consulted on the measures to be taken. It also called upon the authorities to examine the implications of its recommendations for the disposal of currently pending individual cases.

One member of the Commission – Professor Parra-Aranguren – dissented from its findings, conclusions and recommendations. He considered that every treaty had to respect peremptory rules of general international law, in this case those declaring fundamental human rights, and that ILO Convention No. 111 could not be interpreted to protect individuals advocating, even by peaceful means, ideas that were against those fundamental rights. In the opinion of the other members, one could not read into the Convention exceptions other than those provided for in the instrument itself, which sufficiently took into account the security needs of States. They also considered that there was no justification for placing wholly outside the protection of the Convention persons who had behaved lawfully and were in full enjoyment of their civic rights.

In a letter to the Director-General of the ILO dated 7 May 1987, the Government of the Federal Republic, while proclaiming its continued support for ILO supervisory procedures, indicated that it maintained its earlier position that existing law and practice were in conformity with Convention No. 111 and that it did not consider the Commission's recommendations to be justified. In view of that position, the Government did not intend to refer the matter to the International Court of Justice (a possibility provided for in the ILO Constitution).

The Government's negative reaction does not affect the validity of the Commission's conclusions and recommendations. Further developments will be examined by the ILO's regular supervisory bodies, in particular the Committee of Experts on the Application of Conventions and Recommendations, and could also be brought before the ILO Governing Body. Under the ILO Constitution, in the event of failure to carry out the recommendations of a Commission of Inquiry, the Governing Body may recommend to the International Labour Conference such action as it may deem wise and expedient to secure compliance with them.

It is to be regretted that a country which is so committed to the rule of law, and which by its Constitution is a notable rechtstaat, should feel that this important issue of international law should be decided unilaterally by the government involved rather than by a judicial instance. Article 37 of the ILO Constitution states that any question or dispute relating to the interpretation of an ILO convention 'Shall be referred for decision to the International Court of Justice.' It remains to be seen whether, in due course, the ILO will itself refer the issue to the Court.

ARTICLE

Preliminary Report on South Africa

by
Geoffrey Bindman*

Introduction

The International Commission of Jurists decided to send a mission to South Africa in the middle of 1986. They informed the Government of their intention through its ambassador in Geneva. He replied that a mission would be inappropriate at that time because of the State of Emergency which had just been proclaimed by the State President on June 12, 1986. The mission was accordingly postponed. In December 1986 – the State of Emergency still being in force with no sign of being lifted – the Commission decided to send a mission early in the new year. The mission left for South Africa on February 6, 1987 without further notice to the government.

The decision to send a mission reflected increasing international concern at reports of human rights violations and a breakdown of the Rule of Law. The suppression of dissent by harsh measures has been a feature of government policy in South Africa since the nationalists first took power in 1948, and severe condemnation of it has been regularly expressed by the International Commission of Jurists over that period. Recently, however, alongside and perhaps in response to increasingly united and determined opposition to the apartheid system both inside and outside South Africa, it appeared that the Government was mounting a more co-ordinated and ruthless assault on its perceived enemies than ever before, and was doing so by methods which flouted international human rights standards even more flagrantly.

The mission consisted of four lawyers from both practical and academic backgrounds: Geoffrey Bindman, a solicitor practicising in London; Jean-Marie Crettaz, an advocate in Geneva; Henry Downing, a Dublin barrister, and Guenter Witzsch, professor of public law in the University College of Munster, West Germany.

The terms of reference of the mission were general: to examine the degree of compliance in South Africa with the principles of international human rights law, as embodied in the Universal Declaration of Human Rights and other relevant instruments. The mission was asked to pay particular attention to a number of spe-

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cific topics, including human rights in the homelands, trade unions, the repeal of the pass laws and other discriminatory legislation, the security situation, legal services in rural areas and the independence of judges and lawyers. In addition they decided to investigate the treatment of children under the legal system, the state of education and the suppression of free speech and political activity.

A programme of meetings and visits was arranged. The team began with a series of meetings in Johannesburg and then divided into two pairs. One travelled to Bophuthatswana and then to Port Elizabeth and Ciskei. The other to Durban and Cape Town where they were later joined by the other pair. The whole team then went to Bloemfontein and spent a final few days in Pretoria and Johannesburg. They met a wide range of practising and academic lawyers, judges, community workers, political and trade union leaders, human rights activists and ordinary residents of townships. At the end of their stay they met Government officials and the deputy minister of Law and Order.

The team had secretarial assistance throughout which enabled them to record and transcribe virtually all their interviews. They obtained copies of many affidavits, court documents, reports and publications relevant to their enquiry. They wish to express their deep gratitude to all those who devoted so much time and effort to helping the mission in its task. A detailed report of the findings of the mission will be published as soon as possible. The present article may be regarded as an interim report.

The South African government is unique in its continuing adherence to a policy of legally enforced racial segregation. This policy has been employed to maintain the concentration of political power in the hands of a small minority of the population, largely consisting of white persons of Afrikaner descent. The result of recent moral and economic pressure from within South Africa and from abroad has been to force a degree of relaxation in the formal structure of apartheid but the will of the ruling minority to retain power seems undiminished. This has posed a dilemma for the Government: a strategy of political suppression, in which the rule of law and respect for human rights have a low priority, seems necessary to achieve the suppression of the huge disenfranchised majority; yet the acknowledgement of such a strategy undermines the credibility of the Government and weakens its pretensions to legitimacy within the Western liberal tradition. It has a more practical disadvantage as well: it threatens the commercial and cultural relationships with other countries, especially the Western democracies, on which the cherished lifestyle of the white minority depends.

We have concluded that the Government has resolved its dilemma in favour of an uncompromising assault on what it perceives to be the organised extra-parliamentary opposition. Plainly it is attempting as best it can to disguise and soften its strategy within a framework of legalism, aided by the imposition of restrictions on the publication of information about what it labels as 'unrest'. The latter is claimed to be the work of subversive forces operating often through ostensibly peaceful and lawful organisations. The paramount state interest in defeating the enemy is held to justify secrecy and the wholesale abrogation of human rights. We, however, remain unconvinced that the scale of the danger matches the Government's claims. Nor could the measures taken be justified even if those claims were valid.

1. Legitimacy of the Government

The whites, who alone vote for membership of the House of Assembly, constitute some 18% of the population. The House of Assembly has 178 members, the House of Representatives ('coloured') has 85 members, and the House of Delegates ('Indian') has 45. The last two were created under the 1983 constitution which also established the President's Council. In the event of disagreement between the houses of Parliament about any legislation, the President's Council, which is heavily weighted in favour of the ruling National Party, decides which point of view should prevail. When, in 1986, the Government wished to strengthen its security legislation, the Representatives and the Delegates rejected the Bills passed by the Assembly. The Bills were thereupon enacted by decree of the President's Council.

Apart from certain domestic and uncontroversial matters which are left to the 'coloured' and Indian houses, the white House of Assembly is the only effective legislative body. While it is not uncommon for governments to be formed in democratic countries by parties for whom less than half the electorate has voted, the unique feature of South Africa is the exclusion from any participation in government of the great majority of its citizens. This is so even if one were to regard as valid the 'homelands' policy which led the government unilaterally to replace for some 8,000,000 people their South African citizenship with a dubious homeland citizenship. The denial of the franchise has led some black defendants in treason and other trials to reject the jurisdiction of the courts and we have considerable sympathy with their attitude. However, while we believe the legitimacy of the South African government to be seriously in question, it is plainly in de facto control of the country. In whatever form, the government cannot escape responsibility for meeting the requirements of international law in relation to human rights.

2. The legal structures of apartheid

We acknowledge that there has been some relaxation in the legal regulation of apartheid in recent years. This is especially so for what has been termed "petit apartheid". The Reservation of Separate Amenities Act of 1953 legalised the provision of separate buildings, services, and conveniences for different racial groups. It did not compel segregation but permitted it to be enforced by local or state ordinance. Since 1979 there has been a policy of granting blanket exemptions to legalise multi-racial use of facilities. The Government has in recent years discouraged what Prime Minister Vorster described as 'unnecessary and purely irritating race discriminatory measures not essential to separate development'. But during our visit four young girls were prosecuted in Durban accused of unlawfully bathing from a beach reserved for whites and – a well-publicised case – a black schoolboy was refused participation in a national sporting event by the governors of the white host school.

The Immorality Amendment Act of 1957 and the Mixed Marriages Act of 1949 have been repealed but the Group Areas Act still prevents couples living

together across the colour line without Government permission. The reluctance of the Government to waive the requirements of that Act is illustrated by its refusal even to allow its own Ambassador to the EEC, Professor Ranchod, to reside in a neighbourhood designated for whites. The abolition of the pass laws which affected black people only has been hailed by the Government as signalling the demise of apartheid but it is a limited advance. Influx control is just as effectively imposed by the enforcement of other laws. The Illegal Squatting Act criminalises residence in an unauthorised area and empowers the authorities to remove a person to any other land which the Minister may designate. The enforced deprivation of South African citizenship for those consigned to the 'independent' homelands makes their presence outside those homelands illegal unless they can establish permanent residence to the satisfaction of a hostile bureaucracy. Those who still have South African citizenship cannot move without home and job to go to – a virtual impossibility in present circumstances.

The Restoration of Citizenship Act has also been hailed as a progressive change and undoubtedly it marks a turning point from the policy which sought to exclude every black person from South African citizenship. The Government has evidently recognised that this policy cannot be fully implemented – the people in the non-independent homelands are refusing independence because they can see that conditions in those homelands that have opted for independence are even worse than in South Africa itself. But citizens of the independent homelands who now see the possibility of reclaiming South African citizenship will often be disappointed. Only those already permanently resident with home and job outside the homelad will qualify, and they will also be at the mercy of bureaucratic discretion which will rarely be sympathetically exercised.

Experienced observers to whom we spoke saw the abolition of the pass laws as part of a new Government strategy to by-pass the courts: instead of prosecuting offenders publicly in the courts, an administrative discretion is substituted which the judges cannot easily supervise, for example to decide whether a person without a new identity document shall be returned to his 'homeland'. Another illustration of that strategy is the substitution of 'voluntary' for forced removals. In reality, the scale of forced removals remains considerable. Some 64,000 were moved from their homes in 1986, although the Government had claimed in 1985 that there would be no more forced removals. The Group Areas Act ensures that black people will not be allowed to remain in areas coveted by white people, or where white people object to their proximity. Removals have recently been threatened at Brits in Transvaal and at Lawaaikamp in the Eastern Cape. Both were deferred in the face of public protest but there is no reason to suppose that they will not be carried out when outside interest flags. In the Brits case the removal is alleged to be justified by insanitary living conditions, but these were plainly the fault of Government neglect and the real reason is the desire of the neighbouring white suburb to expand its boundaries. At Lawaaikamp it is again the initiative of the neighbouring white town of George which owns the site and relies on its propietary rights to seek the eviction of a whole township.

The structure of apartheid remains untouched by the cosmetic changes which the Government has so far made.

No changes are proposed in the segregated public school system. Even the Group Areas Act could be repealed without threatening white domination. Perhaps even the Population Registration Act, on which the segregated franchise depends, could be sacrificed in the last resort, but so long as it remains, the Government's claim that it is dismantling apartheid will be a hollow one.

3. Education

Another major area of policy in which there is no sign of the abandonment of apartheid is education. Segregation in schools is a cornerstone of the doctrine of white domination and the policy of the National Party has been to ensure a separate and inferior education system for black people. Verwoerd was responsible for introducing 'Bantu education' in 1953. It was designed to equip black children for the menial role which the apartheid system imposed on them.

The schools provided for black children have meagre resources compared with the schools for whites, and the curriculum has excluded subjects necessary to prepare them for higher education and admission to skilled and professional occupations. There is gross discrimination in the funds provided by the State for black and white children. Per capita expenditure is six times greater for white children than for black. Those black children who have gained admission to universities either belong to the very small minority who have been accepted in church or private schools or they have succeeded by exceptional ability and hard work to overcome the huge disadvantages of the public education system. Black students have in recent years protested vigorously against the discrimination inflicted on them and have been in the forefront of anti-apartheid activity. Boycotts of schools have taken place across the whole country. In consequence children have been the target of violent repression by the State. Police and soldiers have carried out arrests on school premises and have, by their constant presence, provoked resistance which is then held to justify arrests, detentions and violent assaults including many killings of children by the security forces. We consider the powers and conduct of the security forces in more detail later.

In an attempt to persuade the Government to change their education policy and to involve the parents and the community in decision-making, a National Education Crisis Committee (NECC) was established in early 1986. Its consultative conference in Durban in April was attacked by busloads of Inkatha vigilantes. The conference nevertheless concluded its business and decided that the national schools boycott should be ended and the children should return to school notwithstanding the failure of the Government to meet its demands for reforms in the system. On their return to school it was intended that the students should implement 'people's education' rejecting the inferior structure provided by the authorities.

The Soweto uprising of 1976 was a protest against education policies. It was the planned commemoration of the anniversary of Soweto on June 16, 1986 which led the Government to declare a State of Emergency on June 12. The NECC has been severely hampered since then by the detention of many of its leaders. Those who were not arrested have had to go into hiding to avoid arrest. Many schoolchildren have been detained and are still in detention. We were told

that children who have been released from detention have great difficulty in being re-admitted to school. They are excluded on the instructions of the security police.

We paid special attention to the problems of black people in gaining access to the legal profession. The number of black lawyers is – obviously – far less than the proportion of black people in the population. Those who come from government schools have the extremely difficult task of passing examinations in latin, a subject which is not normally taught in black schools. We were told that at the University of Cape Town, for example, black students may have to extend their studies by up to two years to achieve the minimum latin qualification, which the Government has recently made more stringent.

Those black students who succeed in passing the professional examinations still have to surmount the hurdle of gaining acceptance by a firm of attorneys as an articled clerck or as a pupil in advocate's chambers. We heard strong criticisms of the failure of the professional organisations to make adequate provision for the admission of black lawyers and the Chairman of the Bar acknowledged that his branch of the legal profession had failed to come to grips with the problem. For example, we were told that there were only two black advocates in regular practice at the Johannesburg Bar. We were assured that the Bar was now fully aware of its responsibilities and was urgently seeking ways of fulfilling them. In particular the financial difficulties facing many advocates starting practice were more likely to affect young black advocates because they were less likely to have sources of funding. For this reason more scholarships were being given.

4. Trade Unions

Trade union law is one area in which the industrial bargaining power of black workers, coupled with the desire of the Government to make South Africa attractive to overseas investment, has led it paradoxically to increase the rights of black people. In 1981, discrimination in industrial relations law was removed in the amended Labour Relations Act of that year. Shortly afterwards the mainly black but in principle non-racial Congress of South African Trade Unions was formed.

COSATU has been seen by the Government as a political danger because of its uncompromising opposition to apartheid and its collaboration with the opposition United Democratic Front. The UDF is an umbrella organisation covering some 640 religious, sports, labour, business, community and other groups. COSATU's members have been subjected to gross harassment during the State of Emergency including the arrest and detention without charge of many of its leaders. We were informed that several unions had been threatened within a short period of time with eviction from their offices. It seemed that this must have been a co-ordinated tactic and it was strongly believed to have been orchestrated by the security police.

When industrial action takes place, albeit resulting from purely industrial grievances, it has become common practice for employers to call the police who then arrest the strikers and thereby put them under pressure to end their action. The limitations on the legal right to strike in the Labour Relations Act make it easy enough to justify arrests even if the police do not choose to rely on their powers under the Emergency regulations. In some cases the police have urged strikers to return to work and have even sought to address strike meetings. Such partiality by the agents of Government is plainly inconsistent with the policy of free collective bargaining embodied in the legislation.

5. The Security Laws

The official policy of separate development, begun after the election of the Verwoerd government in 1948, was accompanied by the introduction and refinement of a body of legislation designed to suppress extra-parliamentary opposition – supposed by the Government to be the work of communists. Hence the Suppression of Communism Act of 1950, in which communism was defined in such wide terms as to make it illegal even to advocate any form of socialism. When the government wished after Sharpeville in 1960 to outlaw the African National Congress, which had become a widely popular and dangerous thorn in the side of the Government, even their notion of communism could not be streteched to cover all opposition to apartheid. The Unlawful Organisations Act of 1960 therefore authorised the banning of any organisation which in the opinion of the Minister threatened public safety or the maintenance of public order. This Act was used to ban the ANC and the Pan-African Congress, and a number of other organisations subsequently. The Appellate Division held (in South African Defence and Aid Fund v. Minister of Justice, 1967) that a banned organisation had not even the right to be heard in order to challenge the making of such an order.

Individuals regarded by the authorities as subversive could also be the subject of banning and restriction orders which could impose huge and infinitely variable limitations on their freedom, including: prohibiting attendance at gatherings; confinement to a particular place or area or exclusion from a place or area; house arrest; prohibiting communication with any person (even a spouse living in the same home); and regular reporting to a police station. Any 'listed' person is excluded from practising as a lawyer. The Suppression of Communism Act gave the State President power to ban any publication if satisfied that it furthered the objects of communism.

The Publications Act of 1974 has become the main instrument of censorship now in South Africa. A committee appointed by the Minister of Home Affairs may declare any publication 'undesirable'. The criteria are very wide, including any material harmful to the relations between any sections of the inhabitants of the country or prejudicial to the safety of the state, the general welfare or peace and good order. There is a right of appeal to a Publications Appeal Board whose members are also appointed by the Government.

Except when questions of statutory interpretation arose, the jurisdiction of the courts was virtually excluded under the security and censorship legislation just described. Until after 1980, the willingness of the courts to interfere even when they might have been able to do so was rare. For example, statutory provisions which left important decisions affecting personal liberty to the opinion or discretion of a Minister were treated as if they excluded the jurisdiction of the courts totally. A bolder attitude has begun to emerge more recently.

Since 1963, legislation has permitted detention without charge or trial on the authority of the Government or even a single commissioned police officer. The

law permitting detention is now consolidated in the Internal Security Act, 1982. The Act defines the powers of Government in relation to the banning of organisations, gatherings and individuals, search and seizure and detention powers.

It also creates or confirms a series of security offences of which the principal ones are terrorism, subversion, sabotage and advancing the objects of communism. Terrorism, like the common law offence of treason, carries the death penalty. Its essence is the commission of violence with the intention of overthrowing the State. It is so widely defined, however, that it includes the mere encouragement of the threat of violence 'to achieve, bring about or promote any constitutional, political, industrial, social or economic aim or change in the Republic' or 'to induce the Government ... to do or to abstain from doing any act or to adopt or to abandon any particular standpoint.'

There are many other criminal offences, both at common law and created by statute, which may be used in security or political situations. Murder and treason, both of which carry the death penalty, are the most obvious, but charges of sedition and intimidation are not unknown. Most frequently used is the common law offence of public violence with which very large numbers of people, especially young people and children, have been charged in connection with 'unrest' in black townships.

Detention under the Internal Security Act without charge is permitted both for the purpose of preventing wrongdoing and in preparation for trial on a criminal charge. Section 28 permits preventive detention of those who, in the opinion of the Minister, are likely to commit security offences or otherwise to engage in activities which endanger the security of the state.The courts have up to the present held that the merits of the Minister's decision are not reviewable. In1985, however, the Supreme Court in Natal held that the Minister must give reasons for his decision and these reasons must be sufficiently specific to give the detainee a fair opportunity to make representations against his detention. However, the Minister is under no obligation to pay any heed to those representations, save that if he rejects them he must submit his decision to a review board. Unfortunately the Government appointed review board functions in secret, no legal representation is allowed before it and its deliberations and recommendations are not disclosed. It falls far short of an effective safeguard.

Section 50 of the Act gives another power of preventive detention which enables any police officer to detain a person for a period of 48 hours, which can be extended by a magistrate for up to 14 days. An amendment in June 1986 has added s.50A, which allows detention for 180 days, renewable, without even the safeguards of s.28. The object of this amendment, which was eventually forced through by the President's Council after the Houses of Delegates and Representatives rejected it, appears to be intended to supply the extended powers of detention on a permanent basis which would otherwise only be available in a State of Emergency. Had the measure not been delayed by the other Houses the Government might not have felt the need to declare a State of Emergency on June 12, 1986.

Section 29 permits detention for the purpose of interrogation of any person whom any senior police officer has reason to believe has committed or intends to commit any security offence; such persons may be held incommunicado for

what is in effect an indefinite period; the Act allows detention until the Commissioner of Police is satisfied that the detainee has satisfactorily replied to all questions or that no useful purpose will be served by any further detention. The court has asserted jurisdiction to adjudicate to a certain degree on the merits of a detention under s.29 because the statute requires that the officer making the decision to detain has 'reason to believe' the facts which are the basis of his right to do so. Judge Leon in Natal, following the celebrated dissenting judgement of Lord Atkin in the second world war British House of Lords case of Liversidge v. Anderson, held that this was an objective requirement which the court was entitled to review by reference to the evidence. The Appelate Division upheld the decision (Hurley v. Minister of Law and Order) by which the release of the detainees – a church worker whom we met in Durban – was ordered. However, it is important to note that the court's jurisdiction only goes to the validity of the initial decision to detain. It does not allow the court to question the continuing justification for detention. Evidence of illegal conduct, such as torture, which might be challenged before the court can rarely be obtained because s.29 detainees may be held incommunicado, without access by legal advisers or even members of their families. Nor hitherto have the courts believed that they have jurisdiction to order a s.29 detainee to be brought to court to give evidence on his own behalf or otherwise. (Schermbrucker v. Klindt, 1965). There are, however, indications that some judges would be prepared to over-rule that decision.

Provision is made for regular visits by a magistrate and by the district surgeon (both government employees) and for a review after six months detention by a review board appointed by the State President. These safeguards have proved inadequate. Detainees are at the mercy of security policemen whose function is to extract information or confessions. Since 1963 at least 60 detainees have died in custody in suspicious circumstances. The cases of Steve Biko and Neil Aggett are among the few which have become widely known. Nor have the judges recognised sufficiently the unreliability of confessions obtained under the inevitable stress of this situation. The routine rejection of all such confessions might bring an end to this form of detention.

A further form of pre-trial detention arises from the power granted by s.30 of the Act to the Attorney-General (a Government prosecutor, not an elected politician as in Britain) to veto the grant of bail to those charged with security offences, over-ruling the decision of the judge. In the Pietermaritzburg treason trial of 16 UDF leaders the court found a procedural defect in the Attorney-General's attempted exercise of his veto which resulted in bail being in fact granted (though subject to stringent conditions) (S.v. Ramgobin). Apart form such fortuitous loopholes, this power, which usurps an essentially judicial function, is absolute and unchallengeable.

The most remarkable and Draconian power of pre-trial detention is the power to detain witnesses. Section 31 permits the detention of 'any person likely to give material evidence for the State in any criminal proceedings' for a security offence. Such persons may be detained for up to six months before the relevant trial takes place and thereafter for as long as the trial takes. No information is made public about the identity of such detainees.

In the Delmas treason trial several de-

tained witnesses have already given evidence who have almost certainly been held since well before the beginning of the trial in January 1986. One of our members was told by the Attorney-General of the Transvaal that it is the practice to keep potential witnesses incommunicado to avoid their being influenced by family or lawyers. The evidence of such witnesses is inherently unreliable, yet the judges usually accept it. Its unreliability is demonstrated by the fact that, occasionally, courageous witnesses who have been detained in these circumstances (including one at the Delmas trial) have subsequently denounced the police when brought to court and have refused to give evidence supporting the prosecution case.

6. The State of Emergency

It may be wondered why the Government should wish to seek even greater powers than those described above which are part of the permanent law of the land. As the leading South African authority on security laws (and one of the Government's sternest critics), Professor Anthony Mathews of the University of Natal, has said: "'Ordinary' and permanent legislation has already brought about a ninety-per-cent destruction of the rule of law and put the country into a permanent state of emergency. When, on top of this, an emergency is declared under the Public Safety Act of 1953, the tattered remnants of the rule of law are stripped away for the duration of the crisis."

The 1953 Act empowers the State President to declare by proclamation that a state of emergency exists within the Republic or any area thereof. A proclamation is not subject to legal challenge. Having proclaimed an emergency he has power to proclaim such regulations as appear to him to be necessary or expedient for maintaining public safety or public order and terminating the emergency or dealing with circumstances pertaining to the emergency. The Act empowers him to make different regulations for different areas and classes of person, and, importantly, to delegate authority to make orders, rules and by-laws. Before 1985 these powers had been used only once: after Sharpeville in 1960. On July 21, 1985 they were used to declare a state of emergency in certain areas. It was lifted on March 7, 1986 but on June 12, 1986 the present emergency, covering the whole country and still in force, was proclaimed.

The regulations issued on June 12 were wider in scope than those granted under the earlier emergency. The principal regulations, issued by the State President, include a power of arrest and detention by the most junior soldier or policeman for up to 14 days, infinitely extendable by secret, unchallengeable decision of the Minister. Section 3(1) of the regulations says 'a member of a Force may, without warrant of arrest, arrest or cause to be arrested any person whose detention is, in the opinion of such member, necessary for the maintenance of public order or the safety of the public or the person himself, or for the termination of the state of emergency, and may, under a written order signed by any member of a Force, detain, or cause to be detained, any such person in custody in a prison.' After 14 days the person must be released unless the period is extended by the Minister.

The regulations prohibit the making, possession or dissemination of subversive statements – defining 'subversive' so widely as to cover virtually any criti-

cism of the status quo; they gave the State President power to outlaw and seize any publication deemed by him to threaten the interests of the state; they prohibited the publication of any information about police activities in relation to any 'unrest' incident; they granted an indemnity to members of the security forces against prosecution or civil liability arising out of their unlawful acts done in good faith; and they purported to oust the jurisdiction of the courts to adjudicate on the lawfulness of the regulations or anything done in reliance on them. A bewildering profusion of local regulations were issued by divisional police commissioners under delegated authority including detailed restrictions on funerals, curfews, banning of the possession of T-shirts and emblems of 47 organisations in the Eastern Cape, prohibition of school pupils being outside their classrooms in school hours, prohibition of dissemination of statements made by 119 named organisations in the Western Cape, prohibition of gatherings convened by named organisations in the Witwatersrand, prohibition of loitering in the whole of KwaNdebele. Breach of any regulation is a criminal offence but few charges have been laid for such breaches because detention without charge is simpler – and it avoids the need to bring the accused before a court.

The other major advantage to the Government is the ability to legislate by regulation without going through parliamentary processes. The myriad detailed regulations which have been issued would bring Parliament to a halt if they had to be the subject of legislation. Of course, another question is why the South African government, already having given virtually unlimited power to its forces, should feel the obligation to provide legal authority for every action. It is paradoxical that a government which violates on a massive scale the rule of law as understood by all civilised nations should attach importance to narrow legalism. The Government's attempt to exclude the courts from supervision of the Emergency regulations has not been wholly successful. The courts have refused to acknowledge the ouster clauses, taking the view that their power to determine the validity of delegated legislation is inherent in their constitutional function. Furthermore, relying on doctrine asserted by the English courts, they have declared certain parts of the Emergency regulations ultra vires or void for uncertainty. In other cases they have ordered the release of emergency detainees on grounds analogous to those discussed in relation to detentions under the Internal Security Act. The fact remains, however, that very few indeed of the detentions under the emergency have been succesfully challenged. The number of detainees since June 12, 1986 is estimated at about 25,000 – no exact figure is known. Of these some 40% are believed to be children under 18.

The behaviour of the security forces in black townships has been removed from public scrutinity. The burden of proving bad faith to defeat the immunity rests with the complainant. It is a virtually insurmountable burden. We were informed of only one case in which a police officer has been prosecuted for violence during the emergency. That case is still continuing.

The security forces have in effect been given a free hand to act without legal restraint. The width and uncertainty of the legislation, the self-assurance of the police and the evident determination of the Government to suppress dissent by any means necessary have created an atmosphere of terror in the townships. In

relation to the media they have caused all but the bravest publishers and journalists to become self-censors, fearful of offending an all-powerful executive.

7. The suppression of opposition to apartheid

The State of Emergency has been used as a means of preventing ordinary peaceful political activity. The formation of the UDF to oppose the new constitution in1983 was accompanied and followed by many public meetings, the essence of democratic organisation. The Government has chosen not to ban the UDF – it would be difficult to do this without banning all its 600 or so affiliated organisations, many of which are manifestly innocuous church groups – but it has evidently determined to do everything short of banning to impede its activities. The Internal Security Act of 1982 empowers any magistrate to ban any meeting within his area or to impose conditions on the holding of meetings. The Government may ban any meetings anywhere. Since the State of Emergency was declared meetings have been routinely prevented for any groups having a remotely political purpose. The UDF in particular has been unable to hold public meetings. The Emergency regulations specifically ban advocacy of 'alternative structures' illustrating the Government's concern to prevent the growth of alternative systems. The people have generally refused to accept the legitimacy of the officials and councillors appointed or sponsored by the Government.

The Government has also widely used the powers of arrest and detention which it has given itself under the Internal Security Act and the Emergency regulations to put out of circulation its political opponents. UDF leaders in all parts of the country have been detained for flimsy reasons. Although the courts have held that reasons for detention can be demanded, it is very easy for the police to give specious reasons which cannot easily be challenged. For example, it is regularly claimed that the detainee is suspected of membership of the ANC, a banned organisation. The courts do not investigate such claims and hitherto have refused to order the detainee to be brought to court to give evidence which might refute them. It has already been pointed out that leaders of COSATU and the NECC have been put out of circulation in the same manner.

A further example of harassment of the UDF is the treason trial now taking place at Delmas, near Pretoria. We attended court and were able to talk to several of the defendants during the lunch break. The 19 defendants include leaders of the UDF, among them its National Secretary. Thirteen of them have been detained for more than 18 months, bail having been refused on three occasions. One of our members attended one of the bail hearings. Bail was refused on the ground of 'national security' but there was no evidence of any threat to national security – the court accepted the Government's argument that it could not disclose the evidence because to do so would, in turn, risk national security.

The same member of our mission was also present at the earlier treason trial at Pietermaritzburg. Sixteen UDF leaders were brought to trial, ostensibly for treason and other security offences but the real objective appears to have been to incapacitate the UDF by putting its leaders out of circulation. The Government withdrew the case after it had become clear that Mr. Justice Milne would not accept its claim that the UDF, contrary to its pretensions, espoused violence and was so closely linked with the banned ANC as to be identified with all its policies. In Delmas, an executive-minded judge may be more likely to accept this claim than Mr. Justice Milne was prepared to.

8. Children

The number of persons detained under the emergency regulations since June 12, 1986 is believed to be in the region of 25,000. Of these it has been estimated that about 40% were children under the age of 18. The Detainees' Parents Support Committee (DPSC) has recently estimated that 10,000 children under 18 have been detained of whom 8,500 are under 17. Any figures which are obtainable are likely to be inaccurate. The Government is obliged to disclose the number of current detainees at the beginning of each session of Parliament. Up to February 12, 1987 the Government has released the names of 13,194 persons detained since the start of the present emergency. (Weekly Mail, 20-26 March, 1987). But these figures do not include those who, at the time when each set of figures was released, had been detained for less than 30 days. Furthermore, they do not include those who were detained under the Internal Security Act or who were held in custody awaiting trial or who were serving prison sentences following conviction. Furthermore, the Government's figures have been shown to be incomplete. We have seen one illustration: a letter from the Minister of Law and Order denies the detention of a named individual, yet a letter from the local police of the previous day acknowledges that he was detained by them. There is also confusion and uncertainty over the identity of detainees listed by the Government. The names are often mis-spelt and no information other than the name is disclosed. We were told that many families have been unable to trace children who may be detained but who may have been killed. The DPSC's Johannesburg office has recently published statistics relating to the detention of children in the district which they cover up to February 5, 1987. They record 885 children under 18 who have been detained since the start of the emergency. In Southern Transvaal 537 children aged 17 and under remain in detention. Of those detained in this area only three are known to have been charged with any offence. Among children who have been detained there are several aged 10, 11 and 12. At least four of the latter, who are identified in the DPSC report, have remained in detention since the start of the emergency and are still detained. Many have complained of assaults, some serious, which have been verified by medical examination following release.

The numbers of children who have been held in police cells awaiting trial is much larger. The Minister of Law and Order told parliament that in 1986 58,962 children aged 17 or under had been so detained. The average period of such detention was not stated. Many would undoubtedly have been subsquently released on bail and either acquitted or given non-custodial sentences. On October 15, 1986, according to the Minister of Justice, 2,677 children aged 17 or under were being detained in prison, of whom 254 were aged 15 or under. These figures do not include 2,280 small children (of whom 1,880 were black) who were staying in prison during 1986 with

their imprisoned mothers.

These bald statistics do not explain the special position of black children in the political struggle which is taking place in South Africa from which follows their prominence among the detainees. What has been described as the 'War Against the Children' stems from their vigorous resistance to discrimination in the segregated school system. The disturbances in Soweto in 1976, ruthlessly quelled by the police who took many lives, arose from the refusal of pupils to accept an inferior curriculum imposed by the Government. Because the segregated education system is a cornerstone of apartheid, the movement to change the structure of education and place control of the schools in the hands of the community is seen as an attack on the whole political system. If the community is allowed to control its schools it will not stop here; it will demand control of all political institutions. This explains also the Government's determination to suppress the UDF which has actively promoted the development of 'alternative' self-governing structures within the townships.

Children have thus been the particular target of violent repression. The security forces patrol the townships in heavily armoured 'Casspirs' and 'Hippos'. (Other kinds of police vehicles have been labelled 'Zola Budds' and 'Mellow Yellows'). They are looking for trouble and they provoke it. Stones are thrown; there is a violent response – often with rubber bullets, tear-gas or bird-shot. Even such 'non-lethal' weapons have caused serious injury or death. In the worst cases, shotguns and rifles are used. This was so at the Langa massacre of March 21, 1985, when 20 people were killed by the police (17 of them shot in the back).

Following an 'unrest' incident, a school boycott or other alleged breach of the law there are frequently arrests, sometimes of very large numbers. (On September 12, 1985 the police arrested 745 pupils of Hlengiwe High School in Soweto and detained them for a day and a night at Diepkloof prison before they were released without charge (S. Afr. J. Hum. Rts., vol. 1, p. 300)). Frequently, children are charged with public violence, a common law crime which carries a maximum sentence of 10 years imprisonment when tried before a Regional Magistrate. On being arrested children are detained at police stations and subsequently at prisons, often with adults. The prisons are grossly overcrowded. We were informed by the Deputy Minister of Law and Order that he would much prefer the children to be held at rehabilitation centres, but, unfortunately, none were provided for black children, only for white.

In police stations and prisons, physical abuse of children, including torture, is widespread. Electric shocks have been administered, and 20 instances of tear-gassing in prisons have been acknowledged by the Minister of Law and Order in Parliament. Beatings and assaults with sjamboks are commonly reported and we saw photographs of children bearing scars evidently the result of violent attacks. Two members of the mission saw children in Ciskei who bore marks of torture eight months after police interrogation. They said the police had whipped them with metal-tipped sjamboks and with strips of rolled wire, as well as scalding them with boiling water and burning plastic. The children complained that they had been denied medical treatment.

There are estimated to be many hundreds of public violence cases being conducted throughout the country against children and young people. The Black Sash in Cape Town has recently monitored such cases and supplied us with the results of their work. Those charged with unrest-related offences are often refused bail and there are long delays before cases are brought to trial. In a very high proportion of cases, the charges are withdrawn at or shortly before the trial or the accused are acquitted. The Black Sash states that of 234 cases in the Cape Town and Boland area from January to October 1986, only 17% of those charged were convicted in court. The remaining 83%, who must be presumed innocent, have suffered severe hardship with little hope of redress. They have been punished and had their lives disrupted by what must in many cases be the improper use of legal processes.

Those who are convicted often receive what we regard as excessively harsh sentences. A four-year sentence is not unusual, even when the child is a first offender for whom an alternative non-custodial sentence should be found. We were informed that the Minister of Law and Order had decreed that no remission of sentence should be granted in public violence cases, thus making clear that it is seen as a political offence.

One member of our mission was in court in Cape Town in October 1986 when two Supreme Court judges refused to vary sentences of 7 years imprisonment on a number of youths aged be0tween 16 and 20, all first offenders, the violence in question amounting to no more than punching a man in the face, causing bruises, setting fire to some curtains and breaking a window. Another case which shocks the conscience is that of the 13 year old Zachariah Makhajane who was detained without charge under the Emergency regulations on August 21, 1986. There had been disturbances at his school some months previously but they had long subsided. When his mother applied to the court for his release the police filed evidence saying that Zachariah was a leader of the Students' Representative Council and was alleged by a teacher who was unwilling to be identified to have threatened to chase children out of classrooms. A Supreme Court judge refused to order Zachariah's release in a judgement which makes no reference to the boy's age, though he plainly must have known it. An appeal to a full bench of three judges, which included the Judge-President of Transvaal and another judge who is generally regarded as the most liberal of the Transvaal judges, was dismissed on the ground that it had not been shown that the police had failed properly to form the opinion that detention was necessary for the maintenance of public order. Yet alternative possibilities were available: the child could have been put in care, or he could have been prosecuted for an offence if there was any evidence of any offence. It is impossible to defend the conduct of any judge who authorises the continued imprisonment of a 13 year old child in these circumstances.

The violence being done to children in South Africa ought to be of great concern to the Government because of the long-term effects on the society as well as on the children themselves. It is difficult to understand why the government allows the present barbarous situation to continue. The disruptive effect of detention and imprisonment of children on their families may be devastating. On the children themselves, we heard from child psychologists that the effect may be disastrous and permanent. Post-trau-

matic stress disorders are common and it may be impossible for many such children to re-integrate into normal society. The policy of excluding children released from detention from school seems not merely cruel but a recipe for future social dislocation.

9. The administration of justice and the judicial system

The constitutional system in South Africa makes Parliament supreme. The judges are bound by their oath of office to apply the law passed by Parliament. They have discretion in certain aspects, such as sentencing; they have responsibility for interpreting the law; and, as we have seen, they can determine the validity of subordinate legislation. Given the evident intention of the Government to deny human rights to the majority of its citizens, how far do these powers enable the judges to protect human rights? And how effectively do they use the powers they have?

Two recent studies of the attitudes of the judiciary from 1910 until 1980 have criticised their excessive readiness to support the policies of the government at the expense of individual freedom. (Corder – "Judges at Work", and Forsyth – "In Danger for Their Talents"). However, this tendency has been less marked in more recent years.

The judges see themselves as belonging to the same professional tradition as the English and American judges, in which a high degree of technical competence and independence from the executive are valued. Their positivist approach to their function leads them to exclude overt political influences and to assume an obligation to give effect to the intention of Parliament regardless of their personal view of its wisdom or morality. They are criticised by such distinguished academic lawyers as Professor John Dugard for failing to take sufficently into account the fundamental libertarian and egalitarian principles of Roman-Dutch law. It is certainly evident that many judges do not apply any presumption in favour of personal freedom when the release of detainees is sought. Moreover, it is quite obvious from the expressed attitudes of many judges that they support apartheid and the policies of the Government towards those who oppose it. Thus the claim to independence is not wholly justified. The judges are appointed by the Government and there have been a number of very obviously political appointments in the past by which the Government has sought to ensure that the courts will not upset state policy. We accept that judges are now more generally appointed on merit, but the predominance of executive-minded judges ensures that the courts will generally reach decisions which accord with the Government's wishes.

In the last two or three years some judges have demonstrated a degree of independence by ruling against the Government in a number of cases where they have had to interpret the Internal Security Act and the Emergency regulations. In four important areas the courts have been able to restrain the executive in order to protect individual liberty:

a) although arrest and detention under s.3(1) of the Emergency regulations requires only the subjective opinion of the arresting officer, the court has insisted that a bona fide and genuine opinion should be formed. In at least one case, the release of a detainee has been ordered on this ground.
b) a court has ruled that an emergency detainee is entitled to be given the reasons for his further detention beyond the initial 14 days, and in one very recent case a judge has ordered release on the ground that such reasons were insufficient.
c) some parts of the Emergency regulations have been declared void for uncertainty and some actions (such as the seizure of a newspaper wrongly alleged to include illegal statements) held to be outside their scope.
d) the interpretation of the law and the regulations has in some cases prevented the Government from action which they intended or believed the regulations permitted them to take. For example, clauses purporting to oust the jurisdiction of the courts to interpret the regulations have been held ineffective, and the explicit exclusion of access of lawyers to detainees has been held not to mean what it says. The latter decision is, however, at present under appeal.

Unfortunately, some of these 'liberal' decisions have been reversed by the Appellate Division and others have been nullified by the Government amending the law. It is plain that the Government will not allow an adverse decision to stand if it inhibits its freedom to detain whomever it wishes to detain. It is therefore obvious that the judges, however courageous and independent, can mitigate only marginally the impact of the security laws. At the same time, their presence on the bench lends undeserved credibility to a legal system in which personal and political freedom are left unprotected. We discussed this dilemma with several judges, most, but not all, of whom are regarded as liberal. We were impressed by their concern to assure us that they would in no circumstances be prepared to accept any intruction from the Government save in the form of a law properly enacted. We were also impressed by their obvious awareness of the fundamental injustice of the system of which they were part. None of them was a Government supporter. They all felt they were justified in continuing to sit on the bench, and it was apparent that questions of individual liberty were not a regular part of their judicial work. This is the effect of the Government's policy of keeping 'security' cases out of the courts: judges are largely occupied with commercial disputes, divorces, motoring cases and 'non-political' crime. Consequently, they rarely need to face up to the conflict inherent in their participation in a repressive legal system. Whether any judge should continue to hold office under the present South African government and constitution is a moral question for each individual. Most of the black lawyers and political leaders with whom we discussed the question thought the 'liberal' judges should resign, but it was generally acknowledged that resignation would have little impact unless it was accompanied by public exposure of the reasons for resigning. Two judges were believed to have resigned in recent years in protest against Government action but they had not acknowledged it publicly. Other leading advocates were believed to have refused judicial appointments.

The judges have been criticised not only on account of their participation in a legal system which denies basic rights to personal liberty. It has also been claimed that in administering the ordinary law, they have made decisions which seem inhuman and have imposed excessively harsh sentences. We have

given examples of sentences on children for public violence and the Makhajane case is another example (see above). This applies even to some of the 'liberal' judges.

10. Human rights in the homelands

There are ten homelands of which four are described as independent: Transkei, Venda, Bophuthatswana and Ciskei. The non-independent homelands are for practical purposes governed as if part of South Africa – certainly as regards security matters. The self-governing homelands have their own security laws and separate judicial systems, though the Supreme Court judges are generally seconded from the South African judiciary. However, the human rights record of the independent homelands is even worse than that of South Africa proper, perhaps to some degree because they are less exposed to critical scrutinity by the international community. We have found an abundance of evidence that any political dissent is harshly suppressed, that detainees – including children – are brutally tortured by a police force which closely collaborates with, or is supervised by, the South African security forces.

Though the judges are as independent as are the South African judges, they show even more reluctance than their colleagues to stop abuses of power by the executive branch of government. It may be that they have even less confidence that their orders will be obeyed.

The level of encroachment upon the rule of law appears to vary among the homelands. Venda and Ciskei have the worst reputation. We have described the evidence which we saw of torture of children in Ciskei. We heard Dean Farisani describe his arbitrary detention and brutal treatment by the security police in Venda.

In Bophuthatswana a Bill of Rights is embodied in the Constitution. In theory at least it provides for the possibility of the annulment by the Supreme Court of Government actions and even Parliamentary legislation. There is also an ombudsman with wide powers to investigate citizens' grievances. Many citizens nevertheless feel themselves powerless to enforce their civil rights, particularly their right to voice dissent and to organise political opposition to the Government.

11. Legal Aid

The Rule of Law depends not only on the availability of fair legal procedures, an independent judiciary and laws which recognise basic human rights; it also requires that citizens have access to the law to defend their rights.This means that those who do not have the means to pay for legal representation in matters where their liberty is at stake must be provided with it at the expense of the State.

The provision of legal aid in South Africa is wholly inadequate and the money supplied by the Government for this purpose falls far short of the sums provided in comparable legal systems. The need for legal aid is particularly marked in South Africa where a very large number of trials are continously taking place in which the accused, if found guilty, can face long terms of imprisonment and even the death penalty. In 1985 164 South Africans were hanged and the 1986 figure is unlikely to have been very different. The antiquated pro Deo system provides legal representation in capital cases – this means that a very junior advocate is deputed by the Bar to take the case for a nominal fee, paid by the Bar. Many advocates in South Africa have had their first experiences of conducting criminal cases by defending black people charged with murder; experienced advocates are too occupied with well paid cases to undertake pro Deo work. Other impoverished defendants, that is virtually all those who are black, must rely on the help of those who are able to represent them without charge or who can be paid from charitable sources, usually from outside the country.

The Legal Resources Centre, with offices in Johannesburg, Cape Town, Port Elizabeth and Durban, does sterling work together with a number of attorneys and advocates in private practice who are willing to risk harassment and even detention to ensure that proper defences are presented at least in political cases. A measure of the risk is that at least five lawyers whose cases were brought to our attention have been detained during the present emergency while engaged in their professional work. The harassment of lawyers so as to discourage them from carrying out their duties is manifestly improper and itself undermines the rule of law.

Particular difficulties are experienced by those faced with prosecution in rural areas. There are few lawyers practising in such areas and those that exist are almost invariably dependent on the white property owners for their income. Consequently they feel unable or are unwilling to represent black people apparently in conflict with the established order. The few progressive lawyers are almost all based in the major cities. Some of these told us that they are prepared to travel to rural areas but the distances are often so great that they can handle only a limited number of rural cases. They also complain of obstruction from the prosecutors, from the police and even from the magistrates. It must be remembered that the magistrates in South Africa are government servants and usually favour the prosecution in political cases. Defence lawyers coming from the city complain of discourteous treatment, being made to wait for local lawyers to have their cases dealt with, and being summoned to the court to make formal applications which could have been dealt with by correspondence. When defence lawyers seek to instruct local lawyers to act as agents they often decline to do so on political grounds.

There are also complaints that attempts to establish local advice centres in rural townships are thwarted by the police – advice workers have been detained under the Emergency. There have recently been proposals to appoint peripatetic salaried lawyers to advise the inhabitants of rural townships, but funds are not provided by the Government for this purpose and private funding is scarce.

12. The security forces and the security state

South Africa is sometimes referred to as a police state. If this expression means that the state is run by the police unrestrained by the Rule of Law, then South Africa comes close to fulfilling the definition. This is so on two levels. The police (and the Government) do not comply with the law as passed by the Parliament, but in any event the law passed by Parliament does not consti-

tute the Rule of Law because it excludes the judges from any power to safeguard human rights.

What we have said already demonstrates that the police have virtually unlimited powers to arrest and detain and have little to fear from the courts. There is little evidence of disciplinary action taken against the police in cases where they have been manifestly guilty of gross abuses. For example, the Legal Resources Centre in Cape Town had obtained an interdict against the Minister of Law and Order and the police to restrain further assaults on the residents of some of the squatter camps in the area of Crossroads. Notwithstanding the interdict, attacks were mounted by vigilantes and police (established by photographic as well as overwhelming eye-witness evidence) which, on June 9 and 10, 1986, led to the eviction of some 60,000 people and the destruction of their homes and property. When the case came to court again for the interdict to be made final, the Government conceded the case. Yet no disciplinary action or court action has been taken against the police notwithstanding their gross contempt of court. Also in the Cape Town area was the notorious incident of the 'Trojan horse' when three children were shot dead by policemen who emerged from boxes on top of an unmarked lorry and opened fire. After the killings they arrested several people in the neighbourhood and charged them with public violence, alleging that they were throwing stones. When the case came to court in late 1986 the police were unable to produce any credible evidence and the case was dismissed. No prosecution or any disciplinary action has been taken against the policemen responsible for the killing.

In exercising control over the townships there is compelling evidence that the security forces take advantage of the existence of significant numbers of black people who, whether for ideological or economic reasons (we suspect more commonly the latter) are prepared to assist the authorities to quell the opposition. The Government seeks to evade responsibility for much of the violence in the townships by ascribing it to 'black on black' conflict. Manifestly, there are fierce differences of viewpoint between black people. Sometimes these may be the legacy of ancient tribal rivalries, but they appear to be much more frequently the result of the apartheid system, which creates desperate competition for scarce resources.

The black groups which support the authorities are generally known as vigilantes. In Natal the Inkatha movement led by Chief Buthelezi fulfils this role. In the Cape Town area, the vigilantes are called 'witdoeke' an Afrikaans word referring to the white armbands which many of them wear. The evidence of collusion with the police in the Crossroads affair is overwhelming. The 'comrades' are the young opponents of apartheid who generally support the UDF. Government support for those who are prepared to attack the comrades may take the very tangible and attractive form of money payments, priority in housing and employment and the provision of weapons. In the case of Inkatha, the Government may not be directly involved, but Chief Buthelezi's own political power as Chief Minister of the KwaZulu homeland gives him a similar interest and power to reward his supporters. We have seen no evidence that Chief Buthelezi has been personally involved in the rash of recent murders of UDF supporters in KwaMakutha, KwaMashu, and other places in Natal, but the evidence of Inkatha involvement is strong. A recent academic study of disturbances in the area concludes that by far the greatest number of them have been initiated by Inkatha members.

A recent tendency has been for vigilantes to be recruited into the police – either the South African police force itself or the local township police. These 'kitskonstabels' (instant cops) are given minimal training and sent into townships where they are not personally known. Many are driven to join the police by severe unemployment and some have been driven to suicide by the hostility of their families or the agony of concealment. The increasing use by the Government of its economic power over black people to compel them to police each other is another way in which it seeks to perpetuate minority rule.

Another sinister developement noted by many observes is the establishment of a network of 'joint management committees' (JMCs). The National Security Council is the body responsible for State Security. Its members are key cabinet ministers and leading generals and policemen. Directly accountable to it is a series of regional security committees and answerable to them are JMCs in almost every town in the country. Each JMC is chaired by the senior policeman or army officer in the neighbourhood and its deliberations are kept secret. Its functions appear to be to monitor dissent and discontent in its area and then to take appropriate action. That may include genuine redress of local grievances by the expenditure of its apparently limitless funds; it may also include alerting the police to the existence of unwelcome dissent, which can lead to detention or prosecution. We heard several stories of actions taken by the JMCs which overrode or by-passed the elected authority in the area. It is clear that a secret parallel system of government has been created which can operate independently of the formal constitutional structure.

Albeit concealed behind a smokescreen of disinformation, censorship and legal formality, the apparatus of the police state is already well established in South Africa.

The recent general election for the white House of Assembly increased the size of the National Party's majority, and gave the Conservative Party more seats at the expense of the liberal Progressive Federal Party. This shift to the right suggests that the policy of repression is more likely to be intensified than relaxed, and that violations of human rights and the Rule of Law will continue to cause misery and bitter resentment among the disenfranchised black majority of the population.

We have drawn attention to the growing marginalisation of the judicial system, by the removal of its jurisdiction to safeguard individual liberty, by the prompt re-introduction of regulations which courts have held ultra vires, by the renewed detention on fresh pretexts of those whom judges have ordered to be released and by the failure of the government and its agents to respect judicial decisions. Since the election a striking example has occurred in the expulsion from South Africa of the representatives of the BBC and Independent Television News for filming scenes of violent police assaults contrary to regulations which at the time when the filming took place the Supreme Court had struck down.

These policies undermine the Rule of Law and the independence of the judiciary. They encourage unjustified deprivation of liberty, violent physical assaults

and torture, which according to the evidence, are perpetrated extensively by the security forces, who are heavily armed and subject to little if any restraint. Whatever genuine fears the government may have about the threat of violent opposition to its rule, its measures in self-defence go far beyond any which could be justified under the international law of human rights, even in the most extreme circumstances. The exclusion of judicial safeguards is far more strict than in other countries where terrorism is notoriously prevalent, such as Israel and Northern Ireland.

Both the policies themselves and their object, the maintenance of the domination of the majority by a minority, are legally and morally indefensible. The object cannot be achieved without escalating violence and must surely be abandoned urgently.

BASIC TEXTS

Declaration on the Right to Development

General Assembly resolution 41/128 of 4 December 1986

The General Assembly,

Bearing in mind the purposes and principles of the Charter of the United Nations relating to the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom,

Considering that under the provisions of the Universal Declaration of Human Rights everyone is entitled to a social and international order in which the rights and freedoms set forth in that Declaration can be fully realized,

Recalling the provisions of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights,

Recalling further the relevant agreements, conventions, resolutions, recommendations and other instruments of the United Nations and its specialized agencies concerning the integral development of the human being, economic and social progress and development of all peoples, including those instruments concerning decolonization, the prevention of discrimination, respect for, and observance of, human rights and fundamental freedoms, the maintenance of international peace and security and the further promotion of friendly relations and co-operation among States in accordance with the Charter,

Recalling the right of peoples to self-determination, by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development,

Recalling further the right of peoples to exercise, subject to relevant provisions of both International Covenants on Human Rights, their full and complete sovereignty over all their natural wealth and resources,

Mindful of the obligation of States under the Charter to promote universal respect for and observance of human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Considering that the elimination of the massive and flagrant violations of the human rights of the peoples and individuals affected by situations such as those resulting from colonialism, neo-colonialism, apartheid, all forms of racism and racial discrimination, foreign domination and occupation, aggression and threats against national sovereignty, national unity and territorial integrity and threats of war would contribute to the establishment of circumstances propitious to the development of a great part of mankind,

Concerned at the existence of serious obstacles to development, as well as to the complete fulfilment of human beings and of peoples, constituted, inter alia, by the denial of civil,