working outside as migrants rose 275 per cent - more than twice as fast - to R150 million. The income of workers living in KwaZulu but commuting daily to work in nearby border areas has risen 62 per cent in three years, to R130 million in 1973. No figure is available for the percentage of the R150 million earned by migrant workers that is actually remitted to KwaZulu. Other studies indicate that as little as 20 per cent is sent home. ^{125/} Of KwaZulu's population living in the Bantustan itself, only 27 per cent are economically active, compared with 46 per cent outside. It has been calculated that an effort must be made to create at least 30,400 work openings a year for the period 1974-1976 in order to obviate the migration of manpower out of KwaZulu. But between 1960 and 1974 only 20,187 African jobs were created through the Bantu Investment Corporation and the Industrial Development Corporation. It is estimated that during 1974, 180,000 workers commuted daily to workplaces in the neighbouring areas. The low level of savings in the bantustan arises in part from low earnings, but also from the high adult male dependence burden, i.e. the number of children dependent on each man (2.9 in KwaZulu, 1 for the white population). Capital formation from internal sources is thus insufficient.

Bophuthatswana

154. Economic activity in Bophuthatswana itself generated only about 23 per cent of the territory's income, and the proportion appears to be slipping, according to a recent official survey. ^{126/} Some 64 per cent of Tswanas do not live in their so-called homeland at all, but in the common area. In 1972 less than

^{122/} Cape Times, 4 May 1976.

^{123/} Sunday Times, 11 June 1976.

^{124/} Economic Review of KwaZulu, published by the Bureau for Economic Research re Bantu Development, cited by Financial Mail, 12 December 1975.

^{125/} Financial Mail, 19 September 1975.

^{126/} Economic Review, published by the Bureau for Economic Research re Bantu Development, cited in Financial Mail, 14 November 1975.

14 per cent of the income earned by the Bophuthatswana population was actually spent in the territory. One of the many adverse consequences of the absence of manpower arising from the migratory labour system is that "the adult male dependence burden" of men in the homeland is very high; in other words, the number of people dependent on each man is very high. This means that the savings of the population remain at a minimum, and the state outlay on social services, such as health, pensions and education, is highly inflated. The extent of current expenditure makes it impossible to obtain adequate savings, with the result that capital formation from internal sources is insufficient, if at all possible. Of all the homelands, the location of Bophuthatswana puts it in a favourable position with regard to the decentralization of industry policy of the South African Government. Babalegi, 40 kilometres north of Pretoria, was intended to be the starting-point for industrial growth within the bantustan, while 104,000 workers in the homeland commute daily to jobs in "white" border areas such as Brits, Rosslyn and Rustenburg. By the middle of 1974 industrial decentralization in and around Bophuthatswana had created employment for some 23,600 Africans. But the current rate of job creation will have to be greatly stepped up. In the bantustan itself only 23 per cent of the people are economically active, whereas the figure for the common area is 45 per cent.

Lebowa

155. Within Lebowa, employment opportunities are very limited, according to a recent study. 127/ The Bantu Investment Corporation has developed two small industries; there is one private white concern operating under licence; and there are several small mines owned by white companies. Most Africans living in Lebowa who work locally do so in border industries. The mining industry is the biggest employer inside Lebowa but provides jobs for only a fraction of the labour offering itself. (The mines in Lebowa must get exemption from the Mines and Works Act to employ black miners, who are not scheduled persons under the Act.)

(e) Obstacles to the right to freely determine political status

156. Witnesses in the hearings of the Group testified on a number of issues related to the right freely to determine political status, among them (i) the enforced removal of people to bantustans; (ii) the imposition of the bantustan system on its peoples; (iii) the system of political representation operative in the homelands; (iv) the character of Transkei citizenship and the effects in rendering Africans in the "common" area of South Africa stateless; (v) consultation by referendum on Transkei "independence".

(i) Enforced removals to bantustans

157. Mr. Andrew Kailembo (419th meeting) said that the consolidation of the bantustans involved the forced removal of Africans to the homelands allocated to them. The use of force and the demolition of houses had become a predominant aspect of the implementation of this policy in recent years. (For further information, see sect. A, paras. 56-66.)

127/ Denis Becket, Rand Daily Mail, 28 January 1975, cited in X-Ray, November-December 1975.

(ii) The imposition of the bantustan system

158. An anonymous witness (429th meeting) said that the bantustan policy had been imposed on the African people without their consent and was calculated to serve the interests of the white minority. Claims that Transkeian "self-government" had grown out of the traditional institutions of chieftainship were specious, since chiefs had been reduced to civil servants answerable to the Government. 128/

(iii) The system of political repression in the homelands

159. The same anonymous witness (429th meeting) traced the political forms devised for the homelands in the Bantu Authorities Act of 1951, the Bantu Self-Government Act of 1959, and the Bantu Homelands Citizenship Act of 1970. The policy, he said was designed to withhold political rights from Africans.

160. The memorandum of the Anti-Apartheid Movement, "The Bantustan Programme of the South African Government", which was presented to the Group at the 433rd meeting, documented the character of "self-government" for the bantustans. Under enabling legislation created by the whites-only South African Parliament, the white-dominated Government has created seven legislative assemblies in the bantustans in none of which is there a majority of elected members. These assemblies comprise a total of 519 members, of whom no fewer than 326 are nominated (chiefs of various rank and headmen) and only 193 (37 per cent) are elected. Even the democratic form of this elected minority is denied democratic substance by the fact that elections take place in the absence of

128/ According to a study of Chiefship in the Tswana homeland by a social anthropologist, John L. Comaroff, many Tshidi believe that, far from ensuring the continuity of the chiefship, the introduction of the homeland system will eventually destroy it. The assumption that the chiefship will stay in force indefinitely is built into the masterplan of Tswana homeland government, and is embodied in the enabling legislation which defines the formal structures of each "self-governing" ethnic unit. Under the Tshidi system, the writer points out, the rights and duties of a chiefly incumbent were not immutably fixed; the chief and his subjects were thought to be involved in a perpetual transactional process in which the former discharged obligations and in return received the accepted right to influence policy and command people. The homeland system created by the South African Government had ostensibly tried to reconcile tradition with modern administrative requirements. But to many in the homeland the personnel of the administration were foreign interlopers in their territory; some chiefdoms had been left with unpopular office-holders who could not be removed; and the lekgotla (or tribal assembly) had been transformed into an administrative authority whose agenda was filled with numerous bureaucratic matters, as a result of which the political character of the council had been partially suppressed. Many in the homeland believed that their chiefship was dying, despite assertions to the contrary on the part of white administrators. This signalled the erosion of a central element in their culture and marked a dramatic escalation in the regulation of their lives by an external régime. As they saw it, neither their aspirations nor their traditions were fully comprehended in Pretoria. (John L. Comaroff, "Chiefship in a South African homeland", Journal of Southern African Studies, vol. I, No.1 (October 1974) (Oxford University Press), pp. 36-51.)

voters' rolls, of political parties (in several of the homelands) and of guaranteed rights of freedom of speech, assembly and movement, and with a partly absentee electorate dispersed among the millions of Africans living outside the homelands. The memorandum called this a travesty of parliamentary democracy perpetuated in a situation in which (1) the authentic national political organizations of the African people, the liberation movements, have been outlawed, and (2) the repressive laws of the white parliament and government are fully operative throughout the whole of South Africa, and create a climate of intimidation and repression in which no genuine choice can emerge, still less be exercised. The memorandum stressed that all major agencies of government - security, foreign relations, defence, labour, regulation of finance and currency, commerce and industry, railways and postal services - are the preserve of the Pretoria régime. Against this, the memorandum stated, "it is not surprising that the homeland legislative assemblies seldom sit for more than one or two months in the year, that their legislative programmes are in the main insignificant, and their role in the actual government of the African people peripheral". Furthermore, all the bantustans rely on Pretoria for 65 to 86 per cent of their revenue, and virtually all the senior administrative posts in the bantustans are occupied by white officials seconded and paid for by the South African Government.

(iv) The issue of Transkeian citizenship

161. Several witnesses dealt with the terms of Transkeian citizenship, which declares all persons with any connexion with the Transkei to be Transkeian citizens without any claim to South African nationality. (For the terms of the Act see para. 130).

162. Mr. Niall MacDermot (418th meeting) said that when the Transkei became the first of South Africa's supposedly independent homeland states, 3 million Africans of the Xhosa tribe would be deprived of their South African citizenship. Unless they were granted and accepted Transkei citizenship, they would be stateless persons. Half of these 3 million did not live in the Transkei but lived and worked in other parts of South Africa. They were being given no chance to choose their citizenship, and the change of status was being imposed upon them.

163. An anonymous witness (429th meeting) cited a report from the Rand Daily Mail of 16 June 1976, which pointed out that Transkeians outside the bantustan would "become foreigners in the land of their birth", namely South Africa.

164. Mr. Allan Brooks (431st meeting) said that the terms under which Transkei citizenship was interpreted meant that Africans would be given a tribal citizenship as an alternative to any real citizenship in South Africa as such. This would be a retrogressive step for the African people because, while they have no rights in what is called white South Africa, which is 87 per cent of the country, they claimed their rights in white South Africa and in South Africa as a whole. The bantustan policy would deny them any possibility of political rights and would instead give them surrogate rights in ten tribal states, of which the first would be the Transkei.

165. From information available to the Working Group, it is clear that some considerable controversy has surrounded the issue of Transkeian citizenship. Initially the Chief Minister of the Transkei, Chief Kaiser Matanzima, stated that Transkei citizenship would not be forced on the 1.3 million Xhosas living outside the Transkei. Questioned at length on chapter 7 of the draft Bill on the Status of the Transkei, Matanzima said there would be no automatic citizenship under clause 7. The Xhosa in the "white" areas would have freedom of choice. They could not be forced to take Transkei citizenship and the Transkei government would reject outright any move by the South African Government to force the Transkei to accept Xhosas living in the Republic who had renounced their citizenship and had become stateless. He added that only Transkei citizens would be able to buy land in the new independent state. ^{129/} In spite of these reports, it then transpired, according to a published report, ^{130/} that the South African Government had got its own way entirely on the question of citizenship. A perusal of the draft constitution showed the position to be the very opposite of the case stated by Chief Matanzima. It was clear that "every black man however remotely connected with the Transkei will become, whether he likes it or not, a citizen of that country when it attains independence on October 26". This report was followed by a categorical statement by the Minister of Bantu Administration that all Transkeian Africans would automatically become citizens of the Transkei after 26 October. ^{131/} Chief Matanzima persisted that citizenship was a matter for the Transkei government to decide. ^{132/} In mid May, the Transkei Parliament by a unanimous vote amended the draft constitution so that no blacks living outside the territory would be forced to take out citizenship. A press report stated: "The 1.3 million Xhosa-speaking Transkeians living in Johannesburg, Cape Town, Pretoria and other cities will thus remain citizens of South Africa if they so wish. That is unless the South African Government decides to contest the latest development. ^{133/}

^{129/} Rhodesia Herald, 4 April 1976, see also Guardian, 24 April 1976.

^{130/} Guardian, 28 April 1976.

^{131/} Guardian, 30 April 1976; see also Financial Times, 30 April 1976.

^{132/} Ibid; see also Rand Daily Mail, 19 May 1976.

^{133/} Guardian, 19 May 1976. During the debate in the House of Assembly about the Appropriation Bill, this matter of Transkei citizenship was raised by Mrs. Helen Suzman MP, who said she protested against "the iniquity of the clause which by the stroke of a pen can deprive something like 1.7 million people of their citizenship of the Republic of South Africa. If they do not take up citizenship of the Transkei, they will be rendered stateless". She pointed to "the confusion that quite obviously exists between the Chief Minister of the Transkei and the Minister (which) certainly has to be cleared up before 26 October, when the Transkei is scheduled to get its independence. There is an astonishing amount of confusion about this. The Chief Minister of the Transkei stated in an interview that he interpreted this clause in the draft constitution as meaning that persons of Xhosa origin living outside the Transkei could opt whether or not they want to become citizens of the Transkei. The Hon. the Minister, however, stated that no such option was available ..." Mrs. Suzman added that this would be a matter of great importance in international law. "I do not think South Africa will be permitted to render people stateless by the stroke of a pen". She stated she was concerned about the repercussions on Africans who are living in the urban areas of South Africa. House of Assembly Debates, 28 April 1976, cols. 5529-5530.

166. The differing interpretation of the nature of the citizenship measure meant, according to one comment, that since the Transkei would not automatically make Xhosas from the common area citizens, it would then be South Africa and not the Transkei that would be rendering them stateless. The Government would thus be creating a whole new problem of stateless persons. ^{134/} The statute subsequently gazetted by the South African Government forced all Xhosa-speaking Africans to become citizens of the Transkei whether they liked it or not. ^{135/} (See para. 130 above for Schedule B, which defines the categories of persons who are Transkeian citizens and will cease to be South Africans.) Chief Kaiser Matanzima subsequently warned in London of what he termed "a coming showdown" over citizenship rights in the Transkei. ^{136/} On the other hand, the Minister of Bantu Administration and Development said that there had been full agreement between the South African and Transkeian governments. ^{137/} A subsequent legal interpretation ^{138/} of the draft Transkeian constitution was to the effect that clause 57 (a) of this constitution provided that all persons who are citizens of the present Transkei will automatically become citizens of the independent Transkei, and in terms of the Transkei Constitution Act of 1963 all Xhosa-speaking Africans in the Republic are already citizens of the Transkei. The amendment to the draft constitution passed by the Transkei Legislative Assembly could affect only borderline cases, and the great majority

^{134/} Financial Mail, 21 May 1976.

^{135/} Guardian, 27 May 1976; see also Rand Daily Mail, 27 May 1976.

^{136/} Rand Daily Mail, 31 May 1976.

^{137/} Rand Daily Mail, 1 June 1976. Introducing Clause 6 of the Status of the Transkei Bill which deals with citizenship, the Minister of Bantu Administration and Development said: "I want to state immediately that an agreement was also reached at Cabinet level between the Transkei and the Republic in regard to the citizenship provisions - including Annexure B of the Bill - and also in regard to the machinery to deal with any question regarding Transkeian citizenship of persons where doubt may exist, namely by means of a joint board". (Assembly Debates, 7 June 1976, col. 8317). During the debate on the question of Transkei citizenship the Deputy Minister of Bantu Development contested arguments by members of the Opposition that there was a confrontation between the Government of South Africa and the Government of the Transkei with regard to citizenship: "My contention is that this is absolutely untrue and that there is no question of confrontation ... The matter has been settled by the Hon. the Prime Minister and the Chief Minister of the Transkei, and it (has been) decided that ... borderline cases in connection with citizenship would be decided by a joint board consisting of members of the two Governments". (House of Assembly Debates, 8 June 1976, col. 8402).

^{138/} See Financial Mail, 18 June 1976, for the legal interpretation by two lawyers of the Witwatersrand University Law School.

of common area Xhosas were not rescued from compulsory Transkeian citizenship by the amendment. The Financial Mail report stated that the apparent firm stand by Chief Matanzima against Transkei citizenship being thrust willy-nilly on common area Xhosas "conflicted with what their own draft constitution provides". One of the lawyers commented that stripping common area Xhosas of their South African citizenship amounted to "denationalization on grounds of race", which is contrary to the Universal Declaration of Human Rights and the 1961 Convention on the Reduction of Statelessness. 139/

167. The significance of the move to make Transkeians eligible for Transkeian citizenship only, according to one commentary, is that:

"By making Africans foreigners, government could claim that discrimination in South Africa was no longer based on race and colour but on the presumption that Africans in the common area are now foreigners, temporary sojourners, working in these areas as gastarbeiders (guest workers)... The argument breaks down of course because White foreigners living in the Republic can own land, buy guns, etc., and even apply for the franchise (via naturalization) whereas Africans cannot. It also breaks down because gastarbeiders in Western Europe are usually in fact temporary sojourners in the countries where they work, whereas it has been estimated that some 3.2 million Africans in the cities and towns in the common area are permanently settled". 140/

(v) Consultation by referendum

168. Mr. Niall MacDermot (418th meeting) told the Group that no plebiscite had been held even among those resident in the Transkei to determine whether or not they wanted an independent state. And according to information available to the Group, attempts from within the Transkei to have a referendum called on the issue of independence for the bantustan have been rejected out of hand by the Chief Minister of the Transkei, Paramount Chief Kaiser Matanzima. 141/ The leader of the Transkei Democratic Party, Mr. H.B. Ncokazi, maintained that the people of the Transkei were against "independence" and in the urban areas less than 5 per cent of Transkeians supported it. "If anyone disputes that, let him call a referendum". The same statement said that the party would be committed to retaining the Transkei as a part of the Republic of South Africa. 142/ Chief Kaiser Matanzima claims that tribal authorities, farmers' associations, sporting bodies, women's clubs, chambers of commerce and urban boards all over South Africa had been sounded out on the question of independence. 143/

139/ Ibid. See also the view of Professor L. Gering, formerly professor of law at the University of Durban-Westville, and an advocate of the Supreme Court, Rand Daily Mail, 12 June 1976.

140/ Financial Mail, 4 June 1976; see also International Herald Tribune, 14 May 1976.

141/ Rand Daily Mail, 7 January 1976.

142/ Rand Daily Mail, 5 March 1976; see also Rand Daily Mail, 16 March 1976.

143/ Rand Daily Mail, 5 May 1976.

(f) Cessation of armed action and repressive measures

169. The memorandum of the Anti-Apartheid Movement presented to the Group by Mr. John Ennals (433rd meeting) said that a new and revealing aspect of the bantustan programme was the growth of the repressive powers and apparatus of the State in those areas. The Pretoria régime had conferred upon the homeland leaders powers of the type it itself possessed in abundance, and which guaranteed that the rule of law would be non-existent in the homelands when they became independent. The KwaZulu government already had powers of detention without trial in respect of some of its districts, and the Ciskei had sought similar powers. The Gazankulu government had prohibited teachers, students and public servants from participating in politics. The Second Bantu Laws Amendment Act, No. 71 of 1974, empowered the homeland governments to assume extensive banning powers similar to those given under the Suppression of Communism Act. No less sinister were the rehabilitation centres in the homelands which could turn out to be forced labour camps or centres for the detention of political opponents.

170. Mr. John Gaetsewe (418th meeting) said that the Transkei proclamation R400 144/ enacted in 1960 was still in force, as were other laws framed by South Africa. Mr. Malcolm Smart for Amnesty International (434th meeting) told the Working Group that, apart from the operation of the various General Law Amendment Acts - the notorious 90- and 180-day detention laws - and the Terrorism Act, the authorities possessed additional powers of arbitrary arrest and detention without charge in the Transkei, where a state of quasi-emergency had existed since the State President of the day issued proclamation R400 in 1960. Several persons had recently been detained under this proclamation in the Transkei.

171. Mr. Andrew Kailombo produced evidence (419th meeting) of the creation of rehabilitation centres in the homelands which are intended to accommodate Africans convicted of pass law contraventions. The stated objective of the centres was to train inmates in "habits of industrial work", and to reorientate them towards their respective national units. In fact, the institutions would be virtual prison work camps, where inmates would be obliged to work for up to 56 hours a week, where payment "shall be a privilege to be earned by work", and rates would be determined by the authorities. Inmates found guilty of indiscipline could be sentenced to extra work, or days without food, or solitary confinement, as in prisons. Mr. Rubin (420th meeting) reported that the ILO had examined the question of the rehabilitation centres in its last annual report. 145/

144/ Under proclamation R400, introduced in 1960 as an emergency measure, all meetings are unlawful unless authorized by the Bantu Commissioner; there are powers to prohibit entry into any area and powers to prohibit departure. Any chief authorized by the Minister can order any African to move with members of his household, with livestock and movable property, from a place within the area of jurisdiction of such a chief to any other place specified, permanently or for a specified period. He can order the demolition of any hut or dwelling without incurring liability for compensation, and can impose fines of up to R100 a head. See Black Review 1974/5, published by Black Community Programmes, 1975, p. 5.

145/ Twelfth Special Report of the Director-General on the Application of the Policy of Apartheid of the Republic of South Africa (Geneva, ILO, 1976), pp. 3-5. See also E/CN.4/1187, paras. 31-32.

172. According to information available to the Group, 11 people were detained in the Transkei under the emergency proclamation R400 in June 1976, in an operation undertaken by the Transkei police. The detentions were announced by the Minister of Police in the South African Government, who said that the South African security police had assisted at the request of the Transkei police. 146/ The total of those detained later rose to 14. The following month four officials of the opposition Democratic Party were detained under proclamation R400. 147/ They included the woman secretary of the Dalindyebo region of the party.

173. The Transkei division of the Bureau for State Security (BOSS) was transferred to the homeland during May 1976. Sources disclosed that the Bureau's white agents would be seconded to the Transkei government. The intelligence service was to be directly responsible to the Chief Minister. 148/

174. According to information available to the Group, the Status of the Transkei Act provides that all unrepealed laws will continue in force in the Transkei after the declaration of "independence". 149/

175. Relations between the Transkei and South Africa are expected to be governed by treaty, of which 26 of an expected total of 48 have already been approved. One of those approved is a five-year labour treaty. All recruitment of labour will be arranged through the Transkei's 26 district labour bureaux, situated at magistrates' offices; or, in special cases, through the Department of the Interior. There are said to be no plans for the enforced repatriation of part of Transkeian workers' earnings in South Africa.

(g) The disruption of national unity and territorial integrity

176. Mr. John Pule Motshabi (427th meeting) told the Group that the constitution of ethnic bantustans meant that the African population would be constitutionally removed from the "white" areas of South Africa and would be permanently excluded from participation in the country's political institutions. The fact that the majority of the 18 million African population live and work outside the bantustans had been dismissed as irrelevant by the régime. The restriction of Africans

146/ Rand Daily Mail, 26 July 1976.

147/ Ibid.

148/ Cape Times, 3 April 1976.

149/ Government Gazette, vol. 133, No. 5198, 9 July 1976.

to 13 per cent of the country's land was unacceptable to the African people: "We claim the whole of South Africa is ours". The African population strongly opposed the country being cut into bits and pieces, and was not prepared to forfeit its claim to the riches of South Africa as a whole, to the vast mineral, industrial, fishing, agricultural and commercial sectors which are vested in white hands. Similar evidence was given by Mr. John Gaetsewe (418th meeting).

177. Chief Gatsha Buthelezi, Chief Minister of the KwaZulu homeland, has denounced the Government homeland policy and said South Africa as a whole must move towards majority rule. (He called for a series of national conventions to discuss this policy among others.) South Africa, he said, was one country, it had one destiny and one economy. ^{150/} The Chief Minister of the Lebowa homeland, Dr. Cedric Phatudi, said that apart from the Transkei, homeland leaders did not want independence under present circumstances. "We have an integrated economy. If you dismantle it there will be a disaster". ^{151/}

3. Opposition to and condemnation of the policy of bantustans

178. The Ad Hoc Working Group of Experts, having closely followed the developments concerning the establishment of bantustans, recalls that the General Assembly has repeatedly condemned the manoeuvres of the Pretoria régime to establish bantustans or "homelands" and accord sham "independence" to them.

179. In resolution 3411 D (XXX) of 28 November 1975, the General Assembly condemned the establishment of bantustans as designed "to consolidate the inhuman policies of apartheid, to perpetuate white minority domination and to dispossess the African people of South Africa of their inalienable rights in their country". The Assembly also called upon all Governments and organizations not to deal with any institutions or authorities of the bantustans or to accord any form of recognition to them.

180. In spite of widespread opposition by the African people of South Africa and members of the international community, the South African Government declared the sham "independence" of the Transkei on 26 October 1976. According to information published in the international press, most States have expressly condemned the so-called "independence" of Transkei and maintain the view that to recognize the Transkei would be to condone South Africa's "separate development" policy and ultimately deprive 18 million blacks - 71 per cent of South Africa's population - of legal rights in the country that most of them have always regarded as their native land. ^{152/}

181. Recognizing the nature of the sham "independence" of the Transkei and in pursuance of the decisions of the General Assembly, the Fifth Conference of Heads of State or Government of Non-Aligned Countries, held at Colombo, Sri Lanka, from 16 to 19 August 1976, adopted a resolution on non-recognition of South African bantustans. The resolution, inter alia, urged all States and committed

^{150/} The Times, 15 March 1976.

^{151/} Financial Mail, 24 October 1976.

^{152/} International Herald Tribune, 27 October 1976; the Guardian, 26 October 1976; Le Monde, 26 and 27 October 1976; Le Monde Diplomatique, October 1976.

Member States of the non-aligned movement not to accord recognition to any bantustan, in particular the Transkei, and committed the diplomatic representations of non-aligned countries throughout the world to wage a concerted campaign to dissuade all States Members of the United Nations from recognizing this fraudulent pseudo-independence.

182. In a statement regarding Transkei, the Secretary-General of the United Nations, recalling the position of the Security Council and the General Assembly on the question of the so-called "independence" of the Transkei, stated that "the South African Government must understand that the world community will never accept the establishment of the Transkei or any other so-called bantustan as separate political entities. The only viable solution is to turn away from the policy of apartheid and allow all the people of South Africa to exercise fully their basic human rights".

183. Reacting to the fact that the racist régime of South Africa had declared the sham "independence" of the Transkei on 26 October 1976, the General Assembly adopted on the same date resolution 31/6 by which it strongly condemned the establishment of bantustans as designed to consolidate the inhuman policies of apartheid, to destroy the territorial integrity of the country, to perpetuate white minority domination and to dispossess the African people of South Africa of their inalienable rights; rejected the declaration of "independence" of the Transkei and declared it invalid; called upon all Governments to deny any form of recognition to the so-called independent Transkei and to refrain from having any dealings with the so-called independent Transkei or other bantustans; requested all States to take effective measures to prohibit all individuals, corporations and other institutions under their jurisdiction from having any dealings with the so-called independent Transkei or other bantustans.

C. FARM LABOUR SYSTEM

184. The question of farm labour was treated in detail for the first time by the Ad Hoc Working Group of Experts in its interim report (see E/CN.4/1187, paras. 138-172), which described the situation of African agricultural labourers as the largest single group of workers in South Africa (para. 131), and the most poorly paid (para. 146). Reference was also made to the lack of official or independent information, including facts and figures on numbers of farm workers, their wages and conditions (para. 132). This scarcity of factual material has persisted through the period under present review.

185. The following figures on employment in agriculture, extracted from the official agricultural census for 1972/73 (the latest published), indicate a drop in the total number of agricultural workers, of every racial group, since the 1969 figures given in the interim report (E/CN.4/1187 para. 132).

Employment in agriculture -- Agricultural census 1972/73 153/

	<u>African</u>	<u>White</u>	<u>Coloured</u>	<u>Asian</u>	<u>Total</u>
Regular farm employees	626,723	11,890	93,953	3,672	736,238
Casual farm employees	549,121	641	102,844	420	653,026
Domestic servants on farms	99,320	-	17,045	191	116,556
Over-all totals	<u>1,275,164</u>	<u>12,531</u>	<u>213,842</u>	<u>4,283</u>	<u>1,505,820</u>

1. Methods of Recruitment of African Agricultural Workers

186. The historical background to the demand by white farmers for cheap black labour on their farms, the dispossession of Africans of their land and the use of the pass laws and a system of cash taxes to force them to work on white farms, was described in the interim report (E/CN.4/1187, paras. 134-144).

187. That report set out the systems under which farm labour was recruited -- traditionally as labour tenants (sharecroppers) or squatters -- which systems have been phased out over the past decade to be replaced, under the Bantu Laws Amendment Act of 1964 and the Bantu Labour Act of the same year, by registered labourers recruited under annual contract direct from the "homelands" -- that is, as migrant labourers who, unlike labour tenants and squatters, leave their families in the "homeland". No comprehensive figures on the phasing out of labour tenancies were available for the period under review, but the Minister of Bantu Administration told the House of Assembly on 25 June 1976 that 186 "redundant" labour tenants from Natal were "resettled" in the Bantu homelands during 1975.

153/ Agricultural Census No. 46: Report on Agricultural and Pastoral Production 1972/73. The 1973/74 census, currently in production, suggests that the number of workers on white farms has still further declined, to a total of 1.45 million (see Financial Mail, 28 May 1976).

188. Several witnesses, including Mr. Gaetsewe (418th meeting), reminded the Group that the land policy which deprived Africans of all but a tiny proportion of South Africa's land area, and the pass laws which banned them from urban areas without special permission, combined to force them to seek work in the most undesirable areas, namely, in the mines and on the farms. Mr. Kailembo (419th meeting), referred to the "semi-slave" condition of black labour on white farms, and reminded the Group that the International Confederation of Free Trade Unions has frequently condemned South African agricultural labour as "forced labour". Mr. de Angeli of the World Federation of Trade Unions (419th meeting) insisted that the question of recruitment of agricultural labour could not be separated from the question of migrant labour as a whole. He reported that his organization was at present studying the South African Government's "homeland" policy in relation to the migrant labour system, including its application to agricultural workers.

189. Mr. Motshabi (427th meeting) also referred to the practice, under the Bantu Service Contract Act of 1932, whereby a farmer may call on the wife and children (from eight years of age) of a labourer to work for him without extra payment; and parents may not contract their children to work for another farmer without the consent of their landlord.

190. In the Group's interim report (E/CN.4/1187, para. 143) it was suggested that the recently established aid centres set up in various cities to "help find employment" for Africans arrested under the pass laws would in fact be used to direct labour to the farms, and witnesses before the Group in its 1976 meetings confirmed this view (see para. 211 below). According to the Minister of Bantu Administration, 221,537 pass law offenders were referred to such centres in 1975, of whom 61,242 were sent to the "homelands" and 21,636 were assisted to find employment. No information was offered on how many of those found employment were sent to farms. 154/

191. Mr. Neville Rubin, representing the International Labour Organisation, pointed out (420th meeting) that a certain number of farm workers, notably in the Orange Free State, were migrants from outside the Republic, in particular from Lesotho, and that these workers were subject not only to the disabilities of African agricultural workers in general but also to intergovernmental agreements. For instance, the Governments of neighbouring countries may agree to supply a certain number of workers annually, sometimes involving payment of wages directly to the Government concerned or into banks or post office accounts in the country of origin. Sanctions for "misbehaviour" may involve deportation. In this connexion, Mr. Rubin raised the possibly complex legal status in the future of migrants from "independent" homelands.

2. Conditions of African agricultural workers

(a) Methods of Control

192. The Group's interim report drew attention to the various repressive measures enacted to control African farm labour (E/CN.4/1187, paras. 145, 146).

154/ Rand Daily Mail, 26 June 1976; House of Assembly Debates, 25 June 1976.

193. Mr. Neville Rubin, in his testimony (420th meeting), referred to the repeal in 1974 of the "notorious" Masters and Servants legislation, which he described as "almost a feudal piece of legislation"; but he pointed out that it was also the only piece of legislation that applied in any sense to farm workers and provided any opportunity for redressing wrongs against an employee, since all existing industrial legislation specifically excludes agricultural workers. No legislation has been passed to replace these clauses and provide protection of any kind for agricultural workers.

194. Other witnesses also stressed the specific exclusion of agricultural workers from industrial legislation, which leaves them at the mercy of what Mr. Motshabi (427th meeting) called the "industrial serfdom" of regulations promulgated under the Bantu Labour Act (see E/CN.4/1187, para. 145). Farm labour, said Mr. Rubin (420th meeting), remains "the least protected form of employment ... shorn almost entirely of any variety of protection, either as to minimum wages or as to the rights of workers to organize in any way".

195. Mr. de Angeli (419th meeting) insisted that no change could be expected in the working conditions, hours of work or rates of pay of African farm workers as long as they were denied "the fundamental freedom of free choice of work and ... the possibility of expressing themselves and making their claims known in a trade union organization".

(b) Wages and working conditions

196. Figures extracted from the 1972/73 report on agricultural and pastoral production indicated that the average annual wage for African regular employees on white farms at the time of the census was R152 in cash plus R65 in kind (less than R13 per month in cash), and for casual employees R50 (R4.16 per month) in cash and R12.5 in kind. White regular employees received on average R2,931 per year (R244 per month) in cash and R131.5 in kind. Provisional figures for the 1973/74 census give the average wage for African workers as under R14 per month. 155/

197. Mr. Motshabi (427th meeting) drew the attention of the Working Group to a study on wages conducted by Tim Muil of the Natal Mercury in 1972/73. Mr. Muil found several farmers paying casual (seasonal) workers only 15 cents a day, without food, that is about R3.60 a month for a six-day week; but he concluded that the average African rural wage was about 40 cents a day, or just under R10 a month. Wages and conditions vary considerably from province to province, and on the Western Cape fruit, grain and sheep farms, adult males are paid 50-80 cents per day (up to R20 per month).

198. Mr. Motshabi went on to describe working and living conditions as "belonging to the feudal age". He pointed out that farm labourers may work 14 hours a day or more and to illustrate the vast gap in living conditions between white farmers and African farm workers, described the housing of each as follows:

"The farmer and his family live in huge brick buildings with all the latest gadgets, expensive furniture, radio, telephone, record players, etc. The farm workers, despite the fact that some farmers did improve and ensure adequate housing for their employees, nevertheless live - the vast majority - with amenities that are essentially the same as they were a hundred years before. Workers continue to live in wattle and dung huts, in shacks and -

a more recent development -- in compounds. They have no electric light, water comes either from an outside tap or, more commonly, has to be fetched by bucket from some distance away, and lavatories, if they exist, are of a pit type."

He added that poor food, inadequate clothing and the absence of medical facilities account for the high incidence of malnutrition and disease, notably tuberculosis, among African farm workers and their families.

199. Mr. Motshabi also drew attention to the inadequacy of educational provision for the children of farm workers (see E/CN.4/1187, paras. 152-153). He described this as a "shocking state of affairs". In 1968 there were only 2,857 farm schools serving 233,417 children in lower primary classes, with little tuition provided above this level. Since a Government notice to local authorities in 1963 banned rural children from attending schools in urban areas, secondary education for the children of farm workers is virtually inaccessible. Even the provision of primary schools is not encouraged, being actually prohibited on farms of less than 200 morgen, and while subsidies of 50 per cent of capital cost are available for higher primary schools, lower primary schools must be built entirely at the farmer's expense.

200. Mr. Motshabi further drew the attention of the Group to the long tradition of brutality by white farmers towards their employees, covered in some detail in the Group's interim report (E/CN.4/1187, para. 155).

201. One witness, Mr. Mamparu (427th meeting), gave testimony arising from his personal experiences among farm labourers.

"African farm workers are having a very difficult time under the farm employers. The Africans find it very, very difficult to work under the conditions in the farms and the previous speaker has already mentioned a few of the points, but I will add to what he has already mentioned. The African workers at the farms have no help from anywhere ... We were trying to organize the farmers to show them the importance of their labour to their masters and it was difficult, because if you were seen organizing the African workers your life was in danger in the sense that you could be shot at any time on sight ... Many of our farm labourers have died in the farms, they have been buried in the fields and they said they were making manure out of their bodies. They killed them while digging potatoes because they were digging with their hands trying to get the first-grade potatoes. If you use a spade shovel you get killed because they say you are cutting them and you are spoiling them. You find an elderly man in the field herding cattle, having no clothes on but just a sack. There is no stipulated time for starting work on the farms. People get up very, very early with their families to go and work for their employers. Their time is regulated by sunrise and sunset. Before sunset there is no chance of being freed. If you complain that you, as a father, work for the farmer, the farmer will turn round and ask you where do your children sleep? The farmer expects my wife to work in the kitchen and do the farmer's washing and the children are also being assigned to look after sheep and also cattle."

202. All the witnesses who dealt with the question of farm labour made the point that wages and conditions in agriculture remain the worst in the Republic, and that they have not changed substantially throughout this century. No improvement has been recorded in the period under review, and witnesses expressed their opinions that change is simply not possible under the present system (e.g. Mr. de Angeli, Mr. Rubin, Mr. Gaetsewe, Mr. Motshabi). Mr. de Angeli felt that even the collection of data on labour conditions was impossible in a situation where no organizations could exist to protect the interests of agricultural workers.

3. Comparative analysis of the situation of African workers in the agricultural sector and in other sectors

203. As was made clear in the Group's interim report (E/CN.4/1187, paras. 157-158) no wage determination or workers' protective legislation applies to agricultural workers; and partly as a consequence of this fact, these workers have not benefited from the general improvements in black wages that have taken place since 1973 (*ibid.*, paras. 160-163).

204. The interim report also mentioned the peculiar position of farm workers in that part of their wages is paid in kind (E/CN.4/1187, para. 163). The Group notes that the tendency of official policy to reduce the number of farm workers living on farms with their families and to replace them with contract workers who leave their families in the homeland (see para. 187 above) would tend to reduce the value to the worker of any payment in kind (i.e. the family would not be able to share in any food, housing or medical care provided by the farmer).

205. The figures for average cash wages to African agricultural workers given in paragraph 196 above indicate that these rose by barely R1 per month between the censuses of 1972/73 and 1973/74 and that cash wages were no higher than R14 per month. No evidence is available to the Group on increases in agricultural wages since then.

206. These figures, when set against the record of pay rises for African workers in other sectors of the economy, suggest a widening disparity between the wages of agricultural and industrial workers. The figures quoted by Mr. Rubin, for instance (para. 107 above), reveal that the median wages of 230,000 black workers employed in over 100 categories of non-agricultural jobs rose by between 5 and 15 per cent in the preceding year; and the Urwick-UAL International survey of non-white employment published in 1975 (see para. 111 above) confirmed over-all percentage wage increases for Africans of 20.6 per cent. Agricultural wages would appear to have risen over a year by only about 7.5 per cent.

207. In cash terms, the run of R14 per month, the average received by African agricultural workers according to the Agricultural Census for 1973/74, may be compared with the figure of R1,152 per year (R96 per month) paid to African railway workers (see para. 119 above), or that of R65-R70 per month as median wage for 120,000 unskilled African workers covered by the Urwick-UAL survey already mentioned. 156/

156/ Quoted in Twelfth 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, 1976), p.22.

208. According to the figures quoted above (para. 196), the ratio of annual white to black wages in agriculture in the year 1972/73 was 19:1. The average ratio over the whole country for 1973 of white to black annual per capita income was 14:1. Similarly, the gap in average annual wages between white and black workers in agriculture was R2,779, compared with an absolute gap in average incomes per head of R2,050. 157/

4. Farm gaols and private gaols

209. The historical and legal background to the use of black convict labour on South African farms were described in the interim report (E/CN.4/1187, para. 165), and the so-called "volunteer scheme" by which Africans arrested for pass offences in urban areas were given the "option" of a period of work on a farm, in gaol conditions, in place of prosecution, was set out in the same report (paras. 167-170).

210. No evidence of any change in the practice of using convict labour on farms, and setting up farm gaols privately owned by farmers to accommodate convict labourers, has been presented to the Working Group for the period under review. On the contrary, several witnesses -- Mr. Motshabi (427th meeting), Mr. Kailembo (419th meeting), Mr. Gaetsewe (418th meeting) -- explicitly confirmed the continued use of convict labour and criticized the inhuman conditions under which such labour is confined and a situation in which farmers are given a vested interest in crime; and further information available to the Group suggests that the use of convict labour has not decreased appreciably in recent years, in spite of government promises (E/CN.4/1187, para. 171) that it would be phased out. The Minister of Prisons told the House of Assembly in May 1976 that a total of 87,543 were "released on parole and placed in employment with various employers" during 1975, though he had no record of how many of these were employed on farms. 158/ He also gave the figure of 22,237 as the average daily total of prisoners working for government, local authorities, institutions and private persons, 159/ compared with a daily average of 24,000 in 1973. 160/ The total number of inspections of farm prisons had increased over the same period from 357 inspections in 1972 to 773 in 1975. 161/

211. Mr. Gaetsewe (418th meeting) and Mr. Kailembo (419th meeting) insisted that in spite of the "abolition" of the "volunteer" scheme, pressure on African pass offenders to accept farm labour as an alternative to a gaol sentence seemed to remain an important source of recruitment of African agricultural labour. Both the labour bureaux in the homelands and the "aid centres" in the cities appear to feature as centres of pressure of this kind.

157/ Survey of Race Relations in South Africa 1975, p.163. No figures are available to the Working Group on average industrial wages, or over-all average wages, to make a direct comparison with the agricultural wages quoted.

158/ House of Assembly Debates, 21 May 1976.

159/ Ibid.

160/ House of Assembly Debates, 25 May 1973, quoted in document on "Prison labour on farms in South Africa" handed in by the witness Mr. Gaetsewe.

161/ House of Assembly Debates, 15 June 1973, 21 May 1976.

212. Mr. Gaetsewe, in a paper on "Prison labour on farms in South Africa", presented on behalf of the South African Congress of Trade Unions, stressed that prison labour of this kind serves to keep wages of other farm workers low. The document added: "With present unemployment and underemployment amongst Blacks in South Africa, and the extremely low wages in agriculture, there seems little ground for arguing that prison labour is necessary on the farms".

Child labour

213. The use of child labour on South African farms was described in the Group's interim report (E/CN.4/1187, para. 144). During the period under review a report was prepared by the Administration of Coloured Affairs on the hiring of Coloured children from farms in the Western Cape to "illegal" employment in urban areas. Children were allegedly being "lured by promises of better conditions and pay" by private employers. Press reports indicated that "several children were found working as domestic servants in private homes, some of them in insanitary conditions with little or no pay". ^{162/} The report when published made the points that canvassing of farm children sometimes had its merits because young girls specially had no future on the farms; that recruitment of farm children with parental consent occurred in some four cases among 1,000 children and without parental consent only in one case among 1,000 children. Amounts involved in agreements with parents ranged from less than R5 to R15 per month, but only 39 per cent of recruiters fully honoured their agreement. The report recommended no new legislation to deal with the problem, ^{163/} but Mr. Solly Essop, of the Coloured Representative Council, accused the Administration of "negligence" in handling the child labour issue, and of "missing" the fact that farmers were exploiting children of school-going age and paying "slave wages". ^{164/}

^{162/} Cape Times, 20 January 1976.

^{163/} Cape Times, 18 February 1976.

^{164/} Cape Times, 20 February 1976.

D. STUDENT MOVEMENTS

1. Introduction

214. The interim report of the Ad Hoc Working Group of Experts (E/CN.4/1187) was the first in which the Group specifically studied the question of student movements, although previous reports had drawn attention to grave manifestations of apartheid in the field of education, including the strict application of race discrimination imposed in the field of higher education; and to the repression of student movements that have challenged official educational policy. The interim report contains a summary of the history of higher education in South Africa, in particular of the segregation of university education following upon the Extension of University Education Act No. 45 of 1959 (paras. 177-184), the establishment of the "tribal" universities and the special universities for Indian and Coloured students (paras. 202-206) and the history of the various student movements (paras. 208-218).

215. The main development in the field of student movements during the period under review has been the series of uprisings during 1976 among students, not only in universities and training colleges, but in high schools throughout the country (see sect. A, paras. 49-55, above). The Group has therefore included in the present report an analysis of the background to race discrimination in South African schooling and the imposition of the policy of Bantu education. This analysis appears in section 3 below (paras. 219-235).

2. Relevant legislation

216. The legislation relevant to university education was summarized in the Group's interim report (E/CN.4/1187, paras. 176-188). It was also pointed out (paras. 189-190) that students, like other members of the population, are subject to the network of security legislation, which has been widely used to suppress student movements.

217. During the period under review, no further legislation has been passed specific to university education, although new security legislation, in particular the Internal Security Amendment Act of 1976 (see sect. A above, para. 70), is relevant to the suppression of student movements.

218. However, during 1976 the whole policy of State control of the black universities, including policy on staffing and admission, control and dismissal of students, has been called into question, as a result of the uprisings in black universities and high schools (see paras. 245-251) and specifically by the publication of the "Snyman Report", that is, the report of the Commission of Inquiry into the University of the North (Turfloop) (see paras. 220-221, 241). The Minister of Bantu Education, Mr. M. C. Botha, however, indicated after the publication of the Snyman Report which recommended that the university be given autonomy on the same lines as that granted to white universities, 165/ that no change in the law was contemplated, though he promised that "everything possible" would be done "within the powers of existing legislation". 166/

165/ Cape Times, 10 June 1976.

166/ Rand Daily Mail, 11 February 1976.

3. Background to student uprisings in 1976

(a) Educational policy

(i) Higher education

219. The imposition of apartheid in higher education, the exclusion of black students from the "open" universities and the setting up of separate black universities on a tribal basis was described in the interim report (especially paras. 191-207).

Attention was drawn to the status of the black universities under the control of the Bantu Education Department (in contrast to the white universities, which remained largely autonomous), which regulates staffing, syllabuses and admissions; and to the fact that university councils and senates, as well as the Rectors and in most cases the majority of the staff, are white (paras. 178, 235).

220. Information available to the Group indicates that during the period under review the whole question of race discrimination in the black universities has come under serious public scrutiny, mainly as a result of the report of the Commission of Inquiry into the University of the North (Turfloop), following disturbances in the university in September 1974 (see E/CN.4/1187, paras. 234-235), which was published in February 1976 and of the report of the Jackson Commission on Africanization at the University of the North, during the same month.

221. Mr. Justice Snyman identified the fact that blacks are excluded from control of their own university as a major factor behind the discontent of both students and staff, and recommended that the relevant legislation should be amended so that black universities should have the same autonomy as the white universities; that apart from a minority nominated by the State President, the Rector and the Senate, other members of the university council should be nominated by interest groups representative of the black community; that the Rector and Chancellor should be appointed by the council on recommendation of the Senate, and that the council should have power to administer its own financial affairs. Staff should not have to sacrifice promotion if this meant authority over a white. And students at undergraduate level should be admitted regardless of ethnic grouping, and at graduate level should be free to apply to any university, black or white. 167/

222. The Jackson Commission endorsed the Snyman recommendations that Turfloop's council should be black controlled, and went on to recommend that black administrators should also play a greater role in the school system, which the report says cannot at present produce sufficient students ready to take university courses in the normal time. To rectify this situation, "Black pupils need better schools than white pupils".

223. The report also proposes that Turfloop establish special relationships with other South African universities to encourage advanced study and research, and that the linguistic proficiency of lecturers be tested before they are appointed. It regretted the complete separation of the black and white communities at the university: "The university will not function satisfactorily so long as this continues". 168/

167/ Rand Daily Mail, 10 February 1976.

168/ Rand Daily Mail, 11 February 1976.

224. According to a South African press report, 169/ following the publication of these reports the Rectors of the black universities have approached the Government to amend the law so that whites can attend their institutions. According to the report, "a change in the Act would give the universities credibility with academic and educational establishments overseas".

225. Although an African has, for the first time, been appointed rector of a university - Mr. W.M. Kgware is to succeed Mr. J.L. Boshoff as Rector of the University of the North - two-thirds of the present teaching staff are white. 170/

226. According to information supplied in the House of Assembly, a total of 13,783 white students received degrees or diplomas at residential universities in the year ending 31 May 1975; 222 Coloured students at the University of the Western Cape and a further 46 at other universities; 350 Asians at Durban-Westville and 120 at other universities; and 697 Africans at tribal universities, plus a further 19 at other universities (excluding the correspondence University of South Africa). 171/

227. The Minister for Bantu Education announced in Parliament in February that a new medical school for Africans was to be established near Ga-Rankuwa outside Pretoria, to produce 150 medical doctors and 35 dentists annually from 1982 and 1983 respectively. 172/ Up to the present, most African doctors (since Africans were excluded from the medical schools in white universities) have been trained at the Durban Medical School of the University of Natal, which has trained 216 African doctors in 24 years but which is in future to be closed to Africans, a move which has caused protests from both the Durban Medical School and the University of the Witwatersrand. 173/ According to information given by the Minister of National Education, a total of 601 white doctors qualified at the end of 1975, 21 Coloured doctors, 65 Indians, and only 6 Africans. 174/ When the enabling Bill was presented in Parliament in March 1976, it emerged that the Government would exercise strict control over both administration and admission of students, which would be limited to members of the black South African "national groups". 175/

(ii) School system

228. According to information before the Group, race discrimination in education remains a major grievance among all blacks in South Africa. According to the testimony of Mrs. Chilwane (427th meeting):

169/ Sunday Times, 2 May 1976.

170/ Sunday Times, 4 July 1976.

171/ House of Assembly Debates, 23 March 1976, 28 April 1976, 5, 7 May 1976.

172/ House of Assembly Debates, 5 February 1976.

173/ Star, 17 January 1976.

174/ House of Assembly Debates, 30 April 1976.

175/ Rand Daily Mail, 31 March 1976.

"Education, which should be the birthright of people of all races, is not uniform in South Africa. There is rigid segregation in the schools, and the education that black children receive is grossly inferior to education provided for whites by the State. Education is segregated. There are different schools for members of different racial groups. Schools for Coloured and Indian children are inferior to white schools; and the schools for African children are at the bottom of the scale, in terms of financial resources, amenities, teachers' qualifications, books, teacher-pupil ratios, prospects for progress to higher classes. African children have to pay for books and contribute towards school fees and uniforms, whereas education for whites is free and compulsory."

And Mrs. Rankin, who said that she was seven years old and just due to start at school when Bantu education was imposed in 1954, described this system (431st meeting) as "designed specifically to keep an African subservient to the whites in South Africa, to foment tribal division, to make Africans think in terms of being a Zulu, or a Xhosa or a Sotho".

229. According to information available to the Group, although the money spent on Bantu education had grown steadily since 1954 (from nearly R16 million in 1953/54 to nearly R151 million, excluding universities, in 1975/76), and the number of African school children has quadrupled (850,000 at school in 1954 and 3.7 million in 1975), 176/ the gap in expenditure on white and black education has increased over the same period: in 1953/54 expenditure on educating a white child was seven times that spent on educating a black child; in 1974/75 it was seventeen times that spent on educating a black child - that is, R671 was spent on every white pupil and only R38 on every black pupil. 177/ The total of R628 million spent by the State on white education in the financial year 1974/75 was more than twice the total spent on African, Coloured and Asian education combined. 178/

230. In addition, according to the Financial Mail, 179/ some 27 per cent of African children of school-going age still receive no schooling at all; and the pupil-teacher ratio for Africans is three times that for whites (1:56 in 1974 as against 1:19 - 1972 figures - for whites; the ratio was 1:28 for Coloured and 1:27 for Asian pupils in 1974). 180/ Further, qualifications of black teachers tend to be very low: in 1975, of a total of 68,083 African teachers employed in the Republic, only 7,631 had passed the matriculation (university entrance) examination or received a university degree; 181/ and at best African teachers are paid 60 per cent of the salaries paid to white teachers. 182/ Double sessions, whereby the same teacher teaches two different "shifts" of pupils each day, operates in the first two years 183/ - a "temporary" system which the Minister has failed to change in the past 20 years.

176/ Financial Mail, 29 August 1975.

177/ Sunday Times (Johannesburg), 23 May 1976.

178/ Rand Daily Mail, 20 March 1976; see also House of Assembly Debates 18 February 1976.

179/ Financial Mail, 29 August 1975.

180/ Race Relations News, April 1976.

181/ House of Assembly Debates, 6 May 1976.

182/ Rand Daily Mail, 27 March 1976.

183/ Financial Mail, 25 June 1976.

231. One of the most striking results of the discrimination in South Africa's education system, in the observation of the Group, is the "drop-out" rate among African children, followed by that among Coloured and Asians, in comparison with whites. Figures quoted from the South African Department of Statistics 184/ indicate that in 1973, 22.83 per cent of adult whites were educated to matriculation or beyond, and only 3.24 per cent Asians, 0.94 per cent Coloureds, and 0.27 per cent Africans. An analysis of the progress through school of the 1962 intake of African pupils, based on the Annual Report of the Department of Education, 1974, 185/ shows that of 426,827 children entering primary school, only 49,504 (less than 12 per cent) entered secondary school, and only 6,732 (1.4 per cent) entered the matriculation year (fifth year of secondary school). An analysis of the 1975 enrolment of African schoolchildren 186/ indicates only 0.24 per cent of the total entering matriculation year. In Soweto, according to answers given in the House of Assembly, 143,030 pupils were enrolled in primary schools in 1975, compared with 25,598 in secondary schools the same year, and only 462 passed the senior certificate, the school-leaving examination. 187/

232. Witnesses before the Group also made the point of the significance of the compulsory learning of Afrikaans for African schoolchildren. Mrs. Rankin (431st meeting) stressed that "we were not given any choice" (the Bantu Education Act gave the Minister power to decide on syllabus and content of African schooling - see E/CN.4/1187, paras. 194-197), and that children were taught in no fewer than three languages - "mother tongue" through primary school, then English and Afrikaans in secondary school.

233. According to information before the Working Group, the question of compulsory instruction in Afrikaans came to a head in the southern Transvaal, including Johannesburg (and therefore Soweto), after the Department of Bantu Education decided in 1975 to enforce the "50-50" rule in the area by making the teaching of mathematics and history in Afrikaans compulsory in 1976. The "50-50" rule dictates that African secondary schoolchildren shall be taught equally through the medium of English and Afrikaans, but it had not been fully enforced in the light of African insistence, both in urban areas and in all the homelands, on the use of English. The rule was denounced by a number of black leaders and organizations, including the homeland leaders, who complained to the Prime Minister that the medium of instruction in "white" areas should be the same as in the homelands, and the 20,000-strong African Teachers' Association, who called the rule "cruel and short-sighted". 188/ In particular, the decision was attacked by the school boards, which are staffed by Africans but have advisory powers only. In consequence, a series of sackings of chairmen and other members of the school boards took place

184/ Quoted in Freda Troup, Forbidden Pastures (London, International Defence and Aid Fund, 1976), p. 66.

185/ Ibid.

186/ Financial Mail, 25 June 1976.

187/ House of Assembly Debates, 26 April 1976, 20 April 1976.

188/ Sunday Times, 20 June 1976; for a fuller discussion of the whole issue, see Freda Troup, op.cit., pp. 34-37.

in the southern Transvaal throughout 1975, 189/ culminating in the sacking of two members of the Meadowlands Tswana School Board in January 1976, when the Board instructed its teachers to use English in defiance of the departmental ruling. In protest at the sackings, the entire board resigned and parents threatened to remove 14,000 children from school. Strikes spread through April and May to Orlando, Diepkloof and other Soweto areas. 190/

234. Witnesses before the Group also explained, however, that the question of Afrikaans instruction was only one element in a general discontent with the content as well as the extent and quality of black education. Mrs. Rankin (431st meeting) said "we were indoctrinated to know that the white man is superior to the black man and we are just inferior", and described how teachers would tell the children: "You know I am teaching you poison, but when you write exams, write the way the Government wants, otherwise you will fail", and she explained that the attitude of Africans to Afrikaans was based on the meaning of the language to them as "the language of the oppressor", symbolic of his determination to force his policies and culture upon Africans against their will. And an anonymous witness (421st meeting) commented: "This is what I am saying specifically, that it adds up to this inferiority complex that the white dominating structure would like to attain and keep: just because you cannot understand the language you belong to an inferior race; you cannot comprehend. I think that is one of the reasons why they are bringing those people who cannot fully communicate with you in English". Similarly, the pamphlet Forbidden Pastures, handed in by Mr. Books on behalf of the International Defence and Aid Fund, draws attention 191/ to "basic distortions in the approach to education which seriously limit both black and white intellectual development", ranging from fundamentalist teachings on evolution in biology syllabuses to racist bias in history courses.

235. An anonymous witness (421st meeting) made similar points in relation to university education. He said the subjects taught are very narrow; that a language barrier had to be overcome "because most of the lecturers came from these chauvinistic, nationalistic Afrikaner people" who "could not relate to the student ... It was that cold contact that we had and I think too that the interest we had in education was too mechanical. We were a sort of machine". The lecturers, he felt, seemed to enjoy "seeing us suffering" because "we could not understand". "They would always make a reference to the inferiority of our people. It was not only done once but it was an everyday thing".

(b) Existing student groups

236. The Group received testimony from various witnesses on the black student movement (outlined in the interim report, E/CN.4/1187, paras. 215-218). 192/ An anonymous witness (434th meeting) explained that "the black students have begun to see the

189/ Drum, 8 March 1976.

190/ Rand Daily Mail, 11 February 1976, 8, 9 April 1976, 15 April 1976, 18, 21, 24 May 1976; Star, 28 May 1976. Le Monde, 28 July 1975.

191/ Freda Troup, op.cit., pp. 43-45.

192/ See also: Ranwedzi Nengwekhulu, "The meaning of Black consciousness, in the struggle for liberation in South Africa" (United Nations, Centre against Apartheid, Notes and Documents, No. 16/76).

system for what it really is and have begun to see that the only way to overcome such a system is to get the people to see themselves as people The movement which is known at the moment as the Black Consciousness movement and which has been spearheaded by the South African Students' Organization, sees the mental oppression of the black people as the primary target at the moment". Another anonymous witness (429th meeting) described the SASO community development programme (E/CN.4/1187, para. 218), in particular a project involving five universities - Port Hare, Turfloop, the University of Zululand, the University of Natal, black section, and the University of the Western Cape - to build homes for the people at Welcomewood, a resettlement camp in the Ciskei. And a third referred to three youth organizations currently active within the Black Consciousness movement (430th meeting: the South African Students' Organization (SASO); the South African Students' Movement, concerned with organizing high school students; and the National Youth Organization. One witness (421st meeting) estimated SASO's membership as about 2,500 of a potential 6,000 black student population. He said the main reason the membership was not higher was the students' fear of being identified as "card-carrying" members.

237. Information before the Group suggests, on the other hand, that during the period under review white students have turned away from the involvement in community activity and anti-apartheid protest that characterized much of the work of the National Union of South African Students (NUSAS) in the past five years (E/CN.4/1187, paras. 210-213). In January 1976 NUSAS made overtures to strengthen links with the Afrikaner students in the ASB (E/CN.4/1187, para. 209), which were rejected by the ASB on the grounds of NUSAS' alleged "involvement in affairs that undermine the State", including the involvement of some NUSAS leaders in the Breytenbach trial (see para. 63 above). 193/ At a special NUSAS congress held in Cape Town in February 1976 a new constitution was adopted aimed at strengthening the involvement of students in the organization at campus level, and putting more power in the hands of individual student representative councils, 194/ but at the subsequent referenda on affiliation held at individual university campuses the students of the white universities of Rhodes and Natal Pietermaritzburg voted against NUSAS (the University of Natal, Durban, disaffiliated in 1975) and those of the Universities of the Witwatersrand and Cape Town voted for affiliation by small majorities. 195/ Leading members of the existing NUSAS executive resigned soon afterwards, 196/ "because we felt the present executive was to the left of student opinion". Press reports spoke of the "disintegration" of NUSAS and referred to the serious financial difficulties in the organization 197/ since it was declared an "affected organization" (see E/CN.4/1187, paras. 228-232) it has been banned from receiving any funds from abroad - and the prospect of the Internal Security Commission (see above, para. 35) taking an interest in the organization, as well as the "siege mentality" spreading among white students in the face of possible call-up to fight in border wars, as all contributing to the crisis in the organization. 198/

193/ Cape Times, 15 January 1976; Star, 24 January 1976.

194/ Rand Daily Mail, 17 February 1976, 9 March 1976.

195/ Rand Daily Mail, 2 April 1976, 3 April 1976, 8 April 1976; Cape Times, 2 April 1976, 9 April 1976.

196/ Cape Times, 21 April 1976.

197/ Cape Times, 3 June 1976.

198/ Rand Daily Mail, 17 February 1976.

(c) Impediments to student organizations

238. Testimony from witnesses before the Group described "a spate of bannings, house arrests and trials" among students (anonymous witness, 434th meeting), intensified after the pro-FRELIMO rally arrests in September 1974 to the extent that raids and arrests were made on every black campus, nationwide (anonymous witness, 421st meeting). A student from the University of Fort Hare described how a meeting, for which permission had been granted by the Rector, was broken up by armed police with police dogs (421st meeting). Witnesses also referred to expulsion from universities and schools as a standard means of dealing with student protest. One witness (430th meeting) described having to leave school because he was banned (under the Suppression of Communism Act), and then being unable to get a job because he was hounded from job to job by the security police. Another had been expelled, with others, from Fort Hare after confronting the Rector on his action described above, and told he would not be permitted to enrol in any other black university. The students then sought to enrol at the correspondence University of South Africa, but since grants were not available they had to find jobs to pay fees and support themselves. Employers, however, were unwilling to employ a former student, and when he found work as a clerk with a Town Council he was soon dismissed for organizing a literary project for migrant workers on the payroll. An agent of the Bureau of State Security then contacted him and offered him a place at the University of the North (Turfloop - in his case for the "wrong" tribal group) if he would act as informer for BOSS among the students.

239. All student witnesses stressed the lack of money as a problem for black student organizations (430th meeting) and poverty among students themselves as a factor making student organization difficult.

240. Arrests, detentions and trials of students, both white and black, have been detailed in the section on treatment of political prisoners and detainees, in paragraphs 88 and 99 above. Witnesses once more stressed that students had been victims of torture under interrogation (e.g. 421st meeting).

241. According to information before the Group, the report of the Snyman Commission, appointed after disturbances on the campus of the University of the North (Turfloop), in September 1974 (see E/CN.4/1187, paras. 234-235), which was published in February 1976, blamed SASO for fostering anti-white feeling on the campus, which it said was the immediate cause of the 1974 disturbances. The report claims that SASO is not a true student organization since its policy "cannot be distinguished from that of a political party", and it "advocates violent revolution and promotes racial hatred in South Africa and, furthermore, is bent on destroying the black universities". 199/ It also concedes, however, that there is a "deepseated and alarming anti-white feeling" among the majority of students and staff at the university, which has been "aggravated by statutory and traditional restrictions which have been imposed on the blacks mainly in the interests of the whites". 200/ Although the Minister of Bantu Administration and Development reacted with a denunciation of SASO as "no longer able to claim to be a students' organization", the Minister of Justice gave an assurance, welcomed by some South African newspapers,

199/ Rand Daily Mail, 10 February 1976; Star, 14 February 1976.

200/ Rand Daily Mail, 10 February 1976; Star, 14 February 1976.

that he did not propose to ban the organization. 201/ But before the end of the month it emerged that five SASO student leaders at the university, including the branch chairman, had been refused readmission for the 1976 academic year. All had good academic records. 202/

242. The same month the Rector of Fort Hare University, Prof. J.M. de Wet, speaking at a ceremony at the university, denounced SASO as "intent only on disrupting university life". He said that he would readmit the students rusticated last year only if they renounced their SASO allegiance. 203/

4. Student protests, disturbances and uprisings

243. Reference was made to disturbances in African schools throughout the 1960s and 1970s in the interim report (E/CN.4/1187, para. 219), which described the series of strikes, boycotts, demonstrations, arrests and expulsions of students that have been a feature of the black universities "almost since their inception", 204/ including the wave of student unrest that swept the University of the North, Fort Hare and the University of the Western Cape in 1974 (ibid., paras. 220-235).

244. During the period under review, these disturbances escalated through the early part of 1976, sparked by the decision of the Department of Education in 1975 to impose the "50-50" rule that Afrikaans should be a joint medium of instruction with English in African secondary schools from January 1976 (see para. 233 above), into a series of nationwide uprisings by school students and university students between June and September; the students were joined and supported by workers, particularly on the Rand and in the Cape, striking in protest at the brutality of police repression of the student demonstration. At the time of compilation of this report, no total figure is available to the Ad Hoc Working Group of Experts for numbers killed during these uprisings, though press reports indicate that this total must amount to several hundreds, many of them schoolchildren; nor is any figure available on the number of arrests, though these appear to total several thousands (see above, paras. 49-55 and paras. 78-81).

245. Incidents reported in the South African press during the first six months of 1976 include the following: 205/

26 January Nearly 400 higher primary school pupils removed from overcrowded classrooms by angry parents - Inkwekwezi Lower Primary School, Soweto. 206/

10 February Dismissal of Meadowlands Tswana School Board for defying 50-50 rule on Afrikaans-medium teaching. 207/

201/ Rand Daily Mail, 10 February 1976, 11 February 1976.

202/ Rand Daily Mail, 26 February 1976.

203/ Rand Daily Mail, 21 February 1976.

204/ Freda Troup, op.cit., p. 60.

205/ A list compiled by the African National Congress of South Africa details some 360 incidents over the period January to mid-September 1976, the majority of them involving students.

206/ Rand Daily Mail, 27 January 1976.

207/ ANC document (see note 205).

- 7 April Expulsion of 142 pupils at Mayisha High School, Nelspruit; boycott by 200 pupils and 20 teachers. 208/
- 8 April 1,000 pupils at higher primary schools under Mochangana School Board, Soweto, on strike. 209/
- 14 May 200 students at Hewat Training College, Cape Town, demonstrate against visit by wives of senior government officials. 210/
- 17 May Strike by pupils of Orlando West Secondary School against Afrikaans ruling. 211/
- 24 May 1,600 pupils of four Soweto secondary schools on strike. 212/
- 25 May 300 pupils of Pimville Higher Primary School on strike. 213/
- 4 June Striking pupils at Belle Higher Primary School stone strike-breakers. 214/
- 7 June Police charge striking pupils at Belle Higher Primary School, arresting at least one pupil, a 15-year old girl. 215/
- 9 June Pupils at Naledi High School stone police sent to investigate disturbances at school. 216/
- 9 June 4,000 pupils from eight schools at Majaneng near Hammanskraal on strike over language of instruction. 217/
- 10 June Pupils at St. Peter's Roman Catholic Seminary sent home after meals boycott. 218/

The 16 June massacre and its aftermath

246. According to the testimony of Mr. Motshabi (427th meeting), on 16 June an estimated 30,000 schoolchildren gathered in Soweto carrying banners with slogans "Afrikaans is Terrorism", "Afrikaans - the most dangerous drug for our people", etc. A police contingent confronted 10,000 of them in Orlando West, and when teargas failed to disperse them, they opened fire. Within hours, road blocks had been set

208/ Ibid.

209/ Ibid.

210/ Cape Times, 14 May 1976.

211/ ANC document (see note 205).

212/ Star, 29 May 1976.

213/ Rand Daily Mail, 25 May 1976.

214/ Rand Daily Mail, 5 June 1976.

215/ Rand Daily Mail, 8 June 1976.

216/ Rand Daily Mail, 10 June 1976.

217/ ANC document (see note 205).

218/ Rand Daily Mail, 11 June 1976.

up and police were unable to patrol the township. Army helicopters, anti-terrorist police in camouflage uniforms, carrying submachine guns, and 14 "Hippo" armoured personnel carriers were called in. 219/ By 26 June, 176 people, many of them children, had been killed, according to official figures. 220/ The violence had spread by 18 June to seven other African townships on the Rand, all African schools in the Transvaal had been closed, as well as the universities of the North (Turfloop), where students had tried to burn down the Afrikaans department, and Zululand, where students had burnt down the library and other buildings. In Alexandra township young people had set fire to a Dutch Reformed Church, two liquor shops, the sports clubhouse, a school and the Indian shopping complex. The Minister of Justice had banned all outdoor meetings. 221/ All boarding schools in the homeland of Bophuthatswana were also closed because of "unrest in several schools". 222/ In the nationwide security clampdown of the next few days, the Minister of Justice admitted to 1,298 people arrested as a result of the riots. 223/ On 5 July the Minister of Bantu Administration and Development and of Bantu Education, Mr. M.C. Botha, announced that in future principals of African schools would be permitted to make application for language medium instruction in their own schools, with a choice of Afrikaans, English or joint Afrikaans/English instruction, with "additional attention" to be given in the other language where instruction in a single language was chosen. 224/

247. After the Soweto massacre, students all over the country joined in protests at police action. Apart from the incidents at the universities of the North and Zululand (see para. 246), white students at the University of the Witwatersrand demonstrated on campus on 18 June, Coloured students at the University of the Western Cape adopted a resolution of solidarity with the Soweto students on 18 June, and Indian and other black medical students at the University of Natal, Wentworth, demonstrated, after which 87 students were arrested, on 19 June. Also on 19 June a school and shops were set on fire in Sebenza Coloured township, Edenvale, and on 20 June, 1,300 students at Hebron Training Institution in Bophuthatswana were sent home. Violence spread the following day to townships outside Pretoria, where vehicles, schools and other buildings were burnt, and to the Orange Free State and the Lebowa homeland. Schools remained closed, and violent incidents continued to be reported in the Transvaal and elsewhere throughout June and July, 225/ when (18 July) students at Fort Hare University in the Cape demonstrated, caused R1500 worth of damage to the college, and police were called in. The Rector closed the University, barely a week after the opening of the new term, and told students that they would be readmitted only if they signed a special undertaking to obey all rules: police were to patrol the campus when it reopened, he said. 226/ The following day (19 July) students at Lovedale Teachers Training College, also in the Cape,

219/ Focus, No. 5, July 1976.

220/ The Times, 1 July 1976.

221/ Guardian, 19 June 1976.

222/ Guardian, 21 June 1976.

223/ The Times, 2 July 1976.

224/ Cape Times, 6 July 1976.

225/ ANC document (see note 205).

226/ Rand Daily Mail, 19 July 1976, 9 August 1976.

caused R100,000 worth of damage to the college. Demonstrations, including burning of school and college buildings, stoning of police and public vehicles, continued in all four provinces throughout July and August, including the homelands (for example, on 5 August, 100 pupils of Manzell High School were detained for setting fire to school buildings in Umtata, Transkei, and on 11 August, St. John's College, Umtata, was set on fire). The protests involved all five black universities (three African, 1 Coloured and 1 Indian), and schoolchildren from all black communities - for example, on 16 August, 1,000 Coloured pupils boycotted classes in support of "our black brothers", and on 31 August Indian pupils boycotted school in support of the students of Soweto. When the students' representative council set up in Soweto called for a three-day stay-away from work, 23-25 August, a press estimate of worker support was 80 per cent, and not only Soweto but Westonaria, Dobsonville and Kagisa and Mohlakeng workers were involved. 227/ Between 20,000 and 25,000 Africans tried to march on Johannesburg, and more deaths were recorded as a result of police reaction. 228/

248. In Cape Town, unrest in surrounding African and Coloured townships was brought into the centre of the city from 2 September, when more than 1,500 Coloured and African students marched into the city, supported by workers and other adults. They were dispersed by police with birdshot and teargas. 229/ Total published deaths in Cape Town by 4 September were 32, 230/ and the violence continued in the townships and the city centre throughout the following week. 231/

249. A second stay-at-home among black students and workers on the Rand on 13-15 September was again reported to be 80 per cent successful, involving some 175,000 people. 232/

250. On 17 September, when the uprisings were by no means over, the following press report summarized destruction to date as follows:

"The Government commission inquiring into the black unrest was told in Pretoria yesterday by a police officer that between 16 June, the start of the disturbances, and 30 August, the police fired 16,000 rounds of ammunition from 7.62 mm rifles, .38 revolvers, .32 pistols, 9 mm hand machine carbines and shotguns.

Casualties were: 120 blacks shot dead by the police, 50 killed by stabbings, shootings, assaults, stonings and fires, and two whites killed by blacks. A further 1,000 blacks were injured by shots, knives and in assaults. The police began using shotguns on 17 August, initially loading them with buckshot, but later using birdshot.

227/ ANC document (see note 205); Sunday Times (London), 13 August 1976.

228/ Sunday Times (London), 5 August 1976; The Times, 7 August 1976.

229/ Guardian, 3 September 1976. Le Monde, 14 August 1976.

230/ Sunday Times (London), 5 September 1976.

231/ ANC document (see note 205).

232/ Ibid.

Among damaged buildings were 24 schools, three clinics, nine post offices, 18 bottle stores, 14 private business premises, 42 government administrative buildings, 19 houses, three libraries, a court building, 19 shops, two community halls and at least 114 vehicles.

Since 30 August, many more people have died, scores have been injured and innumerable buildings have been gutted or damaged.

The official death toll now probably exceeds 300, but the police refuse to publish casualty lists and their figures are disputed. Today, the Cape Times appeals to its readers to give it first-hand information of deaths or serious injury." 233/

251. The Group has also no firm estimate on numbers arrested during the uprisings; 785 schoolchildren were reported to have been arrested under the Riotous Assemblies Act for holding "illegal gatherings" in New Brighton Township, near Port Elizabeth, on one day alone (14 September 1976); 234/ and round-ups of black "leaders" for detention under the Internal Security Act were reported already to have reached 60 by mid-August 235/ (see also paras. 44-47 above).

233/ Guardian, 17 September 1976.

234/ ANC document (see note 205).

235/ The Times, 17 August 1976.

E. APARTHEID AND THE AFRICAN FAMILY

252. This question was studied in detail for the first time by the Ad Hoc Working Group of Experts in its 1976 interim report (E/CN.4/1187), although reference had been made in previous reports to the disruptive effects of apartheid on family life.

253. The interim report contained a historical description of the African family and the impact of the system of migrant labour on family structure and life over the past century, in the first place separating male breadwinners from their families by forcing them to leave them in the reserves or homelands while they seek work in urban areas, and also in separating mothers who work in urban areas from their children (E/CN.4/1187, paras. 244-265). In the current report the Group has looked at the disruption of the African family, especially in the urban areas, as a factor behind the series of uprisings in South Africa that began in June 1976.

Effects of Apartheid on the African Family

254. A number of witnesses before the Group gave evidence on the effects of apartheid on family life, particularly on the family life of urban Africans. Mr. John Ennals (433rd meeting), presenting a set of documents on "Women in South Africa" on behalf of the Anti-Apartheid Movement pointed out that the uprisings in Soweto and elsewhere "are linked with this deprivation of family life". One of these documents (Women under Apartheid, by Joyce Sikakane) described Soweto as follows:

"Soweto (jocularly called by its inhabitants "so-where-to") is the largest single modern ghetto in Africa ...

"The red-brick houses ... are built opposite each other in straight single rows running parallel to a street ... fifty yards from each house is a back-yard toilet separated by a common wall from that of a neighbour's. Naked bulbs hang on roughly installed electric cables ...

"The sizes of the houses vary. Those of the first-built township named Orlando East Location consist of tiny two or three rooms with verandas. Their only water supply is by a tap attached to one of the walls of each backyard toilet. Then there are the four to five roomed houses of Orlando West. These houses are an exception to other four-roomed houses forming 98 per cent of the Soweto complex. The Orlando West houses are exclusive in that each has an indoor shower room with a tap. Some are also provided with a kitchen sink or pantry.

"Scattered here and there in Soweto are a variety of small three-roomed enclaves whose walls, floors and roofs are made of concrete blocks. An average 6.7 people occupy Soweto homes of less than four rooms, and four of these people are adults.

"Only a quarter of the homes in Soweto have running cold water inside the houses. In all the others, residents fetch cold water by bucket. Only three in 100 houses have running hot water. Only seven in 100 have a bath or shower. Only fifteen in 100 houses have electricity.

"Streets in Soweto are narrow, dusty in winter and full of potholes. They turn into streams during heavy rains in summer. A few of the streets have dim electric lights. Only those leading to police stations, administration offices, bottle stores and the big Johannesburg City are brightly lit.

"Separately built in each of the 13 locations are the most notorious and derogatory houses known as the hostels. These long narrow built compartments accommodate 'single' men. Indoors the inmates share the dormitories in groups. In each dormitory are moveable black painted iron steel beds, a common one-plate coal stove and iron bar lockers used by the occupants. Each dormitory has a common cold water shower room. Barbed wire fences the hostel premises from that of the locations. There are no dining rooms, no visitors' rooms, no reading rooms, no recreation facilities and absolutely no privacy for the inmates. Women are not allowed to venture into the hostel premises. Here in these hostels thousands of African men are caged in after working hours.

"Some of these 'single' male occupants of these hostels are migrant workers from the Bantustans. They are respectable married men forced by migratory laws to leave their wives and children in the homelands; they are divorcees and widowers evicted from Soweto houses because they are without spouses. By Government law no single man or woman is allowed to rent a house in Soweto. Some of the men are bachelors from the homelands and from Soweto. The latter are men no longer qualifying to lodge with their parents as they are of working age.

"For instance, Dube Hostel (one of the many hostels) houses over 6,000 male migrant workers, only 5 per cent of whom are contract labourers - the other 95 per cent are staying indefinitely, irrespective of their marital status.

"A hostel for single women has also been built in Soweto. It is situated in Mzimhlope Location. It consists of four-roomed houses each with a common bathroom. Two occupants share a room. The 'single' women inmates of this hostel are mostly domestic servants, factory workers and office workers. They are mostly from the homelands and some of them are push-outs from the Soweto housing system. The latter group are girls of working age who no longer qualify to stay with their parents. Widows and divorcees, orphans and unwed mothers are also included. Mothers are not allowed to reside with their children in the hostel. Men are also forbidden in the hostel premises. The hostel premises is fenced with barbed wire. These hostels are hovels for men and women denied the right to lead creative lives."

255. Mrs. Chilwane referred (427th meeting) to the housing crisis in Soweto, where in a population of some 1,200,000 people, 80,000 are on a waiting list for houses. She also described the humiliation of bringing up children to whom you have constantly to explain "You are not supposed to go there because you are African".

256. Among grievances listed by residents of Soweto in a survey conducted by a South African newspaper in July, were: insecurity of tenure in poor housing (83.6 per cent of houses have no electricity, 31.5 per cent have no running water, 76.4 per cent have no ceiling); insufficient schools and creches; little street

lighting, as deterrent to crime; 236/ arbitrary allocation of housing, not according to choice but to artificial "tribal" affiliation; bad transport and communications; poor shops - residents must go to Johannesburg to shop in a supermarket; poor sports and recreational facilities - there are only two cinemas for over a million people. 237/

257. According to information before the Group, more than half the adult males in the homeland rural areas are now absent from their homes for the greater part of their working life, and among the better educated this proportion is more like 90 per cent. 238/ Throughout this period they see their families only on their annual visits to their homeland. A project has been recently introduced for two-week visits by wives to the city. Sixty-six special houses have been built at Kwa Mashu outside Johannesburg which migrant workers may hire by the night to entertain their wives and families for fourteen days, after which the families must return to their homelands. 239/ A warning on the social effects of the intensification of the migrant labour system was given in 1975 by Professor Monica Wilson, former Professor of African Studies at the University of Cape Town:

"South Africa has lived on the capital of a very strong African family system and that capital has been squandered. Traditionally, children were trained at home in respect and in regard for law. The old family system is now deeply undermined by the separation of husband and wife, the lack of supervision of children, the high illegitimacy rate, all of which are immediately and directly linked with migrant labour. There are very many children both in country and town who have grown up without fathers; thousands of men who have spent their working lives separated from their wives; and an equal number of women forced to live apart from their husbands; and the frustrations engendered boil up." 240/

258. Witnesses stressed the insecurity for urban Africans that influx control, the migrant labour system, and race discrimination involve. Mrs. Joyce Rankin (431st meeting), describing her own childhood in Soweto, explained that the pressures on her parents were such that "we hardly had any warm relationship with our parents". She outlined the fear of pass raids and terrorization by police; the tension of living in an area with the highest crime rate in the world; 241/ the humiliation of the parents who had to seek permission even to receive a visit from a relative; her father's battle on her behalf when she was threatened with endorsement out of the city at the age of 16 because she had been sent to Natal to boarding school and the dilemma of her parents who could not allow themselves the normally private right to a divorce for fear that the wife would lose her permit to stay in the city. Mrs. Rankin pointed out that women alone, whether unmarried or divorced, have no right to live with their children in Soweto, they must live in hostels, so that unmarried women tend to hide their babies and bear them at home rather than in hospital for fear of deportation to a homeland.

236/ Crime statistics for Soweto published in South African Outlook, August 1975, indicate that in the past year there had been 854 murders in the city, 92 culpable homicides, 1,828 rapes and 7,682 assaults with intent to do grievous bodily harm.

237/ Star, 10 July 1976.

238/ Study by Bill Natrass, quoted in Race Relations News, March 1976.

239/ Drum, 8 March 1976.

240/ Race Relations News, September 1975.

241/ See evidence of Mrs. Phyllis Altman (431st meeting).

259. Several witnesses drew attention to the intensification of the insecurity of urban blacks arising out of the so-called "independence" of the Transkei, and the threat that even urban Africans with no link with a homeland will be forced to take out a "homeland citizenship" (see para. 130 above). According to information available to the Group, apprehensions of urban blacks have been intensified by the Government's ruling in October 1975 that the concession announced in May 1975 to the effect that Africans would be allowed to buy 30-year leases on homes in certain urban areas, would be conditional on the applicant applying for citizenship of a homeland and producing a certificate of citizenship when he applied for home ownership. 242/ In August 1976, the Minister retracted this condition, though he also announced that Africans in the Western Cape would be excluded from the scheme altogether, and that Africans applying for commercial sites - for trading, business or professional purposes - would still have to produce a certificate of homeland citizenship. 243/

260. Further steps taken in the period under review to restrict the number of Africans in urban areas include the tightening up of the implementation of the Environment (previously Physical) Planning Act, under which employers may be prosecuted for establishing or expanding any business employing Africans in a "controlled" area - "controlled areas" include most areas which are not within easy reach of a "homeland", that is, those that depend for their labour on the urban African population. 244/

261. Figures before the Group show an extreme disparity in male-female population in urban areas during the period under review (see E/CN.4/1187, para. 266). The Minister of Bantu Administration and Development 245/ gave figures for the population of three African townships outside Cape Town. In Langa, of a total adult population of nearly 25,000, 2,350 were women and 3,700 were children: thus, there were more than 10 men to one woman, and more children than women. More than 8 out of 10 adults lived in single-person hostels. In Nyanga, of 13,200 adults, less than 2,950 were women, and again there were more children than women - 3,825. And in Guguletu there were 16,080 men and a much higher proportion of women - 12,420. 246/

262. The Group has also taken note of the intensification of government efforts to remove black families from "white" areas through the Illegal Squatting Amendment Bill, mentioned in testimony by an anonymous witness (429th meeting), which empowers the Government to force local authorities to demolish squatters' homes - the Minister will be enabled to instruct others to do the work and charge the expenses to the local authority. 247/ (see paras. 23-28). It also imposes fines on private landowners who allow squatters to build homes on their land or who fail to demolish such dwellings. 248/ According to estimates published in the South African press, Cape Town alone has an "illegal" African population of 90,000 and a further 200,000 Coloured people are squatting around the city. In 1966 the Government froze the

242/ Survey of Race Relations 1975 (Johannesburg, South African Institute of Race Relations, January 1976).

243/ Rand Daily Mail, 17 August 1976.

244/ Financial Mail, 23 January 1976.

245/ House of Assembly Debates, 2 April 1976.

246/ Rand Daily Mail, 13 August 1976.

247/ Cape Times, 27 March 1976.

248/ Sunday Times, 4 April 1976.

building of African housing in Cape Town, causing a serious shortage even for Africans "legally" there. 249/ Measures to expel the squatters in the period under review have included a series of police raids on a camp outside Bellville, Cape Town, 250/ and a court application by the Cape Divisional Council to evict 10,000 squatters at Crossroads camp, near Cape Town's airport. In the course of the court case it emerged that lavatory and water facilities were so rudimentary in the camp that a "serious outbreak of intestinal diseases such as typhoid" could result. 251/ While the case was going on Council bulldozers had demolished 139 "vacant" homes on the site, and a church school - for which the Minister apologized and promised to rebuild the school. 252/ The witness described the harassment of residents as follows:

"Despite official intentions to reduce Cape Town's dependence on African labour, the city's demand for it has been increasing. The migratory labour system however, provides that only the male workers can enter the city and must live in compounds. Many workers on contract, and therefore legally entitled to be in Cape Town for the duration of their contract, do not want to stay in the compounds without their families so they bring their wives and children illegally, so to speak, to Cape Town and erect shanty structures out of old packing cases and bits of corrugated iron.

"Most of the people at Crossroads fall into this category. Sometimes the authorities have provided pit latrines, water outlets and rudimentary health services but, on the whole, the policy has been to drive people out of this area. Shanty structures have been torn down by officials and people ordered to move. In one incident, shanties in a camp at Wergemot were set on fire in the small hours of the morning and the owners fled in terror. As fast as the shanties had been demolished, new ones were erected again. Demolitions were halted in the middle of 1975 when the Supreme Court granted two residents at Crossroads an interdict restraining the Cape Peninsular Bantu Affairs Administration Board from breaking down their houses.

"In other instances homes have been raided while the men were away at work and the women and children put on trains to the Transkei and Ciskei. In many cases these families got off these trains at the first station after Cape Town and returned to Cape Town.

"In other instances, as soon as word had got round that there were white officials in the settlement, people resorted to running to the bushes to avoid being served with removal orders.

"Quite a number have been prosecuted under Section 11 of the Urban Areas Act (or Bantu Consolidation Act) for 'harbouring' their own families. Brigadier van der Westhuizen, Chairman of the Cape Peninsular Bantu Affairs Administration Board, told the Financial Mail in April 1976 that families legally living in the area would be provided with housing but that the removal

249/ Financial Mail, 20 March 1976.

250/ Cape Times, 4 June 1976.

251/ Financial Mail, 4 June 1976.

252/ Financial Mail, 11 June 1976; Rand Daily Mail, 10 June 1976.

of 'illegal' people would definitely go on. He denied that the Board is breaking up families. 'The family broke itself up when the man came here and agreed to live in single quarters', he said. If the people of Crossroads were to be allowed to remain, others would come and there would be more squatters' camps. The Government still regards the families of migrant labourers as 'superfluous appendages'.

"The people of Crossroads have shown that the policy of 'migrating' people is unworkable and unacceptable. Of course the Government can use the power of the Boards and the police to enforce their policy, and the people at Crossroads can be removed by force. They have no vote and therefore cannot challenge the might of the State. Otherwise, they cannot challenge the power of the State.

"Crossroads is appropriately named perhaps, for the Government policy on migratory labour is itself at a crossroads."

It is estimated that the new Bill will eventually make 250,000 people homeless. ^{253/}
Compulsory labour training camps for Coloured youth

263. The Group has also taken note of the effect on family life, and the socially alienating impact on youth, of the implementation of the Coloured Cadets Act. This Act, passed in 1967, has been strictly enforced for the first time in the period under review, a fact which, it has been suggested, has fed the discontent among Coloured youth expressed in the 1976 uprisings. Under this Act, Coloured youths between the ages of 18 and 24 are compelled to register for, and may be assigned to, compulsory labour training camps. Police checks on registration resulted in up to 80 arrests in June 1976. The camps are run on the basis of "military" discipline - punishments, for instance, include three days of pack drill, indiscipline can lead to a further year of training, and failure to attend may be punished by three years in prison. The aim is ostensibly to "provide the private sector with trained and disciplined workers", but a stigma attaches to young men who have been there, and the office Theron Commission compared the system with conscription for white youths. The registration board may exempt students, young men in full-time jobs or the unfit. The Campaign Against Racial Discrimination (CARD), in a report on the system, called for the repeal of the Act as one of many measures "reducing significant proportions of the South African population to unfree labour". ^{254/}

^{253/} Observer, 13 June 1976.

^{254/} Guardian, 14 August 1976.

F. INFRINGEMENTS OF TRADE UNION RIGHTS

1. Background

264. At its fifty-eighth session the Economic and Social Council decided, in its decision 84 (LVIII) of 6 May 1975, to transmit to the Ad Hoc Working Group of Experts, for consideration and report to the Council, some allegations regarding infringements of trade union rights in South Africa which were made in a communication addressed to the Secretary-General by the International Confederation of Free Trade Unions (ICFTU). 255/

265. The information laid before the Group concerned the arrest of Mr. Drake Kolka, General Secretary of the Black Allied Workers' Union; and of Mr. L. Mabandla, Mr. M. Mbeo and Mr. S. Cooper, organizers of that union in Durban. The four, charged with having participated at Durban in a prohibited gathering organized in September 1974 as a demonstration of support for FRELIMO, had been arrested under section 6 of the Terrorism Act, 1967. Mr. Cooper, Mr. Drake Kolka and Mr. Mabandla had been placed under a prohibition in 1973 under the Suppression of Communism Act, No. 44 of 1950. 256/

266. After studying the allegations contained in the communication in the light of relevant international standards concerning infringement of trade union rights, which are laid down in a number of instruments prepared under the auspices of the United Nations and the International Labour Organisation, 257/ and after analysing relevant South African legislation (see E/5767, paras. 19-34), the Group reached the conclusion that the repressive laws adopted in South Africa and the practices by which they are enforced are in flagrant contradiction of international standards and that South Africa had deliberately violated trade union freedoms in the case in point. Furthermore, the Group concluded that the combined effects of several acts, in particular the Terrorism Act of 1967, the Suppression of Communism Act of 1950, and the Riotous Assemblies Act of 1956, was aimed at and resulted in the persecution, prosecution and detention without trial of workers and trade unionists because of their ideas and activities. The Group also called for the release of Mr. Cooper, whose health was seriously endangered by his detention (*ibid.*, paras. 53-55). The conclusions and recommendations of the Group were contained in its report to the Economic and Social Council in document E/5767.

267. In this connexion, it should be recalled that the Group had sent a telegram to the Secretary-General of the United Nations, drawing his attention to the imprisonment of the four organizers of the Black Allied Workers' Union (see E/5767, para. 49).

255/ See the report submitted to the Council on this matter (E/5767), which contains the full text of the communication as reproduced in document E/5638.

256/ See E/5767, paras. 35-41, for full details of the statutes under which the trade unionists were arrested and detained.

257/ These standards have been quoted or summarized in previous reports of the Ad Hoc Working Group of Experts (E/4791, paras. 29-34; E/4953, paras. 27-28; E/5245, para. 23). For the international standards against which the communication from the ICFTU were examined, see E/5767, para. 17 (a)-(k).

263. By resolution 1997 (LX) of 19 May 1976, the Council, having examined the report of the Ad Hoc Working Group of Experts, expressed its deep indignation at the repression of African workers and their trade unions in South Africa, and called for the immediate release of all trade unionists currently under imprisonment or detention and for the immediate recognition and restitution of all trade union rights. The resolution requested the Ad Hoc Working Group of Experts to continue to study the question and to report thereon to the Commission on Human Rights and to the Economic and Social Council at such times as it might consider appropriate. The present section of the report has been prepared in response to that request.

2. Relevant South African legislation

269. The various repressive laws which allow detention without trial, and which affect trade unionists as they do the other sections of the population, are described in previous reports and summarized in the report submitted by the Group to the Economic and Social Council in pursuance of decision 84 (LVIII) (E/5767, paras. 20-34).

270. During the period under review, the Government's powers of arrest and detention have been further extended by the passing of the Internal Security Amendment Act, 1976 (see section A above, para. 70).

3. Analysis of evidence and information received

271. In pursuance of its investigation into the infringements of trade union rights, the Ad Hoc Working Group of Experts heard testimony during its 1976 field mission concerning (i) the persecution, prosecution and detention without trial of trade unionists; (ii) the suppression of trade union organizing rights; and (iii) the persecution of workers because of their activities, especially as a consequence of strike action.

(a) Persecution, prosecution and detention of trade unionists

272. Mr. Andrew Kailembo, representing the International Confederation of Free Trade Unions (ICFTU), told the Group (419th meeting) that since the testimony given to the Group the previous year by Mr. Edward Sussex of ICFTU, dealing with the arrest of the four trade unionists of the Black Allied Workers' Union, Mr. Drake Koka, Mr. Mabandla, Mr. Mbeo and Mr. Cooper (see E/5767), the four men had been released. However, Mr. Drake Koka was still under a banning order, Mr. Mabandla had had to go into exile, and all Black Allied Workers' Union activities were being most carefully watched by the South African authorities. He informed the Group that Mr. Mabandla and Mr. Cooper had put in claims for compensation for maltreatment while in detention. The witness stated that the repressive apparatus of the State's security system was still appallingly effective in controlling any dissent. Police State legislation was being constantly extended, and it was becoming increasingly difficult to obtain exact information about prisoners and their conditions. African trade unionists and those helping African workers to organize had become prime objects of the new wave of repression. In December 1975, this witness testified, Mr. Harold Nxasana, organizer of the Institute of Industrial Education in Durban, former organizer of the African National Union of Textile Workers, was arrested under the Terrorism Act. There had followed allegations of torture, and reports that he was in bad health; his wife had been refused access to him, likewise his lawyer and an independent doctor. The witness said that during the strike of workers at the Heinemann Electric Company (SA) in Germiston during

March 1976 (see paras. 287-290 below), Mr. Gavin Anderson, acting secretary of the Metal and Allied Workers' Union, was one of four trade unionists arrested and charged. On 18 and 20 May 1976 respectively, Junerose Nala and Obed Zuma, both of the African National Union of Textile Workers, were arrested, and they were being held by the security police at the time of the witness's testimony. Miss Nala's mother was refused permission to send her daughter a pillow or mattress despite the fact that a medical certificate from a hospital drew attention to serious medical complaints for which the hospital had been treating her up to the day of her arrest and for which she had been advised to undergo an operation.

273. Mr. John Motshabi (427th meeting) told the Group there had been a spate of new detentions in South Africa. He mentioned the arrest of Mr. Harold Nxasana of the Institute of Industrial Education, and also the arrest of Mr. Harry Gwala, former secretary of the South African Railways and Harbour Workers' Union and a member of the local committee in Pietermaritzburg of the South African Congress of Trade Unions. 258/

274. According to information available to the Group, Mr. Eric Molobi, a former electronics worker, was gaoled for five years on 24 November 1975 after being convicted of charges under the Terrorism Act. The prosecution alleged that among other acts he had planned to form trade unions and to cripple the economy by a general strike. 259/

275. During the strike of the Heinemann workers (see paras. 287-290 below), Mr. Sipho Kubheka, the secretary of the Johannesburg branch of the Metal and Allied Workers' Union, was arrested, together with a number of the striking workers. 260/

(b) Suppression of trade union organizing rights

276. Mr. Claude Rossillon and Mr. Neville Rubin of the Department of Equality of Rights of the International Labour Office (420th meeting) drew attention to the statement in the Twelfth Special Report of the Director-General of the ILO 261/ that the fundamental problem was the absence of trade union rights for the great majority of the labour force. Mr. Rubin stated that there had not been any substantial change in government policy over the preceding year. Statements by government ministers indicated that the régime had no intention of granting full trade union rights to black workers. The ILO report noted that there had been an extension of the liaison and works committee systems, and that it was planned to introduce industrial committees. These would be a new departure. Trade union leaders, including those from the Black Allied Workers' Union and the National Union of Clothing Workers, both unions with exclusively black membership, had criticized these committees as imposed from outside and designed to strangle black trade unions. The secretary-general of the Trade Union Council of South Africa (TUCSA), which was an all-white body but which was now prepared to admit black unregistered unions, had commented that the liaison and works committees and the proposed industrial committee

258/ See Anti-Apartheid News, January-February 1976.

259/ Anti-Apartheid News, January-February 1976.

260/ World, 7 May 1976.

261/ Twelfth 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, 1976).

system would be no real substitute for trade unions. The Twelfth Special Report had concluded that the committee system appeared to be contrary to the principles of freedom of association and the right to organize embodied in international conventions. The increase in trade union organization among black workers had taken place despite all the difficulties arising from the absence of legal recognition and the active opposition of the South African Government. Mr. Rubin told the Group that between January and August 1975, five further black trade unions had been formed, and details concerning 24 black unions were tabulated in the ILO report. The report of the South African Federated Chamber of Industries had recommended that industrial employers should take cognizance of the desire of black workers concerning union organization. The Chamber of Industries had stated its belief that it was in the interests of industry neither to give black trade unions premature recognition nor to place obstacles in the way of their development. This, said Mr. Rubin, implied a supposedly neutral view on the question of the development or extension of black trade unions.

277. Mr. Carlos de Angeli, representing the World Federation of Trade Unions (WFTU) (419th meeting), told the Group that with regard to race discrimination in the exercise of trade union rights, there had been absolutely no change.

278. An anonymous witness (429th meeting) told the Working Group that the effect of the detentions on 25 September 1975 was to throw the Black Allied Workers' Union into confusion, since all the leading officials of the organization had been removed. Despite this, the Durban branch of the union had trebled its membership, which demonstrated worker support. The witness found on his release from detention that the union was under severe financial strain because its funds had been frozen pending the outcome of the case against the union and the South African Students' Organisation. The witness said that the Bantu Labour Relations Regulation Act was an attempt to find a substitute for black trade unions and organizers. Black workers rejected the works and liaison committees. Claims by labour officials and the Minister of Labour of the popularity of these committees were false. Employers took a large part in the appointment of members of works committees. Representatives of the workers could not genuinely represent the workers on the regional boards constituted under the Act. Workers were subject to dismissal by employers and could not challenge them. Under the committee system the black workers had virtually no bargaining power.

279. Mr. David Hemson, organizer of trade unions of dockworkers in Natal, submitted to the Ad Hoc Working Group of Experts a collection of documents testifying to the suppression of trade union organizing rights in South Africa. The documents related to the organization of African workers in Johannesburg and Durban. Document No. 1 related to the demand for a place at the negotiating table by the National Union of Clothing Workers (NUCW), whose secretary had applied to the Industrial Council of the Garment Industry for permission to be present at any wage negotiations early in 1973. The Department of Labour strongly objected to the presence of the NUCW at the negotiating meeting of the industrial council, and permission was ultimately refused. The officials of the Department of Labour also announced that legal action would be taken against any employer making deductions as union subscriptions for the NUCW. Mr. Hemson said that despite the studied moderation of the NUCW and its support for policies of the State at international meetings, and its evident representation of the interests of its African workers in the garment industry, the union was denied the right to participate in the negotiations of wage rates for its members.

280. Documents 2 and 3 produced by Mr. Hemson are the charge sheets relating to the activities of the General Factory Workers' Benefit Fund (GFWBF) and the open trade unions in Natal. The State had taken strong administrative action against these unions, including the banning in 1974 of four trade unionists: Halton Cheadle, David Davis, David Hemson and Jeanette Cunningham Brown - the bannings had been in terms of the Suppression of Communism Act - and despite official assurances that reasons were always given to proscribed or banned persons, document 5 showed the circular arguments involved when David Hemson requested reasons. No factual reasons were provided; the real reason, said Mr. Hemson, was that the Security Police felt that the four trade unionists were actively promoting the workers' resistance to all industrial categories based on race, and especially to works committees and liaison committees, and insisting on trade union organization; that they were helping to bring together the spontaneous action of the workers under the organized direction of trade unions which were demanding a living wage, workers' control over industrial conditions, an end to the contract labour system, and the recognition of authentic trade unions, particularly in the textile industry. Document 2, Mr. Hemson pointed out, related also to the activities of the GFWBF, which had been uniquely effective in providing a range of benefits to Africans. The authorities felt that the Fund, which had some 42,000 members, was providing a nucleus for the organization of workers. Despite numerous and strenuous attempts to get the Fund registered in terms of the Friendly Societies Act, the Registrar under the Act refused this registration, according to him because of advice from the security police. The prosecution of the five officials of the Fund followed soon after. The accused were found guilty of organizing and administering an unregistered friendly society, and were fined. The GFWBF was ordered to be dissolved. The members of the Fund then unanimously resolved to form the Transport and General Workers' Union. Document 3 produced by Mr. Hemson relates to the further oppression of trade union organization in Durban. The GFWBF and Central Administrative Services (CAS), both acting as foundation organizations to the rapidly growing open unions, were prosecuted in terms of the Group Areas Act. The charges were eventually left in abeyance after lengthy legal argument but were not dropped. At the same time that these charges were being investigated, all African organizers of the open unions were subjected to a search for identity documents (passes) and were threatened with being endorsed out of the urban areas. Document 4 relates to the arrest of two organizers of the National Union of Textile Workers following a lengthy and bitter strike at a textile plant in Durban. The two are Miss Junerose Nala and Mr. Obed Zuma. These detentions in terms of the Terrorism Act followed the arrest of Harald Nxasana, the education officer of the Institute of Industrial Education, in December 1975. None of these trade unionists has been charged or released.

281. According to press reports, the attempts to form a black union in the commercial and distributive trade afforded an instance of the refusal of employers to permit organizing facilities to the unregistered black union, the Commercial, Catering and Allied Workers' Union of South Africa, despite the support of the registered (white) National Union of Distributive Workers. 262/

282. According to information available to the Group, the Minister of Labour announced in September 1975, when opening the biennial congress of the co-ordinating council of South African trade unions in Pretoria, that the Government was planning

to establish African "industrial committees" which would have direct bargaining power with employers. He pointed out that the Government was not in favour of African trade unions but would introduce legislation to establish these committees "which can speak with authority for the particular industries for which they are set up". The committees could be established for industries and areas where African works and liaison committees had been established and would consist of African representatives from these committees. 263/

283. Towards the end of 1975 the Department of Labour circulated a draft of a Bill to amend the Bantu Labour Relations Regulation Act. Its principal features consisted in provisions (1) that the chairman and members of the Central Bantu Labour Board, Bantu Labour Officers and assistants need no longer be white; (2) that instead of a separate liaison committee in each of his establishments in a particular area, an employer could set up a single such committee for all establishments in that area; (3) that liaison committees would be empowered to negotiate with employers about employment conditions - previously they could only recommend; (4) that an establishment could have both a liaison and a works committee; one suggestion was that a works committee, which may consist only of workers, could communicate its wishes to management via a liaison committee (at least half of whose members must be elected by the workers, the other half being appointed by management); (5) that a new kind of committee - the industry committee - be introduced so that the committee system is extended from a single-establishment to an industry-wide basis. Works and liaison committees in any trade and area could ask for the establishment of an industry committee. In a trade or industry where there is no industrial council registered, an industry committee might enter into an agreement about wages and other employment conditions with an employer group. The agreement might then be declared binding by the Minister of Labour on all employees and employers in that trade and area. The Secretary for Labour claimed at the time this set of proposals was being circulated that the committee system had been "a tremendous success". There were reported to be 1,969 liaison committees and 279 works committees in operation in establishments with a total of 613,000 African workers. But according to a study by the University of the Orange Free State, the initiative for the establishment of liaison committees came from management in nine cases out of ten, and from workers in only one case out of ten.

284. In mid-1976 it was announced that the proposed amendment to the Bantu Labour Relations Regulations Act, which sought to extend the works and liaison committee system by setting up industry committees, had been shelved. It was believed that a negative reaction from the Afrikaans Handelsinstituut and the Co-ordinating Council of South African Trade Unions had been the likely cause of the decision. The white organizations feared that the bill would pave the way for black trade unions. 264/

285. According to information available to the Group, criticisms of the works and liaison committee system have emanated from some employers and from labour experts. The head of Anglo-American Corporation's employment practices division, Mr. Sam van Coller, has warned that productivity bargaining with black workers would not get off the ground until they had a strong system of representation.

263/ Survey of Race Relations 1975, p. 205, citing a press report dated 18 September 1975.

264/ Financial Mail, 25 June 1976.

Although the government system of works and liaison committees had a valid function to perform, he felt they were not suitable instruments for collective bargaining for major enterprises and key industries. Addressing the "Pay Power" convention held by the Institute of Personnel Management, he detailed the inadequacies of the committee system for worker representation. 265/ Another critic of the committee system has argued that while it is derived from the operation of workers' councils in the Federal Republic of Germany and Zambia, such councils were compulsory in those countries, whereas in South Africa they were voluntary. In both those countries substantial powers and facilities were guaranteed to workers' councils, but no such powers or facilities were guaranteed to the South African committees. Furthermore, while in those countries workers' councils were seen as an extension of trade union rights, in South Africa they were seen as a replacement of these rights. 266/

(c) The right to strike

286. On the question of strike action by black workers, the Twelfth Special Report of the Director-General of the ILO, presented by Mr. Neville Rubin (420th meeting), noted that there had been 374 work stoppages during 1974, involving nearly 60,000 African workers. More than 90 per cent of those occurring in the second half of 1974 had been caused by wage demands. In 1975, according to the latest figures available, there had been 119 strikes involving African workers, 87 of which were the result of wage demands. During 1974, the report noted, police intervention had been sought in connexion with 69 of the strikes and had resulted in 841 arrests. In 1976 in one instance alone, 800 workers had been dismissed by a ship repair company because many of them had gone on strike for higher pay, and later in the same month a force of 40 policemen had attacked workers in the Heinemann factory at Elandsfontein in the Transvaal after workers had protested against the employers' refusal to recognize their union, the Metal and Allied Workers' Union, and they had been dismissed following a walk-out in protest against the arrest of alleged union leaders.

287. On the strike of workers at the Heinemann Electric Company in Germiston, an anonymous witness presented the Group (434th meeting) with an account of the events of the strike as recorded by the Christian Institute of Southern Africa. 267/ This read as follows:

"On the 26.3.76 after nearly two months of labour unrest, the entire labour force of some 600 workers was dismissed. The unrest was sparked off when workers wanted trade union representation and rejected the Government-backed liaison and works committees. On the 25.3.76, 20 workers were "retrenched" and the rest of the workers maintained that when they demanded that these men (who, the workers claim, were the people requesting trade union representation) be reinstated, they were all "told to go". They were told that they could collect their pay and reapply for employment on Monday 29 March.

265/ Rand Daily Mail, 25 March 1976.

266/ Clive Emden, "No substitute for unions", Rand Daily Mail, 30 March 1976.

267/ Detention and Détente in South Africa (Christian Institute of Southern Africa, June 1976). See also Rand Daily Mail, 30 March 1976; Guardian, 30 March 1976.

"On Monday about 500 workers gathered outside the factory gates. Police reinforcements were guarding the gates. Trade union leaders unsuccessfully attempted several times to negotiate with the management. At 9.30 a.m. management called for the workers to collect their pay. No one responded. At 10 a.m. the police announced that their pay would be sent to the Industrial Council in Johannesburg where it would be collected on Thursday 1.4.76 and gave the crowd until 10.30 a.m. to disperse. Trade union leaders unsuccessfully attempted once again to negotiate with management. They then addressed the crowd of workers and suggested that, to prevent trouble with the police, the crowd go home and attend a meeting that evening in the townships. The crowd moved off according to eye witnesses at 10.20 a.m. and had already turned the first corner and were in another street when some 27 policemen wielding batons and wooden sticks charged the workers from behind. Panic and confusion ensued. Several people were bitten by police dogs and a woman about seven months pregnant was allegedly "struck by a policeman wielding a stick which resembled a pick handle". She was left lying senseless, face down on the road. It is not known whether she has lost her child as a result of the alleged assault or not.

"Some 14 people were taken to hospital, most of whom were discharged after treatment. Five people were arrested under the Riotous Assemblies Act and the Police Act. Mr. Gavin Anderson, acting Secretary for the Metal and Allied Workers' Union, was admitted to the Germiston Hospital with a fractured left elbow which was allegedly broken when he was hit with a baton or stick by a policeman. He appeared in the Edenvale Magistrate's Court on 30.3.76 when he was released on R200 bail. However when Mr. Mkhabela, Ms. Mashinini, Ms. Mogokane and Mr. Moseko, who are also facing charges under the Riotous Assemblies Act, appeared in the Edenvale Magistrates' Court on 2.4.76, they were refused bail. (They have since been granted bail.)."

288. In the aftermath of the Heinemann Electric strike, according to information available to the Group, the company sacked all 606 of its African workers and then rehired 300 of the original work force and 200 new workers. 268/ In a commentary on the strike, the Financial Mail stated that despite the fact that the African employees had repeatedly made it abundantly clear that they did not want a liaison committee, the management had spared no attempts to foist one on them. Of the more than 600 workers in the factory, 520 had joined the Transvaal branch of the Metal and Allied Workers' Union and had stated that they wanted to be represented by a union and not a works or liaison committee. 269/

289. Four of the workers were subsequently charged under the Riotous Assemblies Act and the four were released on bail by the Rand Supreme Court after an Edenvale magistrate had twice refused bail without giving reasons. 270/

268/ Rand Daily Mail, 13 April 1976.

269/ Financial Mail, 2 April 1976.

270/ World, 29 April 1976.

290. Questioned in Parliament about the strike, the Minister of Police stated that 27 members of the force armed with batons and two patrol dogs had been used against workers, and that seven persons had been injured, of whom two had to be taken to hospital. 271/

291. Expressing grave concern over that situation, the representative of the International Confederation of Free Trade Unions declared at the same session of the Council that his organization had drawn the attention of the United States-based Heinemann Electric Company to the serious violations of internationally recognized labour standards by its subsidiary in South Africa (see E/AC.7/SR.777).

292. On the question of strikes by black workers, information available to the Group indicates that there were 119 strikes involving black workers during 1975 and that of these, 87 were caused by wage demands. Of the strikes, 30 occurred in industrial undertakings where liaison committees had been established, and four where works committees had been established in terms of the Bantu Labour (Settlement of Disputes) Act. 272/ In the same period there were 175 disputes dealt with in terms of the Bantu Labour Relations Regulation Act by labour officers, two by the Central Labour Board and one by the Wage Board. 273/ In answer to a question, the Minister of Police disclosed in Parliament that police intervention had been sought in respect of 61 strikes during 1975. The following information was given concerning the numbers of workers arrested and the charges brought against strikers: 274/

Illegal strike	302
Public violence	24
Illegal strike and continuation of strike	53
Incitement of others to take part in a strike	16
Intimidation of persons in relation to their employment	2
Refusal to obey lawful command of employer	19
Malicious injury to property	8
Breach of contract by persons employed in public utility services	78
Arson	1

271/ House of Assembly Debates, 2 April 1976.

272/ House of Assembly Debates, 29 January 1976.

273/ House of Assembly Debates, 6 February 1976.

274/ House of Assembly Debates, 11 February 1976.

295. The pattern of government repression of strike action by African workers can be gauged by the sequence of events in a number of strikes during the period under review:

(a) In June 1975 the 320 African workers who went on strike at the Superocla concrete and asbestos factory in Germiston were dismissed. The protest was against wages and the treatment of the workers by the factory. The company area manager said the factory would re-engage "those we feel are the sort of people we want". The statutory works committee has been entirely ignored in the strike. The works committee members had participated in the strike, and during it completely different workers had been elected spokesmen. The workers claimed a wage increase from 40 cents to 60 cents an hour. 275/

(b) In September 1975 police arrested 139 African bakery workers at Rustenburg. The workers were demanding a R5 weekly pay increase. 276/

(c) At Dusns Bakery in Woodstock, Cape Town, nineteen black workers were arrested and four dismissed from their jobs during a strike involving half the firm's production staff. Of the 19 arrested workers, 14 were found guilty of striking and were sentenced by the Cape Town Regional Court to fines of R100 with the alternative of 90 days' imprisonment. 277/ The strike took place after the workers had expressed dissatisfaction with the liaison committee set up by the employers and had asked for a ballot to be able to choose between a liaison committee and a works committee. 278/

(d) In October 1975 more than 600 black workers involved in a strike at Natal Cotton and Woollen Mills at Mobeneni were dismissed after refusing to return to work during a dispute over sackings initiated by the factory personnel manager. Following negotiations between the management and the trade union, most, though not all, of the workers were reinstated. 279/

(e) In November 1975, 300 African cartage drivers staged a strike against dismissals and suspensions at the Kazerne goods yards in Johannesburg. They returned to work when the systems manager conceded several of their grievances. 280/

(f) In Durban in January 1976 strikes broke out at the Durban Ice and Cold Storage Company over a wage dispute, and at the Elangeni Hotel, where workers struck in sympathy with two dismissed workers. 281/

(g) In Durban, 2,000 workers struck at Coronation Brick; police with dogs were called to guard the brickyard compounds but were subsequently withdrawn when negotiations over a grievance took place with the management. 282/

275/ Rand Daily Mail, 19 June 1975.

276/ Rand Daily Mail, 16 September 1975.

277/ Cape Times, 14 August 1975, 31 January 1976.

278/ Abasebenzi, University of Cape Town Wages Commission, No. 2, 1976.

279/ Rand Daily Mail, 28 October 1975; Cape Times, 7 November 1975.

280/ Rand Daily Mail, 8 November 1975.

281/ Rand Daily Mail, 7 January 1976.

282/ Rhodesian Herald, 9 January 1976.

(h) In March 1976, 800 African workers were dismissed from James Brown and Hamer, the Durban shipbuilders, when the company refused to concede wage increases under the threat of strike action. The firm stated that the decision to sack all 800 workers was a policy decision taken by the company, which had worked closely with the Industrial Council and the Department of Labour. The workers were demanding an extra 3 cents an hour on their average rate of 45 cents an hour. 283/ This strike prompted a comment by South Africa's leading financial journal on the "tough fire-all tactics of some managements" and the role of the Department of Labour, which has been active in prosecuting illegal strikes. Notwithstanding wage improvements since 1973, the newspaper said, poverty was as pressing as ever as a cause of strikes, while unemployment had made it a buyer's market for labour, particularly in the textile and building industries. 284/

294. During the period under review police were used to disperse strikers on several gold mines. At the Western Platinum Mine between Rustenburg and Brits, 230 Lesotho and Mozambican miners held a wildcat strike that lasted two days, against the introduction of a new four-weekly pay system. 285/ At the Western Holdings Gold Mine at Welkom, miners protested when police were called out to quell a disturbance by African miners over recent pay increases. 286/

283/ Rand Daily Mail, 10 March 1976.

284/ Financial Mail, 19 March 1976.

285/ Rand Daily Mail, 5 February 1976.

286/ Rand Daily Mail, 3 June 1976.

II. NAMIBIA

INTRODUCTION

295. The illegal processes whereby South Africa has steadily extended its jurisdiction over Namibia were described in a previous report of the Ad Hoc Working Group of Experts. 1/ That report drew attention to the convening of a "constitutional conference" at the Turnhalle army gymnasium, Windhoek, attended by African, Coloured and white delegates selected on an ethnic basis; the mass arrests of members and supporters of SWAPO and the Namibian National Convention (NNC) throughout the Territory, following the assassination in August 1975 of Chief Pilemon Elifas of Ovamboland by unknown assailants; the evidence of coercion and intimidation by the South African authorities during the holding of elections for a Legislative Assembly in Ovamboland during January 1975; the escalation of the South African military presence, with the deployment of the South African Defence Force along the border with Angola; and the initiation of "counter-insurgency" operations and "hot pursuit" actions across the border against SWAPO guerrilla forces, including the military intervention of South African army units in the Angolan conflict in October 1975. 2/ Previous reports also discussed the Development of Self-Government for Native Nations in South West Africa Amendment Act, No. 20 of 1973, which enabled the State President to grant "self-government" to any of six proclaimed "homelands" (Ovamboland, Kavangoland, Eastern Caprivi, Damaraland, Hereroland, Namaland) without recourse to the South African Parliament, and the South West African Affairs Act, No. 25 of 1969, which carried further the illegal incorporation of Namibia into South Africa by greatly extending the field in which the South West African Administration in Windhoek had no jurisdiction. 3/

296. Despite the advisory opinion of 1971 given by the International Court of Justice, the contacts made by the Secretary-General of the United Nations between February 1972 and December 1973, the appointment of the United Nations Commissioner for Namibia by the General Assembly in 1974, the activities of the United Nations Council for Namibia, and the repeated resolutions of the United Nations Security Council calling for the withdrawal of its administration from Namibia (culminating in Security Council resolution 385 (1976) of 30 January 1976, by which South Africa was required to make a declaration accepting the holding of free national elections in Namibia under United Nations supervisions and control), South Africa has maintained and reinforced its illegal administration of Namibia. During the period under review it has continued to apply apartheid measures to the Territory, notably by further consolidation of the "homeland" structures and the extension of "self-governing" status to Eastern Caprivi and the Rehoboth Gebiet, together with a large increase in the scope of the repressive legislation (illegally applied to the Territory) used to suppress political activity by the African population. A particularly significant development during the period under review was the decision officially announced at the end of August 1976 to transform the Windhoek constitutional conference into a "multiracial interim government" by June 1977 to rule the Territory with certain limited legislative powers over internal matters until the attainment of full independence by the Territory by 31 December 1978. This move was rejected by SWAPO and the United Nations Council for Namibia at the

1/ See E/CN.4/1187, para. 304.

2/ Ibid., paras. 380-386, 334-338, 353-358, 359-362.

3/ E/CN.4/1135, paras. 196, 198-201, 245-250; E/CN.4/1020/Add.1, paras. 2 and 3.

time as a misleading and equivocal response to the resolutions of the Security Council; and by the Secretary-General of the United Nations as falling far short of United Nations policy. 4/

297. The laws specifically affecting capital punishment, forced removals of population, treatment of political prisoners and captured freedom fighters, public floggings, the conditions of Africans in the "homelands" and the situation of student movements and the African family, are discussed in the corresponding sections of this chapter.

298. The State of Emergency proclaimed in Ovamboland under proclamation R17 of 4 February 1972 remained in force in the period under review, and its provisions relating to arbitrary powers of search, seizure, arrest, detention and interrogation, formerly vested only in the members of the South African Police in Ovamboland, were extended to members of the South African Defence Force in the three newly-declared "security districts" of Ovamboland, Kavangoland and Eastern Caprivi. The new regulations, 5/ which are discussed below, provided for stringent restrictions on the freedom of movement and of association and for the enforced evacuation and clearance of people, livestock and vegetation in order to create a "free-fire zone" along the entire length of the Angola/Namibia border. There was extensive evidence during the period under review of a policy of massive arrests and detentions by the security forces, including the well-documented reports of brutality and torture inflicted on the civilian population of the area during counter-insurgency operations by the security forces. 6/

299. Further action was taken against the leadership of SWAPO during the period under review, with over 200 SWAPO members arrested for alleged involvement in the shooting of Filemon Elifas. Those arrested were held under the provisions of the Terrorism Act, and the Suppression of Communism Act, incommunicado, and without access to lawyers or relatives (see paras. 312-313 below). As a result of the trial of six people under the Terrorism Act in the Swakopmund Supreme Court, Aaron Muchimba, SWAPO National Organizer, and Hendrik Shikongo, were sentenced to death. An appeal was subsequently allowed following proven irregularities in the judiciary process and a wave of international protest.

300. The continued harassment of churches with a predominantly African or multiracial constituency by the South African authorities occurred during the period under review, involving permit denials, expulsions and imprisonment (see paras. 374-375 below).

301. Information available to the Group indicated a significant increase in both the size and the power of the South African armed presence in the Territory in the period under review, violating the terms of the League of Nations Mandate of 1919, which

4/ See Namibia Bulletin (United Nations, New York), June 1976; Guardian, 19 August 1976, 1 September 1976; The Times, 20 August 1976; United Nations Press Release NAM/238, New York, 20 August 1976; New York Times, 27 August 1976; International Herald Tribune, 19, 23 August 1976; Le Monde, 31 August 1976.

5/ Government Gazette, No. 5133, 19 May 1976, "Regulations for the Administration of Certain Areas in South-West Africa", No. R.89, 1976. See also paras. 26, 32, 40.

6/ See relevant sections of this report.

forbade the stationing of armed forces anywhere in the Territory. Namibia was used as a military base for the launching of the South African intervention into the Angolan conflict, which lasted until the withdrawal of South African units guarding the Cunene hydroelectric scheme sites in southern Angola at the end of March 1976, although there have been continued reports by SWAPO that South African troops are continuing to train members of the defeated Angolan factions for guerrilla fighting in Angola. In March, South Africa was condemned by the Security Council for launching raids on villages in Angola and Zambia, and the presence of its forces in northern Namibia was ruled a threat to international peace and security in the region. 7/

302. The text of the statement issued in Windhoek by the constitutional committee of the Windhoek "constitutional conference" on 18 August 1976 was transmitted to the United Nations in the form of a letter from the Permanent Representative of South Africa to the United Nations addressed to the Secretary-General, and subsequently issued as a Security Council document. 8/ The statement reaffirmed the Declaration of Intent issued during the first session of the conference in September 1975, and envisaged the creation of an "interim Government to manage the transfer of functions and to establish a permanent Government on the basis of a constitution which will be finalized during the interim period"; the committee reaffirmed the independence of its various population groups and the desire to maintain "South West Africa" as a unity. There were no details of the proposed form of government, or of any provision for elections or for the involvement of either SWAPO or the United Nations in this process.

303. During the period under consideration, a number of resolutions relating to Namibia were adopted by various United Nations organs, mainly the General Assembly, the Security Council, the United Nations Council for Namibia and the Special Committee on the Situation with regard to the Implementation of the Declaration of the Granting of Independence to Colonial Countries and Peoples.

304. The General Assembly at its thirtieth session, after consideration by the Fourth Committee of the reports of the United Nations Council for Namibia and the Special Committee for 1975, adopted resolution 3399 (XXX) of 26 November 1975 which reaffirmed the inalienable and imprescriptible right of the people of Namibia to self-determination and independence within the framework of a united Namibia. In this resolution, the General Assembly strongly deploring South Africa's continued refusal to comply with the resolutions and decisions of the United Nations, its continued illegal occupation of Namibia, its brutal repression of the Namibian people and its persistent violation of their human rights, as well as its efforts to destroy the national unity and territorial integrity of Namibia, in particular through the convening of a so-called constitutional conference: reaffirmed legitimacy of the struggle of the Namibian people by all means against the illegal occupation of their country by South Africa; strongly condemned the military build-up by South Africa in Namibia and the forceful removal of Namibians from the northern border for military purposes; called upon those States which have consular representation, whether ordinary or honorary, in Namibia to terminate such representation, and calls upon those States which have consuls in South Africa with consular jurisdiction in Namibia to withdraw such accreditation.

7/ See E/CN.4/1159, paras. 244-246; E/CN.4/1187, paras. 259-260. See also Security Council resolution 387 (1976) of 31 March 1976.

8/ S/12180, 19 August 1976.

305. It will be recalled that the Security Council considered South Africa's response to its resolution 366 (1975) of 17 December 1974 at meetings between 30 May and 6 June 1975. A draft resolution sponsored by Guyana, Iraq, Mauritania, the United Republic of Cameroon and the United Republic of Tanzania, calling for the determination of the illegal occupation as a threat to international peace and security and therefore a suitable case for action under Chapter VII of the United Nations Charter, was not adopted owing to the negative votes of three of the permanent members of the Security Council (France, United Kingdom, United States). On 30 January 1976, the Security Council unanimously adopted resolution 385 (1976), in which it declared that in order that the people of Namibia be enabled to freely determine their own future, it was imperative that free elections under the supervision and control of the United Nations to be held for the whole of Namibia as one political entity and that there should be a timetable for the establishment of the necessary machinery to control and supervise such elections. The Council demanded further that South Africa take the necessary steps to effect the withdrawal, in accordance with resolutions 264 (1969), 269 (1969) and 366 (1974), of its illegal administration from Namibia. It called on South Africa to comply fully in spirit and in practice with the provisions of the Universal Declaration of Human Rights, to release all Namibian political prisoners, including those imprisoned or detained in connexion with offences under so-called internal security laws, to abolish the application in Namibia of all racially discriminatory and politically repressive laws and practices, and to accord to all Namibians currently in exile for political reasons full facilities for return to their country without risk of arrest, intimidation or imprisonment. The Security Council decided to remain seized of the matter and to meet on or before 31 August 1976 for the purpose of reviewing South Africa's compliance with the terms of its resolution.

306. At its 230th meeting, in March 1976, the United Nations Council for Namibia passed a number of resolutions, one of which reaffirmed its direct responsibility for the Territory and its obligation to assist the Namibian people in their struggle for independence. In its remaining resolutions, it took note with appreciation of the Declaration of Dakar and Programme of Action adopted by the International Conference on Namibia and Human Rights. 9/

307. The United Nations Fund for Namibia has continued to serve as the main vehicle through which the United Nations Council for Namibia channels its assistance to Namibians. In 1975, the Committee on the United Nations Fund for Namibia allotted the sum of \$US300,000 towards the establishment of the Institute for Namibia as a first instalment of the contributions to be made by the Fund to the Institute. 10/ The Institute for Namibia, referred to in the interim report of the Group (see E/CN.4/1187, para. 317) has begun to operate. The Senate of the Institute met for the first time in July 1975 in Lusaka, and again in December 1975 and April 1976. The Institute was formally opened by President Kaunda of Zambia on 26 August 1976, Namibia Day. Initial enrolment is expected to be 100 students in 1976, with a further 50 students to be added at the start of each academic year. 11/

9/ "Dakar International Conference - Namibia and Human Rights: Past and Future", Human Rights Journal, vol. IX, 2-3, 1976.

10/ Report of the United Nations Council for Namibia (Official Records of the General Assembly, Thirtieth Session, Supplement No. 24, A/10024, vol. I, pp. 51-52.)

11/ A/AC.131/L.35/Add.1.

308. Among the actions taken by other organs of the United Nations, mention may be made of the international seminar on the eradication of apartheid and in support of the struggle for liberation in South Africa, which was sponsored by the United Nations Special Committee against Apartheid, in consultation with the Organization of African Unity (OAU). The seminar, which was held in Havana, Cuba, from 24 to 28 May 1976, brought together representatives of Governments and of the United Nations, the specialized agencies, the OAU, the liberation movements in southern Africa, and anti-apartheid movements and other interested organizations. The programme of action adopted by the seminar at the final meeting called for clear and effective action to be taken by the international community to remove South Africa's illegal administration in Namibia by assisting the South West Africa People's Organisation (SWAPO) in its just struggle for independence. The seminar condemned "the increasing ruthlessness of the Pretoria régime in its illegal occupation of Namibia and particularly the large number of arrests and detentions of Namibians", and stated that "the Pretoria régime must be warned that the carrying out of death sentences through the illegal courts constitutes an international crime". The seminar recommended that the United Nations, intergovernmental and non-governmental organizations should support SWAPO in its rejection of the so-called constitutional talks being held in Namibia under the direction and control of the South African authorities and stated that "any attempt to transfer governmental powers to any body except the United Nations, or a Government elected under United Nations supervision and control, must be rejected". 12/

309. The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples decided on 1 April 1976 to send a special mission of six of its members to visit Botswana, Ethiopia, Mozambique, the United Republic of Tanzania and Zambia in connexion with the recent developments in Southern Rhodesia and Namibia. After having examined the report of that mission, the Special Committee adopted a resolution on 17 June 1976 by which it inter alia requested the Secretary-General, in co-operation with the Chairman of the Special Committee and in consultation with the Organization of African Unity, to prepare for approval by the General Assembly at its thirty-first session, a proposal to convene in 1977 an international conference in support of the peoples of Zimbabwe and Namibia, as suggested by the ad hoc group, for the purpose of mobilizing world public opinion in support of those peoples; invited its Chairman to continue to maintain a close working relationship with the Governments of the front-line States and other concerned Member States, the General Secretariat of the Organization of African Unity and the national liberation movements, including the holding of consultations on a regular basis with their representatives as appropriate, so as to enhance further the capacity and competence of the Special Committee to contribute positively to the endeavours of the peoples of Zimbabwe and Namibia to achieve the goals set forth in the Charter of the United Nations and the Declaration; and requested the

12/ The final document of the seminar, including the Declaration and programme of action, are reproduced in: Centre against Apartheid, Notes and Documents, SEM/1, June 1976.

Secretary-General to transmit the report of the ad hoc group to the Security Council so that it might be made aware of the latest developments in the struggle for the national liberation of the peoples of Zimbabwe and Namibia, and take such further measures as it might deem necessary to enable those peoples to achieve their independence. 13/

310. The Ad hoc Working Group of Experts notes with satisfaction that the General Assembly, in its resolution 31/6/G of 9 November 1976, authorizes the Special Committee against Apartheid to organize a World Conference for Action against Apartheid in 1977 in support of the peoples of Zimbabwe and Namibia, the purpose of which would be to mobilize world public opinion in support of this cause.

13/ Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, A/31/23/Add.1.

A. NEW DEVELOPMENTS RELATING TO THE POLICY OF APARTHEID
AND RACIAL DISCRIMINATION

1. Capital punishment

(a) Reference to some relevant laws

311. As enumerated in previous reports of the Ad Hoc Working Group of Experts, the various South African security laws providing for the death penalty have illegally been 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, and E/CN.4/1111, paras.42-43). Figures for those persons condemned to death and executed in Namibia are included in the total number published for the Republic. As in the case of the Republic, the majority of those sentenced to death are actually executed. (See paras. 3-4 above.)

(b) Analysis of the evidence received by the Ad Hoc Working Group of Experts

312. Reference was made by Mr. Evald (421st meeting), Mr. MacDermot (418th meeting), Mr. Katjavivi (432nd meeting), Mr. Ennals (433rd meeting) and Mr. MacEntee and Mr. Smart (434th meeting) to the sentencing to death in May 1976 of Aaron Muchimba and Hendrik Shikongo, both members of SWAPO, by the Swakopmund Supreme Court, after a three-month summary trial on charges under the Terrorism Act in connexion with the assassination in August 1975 of the Chief Minister of Ovamboland, Filemon Elifas. The two men were found guilty of providing the killers of Chief Elifas with transport and financial assistance. They were tried together with four other SWAPO members; two of these were acquitted, and the other two, who were women, received prison sentences of seven and five years respectively. None of the six was charged with direct participation or with any act of violence in that murder and all six defendants pleaded not guilty. The trial opened on 16 February 1976 and continued with various adjournments until 30 April; judgment was given on 11 May and sentence pronounced on 12 May.^{14/} Aaron Muchimba, SWAPO National Treasurer and Organizing Secretary, was found guilty of delivering a landrover, a radio and some blankets to a person who it was alleged was to overthrow the "lawful authorities" by violence; he had admitted delivering the goods, but denied knowledge of their purpose. Similarly, Hendrik Shikongo was accused of driving two unknown men to the scene of the assassination; he admitted doing this but denied he knew of their purpose. Two international organizations concerned with political prisoners, Amnesty International and the International Commission of Jurists, had observers at the trial whose reports provided direct evidence of the nature of the proceedings.

313. According to information available to the Group, though there is no automatic right of leave to appeal for a prisoner sentenced to death under South African law, the procedure is generally available but in this case leave to appeal was initially refused by the trial judge, J.J. Strydom. In June this decision was reversed by the Windhoek Supreme Court, which granted a defence application for leave to appeal; this followed the granting of an application by the defence for a special entry to

^{14/} For a full description of the trial proceedings, see paragraphs 55, 60-63 below.

be made on the record of the Swakopmund trial proceedings, relating to the extraction of confidential information during the trial from the files of the defence attorneys by employees working with the security police. In granting the appeal, Mr. Justice Hart, summing up the case, said that the initial refusal was a "unique matter in South African legal history and must be rare in the legal systems of other countries". The appeal was to be heard by the Appellate Division of the Supreme Court in Bloemfontein, although no date was set.^{15/}

314. Mr. MacDermot (413th meeting) and Mr. Ennals (433rd meeting) referred to campaigns and mass protests throughout the world against the death sentences. The International Commission of Jurists had issued a statement on 11 June 1976 which concluded that in view of the "gross irregularities" and in light of the report of their observer at the trial it was seen as unthinkable that the death sentences should be allowed to stand. The British Anti-Apartheid Movement had produced posters and postcards with the message "Save SWAPO Leaders" and campaigning on a broad basis had been carried out by an organization known as SATIS (Southern Africa - the Imprisoned Society).

315. According to information available to the Group, there were a large number of protests, appeals for clemency to the South African Government and calls for intervention by the United Nations coming from, among others, the following organizations and individuals: Organization of African Unity, Amnesty International, Lutheran World Federation, World Council of Churches, World Federation of Democratic Youth, Association of Democratic Lawyers (US), Bertrand Russell Peace Foundation, British Labour, Liberal and Communist Parties, British Trades Union Congress, British section of the Methodist Church, Commonwealth Secretary-General Shridath Ramphal, Secretary-General Otto Kersten of the International Confederation of Free Trade Unions (ICFTU), Council of Ministers of the European Economic Community (EEC), Prime Minister Gaston Thorn of Luxembourg. At a press conference held in London to launch an international campaign to stop the death sentences being carried out, statements of support were made by the Botswana High Commissioner, the Acting High Commissioner of Mauritius and the General Secretary of the Transport and General Workers' Union.^{16/}

316. Mr. Sean MacBride, United Nations Commissioner for Namibia, issued a statement which said that in terms of international law, if the death sentences were carried out, those involved would be guilty of murder and those indirectly involved of conspiracy to murder, since the trial and sentences imposed by the court sitting in Swakopmund were null, void and illegal, following from the fact that the occupation of Namibia was illegal in terms of international law. He described the Terrorism Act as a clear violation of the principles of the Universal Declaration of Human Rights and the International Covenants on Human Rights, and said it was being used to deter them from asserting, and the people of Namibia from asserting, their just claim to the liberation of Namibia.^{17/}

^{15/} Focus on Political Repression in Southern Africa (published by the International Defence and Aid Fund for Southern Africa), No. 6, September 1976; Windhoek Advertiser, 13 May 1976, 28 June 1976, 22 July 1976.

^{16/} Namibia News, South-West Africa People's Organisation, March-May 1976.

^{17/} Ibid.

317. According to information available to the Group, a second trial involving seven people on charges under the Terrorism Act started in the Keetmanshoop Supreme Court on 30 August 1976 as a result of which Filemon Nangolo was found guilty and sentenced to death for the murder of four white people in two shootings at the Kalhugel and Okatjiho farms in central Namibia. His alleged accomplice in the murders, Kanisius Heneleshi, was still at large during the trial proceedings. The Judge President, Justice Frans Badenhorst, said he could find no extenuating circumstances; Nangolo's defence counsel gave notice of his intention to apply for leave to appeal. Proceedings against the other six accused were on lesser charges, such as theft with aggravating circumstances, and it was not clear from the information available to the Group whether there remained the possibility of other death sentences. Although there was no evidence that any of the accused were active SWAPO members, Brigadier Verster, Police Chief in the Territory, stated at a press conference that Nangolo and Heneleshi were "trained infiltrators" and it was expected it would be found that they were "SWAPO-orientated".^{18/}

2. Massacres and violations of the right to life

(a) Non-combatant Africans killed by the security forces

318. Several witnesses (Tjizera, 428th meeting; Katjavivi, 432nd meeting; Smart, 434th meeting) in evidence and in documents provided to the Group referred to the increasing numbers of people killed in incidents with the South African police and security forces in northern Namibia. Units of the South African Defence Force stationed in Ovamboland and elsewhere in the north had initiated a campaign of terror and intimidation against Namibians in the wake of the disastrous South African invasion of Angola and their failure to destroy SWAPO's capability of waging guerrilla warfare. This had resulted in a growing risk to the lives and well-being of civilians in the area. Mr. Tjizera said that he had witnessed the machine-gunning of a pregnant woman and her husband, who was trying to take her to hospital at Ondangwa during the night, by South African soldiers in February 1975, when a night curfew had been imposed. Mr. Katjavivi said that reports had been received that the South African security forces were carrying out the clearance of a "free-fire zone" one kilometre wide along the border with Angola in an atmosphere of terror and intimidation, and that many people had lost their lives as a result of refusing to co-operate in the enforced evacuation (see also paras. 324-328 below).

319. According to information available to the Group, there have been disappearances and killings of members of the Anglican church in Ovamboland as a result of actions by the security forces. Ms. Olivie Ngenye, private secretary to Archdeacon Philip Skilongo of Odibo, and her fiancé, Thorothismus Jacobus, were beaten up by Ovamboland tribal policemen under the command of the Ovamboland authorities, with the result that Mr. Jacobus subsequently died of his injuries in hospital.

320. In evidence submitted to the Windhoek Supreme Court in August, an Ovambo man, Mr. Ngumbualle Jakob, described how a South African national serviceman had opened fire on a vehicle containing adults and children, after previously ordering them

^{18/} Focus, No. 5, July 1976; No. 6, September 1976; Windhoek Advertiser, 20, 22 April 1976, 21, 24 May 1976, 16 September 1976; Star, 18 September 1976.

into it.^{19/} According to a SWAPO representative in Luanda, civilians were being tortured and frequently killed in efforts by the security forces to elicit information about the movements of SWAPO guerrillas.^{20/}

321. Information received during the period under review indicates that the situation in the northern part of Namibia for civilians has become especially hazardous since the regulations providing for the establishment of "security districts" in the northern "homelands", the extension of arbitrary powers of arrest to members of the South African Defence Force, and the imposition of martial law in these areas. Pastor Cornelius Ndjoba, Chief Minister of Ovamboland, said in a broadcast on the official Radio Ovambo that security forces had been given instructions to "shoot to kill if necessary" at anyone found in the free-fire zone along the border, and warned people to co-operate with the orders to avoid the border areas so as to prevent unnecessary loss of life. He said that the Ovamboland authorities had decided to use the zone for its intended purposes, following the shooting of African border guards and others, allegedly by SWAPO guerrillas.^{21/} The existence of this order was confirmed by reports that three young boys cycling across the border from Angola were shot on sight by security forces. A South African conscript, Mr. Bill Anderson, serving on the border area during 1976, stated that the orders given to troops on security sweeps were to shoot anyone who ran away, and arrest those who stayed. His information, which was given widespread coverage in the Guardian newspaper, also disclosed details of systematic brutality and mass detention of civilians arrested by security forces in northern Namibia. No information was available as to the subsequent fate and whereabouts of such detainees.^{22/}

322. According to information available to the Group, an indemnity against either civil or criminal proceedings had been granted to all Defence Force personnel and state employees in respect of any action ordered or taken by them in connexion with the "suppression of terrorism in any operational area" under the terms of the South African Defence Amendment Bill. The clause was justified by the South African Defence Minister by reference to an incident in the past (unspecified) which had caused great uncertainty and anxiety in the minds of soldiers doing duty on the border. He said that operational commitments did not allow for soldiers to be withdrawn from their duties to attend judicial inquiries into the deaths through "unnatural causes of persons killed in the process of combating terrorism". The Bill, in its first draft, also amended the definition of South Africa's borders for "military purposes" as "Africa south of the Equator" while amending the definition of "terrorism" to mean "terrorist activities in the Republic or directed against the Republic or any authority or inhabitants of the Republic".^{23/}

^{19/} Rand Daily Mail, 15 July 1976; Windhoek Advertiser, 20 August 1976.

^{20/} Interview with Hermann Nangolo Ithite by Dutch Angola Medical Committee, 4 July 1976.

^{21/} Windhoek Advertiser, 5 July 1976; Focus, No. 5, July 1976.

^{22/} Guardian, 30 August 1976.

^{23/} Focus, No. 3, March 1976.

(b) Deaths following labour unrest

323. Mr. Tjizera (428th meeting) and Mrs. Wood (433rd meeting) referred to the shooting of 11 contract workers by police at the Katutura labour compound, Windhoek, in April 1975, as a result of which one worker died instantly of his wounds (see also E/CN.4/1187, para. 322). The shooting had come in retaliation for stone-throwing, following a 4 a.m. check by police of the estimated 5,000 men to establish all those "illegally" in the compound. Those checked had congregated outside the compound gate to watch events and when attempting to communicate with those being arrested and put into vans had been forced back by the municipal police. The police had opened fire when some workers had tried to run through a larger gate opened for the exit of a truck. Affidavits presented in court during the subsequent trial of 82 men arrested by police alleged that there had been no prior warning, and that many of those shot had been simply running. Police witnesses testified that the fact that many were shot in the back could be accounted for by the fact that when **bending** down to pick up stones, their backs would be exposed. The police always entered the compound fully armed and on the look-out for trouble, since conditions were known to be overcrowded and inadequate, and had seemingly panicked in this instance and opened fire indiscriminately.

3. Forced removals of population

324. A number of witnesses, amongst them Mr. Kahana (421st meeting), Mr. Katjavivi (432nd meeting) and Mr. Smart (434th meeting), referred to the decision by the South African authorities to proceed with the mass clearance of civilians from a "free-fire zone" one kilometre wide along the entire 1,600-kilometre length of the Angola/Namibia border. The evacuation was being carried out forcibly and against the will of the people of the area, who had initially refused to co-operate; this had led to the sending of South African army units to carry out the removals. The area contained large settlements with religious missions, schools, clinics, shops and cafés; amongst the villages being evacuated were Engela, Omafo, Odimbo, Oshanti, Ondobe, Enana, Kongo and Ipinga, which were all within 8 kilometres of the border. The evacuation scheme would involve an estimated 20,000 people. The South African authorities had promised to compensate those affected by the evacuation by providing houses and new land to farm. It was reported that the authorities had pledged that people would be compensated for the loss of their property out of the Kwanyama tribal fund, and that new clinics and hospital services were to be established to replace those lost by the move, while living and working conditions would be improved. People who had "volunteered" for resettlement earlier in the evacuation were reported to have been paid compensation amounting to a total of R700,000 by the end of August 1976, which on the official figures provided amounted to R140 per person. Payments had ceased since then. Figures given by the authorities for the number of persons involved have varied between a minimum of 3,000 and a maximum of 5,000.24/

325. According to information available to the Group, the clearance of a no-man's land along the border was first announced in October 1975 and was initially limited to a 250-kilometre strip comprising the area of the Kwanyame tribal authority along the border. The move was decided on in reaction to a series of SWAPO guerrilla raids across the border and with the intention of providing a base for military operations

by South African forces in Angola. The first stage of the evacuation was apparently to remove residents described as "squatters", followed by those with "vested interests" in the area - traditional farmers, kraal inhabitants and businessmen. The Ovamboland authorities established a special committee to monitor this removal process of permanent residents. It was reported that, according to Anglican church sources, the removals would cause mass dislocation and splitting of families as well as the abandonment of five church centres, two hospitals and several schools run by missionaries. The action would complete the authorities' plans to close down the facilities of St. Mary's Anglican mission at Odibo (see E/CN.4/1187, para. 370). The inhabitants would also forfeit the use of the best-watered farmland of the area.^{25/}

326. According to information available to the Group, the evacuation of the border area was speeded up as a result of the extension of emergency powers to South African troops throughout the northern "homelands" in May 1976. At this time the decision to extend the clearance zone along the entire length of the border appears to have been made, and it was also decided that 18 metres of the one kilometre wide strip was to be totally denuded of vegetation. The new measures provided for the compulsory evacuation of schools, hospitals, shops and businesses designated by the Minister of Defence, while enabling the Minister or anyone under his authority to order any particular area to be cleared of population, sealed off and systematically searched. Residents forcibly removed in this way were forbidden to return within a specified period. The regulations also empowered the Minister to declare any area bordering on a "security district" a specifically prohibited area or no-man's land in which all movement, other than by the security forces, was forbidden.^{26/} It was reported that South African troops clearing the border area were carrying out the wholesale destruction of crops and villages. Refugees in southern Angola alleged that houses were being flattened by civilian-driven bulldozers, and crops burned or ploughed up. The refugees were said to include a number of primary school children who had fled the no-go area, and Mr. Sean MacBride, the United Nations Commissioner for Namibia, stated that the press reports of the mass relocation of the population tallied with reports received from refugees in Angola and Zambia by his office. The only safe way for refugees to cross the border was with SWAPO guerrillas. The village of Ipinga was reported as having been totally evacuated.^{27/}

327. According to information received by the Group, more than 200 former residents of Khomasdal, the Coloured township outside Windhoek, had been left homeless after the Windhoek City Council had carried out the demolition of their homes. The Council had decided to demolish an area of makeshift shanties and tin huts, owned by a private landlord, in 1975, mainly out of a fear for the consequences for law and order of any "social agitation" by the community. Although some 200 houses were to be built by the Council, available for purchase with 100 per cent loans, a deposit of R300 was required. By April 1976, when 84 houses had been built, only four people had taken up the offer - the remainder were left to make their own arrangements on eviction.^{28/}

^{25/} Windhoek Advertiser, 29 October 1975; Namibia Bulletin, June 1976; Focus, No. 2, January 1976.

^{26/} Government Gazette, No. 5133, 19 May 1976; Focus, No. 5, July 1976; The Times, 19 May 1976.

^{27/} Guardian, 30 August 1976, 1 September 1976.

^{28/} Windhoek Advertiser, 31 March 1976, 1, 2 April 1976.

328. As regards the resettlement of population consequent upon the continued implementation of the "homelands" policy in the period under review it was reported that the Minister of Coloured, Rehoboth and Nama Relations had announced in the House of Assembly that about 379 Namas would have to move from the Nama tribal reserves of Bondelswarts and Warmbad, which had been deproclaimed.^{29/}

4. Treatment of political prisoners and captured freedom fighters

(a) Summary of some relevant laws

329. As indicated in previous reports of the Group, the South African security laws that provide for severe penalties of detention and imprisonment for a range of "political offences" as well as those governing the conditions of prisoners in gaol have been made specifically applicable to Namibia.^{30/} 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. In addition, there are certain proclamations which concern Namibia exclusively, ^{31/} in particular proclamation R17 of 1972, which made Ovamboland subject to emergency law, and proclamation R304 of 1972, extending the powers of the South African Police throughout the northern districts of Namibia.^{32/}

330. 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.

331. Three types of police operate in Namibia. The South African Police units stationed in, or seconded to, Namibia are heavily armed, with military vehicles, jeeps and helicopters. Until June 1974 they were mainly responsible for patrolling the Angola/Namibia border. The municipal police, including African constables under white officers, are controlled by the white urban authorities and are mainly responsible for enforcing pass laws, influx controls and so on. The security police have a large detachment of men on duty in Namibia, and other special departments of the police send in men as the need arises; their work is particularly concerned with the detention and interrogation of political prisoners. So-called "tribal police" have been established to Ovamboland and Kavangoland under the control of the tribal authorities and "homeland" governments and are not subject to departmental regulations or public scrutiny. Many of these are undergoing training as a para-military border force by South African army instructors and in military bases in the Republic, and as such are intended as the nucleus for "homeland" armies.^{33/}

^{29/} Rand Daily Mail, 14, 20 October 1975.

^{30/} See E/CN.4/1030/Add.1, para. 9.

^{31/} E/CN.4/1050, paras. 261-263.

^{32/} See E/CN.4/1135, para. 252.

^{33/} See E/CN.4/1135, para. 210; E/CN.4/1159, paras. 243-244; E/CN.4/1187, para. 360. See also relevant sections of the present report.

332. During the period under review, certain provisions of security laws in force in South Africa were extended to Namibia for the first time, and significant additions to those laws already in force were made. The terms of the Internal Security Amendment Act, initially known as the Promotion of State Security Bill, provided for the amendment of the Suppression of Communism Act of 1950, which was renamed the Internal Security Act, together with other repressive legislation, including the Terrorism Act, which was reapplied to the Territory. The provisions of the Riotous Assemblies Act of 1956 were applied to the Territory for the first time (see chap. I, para. 70).

333. Sections 12, 13 and 14 of the new Act applied the Riotous Assemblies Act to the Territory, replacing previous legislation in force since 1930. These enable the authorities to ban, without recourse to courts of law, any assembly or gathering which in the opinion of the police constituted a threat or could become "riotous". Justifying this decision in the House of Assembly, Mr. Kruger, the Minister of Justice, said that the Government had been asked by the Windhoek constitutional conference to provide the necessary conditions for the peaceful consideration of the future of the Territory and for the maintenance of law and order. The previous laws in force in the Territory enabled magistrates to ban gatherings only with the approval of the then South West African Administrator, which in practice meant the Minister of Justice, and this was "impractical" in emergencies. Magistrates would henceforward be able to apply the South African legislation directly. The new powers were to be "put on ice for use in case of need" and were not aimed at or suitable for a full-scale emergency or large-scale internment. They were intended for use in times when uncertainty on the border required more attention.^{34/}

334. As referred to in paragraph 298 above, the provisions of emergency proclamation R17 in force in Ovamboland were massively extended by the regulations gazetted on 19 May 1976.^{35/} The e provided for the exercise of powers formerly conferred only on members of the South African Police to members of the Defence Force throughout Ovamboland, Kavangoland and Eastern Caprivi, in respect of arrest, detention and interrogation. Any civilian suspected of withholding information about insurgents may be arrested without warrant and held incommunicado until such time as the authorities are "satisfied that he answered all questions fully and truthfully". Access to legal advice during this period is specifically forbidden, unless official permission has been granted. Offenders tried and convicted are liable to a maximum fine of R600 or imprisonment for up to three years or both. Persons, sites and vehicles can be searched without warrant and "evidence" seized. All chiefs, headmen and other adults are obliged to report the presence of any person known or suspected to be in the "homelands" unlawfully, to a Native Commissioner or to the South African Police, with failure to do so a criminal offence. (This is similar to section 51 of the Law and Order (Maintenance) Act in Southern Rhodesia.) The effect of the regulation was to make the three "security districts" in effect a closed area where the numbers and identities of those detained, as well as the conditions under which they are held, are difficult to obtain.

(b) Analysis of evidence received by the Ad Hoc Working Group of Experts

335. The evidence presented to the Group can be analysed under several headings:
(i) evidence concerning recent arrests and the numbers of political prisoners;

^{34/} Windhoek Advertiser, 5, 6, 11 May 1976; House of Assembly Debates, 7 May 1976.

^{35/} Government Gazette, No. 5133, 19 May 1976; Focus, No. 5, July 1976.

(ii) allegations concerning torture and the cruel, inhuman and degrading treatment of political prisoners; (iii) allegations concerning violations of the right of the accused to a fair and public trial and procedures for complaint and redress.

336. The Group examined the evidence analysed below in the light in particular of the international standards embodied in the instruments mentioned in the introduction to the present report (paras. 35-36).

(i) Evidence concerning recent arrests and the numbers of political prisoners

337. Many witnesses referred to the mass arrest and detention of people for political reasons by the South African authorities. Mr. Tzijera (428th meeting) said that at the time he left the country in August 1975 there were more than 900 SWAPO members arrested from all parts of the country, held in solitary confinement. Mr. Smart (434th meeting) said that under the provisions of the Terrorism Act and the emergency regulations in force in Ovamboland and the north, detainees had no right of access to their families or to a lawyer and were frequently held in solitary confinement; in certain cases the families of detainees had not been informed of their arrest by security police and had received no official explanation for their disappearance. A document compiled by Amnesty International listed the names of all those known to have been detained without trial, to have been restricted, or to be serving sentences for political offences as of December 1975. Due to the official restrictions on the flow of information from Namibia to the outside world, many others known to have been detained had in most cases remained anonymous.

338. Mr. Katjavivi (432nd meeting) stated that SWAPO had been the primary target of police repression because of its opposition to the Windhoek constitutional talks and the fact that the Namibian people identified SWAPO with their objectives of freedom and national liberation. In the north, South African armed forces and police were attempting to break any links between the civilian population and SWAPO freedom fighters through mass arrests, while in the rest of the country SWAPO activists were subjected to constant intimidation and harassment, often by repeated short-term detentions. Following the assassination of Filemon Elifas, the Ovamboland Chief Minister, in August 1975, more than 200 SWAPO members or supporters had been arrested, including a number of priests.

339. According to Mr. Thornberry (433rd meeting), who had visited Namibia frequently between early 1974 and September 1975 as an observer of the general situation of human rights on behalf of three non-governmental organizations, the SWAPO leadership was particularly singled out for persecution and arrest because of their attempts to develop political education and organization on a non-ethnic basis - as soon as it became too effective the police would move in to arrest the current leaders on one common charge or another.

340. Mr. Katjavivi and Mr. Smart referred to the arrests, subsequent trials and sentencing of SWAPO members on charges under the Sabotage and Terrorism Acts. In the period under review, six people had been arrested on charges under the Terrorism Act and subsequently brought to trial at the Swakopmund Supreme Court.

341. Mr. Katjavivi referred to the continuing arrests and intimidation during the trial.

342. According to information available to the Group, three SWAPO leaders - Othniel Kaakunga, SWAPO vice secretary-general, Richard Ujaha, chairman of the SWAPO Youth League, and Silas Emula - were arrested at a political meeting in a communal hall in Rehoboth district in July 1976. They were subsequently fined R50 each by Rehoboth magistrates court for being in the area without permits.^{36/} Othniel Kaakunga had previously been in detention; since his release on 3 October 1975 he had been rearrested twice in Windhoek and locked up for short periods on the grounds that his pass was not in order. Maria Mueshihange, the sister of a SWAPO official in exile, was also reported as detained at that time. In July 1976, the Minister of Justice confirmed that an "armed infiltrator" who had been wounded and captured in northern Namibia was being held under section 6 of the Terrorism Act.^{37/}

343. According to figures provided by the Minister of Justice to the South African Parliament, a total of 45 men and 12 women were arrested during 1975 in terms of regulation 19 of the emergency proclamation R17 in force in Ovamboland. Of these, three had been arrested in connexion with malicious injury to property, 52 on suspicion of murder or attempted murder and contravention of the Terrorism Act, and two for illegal possession of arms and ammunition. By April 1976, 41 men and 9 women had been released after being held in detention for periods of up to 168 days. Only five people, two men and three women, were charged, and two men were still in detention.^{38/}

344. According to the document presented by Amnesty International (Mr. Smart, 434th meeting), 40 long-term Namibian political prisoners were incarcerated on Robben Island. Of this number, 28 comprised those convicted at the Terrorism Trial in Pretoria in February 1968 (including Toivo ja Toivo), of whom 15 had been sentenced to imprisonment for the rest of their natural lives. In addition, two SWAPO leaders, Brendan Simbwaye and Nathaniel Gottlieb Maxhuilili, acting President of SWAPO, continued to be restricted to the areas of their homes. Brendan Simbwaye had been restricted to his home at Katima Mulilo since 1964, and was reported to have disappeared at the time of the visit of the United Nations envoy to Namibia, Dr. Escher, in 1972. The banning order on Nathaniel Maxhuilili, the only Namibian known to have been banned under the powers of the Suppression of Communism Act, was due to expire in July 1977, and it was expected it would be reimposed.

345. According to information available to the Group, it had been decided in principle that political prisoners from Namibia at present being detained in South Africa should be transferred to Windhoek as soon as suitable accommodation had been prepared. The Minister of Justice, Mr. Kruger, said the decision had been taken for administrative reasons and to allow the families of prisoners to visit them.^{39/}

(ii) Torture and cruel, inhuman and degrading treatment of political prisoners and captured freedom fighters

346. Mr. Beukes, presenting the testimony of Reuben Hauwanga (432nd meeting), and Mr. Katjavivi (432nd meeting) referred to the torture methods used against detainees,

^{36/} Windhoek Advertiser, 21 July 1976.

^{37/} Windhoek Advertiser, 12 November 1975; Rand Daily Mail, 16 July 1976.

^{38/} House of Assembly Debates, 7 April 1976, SWA Security.

^{39/} Windhoek Advertiser, 10 August 1976.

in particular to the case of Reuben Hauwanga, SWAPO secretary for information and publicity in the north, who had prepared an account of his imprisonment. According to this document, which was made available to the Working Group, Mr. Hauwanga had been detained in various prisons since his arrest in Oshakati on 17 August 1975 and released from Ondangua prison on 30 January 1976. He had undergone solitary confinement in a corrugated iron cell, had shared a cell with a mentally deranged prisoner who kept him awake, had endured beatings on the face and body, being hung by his wrists from the ceiling for six days without being allowed any sleep, being locked in a police van under a hot sun for two days, and being given electric shock treatment on two occasions, administered to his fingers and toes. At Ondangua regional prison, where he was taken initially, he received no medical treatment for his beatings, despite his requests and the fact that he could not chew properly because his jaws were hurting; he was also experiencing attacks of severe headache and was urinating blood. The food there was inedible, salty hard porridge and water. At Oshikango regional prison he was interrogated by a Lieutenant Dippenaar and Colonel Skoon, accompanied by South African soldiers and security police - after his suspension ordeal he was placed in a room where he was able to hear Dippenaar complaining that he had not been "broken". He met there another detainee, Festus Shaanika, who was so badly tortured that he was taken to the military doctor at Onuno. At Ongongo, where he was next taken by Lieutenant Dippenaar, he heard Aaron Muchimba screaming from inside a garage, whilst he was locked in the police van, and the next day found a piece of Aaron Muchimba's shirt covered in blood in a room to which he was taken. He described his electric shocks as "a thunderous big stream" passing through him that was terrible, but not impossible. On returning to the van he heard more screams and saw Sam Shivute, with whom he had first been arrested, receiving electric shocks. His torture ceased when he agreed to make a statement that he had visited Angola in November, after which he was allowed to visit a clinic for treatment, where a white nurse, wife of a policeman, told him she regretted having to treat "terrorists". On his release he was told by Lieutenant Dippenaar that they had not been able to find anything against him. According to information available to the Working Group, other detainees are known to have been moved around from prison to prison in this manner. Skinny Hilundwa, SWAPO northern regional chairman, detained on 27 August, was released on 31 October 1976 and was reported to have contracted an illness during his detention.^{40/} Conditions at the Onuno detention camp were described by other detainees to Reuben Hauwanga; the people were huddled together in a fenced enclosure, there was no roof and they were given no blankets. Each had to put a bag over his head during the day so as not to see what was happening in the military camp; the rations consisted of one tin of beans and one tin of water a day. It was reported from church sources that detention sheds at Oshikango consisted of corrugated iron so constructed that those confined were unable to stand up. Up to six people were held at a time, often for over a week, before being transferred to the detention centre at Oshakati. This was constructed of tents and divided into three sections.^{41/}

347. Mr. Thornberry (433rd meeting) referred to the consistent use of the technique of sensory deprivation through protracted isolation as a means of breaking down the psychological condition of the detainee. A number of the defendants in trials in

^{40/} Focus, No. 2, January 1976.

^{41/} Guardian, 30 August 1976; Namibia News, January-February 1976.

Windhoek and Gobabis from June to September 1974, including Thomas Komati, Ezriel Taapopi and Thomas Kashea (see also E/CN.4/1159, paras. 228-230), had testified that they had been subjected to this technique and that it had made them feel they were losing their minds. Mr. Katjavivi referred to Pastor Zephaniah Kameeta, who had described the effects of solitary confinement after his release: "There were days when I experienced great doubt ... There were also moments when anxiety took over. My hands sweated with fear. In such moments when I tried to pray my mouth felt dry and I could find no words. This fear especially descended on me before the interrogations. My unease was at times so great that I feared there was something wrong with me."

348. Mr. Evald (421st meeting) described conditions at Windhoek gaol, where he had been detained for a period of eight days after being arrested with 154 people travelling from Windhoek to Rehoboth for a SWAPO meeting in January 1974. Although he had not been specifically tortured, whenever he had passed from one room to another in gaol there had been someone at the door to hit him, and this he described as a general feature. They had food twice a day; breakfast at 7 a.m. consisted of maize porridge with mustard and tea; lunch at 4 p.m. was also maize; after that time the prisoners were locked up until the next day. No relatives or other visitors had been allowed.

349. Witnesses MacDermot (413th meeting), Katjavivi (432nd meeting), MacEntee and Smart (434th meeting) referred to the consistent allegations made during the course of the Swakopmund trial by defendants and witnesses alike concerning their torture by police whilst in detention. Mr. MacEntee, a Senior Counsel of the Irish Bar, had attended the first two weeks of the trial, when the bulk of the evidence was given, as an observer for the International Commission of Jurists. Allegations of torture had been made both in court and privately to him, and attached to his report for the International Commission of Jurists, handed in by Mr. MacDermot, were photocopies of medical evidence from Dr. Franz Stellmacher. Dr. Stellmacher found evidence of "quite definite neurological signs" displayed by the three male accused, and stated that the description offered by one defendant of the after-effects of his treatment appeared to him "strikingly significant" coming from a lay person. Mr. MacEntee concluded that "one could not but be impressed by the internal coherence and consistency of the allegations and evidence of torture". Another observer of the trial, for Amnesty International, Professor Otto Triffterer, Professor of International Criminal Law at the University of Giessen in the Federal Republic of Germany, had spoken to each of the six defendants in private. They had described the methods employed against them as including deprivation of food and sleep for long periods, solitary confinement, beatings, hanging up by the ankles, and electric shocks. Mr. MacEntee commented on the "fortitude" with which these allegations had been received by both the prosecution and the court; in one case of particularly serious torture, the prosecution informed the court that he would bring the matter to the attention of the Attorney-General of South West Africa, since when nothing had been heard.

350. According to Mr. Katjavivi (432nd meeting), a number of witnesses allegedly appearing for the prosecution refused to give evidence, and instead gave testimony in court that they had been tortured. Ms. Kauna Malua alleged that following her arrest she had been strung up from the ceiling of a room by a chain attached to her right wrist for ten hours, after refusing to make a statement. Mr. Justice Strydom had been able to see black marks on her wrist. Victor Nkandi and Axel Johannes, both appearing as State witnesses, also testified in court about their mistreatment

in prison. Mr. Mkandi said that after four days and nights of being kept awake and beaten by a police colonel and Lieutenant Dippenaar, he was visited by the investigating officer, who said he looked worried and asked what the matter was. He did not answer, as he was wearing a white shirt covered in blood. He was then taken to a place where he could hear people screaming and was told that he would scream like them unless he co-operated. Both men were sentenced to 12 months' imprisonment for their refusal to testify. Axel Johannes had been arrested and held for five months in solitary confinement under the Terrorism Act in 1974.^{42/}

351. Mr. Katjavivi also referred to the torture of Ms. Ragel Shifotola. She had been knocked to the floor, trussed and spun around with a stick until her elbows were bleeding and she was completely disorientated. Water was then poured down the side of the blindfold and she was then electrically shocked behind the ears until she lost consciousness.

352. According to information available to the Working Group, systematic torture was also being used on detainees in Ovamboland by South African soldiers to extract information about SWAPO guerrilla movements. The reports were based on the account of a South African conscript serving in a major security sweep, code-named "Operation Cobra", during June 1976, and subsequently confirmed by another conscript and a Roman Catholic priest in Namibia. The conscript, Bill Anderson, said his unit, the 6th Battalion, South African Infantry, was until mid-February 1976, guarding the **Kunene** dam site, where cattle thieves who were suspected of being MPLA/SWAPO agents were subjected to water torture. The unit had patrolled the border until mid-April, when it had been sent to the north-east base of Ondangua, the military centre, and from there to the village of Inahma, 12 kilometres from the Angola border, where it joined other battalions patrolling a 200 square kilometre area. The patrols, of about 35 men on foot with helicopter support, went to kraals to conduct searches and to bring back suspects for questioning, usually two to three at a time. They were kept blindfolded from the time of their arrest and while waiting for interrogation were assaulted; they were punched, burned with cigarettes, and their mouths were filled with sand, in the presence of senior officers who made no attempt to stop the assaults. They were then taken into the "bps tent", usually at night, for interrogation, which took place between around 9 p.m. and midnight. Officers had boasted of using field telephones for electric shock torture to genitals, nipples and ears. He had witnessed two men being given water torture by having their heads stuffed into iron buckets full of water and held under until they ceased to struggle. Suspects were kept handcuffed to trees at night, dressed only in loin cloths and drenched in cold water; some were kept in pits dug for protection against mortar attack. On average, suspects were kept for two days before being flown on to Ondangua. In June, during a security sweep involving five battalions, every male over the age of puberty was brought in from a 100 square kilometre area, and all the arrested men were beaten, tortured and interrogated without exception. The unit had captured between 200 and 300 men, and other battalions had captured a similar number each; of the 1,000 or so men detained, some 40 were subsequently charged with terrorism offences. Those at Ondangua who were not charged were ordered to fill sandbags while soldiers emptied them and ordered them to fill the bags again. The Guardian newspaper on publication stated that the information had been cross-checked and verified by other members of his battalion still in South Africa.

It was reported that Anglican, Catholic and Lutheran clergymen had confirmed the authenticity of the accounts of torture and atrocities by troops in Ovamboland. One of the priests who had travelled in the north in June and July had spoken to victims of torture and seen maimed limbs and other similar injuries. People were rounded up if they did not have an identity document, or if someone was missing from the household, or if relatives or children had fled across the border.^{43/}

353. It was reported that Amnesty International had called on the South African Prime Minister, Mr. Vorster, to authorize an international commission of inquiry into the allegations. The official censor of the South African Minister of Defence ordered the Rand Daily Mail not to publish an account featuring Bill Anderson's evidence. In the only official reaction, the chief of the South African Defence Force, General Magnus Malan, admitted that individual soldiers had committed atrocities in Namibia but that they had all been dealt with by the courts.^{44/}

(iii) Violations of the right of the accused to a fair and public trial and procedures for complaints and redress

354. Several witnesses, including Mr. MacDermot (418th meeting), Mr. MacEntee and Mr. Smart (434th meeting), referred to a number of unsatisfactory factors at the Swakopmund trial. These included the police intimidation of witnesses, the attempt by the prosecution to link the defendants with "terrorist activities" through stressing their association with SWAPO, the use of distorted translations of Ovambo texts and tape recordings, testimony which bore no apparent relationship to the incidents detailed in the charges, and the leaking of confidential trial documents to the security police from the firm of defence attorneys engaged for the trial. The report of Mr. MacEntee stated that it appeared evident from the opening of the case by the state prosecutor, Mr. Jansen, and from the nature and scope of the evidence produced by the prosecution, that the trial was conducted primarily with a view to establishing the guilt of SWAPO, rather than that of the individually accused persons. The prosecution evidence was selective and incomplete; two women, Bertha Manbula and Martha Kambade, who on the prosecution's evidence were eye-witnesses to the killing of Chief Elifas, were neither called nor made available to the defence; similarly with Annaki Nangombe, who was present with the deceased in the bottle store where the killing occurred until a few minutes before his death. The joinder in the indictment of three nurses with the three males was highly prejudicial to them and explicable only in terms of an overriding political aim. They were charged with relatively trivial offences; in two cases of collecting donations of R10 from two other people for passing on to a group with "violent" intentions; and in the third case (Rauna Nambinga) of crossing into Angola and providing soap, a sanitary towel and a dress to a member of SWAPO.

355. The report said that since the vast majority of African witnesses called by the prosecution had been arrested and detained for lengthy periods, their detention, uncertainty about their future liberty, torture and fear of torture, rendered the probative value of their evidence suspect. Many of the witnesses exhibited signs of confusion and hopelessness in the face of the system. The report also criticized the venue of the trial at Swakopmund, a small seaside town, whose remoteness added to

^{43/} Guardian, 30 August 1976, 1 September 1976; sworn statement by Bill Anderson, 17 September 1976, London.

^{44/} International Herald Tribune, 3 September 1976; Africa, October 1976.

the difficulties of the defence and the sense of isolation of the accused. There was a clear identity observable in the course of the trial between the prosecution and the security police, including Lieutenant Dippenaar, named as one of the principal torturers, who sat with the counsel for the Attorney-General of South West Africa and was frequently seen talking to the witnesses while they were giving evidence.

356. The report concluded that the summary nature of the trial, the joinder of the six accused and the venue, taken separately and, a fortiori, together, amounted to an oppressive and unsatisfactory judicial process. In view of the charges against Ms. Nambinga and Ms. Ngaihondjwa and the evidence tendered, the sentences of seven and five years' imprisonment respectively were extremely harsh. The trial judge had felt compelled to distinguish between the two accused in respect of the degree of culpability, and under the Terrorism Act the minimum sentence he could impose was five years. The harshness of the death sentences, in view of the fact that neither of the two defendants had been convicted of murder, appeared to be related to evidence submitted of "terrorist activities" in Ovamboland presented by two security police witnesses after judgement, but before sentence had been passed. According to information available to the Working Group, all but three of the alleged incidents had taken place several weeks or months after the accused had been arrested. Naimi Nombowo, the third nurse, was acquitted, while Andreas Nangolo, the third male accused, had been discharged on 27 April.45/

357. Mr. Katjavivi (432nd meeting), and Mr. MacDermot (418th meeting), referred to information, received since the sentencing, of interference by security police in the work of the defence. Documents from the files of Laurentz and Bone, the defence attorneys, had been handed over to the security police by a telephonist with the knowledge of one of the firm's partners. The police had obtained a steady stream of information, including a sworn affidavit by Hendrik Shikongo, from the start of the trial. In June the Windhoek Supreme Court granted that a special entry be made on the report of the trial, recording certain irregular and/or illegal departures from the rules and principles that the law required for a fair trial (see also para. 313 above).

5. Floggings

358. Previous reports of the Group (E/CN.4/1159, paras. 260-271; E/CN.4/1187, paras. 341-344) have discussed in detail the evidence and information relating to the floggings imposed by the authorities in Ovamboland on men and women alleged to be members or supporters of SWAPO. Mr. Katjavivi (432nd meeting, document handed in) and Mr. Smart (434th meeting, document handed in) referred to the use of floggings as part of a brutal policy of repression in Ovamboland by the tribal chiefs on behalf of the South African authorities.

359. Mr. Shanyengana (430th meeting) referred to the fact that he had initially been detained by South African police for three months during 1975 at Oshikango. When it was discovered that there were no grounds for laying charges, he was handed over to the chiefs and headmen, who were told that his crimes were against them. He was handcuffed and taken to Ohangwena, where the police had a written order ready for the

tribal police to the effect that he should be given 30 strokes. After being flogged in a headman's house, he was thrown outside and ordered to walk home; the police refused to take him to hospital. After a month in hospital he had gone to see Captain Strauss, the local head of BOSS, who had ordered his arrest in the first instance. Captain Strauss had agreed that the police were aware that the floggings were being carried on but maintained that they were carrying out the orders of the South African Government.

6. Conditions of Africans in the "homelands"

(a) Background information

360. The system of "native reserves" devised by the German administration before the mandate period and subsequently taken over and extended by the South African administration in Namibia, has been described in an earlier report of the Ad Hoc Working Group of Experts; the implications of the "homelands" policy as established by the implementation of the recommendations of the official "Odendaal Commission" have likewise been described.^{46/} The reports of the Working Group for 1974, 1975 and 1976 summarized legislation enacted in the period since February 1973 in relation to the continued establishment of "homelands" for so-called "native nations", in accordance with the provisions of the Development of Self-Government for Native Nations in South West Africa Amendment Act, No. 20 of 1973.^{47/}

(b) Summary of recent legislation

361. During the period under review, a number of legislative enactments were introduced to extend the legislative process analysed in previous reports and involving the further consolidation of the bantustan structures in the Territory.

362. Proclamations R42 and R43 of March 1976 provided for the declaration of Eastern Caprivi as a "self-governing area", the third and final stage in the bantustan legislative process, and for the conduct of elections for members of the Caprivi Legislative Council. The proclamation was issued following "consultation" with the existing Legislative Council. This is to comprise henceforward 32 members: the chiefs of the Basubia and Mafue tribes, 9 persons designated by each of the tribal authorities, and 12 persons to be elected by electors of two electoral districts, one for each tribal authority area. Those eligible to vote included all those aged 21 or over in possession of a registration card issued in terms of the Eastern Caprivi Registration Act, 1973, indicating the holder to be a member of the "Caprivi nation". The proclamation also provided for the recognition of Lozi as an official language for certain purposes.^{48/}

363. Self-government was conferred on the Rehoboth Gebiet in terms of an act of April 1976, which provided for the establishment of a Kaptein's council and a Legislative Council for "Rehoboth". The Act purported to be in accordance with and a reinstitution of the provisions of the Paternal Law of 31 January 1872, which embodied the traditions and management institutions of the ancestors of the citizens of the Rehoboth Gebiet. The grant of self-government was allegedly on the basis of

^{46/} See E/CN.4/1020/Add.1, paras. 29-36, and A/8723/Add.2, paras. 11-40.

^{47/} See E/CN.4/1135, paras. 245-252, E/CN.4/1159, paras. 237 et seq.

^{48/} Government Gazette, No. 5022, 19 March 1976.

proposals by the Baster Advisory Council, and without prejudice to the further constitutional government of the Territory. It provided for a government that would maintain law and order in Rehoboth; protect and develop the people's own traditions and culture; propagate the ideals of Christian civilization; and strive after peace with and goodwill to the other inhabitants of the Territory. The Kaptein's Council was to comprise a Rehoboth burgher elected for a term of five years as Kaptein, assisted by two persons designated by the Kaptein; these, together with a Legislative Council of six members elected annually, were to comprise the Legislative Authority for Rehoboth. All citizens of the Rehoboth community aged 18 or over were entitled to vote, and the official languages were established as English and Afrikaans. An attached schedule listed a number of areas in which legislation could be enacted.49/

364. Reference was made in a previous report of the Group to the establishment of the initial structure of a bantustan authority for Namaland during 1975 (see E/CN.4/1187, para. 352). Government notice R777 in May 1976 provided for the formal establishment of a Nama Council for Namaland, together with tribal authorities and village management boards. Government notice R805 provided for the establishment of tribal authorities and definition of the areas for which they were established. These comprised: Spromaas; Berseba-Isaakgronde, Goliathgronde; Tses-Gertsegronde; Stephanusgronde; Gibeon-Bondelswartsgronde; Witbooi-gronde. Government notice R1165 provided for the election and constitution of a village management board for Gibeontown, to consist of three elected Namas.50/

365. Proclamation R1 of 1976 provided for the amendment of the Ovamboland Affairs Proclamation of 1929 (No. 27) under section 14 of the Development of Self-Government for Native Nations in South West Africa Act of 1968, by insertion of the following subsection: "Every constable of the Ovambo Police shall on enrolment take the following oath: I ... do swear that I will enforce the law in force in Ovambo, faithfully serve the lawful authority in the area as a member of the Ovambo Police".51/

366. As part of the provision of further powers to the Ovamboland Legislative Council agreed between Mr. Vorster and Pastor Ndjoba, the Chief Minister, in 1975 (see E/CN.4/1187, para. 363), responsibility for health matters was transferred to Ovamboland in terms of government notice R1303 during the period under review.52/

367. Government notice 352 provided for the appointment of Oshivo, Ombalantu and Ohangwena as places for the holding of courts in the district of Ovambo, in addition to Ondangua, the seat of the magistracy, in terms of the Magistrates Court Act, No. 32 of 1944.53/

49/ Government Gazette, No. 5095, 28 April 1976.

50/ Government Gazette, No. R5107, 7 May 1976; No. R5113, 14 May 1976.

51/ Government Gazette, No. 4946, 2 January 1976.

52/ Government Gazette, No. 5237, 30 July 1976.

53/ Government Gazette, No. 4995, 3 March 1976.

(c) Analysis of evidence received by the Group

(i) Political rights and police powers

368. Mr. Katjavivi (442nd meeting, document handed in) and Bishop Wood (443rd meeting) referred to repression conducted by tribal chiefs and tribal police, South African police and armed forces against individuals seeking to exercise civil and political rights, particularly in the areas of Ovamboland, Kavangoland and Eastern Caprivi. The degree of repression had intensified with the militarization of Namibia and the presence of large numbers of South African soldiers as an occupying force. Men and women were living in fear of arbitrary arrest and detention, and the indiscriminate entering and searching of their homes by South African soldiers. Mrs. Rachel Nailenge, the 75-year-old wife of Pastor Nailenge, had been beaten and sexually assaulted by two South African soldiers in an incident at her home at Ongenge, in August 1975. According to information available to the Working Group, the two men concerned were subsequently found guilty of house-breaking with intent to assault in the Windhoek Supreme Court and sentenced to cuts with a cane and suspended sentences. The judge issued a warning to members of the Defence Force in Ovamboland not to abuse their position.^{54/}

369. Reference has been made in the previous report of the Working Group to the intimidation and coercion alleged to have been used during the elections for the Ovamboland Legislative Council in January 1975 (see E/CN.4/1187, paras. 353-358). Bishop Wood (433rd meeting) provided some further evidence on the conduct of the elections and of the pressure placed on people to vote. The situation did not allow for a free and open election; there was no provision for open discussion of the issues or electoral procedure; and most candidates, although some were "independent", were in fact supporters of the Ovamboland authorities. Although there existed the possibility of requesting permission from the tribal chiefs to hold meetings, this had always been refused and when meetings were held without permission they were generally broken up. A boycott urged by SWAPO had been initially successful, but on the third day of polling the numbers voting had dramatically increased. Reports from Ovamboland indicated tremendous pressure to vote, including denial of work permits for the south to those who failed to vote, or of the right to plough and other activities for which official permission was required. Apart from direct threats, the voting system was operated as a military exercise. Police transported people to the polls in their own vehicles, army vehicles were used, together with helicopters. There were many mobile polling booths, with always an armed soldier or policeman on guard. Although over-all figures showed 55 per cent of the people entitled to vote had done so, there was a great disparity between the proportion voting in Ovamboland itself, 75 per cent, and in the south, where only 5 per cent of the thousands of contract workers voted, which indicated the degree of pressure on the population of Ovamboland.

370. An investigation of the conduct of the elections had been attempted by Bishop Wood, Bishop Lukas de Vries of the Lutheran Church, and Bishop Leonard Auala of the Lutheran Church in Oniipa. Legal advice was obtained as to the basis on which to challenge the election, and two men, Reuben Hauwanga and Sam Shivute, were sent to Ovamboland to collect evidence, where they found many prepared to make

statements as to intimidation. Eight people were then taken to Windhoek for consultations with an attorney, as a result of which it was decided that it would be necessary to obtain facilities for a legal team to visit Ovamboland if the case was to be prosecuted. Permission was reluctantly granted, but the team was restricted to the Ondangua court house. In the light of the climate of fear of the authorities prevailing, most potential witnesses were scared of identifying themselves in this way to the police. Permission was refused for the team to visit people privately to obtain evidence, and it proved physically difficult to transport large numbers of witnesses to one of the nearest towns outside Ovamboland, such as Tsumeb. Investigations were therefore never completed, but documents containing statements by 179 people that would have been given in testimony if a case had been brought had been drawn up. The case was a strong one and it would have proved embarrassing to the South African authorities, who had for this reason put impediments in its way. Bishop Wood had been expelled in June 1975, mainly for his part in commissioning the investigation, while Reuben Hauwanga and Sam Shivute had been arrested under the Terrorism Act. South Africa had since tried to sell the result of the election as if it was a genuine result, claiming that the people elected were genuine representatives of their people. This had also been used at the Windhoek constitutional talks to allege the representative nature of the delegation from Ovamboland.

371. Bishop Wood (433rd meeting), Mr. Kahana (421st meeting) and Mr. Tjizera (428th meeting) referred to the widespread use of propaganda by the South African authorities to influence political opinion in Ovamboland and other "homelands". They used transmissions on "radio Ovambo" in the Ovambo languages to put out regular propaganda. This was merely a relay station and was supplied with recordings by the recording station in Windhoek. There were other so-called "radios" in other "homelands" such as Radio Herero and Radio Nama, and stations were to be set up for the rest of the country, including Epukiro and Aminuis. International news was mainly supplied by the South African Broadcasting Corporation, while since 1972 restrictions had been placed on the purchase by Africans of powerful radios able to pick up outside stations such as the BBC World Service, Radio Zambia and Radio Tanzania. During the Ovamboland elections use was made of the radio and the press, which with the exception of the English-language Windhoek Advertiser was pro-Government. The Government's ability to spend vast amounts of money, together with the influence of white South Africans working in the Bantu Investment Corporation and other government agencies on their employees, had also been a factor.

372. According to information available to the Group, efforts to obtain sworn accounts and written statements from people affected by the situation in the emergency area was made difficult through fear that people would be prosecuted should they speak out about their treatment. There was no one to whom to report allegations except to a local or travelling priest. Some people were ignorant of the procedure to adopt in reporting maltreatment and coercion, because much of the area was rural and out of touch with any urban centre.^{55/} Under the emergency regulations in force throughout the three northern "homelands", virtually all meetings are prohibited without prior consent in writing, while church services, funerals, sporting events, entertainments and concerts, may be arbitrarily prohibited. Any individual may be forbidden to attend or address any meeting, which can be defined as a gathering of more than two persons.^{56/}

^{55/} Guardian, 30 August 1976.

^{56/} Government Gazette, No. 5133, 19 May 1976.

373. According to information available to the Group, South Africa began the training of permanent tribal regiments under the aegis of the Ovamboland and Kavangoland tribal authorities during the period under review. It was reported that soldiers had been in training since the end of 1975 in all aspects of military duties. In Kavangoland, 82 recruits who had begun training under South African army instructors in November 1975 had completed their courses and moved on to weapons instruction (see also E/CN.4/1187, para. 360). From Ovamboland an initial group of recruits had completed a course of instruction in their own territory and were undergoing further training at Lenz military base, 30 kilometres from Johannesburg, together with recruits from "homelands" in the Republic. Their instruction was in Afrikaans and they wore the same South African army uniform as other black recruits.^{57/}

(ii) Personal freedoms: freedom of movement

374. Mr. Katjavivi (432nd meeting, document handed in), Bishop Wood (433rd meeting) and Mr. MacEntee (434th meeting), referred to the widespread restrictions on freedom of movement, particularly in Ovamboland, the withholding of travel permits, and the restrictions on crossing into Ovamboland from the south of the country and between Ovamboland and Angola. This particularly affected the freedom of movement of the clergy, with serious consequences for the work of the church: over 95 per cent of the membership of the Anglican church was black and located along the Namibian side of the border with Angola. To enter that area it was necessary to go through a police checkpoint at Oshivello, and to have permits with various restrictions written on them as to time-limits and things that could not be done. In the case of Bishop Wood, who had been in Namibia from 1971 until his expulsion in 1975, he had only once been provided with a permit to visit Ovamboland, at Easter 1972: this was for two days only and confined him to the area of the Odibo mission. His successor, Rev. Ed. Morrow, had been refused entry to Ovamboland. Permits had also been refused to many other people from both the Anglican and Lutheran churches. According to information available to the Working Group, movement across the Angola/Namibia border during 1976 was restricted to a single checkpoint at Oshikango, with a further crossing-point at Ruacana/Calueque reserved for the exclusive use of workers on the Ruacana Falls hydroelectric scheme.^{58/}

375. Reference was also made to the number of Anglican and Lutheran pastors and clergy who had been expelled from the country or refused entry, a practice which had become more widespread as church leaders had expressed their opposition to South African policies in Namibia. According to information available to the Group, Ms. Margaret Valentin, employed in the Anglican church offices, was ordered at the end of November 1975 to "leave forthwith". She had worked for the Dependants' Conference, an organization which arranged transport for wives and families to visit detainees, and had arranged several visits to SWAPO prisoners on Robben Island. An extension until 5 December was granted by the Department of the Interior but no reason for the expulsion order was given. Later in that month Mr. Jonathan Lloyd, a 19-year-old student, was refused entry by the immigration authorities at Cape Town; he had arrived with the intention of spending 10 months with the Anglican diocese in Namibia. It was reported that the Council of the United Evangelical Lutheran Church in Namibia (UELCSWA) had written a letter of protest to the Minister of the Interior

^{57/} Star, 14 February 1976; Sunday Times (Johannesburg), 15 February 1976.

^{58/} Rand Daily Mail, 7, 19 May 1976.

following the refusal of visas to Dr. Carl Mau, secretary of the Lutheran World Federation, and Rev. Christian Krause, from the Lutheran Church in Germany. They were to have taken part in a theological consultation between UELCSWA and the smaller German Lutheran Church. The two pastors had left Namibia a year previously when the latter church had refused to agree to a merger with the two larger black Lutheran churches of UELCSWA. The letter said the refusal to grant the visas impeded church work, was a blow against religious freedom, and increased tensions between church and state.^{59/}

376. It was reported that Mr. Daniel Thongororo, the publicity secretary of SWAPO and the Namibian National Convention, as well as information secretary for UELCSWA, had been denied an exit permit by the authorities. He had been invited to the United States as a guest of the State Department. He had been refused a passport twice before, in 1974 and at the end of 1975.^{60/}

377. According to information available to the Group, the South West African Administration had proposed to the Turnhalle constitutional conference the replacing of the pass laws with influx controls to be operated by the "homelands" or "ethnic provinces" for their own territory. Under these proposals, people seeking work in the white area would be allowed to move into only one of three regions nearest to their area of residence: in the case of Ovamboland a rigid quota would control their entry into the white area as a whole. Everyone would need a permit for areas other than his own. These proposals were shelved temporarily after opposition from African delegates, who said the proposals violated the principle of free movement.^{61/}

378. Under the emergency regulations extended to the northern "homelands" in 1976, the whole of the area was placed under night curfew, with no person, other than a government employee, allowed to leave the homelands without a permit signed by a Native Commissioner. Non-residents are likewise required to obtain a permit to enter the homelands, "non-resident" being defined in such a way as specifically to include persons who left the country as refugees or to join SWAPO.^{62/}

(iii) Health

379. Bishop Wood (433rd meeting) referred to the enforced closure of health facilities maintained in Ovamboland by the church (see also E/CN.4/1187, paras. 370-371). The continued refusal of permits had made it impossible to get the necessary qualified staff to ensure the efficient running of the hospital at Odibo. When the hospital had been closed down in December 1973, the South African Government had stated that it was because of the lack of adequate staff and proper control, although it was serving a very important function in the community.

380. Ms. Frieda Williams (430th meeting), a former nurse at Oshakati hospital, had made at a public meeting a number of criticisms of the health facilities available which had led to her arrest. These applied especially to Ovamboland and included the fact that certain supplies of medicine had run out, while many parts of the north were not provided with a clinic or a hospital.

^{59/} Windhoek Advertiser, 1 December 1975; Namibia News, January-February 1976.

^{60/} Neue Zürcher Zeitung, 25 May 1976.

^{61/} Star, 17 August 1976.

^{62/} Government Gazette, No. 5133, 19 May 1976.

381. Reference has been made to the clearance of the border area and the subsequent destruction of hospitals and clinics of both the Anglican and Lutheran churches.63/

(iv) Economic opportunities

382. Mr. Evald (421st meeting) and Mr. Tjizera (428th meeting) referred to the fact that the "homeland" areas were unfit for agriculture and as a result African men were compelled to go and work on contract in the south. According to the information available to the Group for the period under review, economic opportunities continued at a low level in the "homeland" areas, despite a paraphernalia of state agencies allegedly designed to provide economic assistance. Four white-directed development corporations had been established for the non-white areas: the Bantu Investment Corporation, the Bantu Mining Corporation, the Rehoboth Investment and Development Corporation, and the Coloured Development Corporation. These corporations were officially charged with providing funds and technical assistance to "non-whites" for the purpose of establishing or improving business undertakings; in addition the corporations were empowered to establish and carry on industrial, commercial and mining/financial enterprises on their own account.64/

383. According to information available to the Group, a further two development corporations were established in 1976 specifically for projects in Ovamboland and Kavangoland; the Ovamboland Development Corporation Ltd. and Ekuliko Kavango Ltd. These were established under the terms of the Promotion of the Economic Development of Homelands Act, 1968 (No. 46), with powers similar to those of the above four corporations.65/

384. Figures available on the Bantu Investment Corporation show it as the largest source of government finance for "homelands" and indicate the type of aid provided. Between 1973 and 1975 it invested R15 million in industrial and commercial ventures in African areas, mainly Ovamboland, in bakeries, butcher shops, garages, cafés, rest camps, wholesale concerns and a soft-drink factory, of which a small number had been sold to Africans. In addition, loans of R400,000 had been granted to businessmen, and two agricultural schemes with the participation of white farmers had been initiated. The total gross turnover of its ventures in 1973 amounted to R13 million, and it was claimed that 1,450 jobs had been created, of which 600 were in industrial and commercial ventures and 600 in construction. It was planned to invest a further R22.5 million between 1972 and 1977 in order to increase the number of jobs available to 5,000.66/

7. The low wages paid to black workers

(a) Evidence of poverty and low wages amongst blacks

385. Mr. Kahana (421st meeting) referred to the gross deprivation suffered by African workers, revealed by a comparison of African and non-African wages in Namibia. The wages paid to Africans were so low that they fell below the poverty datum line (PDL) set by the South African régime itself. In October 1973, the Non-European Affairs

63/ See para. 29 above.

64/ See A/AC.109/L.1069/Add.1, 24 March 1976, paras. 145-151.

65/ Government Gazette, No. 5100, 30 April 1976.

66/ A/AC.109/L.1069/Add.1, para. 147.

Department of the South West Africa Administration set the PDL for African workers at \$US 91 a month, though this amount was itself far from adequate for a worker and his dependants to lead a decent life. The majority of employers in Namibia, especially Afrikaner farmers, paid their workers less than that amount, some as low as \$US 5 a month. This was because the South West Africa Administration did not bother to see that employers paid their African workers the set amount. According to information available to the Working Group, the Turnhalle conference adopted a consensus on equal pay for equal work and the total removal of discrimination in wages based on colour or race. A minimum wage or salary for unskilled workers of R54 a month plus non-cash benefits, or R106 if benefits were not provided, was also approved. But no legislation was recommended to make the proposals compulsory. Instead, assurances of co-operation were accepted from employers. The closure of the gap in salaries for skilled and professional whites and non-whites was proposed within three years; this was currently 50 per cent for public service jobs and higher in private industry. Despite a practice of "voluntary" job reservation, there was nothing in the regulations to prevent the employment of non-whites as clerical staff, operators, etc.67/

386. It was reported that government ministries such as the Department of Bantu Administration and Development had ordered across-the-board wage increases for African and Coloured staff in their employ while agreeing to apply the equal pay for equal work principle. A general salary rise for employees of the South West Africa Administration was made at the same time. This provided for increases of 20 per cent for Africans, 15 per cent for Coloureds, and 10 per cent for whites. The figures provided enabled no assessment of whether there had in fact been any lessening of the gap between white and non-white wages.68/

387. According to information available to the Group, the proposals for a minimum wage were rejected by the SWA Agricultural Union, representing organized agriculture. The union had appointed its own body of experts, to report back to Turnhalle by February 1977, on wages and other labour market factors. Figures provided by the union's chairman revealed that the highest wage paid was to a livestock manager, who received R27 a month. Unskilled, inexperienced workers received R12.50 a month, with an increase of R1 after six months, rising to a cash wage of R15 a month if the worker stayed for 18 months. It was claimed that in addition workers received free housing and food rations. It was admitted that there was much labour dissatisfaction over poor housing conditions on farms - in many cases, mere hovels. A list of farmers exploiting their workers had been provided to the union by the Ovamboland and Kavangoland homeland governments. In some cases, farmers operated small dealer shops, reselling at great profit to workers, who did not receive wages at the end of the month if the value of their purchases exceeded their earnings.69/

388. Mr. Kahana (421st meeting) referred to the foreign multinational companies, who employed 60 per cent of the work force, as the biggest exploiters of labour. He cited the Tsumeb Corporation (owned by American Metal Climax and Newmont Mining Corporation), where an experienced African worker received \$US 50 a month, less than

67/ Windhoek Advertiser, 10 March 1976.

68/ Windhoek Advertiser, 8 July 1976; Star, 12 June 1976.

69/ Windhoek Advertiser, 25 June 1976; Rand Daily Mail, 26 March 1976.

a white apprentice. According to information available to the Group, minimum wages at the Tsumeb Corporation were raised by 49 per cent in the period under review. From previous published figures this would still leave the minimum at R60 a month, below the PDL. Advertisements by the company for white mining personnel, such as metallurgists and economic geologists, offered salaries at between R600 and R1,200 a month, with numerous fringe benefits, including 42 days leave, free life and medical insurance, rent-free housing and leave bonus.^{70/}

(b) System of labour recruitment

389. Previous reports of the Group have summarized the arrangements relating to the recruitment of labour and the employment policies of government and employers, in particular the establishment of labour bureaux in the Territory (see E/CN.4/1135). In the period under review it was reported that the Ministry of Bantu Administration had recommended that the system of labour bureaux should remain and be improved, along with the issuance of identity documents. The 1976 National Party congress approved a recommendation that the system be investigated to remove its shortcomings.^{71/}

390. Regulations for the establishment of labour bureaux for Namas in Namaland were promulgated during the period. These contained similar provisions to those of the Employment Bureaux Regulations of 1972, and provided for an employment bureau to be located in each tribal authority area of the "homeland" and the compulsory registration of all Namas as "workseekers" within 72 hours of becoming unemployed, or within one month of attaining the age of 16. The main field of employment was indicated as the agricultural sector, and the term in the regulations, "association of employers", was defined as meaning any branch of the SWA Agricultural Union, the SWA Wool Growers' Association, the Agricultural Employers' Association of SWA, or any group of farmers applying for Nama labour on behalf of the group.^{72/}

8. Other serious violations of human rights

(a) Militarization of Namibia

391. Mr. Katjavivi (432nd meeting, document handed in) and Bishop Wood (433rd meeting) referred to the massive militarization of Namibia by South Africa, which was aimed at maintaining the illegal occupation of the country. This had led to a violation of the human rights of the Namibians, which violation could only be brought to an end by a withdrawal of the occupying forces. One of the conditions of the League of Nations mandate which South Africa claimed to observe had been that there should be no military forces or bases in Namibia. According to information available to the Group, the Grootfontein base had been hurriedly commissioned in terms of a project known as "Threshold" and had been completed in February 1976. The base contained aircraft hangars, storage depots, air force headquarters and a transport complex. There was a communications system and a railway spur, and the base consisted of 152 buildings as well as covered shelters for mobile weapons and other war materials.^{73/}

^{70/} Newmont Mining Corporation, 2nd quarter report, 30 June 1976; Mining Journal, 4 June 1976, 23 July 1976.

^{71/} Star, 17 August 1976.

^{72/} Government Gazette, No. 5102, 20 April 1976, Proclamation 65 of 1976.

^{73/} Der Spiegel, 27 October 1975; Namibia Bulletin, June 1976.

392. According to information available to the Group, South Africa had mobilized a force of 45,000 troops for its military operations in Namibia. These included a special counter-insurgency force of 12,800 troops, paratroops, mechanized brigades and motorized infantry. The continued military build-up of South African military forces in northern Namibia, with an increased threat to the security of Angola and Zambia, indicates that South Africa has no intention of withdrawing its forces of occupation from the territory in the foreseeable future.^{74/}

(b) Violations of the right to self-determination

393. Several witnesses referred to the whole policy of the South African Government towards Namibia, in particular the convening of the Turnhalle constitutional conference, as aimed at preventing the population of the Territory from exercising its right to freedom, self-determination and independence (Mr. Tjizera, 418th meeting, Mr. Katjavivi, 442nd meeting (document handed in)), Bishop Wood, 433rd meeting). South Africa hoped to satisfy the demands of the international community and of the United Nations by installing a puppet government in Namibia, arising out of the constitutional talks, behind which it could continue to influence and control the Territory. Mr. Vorster was not prepared to speak to those who were the voice of the people, but was using the influence of the South African Government and all its resources to ensure that whatever change that came would be in its interests. This had been demonstrated by the statements made by Mr. Schwartz, an American lawyer who had been involved in the preparation of a constitution for a future independent "South West Africa", and by Chief Clemens Kapuuo, leader of the Herero delegation at the talks, in the course of a meeting in London, where they had ruled out the participation of SWAPO leaders and the United Nations in any consultations on the Territory. Inside Namibia, the South African authorities were attempting to drive a wedge between SWAPO and the affiliated parties of the Namibia National Convention and the people of Namibia, particularly in Ovamboland. Most Namibians had demonstrated their rejection of the tribal leaders, whom they did not regard as their true representatives.

394. A number of witnesses referred to the evidence of the conduct of the elections in Ovamboland by South Africa as showing that any referendum of national consultation under the control of South Africa would be totally unacceptable. Pretoria would use the propaganda media at their disposal and their military presence to ensure that there was no free political activity and no possibility for people to express themselves freely. The demand by the United Nations that there should be free elections under the supervision and control of the United Nations would be the only practical way of ensuring that South Africa was not able to stage a repetition of the Ovamboland proceedings. According to information available to the Working Group, a statement to the United Nations Council for Namibia by Reuben Hauwanga claimed that the call of the Security Council for United Nations-supervised elections had been received with enthusiasm by a majority of the Namibian population.^{75/}

^{74/} Africa, No. 62, October 1976 and No. 60, August 1976.

^{75/} Statement to the United Nations Council for Namibia, 8 March 1976, Namibia Bulletin, June 1976.

(c) Freedom of information

395. Mr. Kahana (421st meeting) referred to the existence of four newspapers in Namibia. With one exception they were concerned with events in the white community only and were hostile to the African freedom movement. These were: Die Suidwester, owned by the National Party and in Afrikaans; Die Suidwes Afrikaner, reflecting the view of the United Party, also in Afrikaans; Allgemeine Zeitung, owned by and expressing the interests of the German community; and Windhoek Advertiser, the only English-language daily. The latter was widely read by the African population.

B. STUDENT MOVEMENTS

Introduction

396. The question of student movements was dealt with for the first time in the interim report (E/CN.4/1187, paras. 387-394), which concluded that education in Namibia is based on concepts so restrictive and so 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 institutes, as well as segregated high schools, where a student consciousness can be said to exist. These include the government-controlled Windhoek Augustineum, a high school, a teachers' and technical training centre, the Ongwediva Educational, Vocational and Training Institute in Ovamboland, and the Paulinum Theological Seminary and Martin Luther high school, controlled by the Lutheran Church organization. The only black graduates are therefore from South African universities.

1. Relevant legislation

397. The Group's interim report (E/CN.4/1187, paras. 388-389) summarized the South African legislation that affects education for Africans and Coloureds in the Territory. It discussed the implementation of the 1958 Van Zyl Commission and the effects of the application of the Bantu Education Act, No. 47 of 1953, as amended, to the Territory in 1970. The report also discussed the transfer of African education to the Department of Bantu Administration and Development, and that of Coloureds, Namas and Rehobothers to the Department of Coloured, Rehoboth and Nama Relations, consequent upon the South West Africa Affairs Act, No. 25 of 1969.

398. Teaching methods are based on the Bantu education syllabus, involving instruction in a "mother tongue" according to ethnic group, and in Afrikaans. At secondary school, English and German may be taken as other languages but the medium of instruction remains Afrikaans (see chap. I, paras. 233-234, for a discussion of the meaning of Afrikaans-medium instruction for Africans in South African schools). As discussed in the interim report, the introduction of the Bantu education syllabus has gone side by side with the systematic closure of mission-run and non-state schools which offered courses at secondary level in English.

2. Existing student groups

399. The interim report discussed the limitations placed on the existence of student groups as a result of the nature of the educational structure imposed by the Government on educational centres, as well as the extremely limited facilities available until well into the 1960s for both secondary and higher education. The most recent official information available gives a total school attendance for Africans and Coloureds of 138,890 in 1973, compared with 43,624 in 1960, with the number of schools increasing from 313 to 592. The majority of these were officially listed as "community schools" teaching the Bantu education syllabus. An analysis of these official figures by a representative of UNESCO pointed out that of the total number of African schools, 480 were primary schools, and only seven were junior secondary schools and only eight were secondary schools. Of the total number of students enrolled in 1972, 32,300, or 30.68 per cent, were in substandard A, the first grade of primary school, with only 3,722, 3.53 per cent in Standard VI, the last grade of primary school. In Form I, the first grade of secondary school, the total had further dipped to 805 pupils, 0.76 per cent, and

by the last grade, Form V, it had dropped to a mere 51 pupils, or 0.05 per cent of the total. These percentages indicated that only a tiny fraction of the reported school population completed the entire course of schooling and that the vast majority dropped out before completing primary school. 76/

400. Official information before the Group showed that teacher training and vocational training for Africans and Coloureds was available at seven centralized comprehensive boarding schools, which also offered academic tuition up to matriculation level. Of these institutions, with a total enrolment of 2,664 pupils in 1974, two are located in Windhoek and one each in Ovamboland, Kavangoland, Hereroland, Eastern Caprivi and Namaland. Only one of the schools, the Augustineum, is state-operated, the remainder being financed and controlled by various churches. Reference has been made earlier in this report to the loss of educational facilities operated by the churches in Ovamboland as a result of the border clearance policy (see para. 324 above). 77/

401. Mr. Evald (421st meeting) categorized the educational system in Namibia as forming an integral part of the apartheid system and as being designed to reinforce the apartheid concepts of white supremacy and racial segregation. African students were forced to go to schools operating on a tribal basis; this applied not only to the "homelands" but also to the urban areas, where there was a school for each "tribe". African students were taught to accept that they would never be capable of ruling themselves and were destined to be ruled by the white man. The purpose was to convince Africans that the South African Government was the legitimate government of Namibia; and anyone who spoke in school about the illegal occupation faced expulsion. There existed widespread repression of progressive students and teachers, and denial of any student rights. In the government-controlled secondary schools, the students had no right to form a movement or to organize themselves in any way. There was no body through which they could forward their problems to the school authority. The only body allowed to function at such schools was the Christian Students Association, which was concerned purely with spiritual and religious matters and did not concern itself with the interests of the Namibian students or with the social and political life of the population. Since 1972 it had been directed by the principal of the Augustineum, a Mr. Kuun, who had taken action to suppress the expression of progressive ideas by the members. According to information available to the Group, the Christian Centre, run by the churches under the leadership of Mr. Tsumo Hatuikulipi in succession to Pastor Rolf Friede, who had been expelled in 1975, was, however, involved in organizing numerous seminars for pastors, teachers and nurses on the role of Christians in witnessing against injustice and helping to build a free country for the future. 78/

402. Mr. Evald contrasted this educational system with the education offered in other African countries. In the United Republic of Tanzania where he had been

76/ Survey of Race Relations in South Africa 1973 (Johannesburg, South African Institute of Race Relations, 1974), quoted in General Assembly document A/AC.109/L.1069/Add.1, paras. 167-168.

77/ South West Africa Survey, 1974 (Pretoria)

78/ Namibia News, January-February 1976.

studying since leaving Namibia in 1974, African students were taught about their human dignity and how to be self-reliant. This was reflected in the content of the courses offered to students. The apartheid educational system also affected women and young people generally. Most women were obliged to stay at home, especially in the "homeland" areas, and had little communication with the outside world or opportunity to study. Because of the contract labour system, they had to stay at home to look after the children and there was therefore a great deal of illiteracy among Namibian women. There was also widespread illiteracy among contract workers and young people, who were often unable to complete their studies owing to the low wages received by their parents, as a result both of the contract system and the fact that it was impossible to earn a living from agriculture in the "homelands". There were no training schools specifically for workers and youths. There were only the high schools, which offered a type of vocational training for certain trades, such as carpentry and tailoring, but these qualifications were not recognized by the South African authorities.

403. Mr. Evald and Mr. Shanyengana (430th meeting) referred to the situation of African teachers, who were underpaid, overworked, forced to accept white supremacy in their teaching instruction, and harassed regularly by the police.

404. Mr. Tjizera (428th meeting) referred to the fact that the compulsory instruction of Africans in Afrikaans had begun after South Africa had taken over Namibia from the Germans. Every subject was taught in Afrikaans and the vernacular, and in general Namibians were consequently handicapped in their command of English. It was reported that legislation for the use of English and Afrikaans on a 50-50 basis was not applied to the Territory. The regional director of Bantu education claimed that no request had been received for the use of English as a medium of instruction. 79/

405. According to information available to the Group, the Windhoek constitutional conference had apparently accepted the principle of compulsory education for all races and recommended that equal standards of education should be provided. It voted, however, to retain separate departments for white, Coloured and African education, although in certain circumstances pupils would be allowed to attend schools outside "their own population groups" if parents desired it and education authorities permitted it, but pupils should be educated within their own community if possible. The establishment of a multiracial university was accepted in principle, after strong white objections, and a feasibility study was set up. 80/

3. Impediments to student movements

406. Mr. Evald (421st meeting) and Mr. Tjizera (428th meeting) referred to the denial by the authorities of the right of students to organize themselves and the use of disciplinary methods, mass expulsion and police intimidation against students objecting to the apartheid educational system. From 1968 onwards, the Augustineum and Ongwediva high schools in Windhoek and Ovamboland had become centres of student activity.

79/ Star, 17 August 1976.

80/ Star, 20 March 1976.

407. The witnesses testified that repeated attempts to form student movements had proved impossible, especially in central Namibia. Only student movements which promised to work within the apartheid framework would be acceptable to the authorities. Namibian students had instead organized themselves under the aegis of the SWAPO Youth League, which had led protests against the educational system and the oppressive behaviour of white teachers in high schools and teacher training institutions. These had culminated in public rallies and protest demonstrations at which many students and leaders of the Youth League, including Jeremiah Ekandjo, David Shikomba and Jacob Kashea, had been arrested (see also E/CN.4/1159, paras. 215-217). Despite these arrests, the Youth League had been reorganized and had continued its activities.

C. APARTHEID AND THE AFRICAN FAMILY

Introduction

408. The interim report of the Ad Hoc Working Group of Experts (see E/CN.4/1187, paras. 396-410) summarized the factors comprising the over-all effect of apartheid on the African family and community life. These included the system of racial segregation, the pass, permit and influx regulations and the operation of the contract labour system. During the period under review, further factors included the disruption of family life caused by the evacuation of the border area in northern Namibia, the restrictions on movement across the border, and the effects of the continued exodus of refugees to Angola and Zambia.

1. Description of the African family and analysis of its role

409. Reference was made in the interim report to the information available on the population age structure, family and social life of Africans in rural areas, "homelands" and urban areas. There remains little original material on the African family relating specifically to Namibia. However, much of the work carried out on the family and its role in South Africa has relevance to the situation in Namibia. Therefore, for descriptions of the effects on the African family of urbanization, the migrant labour system, the pass laws and the segregation of ethnic groups, reference is made to chapter I of the present report (paras. 252 et seq.).

410. Reference was made by Mr. Evald (421st meeting) to the detrimental economic effects of the enforcement of apartheid on all sectors of the African population. In particular, the contract system was used by the apartheid régime to harm African family life. The Africans were compelled by the bantustan programme to live in arid and infertile areas unsuited to agriculture, where they were deprived of their human rights, without freedom of association and movement. People were forced to live where they did not choose to, and this resulted in husbands being separated from wives and fathers from daughters or sons.

411. The disruptive effects of the border clearance on whole communities in northern Namibia has been referred to above (see paras. 324-328). According to information available to the Group, the restrictions on movement across the Angola/Namibia border were having a disruptive effect, since the border cut through the area inhabited by the Kwanyama tribe, and there used to occur regular visits amongst families with relatives on both sides of the border. 31/

2. Short-term and long-term effects of the policy of apartheid on the African family

(a) Effects on conjugal relationships

412. The disintegrating effects of the contract labour system were discussed in the Group's interim report (E/CN.4/1187). Under the system of influx controls and

31/ Guardian, 30 August 1976.

pass laws, the wife and family are prevented from moving with the contract worker to the urban areas. This puts marriages under constant strain both from the point of view of the wife left at home and the husband on his own in the labour compound. 82/

(b) Other effects

413. Reference was made by Mr. Evald (421st meeting) to the alienation from their families forced on contract workers as a result of their being away for lengthy periods. The children did not enjoy the love of their parents as they should. Because the wife has to look after herself, the house and the children while her husband is away, she is often unable to bring the children up in the way she would like.

414. The apartheid policies which particularly affect family life are the pass laws, influx control, residential segregation, the immorality acts and the implementation of the "homelands" policy. Although there is a substantial volume of material on these matters with regard to African families in the Republic, there is little written specifically about their effects in Namibia. Reference must be made to material on conditions in the Republic, above.

415. The effects of the pass laws and the restrictions on the freedom of movement of Africans have the result of separating families in different reserves, "homelands" and magisterial districts, causing economic, social, moral and psychological problems. Previous reports of the Group, particularly those for 1975 and 1976, have discussed this process.

416. Reference was made by Mr. Evald (413th meeting) to the economic effects on the families of the refugees of the exodus by Namibians in 1974 and 1975. Some had left wives with several children and no source of income. Many of the refugees had been working in the industrial areas and were supporting several relatives.

82/ For details of the labour regulations and influx controls which enforce separation of families, reference is made to the previous reports of the Group, for example, E/5622, paras. 118-130.

D. FOLLOW-UP OF THE DECLARATION OF DAKAR AND THE PROGRAMME OF ACTION

417. The interim report of the Ad Hoc Working Group of Experts (E/CN.4/1187, paras. 411-449) reviewed the work and results of the International Conference on Namibia and Human Rights, which took place in Dakar, Senegal, from 5 to 8 January 1976. It also contained the texts of the Declaration of Dakar and the Programme of Action adopted by the Conference.^{83/}

418. The Conference adopted by acclamation a declaration stating that the exercise of the right to self-determination was a prerequisite for all other human rights and that the maintenance of the occupation of Namibia by South Africa and of the system of apartheid constituted a threat to peace and security in southern Africa, the whole of Africa and the world. The recent reinforcement of the military presence of South Africa in Namibia, the Conference declared, must be condemned as a means of consolidating the illegal occupation of that country and of repressing the legitimate resistance of the people of Namibia. In the Declaration, the Conference invited Governments to recognize SWAPO as the only authentic representative of the people of Namibia and stated that, so long as the international community did not use the means at its disposal to put an end to the illegal occupation of Namibia, all means, including armed struggle, were justified to liberate the country.

419. In the Programme of Action, the Conference proposed to international organizations, States, non-governmental organizations and social, professional, trade-union and information organizations a set of measures to be taken to secure for the people of Namibia the exercise of their right to self-determination.

420. The Programme of Action referred inter alia to the possibility of Namibia adhering to the International Covenants on Human Rights of 1966, and to the setting up of an investigative body responsible for looking into violations of human rights in Namibia and preparing cases for future legal prosecution.

421. In order to achieve the objectives of the Conference, the Group recommended that the two documents which contain the Declaration of Dakar and the Programme of Action should be given the widest possible publicity. They have been communicated to the members of the Security Council and distributed to all Member States in an official United Nations document (A/31/45-S/11939). They were also given a world-wide circulation by the appropriate United Nations information organs.

422. As also recommended by the Group, the Commission on Human Rights, in its resolution 8 (XXXII), drew the attention of States, international organizations, non-governmental organizations and socio-professional and information groups to the Declaration of Dakar on Namibia and Human Rights and to the Programme of Action annexed thereto.

423. It appears to the Group that the Dakar Conference had a particular effect on the international level, for it was at Dakar that much of the strategy to be used by the international community in the ensuing period on behalf of the liberation of Namibia was apparently planned. The discussion by the Security Council of

^{83/} The Declaration of Dakar and the Programme of Action are reproduced in the interim report of the Group (E/CN.4/1187, annex I to chap. II).

Namibia, leading to the adoption of resolution 385 (1976) of 30 January 1976, together with the work of the various special committees concerned with Namibia, drew substantially on both the Declaration and the Programme of Action.

424. The Conference also served particularly to focus the attention of international organizations and international legal associations on the violations of human rights in Namibia under South African occupation.

425. The value of the Conference in initiating a greater degree of international co-ordination of measures to provide legal defence to Namibians put on trial by South Africa was referred to by two witnesses who appeared before the Group (Bishop Wood and Mr. Thornberry, 433rd meeting). According to their testimony there were a large number of action groups of a non-governmental character that had achieved much in the international sphere by persistent lobbying campaigns on the Namibian issue, but their effectiveness and impact would be improved through the establishment of some institutional co-ordination in the fields of information and topical developments. One significant proposal made at Dakar was for the provision of funds on a substantial scale for the defence of individuals accused under the security laws. To hire a fully qualified legal team required for prolonged hearings required large sums, and legal defence could be seen as fulfilling an important function, as it enabled the placing on record of the details of the treatment of prisoners, the injustice of the situation and other adverse facts. Once these had been written into the evidence at a trial, thus becoming a public document, they could be reprinted by newspapers and communicated to the international community. In addition to providing legal defence, which could save lives and might minimize sentences of imprisonment, it formed an effective propaganda and political weapon in the liberation struggle. A lawyer seeking to assist persons under the security laws would also often find that his clients wished to go into court to make a declaration about treatment in prison and opposition to the illegal occupation by South Africa.

426. The strong participation in the Conference by churches, both denominationally from Namibia and internationally, highlighted the role of the churches in the liberation process. The Programme of Action adopted by the Conference called on "organizations and public bodies" to "support the churches in Namibia in their opposition to the racist and colonial administration". At the international level the churches have continued to raise pressure for the liberation of the Namibian people by publicizing the current plight of the Namibian people and making known their opposition to South African policies for the Territory.

427. The reaction of SWAPO to the Dakar Conference was to welcome it as "a major step forward in our efforts to mobilize the international community in support of our struggle". SWAPO expressed the hope that the Dakar Declaration and the associated Programme of Action would serve as guidelines to the international community in the fulfilment of its responsibility to the people of Namibia.^{84/}

^{84/} SWAPO press statement, 16 June 1976.

428. According to information available to the Working Group, the Permanent Representative of Senegal to the United Nations has transmitted a message from President Leopold Sedar Senghor to the Secretary-General concerning the proposal for a week of solidarity with the Namibian people. President Senghor thus renewed the suggestion he had made at the Dakar Conference on 5 January 1976, and which was adopted by the Conference, that 27 October each year, the anniversary of the withdrawal of South Africa's Mandate by the United Nations, should be celebrated throughout the world as the start of a week of solidarity.^{85/}

^{85/} See A/AC.131/50, 25 August 1976.

III. SOUTHERN RHODESIA

A. NEW DEVELOPMENTS RELATING TO THE POLICY OF APARTHEID AND RACIAL DISCRIMINATION

Introduction

429. 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, paragraphs 1-11, and E/CN.4/1020/Add.1, paragraphs 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 Ad Hoc Working Group of Experts (E/CN.4/1020, paras. 369-373, and E/CN.4/1020/Add.1, paras. 73, 74).

430. As the Group said in its 1973 report (E/CN.4/1111, para. 232), 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.

431. As the Group emphasized in previous reports (E/CN.4/1111, para. 231; E/CN.4/1135, para. 327), although the United Kingdom has consistently refused to take measures sufficient for the restoration of lawful government in Southern Rhodesia, the territory remains in international law, in terms of British legislation and 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.

432. As stated in the Group's interim report (E/CN.4/1137, paras. 453-455), the South African Prime Minister instituted the so-called "détente" in a speech in October 1974. The initial result of the "détente" was that a strictly limited number of African detainees were released and talks were held between the leaders of the African National Council and the rebel régime. These culminated in the talks at the Victoria Falls in August 1975, which broke down over the refusal of the régime to allow some of the leaders of the African National Council to enter Southern Rhodesia.

433. In September 1975 a congress of the ANC was held, at which Mr. Joshua Nkomo was elected as the leader of ANC. However, this election was not accepted by a large proportion of the members, who continue to accept Bishop Abel Muzorewa as their leader. At the end of October 1975, Mr. Nkomo met the leader of the rebel régime, Mr. Ian Smith, in preliminary talks to pave the way to constitutional talks. 2/ At the beginning of December, they signed a "declaration

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

2/ Rhodesia Herald, 1 November 1975; Le Monde, 2-3 November 1975.

of intent" to negotiate a constitutional settlement. Among other items, this declaration stated that representatives of the ANC involved in any way in the talks would have

"full freedom and/or diplomatic immunity in respect of the following:

"(a) from preventive detention or restriction for any act or omission in or outside Rhodesia; and

"(b) to enter and depart freely from Rhodesia; and

"(c) subject to the confidentiality of the discussions agreed in Clause 8 hereof, to exercise freedom of expression and speech at any meeting or meetings in Rhodesia as described hereinbefore in this clause and to communicate freely with any person inside or outside Rhodesia; and

"(d) not to be subjected to any observation, harassment or recording by film, tape, other mechanical device, or other means not expressly authorized by themselves."

These immunities would apply only until the end of the talks. ^{3/} The substantive constitutional talks started on 11 December 1975 between representatives of the ANC led by Mr. Joshua Nkomo and representatives of the rebel régime led by Mr. Ian Smith. In all, 15 sessions were held, but agreement was not reached and the talks broke down in March 1976. According to the ANC: "The talks broke down 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." ^{4/}

434. According to information before the Group, the rebel régime set up a Commission of Inquiry into Racial Discrimination in September 1975, which reported in April 1976. ^{5/} A number of its proposals will be discussed later. It may be noted here that the rebel régime rejected the proposals for a common roll, for the removal of the distinction between European and African land, and for a justifiable Bill of Rights. ^{6/} The other attempt the rebel régime has made to legitimize itself was the appointment of four African "Ministers" (all Senator Chiefs) and three African "Deputy-Ministers" (all African MPs). These appointments, according to the Rhodesian press, make the government of Southern Rhodesia multiracial for the first time. However, the appointment

^{3/} Rhodesia Herald, 2 December 1975.

^{4/} Report by the African National Council on the Rhodesian Constitutional Talks in Salisbury, Rhodesia, December 1975 to March 1976, published by the African National Council, Highfield, Salisbury, Rhodesia, para. 2.

^{5/} Cmd. RR 6-1976.

^{6/} Rhodesian Parliamentary Debates, House of Assembly (hereinafter Parl. Deb.), 23 July 1976, cols. 1377-1387.

and continuing action of these "Ministers" is totally dependent upon the continuing existence and power of the Rhodesian Front party which has no African support or membership. 7/

435. During the period under review, the guerrilla war on the north-eastern and eastern borders has continued, and in the first half of 1976 it spread to the northern border and to the southern part of the country. The fighting has considerably escalated in this latter period, and the Mozambique border with Southern Rhodesia has been violated on many occasions by the rebel régime. The illegal régime has claimed the right of "hot pursuit". The legality of this claim has been contested by, among others, Lord Gardiner (at one time Lord Chancellor of the United Kingdom) in a statement in May 1976. He stated that if Southern Rhodesian forces engaged in hot pursuit into a neighbouring country, they would breach international law. This is because of the illegal status of the rebel régime and of its forces. 8/ Mozambique responded to these attacks on its territorial integrity by closing its border with Southern Rhodesia in March 1976. The Rhodesian forces have attacked and killed Mozambican civilians and soldiers and also African refugees from Southern Rhodesia. The most serious of these attacks occurred in August 1976 when a refugee camp recognized by the United Nations High Commissioner for Refugees was attacked and at least 680 civilians (including women and children) were killed. 9/ Details of these attacks are given in paragraphs 474-479 below.

436. There have been some contacts with the British Government. From 24 to 27 February 1976 Lord Greenhill (a former head of the British Diplomatic Service) made an "exploratory" visit to Southern Rhodesia and met a wide range of leaders, including Mr. Joshua Nkomo and Mr. Ian Smith. A month later, on 22 March 1976, Mr. Callaghan (at that time Foreign Secretary) stated that any settlement supported by the United Kingdom would have to be based on four principles:

- (i) Acceptance of the principle of majority rule;
- (ii) Elections for majority rule to take place within 18 months to two years;
- (iii) Agreement that there would be no independence before majority rule;
- (iv) Negotiations must not be long drawn out. 10/

7/ Rhodesia Herald, 29 April 1976.

8/ Rhodesia Herald, 5 May 1976.

9/ United Nations Information Service press release REF/1261, Geneva, 21 August 1976.

10/ Daily Telegraph, 23 March 1976; Le Monde, 24 March 1976; The Times, 23 March 1976.

These proposals were rejected by the white Southern Rhodesian leaders. However, the British Government refused to consider the proposal by President Kenneth Kaunda of Zambia that it intervene militarily to set up a government under British control. 11/

437. Southern Rhodesia has continued to receive considerable support from South Africa. During the first eight months of 1975, the South African Government gradually reduced its overt military presence in Southern Rhodesia. However, other military support has continued to be given to Southern Rhodesia by South Africa. It was reported in September 1976 that only then were the 50 South African pilots and technicians serving in the Rhodesian Air Force being withdrawn to their own country. 12/ South Africa has also continued to be the main and the only route for goods entering and leaving Southern Rhodesia since the closure of the Mozambique border.

438. The main concern of South Africa continues to be the necessity of defusing the guerrilla war and retaining a client state on its border. The South African Foreign Minister stated in a television interview "I think they (the Rhodesians) must be realistic. They must realize that what happened in Angola could be repeated somewhere else". When asked: "In Rhodesia?", Dr. Muller replied: "Well, it could". 13/ However, the South African Government has refrained from putting overt pressure on the illegal régime by closing its border or by refusing to allow the passage of goods.

The Geneva Conference on Rhodesia

439. In April 1976 Dr. Henry Kissinger, the United States Secretary of State, proposed to Mr. Smith a peace plan for a Rhodesian settlement. The terms of the proposals were as follows:

- (1) Rhodesia agrees to majority rule within two years.
- (2) Representatives of the Rhodesian Government will meet immediately at a mutually agreed place with African leaders to organize an interim Government to function until majority rule is implemented.
- (3) The interim Government should consist of a Council of State, half of whose members will be black and half white with a white chairman without a special vote. The white and black sides will nominate their representatives. Its functions will include legislation, general supervisory responsibilities and supervision of the process of drafting the constitution. The interim Government should also have a Council of Ministers with a majority of Africans and an African First Minister. For the period of the interim Government the Ministers of Defence and of Law and Order would be white. Decisions of the Council of Ministers will be taken by two-thirds majority. Its functions should include delegated legislative authority and executive responsibility.

11/ The Times, 30 March 1976.

12/ Financial Times, 7 September 1976.

13/ Rhodesia Herald, 9 February 1976.

- (4) The United Kingdom will enact enabling legislation for the process to majority rule. Upon enactment of that legislation Rhodesia will also enact such legislation as may be necessary.
- (5) Upon the establishment of the interim government, sanctions will be lifted and all acts of war, including guerrilla warfare, will cease.
- (6) Substantial economic support will be made available by the international community to provide assurance to Rhodesians about the economic future of the country. A Trust Fund will be established outside Rhodesia which will organize and finance a major international effort to respond to the economic opportunities of the country and to the effects of the changes taking place. The Fund will, inter alia, support the internal and external economic circumstances of the country and provide development assistance, guarantees and investment incentives to a wide variety of projects. The aim will be to expand the industrial and mineral production of the country, to enhance agricultural potential by suitable land utilization and development programmes and to provide the necessary training and educational facilities to provide the essential flow of skills. Pension rights, the investment of the individual in his own home and/or farm and the remittance overseas of an individual's liquid resources within levels yet to be stipulated will be guaranteed by the interim and subsequent governments. These particular measures will be underwritten by the Trust Fund thereby giving a firm international base to the government guarantee. 14/

440. The five African presidents of the "frontline" States (Angola, Botswana, Mozambique, United Republic of Tanzania, Zambia), as well as the leaders of the liberation movements, rejected several aspects of the settlement proposals, including the holding by white Ministers of Law and Order or Defence portfolios in an interim Government, and demanded an African majority in the decision-making Council of State. 15/

441. These presidents called on the United Kingdom Government to convene immediately a conference outside Rhodesia "with the authentic and legitimate representatives of the people". The conference should discuss the structure and functions of the transitional Government, establish it, and prepare for a full constitutional conference.

442. The Conference began on 28 October 1976 in the Palais des Nations at Geneva. Four delegations representing the parties concerned attended the Conference. Mr. Smith led the Rhodesian delegation and Mr. Ivor Richard, Chairman of the Conference, led the United Kingdom delegation. Mr. Mkombo and Mr. Mugabe, who formed a "patriotic front", led the Zimbabwe African People's Union delegation and Mr. Muzorewa and Mr. Sithole represented the Zimbabwe African National Union's delegation.

14/ Rand Daily Mail, 25 September 1976; International Herald Tribune, 10 September 1976, 21 and 22 September 1976; Le Monde diplomatique, October 1976.

15/ Guardian, 27 September 1976; International Herald Tribune, 27 September 1976.

443. At the time when the Group was beginning its final reading and adoption of this report, the Conference on Rhodesia had not yet resumed its work.

1. Capital punishment

(a) Summary of relevant legislation

444. The legislation sanctioning 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). The Law and Order (Maintenance) Act, with its amendments, established the death sentence (often mandatory) for a wide range of offences and lays the onus of proving innocence upon the accused. According to a recent study of this Act, "it has consistently been used to suppress African political activity, civil disobedience and all other forms of opposition to white supremacy". 16/

445. The Group's interim report (E/CN.4/1137, para. 460) noted that a spokesman for the "Ministry of Justice" stated in April 1975 that public announcements would no longer be made after hangings. This decision was taken because the question of executions was "an emotive one". He said that when sentences were passed and the appeal turned down, it must be accepted that the sentence had been carried out. As a number of trials are held in camera, it is therefore possible for the accused person to be tried and executed in complete secrecy.

(b) Capital punishment sanctioned through the judicial process

446. According to a study by Amnesty International, handed in as evidence by Mr. Malcolm Smart (343rd meeting), in 1975 more than 60 people had been hanged by the rebel régime since the unilateral declaration of independence. The study states that since executions have ceased to be announced "it is impossible to know how many prisoners have since been executed". 17/

447. Full information about those charged in the courts and the outcome of their trials is difficult to obtain. Press reports are incomplete and often significant stages (including appeals and their outcome) are not reported. Thus the information given by the Working Group is inevitably incomplete. It may be assumed that all those whose appeals failed have been hanged. It may also be assumed that most of those sentenced to death, where appeals were not presented, have also been executed.

Some examples of death sentences known to the Group

448. In the Group's interim report (E/CN.4/1137, para. 472) it was stated that Benson Ncube and Robbie Nyambabvu had been sentenced to death for recruiting six youths for guerrilla training. Their appeals against sentence were dismissed in December 1975. 18/

16/ "'Civilised standards' in Rhodesia", Fact Paper, No. 1, International Defence and Aid Fund, May 1976.

17/ Rhodesia/Zimbabwe Amnesty International briefing, March 1976.

18/ Rhodesia Herald, 13 December 1975; Anti-Apartheid News, January-February 1976.

449. Shadreck Machisa was sentenced to death in October 1975 for recruiting a man for guerrilla training. In dismissing his appeal against sentence in December 1975, the "judge" stated that the sentence was mandatory as there were no "special circumstances" of an extenuating kind. 19/

450. John Hlengani was found guilty and sentenced to death for recruiting three youths for guerrilla training in October 1975. His appeal against sentence was rejected in March 1976. 20/

451. In November 1975 three guerrillas, Elliot Dube, Reza Myamurupa and Ignatius Moto, were sentenced to death for murder (they were involved in an engagement with the Southern Rhodesian security forces at the beginning of April 1975) and for possessing arms of war. It was reported in February 1976 that the latter two were appealing against sentence on the grounds of their age. The result of this appeal was not reported. 21/

452. In October 1975 Chiereso Waini was sentenced to death for attacking a European farm, and also for being part of a guerrilla band which killed an African farm foreman. In the attack on the farm in October 1974, none of the occupants was killed. Mr. Waini was held responsible, as a member of the guerrilla band, for the death of the foreman. It was not proved that he killed the man himself. His appeal against sentence was rejected in March 1976. 22/

453. An appeal against the death sentence by Christopher Nhiri was dismissed in March 1976. Mr. Nhiri was found guilty of possessing weapons of war, and of murder. On the second charge, the band to which he belonged had ambushed Southern Rhodesian security forces and killed two of them. It was established that Mr. Nhiri was not personally responsible for these deaths but it was shown that there was "common purpose" between the members of the guerrilla band to try to kill Southern Rhodesian soldiers. 23/

454. Kumbykaye Patrick, Kenneth Nyakudya and Good Kanokunda were sentenced to death in February 1976 under the Law and Order (Maintenance) Act for having offensive weapons in their possession the previous September. In the subsequent appeal in May 1976, the sentence against Kenneth Nyakudya was confirmed and that against the other two was suspended because of the possibility that they had been abducted by freedom fighters shortly before being captured by the security forces. 24/

19/ Rhodesia Herald, 18 October 1975, 30 December 1975; Anti-Apartheid News, January-February 1976.

20/ Rhodesia Herald, 23 October 1975, 6 March 1976.

21/ Rhodesia Herald, 8 November 1975, 25 February 1976.

22/ Rhodesia Herald, 11 October 1975, 16 October 1975, 2 March 1976.

23/ Rhodesia Herald, 3 March 1976.

24/ Rhodesia Herald, 7 February 1976, 19 May 1976.

455. In March 1976, Luckson Tiriboyi was sentenced to death for killing a soldier who was flying (as a passenger) in a helicopter. It was established that Mr. Tiriboyi was not the one who fired the shot but he was convicted by the legal doctrine of "common purpose". 25/
456. In May 1976, Ponias Shava was found guilty and sentenced to death for the murders of Acting Chief Makope in April 1975 and of a European farmer in June 1975. Again, it was proved that he was a member of the guerrilla band responsible for the deaths but not necessarily that he was directly responsible. 26/
457. At a meeting of a "special court" in Inyanga at the end of May 1976, six unnamed men were sentenced to death for possessing arms of war. The procedures of the "special courts" will be dealt with in paragraph 527 below, where it will be shown that they are heavily biased against the accused and that they may be convened at short notice and in remote places in the country not easily accessible to members of the press. In the case of the six men above, the only details are those supplied by the "Ministry of Justice", as no independent reporter was present at the hearing. 27/
458. An appeal in June 1976 against the death sentence on Ben Gibson was dismissed. Mr. Gibson was found guilty as an accomplice for pointing out three tribesmen as "sell-outs". 28/
459. Lazerus Gahazikwa was sentenced to death at a "special court" in Salisbury in June 1976. He was found guilty of having arms of war in the Mtoko area in September 1975. It was established that neither he nor any of his colleagues was responsible for killing any of the soldiers they had ambushed. At the appeal against sentence held the next month, the death penalty was confirmed. 29/
460. At a trial in June 1976, Isaki Swaze was sentenced to death for having planted three land mines and for possessing an AK rifle. As a result of the mining, three vehicles were damaged and nine people injured, but no one was killed. 30/
461. At a "special court" in Salisbury in June 1976, Darlington Phillimon Kanyasa was sentenced to death for having a gun and some explosives. 31/

25/ Rhodesia Herald, 27 March 1976.

26/ Rhodesia Herald, 30 April 1976, 4 May 1976.

27/ Rhodesia Herald, 29 May 1976.

28/ Rhodesia Herald, 26 February 1976, 5 June 1976.

29/ Rhodesia Herald, 12 June 1976, 30 July 1976.

30/ Rhodesia Herald, 17 June 1976.

31/ Rhodesia Herald, 19 June 1976.

462. At a "special court" in Umtali in June 1976, an unnamed African was sentenced to death for reporting the presence of two policemen to guerrillas. The President of the court who passed the death sentence was a magistrate, not a judge, as in the previous cases. 32/ At an appeal heard in July 1976 against the sentence of death passed by a "special court" in Umtali in May on Steven Chapunga, who had been convicted of possessing arms of war, the penalty was confirmed. No evidence was given to suggest that he had actually killed anyone. 33/

463. At a "special court" in Inyanga in July 1976, Luke Bumhira was sentenced to death on charges of possessing arms of war. 34/

464. Two guerrillas, Nisa Surupati and Petersen Suva, were sentenced to death at a hearing in a "special court" held in July in Umtali. Both had pleaded guilty to bearing arms of war into Rhodesia. 35/

465. An official of the African National Council was sentenced to death for recruiting freedom fighters, at a "special court" in Umtali in May 1976. His appeal against sentence, which was heard in August 1976, was lost. 36/

466. In the period covered by this report, the death sentence on 11 Africans was confirmed in reported appeals; the result of the appeals of another four Africans is not known; and in another 15 cases appeals have either not been made, or they have not yet been heard or have been held but not reported in the press. The number of those sentenced to death at the trial who escaped this penalty as the result of a subsequent appeal is three in the period under review.

2. Massacres and violations of the right to life

(a) Non-combatant Africans killed by the security forces

(i) Inside Southern Rhodesia

467. Testimony given to the Group on behalf of the African National Council of Zimbabwe (429th meeting) claimed that "the Southern Rhodesian régime, through its police, armed forces and armed white citizenry, is killing a conservative average of 300 ordinary, unarmed, non-combatant Zimbabweans every month". The statement went on to categorize the ways in which Africans are killed: "killing for sport" by shooting at innocent Africans passing by; "killings as punishment", which includes the execution without trial of those suspected of supporting guerrillas, the destruction of whole villages (with their occupants), as well as executions as a result of the judicial process; "killings as intimidatory warning", in which the bodies of those killed are displayed to the local African population; and finally, "killings as a weapon against freedom fighters", which includes allowing the spread of disease in areas in which guerrillas are operating.

32/ Radio Salisbury, 24 June 1976.

33/ Rhodesia Herald, 31 July 1976.

34/ Rhodesia Herald, 30 July 1976.

35/ Rhodesia Herald, 31 July 1976.

36/ Daily Telegraph, 27 May 1976; Rhodesia Herald, 3 August 1976.

468. Contempt for black lives has been a feature of statements by white "leaders" in the period under review. In May, the "Secretary for Internal Affairs" was reported as saying at a passing-out parade of police recruits that a normal criminal such as a thief was still entitled to the protection of the law but that the "terrorist", because of his conduct, may be killed on sight. 37/ Two months later, on a similar occasion, the "Secretary for Law and Order" said the police have to adopt tough measures. He urged the recruits not to be "squeamish in departing from the niceties of established procedures which are appropriate for normal times". 38/ In a speech in the Southern Rhodesia House of Assembly, the "Minister of Defence" answered the complaint of an African MP about the bombing of African villages: "The answer to that is very simple: if villagers harbour terrorists and terrorists are found moving about in villages, naturally they will be bombed and destroyed in any manner which the commander on the spot considers to be desirable in the suitable prosecution of a successful campaign". 39/ Speaking at the passing-out parade of new army recruits, the same "Minister" said: "To you will fall the honour of exacting the most terrible vengeance for our comrades and compatriots who have been maimed and murdered by the terrorist beasts".

469. According to communiqués issued by the rebel régime's security forces, seven African civilians were killed breaking the curfew between August and December 1975, and a further 72 were killed between January and July 1976. 40/ According to evidence given to the Group, the curfew is very rigidly adhered to. One witness (422nd meeting) stated that a woman and two students were working in a curfew area at 6.15 p.m. and they were all shot because the curfew began at 6 p.m. The witness continued: "If you are found in a curfew area, you are not going to be questioned. Your punishment is that you are going to be shot straight away." Another witness (429th meeting) stated that a man was killed for letting his cattle out before time. A letter from Bishop Donal Lamont and a reply from an official spokesman of the rebel régime, both published in the Rhodesia Herald in June 1976, support the concern of the above witnesses. They indicate that the security forces do not challenge any Africans breaking curfew but shoot on sight because, it is alleged, in almost all cases those shot have been "associated with" guerrillas. Those killed are returned to their families without any post mortem or questioning as to the legality of the death. The spokesman stated: "Every possible means is used to ensure that the population is fully warned of curfews". No method of warning the tribesmen who may well not have watches or clocks is mentioned. Bishop Lamont's call for a public inquiry met with no response. The Bishop also stated that he knew "that individual members of the security forces are themselves deeply disturbed by the killing of so many curfew breakers". 41/

37/ Rhodesia Herald, 14 May 1976.

38/ Rhodesia Herald, 30 July 1976.

39/ Parl. Deb., 2 July 1976, col. 605.

40/ These communiqués are issued by the Rhodesian "Ministry of Information" and printed and published regularly in the Rhodesia Herald and over Radio Salisbury.

41/ Rhodesia Herald, 11 June 1976.

470. Mr. Smart (434th meeting), giving testimony for Amnesty International, summed up the position: "Curfew breaking carries a maximum penalty of two years, but they are in fact shot".

471. According to communiqués referred to in paragraph 42 above, 89 African civilians who it is claimed were associated with the guerrillas were killed by the security forces between January and July 1976 (none being admitted in 1975). In evidence given to the Group, a witness (422nd meeting) described the aftermath of an ambush of Southern Rhodesian security forces in the north of the country. Two children were arrested and tortured at a nearby police station and six men were killed. The same witness stated that African soldiers disguise themselves as freedom fighters, enter a village and ask for food and information, and then call for the army which will come and kill people in the village. Another witness, Mr. Noah Mvenge (428th meeting) described the death of an old woman, Mrs. Masvikeni, in the Umtali area. She was going to the bus stop when she was stopped by some soldiers and asked for her identity card. She put her load down to get it out but was shot dead because they thought she was going to get a gun out. Another witness (429th meeting) described the death of his father, who had been tortured to death because his sons had joined the guerrillas. Speaking in the Southern Rhodesian Parliament, Mr. T. T. Zawaira described an incident in the south-eastern part of the country. A woman carrying a child was standing at a bus stop when a passing army lorry had a blowout. The explosion gave the woman a fright so that she started to run away. At that the soldiers in the lorry shot her down. 42/

472. The Group received detailed testimony on the destruction of whole villages inside Southern Rhodesia.

473. One witness (422nd meeting) described attacks by the Southern Rhodesian army in several villages in the north of the country. In one village, ten men, three women and six children were killed. In another village, the people were called to a meeting only to be massacred because of the presence of freedom fighters a few miles away. In yet another area, a mixed group of Southern Rhodesian and South African troops came into a village and shot everyone in sight. This they did because some army trucks had been mined and some other trucks had been ambushed, with considerable loss of life by the army. This evidence is supported by other reports available to the Group. In a report in the newspaper The Guardian, James MacManus described the destruction of a village near Chiredzi (in the south-east, 30-40 miles from the border of Mozambique). Three freedom fighters were being reluctantly entertained by the village when the headman slipped out to tell the army. The village was bombed, killing about 12 villagers, injuring 14, but not killing the freedom fighters, who escaped when they heard the sound of the helicopter. The headman committed suicide when he found that his wife and daughter were among the dead. The rebel régime has confirmed the suicide of the headman in question. 43/ In a speech in the Southern Rhodesian Parliament, Mr. T. T. Zawaira described an incident in which some villages near to Zhanje mountain were bombed during an attack on a supposed guerrilla camp. 44/ In another

42/ Parl. Deb., 23 June 1976, col. 70.

43/ Guardian, 2 June 1976.

44/ Parl. Deb., 23 June 1976, col. 70.

speech, another African MP Mr. E. S. G. M. Nyandoro, described the destruction of Chitora School, carried out fortunately without killing any of the 500 pupils. The attack took place while the army was searching for a European who had been abducted.^{45/} According to missionary sources and Africans returning to the cities, the official casualty figures conceal a far higher figure among the rural African population.^{46/}

(ii) Inside Mozambique

474. The leaders of the Southern Rhodesian security forces have for some time claimed the right of "hot pursuit" of guerrillas into neighbouring African countries. This was explicitly confirmed by Lt. General G. P. Walls in May 1976: "We would prefer that our neighbours were as good neighbours to us as we are to them, but if they harbour terrorists and allow others to operate into our territory, we have every intention of taking whatever action is necessary to prevent them from doing so. Where any terrorists take refuge across the border when we are closing with them to destroy them, we will, if necessary, follow them across the border."^{47/}

475. There is evidence that the Southern Rhodesian forces have operated inside Mozambique for a number of years. A document written by a number of middle-ranking Portuguese army officers was issued a few days before the coup in Portugal in April 1974. It stated: "Contrary to official denials, there exists a close collaboration in the military field between the Portuguese army and Rhodesian troops, who include mercenaries from South Africa ... Since the beginning of last year [i.e. since 1973] the collaboration has been intensified with the permission given to the airborne troops from Rhodesia to operate in a very large area, north and south of the Zambesi ... These operations, co-ordinated with the Portuguese operations, consist of speedy paratroop actions in specified areas and the liquidation of any human lives (there being no military or civilian prisoners) and a return to their bases in Rhodesia."^{48/}

476. In a communiqué issued in February 1976, the rebel régime reported the death of one of its soldiers and stated that "during these clashes and subsequent follow-up hot pursuit operations, 24 terrorists are known to have been killed".^{49/} This incident was in fact so serious that it provoked the closure of the border between the two countries. In announcing this, the President of Mozambique, Mr. Samora Machel, stated that the above incident was an attack on the villages of Pafuri and Mavue, and that eight Mozambique civilians had been killed. He went on to list 23 other Rhodesian incursions (including 11 violations of Mozambican air space) which had taken place in the previous six months.^{50/}

^{45/} Parl. Deb., 25 June 1976, cols. 240, 241.

^{46/} Guardian, 2 June 1976.

^{47/} Rhodesia Herald, 1 May 1976. It is worth noting that a new radio station "Voice of Free Africa" ("Radio Voz de Africa Libre"), which opposes the Mozambique Government, has its address in Salisbury and presumably has its radio station located in Rhodesia (Summary of World Broadcasts, Second Series, ME/5267/B/10; "Voice of Free Africa", 27 July 1976).

^{48/} Guardian, 23 April 1974.

^{49/} Radio Salisbury, 25 February 1976.

^{50/} Translation of speech of 3 March 1976, in People's Power in Mozambique and Guinea-Bissau (hereinafter called People's Power), No. 1, March/April 1976, pp. 16-25.

477. According to the Mozambique Government, a major incursion took place into Mozambique on 26 June 1976. An attack was made on the town of Mapai, in Gaza Province, about 90 kilometres from the Rhodesian border. The report states that nearly 100 Rhodesian soldiers led by a former Portuguese colonial resident of Mapai and supported by a helicopter and jet aircraft, made the attack. Twenty-nine people were killed in this raid, including 13 soldiers, and 16 were wounded. 51/

478. The most serious massacre took place in the month of August 1976. In a communiqué issued on 10 August 1976 the rebel régime claimed that as a result of an attack on their security forces on 8 August, resulting in the death of 5 soldiers, an attack had been made on a "terrorist command headquarters and base camp in Mozambique". The communiqué went on to state: "More than 300 terrorists were killed. In the fire-fight about 30 Mozambique troops and about ten civilians who were supporting the terrorists are known to have been killed." It also stated that further casualties occurred during the destruction of a road block and a bridge. However, this communiqué was a gross distortion of the truth. According to a report in the Maputo newspaper Noticias, Nyazonia camp was a refugee camp for civilians from Southern Rhodesia. This was later confirmed by a representative of the Office of the United Nations High Commissioner for Refugees (UNHCR). The Rhodesians came disguised as members of FRELIMO, singing revolutionary songs. When they were in the middle of the camp, they began to shoot all in sight; women, children, old men. They then chased those who ran with their vehicles, running many over. The report estimated that at least 620 died and that another 302 were in hospital. 52/

479. The representative of UNHCR in Maputo (Mozambique) had visited the refugee settlement of Nyazonia in May, when it contained 8,000 refugees. He revisited this camp, with his deputy, shortly after the attack by the rebel régime. In his report he states: "Visiting the camp was desolating. Ten mass graves were being covered. Huts had been burned, including dispensary, dormitories, and food warehouse. Dried-up bloodstains on ground, stench from graves, the remains of bullet shells, testified to what must have been a horrifying scene". He then visited the Chimoio hospital where he counted 296 wounded persons, among them many women and children. He counted 204 wounded in a temporary camp sheltering some of the former inhabitants of Nyazonia. He was informed that 176 serious cases had been evacuated to the hospital in Beira. The High Commissioner, Sadruddin Aga Khan, stated in response to this report: "It escapes my understanding as to what those responsible for it thought they were accomplishing through such an atrocity." 53/

(iii) In Botswana

480. The Group notes that the security forces of Southern Rhodesia, claiming the right of hot pursuit of the freedom fighters, are violating the principle of territorial sovereignty with increasing frequency as they extend their action to other States such as Botswana. In December 1976, for example, there was an incursion into the territory of Botswana in an area near Francistown. 54/

51/ Radio Mapuro, 30 June 1976; People's Power, No. 7, pp. 30-31.

52/ Rhodesia Herald, 11 August 1976; People's Power, No. 3, pp. 33-35; Le Monde, 14 August 1976.

53/ United Nations Office of Public Information, press release, REF/744, New York, 25 August 1976.

54/ Rand Daily Mail, 20 December 1976; Times, 22 December 1976.

(b) Deaths while in detention

481. According to evidence presented by both Amnesty International (434th meeting) and by Mr. Hitler Hunzui (428th meeting), Mr. Edward Bhebe died of unexplained causes at the age of 45 in Gwelo prison. He had been detained or imprisoned continuously since 6 July 1965, and his death was reported on 6 June 1976.

482. According to further evidence presented by Mr. Hunzui, Mr. Gurupira, a detainee, died in the Whawha restriction area during the period under review. He had spent more than 11 years in detention, during which effective communication with his relatives had been denied.

(c) Deaths following political unrest

483. According to information available to the Group, a serious incident which resulted in the death of one African and the wounding of another occurred in Gwelo in January 1976. "Rioting" apparently broke out between supporters of the two wings of the African National Council, and started at a beer hall in one of the African townships. According to the prosecutor at the trial of an African arrested: "During the course of the riot, one person was shot dead and another injured by the police in an effort to stop the riot and prevent further damage to property." ^{55/}

3. Living conditions in rural and urban areas and forced removals of population

(a) Introduction

484. The historical background to the development of the African areas was given in previous documents of the Ad Hoc Working Group of Experts (E/CN.4/1020 and Add.1) and a comprehensive survey of the laws which affect Africans in these areas was also given in documents E/CN.4/1020 and Add. 1 and E/CN.4/1050. There have been no significant legislative changes during the period under review.

485. The position of Asian and Coloured people has been one of great concern to the rebel régime. In 1970 a draft of a Residential Property Owners (Protection) Bill was published. This had the objective of making a legal separation between the European residential areas and Asian and Coloured residential areas. This special separation was deemed necessary as the Asian and Coloured populations are deemed European for the purposes of the Land Tenure Act. The Bill was never enacted, mainly because of the financial implications for local councils. Instead, many of its aims have been successfully dealt with by an amendment to the Deeds Registries Act contained in the General Law Amendment Act of 1972. In this, a condition restricting the occupation of a property could be written into the legal title of the house. Anyone of a forbidden race living in the house could then be evicted. ^{56/} In the Regional Town and Country Planning Act, passed in February 1976, the local authorities were given powers to enforce racially restrictive clauses in the title deed of a house. This means that an aggrieved neighbour can go to the local council for enforcement of the racially restrictive clause at no cost to himself. ^{57/}

^{55/} Rhodesia Herald, 13 January 1976, 14 January 1976.

^{56/} D. K. Davies, Race Relations in Rhodesia. A Survey for 1972-1973 (London, R. Collings, 1975), pp. 315-317.

^{57/} Rhodesia Herald, 28 February 1976.

486. 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 (according to official estimates) has been shown to have risen from 4,880,000 in June 1969 to 6,110,000 in December 1974. During the same period, the European population is estimated to have increased from 230,000 in 1969 to 278,000 in 1974. 58/ There is no up-to-date information regarding the distribution of population. The distribution of the African population by sex and age according to different land categories (again at the April 1969 census) was given in the interim 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.

487. A previous report of the Group (E/CN.4/1159, para. 330) gave important information about the oppressive regulations covering the rural areas.

488. According to documents submitted to the Group by Mr. Alan Brooks on behalf of the International Defence and Aid Fund, the entire length of the borders with Mozambique and Botswana has been under a dusk-to-dawn curfew since the summer of 1975 and the area is a free fire zone during the curfew. An order imposing a curfew can be made by a police commander under the terms of the Emergency Powers (Maintenance of Law and Order) Regulations. It forbids the movement of any person at night more than 50 metres away from a house, hut or tent. 59/ A further regulation, the Emergency Powers (Maintenance of Law and Order) Regulations 1976, will severely restrict the work of welfare agencies. The order gives power to the "Minister" to prohibit payments of money to residents in the operational area "when it is known or suspected that the money, or things bought with it, have been made available to the terrorists". This is aimed at organizations such as the Chiweshe Residents Association, operating in Salisbury on behalf of relatives in the protected village at Chiweshe. 60/ Finally, the powers of African Chiefs (whose appointment is controlled by the rebel régime) have been increased. The Emergency Powers (Powers of Chiefs) Regulations state that a visitor to a rural area must report to the Chief. If the Chief decides that the "stranger's" presence will lead to a "breach of the peace or be prejudicial to the maintenance of law and order", he can order the man to leave and not return for at least one month. The only appeal is to the District Commissioner. 61/

(b) The position of Coloured and Asian people in urban areas

489. The Asian and Coloured populations live almost exclusively in the main towns and cities. According to the Monthly Digest of Statistics (August 1976, table 2), the distribution on 31 December 1975 was estimated as follows:

58/ Monthly Digest of Statistics, July 1976, table 1.

59/ Focus on Political Repression in Southern Africa, News bulletin of the International Defence and Aid Fund for Southern Africa (hereinafter Focus), No. 5, July 1976.

60/ Focus, No. 4, May 1976.

61/ Rhodesia Herald, 17 July 1976.

	<u>Asian</u>	<u>Coloured</u>
Total population	10,000	20,900
Population in main towns	9,100	17,500
Percentage of population in main towns	91.0	83.7

It can be seen that there are very few Asians and Coloureds who do not live in the main nine towns in Southern Rhodesia.

490. The rebel régime is promoting its policy of racial separation in Salisbury. In the low-cost residential suburb of Salisbury, Southerton, the régime has spent about \$R 400,000 in buying up the homes of European residents who wish to leave but who cannot find a private buyer. The idea is that these houses will be sold or leased back to Coloureds, so that eventually the suburb will be exclusively Coloured. 62/

491. Opposition to the Asian "intrusion" was expressed at a meeting of the Marlborough Ratepayers and Residents Association in September 1975. A member said to the Association: "We should take steps to keep this community of ours in white hands. The gradual erosion of white rights in the country has to stop." 63/

492. A Salisbury councillor revealed that the City Council had not "in the last five years issued one permit to a couple where there is a European husband and an African wife, or vice versa." 64/

(c) Conditions of Africans in urban areas

493. As is already clear from previous reports of the Group, African workers are accommodated in a number of African townships on the outskirts of white towns. The accommodation normally comprises a number of barrack-like flats for single men, small council houses, many of which are supported by industrial concerns for the benefit of their own employees only, and a (growing) number of estates where Africans can own their own houses. Domestic servants usually live with the families they serve, in a "kia" at the end of the garden. However, there are by-laws which strictly control the numbers of dependants who may live with the employee (see E/CN.4/1187, para.502).

494. In the interim report of the Group a full summary was given of the Salisbury City Council's "Urban Plan". The basic concern of the document was to protect Salisbury as a city "where European interests are paramount". Part of this policy was the removal of four African townships in the centre of Salisbury to outlying areas (E/CN.4/1187, paras. 492-499).

62/ Sunday Mail, 4 April 1976.

63/ Rhodesia Herald, 25 September 1976.

64/ Rhodesia Herald, 5 February 1976.

495. The township of Seki in the Seki TTL, over 10 miles from Salisbury, is one of the African townships that is being built to conform with the City Council's policy. In a letter to the Rhodesia Herald, Mr. J. B. Magaya stated: "I have been a resident for nearly two years now ... In Seki Township street lights are badly needed. From Fridays to Sundays gangs of thugs rob people of their money at night. I appeal to the authorities not to build more houses before street lights are installed in the whole of Seki Township. A town like Seki should have street lights, football ground and cheap transport on the same rate as at St. Mary's, Hunyani. If Seki is going to be the first African city in Rhodesia, transport should be cheaper." Mr. Magaya's complaints were confirmed by the white administration. 65/ Another African township at Zengeza, slightly nearer than Seki, was opened by the Mayor of Salisbury in April 1976.

496. A number of cases of servants not being allowed to live with their families have come to the attention of the Group. Mrs. Esther Madziwa was refused an accommodation permit by the Salisbury City Council under the African (Urban Areas) Accommodation and Registration Act. She wanted to live with her six children and had the agreement of her employer in Borrowdale, with no objections from neighbours. In an appeal to the High Court, the City Council's counsel stated that they were not obliged to give reasons for the refusal to give the permit. The judgement was not reported. 66/ In a letter in the Rhodesia Herald, Mr. C. C. M. Chagonda expressed his distress at not being allowed to live with his family. On his pay, he could not afford to get a separate house in a township. 67/ In a trial in April 1976, Mrs. Emily Kawone was found guilty of harbouring a trespasser under the African Identification and Registration Act. The trespasser was in fact her husband, and he had been found in her accommodation (where she worked) at 4.40 a.m. She was discharged with a caution. 68/

497. An important principle pursued in running the African townships is that, as far as possible, no charges should fall on European ratepayers. One of the main sources of revenue for Salisbury City Council's health, welfare and housing programme is the profit from the Liquor Undertaking. It was reported in May 1976 that the profit from this source was expected to slump from \$R 2.1 million to \$R 750,000 owing to recent increased sales taxes. These were increased by the rebel régime to pay for the guerrilla war. As a result, prices have gone up by between 2 and 4 cents per litre. From the report, it is clear that the reduced profits will mean reduced facilities. 69/

498. An increase in rents was announced in April 1976. The purpose of this was to make up for the "services levy" charges, which have been abolished. The increases were discussed with the régime and the wage-fixing bodies at the end of 1975, so that the increase in rent will take place at the same time as an increase in wages, thus nullifying part of the wage increase. 70/

65/ Rhodesia Herald, 12 November 1975.

66/ Rhodesia Herald, 14 November 1975.

67/ Rhodesia Herald, 24 December 1975.

68/ Rhodesia Herald, 9 April 1976.

69/ Rhodesia Herald, 3 May 1976.

70/ Rhodesia Herald, 27 April 1976.

(d) The Southern Rhodesian version of "bantustanization"

499. According to information available to the Group, the rebel régime is vigorously promoting the policy of "community development", which was detailed in a previous report of the Group (E/CN.4/1135, paras. 368-371).

500. This policy is being applied to urban areas as well as to rural areas. During the year under review, in spite of the opposition of both the European local councils and the European-controlled National Association of Local Government Officers, the rebel régime have promoted Township Boards in urban African townships. In the recent past, most African townships have had Advisory Boards which have a purely advisory relationship to the controlling European town or city council. The Township Boards have greater powers, including powers to raise a small levy to help pay for social facilities. In a letter to the Rhodesia Herald in May 1976, the "Minister of Local Government and Housing" said it was the policy of the régime "to devolve progressively on to freely elected African township boards a range of social and amenity functions that can best be managed at local level". This is part of the rebel régime's policy of "community development", in which certain carefully prescribed powers are handed over to the Africans. The crucial responsibility for "landlord and engineering functions" will remain in the hands of the senior municipal council, including over-all planning and development of major infrastructural services. The "Minister" made it clear that an aim of the policy is for the Africans to finance their own welfare and social facilities. He also stated, in December 1975 while opening an African community centre, that he intends that there will be township boards in all municipalities by the end of 1976. 71/ The reasons for this policy are twofold:

- (i) To legitimize the racial segregation of the country, without giving away any real power; and
- (ii) To provide a mechanism whereby the European population (which has a very high living standard) does not have to pay for the social and welfare facilities of the urban African population.

501. In its interim report, the Group stated that the rebel régime's policy of "provincialization" was being brought into operation (E/CN.4/1187, para. 504). In particular, it stated that Southern Rhodesia would eventually be covered by eight "regional authorities". The appointment of four African chiefs as Ministers with responsibility for African development in the various areas of Rhodesia is a very important step in the implementation of the policy of "provincialization". 72/ A further step was the establishment of a "Mashonaland Cabinet Council" in June 1976. This council had as members the two chiefs who had been made "Ministers" in April 1976, an African "deputy Minister" (the only member of the committee not a chief), and four other chiefs. A similar Cabinet Council for Matabeleland is being set up. They are intended to formulate policy for all aspects of development in the African areas of Mashonaland and Matabeleland. 73/

71/ Rhodesia Herald, 9 October 1975, 13 December 1975, 28 May 1976.

72/ Daily Telegraph, 29 April 1976.

73/ Rhodesia Herald, 16 June 1976.

502. A great deal of evidence on the question of land and its designation, ownership and development was presented to the Commission of Inquiry into Racial Discrimination. The African "Council of Chiefs" demanded that State land adjacent to the TTLs should be added to the tribal areas. The Commission was told: "Many Africans have been told to leave the land they are occupying in terms of the Land Tenure Act. These people left for the TTLs and added to the already crowded conditions." 74/ The chief planning officer in the "Ministry of Agriculture's" Department of Conservation and Extension told the Commission that the best agricultural land was generally allocated to the Europeans. The highest proportion of Europeans had occupied the two natural regions which had the highest rainfall. One of these consisted mainly of mountains, but the other was the main cash crop area for the country and included an area north of Salisbury and parts of Manicaland. European occupation accounted for 69 per cent of this area, and African for 25 per cent. He attributed this distribution to historical settlement patterns. 75/ The report of the Commission proposed that the division of the land into European and African should be abandoned and that such land should be open to settlement by all races. However, they specifically excluded TTLs and European residential areas. 76/ As noted in paragraph 6 above, this proposal was rejected.

503. Mr. Niall MacDermot, representing the International Commission of Jurists (ICJ), in his evidence to the Working Group (418th meeting) handed in a study entitled Racial Discrimination and Repression in Southern Rhodesia. In this report, a detailed analysis of land policy, a witness is quoted as describing the Land Tenure Act as "having divided the land in two between the one quarter of a million white population and the five and a half million Africans - with the half given to the Africans as that which is most unproductive". It is the stated policy of the rebel régime to bring the African "tribesmen" in the TTLs into the Southern Rhodesian cash economy, and one of the methods that has been used to deal with this problem has been the Tribal Trust Land Development Corporation. Yet the evidence of the ICJ shows that the effect of this is that the profits from industrial development by the corporation do not go to the Africans in the TTLs. 77/

504. According to information before the Group, a former President of the Associated Chambers of Commerce of Rhodesia, Mr. J. D. Cameron, in a speech in September 1975, quoted population figures which showed that the population in the TTLs had exceeded safe limits by 15 per cent in 1963, 40 per cent in 1969, and 85 per cent in 1972. On past trends the excess would reach 210 per cent by 1984. He said that the isolation of Africans from the European economy was partly responsible for this critical underdevelopment. 78/ In a lecture to the annual conference of the Natural Resources Board in Bulawayo, Dr. John Hanks pointed out that it was unrealistic to maintain isolated wild-life sanctuaries, which had money,

74/ Rhodesia Herald, 22 November 1975.

75/ Rhodesia Herald, 6 November 1975.

76/ Cmnd. RR 6-1976.

77/ International Commission of Jurists, Racial Discrimination and repression in Southern Rhodesia (London, Catholic Institute for International Affairs, 1976).

78/ Rhodesia Herald, 19 September 1975.

effort and expertise lavished on them, alongside TTLs which were being degraded at a frightening rate. Family planning on its own was no answer. 79/ In a detailed letter to the Sunday Mail in November 1975, Mr. R. H. Clark, the general manager of the African Loan and Development Trust, showed how one of the fundamental problems of African agriculture, even in the comparatively developed African Purchase Areas, has been the lack of proper capital finance. Thus the amount of credit finance available to African farmers has been 66 cents per hectare and \$R 125 per farmer per annum, while for European farmers there has been \$R 9.30 per hectare and \$R 20,000 per farmer per annum. He attacked the policy of successive governments over many years for paternalism and unfairness in its use of capital. 80/

505. Evidence of malnutrition in Chiveshe TTL was given in September 1975. Dr. James Watt of the Howard Institute estimated that 40 per cent of the children under the age of five years suffered from malnutrition of one sort or another. 81/

506. A report in February 1976 indicated that Africans in the Magonde and Sipolilo areas (north of Salisbury) were still in desperate need of help. The Reverend Norman Cliff attacked those Europeans who had said there was no such need in the areas referred to: "... a glance at the records of the Lomasundi division of the Salvation Army based at Sinoia will give the lie to such glib talk". 82/

(e) Forced removal of rural Africans: removals as a result of the land policy

507. In the interim report of the Group, the continuing plight of the Tangwena people was referred to (E/CN.4/1187, para. 512). The International Commission of Jurists report states that the Tangwena have not been able to return to their homeland in the north-eastern border area of Southern Rhodesia. "The Rhodesian army patrols the mountain area constantly and incidents occur, as when a Rhodesian soldier shot a Tangwena man. He was found by other Tangwena in a shallow hole in the ground, covered with leaves. His arm was broken, his left jaw was missing, as was part of the skull bone." The children, ranging in age from 4 to 13, were placed at nine different mission stations, where they are to this day. Sixteen are at secondary schools. 83/

508. A witness (422nd meeting) stated before the Group that people are being moved from Seki to Gokwe, on the northern border. "All of a sudden you find yourself being told, at such and such a time you will be moving from your birthplace to a place which you do not know. Gokwe is an infertile country, and there is nothing that can grow there."

509. The forced movement of Africans who lived in the Stapleford Forest area was reported in a previous report of the Group (E/CN.4/1135, para. 384). A witness (422nd meeting) described to the Group how this was accomplished. "When they want to remove people from an area, the District Commissioner is instructed to tell the Chief, then the Chief will tell his people that they will be moved from this area

79/ Rhodesia Herald, 3 June 1976.

80/ Sunday Mail, 30 November 1975.

81/ Rhodesia Herald, 9 September 1975.

82/ Rhodesia Herald, 6 February 1976.

83/ International Commission of Jurists, op. cit., p. 105.

to such and such an area; but the means of transport is their own problem. Like what happened in the case of Stapleford I was speaking of, each family had to get his own means of carrying his things to that area and finding a suitable place for himself. Again, the place is too small and cannot accommodate all the people and their cattle."

(f) Conditions in the "protected and consolidated villages"

510. In the previous reports of the Group, the setting up of and conditions in the so-called "protected villages" were described in some detail (E/CN.4/1159, paras. 341-352, and E/CN.4/1187, paras. 513-518). The Group has received a great deal of evidence on conditions inside the "protected villages" from a number of witnesses. It has also gathered evidence which shows that many more "protected villages" have been set up, along with "consolidated villages".

511. According to the report handed in by the International Commission of Jurists, in June 1975 a "new concept in the fight against terror" was announced. This variant on the "protected village" is the "consolidated village". The idea is to put all the African people into one area alongside a road, so that the security forces can make regular patrols by road to a far smaller number of settlements. Although these villages are not surrounded by a wire fence, they are subject to the same kind of restrictions and controls as are "protected villages". 84/

512. The growth in numbers in both kinds of village has been very rapid. By the end of 1974 there were estimated to be about 100,000 people in 30-40 "protected villages". 85/ According to the "Minister of Internal Affairs", there are now a total of 39 "protected villages" in Centenary, Mount Darwin, Concession and Shamva and another 70 "keeps or protected sub-offices in various districts". 86/ In March 1976, a "Minister" in the rebel régime said there were between 175,000 to 200,000 people who had moved into "consolidated villages". 87/ According to a press report of about the same date, in the north-east of Southern Rhodesia about 60,000 people were moved into 39 "consolidated villages" in the middle of 1975. 88/ All reports make it clear that the primary aim of the exercise is to make contact between the guerrillas and the African villagers more difficult.

513. The "Minister of Internal Affairs" in the rebel régime stated in June 1976 that plans were in hand for further "protected villages" in "areas newly affected by

84/ Ibid., p. 78.

85/ Sunday Times, 6 October 1974.

86/ Parl. Deb., 3 August 1976, col. 59.

87/ Radio Salisbury, 9 March 1976.

88/ Rhodesia Herald, 13 March 1976.

terrorism". He said: "The protected/consolidated village concept in the north-east has proved successful in depriving terrorists of local contact and has facilitated the movement of security forces throughout the area". 89/

514. One of the first "consolidated villages" in the south-east is that near to the Chikore mission, run by the United Church of Christ. The régime confirmed in May 1976 that 420 families (comprising about 6,000 people) were to be moved into three "consolidated villages". In June 1976, a spokesman conceded that "The move was not voluntary initially - it was suggested by the security forces for better control. However, the people have now accepted it, and there had been no opposition to it as yet". 90/ There have been no other published reports of moves, since control of the news media by the rebel régime means that the moves are rarely reported.

515. In a previous report of the Group it was stated that the "protected villages" were controlled by an armed militia of District Assistants (E/CN.4/1159, para. 344). These District Assistants came under the control of the "Ministry of Internal Affairs". In August 1976, it was announced that a new "Guard Force", under the "Ministry of Defence" (but not part of the Southern Rhodesian army), was taking over the job of the District Assistants and was commanded by a retired army chief-of-staff. 91/

516. A report from the American magazine Newsweek vividly described the "protected village" of Manyica, about 70 miles east of Salisbury. "At first glance, it looks like a prison camp. A guard, rifle at the ready, is poised at the ... gate. Inside, behind the high barbed-wire fence, people can be seen cooking dinner and carrying on conversations in small groups amid the neat rows of traditional African huts. Looming over the compound and the surrounding bush is a 100-foot hill that has been carved from the earth. Its rim is encircled by a wooden stockade, bristling with pointed sticks and sentry towers. A steep path, wide enough to accommodate only one vehicle at a time, winds up to heavy double gates. The Rhodesian flag whips in the breeze at the top of a flagpole." 92/ Commenting on this layout, the International Commission of Jurists states: "It is obvious ... that the only persons who are protected from attacks by terrorists (sic) are the District Officer (European) and his Assistants". 93/

517. A large amount of evidence was given by witnesses describing conditions inside the "protected villages". An anonymous witness (426th meeting) stated: "In Madziwa concentration camp ..., first of all when we were put there, we were about

89/ Rhodesia Herald, 14 June 1976.

90/ Rhodesia Herald, 4 May 1976, 23 June 1976.

91/ Daily Telegraph, 13 August 1976.

92/ Newsweek, 4 April 1976, p. 24.

93/ International Commission of Jurists, op. cit., p. 74.

120 persons. But within a period of three weeks we were 4,251 or 4,216 persons. In these camps our drinking water used to be brought by army trucks, until later on they constructed the piped water system."

518. The same witness complained about brutality in the camps. He described an incident in which a headman protested about the food. "This headman was shot dead because the policeman said to him that he was trying to organize the people to revolt or to sort of dislike the idea of concentration camps." Further evidence of brutality in "protected villages" was revealed in a case heard in December 1975. A European District Officer, Sean Hundermark, was found guilty of assaulting an African District Assistant who lost consciousness and was in hospital for 10 days as a result. In evidence, Hundermark said that the District Assistant was being punished for being absent without leave, assaulting African tribesmen, seducing their wives, and being insubordinate to junior European officials. A District Commissioner gave evidence to the same effect. 94/

519. The witness Mr. Nyathi (428th meeting) described living conditions in the "protected villages". He said that the people live in "small tin huts which are extremely cold during the night and very hot during the day". The area is two square metres only per family. The sanitation is totally inadequate. Most of the people have lost their property. Mr. Chisese (434th meeting) commented on the homes of the people: "To call them houses would not be really the right term to use; they are little caves which are purposely designed by the viciousness of the system to oppress the existence of human beings."

520. Several witnesses also described how carefully the people's movements are being controlled. People who leave the village to farm their land are searched so that they do not take anything out such as matches, water or food. They are given a pass to go out and they are searched when they get back. They are allowed out only at 6 a.m. and have to be back by 6 p.m. One witness (429th meeting) stated that her aunt had to walk seven miles to and from her fields in order to cultivate them. According to another witness (429th meeting): "If you are late, you won't be allowed in, and then you will actually be treated as a terrorist if you are not in by that time, because they reckon it is only terrorists who can be 'out of the fence' by that time". Two other witnesses (425th meeting) described armlets which are used in some "protected villages". These have identification numbers on them, as well as the name of the district in question.

521. Considerable problems have been experienced with livestock, particularly cattle. Mr. Chisese (434th meeting) described how "cattle, sheep and goats are 'slotted in' the verandahs of their [residents of 'protected villages'] houses."

522. A statement was issued in October 1975 by 25 heads of Christian denominations in Rhodesia. It said that malnutrition had resulted because thousands of villagers were not able to grow vegetables on their land outside the "protected villages". There were also serious problems of social, moral and educational decline. In response, the churches had built 420 huts for people too old to help themselves, and almost 6,000 blankets, along with food and clothing, had been distributed. A mobile clinic had been established in Chiweshe. 95/

523. The International Defence and Aid Fund for Southern Africa submitted to the Ad Hoc Working Group of Experts a publication which contains the following statement made in May 1976 by an unnamed political prisoner at Khami Maximum Security Prison:

"... All my property was either confiscated or destroyed by the State and all my dependants were placed in these so-called protected villages or the concentration camps as generally known ... All the African people of my home district (name stated) were placed in these kind of villages. It is in one of these villages that my 16 dependants are living today. Conditions in these villages are inhuman. Several people died due to either starvation or infectious diseases which are rife in these places. Several of the inhabitants of these villages are going about naked and sleep without blankets at night ... Several of my fellow prisoners have received letters in which deaths of their relatives in the concentration camps have been due to one of these mentioned above. Furthermore I receive letters from wives and relatives which inform me about the way they live and about the conditions in these villages ... If you could try to communicate with me I am afraid if you attempt to do that I will be in trouble because I wish to confess I smuggled this letter". 96/

95/ Rhodesia Herald, 2 October 1975.

96/ Ian Smith's Hostages: Political Prisoners in Rhodesia (London, International Defence and Aid Fund for Southern Africa, December 1976), p. 4.

4. Treatment of political prisoners and captured freedom fighters

(a) Introduction and relevant legislation

524. 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 amendments, was given in a previous report (E/CN.4/1111, paras. 242-252). A further amendment was reported in 1976 (E/CN.4/1187, para. 521). A detailed analysis of the Law and Order (Maintenance) Act by the International Defence and Aid Fund (IDAF), published in May 1976, concludes: "Today, after 16 years of the enforcement of 'civilised' standards through the Law and Order (Maintenance) Act, the failure of white supremacy to solve any of Rhodesia's fundamental problems is abundantly clear." 97/

525. In its interim report (E/CN.4/1187, para. 522) the Group reported that the rebel régime had introduced the Indemnity and Compensation Bill. Despite an adverse report from the Senate, this became law in October. This Act indemnifies any employee or appointee of the State against civil or criminal action for any activities done "in good faith" to suppress "terrorism". The decision to stop or not allow a case is taken solely by the "President" or by the "Minister of Justice and Law and Order", who does not have to state any reasons. The only other country to have a similar law is South Africa. What the document handed in by the International Commission of Jurists found particularly unfortunate about this Act was the fact that it is forward-acting. They quote Sir Robert Tredgold, a former chief justice of the Central African Federation, who said in a letter to the Rhodesia Herald (3 September 1975) that Indemnity Acts were always passed after the events to which they referred had taken place - when the facts were known. "There is a vital distinction between these and giving an indemnity against future occurrences - a distinction that is analogous to giving a blank cheque, as opposed to a cheque for an ascertained amount." 98/

526. According to further evidence before the Group, in Emergency Powers (Maintenance of Law and Order) Regulations gazetted in 1975, the police were indemnified against damage to property due to destruction or seizure necessary to stop "terrorists" from using them. When these regulations came before the Senate, they were deemed to be inconsistent with the Declaration of Rights, which limits actions during a war to those "reasonably justifiable". On this occasion, the "Minister of Justice and of Law and Order" accepted the view of the Senate and agreed to remove the clause. He commented that there was already a similar provision in the main regulations which had not been objected to. 99/ The Indemnity and Compensation Act referred to in paragraph 525 above will also cover any situation likely to occur.

97/ International Defence and Aid Fund for Southern Africa, Fact Paper, No. 1, May 1976.

98/ International Commission of Jurists, op. cit., p. 85.

99/ Rhodesia Herald, 3 March 1976, 4 March 1976.

527. A document handed in by Mr. Brooks for the International Defence and Aid Fund dealt with the introduction of special courts. At the end of April 1976, the rebel régime announced that it was setting up mobile special courts. This it has done under the Emergency Powers (Criminal Trials) Regulations, which allow trials to be held at short notice virtually anywhere in Southern Rhodesia. This can make it difficult for the accused to get a proper defence, especially as his right to choose his own defence counsel can be overruled if it would result in "undue delay". The courts, which have the power to impose the death penalty, are presided over by a president who does not have to be a judge, merely to have the legal qualifications of a magistrate, advocate or attorney. The rules of court procedure are also not orthodox, although some follow proposals which were made later in the year (see para. 528 below). Thus the defendant need not be given proper information about the charge against him until the commencement of the trial. He is obliged to answer all questions, even those that incriminate him, before the trial and during it. If he does not his silence will be taken as corroborating the evidence against him. He is also obliged to take the defence stand at the beginning of the defence case. As is evident in paragraph 457 above, these courts are already in operation^{100/}

528. At the end of July 1976 it was reported that a new bill was to be put before parliament making further significant changes in court procedures. Preparatory examinations would in future take place in secret. The method of dealing with allegations by the accused as to how his statement was made will make it difficult to challenge the police. Finally, his right to remain silent in his trial will be removed. These proposals arise from the report of the Courts Enquiry Commission of 1971.^{101/}

(b) The workings of the courts

529. In an article in the Rhodesia Herald in April 1976, the "Secretary for Justice" analysed the workings of the Southern Rhodesian courts in answer to a variety of criticisms. Among other items, he dealt with the duties of the appeal courts. He stated that appeal courts will never interfere with the trial court's findings of fact "unless it is quite clear from the record that the trial court was wrong". Furthermore, the sentence of the trial court cannot be changed "unless it is manifestly so inappropriate as to induce a sense of shock".^{102/} The Group views these limitations on the powers of the appeal courts all the more seriously in the light of the setting up of the mobile "special courts", referred to in paragraph 527 above, and the fact that these courts can impose the death sentence (paras. 457, 459-465 above) and long prison sentences (para. 566 below).

^{100/} Focus, No. 5, July 1976.

^{101/} Rhodesia Herald, 31 July 1976.

^{102/} Rhodesia Herald, 5 April 1976.

530. Existing difficulties in reaching appeal were shown when 17 people convicted of rioting in June 1975 withdrew their appeal because they were unable to pay for the record of their trial. The record would have cost \$R 280. Six of them were juveniles and had been sentenced to 30 months' imprisonment, and the others were sentenced to four years in gaol. 103/

531. Two successful appeals during the period under review concerned allegations of brutality by the police. In one case an African was convicted of arson in a village. The appeal judge stated: "When the matter came before me on review I had grave doubts whether the State had discharged the onus of proving that the accused's warned and cautioned statement had been made voluntarily, and if so whether there was sufficient justification for regarding the statement as genuine". The Attorney-General, to whom the case was referred, stated that the accused felt he had been influenced by suggestions as to what might happen if he did not confess. "All in all I am not satisfied the State has satisfied the requirements of admissibility or genuineness. The conviction must be set aside." The trial magistrate sought to justify the original conviction, but the appeal judge set it aside. 104/

532. In another appeal court decision, a conviction for attempted murder was quashed because a claim of assault had not been properly investigated. The defendant claimed that he had been beaten on the soles of his feet and as a result had been sent to the prison hospital. However, the trial magistrate had not checked the results of his visit to the hospital. 105/

533. The Anglican Bishop of Mashonaland protested about sentences of "some years" given to members of his Church for giving food to guerrillas at gun point. He said: "Surely severe punishment for actions committed under the greatest duress is not compatible with morality, legality nor the fundamental human rights about which we often speak?" 106/

534. In March 1976, the newly appointed "Minister of Justice and of Law and Order", Mr. Hilary Squires, gave his views on sentencing. He said that imprisonment of six months or less "for the African tribal peasant" achieves absolutely nothing. It is no deterrent because the condition of imprisonment makes no impression. The quality of prison food is often better than his normal diet". 107/

103/ See E/CN.4/1187, para. 484; Rhodesia Herald, 12 March 1976.

104/ Rhodesia Herald, 31 January 1976.

105/ Rhodesia Herald, 6 March 1976.

106/ Rhodesia Herald, 5 May 1976.

107/ Radio Salisbury, 29 March 1976.

535. It should be noted that it is difficult to report actual detentions in the Southern Rhodesian press owing to the laws which prohibit the use of a detainee's name. Thus a well-known detainee's name will be reported outside of Southern Rhodesia, while the detention of one less well known internationally will go totally unreported. Even when detainees are released, the rebel régime refuses to name them. In reply to a newspaper query, a spokesman for the "Ministry of Justice and of Law and Order" admitted that some detainees had been released. "This is in accordance with regular practice; but the names and numbers of these cannot be provided." 108/

(c) Treatment of political prisoners

(i) Prison conditions

536. On general conditions in prisons, the executive officer of the Rhodesian Prisoners' Aid Society stated in January 1976 that Rhodesia's prison system was 30 years out of date. He said that the prison staff were "merely guards and admin. men" and were not taught psychology or rehabilitation. 109/ In an address to the Society in August 1975, its President said that the Prison Service was the Cinderella of the uniformed services. Furthermore he revealed that research had shown that 60 per cent of those admitted to prison were not undergoing the form of punishment that the courts had originally intended. 110/

537. A letter written by a detainee to his lawyer on 13 August 1975 was stopped by the prison authorities. A court case, fought on a point of law, was lost by the detainee. What was revealed by the case was that a detainee had no automatic right to communicate with his lawyer. All letters from detainees are read by the prison authorities, and if "objectionable" are stopped. In this case, the letter was stopped. 111/

538. A detainee was convicted by a visiting magistrate to a prison for refusing to wear prison clothing and also for hitting a prison officer. The incident had arisen because the detainee did not wish to wear prison clothing when he and five others arrived at a prison to appear before the Detainees Review Tribunal. He appealed unsuccessfully against sentence, although he had the charge changed. He maintained that despite being polite and reasonable, he was set upon by two of the officers. 112/

108/ Rhodesia Herald, 2 December 1975.

109/ Rhodesia Herald, 5 January 1976.

110/ Rhodesia Herald, 31 August 1975.

111/ Rhodesia Herald, 6 January 1976.

112/ Rhodesia Herald, 23 April 1976.

539. Mr. Hitler Hunzui (428th meeting) described a "deep freeze" at Goromonzi prison. This is a cold and damp cell into which prisoners are put in order to make them confess to crimes with which they are charged. Another witness (422nd meeting) described conditions in Salisbury central prison. "What I experienced was horrible, terrible torture; people crying all night, some being beaten, without any reason ... In the morning, if you are a political prisoner, you are given porridge without sugar, tea without sugar, and in the afternoon you are given ground nuts with a little bit of sadza. In the evening it is the same." (Sadza is made from maize meal.) Another witness (424th meeting) described the overcrowding, with as many as 10 in one cell.

(ii) Detentions

540. According to the publication referred to in paragraph 523, 113/ it is estimated that, at the present time, 3,000 Zimbabweans are incarcerated in Ian Smith's gaols for political and ideological reasons. The increase in the number of detainees over the past two years is alarming. It reflects a deeply divided society in which, even while talking of peaceful solutions and just settlements, the illegal régime has been tightening its grip on the African people in a vain attempt to curb their fight for freedom.

541. The same study, which contains a list of the names of 1,839 Zimbabwean political prisoners in Southern Rhodesia as at December 1976 and testimonies with regard to torture and assault, states:

"It appears that torture and assault are not merely resorted to in an indiscriminate fashion by individual members of the police and security forces, but have been developed by the régime into an institutional and systematic weapon of repression. In virtually every political trial under the Law and Order (Maintenance) Act, allegations are made and evidence brought forward of the use of torture and assault to elicit statements and 'confessions' from the accused. As the majority of trials are held at least partially in camera, very little of this evidence is ever made available for publication." 114/

542. According to evidence submitted by Amnesty International (434th meeting), the number of long-term detainees has risen from 260 in January 1975 to more than 700 in July 1976. This does not include ex-detainees and others who are restricted to certain areas, such as the confines of a "protected village", or to the vicinity of their home in their town or village. 115/

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

114/ Ibid., p.33.

115/ Amnesty International Briefing on Rhodesia/Zimbabwe, published by Amnesty International Publications, London, March 1976.

543. According to information supplied by Mr. Brooks (431st meeting), in October 1975 the Rhodesian relief organization, Christian Care, stated that it had 664 detainees on its books. It commented that this does not necessarily represent the total number, as an unknown number are being held incommunicado, often in remote police stations. 116/

544. The documents handed in by Mr. Brooks described how on 10 April 1976 police searched the offices of the Muzorewa ANC in Bulawayo, seizing papers and documents, and detained Eric Nkala. No reason was given for his arrest. Over the next two days at least 50 more Muzorewa supporters, many of them prominent local officials, were arrested up and down the country, apparently without charge. They include Mr. A. Mwumbe, Mr. Arnold Sawana and Mrs. Excelia Mandizvidza. 117/

545. According to the same documents, in March 1976 four top men of the Muzorewa wing of the ANC were barred from entering the Rhodesian Midlands for a period of three weeks. They had been planning a series of "meet the people" rallies. 118/

546. Speaking in a debate in the Rhodesian House of Assembly in June 1976, an African MP described the Whawha restriction camp for detainees. He said that if improvements were not carried out it could easily become the "biggest concentration camp on the continent of Africa". He was particularly concerned about medical facilities, which were inadequate because doctors were not prepared to help detainees. He also stated that the numbers in Whawha were increasing daily and, as a result, the accommodation was very overcrowded. He stated that 26 detainees were sleeping in one room, so that they could not even stretch their legs. Finally, many detainees were not allowed visitors. It will be recalled that detainees have not been convicted of any crime. 119/

547. Mr. Isaac Nyathi (428th meeting) described how a number of fairly well-known detainees were released at the beginning of 1976, including Mr. Arthur Chadzingwa and Mr. Charlton Ngcebetsha, and within six months were redetained. Mr. Findo Mpofu was also among those rearrested. Mr. Joshua Nkomo described the arrest and detention of one of his advisers as follows: "A Land Rover stopped at my house and two young Special Branch men got out and said they were detaining him for 30 days. I got in touch with the Chief of the Special Branch and he said they were carrying out an investigation." He accused the police of trying to sabotage his international tour. 120/

116/ Focus, No. 1, November 1975, quoting The Times, 27 October 1975.

117/ Focus, No. 4, May 1976.

118/ Ibid.

119/ Parl. Deb., 24 June 1976, cols. 157-159.

120/ Rhodesia Herald, 8 May 1976.

548. According to information available to the Group, Mr. Garfield Todd, former Prime Minister of Southern Rhodesia, was allowed to visit London for a period of about a month in February 1976. His restriction order was finally lifted in June 1976 as a result of very considerable international pressure. Press reports concluded that the reason for the original restriction had simply been to remove him from active political involvement; there was no evidence that he constituted a real security risk. 121/

(d) Arrests of politically involved people

549. A very large number of people have been arrested and convicted of political offences, other than those connected with direct or indirect support of freedom fighters (see paras. 569-572 below for treatment of helpers of freedom fighters). An estimate of those serving prison sentences for political offences under the Law and Order (Maintenance) Act, the Unlawful Organisations Act, etc., is 400 or more. 122/

550. According to further information before the Group, in October 1975, Mr. Godfrey Chidyausiku, an African MP, was found guilty of resisting three police officers in March 1975. He had gone to the house of a relative of the late Mr. Herbert Chitepo after his assassination in Lusaka. A crowd of about 200 had been outside the house, which was in New Highfield, an African township near Salisbury. This crowd had been moved on by the police. Mr. Chidyausiku arrived when only a few were present and tried to enter the house. The police (not the occupant) told him not to enter the house. He demanded to know why, but no reason was given. According to a witness: "He was pushed back to the gate by the police and a dog set on him." He was then escorted away. He was fined \$R 100. 123/

551. The Chairman of the Mashonaland South Province of the Muzorewa branch of the ANC was convicted of unlawfully convening a public meeting of over 199 people in Highfield, Salisbury. He had called the meeting in October 1975. Passing of sentence was conditionally suspended for five years. 124/

552. In April 1976, 158 Africans were arrested in Sinoia for participating in an "illegal" meeting addressed by the Chairman of the Muzorewa branch of the ANC, Mr. Moton Malianga. The meeting was illegal because permission was not obtained before it was held. 125/ Three of the leaders who attended this meeting were later convicted of addressing it unlawfully, and another 12 were convicted of attending it. 126/

121/ Guardian, 9 February 1976; Daily Telegraph, 1 March 1976; International Herald Tribune, 2 February 1976.

122/ Focus, No. 1, November 1975.

123/ Rhodesia Herald, 12 September 1975, 14 October 1975.

124/ Rhodesia Herald, 13 January 1976, 20 January 1976.

125/ Radio Salisbury, 5 April 1976.

126/ Rhodesia Herald, 27 April 1976.

553. Mr. George Maranga, Mr. Willie Dlamini and Mr. M. Chawafambiri, all officials of the Nkomo branch of the ANC, were arrested and then released on 14 May 1976. The arrests were said to be in connexion with a "guerrilla" who was allegedly seen in the Highfield African township. 127/

554. Mr. Arnold Sawana was convicted of using threatening words against "a class of persons" when opening a branch office of the Muzorewa ANC near Umtali. He was sentenced to eight years' imprisonment, of which half was suspended in an appeal held in June 1976. 128/

(e) Deportations and prohibited visitors

555. Dr. Carl Stiehle, of Swiss origin, and his wife Alida, a Coloured South African, were refused a residence permit and declared prohibited immigrants in February 1976 after a year's residence in Rhodesia. They claim that they were refused permanent residence because Mrs. Stiehle was "not European". 129/

556. In May 1976 the Rev. Kare Eriksson and his wife were refused entry into Southern Rhodesia when they returned from a year's leave. They had been missionaries in Southern Rhodesia for about 30 years. Although no reason was given for this action, Mr. Eriksson had been administrative assistant to Bishop Abel Muzorewa for seven years in the United Methodist Church. 130/

557. Also in May 1976, Mr. and Mrs. G. C. Grant were deported. Although they were both Rhodesian citizens (Mrs. Grant was the daughter of a former Chief Justice of Rhodesia), they had "lost their domicile" in the country and so could be deported without having first to lose their citizenship. No reason was given for the deportation, but Mr. Grant thought the reason was political. 131/

558. Two British journalists, working for the Daily Mirror, were arrested and deported in June 1976. They had entered quite openly and had been in close contact with the army, the police and the "Ministry of Information". 132/

559. At the end of July 1976, Mr. Michael Holman was declared a prohibited immigrant. He is a Rhodesian citizen and, despite having spent some time at Edinburgh University, has lived in Rhodesia since 1973. He appealed against deportation but the hearing has been postponed on several occasions. He is a journalist working for a number of newspapers in South Africa and the United Kingdom. 133/

127/ Zimbabwe Star, 15 May 1976.

128/ Rhodesia Herald, 9 June 1976.

129/ Rhodesia Herald, 3 February 1976.

130/ Rhodesia Herald, 21 May 1976.

131/ Rhodesia Herald, 21 May 1976.

132/ Rhodesia Herald, 26 June 1976.

133/ Rhodesia Herald, 31 July 1976, 7 August 1976.

560. It was reported in August 1976 that Mr. and Mrs. John Lowe were informed by the rebel régime that it intended to revoke their citizenship. They are appealing against the decision. They are both missionary teachers who have identified very closely with the African people. The mission at which they taught, in Chikore, was taken over by the rebel régime in July 1976. It will be recalled that before Mr. Guy Clutton-Brock, in similar circumstances, could be deported, he had to have his citizenship withdrawn. 134/

(f) Travel restrictions on Africans from Southern Rhodesia

561. In evidence before the Working Group, Mr. Gabriel Chisese (434th meeting) explained the difficulties he had experienced as an African travelling out of Southern Rhodesia. He was first given a Rhodesian passport, which is not internationally recognized. Consequently he walked through the bush to Beira in Mozambique and got a British passport from the British authorities there. When he came back to Southern Rhodesia by air from the United Kingdom, he was interrogated by six men for six hours. As he had not returned with his Rhodesian passport, his British one was confiscated and he was only allowed to stay in a restricted area in Rhodesia, where he had to report to the police every day. When he wanted to leave, he had to negotiate for a whole morning before they gave him a special document called "Emergency Regulations". He was then allowed, after the most extensive body search, to leave the country.

562. According to further information before the Group, in January 1976 Mr. Moton Malianga was refused a passport by the rebel régime. Mr. Malianga claimed that it was refused with the connivance of the British Government, who did not want a member of the Muzorewa ANC to hinder the negotiations between the rebel régime and Mr. Joshua Nkomo. This was the second time his application had been refused. 135/

563. A Rhodesian girl of 10 years and her 20-year-old cousin were deported from Britain in March 1976. The British officials maintained that the child did not have a close relative in the United Kingdom, and that the 20-year-old might not return home to Rhodesia after completing his studies. 136/

564. In March 1976 another student, who had paid £150 in college fees and had another £400 in a bank account, was nearly deported from the United Kingdom because the British officials did not believe he had sufficient money to maintain himself in the country. The student claimed that his father in Southern Rhodesia had the money to support him if it could be got out of Rhodesia. The British Home Office agreed, at the last minute, to allow the case to be investigated. It was reported that about 20 African students were deported back to Southern Rhodesia between January and the middle of March 1976. 137/

134/ Rhodesia Herald, 5 August 1976.

135/ Rhodesia Herald, 20 January 1976.

136/ Guardian, 2 March 1976.

137/ Guardian, 18 March 1976.

(g) Treatment of freedom fighters

565. The cases of a number of freedom fighters who were sentenced to death have been recorded in paragraphs 451-457, 459-461 and 463-464 above. The cases discussed below are those which are known by the Group to have been reported.

566. In addition to the 24 freedom fighters sentenced to death in the period under review (see para. 448-466), a further 14 trials have been reported in the press and on the radio, involving a further 19 freedom fighters. In one trial two were acquitted; another was a preparatory hearing of which no further stages were reported. In the third case, the conclusion of the trial was not reported. The sentences given in the other trials ranged between 10 years and life imprisonment. The distribution of sentences was as tabulated below: 138/

<u>Sentence</u>	<u>Number of sentences</u>
10-15 years	4
10-20 years	1
21-25 years	4
Life	4

567. An anonymous witness (426th meeting) claimed that many of those who were captured as guerillas were in fact civilians. When freedom fighters were captured, their treatment at the hands of the rebel régime depended upon the rank of the person concerned: that is, if the man was a section commander, he would be held and interrogated and, if necessary, tortured. On the other hand, if the person were clearly unimportant, with no valuable information, he might just be killed.

568. From this witness and from the reported court cases, it appears that the rebel régime persists in treating freedom fighters as common criminals, with no rights under the Geneva Convention as prisoners of war. This question was discussed in previous reports of the Group (particularly E/CN.4/1111, paras. 242-252) and there has been no change in the period under review.

(h) Treatment of those who help or fail to report freedom fighters

569. From September 1975 to July 1976, 237 Africans in 28 trials were accused of recruiting or helping freedom fighters. Of these, 56 were not charged through lack of evidence, were acquitted at the trial or were released on appeal. The other 181 were given sentences ranging from a suspended two-year sentence to life imprisonment. The sentences are tabulated below: 139/

138/ Rhodesia Herald and Radio Salisbury, various dates between 2 August 1975 and 31 March 1976.

139/ Rhodesia Herald and Radio Salisbury, various dates between 17 September 1975 and 29 July 1976.

<u>Sentence</u>	<u>Number of sentences</u>
0-5 years	70
6-10 years	81
11-15 years	5
16-20 years	12
21-25 years	1
Life	1
Unknown	11

570. Two appeals are of particular interest. Eleven Africans from the Gokwe area (just south of Lake Kariba) were convicted in November 1975 of having failed to report the presence of guerrillas to the security forces. Their ages ranged between 30 and 72 years and they were sentenced to between 18 months and five years in gaol. However, in February their conviction and sentence were set aside on appeal and a retrial was ordered. The legal grounds for the retrial were that certain matters were not recorded when the men entered their plea of guilty. The appeal judge also questioned "why it was necessary for tribesmen to report when the authorities already knew about the presence of terrorists and when security forces were in the area". In the retrial, they changed their pleas to not guilty and their sentences were reduced to between nine months and four years in gaol. 140/

571. In the other appeal the judge protested at the "inhuman" gaoling of an 80-year-old kraal head. He had been convicted of helping freedom fighters and of not reporting them to the security forces. He had been sentenced to 10 years in gaol, of which three years were suspended. The judge said the man, Mr. N. S. Kodzaimambo, was a very frail old man and almost blind. 141/

572. In another case, five men were sentenced for not reporting the presence of "terrorists". The sentencing was done at a special meeting at the Ruda police station, in the presence of about 100 kraal heads, school masters and businessmen. In sentencing the five men, the senior magistrate addressed the assembled crowd, calling on them not to assist the guerrillas in any way. The sentences were heavy, ranging from seven to ten years' imprisonment. 142/

573. A Swiss missionary of the Society of Bethlehem, Paul Egli, is reported to have been sentenced on 12 January 1977 by the Regional Court of Bulawayo to five years' imprisonment; the missionary was found guilty of not having reported to the racist authorities the presence of freedom fighters in the mission premises where they had been hospitalized.

140/ Rhodesia Herald, 22 November 1975, 20 February 1976, 1 April 1976.

141/ Rhodesia Herald, 7 February 1976.

142/ Rhodesia Herald, 10 April 1976.

5. Disparity between the wages and conditions of employment of black and white workers and discrimination against black workers

(a) Introduction

574. Detailed analyses of black and white incomes have been given in previous reports of the Working Group (especially E/CN.4/1135, paras. 417-421, and E/5622, paras. 137-160).

575. Three pieces of relevant legislation were passed by the rebel régime during the period under review. The first was the Factories and Works Amendment Act, which proposed increases in fines on employers breaking the law. 143/ The second was the Industrial Conciliation Amendment Act, which changed the procedure for disposing of money held by a defunct Industrial Council and also extended the powers of civil servants to attend meetings of Industrial Councils. 144/ The third was the Foreign Migratory Labour Amendment Act. This was the most significant of the three, and its intention is to tighten up and make effective the Closed Labour Areas Order, which closed certain areas to foreign African labourers. The areas in question are Bulawayo, Salisbury, Fort Victoria, Umtali, Gwelo, Que Que and the Seki industrial complex. The Amendment Act made it illegal to employ or continue to employ a foreign African in a closed labour area and provided for inspectors to police the system. 145/

576. In the Group's interim report (E/CN.4/1187, para. 555) the introduction of the Agricultural Industry (Employees' Pension Scheme) Bill was reported. This became law in September 1975, and the Agricultural Pension Scheme was introduced at the beginning of October. Opposition was immediately experienced from some farmers. For example, the Ayrshire Farmers' Association called for it to be postponed, in effect, for 10 years. 146/

577. The Closed Labour Areas Order was extended at the beginning of July to cover all jobs except farming and mining. 147/ According to the South African Financial Mail, this order has freed many Southern Rhodesian Africans to take jobs in South Africa by recruitment with the Mine Labour Organisation (Wenela) Ltd. (see E/CN.4/1187, para. 560). According to the President of the African Trade Union Congress, speaking in January 1976, the fact that there were 36,000 vacant jobs for Africans in farming was due to the decreasing purchasing power of wages: between 1972 and 1974, wages had risen by 6.6 per cent and the cost of living by 9.9 per cent. He also protested at the handling of the Agricultural Pension Scheme. He finally commented that mining wages were very low. 148/

143/ Parl. Deb., 17 February 1975, cols. 403-445; 19 February 1975, col. 528.

144/ Parl. Deb., 17 February 1975, cols. 420-426; 24 February 1975, col. 702.

145/ Parl. Deb., 17 February 1976, cols. 405-408, 416-420; 19 February 1976, cols. 528-529.

146/ Rhodesia Herald, 9 November 1975.

147/ Rhodesia Herald, 21 June 1976.

148/ Rhodesia Herald, 15 January 1976.

(b) Industrial relations and employment and pay policies

578. In a document submitted to the Group on Slavery of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the International Commission of Jurists drew attention to the provisions of the Masters and Servants Act, 1901, which is still in force in Southern Rhodesia. This Act applies to 546,700 African employees out of a total of 927,000. These employees are excluded from trade union activities and have no trade union rights; instead their employment is governed by this Act. After detailing some of its provisions, the ICJ concludes: "It is submitted that to apply penal sanctions to terms and conditions of employment in this way is a practice akin to slavery". 149/ In evidence to the Rhodesian Commission of Inquiry into Racial Discrimination, the African Trades Union Congress (ATUC) called for the repeal of the Masters and Servants Act. It called the Act an "essentially penal code", and said that agricultural and domestic workers should have the right of collective bargaining through industrial councils. The Commission, in its report, agreed that some aspects of the Act were bad - in particular the constraint it places on workers to obtain the permission of their present employers before they can change their jobs. It wanted these repealed but the Act as a whole to remain. 150/

579. There have been a number of industrial disputes in the period under review. In January 1976, 150 African bus drivers went on strike; they went back to work only after the manager called the police and the industrial relations officer. 151/ In the same month 400 workers at a clothing factory went on strike when their shop steward (Mr. N. Samurusi) was dismissed for trying to present their grievances. They were all, as a result, instantly dismissed. Four days later they had returned, but it is unclear whether Mr. Samurusi was reinstated. 152/ In a strike reported in June 1976, 25 petrol-tanker drivers refused to drive in a "sensitive area" unless they got danger money. They were members of the Rhodesian Omnibus Transport Workers' Union, a union which is not recognized. Some of them had been employed with this company for 16, 17 and 20 years. Their union was not called in to negotiate and the men were sacked; they were offered reinstatement only if they gave up their claim. A spokesman for the "Ministry of Labour and Social Welfare" explained that it was illegal for the men to go on strike. He commented: "We get cases like this every month". 153/ A strike in July 1976 of 380 employees at a clothing factory for more pay was broken when they were threatened with dismissal, as the strike was deemed illegal. In fact, most were dismissed, but some came back. Of those that did return, a number were paid off and not re-employed. 154/ Later in the same month, the entire staff of 400 of another clothing factory went on strike after the factory manager had called their shop steward a "trouble maker" and had suddenly dismissed him. On this occasion, the management met the trade union concerned (the Rhodesia Tailors' and Garment Workers' Union) and came to a partial agreement. However, the sacked shop steward was not reinstated. 155/

149/ Information received from non-governmental organizations pursuant to Sub-Commission resolution 5 (XXVIII) (E/CN.4/Sub.2/AC.2/6, annex).

150/ Rhodesia Herald, 9 December 1975; Report of the Commission of Inquiry into Racial Discrimination 1976, April 1976, Cmd.RR 6-1976, pp.90-91; see also E/CN.4/1187, para. 556.

151/ Rhodesia Herald, 6 January 1976.

152/ Rhodesia Herald, 9 January 1976, 13 January 1976.

153/ Rhodesia Herald, 12 June 1976.

154/ Rhodesia Herald, 7 July 1976.

155/ Rhodesia Herald, 21 July 1976.

580. According to evidence from Mr. J. C. Patzanza (422nd meeting), the black unions that exist only do so "at the mercy" of the whites. "A large proportion of farm workers, whose conditions are no better than those of former slaves on cotton plantations in America, are not allowed to organize themselves into trade unions."

581. The Commission of Inquiry into Racial Discrimination took a considerable amount of evidence on the question of opportunities for employment. Probably the most important piece of evidence was that given by the Chairman of the Public Services Board, exemplifying the attitude of whites in Rhodesia in the civil service, and probably in private industry to a large extent as well. The official policy since 1961 has been (1) the rate for the job, (2) no fragmentation of skilled trades, (3) merit as the criterion for advancement, and (4) the avoidance of racial discrimination. However, these principles have been attenuated by a whole series of factors, including the limitations of finance "and the impossibility of wholesale egalitarianism being applied", the need to take account of different social attitudes, the need to avoid situations that might lead to friction of a racial kind, and "any other relevant factor". Part of the memorandum quoted in the Commission's report is reproduced below: 156/

"Generally speaking the European in Rhodesia, particularly in the lower income groups, seems to be reluctant to accept the African either as a colleague on an equal footing or, even more so, as his superior, and the public servant is no exception. Ministries therefore hesitate, because of the possibility that there will be racial friction within their organisations, to accept African staff other than in relatively small numbers. The Board has been informed that there is similar opposition from elements of the European public who resent having to deal with Africans in Government offices, particularly on what can be termed personal matters such as income tax, customs, immigration, etc.

"The Board, acting within the guidelines set out by Government, has adopted the position that to impose on a ministry any person who is unacceptable either to the Minister, head of ministry or to the staff of that ministry, would be against the best interests of an efficient Service, and indeed the interests of the person concerned. The net effect could well be the opposite to that intended and could lead to antagonism between the races.

"The other main objection raised by ministries to the employment of Africans relates to national security. Under present circumstances a considerable number of Government departments are involved in security matters. These departments are not prepared to take the risk inherent in the employment of Africans who are particularly vulnerable to pressure from members of their own community, to disclose information which could be prejudicial to the interests of the country.

"There is also a particular problem in appointing Africans to some of the smaller centres of the country. In many cases it is necessary for the incumbent of a post to occupy a Government house in a European area. Apart from the social problem which would arise it could be seen as a form of forced integration ...

"There is also the question of maintaining a high standard of efficiency and service to the public. Here the Board must state that from its own experience and information received from ministries, few Africans have been successful in demonstrating that they possess the qualities or that they can use their academic qualifications to the standard expected of a European officer.

"It should also be mentioned at this point that African arts graduates are often difficult to assimilate into the Service even though they may possess qualifications similar to those gained by European students. It is perhaps regrettable but true that African arts students at the University of Rhodesia have gained a reputation for political activism coupled with violence and the support of external groups hostile to this country, and for this reason ministries are reluctant to accept arts graduates from the local university on their administrative staff ..."

582. Views similar to those quoted above were propounded by the leader of the (European) National Association of Local Government Officers and Employees in September 1975. Explaining why European employers do not take Africans on as apprentices, he said: "The African, at this time, has not evolved sufficiently to be economically suitable to be trained by the accepted methods by the big capitalists of this country." In a reply to this, the President of the ATUC, Mr. Phineas Sithole, pointed out that the above statement was based on a politically inspired myth. The wages of whites were based on a direct comparison with wages in Europe. These rates could be supported only by the suppression of black wages, and by keeping blacks out of white jobs. 157/

583. According to information available to the Group, the most detailed analysis of the aspirations, abilities and employment of young Africans in Southern Rhodesia was published in October 1975, in Education, Race and Employment in Rhodesia. It focused its studies on African school-leavers at the Form IV and Form VI levels and the companies that employ them. Among its summary conclusions were the following:

"2. The school-leavers' academic achievement is comparable to that of their white counterparts, both in regard to quality and content, implying an intellectual and occupational potential of equal comparability.

"5. Unemployment was a significant feature of the post-school experience of school-leavers, being particularly high among Form IV leavers. Of these, only 12.9% of the males and 8.0% of the females were employed. 50.9% of the males and 58.2% of the females were unemployed, the balance falling into either 'further education' or 'no response' categories."

The study also found considerable evidence of underemployment of school-leavers vis-à-vis their academic training and qualifications. As far as company employment policies are concerned, some of the summary conclusions were as follows:

"12. In the companies studied, Africans are over-represented in the un- and semi-skilled jobs, and are under-represented in clerical, supervisory, skilled, technical, managerial and professional posts.

"13. Although individual company situations differ, the research indicates that employment policy and practice in respect of the allocation of jobs and rewards for work are generally not merit-based, and in spite of non-racial labour legislation are constrained by the mechanisms of racial discrimination.

"14. African work performance, given the appropriate circumstances, is satisfactory and comparable to that of whites in the same occupational categories."

In its other conclusions, it deals with the social and institutional framework for discrimination in employment policy, including supposed white employee and white customer resistance. 158/

584. In its recommendations, the study calls on the "Government" to initiate a positive programme to overcome the gross under-use of human resources. However, it expresses doubts as to whether the present régime in Southern Rhodesia will be able to free itself from its (white racist) sectional interests, and notes the same reservations about the white employees. The black employees have, it feels, a responsibility to make their demands absolutely clear. Finally, it expresses the belief that the present management must "deracialise" the present employment policy if it is going to survive at all. 159/ The Commission of Inquiry into Racial Discrimination took some note of Murphree's book but it made no precise recommendations for the removal of discriminatory practices inside the civil service.

585. Further evidence of the extent of racial discrimination has been described in a recent article in the Rhodesian Journal of Economics. Mr. G. E. Cheater starts by commenting on the current debate inside Southern Rhodesian industry about manpower usage, which has led many large companies to adopt a manifesto that refers to company responsibility towards its workers, covering aspects such as "equality of opportunity" and a "fair return for a fair day's work". However, he concludes that this concept is not applied to the semi- and unskilled workers, all of whom are black. In his study of one particular fairly large (unnamed) subsidiary of an international company, he concludes:

"By not acknowledging the adequacy and relevance of the training received by employees in the lower employment categories; by denying these workers access to formal, structured training facilities offering access to higher employment categories; by erecting racial barriers to advancement, allegedly at the insistence of white employees; by claiming, invalidly, that head office was responsible for promotion and nomination to international seminars; by all these actions, local management in this company indicated that it was not prepared to advance Africans in the internal labour market beyond those positions already attained. This situation, of course, conflicted with the intent of the company manifesto on responsibility towards employees."

158/ M. W. Murphree, ed., Education, Race and Employment in Rhodesia (Salisbury, 1975), pp. 295-298.

159/ Ibid., pp. 298-303.

He ends his article by stating that the apparent concern of white companies for their black employees "must therefore be viewed with some degree of scepticism". 160/

586. Discussing the charge that Africans are incapable of initiative, Mr. Murphree tells the story of a machine operator of several years' standing. After having seen his machine repaired on several occasions, he began to make the repairs himself, until the European foreman saw him doing it. The foreman lost his temper, told the African that he should not effect repairs because he (the African) was not trained to do so and that, therefore, he would make a mess of the repair. The African operator now adopts the following approach: in the event of a breakdown he carries the repairs to the final stage before calling the foreman. The foreman is then summoned to "repair" the machine but, in fact, has only the final step to complete. Thus, outwardly, the foreman makes the repair, so there is an uneasy peace between the two sides and the European's position is not threatened; but the African cannot openly demonstrate his abilities for if he did so he would probably be sacked. 161/

587. Speaking after the publication of Murphree's book, the "Minister of Labour and Social Welfare" expressed himself well satisfied with the present system of industrial relations in Southern Rhodesia. He felt that it needed no basic change (only "slight tinkering") and said that the only industrial problems were caused by such things as language problems and personal friction between African workers and their European supervisors. 162/

588. A number of witnesses confirmed the conclusions of the academic studies referred to above. Mr. Patzanza (422nd meeting) commented that there were no training schemes or openings for Africans to do skilled jobs. Another witness (425th meeting) stated that "there is no restriction in the employment office except that whites get more chance of getting employment than the blacks". Another witness (424th meeting) explained how "reserved jobs" for whites were called "skilled jobs", to sound non-racial. "They say we want 'skilled labour' for these jobs but then you find out that for you to have the skill you have first to be trained. But then you are never given the chance to go and train, so you can never be skilled. The whites will be given the chance to get trained so that they would be skilled and then they will get the jobs ... You will find that the jobs that are reserved for black Africans are to work in the gardens, to work on the farms." Yet another witness (426th meeting) described his job as a messenger at \$R 2.55 per week. He collected and delivered parcels for his master but he never actually saw the man. The only time he went into his master's office was in the morning, before he arrived.

160/ G. E. Cheater, in Rhodesia Journal of Economics, 9 (No. 3), September 1975, pp. 117-132.

161/ M. W. Murphree, op. cit., p. 274.

162/ Rhodesia Herald, 20 November 1975.

(c) Evidence of poverty and low pay among blacks

589. A detailed statement of average African and European wages was given in a previous report of the Group (E/CN.4/1135, para. 417). Some recent figures are given below for the total European and African work force for December 1975: 163/

	<u>African</u>	<u>European</u>
Number of employees	944,000	119,700
Average wages (\$R)	462	5,062

The ratio of European to African wages has remained about the same but, as shown by the figures given below, the quantitative gap has continued to increase. 164/

<u>Year</u>	<u>Wages gap</u>
	\$R
1958	2,013
1962	2,160
1967	2,446
1972	3,284
1973	3,618
1974	4,076
1975	4,600

590. In a letter to the Rhodesia Herald in the period under review, Dr. M. F. C. Bourdillon stated: "A dominant feature of African life in this country is a desperate need for money; a need which is so desperate that it drives men away from their wives and families for years at a time, to work long hours for petty wages, and which often gives rise to remarkable individual initiatives". 165/

591. In a major article in the Sunday Mail, 166/ the problems of the low wages of a number of Africans were discussed. One subject, "Peter", a messenger with a large firm, had a wife and two children. He earned \$R 14 per week (\$R 60 per month) and about \$R 20 per month overtime. His monthly budget was as follows:

	<u>\$R</u>
Deduction for pension	3.00
Rent and water	12.14
Food and candles	40.00
Bus fares	1.00
HP repayments	5.00
Paraffin	2.40
Entertainment	<u>4.00</u>
Total	<u>67.54</u>

163/ Monthly Digest of Statistics, July 1976, tables 14, 15, 16, 17.

164/ Ibid.

165/ Rhodesia Herald, 17 September 1975.

166/ Sunday Mail, 12 October 1975.

The extra \$R 12.50 has to be kept for clothes, clinic fees, etc. What has been particularly serious for "Peter's" budget is the increase in the cost of living. His last pay rise was a year and a half before he was interviewed - and then it was only 50 cents. One of the effects of this marginal level of existence, coupled with the rising cost of living, has been increased applications to credit stores to spread repayments over longer periods. Also, "stores catering solely to the African trade were feeling the pinch most. They were turning from luxury items and limiting their buys to basics".

592. One witness heard by the Group (424th meeting) described working on the Inyanga Tea Estates, where there was no fixed pay. "You are paid for the amount of tea you have picked ... But then you find out you can never pick enough to get you a proper living, even if you are a good picker." He also stated that on a farm, a worker might be given some food (mealie meal, dried fish, or beans) and then at the end of the month, three or four dollars.

593. There has been some attempt to obtain increases in wages. An increase of 10 per cent for workers in the Rhodesian clothing industry was announced in September 1975. No information is available about the actual level in this industry. 167/ In June 1976, some classes of commercial workers in Gwelo and Umtali were told they were getting rises of between 10 and 12.5 per cent. The new rates of Umtali will be, at the lowest covered by the agreement \$R 7.99 per week, and at the highest \$R 12.28 per week. Many would get accommodation allowances of \$R 8.00 per month. 168/

594. According to information before the Group, a heavy over-all expense to the African population is taxation. In order to pay for the rapidly increasing guerrilla war, the rebel régime increased sales tax by nearly 10 per cent. This means that, as the African population in aggregate buys more, it will pay more of this sales tax than the European population. Furthermore, because it is a regressive form of taxation, individual Africans will pay proportionately more than Europeans. The President of the African Trades Union Congress stated immediately after the announcement: "We reject this sales tax increase as undesirable because the African people are not responsible for the security and social services which arise out of a situation created by the Government. African workers possess nothing that is worth their money being spent on security. All social services for them come from beer profits." 169/

595. The African Trade Union Congress, in its evidence to the Commission of Inquiry into Racial Discrimination, called for a poverty datum line minimum wage to avoid the "widespread poverty, malnutrition, hunger, inadequate family health and an inability to finance even basic education among the majority of the African households". 170/

167/ Rhodesia Herald, 12 September 1975.

168/ Rhodesia Herald, 29 June 1976.

169/ Sunday Mail, 18 April 1976; Rhodesia Herald, 22 April 1976.

170/ Rhodesia Herald, 30 October 1975.

596. In evidence, one witness (424th meeting) before the Working Group claimed that a number of European employers, often farmers, were most unreliable when it came to paying their work force. He said: "You might end up in two or three months and you have not received your salary and then you will be given it some time. But then the problem is when they say you will be given your salary after these two months, there is a stall or grocery nearby where you are allowed to go and borrow some things there. By the end of those two months you are supposed to get your salary, your salary already goes to this store where you borrowed these things. So you end up with nothing." It is worth noting that most of these stores are owned by the European farmer himself.

597. There is also evidence that many Africans are being paid less than the legal minimum, or even not being paid at all. The President of the white Trade Union Congress of Rhodesia told the Commission of Inquiry into Racial Discrimination that employers' underpayment and breach of trade agreements amounted to tens of thousands of dollars in some cases. 171/

598. There have been several court cases in the period under review alleging such underpayment. In September 1975 a Salisbury builder was found guilty of employing three men (Africans) to do a journeyman's job, although they were not registered as such, and for underpaying them - in fact, paying them about 25 c. The official rate is several times more than this. 172/ A Salisbury building firm was taken to court for not paying journeyman's wages for a journeyman's job over a period of three years. The result of the case is not known. 173/ In another case, Allied Steel Ltd. were charged with employing three non-journeymen to do welding as journeymen between October 1971 and September 1975. The men had been underpaid a total of \$R 24,178. The result of the case is not known. 174/ In yet another case, a bus company was charged with underpaying 12 men a total of \$R 50,000 over a two and a half year period. Again, the result of the case is not known. 175/

6. Other serious violations of human rights resulting
from racial discrimination

(a) Secret trials

599. In Southern 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 only the press present, conditional on their refraining from publishing certain details (such as names, places, dates, etc.). In these cases only white reporters are allowed to attend. No evidence is available as to whether or not such secret trials have been held during the period

171/ Rhodesia Herald, 22 November 1975.

172/ Rhodesia Herald, 20 September 1975.

173/ Rhodesia Herald, 28 January 1976.

174/ Rhodesia Herald, 7 February 1976.

175/ Rhodesia Herald, 24 July 1976.

under review, but one case in which reporting was severely restricted involved Viscountess Malvern and Mr. Leslie Thomas. They were charged with contravening the Postal and Telecommunications Act. No details were disclosed. The two defendants did not object to the trial being held in public but the prosecutor's application for the case to be held in camera was successful. The grounds were that it was in the interests of justice "and the protection of the private lives of certain people". 176/

(b) Cases of torture and assault

600. In the interim report of the Group (E/CN.4/1187, para. 509), four civil cases against the "Minister of Law and Order" were described. Another case, against Senator Chief Chirau, was instituted in February 1975, by two brothers, Cyril and Francis Makunda, members of the ANC, who alleged that they had been summoned to the court of Chief Chirau, who told them that "he did not want political affairs introduced into his area" and physically assaulted them, with the result that they had to be taken to hospital where one was found to have a fractured rib. The brothers demanded \$R 1,200 compensation. However, as Chief Chirau is a paid government official, the local Assistant Commissioner of Police wrote to the brothers advising them that the action could not be taken without the written authority of the "Minister of Law and Order", and within weeks of the passing of the Indemnity and Compensation Act, they indeed received a certificate signed by the "Minister" directing that the proceedings under way in the High Court should cease. 177/

601. As a result of the Indemnity and Compensation Act, three other cases were stopped by the "Acting Minister of Law and Order" in January 1976. From reports, it appears that another two were still being pursued in the courts and three others remained on the files of the Roman Catholic Commission for Justice and Peace in Rhodesia. Compensation had been paid to one of the people whose cases appeared in the Justice and Peace Commission dossier The Man in the Middle, and further cases were subject to negotiation. 178/ In a statement issued at about the same time, the Catholic Commission for Justice and Peace pointed out that the indemnity certificate, stopping the court cases, represented an admission that the acts of brutality concerned did happen. 179/

602. In the middle of October 1975 the Publicity Secretary of the Muzorewa branch of the ANC, Dr. Edson Sithole, disappeared from Salisbury. Brother Arthur, a European Roman Catholic religious, has reported that he saw Dr. Sithole being accosted and led away to a van by two white men and two Africans. Shortly after, he saw Dr. Sithole's secretary, Miss Miriam Mhlanga, being taken to the same van and saw them driven away. The witness said he heard Dr. Sithole ask the man who originally accosted him if he was a member of the Special Branch. Later information

176/ Rhodesia Herald, 7 January 1976.

177/ Focus, No. 2, January 1976.

178/ Rhodesia Herald, 24 January 1976.

179/ Umbowo, March 1976.

supplied by a private detective employed by the ANC and by Dr. Sithole's family produced a witness who had seen him shortly after the abduction and also at a number of different places since. An attempt to make the rebel régime produce Dr. Sithole and Miss Mhlanga in the courts in February 1976 came to nothing, owing to the absence of a vital witness. The rebel régime denied that they had him. However, when an appeal was made to the "Minister of Justice and of Law and Order" to appoint a commission of inquiry into the disappearance, the "Minister" refused. 180/ According to press information available to the Group, the ANC led by Bishop Abel Muzorewa has included Dr. Edson Sithole in its delegation to the Geneva Conference on Rhodesia's constitutional future. His inclusion in the delegation would indicate that Dr. Sithole is still being held by the white minority régime, although the Government has denied these claims. 181/

603. There have been several cases in the period under review proven in the courts of abuse of power by members of the police force and the security forces. In March 1976 two African policemen were found guilty of extorting \$R 3 from two men who were selling mats without a hawker's licence. 182/ A European acting Lance Corporal was convicted of assaulting five prisoners in Brady barracks at Bulawayo. The five prisoners, who were all European, were under close arrest on a drugs charge. He said that the five prisoners had gradually "got on [his] nerves". 183/ An African policeman was convicted of extorting \$R 33 from three people. In one of these cases, the man found a woman selling goods without a general dealer's licence and threatened to arrest her before demanding \$R 20. 184/ Three African detectives failed on appeal against conviction by a board of officers of the British South African Police (i.e. the Rhodesian Police) for assaulting Mr. Lyson Erira, arrested on suspicion of theft, who when he had been taken into custody was in good health, yet "later that evening he was found to be in a condition where he could not walk, he was so savagely beaten". 185/ A member of a Coloured Protection Unit, a unit in the Rhodesian Army, was found guilty of culpable homicide. He had made sexual advances to a fifteen-year-old African girl in Makosa Township of Mtoko TTL, and when she resisted he had fired at and killed her. 186/ A European Territorial Force soldier was convicted of raping a 35-year-old married African woman in the Mount Darwin area. He had forced her

180/ Rhodesia Herald, 18 October 1975, 25 January 1976, 6 February 1976, 2 June 1976.

181/ The Guardian, 15 October 1976; The International Herald Tribune, 16-17 October 1976; The Times, 15 October 1976.

182/ Rhodesia Herald, 12 March 1976.

183/ Rhodesia Herald, 24 March 1976.

184/ Rhodesia Herald, 6 May 1976.

185/ Rhodesia Herald, 2 June 1976.

186/ Rhodesia Herald, 25 June 1976.

to submit at gun point. Although he was sentenced to three years, he had been allowed bail on surety of \$R 100 (and surrender of travel documents). 187/ Two Coloured soldiers were charged at a preparatory examination in July with breaking into African quarters in the Mount Darwin area. One pleaded guilty to housebreaking and assault. He pleaded not guilty to a series of charges of indecent assault, attempted rape, and molesting three girls. His co-defendant pleaded not guilty to all these offences. 188/

(c) Excessive penalties for offences by Africans

604. In February 1976, the rebel régime introduced the Stock Theft Amendment Bill. The effect of this was to increase the penalties for stealing animals such as cattle, goats, horses, sheep, pigs, etc., including portions of the carcass and the skin or wool. The Bill proposed a minimum sentence of nine years for any offence, without the option, plus restitution of the animal or its financial equivalent. At the same time, the Bill proposed amendments so that the sentence could be imposed by a magistrates' court and did not have to go to the High Court, which normally is alone allowed to pass sentences of this severity. In introducing the Bill, the "Minister of Justice" said that the introduction of a minimum sentence was not normally desirable. "However, from time to time the problem reaches such proportions that the interests of the State as a whole dictate that certain offenders should be dealt with in an exemplary manner." In support of his contention that the interests of the State as a whole were being threatened, he stated the following: "Losses through theft of 30 to 40 beasts a year from one farmer are not uncommon, and there have been instances of very much higher figures of loss than these, for example, 120-130 animals in a year and even in one unfortunate case 179 animals lost in one year". 189/ It should be noted that the defendants in stock trials are almost without exception Africans who have taken animals from European farms. This Bill became an Act on 3 April 1976 with very little opposition.

605. Criticism of the Act came after it became law from a number of magistrates. In April 1976 the Rhodesia Herald reported that two magistrates resigned because they did not want to have to give the nine-year sentence. 190/ A week later, it was reported that "several magistrates" were opposed to the sentences. 191/ A retiring magistrate said in reference to the stock sentences: "If you have a mandatory sentence there are obviously going to be cases where injustice is done". 192/ In an editorial the Rhodesia Herald commented on the fact that there

187/ Rhodesia Herald, 2 July 1976.

188/ Rhodesia Herald, 3 July 1976.

189/ Parl. Deb., 19 February 1976, cols. 531-537.

190/ Rhodesia Herald, 10 April 1976.

191/ Rhodesia Herald, 16 April 1976.

192/ Rhodesia Herald, 25 April 1976.

had been no reaction to the Bill or the Act by the Magistrates' Association or the Law Society. In fact, the Law Society did subsequently object to the Act - in the middle of May. The Rhodesia Herald also asked how well the Act had been publicized - if it were to act as a deterrent it needed to be known. 193/

606. In a number of cases the sentencing magistrates have expressed concern. Commenting on a case in April 1975 the magistrate said later: "After six years on the bench, it was the first time I felt I had done an injustice to the accused". 194/ In another case, the magistrate called the sentence "tragic". 195/ In a third, the magistrate said the sentence "disturbs me", and told the accused to make a plea to the Rhodesian "President". 196/ And in a fourth, two women were sentenced to nine years by a magistrate, although the sentence on one of the women, who was 16 years old and pregnant, was admitted to be "inappropriate". On appeal, the case was sent back to the magistrate so that the girl could go before a juvenile court. 197/ In a review of sentences in the Appeal Court, a judge reduced a sentence on a man who had been convicted of two stock theft offences - before and after the Act. In order to differentiate him from a man convicted of the offence after the Act, the man had been given 12 years. The judge reduced his sentence to nine years and said: "The case serves to illustrate the undesirability of mandatory sentences". 198/

607. It seems that the Act has not yet reduced stock thefts. Although the European farmers claim to have lost less cattle, the police say that in April 1976 the number of reported thefts was 137 as against 94 in the previous year. 199/ However, the "Minister of Justice" refused to review the mandatory sentences. 200/

(d) Black education: disparity between black and white facilities

608. In the Group's interim report (E/CN.4/1187, para. 579), details were given of the expenditure on African education and the resulting drop-out of Africans from schools. In testimony to the Group (424th meeting), one witness described the difficulties for Africans in progressing through the educational system. He described the different "blockades" between the different schools: an examination after Grade VII had the effect of removing 50 per cent of the children; after Form II came another examination that eliminated more; and again after Form IV ("O" level stage) - "the pruning is there". After Form VI, even if the examination results are good enough to gain entry into university, there is the problem of finance. "If you are lucky to get the finance to go to the university, you simply have to behave and act as a parrot of the Smith régime".

193/ Rhodesia Herald, 19 April 1976, 13 May 1976.

194/ Rhodesia Herald, 13 May 1976.

195/ Rhodesia Herald, 27 May 1976.

196/ Rhodesia Herald, 10 July 1976.

197/ Rhodesia Herald, 17 July 1976, 22 July 1976.

198/ Rhodesia Herald, 26 July 1976.

199/ Sunday Mail, 30 May 1976.

200/ Rhodesia Herald, 24 June 1976.

609. A major issue through the period under review, according to information before the Group, has been the position of African primary schools. As a result of previous legislation and decisions of the rebel régime, the churches ceased to be responsible for the administration of most schools in the rural areas in 1970. The rebel régime, in an Act at that time, stated that these schools would have to be taken over by local African councils or by some other responsible body. This action was an integral part of their policy of community development (see E/CN.4/1135, paras. 368-371). However, the rebel régime set a five-year period for the local councils in question to be set up: after 31 December 1975 all those schools still run by the rebel régime's administration would be closed. As the provision of primary education is crucial, this ruling has been very important as a weapon in the rebel régime's campaign to set up African councils. Thus, in answer to a question in the Rhodesian House of Assembly, the "Minister of Internal Affairs" stated at the beginning of 1970 that there were 130 African councils. Between then and February 1976 another 122 councils had been established, all of which had become responsible (in an administrative and financial sense) for their schools. He stated that there were still 30 areas without schools. 201/

610. In a report in the African-aimed newspaper Umbowo, an African tribesman claimed that about 50,000 primary school children were going to be without a school in the Chilimanzi TTL in 1976. Apparently it was estimated that about 100 schools would not open because the people were refusing to form an African council, despite a warning by the rebel régime that the schools would be closed. The teachers were being transferred to other schools but the children were not allowed to be transferred. According to the report, the children's parents were building their own pole-and-dagga school buildings for their children. In the Filabusi district, 23 schools were apparently facing the same fate. 202/

611. In the debate on the African Education Amendment Bill, which proposed a minor amendment to the principal Act, the "Minister of Education" claimed that only three schools would be closed because of the removal of the central administration from the field. According to the "Minister", most schools in areas without African councils were being administered by the Regional Authorities. 203/ But in the subsequent debate three African MPs mentioned by name 23 schools which would be closing, 18 of which were estimated to have an enrolment of 11,000-12,000. No figures were given for the other five. The "Minister of Education" did not respond in any way to this evidence. 204/

612. As far as the curriculum is concerned, one witness (426th meeting) attacked it as being "good for knowing English". He maintained that the type of education for Africans "is just for creating Africans who have the feeling that the racists are always superior and then the African is inferior".

613. According to information before the Group, schools and education establishments quite regularly have problems with the land policy. Salisbury City Council asked the rebel régime to look at some private schools to make sure that they were not contravening the Land Tenure Act. The "Ministry of Local Government and Housing" took immediate action, including sending personal letters for the

201/ Parl. Deb., 25 February 1976, col. 797.

202/ Umbowo, January-February 1976, vol. 59, Nos. 1-2

203/ Parl. Deb., 17 February 1976, cols. 351-368.

204/ Parl. Deb., 18 February 1976, cols. 493-509.

"Minister of Education" and obtaining returns to make sure that the number of Africans was not above agreed levels. 205/ In another attack on multiracial establishments, several Salisbury City Councillors tried to stop African students from enrolling at three commercial colleges which are in European residential areas. They were not successful. 206/

(e) Violations of freedom of speech and association

(i) Introduction

614. In a previous report (E/CN.4/1135, para. 389), 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 (see E/CN.4/1159, para. 356). In the interim 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 (E/CN.4/1187, para. 585).

(ii) Examples of violations of the right to freedom of speech

615. The monthly newspaper Umbowo, published by the Christian Council of Rhodesia, was banned by the rebel régime in August 1976. It had a largely African readership of about 20,000 persons. 207/

616. In April 1976 the rebel régime announced the formation of a National Security Committee with powers to issue "D notices", which would have the effect of prohibiting the publication of certain information. According to the rebel régime, the system was designed to "regulate the publication by Rhodesian news media of certain information relating to defence, public safety, public order, the economic interests of the State, or information which would cause alarm and despondency, and allied matters ... The Government considers a measure of control is necessary in this respect in view of the intense psychological pressure to which Rhodesia is being subjected". There is no appeal, and the newspaper in question cannot report that a D notice has been issued. Inspectors have also been appointed with power to enter newspaper and other offices. 208/

617. Apparently, the decision to impose this sort of control caused surprise because there had been an informal arrangement for at least 18 months between the rebel régime and its newspapers. 209/ According to the evidence submitted to the Group on behalf of the ICJ, the national press (i.e. the Argus company) has to submit all its material to the Ministry of Information in advance of publication. 210/ This charge has been denied by the company concerned, which states that the ICJ "have published a falsehood", but the company did say that "matters of a security nature only receive clearance from the Government through the Information Department, before they are published". 211/

205/ Rhodesia Herald, 14 January 1976, 9 March 1976.

206/ Rhodesia Herald, 28 April 1976.

207/ Focus, No. 6, September 1976.

208/ Rhodesia Herald, 27 April 1976.

209/ Financial Times, 27 April 1976.

210/ International Commission of Jurists, op. cit., p. 40.

211/ Rhodesia Herald, 18 May 1976.

618. The International Press Institute in its annual report published in December 1975 in Zurich stated that Southern Rhodesia's press is shackled by the emergency regulations and publishes nothing in political depth. "Until there is a change in the political situation, in the political conflict between black and white, there will be no change in Rhodesia's grey press, which, though it takes pains to look free and outspoken, dare not be too revealing in its coverage." 212/

619. The rebel régime has expressed its anger at reporting by the foreign press on a number of occasions, and on several occasions foreign journalists have been deported. For example, two journalists for the Daily Mirror were deported in June following a report in the paper about atrocities in Rhodesia earlier in the year (see paragraph 558 above). In an attempt to increase control over foreign reporting, the rebel régime introduced new regulations in July, under which all foreign news reporters would need a temporary work permit "as a result of recent incidents in sensitive areas of Rhodesia". 213/ This means that the régime can refuse permits to foreign journalists and can stop the work of those working for Southern Rhodesian papers. It is already able to harass those resident journalists who work for foreign newspapers (see paragraph 559 above for the recent attempt to deport Michael Holman).

620. The rebel régime has a very active censorship policy which covers both books and journals. Among books and magazines which have been banned in the period under review are the following:

Revolution in Guinea: An African People's Struggle (1968) by Amilcar Cabral.

Tania (1973) by M. Rojas and M. C. Calderton. 214/

Strategic Problems of South Africa's Liberation Struggle: A Critical Analysis (1974) by B. Turok. 215/

Quarterly Journal of Opinion, vol. 5, No. 1, 1975, published by the African Studies Association, United States of America. 216/

New Portuguese Letters (1975) by Maria I. Barreno, Maria T. Horta and Maria V. da Costa. 217/

The Fight for Zimbabwe: The Armed Conflict in Southern Rhodesia since UDI (1975) by Kees Maxey.

Der Spiegel, No. 47, November 1975. 218/

212/ Rhodesia Herald, 23 December 1975.

213/ Rhodesia Herald, 28 July 1976.

214/ Rhodesia Herald, 30 August 1975.

215/ Rhodesia Herald, 9 September 1975.

216/ Rhodesia Herald, 23 September 1975.

217/ Rhodesia Herald, 29 November 1975.

218/ Rhodesia Herald, 27 December 1975.

African Nationalism (2nd edition) by Ndabaningi Sithole.

Guerrilla Warfare, by Che Guevara.

Revolution in the Revolution and Strategy for Revolution, by Regis Debray.

The Wretched of the Earth, by Franz Fanon.

All issues of Tricontinental. 219/

The African Reader: Independent Africa (1970), eds. W. Cartey and M. Kilson.

Der Spiegel, No. 14, March 1976. 220/

(iii) Examples of violations of the right to free association

621. According to information before the Group, in October 1975 the Muzorewa branch of the ANC held a meeting in Highfield, Salisbury, to which 294 people came. As the organizer did not have a licence for more than 199 people allowed to attend the meeting, it was closed down, and the organizer, Mr. C. Chinyerere, was charged with contravening the Law and Order (Maintenance) Act. 221/ In April 1976 a meeting of the same organization took place in Sinoia without permission; 158 Africans, including three leading members of the Muzorewa branch of the ANC, were arrested and charged under the Law and Order (Maintenance) Act. 222/

622. On 21 May 1976 the rebel régime banned receipt cards issued by both branches of the ANC to certify donations. The original membership cards of the ANC were banned in 1972 and anyone possessing a card was instructed to destroy it or hand it in to a police station. The justification was that intimidation by the two branches of the ANC was occurring. 223/ Just over a week later, a mother of four children, Mrs. Stella Mponda, was found guilty of possessing the card and fined \$R 25 (or 30 days' imprisonment). Her husband had told her to destroy it but she had forgotten to do so. 224/

623. The different treatment accorded European and African demonstrations is illustrated by the answer to an African MP in the House of Assembly. Mr. Maposa asked the "Minister of Education" what action had been taken to cope with the protest demonstrations against military call-up in certain African schools. The "Minister" replied that: "The pupils have been sent home and each one must make application for re-enrolment in the third term of this year. Their enrolment will be on a selective basis at the discretion of their headmaster". When Mr. Maposa

219/ Rhodesia Herald, 7 February 1976.

220/ Rhodesia Herald, 1 May 1976.

221/ Rhodesia Herald, 13 January 1976.

222/ Radio Salisbury, 5 April 1976.

223/ Rhodesia Herald, 22 May 1976.

224/ Rhodesia Herald, 1 June 1976.

asked as a supplementary about the action being taken against white pupils who had been led in a demonstration by their headmaster, the "Minister" replied: "I think that was a demonstration of a patriotic nature and not a political nature". The white demonstration had been one of support for the rebel régime. 225/

624. The right to free association of a non-political kind was denied to a number of schools which had organized a multiracial swimming gala in October 1975. Salisbury City Council, acting on the instructions of the "Minister of Local Government and Housing", refused permission under the Land Tenure Act for African students from St. Ignatius school, Chishavasha, to compete. The President of the Rhodesia Amateur Swimming Association had hoped to persuade the international swimming body, FINA, to readmit Rhodesia, but this decision made this most unlikely. Nearly one and a half months later, Mr. Ian Smith tried to suggest that the decision to ban the gala had been that of the City Council alone. The Mayor of Salisbury denied this: "As far as public swimming pools are concerned, the African use of these is governed by the policy clearly defined by the Government, and the Council's decision must be fully in accordance with the policy". 226/

225/ Parl. Deb., 20 August 1976, cols. 1123, 1124.

226/ Rhodesia Herald, 30 October 1975, 20 November 1975.

B. APARTHEID AND THE AFRICAN FAMILY

1. Introduction

625. The Group's interim report for the first time treated the African family as a subject on its own, giving a detailed description of the African family, including ethnographic background, the impact of colonialism and industrialization, the political and economic background, the rebel régime's policy of "population control", the effects on parent-child relationships, and the various practical problems arising from the migrant labour system. Included in this study were statistical tables indicating how the African family in Southern Rhodesia was broken up, resulting in a predominance of women in the TTLs and men in the white urban areas (E/CN.4/1187, paras. 598-626). This general situation has remained unchanged during the period under review, although further items of evidence on the impact of racial repression on African family life have been drawn to the attention of the Group.

2. Analysis of evidence received

626. In his evidence to the Commission of Inquiry into Racial Discrimination, the Anglican Bishop of Mashonaland attacked the effects of the Land Tenure Act on family life. He said the Act entrenched separation and discrimination among domestic servants in Rhodesia and was "a direct contradiction of the New Testament teachings". The forced separation of domestic servants from their families resulted in promiscuous behaviour and in lack of parental influence on a growing family. It was also a long and costly journey for the families to meet. He stressed the need for African schools to be closer to the parents' place of employment, and suggested that land be set aside in Highlands (a European suburb of Salisbury) to house the families of domestic servants. "We are also conscious of the dangers of loneliness leading to a breakdown of the family units." 227/ (Para. 496 above gives examples of the separation described by the Bishop).

627. In further evidence to the Commission of Inquiry into Racial Discrimination, the Reverend Fred Rea said the basic planning principle on which Salisbury was based was that of maintaining European interests. "As a guideline to future planning, such a principle is disastrous." He pointed out that 75.5 per cent of the population (African) had 8.6 per cent of the land in the city area available for African houses. He said: "Is it to be imagined that within the area of what is now white Salisbury there is to be no residential married accommodation for four fifths of the city's population?" He also pointed out that the distribution of housing for lower income citizens (all African) was "at the most remote distances from their place of work". This, he believed, was "neither economically efficient nor socially just". 228/

628. Evidence from the Borrowdale Ratepayers' and Residents' Association, opposing the African (Urban Areas) Accommodation and Registration Act which prohibits the families of African employees from living on their employers' property, supported this view. It stressed that "In our opinion the enforced splitting of families is inherently wrong, will promote discontent, and will tend to encourage immorality". 229/

227/ Rhodesia Herald, 7 November 1975.

228/ Rhodesia Herald, 5 December 1975.

229/ Rhodesia Herald, 4 December 1975.

629. In evidence to the Commission of Inquiry into Racial Discrimination, and later to the "Minister of Internal Affairs", the Young Women's Christian Association (YWCA) protested about the inferior legal status of African women in Southern Rhodesia. African women who seek to contract a western-style or Christian marriage have to obtain their parents' permission - whatever their age - and if their husband dies intestate their status reverts to that under customary law and they and their children come under the legal control of their husband's brother. The YWCA asked that African women be treated legally as European women. Making it clear that they were not seeking to enforce changes on women who wished to continue in a traditional way, the YWCA felt, however, that African women should be allowed the choice of a different way of life. The Commission of Inquiry commented that an official of the "Ministry of Internal Affairs" felt that African women had the best of both worlds, but the Commission called for a committee to be set up to inquire into the whole question in depth. 230/

IV. CONCLUSIONS AND RECOMMENDATIONS

630. The Ad hoc Working Group of Experts adopted the following conclusions and recommendations:

A. SOUTH AFRICA

1. Conclusions

(1) No significant change has occurred in South Africa in respect of Government policy and the apartheid system.

(2) During the period under consideration, the Ad hoc Working Group of Experts noted that the number of executions had considerably increased and might even be estimated at more than twice the number during the preceding period. In addition, a number of deaths have occurred in prison for which the authorities have been unable to give convincing explanations. For the most part, these deaths involve black prisoners.

(3) The year 1976 was one of widespread collective opposition to the policy of apartheid, resulting in demonstrations and riots, which started with a peaceful demonstration by schoolchildren on 16 June 1976 in the African township of Soweto, outside Johannesburg. In the course of these events, South African police reacted with brutality and without respect for human life.

(4) Forced removals of population continued, particularly under the new Prevention of Illegal Squatting Act of 30 June 1976.

(5) It is to be feared that the repression carried out in the name of "security" may be intensified as a result of the recent promulgation of new laws which considerably worsen the situation of all those combating the apartheid policy in South Africa.

(6) To give an idea of the scope of apartheid policy, it should be mentioned that the prison population is estimated at 100,000. The pass system is still one of the methods of applying this apartheid policy. In 1975, its application resulted in the arrest of 269,000 Africans.

(7) The co-operation of the judiciary with the executive in applying racist security laws once again became apparent on the occasion of numerous political trials, among which the SASO "terrorism" trial and the "journalists" trial may be mentioned, together with that of Breyten Breytenbach, the eminent Afrikaaner poet, who has not been authorized to appeal.

(8) The disparity of wages between black and white workers has continued to widen, although the wages of black workers have risen. It is of interest to note that nearly half the foreign companies were paying wages below the minimum effective level recommended by the Government. Therefore it is not true to say that foreign investments contribute to higher living standards for African workers.

(9) Despite the demands of the black workers, the practice of job reservation is not to be abandoned. The competent minister has just given the white trade unions an assurance to that effect.

(10) After considering thoroughly the development of the "Bantu homelands" policy, in particular since the creation of the so-called independent Transkei, and after comparing this policy with the principles contained in the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Ad hoc Working Group of Experts reached the conclusion that the "Bantu homelands" policy violates the right of the people to the exercise of sovereignty and their right to freely pursue economic development and to freely determine their political status, that it does not give the people freedom from alien exploitation or put an end to repressive measures, and that it disrupts national unity and territorial integrity. All this is substantiated by reliable testimony and documentation.

(11) Despite the fact that it has been unilaterally declared that the Transkei is "a sovereign and independent State" and that it "shall cease to be part of the Republic of South Africa", the constitutional framework, the economic situation, and the position of the citizens of Transkei suggest that the Transkei is in reality a non-self-governing territory, a protectorate of South Africa, lacking the main elements of a sovereign State - financial resources of its own, and control of its military defence and foreign relations.

(12) Having carefully examined the system of employment in agriculture and having noted that the 1,505,820 African workers employed in this sector have no trade union and are not protected by any law, although the so-called "Masters and Servants' Laws" have been repealed, the Ad hoc Working Group has come to the conclusion that the agricultural workers and their families are entirely at the mercy of the white farmers. In addition, agricultural workers have not benefited at all from the increase in black workers' wages which has occurred since 1973 in other sectors.

(13) The school system for children of farm workers may be described as deplorable; child labour is widespread and children from farms are separated from their families to work in urban areas.

(14) The abhorrent system of farm gaols and private gaols still exists. The Minister of Prisons has stated that during 1975 a total of 87,543 persons were "released on parole and placed in employment with various employers". In this connexion, he gave a figure of 22,287 as the average daily total of prisoners working for government, local authorities, institutions and private persons, compared with 24,000 in 1973.

(15) In general, racial discrimination prevails in the school system, in the form of rigid segregation and inferior education for Africans, who must pay for books and contribute to the cost of uniforms and school fees, while for whites education is free and compulsory. The percentage of enrolment of African schoolchildren is low and the drop-out rate is high. In 1975 only 0.24 per cent of the total number of Africans entering primary school entered the matriculation year (the fifth year of secondary school). The competent Minister has the power to decide on the syllabus and content of African schooling. It is compulsory for African children in secondary schools to learn Afrikaans. In certain areas the teaching of mathematics and history in Afrikaans became compulsory in 1976.

(16) Apartheid is imposed in higher education: black students are excluded from the "open" universities; however, separate black universities have been set up on a trial basis. Black universities are under the control of the Bantu Education Department and do not benefit from an autonomous status as the white universities do. University councils and senates, the Rectors and most of the staff are white; the only African Rector is the newly appointed Rector of the University of the North.

(17) Black student movements have grown, despite the numerous difficulties placed in their way by the South African Government; the South African Students' Organisation (SASO), with a membership of about 2,500 out of a black student population of 6,000 is the most important one. The South African Students' Movement is concerned with organizing high-school students. The anti-apartheid protests of student movements are answered by expulsions, house-arrests and trials.

(18) Student movements participated actively in the widespread uprising which took place in the summer and autumn of 1976. This uprising stemmed from the South African education policy, but it should be seen in a wider context as an anti-apartheid demonstration.

(19) On 16 June 1976, 30,000 schoolchildren demonstrated in Soweto. The violence had spread by 18 June to seven other African townships; 176 people, many of them children, were killed on the first day; 785 schoolchildren were reported to have been arrested in one day alone. There are no reports of investigations into the ruthless police behaviour that cost the lives of so many schoolchildren and others.

(20) Apartheid has a disruptive effect on family life. It is humiliating to bring up children in conditions of segregation.

(21) Housing for Africans is poor and hygienic facilities are lacking. Only three in 100 houses in Soweto are reported to have running hot water, only 15 in 100 houses have electricity.

(22) The migrant labour system has a negative effect on the family unit and its stability; a wife cannot stay in the city where her husband works. Figures show an extreme disparity in male-female population in urban areas; in a township outside Cape Town (Langa) there are more than 10 men to one woman, and more children than women.

(23) The demolition of squatter homes and the failure to provide for other housing facilities has led to a considerable increase in the number of homeless people, which is estimated to have reached 250,000.

(24) On the basis of concrete allegations addressed to the International Confederation of Free Trade Unions, the Group found that the practices by which the relevant legislation is enforced in South Africa continue to violate trade union rights.

(25) The repressive laws already analysed by the Group have not changed for the better; on the contrary, the Internal Security Act of 1976 gave the State greater powers of detention. Trade unionists are persecuted, prosecuted and detained, in particular as a consequence of strikes.

(26) The Trade Union Council of South Africa (TUCSA), an all-white body, is now prepared to admit black unregistered unions.

(27) There is a committee system developing which tends to replace trade unions; in the Twelfth Special Report of the Director-General of the International Labour Organisation it is stated that this appears to be contrary to the principles of freedom of association. However, in 1975 there were reported to be already 1,969 liaison committees and 279 works committees in operation in establishments with a total of 613,000 African workers.

(28) In 1975, there were 119 strikes involving African workers. In respect of 61 strikes police intervention took place; 503 workers were arrested.

2. Recommendations

(29) The Group reiterates all its previous recommendations, in particular those relating to the treatment suffered by persons arrested and detained because of their opposition to the policy of apartheid.

(30) The Group renews its recommendation that a symposium should be organized at a suitable location in southern Africa for the purpose of focusing attention on (i) economic and cultural exploitation of the blacks in South Africa and Namibia and (ii) prison conditions in the South African gaols, including in particular the notorious Robben Island maximum security prison. Invitations should be extended in particular to the appropriate United Nations organs, to the Organization for African Unity, Amnesty International, the International Commission of Jurists and other non-governmental organizations concerned and to black South Africans and ex-prisoners. The results of the symposium should be communicated to the Commission on Human Rights for study.

(31) The Group, which is bearing in mind the matter of the allegations concerning infringements of trade union rights in South Africa, in conformity with Economic and Social Council resolution 1997 (LX), suggests that the ILO should be invited to make a thorough study of possible ways of improving the lot of African agricultural workers and their families.

(32) A thorough study should be undertaken of police behaviour in the course of peaceful demonstrations, in particular in regard to the respect of the right to life of Africans, to the use of firearms and to the responsibility of policemen for the events in 1976. An investigation should be made, more specifically, of the behaviour of police in the student uprisings in 1976, and it should be established whether the police fired on schoolchildren on higher orders, and whether such behaviour can be considered a violation of the International Convention on the Suppression and Punishment of the Crime of Apartheid.

(33) The Group recommends that UNESCO should make a special study of the effect on African children in South Africa of being educated in more than one foreign language, and also the consequences of instruction through Afrikaans, a language which is regarded by the Africans as unsuitable for effective communication outside their country and which, in addition, they consider to be the language of oppression.

B. NAMIBIA

1. Conclusions

(34) The Ad hoc Working Group of Experts finds that in the period covered by its present report, no development of any fundamental nature has taken place which would indicate a lessening of South Africa's illegal control over the international territory of Namibia or the insulation of the territory from the harmful effects of legislation and the policy of apartheid.

(35) Judging from the attitude of the South African authorities and that of the authorities imposed on Namibia by South Africa, the Ad hoc Working Group of Experts is of the view that the situation is deteriorating, for despite the measures taken by various international groups and organs, chiefly the General Assembly, the Security Council and the United Nations Council for Namibia, South Africa has

proceeded by devious methods to determine Namibia's future in a manner which would best serve the political and economic interests of South Africa and not those of the people of Namibia.

(36) In this regard, the Ad hoc Working Group finds that the so-called Windhoek Constitutional Conference does not meet the requirements of Security Council resolution 385 (1976) and therefore that this Conference can only serve the purpose of denying to the Namibian people and their true and recognized representatives the opportunity to express themselves on the form by which they can exercise their rights of self-determination and independence. Far more insidious is the fact that while in one breath the South African authorities create the impression of a willingness to abandon the policy that seeks to divide the territory into "bantustans", legislation introduced during the period points to a pursuit of the policy of "bantustanization". The Ad hoc Working Group of Experts wishes to refer in this regard to proclamations R42 and R43 of March 1976, which provide that the Eastern Caprivi shall be a "self-governing area", thus ushering in the third and final stage in the process of "bantustanization".

(37) "Self-government" was also conferred on the Rehoboth Gebiet in terms of an Act of April 1976 and on the basis of proposals by the Baster Advisory Council.

(38) A major development which has taken place in Namibia during the period under review is the evidence brought to the attention of the Ad hoc Working Group of Experts of the extensive military presence of South Africa in Namibia. Needless to say, under the terms of both the League of Nations Mandate and the relevant General Assembly decisions, the militarization of Namibia by South Africa is deemed illegal.

(39) Judging from the information presented to it, the Ad hoc Working Group of Experts concludes that South Africa may be maintaining a force of about 45,000 troops in Namibia. These troops include a special counter-insurgency force of 12,800 troops, paratroops, mechanized brigades and motorized infantry.

(40) Another feature of this militarization has been for South Africa to harass and to remove from their traditional homes large numbers of Namibians, particularly in northern Ovamboland, on the ground that it was establishing "security districts", one kilometre wide, along the border with Angola. The Group is satisfied that, in the process of implementing this policy, South African troops have carried out a campaign of terror and intimidation against Namibian civilians, particularly against people who are known to belong to SWAPO cadres or to be sympathizers of SWAPO.

(41) It would seem to the Ad hoc Working Group of Experts that a major concern of the South African authorities, judging from their military build-up in northern Namibia in particular, has been to destroy the presence of SWAPO in the territory and to alienate the Namibian people from any sympathy for that organization. An important element in this regard is the fact that South Africa has in the period in question carried out military incursions into border towns and villages of Angola and Zambia, in the hope of destroying SWAPO freedom fighters who may be operating from those countries. This is a development of great import, since it further aggravates the situation in southern Africa and threatens to undermine international peace and security.

(42) The Ad hoc Working Group of Experts finds that South African security laws have continued to be applied to Namibia, in particular that the death sentence has been imposed on many people for acts which, because of the wide meaning given to "terrorism", have been made acts punishable by death.

(43) The most important case study has been that of the Swakopmund trial, which ended with the sentencing to death of Mr. Aaron Muchimba and Mr. Hendrik Shikongo. The Group notes with satisfaction that, owing to international pressure, the death sentences have not been carried out. Nevertheless, it wishes to state that in its opinion, which is shared by legal authorities of many shades, the evidence placed before the Court would lead it to the conclusion that the trial was characterized by gross irregularities. More important, the Ad hoc Working Group of Experts is of the view that, having regard to the 1971 advisory opinion of the International Court of Justice and the international status of Namibia, the trial itself was illegal and therefore the sentences. The Group wishes to stress that it is its opinion that the Terrorism Act is a clear manifestation of injustice which also violates the principles of the Universal Declaration of Human Rights and the International Covenants on Human Rights.

(44) The Ad hoc Working Group, after studying the educational system and the content of education provided in Namibia, has come to the conclusion that this system is consciously geared towards reinforcing the apartheid concepts of white supremacy. African schools, which are very limited, are organized on a tribal basis, thus emphasizing the artificial divisions among the African population and serving the policy of "bantustanization" for Namibia. There are no universities in Namibia.

(45) In general, the educational system operates to the detriment of women. Consequently, and also because of the "contract labour system", which has the effect of keeping women at home from their childhood, the level of female illiteracy is very high.

(46) From the evidence brought to the attention of the Group, there does not appear to be any student organization worthy of the name - which is further evidence of the strict enforcement of the apartheid policy in Namibia. Any attempt to organize the students has been frustrated by official action. An example of this was the swift and ruthless manner in which the authorities intervened to destroy the SWAPO Youth League which, in its brief existence, had led protests against the educational system and the oppressive behaviour of white teachers in high schools.

(47) By the very nature of the apartheid policy, decent family existence is all but impossible for the African, whether he is a South African or a Namibian. The single main disintegrating factor for the family is the "contract labour system". For the period under review the Group found that this system had been operated with every force and accounted for the large numbers of broken families. This situation has also created additional economic, social and psychological problems for the African family.

2. Recommendations

(48) In the light of the latest investigation by the Ad hoc Working Group of Experts concerning the Namibian people, the Group recommends that the Commission on Human Rights reaffirm the imprescriptible right of the Namibian people to self-determination and independence and their right to enjoy all the rights recognized in the various international instruments on human rights.

(49) The Commission on Human Rights must once again express its most serious concern about the continued violations of human rights which have characterized the situation in Namibia. In this regard the Commission on Human Rights must give priority attention to the implementation of the relevant provisions of the International Convention on the Suppression and Punishment of the Crime of Apartheid,

which has now come into force. Efforts should be made to find out how the agents of the apartheid policy in Namibia may be prosecuted for crimes against the population of the international territory of Namibia.

(50) The Commission should recommend that the General Assembly and the Security Council should now adopt firm and concrete measures, including measures provided for under Chapter VII of the Charter of the United Nations, with a view to expelling South Africa from Namibia, where its presence is illegal.

(51) The Commission should continue to keep a vigilant eye on the subtle methods employed by South Africa for the purpose of the "bantustanization" of Namibia.

(52) The Group recommends that the Commission on Human Rights approve the recommendations formulated in the Declaration and the Programme of Action of the International Seminar on the Eradication of Apartheid and in Support of the Struggle for Liberation in South Africa (A/31/104), which was held at Havana, Cuba, from 24 to 28 May 1976.

(53) The Commission on Human Rights should show its support for and be represented at the World Conference for Action Against Apartheid, to be held in 1977, in accordance with General Assembly resolution 31/6/G.

(54) The Commission on Human Rights should appeal to countries that maintain consular missions in Namibia or whose nationals are involved in the economic life of Namibia to terminate all such relations.

(55) Considering that the situation in Namibia has reached a most decisive and critical stage, it is recommended that the Commission should continue to keep a vigilant eye on (a) the increasing evidence of arrests and the harassment of the Namibian people, (b) the increasing incidence of torture and other cruel, inhuman and degrading treatment meted out to political prisoners, (c) the introduction of draconian and discriminatory laws into Namibia as well as the irregular legal processes which characterize the trials of accused persons. The Commission on Human Rights should affirm the illegality of any death sentences passed or likely to be passed in Namibia.

(56) The Commission on Human Rights should demand the immediate release from detention of all political prisoners, particularly those suspected of being sympathizers of SWAPO.

(57) The Ad hoc Working Group of Experts recommends that, following upon the Declaration and Programme of Action of Dakar, the Commission on Human Rights should:

- (a) Condemn the so-called Windhoek Constitutional Conference as being contrary to the legal status of Namibia, which is a territory under international régime, and as being designed by its composition and its purpose to perpetuate the illegal control of South Africa over that territory;
- (b) Reiterate its appeal to the international community and to the Member States to give SWAPO, recognized by the United Nations as the sole authentic representative of the Namibian people, the maximum support in its struggle against the illegal occupation of Namibia and for the exercise by the Namibian people of its right to self-determination;

- (c) Request the General Assembly to invite the United Nations Council for Namibia to consider, in consultation with SWAPO, the possibility of Namibia becoming a party to the international human rights covenants and to the International Convention on the Suppression and Punishment of the Crime of Apartheid;
- (d) Ask an investigating body to inquire into the violations of human rights in Namibia and to prepare case-histories with a view to future legal proceedings, in application, inter alia, of the provisions of the Convention on the Suppression and Punishment of the Crime of Apartheid;
- (e) Draw the attention of the Security Council to the urgent need, following upon its resolution 385 (1976), to impose sanctions against South Africa for not having respected the provisions of that resolution;
- (f) Note with satisfaction the decision by the General Assembly to proclaim annually the week following 27 October as Namibia Week. The Assembly should be urged to ensure that the legitimate struggle for self-determination of the Namibian people receives wide publicity and comprehensive support in the greatest possible number of countries;
- (g) Welcome the fact that SWAPO, recognized by the United Nations as the sole authentic representative of the Namibian people, should have expressed in a study entitled: "Namibia and the International Rule of Law" as well as in a "discussion paper on the constitution of independent Namibia", its attachment, together with that of the Namibian people, to the basic principles of and rules governing human rights. 1/

C. SOUTHERN RHODESIA

1. Conclusions

(58) The year 1977 is bound to be decisive for the future of Southern Rhodesia, which poses a twofold problem: decolonization or the accession to independence of a new African State; and acceptance of the principle of rule by the majority, which will have to put an end to the abuse of power by the racist régime and the semi-servitude in which the Africans are held in their own country.

(59) The United Kingdom is now showing itself more aware of its responsibilities and has begun to engage in intense activity. In view of the fact that the situation is deteriorating daily, a complete breakdown of the Geneva Conference would produce a wave of pessimism throughout the world and many people would no longer believe it possible to establish a majority government and create a multi-racial society by peaceful means. The illegal régime seems to accept the idea of establishing such a government, but it is putting forward demands unacceptable to the representatives of the majority, undoubtedly under the pressure of Whites who support the minority régime.

1/ The full texts of these documents, transmitted by SWAPO to the International Conference on Namibia and Human Rights at Dakar, are reproduced in annexes III and IV to this report.

(60) If the negotiations do not produce a satisfactory result, there is a danger that the armed struggle might intensify and that the conflict might be internationalized and become a threat to peace in the region and in the world.

(61) During its most recent visit to various countries in southern Africa, the Group noted with deep concern that public opinion was for the most part convinced that the possibilities offered by good offices had been exhausted and that armed struggle was the only remaining option.

(62) As stated in the chapter of the present report relating to Southern Rhodesia, it may be seen that the illegal régime continues to be characterized by the extreme cruelty with which it has treated the Africans, by harsh racial discrimination, by the abject conditions in which the Africans live, by the shameful nature of the so-called "consolidated villages", by its treatment of politically active Africans fighting for their freedom, and by abuses, arbitrariness and the persecution of black people.

2. Recommendations

(63) Once the Geneva Conference resumes its work, the United Nations, the Organization of African Unity, the United Kingdom of Great Britain and Northern Ireland and other Powers, as well as world public opinion, should exert pressure on the rebel government to ensure that the Conference produces tangible results and that the transition period is a calm one.

(64) In the present circumstances, the Security Council should keep a close watch on the situation and all United Nations organs should co-operate closely in order to find the most rapid possible solution to one of the most alarming problems with which they are faced.

(65) Likewise, in the present circumstances, the United Nations should intensify its co-operation by supplying the neighbouring countries with humanitarian assistance, particularly in the form of medicines and foodstuffs, to help the combatants fighting for the liberation of Rhodesia and their families. Furthermore, in view of the special geographical position of Mozambique, significant assistance should be given to that country on account of the damage it is suffering and the transport difficulties hampering its external trade, as a result of the frontier clashes that have occurred.

V. ADOPTION OF THE REPORT

631. 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 Arkyyin Cato

Mr. Humberto Díaz Casanueva

Mr. Felix Ermacora

Annex I

STATEMENT MADE BY MR. ARMANDO PANGUENE, VICE-MINISTER FOR
FOREIGN AFFAIRS OF MOZAMBIQUE, AT THE 423RD MEETING, HELD
AT MAPUTO ON 22 JUNE 1976 a/

On behalf of PRELIMC and the Government and people of Mozambique, allow me to transmit to the Chairman and distinguished members of the United Nations Ad Hoc Working Group of Experts our salutations of welcome and to tell you how honoured we feel to have you in our independent country.

The Government of the People's Republic of Mozambique is sure that the mission which you have been entrusted to carry out in this part of Africa in safeguarding of the rights of the peoples of Zimbabwe, Namibia and South Africa will meet with complete success.

While commending you for having been able to surmount the difficulties and come over here in search of the truth and to find out what is really happening to the peoples of Zimbabwe, Namibia and South Africa, we should like to express our profound regret that Mr. Kéba M'Baye, Chairman of the Group, and Mr. Felix Ermacora, member of the Group, are unable to be with us here today on the soil of this land, whose people's right to self-determination and independence they advocated and upheld with courage and determination.

The fact that you come at this time to this part of Africa with the specific task of studying and examining the conduct and malpractices of the racist minority régime of South Africa and the illegal minority régime of the British colony of Southern Rhodesia is an indication of the international community's concern over the fate of the peoples who are our neighbours. Your coming here may also be viewed as a prelude to the crumbling of the old myths, and the recovery by the people of those countries of their emancipation, freedom and independence.

The growing concern of the international community is grounded in the injustices, discrimination, systematic persecution, massacres, humiliation and constant degradation of the African peoples which still prevail in Zimbabwe, Namibia and South Africa.

The crimes against peace and the crimes against humanity are thus committed and perpetrated deliberately and in utter disregard for world public opinion and the relevant United Nations resolutions.

The persistent refusal of the illegal minority régime of Ian Smith to meet the demands of the people of Zimbabwe and to heed the appeal of the international community for an immediate solution with a view to self-determination according to the principle of majority rule and independence is not less than a flagrant violation of human rights, an open challenge to fundamental laws, and a blatant defiance of international public opinion.

We are convinced that both here and in other places where you are to work you will find pertinent evidence that the people of Zimbabwe is denied the right to participate in political activities; it does not enjoy freedom of expression or the right of association; it does not have access to the press or the right to

a/ Statement delivered in Portuguese.

issue any publications enabling it to convey ideas to the community. On the contrary, the people of Zimbabwe is being harshly persecuted and accused of complicity for not denouncing but supporting the struggle of the freedom fighters against the illegal régime.

We consider all this to be a gross and flagrant violation of human rights. In April 1975, for instance, the illegal régime of Ian Smith forced about 200 families to leave their land and homes and to move some 750 kilometres away as a punishment for failing to co-operate with his régime. Today you will meet some people who are victims of recent brutality and persecution.

The illegal régime of Ian Smith is arbitrarily imprisoning completely innocent people, hanging and beheading the nationalist fighters, torturing and terrorizing defenceless innocent people, and thus extending its policy of apartheid with its false concept of law and order in the name of values of a civilization of its own style.

As this is not our first meeting with this Group of Experts dealing with the question of human rights, we feel that our contribution should not be confined to helping you to meet and hear victims so that they can tell you personally about their experiences, as we ourselves did whenever you came to see us and needed our assistance to expose to the world the enemies of peace, justice and freedom of peoples at the time when we were still fighting against Portuguese colonialists for our independence.

Our position vis-à-vis the problem of Zimbabwe is clear. In accordance with the relevant resolutions of the United Nations General Assembly and Security Council, our Government and our people decided to apply sanctions against the British colony of Southern Rhodesia. Consequently, the important thing is for this Group to convince the world that, in order to eliminate the crimes just mentioned, it is imperative to do away with Ian Smith and his illegal minority régime, since the people of Zimbabwe is in fact fighting against a system which is by nature exploitative and oppressive and not against individuals as such.

In conclusion, allow me, on behalf of the Government and people of Mozambique, to express our gratitude for the support which the Commission on Human Rights gave us during the 10 trying years of armed struggle for national liberation.

We are convinced that the Ad Hoc Working Group of Experts, which is so ably chaired by Mr. Branimir Janković, and which comprises renowned personalities in the field of the defence of human rights, will be able to render all moral, political and material support to those fighting in Zimbabwe, so as to enable them to eliminate once and for all the chronic foreign domination characterized by the system of exploitation of man by man perpetrated by the illegal, rebel, minority régime of Ian Smith.

We wish you all success in the work which you are about to start and a good stay in our country. It is our conviction that the triumph of the oppressed peoples will mark the just cause of humanity which your Commission advocates and upholds. The struggle continues!

Annex II

STATEMENT MADE BY MR. ISAAC MANDA, ACTING PERMANENT SECRETARY,
MINISTRY OF FOREIGN AFFAIRS OF ZAMBIA, AT THE 427TH MEETING,
HELD AT LUSAKA ON 25 JUNE 1976

I would like on behalf of the Party, the Government and the people of Zambia as well as on behalf of His Excellency the President, Dr. Kenneth Kaunda, who is currently touring the interior of the country, to welcome you to Zambia.

There is no doubt that your coming here is a clear testimony of the importance which the United Nations attaches to matters of human rights particularly as they affect the southern part of Africa, that is, South Africa as well as Southern Rhodesia and Namibia.

My Government therefore attaches the greatest importance to your mission and we shall do everything possible to enable you to carry out your work in the best possible conditions.

You could not come at a more opportune time in the unfolding of events in this part of the world. There is a war in Rhodesia and Namibia. Johannesburg still smells of gunpowder following the wanton shootings of innocent people in Soweto and other African townships. The subject is human rights. People have been denied their birthright in Rhodesia, Namibia and South Africa on account of the colour of their skin. The recent wanton and senseless massacres of innocent Africans by the South African racist régime proves beyond every shadow of doubt the diabolical and evil intentions of the apartheid system which the world condemns. The murder of nearly 150 defenceless Africans in Soweto Township and other African townships in Johannesburg can never be condoned. It deserves the strongest condemnation. It will be recalled that in 1961 the South African fascist forces opened fire on defenceless innocent Africans at Sharpeville whose only crime was the call for human justice among all races of South Africa.

We in Zambia rightly believe that we can never feel secure and free unless all those countries that surround us have stable and strong governments based on fair play. It is obvious that there can never be a peace in South Africa unless such a government has the backing of the majority of the people. This is an important element in any country that wishes to establish a system of government that can foster peace and human dignity.

The African people of South Africa, Zimbabwe and Namibia are not any different from us or from those people throughout the world who are running the political, economic and social affairs of their own countries. The racist régimes in southern Africa are doing all they can to build hatred and bitterness. They are doing their best to build racism and tribalism. All these are evils which cannot be tolerated in this day and age.

When Africans demand majority rule, they do not seek to expel the Europeans who have settled down in Africa. On the contrary, we believe that Europeans, and indeed all other non-Africans, would adapt themselves to the new realities and even bring to the young African States the benefit of their experience in the field of commercial, industrial, technical and scientific endeavour.

Our own Government in Zambia, like many African Governments, has always guaranteed the safety of all peoples irrespective of colour, race or religion. We are building here a humanist society in which the dignity of man will be restored.

We have stated before that Africa in particular and mankind as a whole can no longer tolerate further Sharpevilles. The recent massacres have exceeded the excesses of Sharpeville. Future massacres are likely to be of greater magnitude.

It is imperative therefore for all of us to put an end to this bloodletting. South Africa must be made to heed the just demands of the oppressed people and abandon the evil policy of apartheid. If this cannot be done peacefully then the people of South Africa will use other means. Their reach towards their cherished goal of peace, freedom and justice cannot be halted by Vorster and all the guns in the world.

We hope, therefore, that during your stay in Zambia you will gather sufficient evidence which when presented to the United Nations will help the world body in its efforts to eradicate the evil system of apartheid and ensure political, economic and social stability, which is essential for peace and security in the region.

Once again, I wish to welcome you to Zambia.

Annex III

NAMIBIA AND THE INTERNATIONAL RULE OF LAW

A Survey by the
South West Africa People's Organization (SWAPO) of Namibia

Introduction

"It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".

(Universal Declaration of Human Rights,
Preamble).

Respect for international law, including the principle of the United Nations Charter and of the international law of human rights, is the foundation of international peace and security. Where a people is deprived of its fundamental rights and freedoms, including its right to self-determination, then a situation threatening international peace and security will inevitably arise. Moreover, the people, as recognized through the ages in moral, political, legal philosophy, have an inalienable right to overthrow their oppressors, using force if necessary. When this occurs, it has long been the doctrine of international law that the other members of the family of nations have the right, because of the common bond of humanity, to aid them in their struggle. Moreover, modern international law commands that no State may aid the oppressor.

SWAPO, internationally endorsed by the United Nations, speaks for the oppressed people of Namibia [General Assembly resolution 3295 (XXIX)]. We say that tyranny, racism and repression of the right of the Namibian people to self-determination, is an international notoriety. Our compatriots are exploited, suffer every denial of fundamental rights and freedoms, are barbarically tortured and killed. This is not incidental to, but is an integral part of, the aggressive occupation of our country by South Africa. The occupation is founded upon a materialistic greed to exploit the natural resources belonging to the Namibian people. We who have sought to withstand this repression have been imprisoned or driven into exile. At this moment, many of the finest sons of Namibia lie on Robben Island or in the torture chambers of South Africa; held under its Terrorism Act without trial, charge - without rights of any kind. Several of those invited to this international conference have not been able to be contacted because they are being held, often in animal-like conditions, by the repressors. Their crimes have indeed been grave: those of proclaiming to the Namibian people the standards upheld by the United Nations. To speak in Namibia of the ending of racism; of an independent unitary State; of human rights; invites such treatment. Yet SWAPO will continue to speak of these things, whatever weapon is used by the occupier to try to destroy our will. The lesson of history confirms the experience of the people: the will to freedom is invincible.

The case of Namibia is very special not only because of the length and bitterness of our repression (the Germans practised genocide in our country before the 1914-1918 war); but also because the international community has specifically assumed certain legal responsibilities for Namibia: first, under the League of Nations Mandate, now terminated; then, under the present very special legal régime of the United Nations.

On behalf of the Namibian people, SWAPO accepts international law in its fullest extent. We welcome and respect the continuing endeavours of the international community to fulfil the legal responsibilities which it has most solemnly undertaken. We will do all in our power to assist the world to fulfil the responsibilities it has assumed. We shall strive to make international law effective. We furthermore acknowledge the response of the family of nations to the growing struggle of the Namibian people to attain their inalienable rights under law. The responsibility of the international community, and the duty of SWAPO, are complementary to one another.

For the future, SWAPO believes that it is for the people of Namibia, under truly free conditions, to determine their own political destiny. In an Annex to this Position Paper we have set out, as a basis for discussion by the Namibian people, our proposals for the implementation of the principle of self-determination. Our Discussion Paper also suggests, in outline, how we would envisage the future development of Namibia according to the rule of law sustained by International Law.

International human rights' law and international
peace and security

"The protection of human rights is an area where the credibility of the United Nations is especially at risk".

(Dr. Waldheim: Introduction to the Report of the
Secretary-General on the Work of the United Nations
1972-1973)

The purpose of international law is to provide a framework within which sovereign States may develop peaceful and harmonious relations. Founded upon principles which include respect for the sovereign equality of States its development is essential to the maintenance of international peace and security. If it is to be strong and vital, it must also reflect a universal interest in achieving greater equity between rich and poor and ensure that the principle of non-discrimination in its various aspects has real meaning. Moreover, like all the laws of mankind, it exists to serve man. It is weakened to the extent to which it deviates from its essential human foundation. International law must be preoccupied with achieving justice - social, economic, political - among men and among nations.

For these reasons, the Charter of the United Nations insists on the intimate link between the maintenance of international peace and security, the development of friendly relations among nations "based on respect for the principle of equal rights and self-determination of peoples", and the promotion of human rights and fundamental freedoms (article 1 (1) (2) and (3)). There can be no lasting peace while human rights and peoples' rights to self-determination are devalued and trampled upon. This perception was heightened by the genocidal massacre and destruction of the 1939-1945 war. It is strengthened by the lessons of the anti-colonialist struggle of the ensuing period. Little depth or breadth of insight is needed to observe its current validity in the context of southern Africa and especially of Namibia.

That the Security Council of the United Nations has shrunk in recent years from translating this self-evident truth into legal reality is regrettable. SWAPO believes that by its inaction the Council may exacerbate an already dangerous situation; aside altogether from undermining the international legal structure created by men of larger vision thirty years ago in their establishment of the United Nations.

Experience clearly shows that widespread, persistent and gross abuse of human rights in the territory of any State ultimately provokes conflagration. When this comes, it is not easy to limit the fire. In the modern interdependent world it almost inevitably spreads to adjacent territories, or wider still.

United Nations resolutions on Namibia

"The General Assembly... Considers that the continued foreign occupation of Namibia by South Africa in defiance of the relevant United Nations resolutions and of the Territory's established international status constitutes a grave threat to international peace and security".

Resolution 2372 of 1968.

"Britain, France and the United States today vetoed a Security Council Resolution which would have declared 'that the illegal occupation of the Territory of Namibia by South Africa constitutes a threat to international peace and security'."

News Agency Report, 6 June 1975.

Since 1966, the organs of the United Nations have discussed the question of Namibia many times. Numerous resolutions have been passed. Because of the inability of the Security Council to agree upon enforcement action under Chapter VII of the Charter, no final seal has yet been set on international action. We summarise below the main resolutions of the last ten years.

In October 1966 the General Assembly of the United Nations terminated the Mandate of South-West Africa and assumed direct responsibility for the territory until its independence (resolution 2145). In May 1967 the General Assembly established the United Nations Council for Namibia (resolution 2248). In June 1968 the General Assembly resolved that South Africa's conduct regarding the territory constituted a grave threat to international peace and security and requested the Security Council to take "all appropriate steps" to ensure the immediate removal of the South African presence and the independence of Namibia (resolution 2372).

In March 1969, the Security Council, recognizing the Mandate's termination, stated that South Africa's continued presence in Namibia was illegal. It called on South Africa immediately to withdraw its administration. Actions designed to destroy national unity and territorial integrity through the establishment of bantustans were contrary to the United Nations Charter. The Security Council, if South Africa failed to comply with the resolution, would meet immediately to determine upon necessary steps or measures in accordance with the relevant Charter provisions (resolution 264). In August 1969 the Security Council recognized the legitimacy of the Namibian people's struggle and called on South Africa immediately to withdraw its administration, in any case before 4 October 1969. If it failed to do so, the Security Council would meet immediately to determine upon effective measures (resolution 269).

In July 1970 the Security Council called on all States to refrain from any relations implying recognition of the authority of South Africa over Namibia, and on all States maintaining diplomatic or consular representation in South Africa to terminate its extension to Namibia and to withdraw any diplomatic or consular mission or representative residing in the territory. All State-owned or State-controlled companies were to cease all dealings in respect of Namibia. No privately owned company dealing with Namibia was to receive financial assistance from a State; all new foreign investment activities in Namibia were to cease. Any further foreign

investment was to be divested of national protection against the future claims of a lawful government of Namibia. The promotion of tourism and emigration to Namibia was to cease (resolution 283).

In October 1971 the Security Council again affirmed the national unity and territorial integrity of Namibia and condemned all moves to destroy that unity and territorial integrity of Namibia. It declared South Africa's presence in Namibia an internationally wrongful act and stated that any further refusal of the South African Government to withdraw would create conditions detrimental to the maintenance of peace and security in the area (resolution 301). In February 1972 the Security Council stated that the continuing illegal occupation created a situation prejudicial to the maintenance of peace and security in the region. It called on South Africa immediately to withdraw its police, armed forces and civilian personnel. If South Africa did not do so the Security Council would meet immediately to determine upon effective measures under the appropriate terms of the Charter to ensure the total and rapid application of the resolution (resolution 310).

In December 1973 the United Nations General Assembly formally terminated "talks" with the South African régime over Namibia, and recognized SWAPO as the authentic representative of the people of Namibia. In December 1974 the Security Council unanimously condemned the continued illegal occupation; the illegal and arbitrary application of racially discriminatory laws and practices in Namibia. It demanded that South Africa make a solemn declaration that it would comply with the resolutions and decisions of the United Nations and that it recognized the territorial integrity and unity of Namibia as a nation, such declaration to be addressed to the Security Council. It demanded that South Africa take the necessary steps to effect the withdrawal of its illegal administration and to transfer power to the people of Namibia with the assistance of the United Nations. Pending such transfer, South Africa must: comply fully in spirit and in practice with the provisions of the Universal Declaration of Human Rights; release all Namibia political prisoners; abolish all racially discriminatory and politically repressive laws and practices, particularly bantustans and homelands; accord (unconditionally) full facilities for the return of all Namibians currently in political exile. The Security Council also decided to meet again on or before 30 May 1975 to review South African compliance with the terms of the resolution and, in the event of non-compliance by South Africa, for the purpose of considering the appropriate measures to be taken under the Charter (resolution 366). The General Assembly also endorsed the United Nations Council for Namibia's decree aimed at protecting Namibia's resources.

When the Security Council reconvened in May 1975 to reconsider the question of Namibia, it was evident that South Africa had no intention of complying with the previous resolution. A resolution was accordingly presented by Guyana, Iraq, Cameroon and Tanzania, which would have acknowledged this continued contempt. Its terms would have required South Africa, amongst other things, to withdraw so that "free elections be organized under the supervision and control of the United Nations as soon as possible and, in any case, not later than 1 July 1976". It also would have determined that the continuing illegal occupation constituted a threat to international peace and security and imposed an arms embargo on South Africa. This resolution was duly vetoed, there being no other contrary votes, by Britain, France and the United States.

Gross and consistent violations of human rights in Namibia

"The United Nations put South Africa here and so the United Nations must take them away again. But if we here are quiet the United Nations will not hurry. For it's not the United Nations that's being repressed. It's us. So even if the police oppress us, we must feel no fear. If you sit on the fire,

you cannot wait until someone comes to get you up. You get up yourself."

Esrael Taapopi, SWAPO Youth League Chairman, at his trial in Windhoek, 23 July 1974

SWAPO believes it to be a matter of international notoriety that South Africa, quite apart from its illegal occupation of Namibia in breach of United Nations resolutions as authenticated in the Advisory Opinion of the International Court of Justice on Namibia (1971), has engaged in gross and consistent breaches of human rights of the people of Namibia. Recent events there are thoroughly documented in United Nations sources, including those of the Ad Hoc Working Group of Experts of the Commission of Human Rights; in recent Reviews of the International Commission of Jurists; and in the Namibia News. It is notorious that South Africa has recently increased its repressive measures and the following practices of a barbaric nature have occurred: public flogging of SWAPO members; detention without trial and, under incarceration, sensory deprivation; electrocution and other forms of torture; indiscriminate killings; the maintenance of a labour system akin to slavery, servitude or forced labour; the brutal repression of attempts at trade union organization; the holding of fraudulent elections under conditions of grave intimidation; the forced removal of families from homes and farms; the grossest forms of restriction of movement and limitation of freedom of expression; undisguised interference with lawyers acting to secure such rights as are protected by law, and of gross and consistent breaches of civil and political rights too numerous even to be summarized here; including racial discrimination practised at every level of society and elevated into a doctrine of state. The régime is one in which the idea of economic, social or cultural rights for the black members of society is, of course, anathema. It seems quite clear that South African conduct is in breach of the standards of the United Nations Charter as elaborated in the Universal Declaration of Human Rights and in the two Human Rights Covenants of 1966; of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965; and of the Convention on the Suppression and Punishment of the Crime of Apartheid of 1968. It also appears inescapable to SWAPO that the persistent illegal occupation by South Africa of the territory of Namibia is an act of aggression within the meaning of the United Nations Charter and under the Principles of the Nuremberg Judgement as adopted by the General Assembly. Recent admitted military excursions into Angola under a variety of pretexts are further clear acts of aggressive war.

Moreover, by preventing the people of Namibia from resolving their own political future (an action which is exacerbated by the recent and current public relation exercise undertaken with local "bantustan" nominees relating to so-called "constitutional talks") South Africa is patently suppressing our right to self-determination. This is in breach of the United Nations Charter; of the law of the United Nations centering on the Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960; of the common Article One of the Human Rights' Covenants of 1966 (according to which, additionally, South African - and other foreign - exploitation and pillaging of our natural resources is unlawful); and of many other international resolutions and decisions, relating not only specifically to Namibia, but also to the right of self-determination in general. This breach is acknowledged in paragraph 52 of the International Court's Advisory Opinion of 1971.

SWAPO contends that these gross and consistent breaches of the human rights of the Namibian people have major legal consequences. If ignored, not only is Namibia betrayed, but the law itself is brought into grave disrepute.

The right of the people to struggle for their liberation

"The doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind".

Bill of Rights, Maryland, 1776

The most fundamental of human rights, and the precondition for the enjoyment of human rights, bona fide self-determination, are and have been denied to the Namibian people by South Africa. Likewise, it has refused to accept the authority of international law in respect of Namibia. The organ charged with the maintenance of international peace and security under the United Nations Charter does not act in the matter. In these unpropitious circumstances, what remedy is available to us, the Namibian people?

The long line of moral and political authority justifying a people's resistance to tyranny reaches back through theological history to Thomas Aquinas and further still. In the Papal Encyclical Pacem in Terris (1963), it is maintained, consistent with this position, that it is the province of secular legislatures, by the will of God, to protect the inviolable rights of the human person and to create conditions in which every man is enabled to perform his duties. Where the authorities of a State fail to give due recognition to these rights, or violate them, they are deficient in carrying out God's mandate; and their failure to fulfil the task God has allotted them deprives their laws of binding force. It can scarcely be denied that this is such a case. The Bishops and church leaders in Namibia have frequently stated that South Africa is engaged in multiple fundamental breaches of the Universal Declaration of Human Rights in our country.

Two hundred years ago Thomas Jefferson and Benjamin Franklin had the principle "Resistance to Tyrants is Obedience to God" inscribed on the Seal of Virginia. Many of today's State constitutions recognize the right, even the duty, of the citizen to withstand repression and by taking up arms if need be, to overthrow a despotic government and restore a rule of law. SWAPO believes that a war of liberation against the repressor by the people of Namibia is morally justified: the modern version of bellum justum in the old natural law ideology of international law.

But we go much further; SWAPO is confident that a liberation war is not only morally but legally justified. It seems beyond doubt that self-determination is today a cardinal principle of international law. The Declaration of Independence for Colonial Territories treats it as a part of the legal duties stemming from the Charter and it may be argued that it forms part of the jus cogens of international law. It is a right which accrues in favour of a people. If it is forcibly denied them then, under Article 51 of the Charter of the United Nations, they have the right to defend themselves and their territory; the more so, against an illegal occupier. A people's liberation war can be clearly identified as defensive action within the meaning of the Charter.

There can be no doubt that South African occupation of Namibia is lawless aggression:

"The territory is occupied by force against the will of the international authority entitled to administer it. Such occupation is as much belligerent occupation as the hostile occupation of the territory of another State".

(Written submission of the U.S. Government to the I.C.J. in its hearings relative to the 1971 Namibia Advisory Opinion)

"An armed force which violates the frontiers of a country indisputably commits an aggression.... The aggression committed by South Africa with regard to Namibia is the more serious in that... it has turned into a veritable annexation".

(Judge Ammoun, The Namibia Opinion, pp. 89-90)

Following the Declaration on the Inadmissibility of Intervention, the General Assembly set out in 1970 the Declaration of Principles of International Law concerning Friendly Relations between States. This makes clear that a people has the right to resort to forcible action in pursuance of its right to self-determination. Above all, however, it would seem that the people's liberation war is legally justified by the principle of effectiveness in international law. The fundamental interests of the Namibian people may clearly be vindicated by unilateral action unless and until international society provides effective enforcement action to back up its repeated pronouncements of law (C.F. Article 51 of the United Nations Charter).

To place the question of the legality of our action beyond any shadow of doubt, we refer to the many resolutions both of the General Assembly and of the Security Council bearing on the subject. They include Resolutions 2372 (XXII), 2403 (XXIII), 2498 (XXIV), and 2517 (XXIV) and 269 (1969). The last resolution contains the following provision:

"The Security Council... (4) Recognizes the legitimacy of the struggle of the people of Namibia against the illegal presence of the South African authorities in the territory."

Judge Ammoun commented:

"Since South Africa has opposed the achievement of the objects of the Mandate and blocked Namibia's path to independence and the enjoyment of its full sovereignty, Namibia has decided to fight... In law, the legitimacy of the people's struggle cannot be in any doubt, for it follows from the right of self-defence, inherent in human nature, which is confirmed by Article 51 of the United Nations Charter. It is also an accepted principle that self-defence may be collective; thus we see the other peoples of Africa, members of the OAU, associated with the Namibians in their fight for freedom".

(Loc. cit. pp. 69-70)

The rights and duties of other nations in respect of a people's struggle for human rights and self-determination

"If a tyrant... practises atrocities towards his subjects, which no just man can approve, the right of human connexion is not cut off in such a case..."

(H. Grotius, De Jure Belli ac Pacis, 1625)

"By virtue of its personal and territorial supremacy, a State can treat its own nationals according to discretion. But... There are limits to that discretion and... when a State renders itself guilty of cruelties against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind intervention in the interests of humanity is legally permissible".

(Oppenheim-Lauterpacht, International Law, 1955)

SWAPO does not accept that international law any longer gives States a general right of intervention as described by the great British lawyer Lauterpacht. It is a dangerous doctrine, open to abuse and prohibited by the United Nations Charter and Declarations on Intervention and on Friendly Relations. Yet it expresses a persistent theme of international law, albeit, variably formulated.

Grotius, in the seventeenth century, continued by saying that a foreign sovereign could "justly take up arms to punish nations which are guilty of grievous crimes against the natural law". Today's international law may prohibit so-called humanitarian intervention altogether. But, in the case of a people deprived of its right to self-determination, the General Assembly's Declaration of Principles of International Law concerning Friendly Relations of 1970, sets out the duty of third States towards such peoples:

"Every State has the duty to refrain from any forcible action which deprives peoples.... of their right to self-determination and freedom and independence. In their actions against and resistance to such forcible action in pursuance of their rights to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the Charter".

In the resolution adopted nem.con. by the General Assembly on 14 December 1974 on a Definition of Aggression it is stated (in Article 7) that:

"Nothing in this definition, and in particular article three, could in any way prejudice the right of self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist régimes or other forms of alien domination; nor the right of those peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration".

In the case of Namibia, the factual basis preconditioning certain legal consequences is clearly and authoritatively set out in recurring resolutions of the General Assembly and Security Council adopted over many years. These resolutions contain the persistent theme (as for instance in Security Council Resolution 269 of 1969):

"The Security Council requests all States to increase their moral and material assistance to the people of Namibia in their struggle against foreign occupation".

Thus, so far as concerns the liberation struggle of the people of Namibia, the legal consequences appear to be:

1. The Namibian people have the right under international law to seek to repel the aggressor by means which include the use of force.

2. In so doing, the Namibian Liberation Army must - and does - comply with the laws and customs of war as set out, in particular, in the Geneva Conventions of 1949 and South Africa's armed forces are also bound by these provisions;

3. Other States have, under international law, the right to provide assistance, military and otherwise, to the Namibian people in their struggle for self-determination;

4. By taking military action against the Namibian people, South Africa is fighting an aggressive war, compounding her initial aggressive occupation of their territory. This has consequences both in terms of international penal law and general international law;

5. It follows from the Nuremberg principles that the planning, preparation, initiation and waging of a war of aggression is a crime under the law of nations;

6. It also follows that an aggressor may not benefit legally from his aggression;

7. No State may in any manner aid an aggressor in its aggression nor may it lawfully benefit from this aggression; in particular by enjoying material benefits in consequence of the aggressive occupation.

SWAPO believes and contends that these consequences flow from international law and the law and practice of the United Nations independently of any future determination by the Security Council (which would require the concurring votes of the five permanent members) that South African action amounted to an act of aggression. That is to say, this situation of law already exists; any determination by the Security Council would be declaratory only, not creative of the legal situation.

It is therefore open, for instance, to a group of States, which may incidentally be members of the United Nations and of its General Assembly, to resolve to aid materially the Namibian liberation struggle. At the moment, three permanent members of the Security Council seem to shrink from the inescapable logical conclusion created for the world community under international law. In such circumstances the General Assembly may have an irrefutable right to decree appropriate measures.

The importance of making the international law of
human rights effective

"The dispute over Namibia... provides the most straight-forward challenge to international law of our time. Failure to resolve the problem may well be as serious a blow to the survival of the United Nations as a force for world peace as the failure by League of Nations members to react effectively to Fascist occupation of Abyssinia was to the League".

(The Namibians of South-West Africa, Minority Rights Group (1974))

SWAPO is intransigently committed to the furtherance of an effective international law of human rights. As is shown in the annex to this paper (paragraph 101) it would be our intention to accept for independent Namibia the full range of international obligations established by the profoundly important developments in this field. The Namibian people have suffered longer and more bitterly than almost any other nation from a situation in which human rights are trampled in the dust. Commitment is the fruit of experience; as is our perception that human rights are indivisible.

It has been necessary, and it may continue to be necessary, for SWAPO, on behalf of the Namibian people, to fight to bring to our enjoyment of fundamental

rights and freedoms. In this, we are actively and thankfully conscious of the benevolence of the outside world in general. We are also confident that our quest is legally justified and are certain that it will be successful; however long it may take and whatever sacrifices may be required of us.

Because we are dedicated to the furtherance of an effective international law of human rights as an essential prerequisite to international justice and international security we are convinced that the world has a vital interest in ensuring that its clear legal standards bearing upon Namibia are made effective by it. If it allows those standards to be flouted by South Africa (and by those who appear to support it) international law is to that extent undermined.

Self-determination for the people of Namibia and their future

In the annex to this paper we exhibit a Discussion Paper which has been circulating among Namibians since early 1975. It sets out some of our thinking on the political future, on how we shall realistically exercise our right of self-determination, on how we would hope the Namibian people will entrench the rule of law. It was prepared by SWAPO in full consultation with our branches and allies in Namibia. From it, it will be seen that we would hope that elections could take place for a constituent assembly at which the representatives of the people will freely determine their own future. While all Namibians, without discrimination, will have equal political rights, it is essential that genuine political freedom be maintained in this interim period by an international presence which will ensure the authenticity of the expression of the people's will.

We have already suggested that the adherence to human rights' standards has become deeply established among the Namibian people because of our experience of repression. Above all, we who have been placed under one of the most vicious forms of discrimination, are resolute to ensure equality before the law. This we will establish through non-discrimination legal provisions, accompanied by a full range of judicial and administrative remedies. The principle of non-discrimination has come to replace, in international law, the former and now largely discredited "minorities régimes" of between the wars. Africa has had too much experience of minorities seeking special rights and privileges. Only the South Africans, who have for years tried to set our people against one another and who wish to destroy our future task of nation-building, may endeavour to foist upon the Namibian people a divisive régime, discarded virtually everywhere else and unsuitable to our continent. Moreover, "minorities régimes" have historically been accompanied by external intervention. Namibia's independence when achieved will be guarded as fiercely as our humanitarian principles.

Annex IV

SWAPO Discussion Paper on the
Constitution of Independent Namibia

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Summary

1. This is a discussion paper, in no sense a final set of proposals. It is aimed at stimulating full and informed discussion of our constitutional future. It is for the people themselves to determine their constitutional future.
2. The constitution, while providing a clear legal framework, must be capable of adaptation to the needs of a developing state. The constitution is for the protection of all the people and for the advancement of their welfare.
3. SWAPO will consult the people about their future form of government. It will not participate in tribalistic talks aimed at the perpetuation of white South African rule.
4. The Namibian constitution can draw on the experience of other countries. But it must be geared to the particular needs of Namibia.
5. Namibia has special problems of history, geography, economic development. These must be taken into account. Its supposed "ethnic problems" have been blown up by South Africa for its own purposes.
6. Interim measures should include elections for a constituent assembly under international supervision. At this constituent assembly, the freely elected representatives of the people will agree on a constitution. When that constitution is accepted free elections for a Namibian government will be held under it.
7. Namibia should be a republic; English should be its official language.
8. All those born in Namibia, or resident there for 5 years prior to independence, should be entitled to citizenship.
9. The President should be head of the executive. He would be directly elected by the people. He would be assisted by a cabinet of ministers drawn from the Legislature.
10. A single-chamber legislature could be entirely adequate. But the people might wish to have a second house, a House of Chiefs, without legislative power, to exist as a second chamber.
11. SWAPO suggests a directly-elected legislature of 100 members, elected by simple majority vote in 100 constituencies which are approximately equal numerically. We reject as inappropriate to Namibian conditions any system of proportional representation. We believe that protection for minorities should be achieved by other constitutional means.
12. All Namibians over the age of 18 should have the right to vote.
13. The National Assembly would have sole law-making power and control of public expenditure.
14. There would be an independent state auditor.
15. The principle of an independent judiciary could be guaranteed by the appointment of a Judicial Commission and by security of judicial tenure.

16. There would be both central and customary courts.
17. To avoid the undesirable consequences of perpetuating South African Roman-Dutch based law, a high-powered legal commission, with international representation, would be appointed to report upon the adoption of a completely new legal system.
18. Acquired legal rights, including pension rights, would be maintained both in the event of the adoption of a new legal system and on the handover of sovereignty at independence.
19. The Attorney-General should be a political appointee, but the public prosecutor would be wholly non-political.
20. A Constitutional Court should be established. This would be final arbiter and guardian of the Constitution. To it would be referred all issues touching upon human rights or other issues of constitutional determination. The judges of this court, who would be subject to a special appointment procedure, would have a minimum period of tenure of 10 years.
21. We would appoint a Public Service Commission superintending appointments, terms of service, etc., in the various areas of the public service. The object would be to ensure as nearly as possible an impartial and efficient public service.
22. We are in favour of a rational system of local government while being totally opposed to any notional "regionalism" which was based exclusively upon tribal affiliations.
23. We propose a comprehensive bill of rights whose terms would closely follow those of the two United Nations Covenants of 1966 on Human Rights. Such a bill of rights would be fully enforceable against the executive and the rest of the state administration at the instance of the citizen, and would take priority over the terms of the constitution.
24. There will be comprehensive and effective anti-discrimination legislation. We pledge ourselves to eradicate the evil of racialism in all its forms.
25. SWAPO would advance for consideration the appointment of a minister whose portfolio would include responsibility for the furtherance of human rights in Namibia.
26. We propose the appointment of a Complaints Commissioner whose sole function would be the investigation and resolution of complaints of unfair administration in any area of the public service.
27. Namibia would be an active member of the United Nations and of the OAU, a non-aligned state. We would actively pursue the establishment of friendly relations with all states. Above all, we would end the international isolation of Namibia under illegal South African rule. Namibia would be an outward looking state.
28. SWAPO would advance for public consideration and view in a favourable light the idea of independent Namibia rejoining the Commonwealth.
29. We advance various possibilities of judicial appeal in matters of human rights to external or international organs.

30. Sovereignty in Namibia would remain with the people. They would be the final protectors of their liberty and receive education in the schools in the nature and meaning of their constitution.

A discussion paper

31. This document is not a Constitution. It is a discussion paper about a possible future Constitution. The people will make the Namibian Constitution.

32. SWAPO wants to discuss, with all the people, the outline of how Namibia will be, when we are free. So we have drawn up this paper which we want to circulate as widely as possible in Namibia. We hope to have it translated into many languages. It sets out some of our ideas. It repeats the principles for which SWAPO has struggled and suffered over many years. We sincerely and deeply believe in these principles. We also think that they reflect very closely the desires of the Namibian people. But, whatever we think, it will be for all the people of Namibia, after full discussion and debate in conditions of total political freedom, to decide their future.

What a Constitution Should Do

33. A Constitution is a series of rules within which the State is governed. It is the supreme law. It binds rulers and people. Within its boundaries other rules, the more detailed laws, are made. They can only be valid if they are not against the Constitution. If they are in breach of the Constitution, then the courts must declare them to be void and of no effect, and uphold the Constitution instead. A Constitution will set out the machinery of government and say how a president, a legislature, etc. should be elected, and what they must or may do. A Constitution must provide certainty in the state, show the way. It must also provide the means by which the wishes and desires of the people can be achieved, now and in the foreseeable future. If a Constitution is too rigid it will shatter into pieces once it is placed under real pressure. So it must provide for growth and development.

What a Constitution is Not

34. A Constitution is not an absolute guarantee against tyranny and official lawlessness. However good it may be, however many safeguards it may have, there is always a danger of despotism. In our discussion paper we have tried to set out, in some detail, how we would try to prevent this from happening.

35. In the end, the price of our freedom will be our continual vigilance, together with general acceptance of the basic rules. In our schools we will see that our children are taught about our Constitution so that they may know and understand it. Our people will know why the rules are as they will be. They will realize the need to defend these principles; if necessary with their lives.

36. Nor can, or should, a Constitution say what kinds of policies governments should follow. This is for the people, through their elected leaders, to decide. All the Constitution can do is to lay down the basic rules of fairness and of human rights which no government, of whatever political persuasion, may breach. These rules of fairness and of human rights are for the people. They are to defend them even against their leaders. The Constitution is for the protection of the people and for the advancement of their welfare.

The Tribalist "Round-Table"

37. SWAPO will not participate in the tribalist so-called "round-table" constitutional talks now convened for 1 September 1975. We believe them to be a farce. They are aimed at the perpetuation of white minority rule under which South African domination would continue. The whites would be supported by reactionary tribalists who have to look to the Boers for their support. These proposed talks are founded upon the evil basis of bantustan racialism. They are a public relations exercise, a stunt, in which white South Africans will talk to their puppets (most of whom are already in their pay). They are also aimed at trying to delude the world into taking away its growing pressure. They are a monumental exercise in Boer bad faith. They cannot possibly succeed because the Namibian people do not want tribalism. In throwing off the South African yoke we shall also remove the evil of their racialism.

38. On the other hand, SWAPO many times stated its willingness to have meaningful discussions with South Africa aimed at the establishment of a truly independent, democratic unitary state. We repeat them once again:

1. South Africa must publicly accept the right of the Namibian people to independence and national sovereignty;
2. South Africa publicly announces that Namibian territorial integrity is absolute, and not negotiable in any quarter;
3. All political prisoners are released, including Herman Ja Toivo and our many other leaders and colleagues on Robben Island and elsewhere;
4. The banning order on our Acting President is set aside;
5. The tyranny of R 17 under which Northern Namibia suffers must be removed;
6. All political exiles, of whatever political organization, must be allowed freely to return to their country without fear of arrest or victimization;
7. South Africa must commit herself to the removal of her police and army;
8. Our talks can take place under United Nations supervision, and are aimed at the holding of free elections in Namibia under United Nations supervision and control.

Other Constitutions

39. In drawing up our discussion paper, we have had wide expert consultations. We have looked at the constitutional examples of many other countries in all parts of the world. We have, for instance, examined closely the parallels in African constitutions, especially those of neighbours and friends such as Tanzania, Zambia and Botswana.

40. All of these, and many others, provide invaluable precedents and instances of how recurring problems have been worked out in the different societies of the world. Namibia, however, is an African state, and it is in the African experience that the closest parallels lie. But Namibia has its own problems and the Namibian Constitution, while taking other peoples' histories into account, must in all things be truly Namibian.

The Particular Situation of Namibia

41. A Constitution must relate to the real situation in the country, as well as to what the people wish the situation to become. What are the very particular Namibian realities? There will be many answers to this question. But we believe some of the critical features are as follows:

- (i) Namibia is a very large country with a small population. Distances between the centres of population are very large. There is a danger that some parts may be isolated, with such long lines of communication;
- (ii) The colonial power has been South Africa, a rich, powerful state on our very borders, which has sought to inflict the vicious evil of apartheid and bantustanization upon the Namibian people over many years. For its own purposes, it has tried to divide the people and perpetuate traditional and anachronistic tribalism;
- (iii) While Namibia could, with judicious policies, become one of the richer states of Africa, its economy is an unbalanced colonial one, requiring development in many ways. Moreover, the economic, social and political inequality imposed by South Africa upon the people is as profound as it is dangerous;
- (iv) It would be unrealistic, in the short term, to expect South Africa's unofficial meddling to disappear. We must attain genuine independence.
- (v) A part of the South African policy of continuing domination and unlawful rule has been deliberately to deprive our people of the education and training they will need to administer and develop the state. Many of our people have been driven abroad to seek the education to which they aspire, and many will return with independence. Moreover, the United Nations' Namibia Institute, now based in Lusaka, is an imaginative and excellent source of future technical talent. However, in the first year or so after independence, we are likely to need expatriate expertise.
- (vi) An aspect of apartheid-colonialism is that we have been ruled, often with great viciousness, by a white minority group. There is a danger that memories may be too long. Just as some whites will be unable to accept black majority rule, so also some blacks may be unable to accept the good faith of those whites who sincerely want to work for the democratic non-racial state of Namibia. Our Constitution must achieve the reconciliation of all Namibians of goodwill, providing effectively for their reasonable fears, as well as for their fulfilment, within the needs of the whole society.

The Essential Principles of Our Constitution

42. SWAPO has, over many years, repeated its essential conception of Namibia as an independent, unitary state. The borders of our territory are those of "South West Africa", including Walvis Bay, and no cession of any of our territory may be negotiated in any quarter. Our experience of persecution and racialism over many years has deepened our unqualified commitment to democratic rule, the eradication of racialism, the establishment of the rule of law and the entrenchment of human rights. Moreover, we reject absolutely any notion of bantustans masquerading as federalism. SWAPO is pledged to the idea of a unitary state. Of course, that does not mean that every governmental decision, however local its effects, must be taken centrally. As in all systems of government, some issues will be decided centrally, some locally, by devolution of power from the centre. But devolution must come from the centre; not transfer from South African-inspired "homelands".

Interim Measures: A constituent Assembly

43. It will be necessary to establish an interim administration operating with international help to supervise the formulation of an electoral register and the holding of elections for a constituent assembly. These elections must be preceded by a period of political freedom in which the parties may campaign to inform the people of their various constitutional policies. Such freedom does not now exist and elections held under South African auspices, as we have recently seen in the north, are a grim farce of trickery and intimidation.

44. On the basis of these results it will be for the people to decide - not for any individual or group - through their elected representatives, what kind of constitution, what form of government, they desire. We think that the constituent assembly's draft constitution should, in principle, then be put to the people in a second vote in a referendum. Once adopted, a second interim stage of government will take place leading to the holding of the first democratic elections for a government for Namibia. It is arguable that the second of these votes could be omitted. However, we feel that the whole people must be engaged in the birth of our state at each of its stages.

A Republic

45. It seems uncontroversial that our state of Namibia should be a Republic, with a President as its Head of State. We think there is little opposition to the name of our Republic being Namibia. We believe that its boundaries should be those of the old South West Africa together with the anomalous Walvis Bay enclave. It seems to us that the official language of the Republic of Namibia should be English.

Citizenship

46. Any person born in Namibia before or after independence should automatically become a citizen.

47. Any other person who had lived in Namibia for more than five years before independence might become a citizen by automatic grant if he or she so desired to be. Application would be within a fixed period of time after independence. Children born abroad of Namibians (men or women) should also be entitled to Namibian nationality.

48. Those who did not wish to assume Namibian nationality would, as in any other state, be aliens. They would not enjoy the full privileges of citizenship. But this, of course, would not mean that all aliens would be required to leave. They would have rights of residence in compliance with the aliens laws.

49. Nationality is a complex matter and detailed laws would be enacted on the subject. These laws would operate within the constitutional framework and without discrimination on grounds of colour, creed, race or sex.

A Presidential System

50. As a Republic, Namibia will have a President. Presidents may have merely formal powers; or they may exercise real executive authority. We think that the President of Namibia should be the executive as well as being the Head of State.

51. There are various ways by which a President can be elected, for various periods of time. He can be elected by direct popular vote, or he can, for instance, be elected by the legislature. We think that he should be elected by the people and that he should have a fixed term of office. Five years may be a good period. He would leave office whenever the National Assembly was dissolved. The first presidential elections in Namibia would take place at the same time as the first elections under the newly-adopted Constitution for a Namibian Government and National Assembly.

52. Assisting the President in making the policy of the state would be a Cabinet of Ministers drawn from the legislature. Under them would be the public officials of the state grouped in their various administrative departments.

53. It is arguable that there might also be a Prime Minister drawn by the President from the majority group in the legislature. Zambia, for instance, has both President and Prime Minister. We think this a matter of administrative convenience.

54. It is also possible that some Ministers might not be in the legislature, as happens in some countries. We, however, feel that it is important that Ministers administering departments of state should be directly answerable to the people's representatives in the legislature. Possibly, if there were a House of Chiefs (see below) one or two Ministers be drawn from this body rather than from the directly elected legislature. We think this a matter of judgement; and it would also depend on what kinds of function the Ministers had. It would also depend upon what kind of functions were attributed to any such House of Chiefs.

55. The President, as Head of State, would have certain vital roles. He would, for instance, be chief of the armed forces; he would appoint the heads of various bodies, such as judicial and public service commissions (see below). He might have the power of veto, in certain circumstances, over legislation. Ordinarily, we would expect President and legislature not to differ politically. But provision would have to be made, in the event of any clash. Possibly on certain issues the President would have primacy; whereas, in the main, the legislature would. If the President found it necessary to dissolve the legislature then his office, too, would be vacated and a simultaneous Presidential election would have to take place.

The Legislature

56. While SWAPO feels that a single-chamber legislature, directly elected by the people, would provide a satisfactory legislative organ, there are many precedents in Africa for a second chamber, a House of Chiefs.

A House of Chiefs?

57. Were such a second chamber to be desired, we feel that the various tribal groups should be entitled to nominate a member to the House. Arguably, certain other people of distinction could also be specially elected to such a chamber. The powers of a second chamber would, however, be essentially advisory. It could consider any matter and any proposed legislation and make representations to the National Assembly of directly elected members, or to the President. It is possible that one or two Ministers might be drawn from the House of Chiefs, though we feel that there might be certain political and practical disadvantages in such an arrangement. But this seems to us to be very much the kind of matter on which the people should decide.

The National Assembly

58. The National Assembly should consist of directly elected members. Elections would take place at least once every five years, though the power of dissolution before that time would rest with the President. On dissolution, there would also automatically be writs issued for elections to the legislature and to the Presidency. The Constitution would provide that the National Assembly would meet at least once every six months and that its session would continue until adjourned by the President.

59. We have considered carefully the question of electoral procedure. It is sometimes argued that a form of proportional representation based upon large multi-member constituencies is the fairest electoral system. It ensures a more mathematically exact representation of all groups submitting themselves for election. In this way, it ensures a measure of protection for minorities. We feel that some of these arguments have much persuasiveness, and we are most sympathetic to the idea of protecting minorities and to assuaging their reasonable fears. But we are firmly of the opinion that such protection should be created by other institutions in the Constitution, such as the judicial and public service commissions, the bill of rights, the independence of the judiciary, etc. We are convinced that the better system for Namibia will be one of small, single-member constituencies, in which members of the National Assembly will be directly elected on a simple majority system. The reasons for this are as follows. First, it is desirable that the electorate should feel as closely involved with the work of the National Assembly as possible through their local member. Second, the simple majority system should help to ensure the healthy development of political parties on a national, rather than a regional basis. Third, it should help to ensure that clear parliamentary majorities exist in the National Assembly.

It will be recalled that we have earlier stated that geographical, demographic and historical factors will make our process of nation building exacting. While it is necessary and desirable to ensure protection for legitimate regional and minority interests, this must be combined with a strong programme of nation building.

For these reasons, SWAPO strongly recommends the division of the country into roughly equal electoral constituencies by a Delimitation Commission associated with the Judicial and Public Service Commissions. Each constituency - there could, perhaps, be approximately 100 - would elect one member of the National Assembly. It will be a part of such a representative's duty to represent the interests of all his constituents, as well as attending to the business of the nation as a whole.

60. All Namibians over the age of 18, unless subject to special disqualification of standard type, may be elected and will have the right to vote. Persons who are entitled to be elected to the House of Chiefs will be entitled to vote for or be elected to the National Assembly.

61. The Assembly will have the exclusive power of making new laws, normally on the proposal of the Government. Together with an independent State Auditor, it will have the exclusive powers of raising taxes and of ensuring their legitimate expenditure. It will have the power to pass a vote of no confidence in the Government, forcing its resignation. In ordinary circumstances, however, it would be expected to provide the Government with a parliamentary majority.

62. In certain very carefully limited circumstances the Assembly might have power to amend the Constitution. A special majority for such amendment would be necessary. Alternatively, power to amend would be shared with the people, in whom sovereignty would remain.

The Law

63. The law would be administered by an independent judiciary.

64. Courts, both central and local customary, would be established throughout Namibia.

65. We feel that a new institution, not unlike the United States Supreme Court or the German Constitutional Court, should be created (see below).

66. Namibian law is at present based on the Roman-Dutch system. This system is limited to southern Africa. If we maintain it, we will maintain a mainly Afrikaans-based legal system which will isolate us from the rest of the world. Moreover, Afrikaans itself will gradually die out among the majority of the people. We believe that such a situation is highly undesirable. We are convinced that an autonomous Namibian legal system, using English as the language of the state, should be created. We would propose the appointment of a high-powered, independent group of legal experts, drawn from Namibia, Africa, the United Nations and certain specialist international non-governmental agencies, to investigate and advise on the creation of a new legal system for our country.

67. Whatever system was decided upon, the interim law would fully protect vested legal rights and titles, in property, commercial matters and personal rights and duties (Public service pension rights would also be preserved after independence).

The Judiciary

68. It seems to us quite essential that we should have a truly independent judiciary. This is a prerequisite to the establishment in Namibia of the rule of law and respect in all quarters for the law's impartiality. The law, under illegal South African rule, has been an implement in the repression of the Namibian people.

69. The judges should be insulated from any kind of political control. We are, however, anxious to ensure that the judiciary shall - in the most general terms - be broadly sympathetic to the needs of a developing African nation. At the same time, they must be men of firmness and integrity.

70. We believe that the President should appoint members of the Constitutional Court (see below), the Chief Justice, and the members of the Judicial Commission. We see no practical alternative to this proposal. However, upon appointment, such high judicial officers should have absolute security of tenure, insulated from the changing political scene.

71. As for the other High Court judges, including those of the Court of Appeal, and for magistrates and other judicial officers such as Registrars, they should be appointed by the President upon the advice of the Judicial Commission; whose advice would be binding on him. The Commission would be comprised of the members of the Constitutional Court and the Chief Justice. Their removal, for misbehaviour or incompetence, would likewise depend upon a finding by the Commission.

72. We tend to think that an Attorney-General should be a political appointment. He would be the chief legal adviser to the Government. But he would also have certain quasi-judicial functions, wherein he would have to act as an independent lawyer.

73. There would also be a Public Prosecutor, appointed by the Judicial Commission and removable only for cause. In the exercise of his functions he would be wholly removed, save in very exceptional circumstances, from political pressures.

A Constitutional Court

74. We are determined that our Constitution, once accepted by the people, shall prevail in whatever circumstances. Ultimately the people themselves in whom sovereignty shall remain, must be the guardians of their freedoms. They have the right and duty to resist tyranny.

75. However, we believe that a special Constitutional Court should be established as a kind of penultimate guardian of the Constitution; (the people are the final custodians). To it would be referred all matters arising in the ordinary courts bearing upon the interpretation of the Constitution, and, in particular, upon the Bill of Rights. But the Government would also have the rights to refer matters to the court for advisory opinions. Such matters might include the terms of proposed legislation.

76. The selection of judges for the Constitutional Court would be a matter of exceptional sensitivity given their functions. We feel that a case may be made out for national and international consultation. However, we believe that their selection would ultimately depend upon the judgement of the President of Namibia. Once appointed, the members of the Constitutional Court would sit for a minimum period of 10 years, and would be dismissible for cause found by a special tribunal; and only then.

The Public Service

77. We think it important to establish a tradition of impartiality and integrity among members of the public service. This would involve administrators, teachers, police.

78. To this end, as in certain other African states, we would propose a Public Service Commission, to superintend appointments, terms of Service, conditions for removal, of all such public servants. We believe that a member of the Judicial Commission might be its chairman. Other members should be appointed by the President.

79. We think that some officers - e.g. Permanent Secretaries in the various government departments - should be appointed by the President, though after consultation with the Public Service Commission.

Central and Local Government

80. One of the most difficult areas of modern government, in Africa as elsewhere in the world, is the division of functions between central and local government. How can efficient administration, which tend to large units and increasing centralization, be combined with the needs of people to be involved in decision-making, and avoid the dangers of remoteness? The problem has to be solved, because failure to resolve it may lead to a threat to the democratic process itself and alienation between leaders and people.

81. One answer has been to move towards regionalization, bringing public administration and service more closely into touch with local feeling. Another has been to democratise these services through special agencies; seeking to ensure the role of the people, and popular involvement, at all levels in official decision-making.

82. From this it will be seen that we perceive the problem of balancing central and local interests as part of a wider problem - the world-wide danger of totalitarianism arising from an alienated people and a centralized over-bureaucratic state machine.

83. The South Africans, in their own interests, have tried to exploit tribal differences in Namibia as part of the divide and rule policy. They have tried to stress and to exaggerate the differences between so-called ethnic groups, arguing that Namibia can never be one nation because of its racial variety. Thus, they assert, only a "federal" or "confederal" solution will work. In fact, the kinds of "federal" or "confederal" notions which they advance have nothing to do with the terms as accepted throughout the world, as they are understood, for instance, in the United States, Russia, Germany or Switzerland. They are simply another way of advancing tribalism, racist bantustans, enabling the privileged few to go on running the country.

84. SWAPO contemptuously rejects this specious thinking. It is either a device, or the product of psychosis. Almost every country in the world has a population which varies in language, religion, colour of skin. While others glory in this diversity, the apartheid clique of frightened little men cower away from this variety.

SWAPO is thus resolutely opposed to a system of devolution of government to local authorities with tribalist foundations. At the same time, it is clear that decisions in many areas of administration must be taken locally, at source. It may also be necessary to have a system of taxation which involves both general state taxes and local. We believe that these matters will require the most careful thought to ensure good administration and popular, democratic involvement. Namibia could, for instance, be divided into four regions - northern, southern, eastern, western - for certain administrative purposes.

85. However, we greatly doubt whether these matters need to be enshrined in the Constitutions of other unitary states and we see nothing so special or unique about Namibia to cause us to deviate from the general practice. Only the proximity of South Africa, with its racial psychosis, causes us to discuss it at this length. The organization of local government and the extent and manner of devolution from the centre should instead form the basis of ordinary legislation by the Assembly in accordance, as with any other legislation, with the Constitution. This is not to deny the need to give the matter very hard detailed consideration. But only real questions need be considered, not imaginary ones.

A Bill of Rights

86. It is customary, when drawing up constitutions for modern States, to include Bills of Rights. They take various forms, and their legal effectiveness varies also.

87. SWAPO will do all in its power to ensure that the Namibian Constitution includes a detailed and effective Bill of Rights. We are especially determined about this because the Namibian people, more, perhaps, than any other people who have been under colonialism, have suffered persecution, extermination, repression, wholesale denials of the most basic rights of man. This must never be allowed to recur here under any government. By the same reasoning we, who have suffered under the most evil form of discrimination, South African apartheid, are determined to eradicate this de-humanizing perversion in all its forms. Discrimination is indivisible. A state which permits discrimination in whatever form is in the end wholly corrupted by it.

88. Our Bill of Rights will include a comprehensive anti-discrimination provision, with machinery which will ensure its effectiveness. We will ratify the United Nations Convention Against Discrimination.

89. The Bill will reflect the developing international standards of human rights. We shall ratify the two United Nations Covenants on Human Rights - on Economic, Social and Cultural Rights, and on Civil and Political Rights. The rights protected will be based on these Covenants. We shall give consideration to the appointment of a Minister whose portfolio will include that of human rights - their advancement and enforcement.

90. We shall ensure that these rights are effective on behalf of the citizen. Our Constitutional Court will oversee their implementation in all situations.

91. It does not, perhaps, need to be emphasized that human rights' standards exist to protect the citizen against the state - normally, against the Government itself. Being available to all persons without discrimination, they will provide the single most effective line of defence for any minority; or, for that matter, for any majority.

A Complaints Commissioner

92. In recent years, a number of countries throughout the world have looked to a Scandinavian institution, the Ombudsman. The role of the Ombudsman is to deal with complaints by citizens against the administration. Such complaints are of misbehaviour which do not amount to breaches of the law but are instead of some kind of malpractice, usually unfairness.

93. In Africa the experiment of a Complaints Commissioner has also been tried. It appears to have had marked success, for instance, in Zambia and in Tanzania. In these cases, the idea has been adapted to African conditions.

94. SWAPO intends to ensure the most efficient and fairest administrative process possible. We recommend the study and adoption of this idea, as an additional safeguard available to all Namibians.

Foreign Relations

95. Properly speaking, the direction of Namibia's foreign relations is not a constitutional matter. As in other states, their conduct should be a part of executive action for which the President and Cabinet would be answerable to the people through the National Assembly.

96. However, SWAPO has always made clear its determination to ensure that Namibia is a non-aligned state, enjoying friendly relations with all nations. We would immediately seek membership of the United Nations and of the OAU.

97. SWAPO has had long experience of these international bodies, during the years in which it has provided the effective diplomatic representation abroad for the people of Namibia. Namibia will in the future play a full and active part in the affairs of Africa and of the world. In contrast to the long isolation of our country, while under unlawful South African occupation, Namibia will be an outward-looking state.

98. It has been suggested that independent Namibia should rejoin the British Commonwealth. This would be a restoration. South Africa was once a member; the League of Nations Mandate was granted to the British Crown and delegated to South Africa. We do not now see the British Commonwealth as an imperialistic body and we feel that the idea of re-joining the Commonwealth has much to recommend it to the Namibian people.

Constitutional Guarantees

99. Constitutions sometimes seem like scraps of paper, to be torn up by rulers at will. How do we obtain greater security for Namibia against any threat of despotism; whether of a man, a group, a majority - (for there is such a thing as tyranny by a democratically elected majority)?

100. We have tried to show, in this discussion paper, the range of protection to all citizens which would be available under the Constitution. This seems important, because despotism is often a creeping threat, rather than a sudden one; and we believe that our proposals contain many safeguards, many alarm bells.

101. We tend to favour the fullest participation in the United Nations Conventions and Covenants dealing with Discrimination and with Human Rights. We would, for instance, propose ratification of the Optional Protocol to the United Nations Human Rights Covenant of 1966, which would enable international actions to be brought against the Government in the event of its failure to respect the human rights of any of its citizens.

102. While a Constitution, however well-suited or just well-intentioned, cannot ensure liberty, it can make or destroy the people's freedom. It therefore is of the utmost importance, in our view, to ensure that the Namibian Constitution has as many checks and balances as are compatible with the founding of a new state, the building of a nation.

103. Whatever the guarantees, in the end freedom depends upon those who wish to enjoy it. Namibia will be as free as Namibians want it to be.
