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SOUTH AFRICA

ORAL STATEMENT BY AMNESTY INTERNATIONAL TO THE 47TH SESSION OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS

FEBRUARY 1991

SUMMARY

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On 5 February 1991 Amnesty International made an oral statement on its concerns in South Africa to the United Nations Commission on Human Rights in Geneva, Switzerland. The worldwide human rights organization remains concerned at continuing reports of incommunicado detention, torture and extrajudicial executions in South Africa despite recent government initiatives to reduce violations of basic civil and political rights.

The government has so far failed to repeal laws which allow indefinite incommunicado detention without trial and which grant security forces immunity against prosecution. Last year more than 1,500 people were detained incommunicado without charge or trial. There were frequent reports of assault and torture in police custody with at least 18 people dying under suspicious circumstances. In only one of these cases did the government order a full, judicial inquiry.

Security forces were once again responsible for killing unarmed civilians during peaceful demonstrations last year and the government has still to act on the recommendations of a judicial commission of inquiry which harshly criticized police conduct.

Commissions of inquiry and the Supreme Courts in Natal and Johannesburg have heard credible evidence of security force involvement, either covertly or through partisan policing, in killings and other acts of violence against members of opposition organizations. Despite this, the government has still not brought to justice members of the security forces who were found to have committed human rights violations.

Amnesty International is calling for the repeal of laws which allow indefinite incommunicado detention, for full investigations into all reports of torture or ill-treatment of prisoners, for those responsible for human rights violations to be brought to justice and for members of the security forces to be held fully accountable for their actions.

This summarises a 5 page document, Oral statement by Amnesty International to the 47th Session of the United Nations Commission on Human Rights, February 1991 (AI Index: AFR 53/05/91), issued by Amnesty International in February 1991. Anyone wanting further details or to take action on this issue should consult the full document.

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ORAL STATEMENT BY AMNESTY INTERNATIONAL TO THE 47TH SESSION OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS

Mr Chairman,

In the year since State President F W de Klerk's dramatic speech opening the South African Parliament in February 1990 the government has taken some initiatives to reduce violations of basic civil and political rights. In addition to the announcement made by the State President last Friday regarding his intention to repeal the fundamental laws of apartheid, we note among these initiatives the lifting in February 1990 of restriction orders imposed on some 700 people; the release of prisoners of conscience and other political prisoners detained without charge or trial under the nationwide state of emergency or serving terms of imprisonment; and a dramatic decline in judicial executions from more than 100 each year to only one in 1990, as a result of a moratorium on executions and amendments to death penalty laws, and a judicial review, currently underway, of the cases of several hundred people under sentence of death.

However, Amnesty International remains concerned that serious human rights violations still occur and that specific concerns raised by the organization in its statement to the UN Ad Hoc Working Group of Experts on Southern Africa in 1989 have yet to be addressed. Insufficient action has been taken to prevent the assault and torture of detainees, often held incommunicado, and some have died as a result. The government has so far failed to repeal laws which permit indefinite incommunicado detention without trial and grant indemnity to the security forces against prosecution, provisions which facilitate human rights abuses. The government has failed to take adequate steps to investigate and bring to justice members of the security forces implicated in the torture and killing of government opponents.

During 1990 the security forces used their powers under the terms of the nationwide state of emergency, the Bophuthatswana state of emergency, newly invoked "Unrest Areas"

regulations and the Internal Security Act to detain more than 1,500 people incommunicado and without charge. These provisions allowed arbitrary detention to occur, as well as imprisonment for peaceful political activities. In Amnesty International's experience incommunicado detention facilitates torture. The UN Special Rapporteur on torture has recommended that incommunicado detention should be limited and eventually declared illegal since so many reports of torture occur under such circumstances. It is not surprising that during 1990 there were frequent reports that detainees in South Africa were assaulted and tortured.

A number of released detainees, including a prominent member of the African National Congress (ANC) and South African Communist Party, Mac Maharaj, brought charges of assault against the police. On occasions, the courts issued injunctions against the police after receiving evidence of the torture or ill-treatment of untried detainees. On 22 February 1990, for example, the Supreme Court ordered the police to refrain from further assaulting an Internal Security Act detainee, David Madurai, who alleged that the police had subjected him to beatings, partial suffocation and threats of electric shock torture after stripping him naked, while he was held at police headquarters in Durban.

Certain police stations, notably Welperdiend, near Carletonville, have been repeatedly named as places where torture has occurred. At Welperdiend, the victims were predominantly 15 to 20-year-olds who have described being beaten, kicked, suspended upside down on an iron bar, partially suffocated and given electric shocks. A local doctor was reported in early October 1990 as estimating "conservatively" that he had treated at least 30 youths with burn marks from electric shocks inflicted in police custody at Welperdiend. Police officials announced at the end of July 1990 that the methods used at Welperdiend were under investigation, but there has been no announcement of their conclusions. Since July there have been further allegations of the torture of detainees at Welperdiend.

At least 18 people died in police custody under suspicious circumstances last year, two of them at Welperdiend. In the case of 16-year-old Mbuyiselo "Nixon" Phiri, the police acknowledged that he had died during interrogation at the police station in January 1990. In early October 1990 the Deputy Attorney General of the Transvaal was reported as saying that the evidence in his possession suggested that "Nixon" Phiri had died of an epileptic seizure and made no reference to possible prosecutions. However, an independent pathologist concluded from his post-mortem examination that the boy had died as a result of a cerebral haemorrhage associated with external injuries.

In the aftermath of only one of the 18 deaths in custody last year did the government order an independent judicial inquiry into the circumstances. Mr Justice R J Goldstone concluded that Internal Security Act detainee Clayton Sizwe Sithole committed suicide but described the provisions under which he was held at the time of his death in January 1990 as

"drastic" and making "serious inroads into the normal rights and privileges of every citizen".

The security forces' lack of accountability, particularly to the courts, is of grave concern when it results in unnecessary and large-scale loss of life. In 1990 the security forces were once again responsible for killings of unarmed civilians which amounted to extrajudicial executions, using lethal force held to be unnecessary not only by government opponents, but also by senior judicial officials. Article 3 of the UN Code of Conduct for Law Enforcement Officials stipulates that "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty".¹ Yet this fundamental principle has been routinely violated in South Africa.

In Sebokeng on 26 March 1990, five people were shot dead and 161 others wounded when the police fired on a peaceful demonstration organized by the United Democratic Front. A further 127 people were wounded, seven of them fatally, by the police on the same day. Following a public outcry the State President ordered a judicial commission of inquiry - a decision seldom taken following previous killings. The investigating

¹ UN General Assembly resolution 34/169 of 17 December 1979. This standard has been confirmed and reinforced by the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, approved by consensus by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders on 7 September 1990 and welcomed by the UN General Assembly in its Resolution 45/121 of 14 December 1990. Articles 4 and 5 stipulate that:

Article 4: "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

Article 5: Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimize damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment."

judge strongly criticized the undisciplined conduct of the police in the main incident where the majority of killed and wounded were shot from behind and noted other serious examples of irregular conduct on the part of the police. He concluded that the behaviour of the police, in opening fire with lethal ammunition without any prior warning to disperse a crowd which posed no credible risk to their lives, was unlawful and unjustified. He criticized, in particular, the conduct of one police sergeant who shot dead four other people in separate incidents on the same day. The judge recommended that the Transvaal Attorney General investigate the conduct of the 30 policemen who shot live ammunition into the crowd, as well as the conduct of four named police officers, with a view to bringing criminal charges against them. Almost five months later, the decision of the Attorney General is still not known.

The findings of the judicial commission make it apparent that the police violated international standards in this incident and appear to have committed extrajudicial executions. Amnesty International is urging the government to ensure that police committing unlawful killings in such circumstances are brought to justice in accordance with Article 7 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.²

During the violence which swept through the black townships around Johannesburg in late 1990, persistent allegations were made of security force complicity in killings and other acts of violence, which were largely carried out against members and supporters of the ANC and allied organizations. The nature of the alleged complicity ranged from a failure to act impartially to covert involvement in assassinations. Numerous similar allegations have been made in Natal province, where credible evidence of unlawful conduct and partisan policing by the security forces has been heard by the courts since 1987 and as recently as September 1990. In addition, credible evidence of the security forces involvement in covert assassinations has recently been presented to various commissions of inquiry and the Johannesburg Supreme Court. Indeed, the latter has just determined a libel suit against two newspapers by the police by ruling that there was evidence to corroborate allegations by former Security Police Captain Dirk Coetzee that he obtained poisons from police forensic laboratories to be used to kill ANC members and had carried out cross-border raids against ANC members on official instructions.

A judicial commission of inquiry into alleged security force involvement in political assassinations, appointed in February 1990, concluded in its report later in the year to the

² Article 7 states:

"Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law."

government that a covert military unit, the Civil Cooperation Bureau, was involved in attempted assassinations of government opponents as recently as 1989. The victims included Dr Fabian Ribeiro and his wife, killed in 1986. The commission concluded that the Civil Cooperation Bureau, which had been established with the approval of the Minister of Defence, in its operations against ANC members and others identified as "enemies of the Republic", had "arrogated to itself the powers to try, to sentence and to punish persons without those persons knowing of the allegations against them or having had the opportunity to defend themselves". The commission judge recommended that the Attorney General investigate further a number of cases of assassinations and attempted assassinations with which he found Civil Cooperation Bureau members linked. There is no indication yet that the Attorney General has made a decision in these cases.

In the context of discussions about amnesties for political prisoners, there are fears that the authorities are considering granting an indemnity to members of the security forces who have been responsible for torture or extrajudicial executions.

Mr Chairman,

In Amnesty International's view, the Government of South Africa needs to take immediate action to repeal all legislation providing for indefinite incommunicado detention without trial and to bring all laws fully into accordance with the standards set out in international human rights instruments. The government should state publicly and unequivocally that the torture and ill-treatment of prisoners will not be tolerated. Formal procedures to ensure that all such allegations are subjected to independent and impartial investigations should be established. Those responsible for human rights violations should be brought to justice. In particular, individual members of the security forces must be held accountable for the human rights violations which they commit or authorize. The government faces the major challenge this year of taking concrete measures to make the security forces accountable for their actions and thereby contributing to the establishment of the rule of law in South Africa.

Thank you, Mr Chairman.