

REPORT OF THE COMMISSION OF ENQUIRY
INTO COMPLAINTS BY FORMER AFRICAN
NATIONAL CONGRESS PRISONERS
AND DETAINEES

AUGUST 1992

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1017 Innes Chambers
Pritchard Street
Johannesburg
2001

31st of August 1992

The President
African National Congress
Shell House
51 Plein Street
JOHANNESBURG
2001

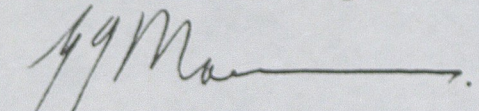
Dear Sir,

re: COMMISSION OF ENQUIRY

1. I have pleasure in furnishing you with a copy of the report of the Commission of Enquiry into complaints by former African National Congress prisoners and detainees. The report represents the unanimous view of all members of the Commission.
2. You will be separately furnished, in due course, with the following:
 - 2.1 The typed record of the oral evidence.
 - 2.2 Statements made by witnesses.
 - 2.3 Exhibits.
 - 2.4 A schedule containing the names of the witnesses who testified, the property lost by them, and various ancillary matters.
 - 2.5 A schedule of the names of persons against whom allegations of maltreatment were made during the course of the enquiry.
3. The terms of reference of the Commission contain an undertaking that the report of the Commission will be published "subject only to the deletion of the names of persons mentioned in the report where this is considered appropriate by the Commission for reasons of privacy, reputation, safety, confidentiality or the like". You will observe that our final

recommendation is that this report be released to the public as soon as possible. We consider that the report in its present form should be so released. The matter referred to in paragraph 2 above, except for the items mentioned in paragraph (ix) of our recommendations, is not intended for public release.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'ADV Marcus', with a horizontal line extending to the right.

ADV GILBERT MARCUS

Tel: 20 4311
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1017 Innes Chambers
Pritchard Street
Johannesburg
2001

4th September 1992

The President
African National Congress
Shell House
51 Plein Street
JOHANNESBURG
2001

Dear Sir,

re: COMMISSION OF ENQUIRY

1. I refer to my letter of 31 August 1992 and now have pleasure in furnishing you with the following:
 - 1.1 The typed record of the oral evidence.
 - 1.2 Statements made by witnesses.
 - 1.3 Exhibits.
 - 1.4 A schedule containing the names of the witnesses who testified, the property lost by them and various ancillary matters.
 - 1.5 A schedule of the names of persons against whom allegations of maltreatment were made during the course of the enquiry.
2. Certain explanations of the above documents are required. The typed record must be read together with the statements of witnesses. In general, witnesses were asked to confirm the correctness of their statements and the statement was not read into the record.
3. You have been furnished with all the statements, including those which are unsigned, as well as statements from persons who did not testify. The report is obviously based upon the testimony of witnesses who actually appeared before the Commission (as

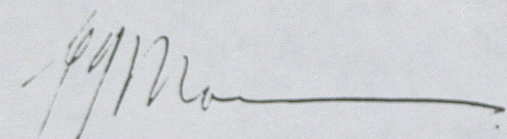
well as certain documentary evidence which the Commission accepted).

4. The exhibits do not contain a copy of the Stuart Commission report. We were only handed one copy of that report by Mr Stuart and that copy has been returned to him. For the purposes of recommendation (ix) on pp. 73 - 74 of the report, therefore, it will be necessary for you to obtain a copy of the report directly from Mr Stuart.
5. The schedule of the names of witnesses who testified is not to be shown to any member of the security department at this stage. Several of the witnesses expressed their concern that their names might be revealed to the very persons whom they accuse of abuse. All of the witnesses were content for their names to be revealed to you. If recommendations (i) - (v) on pp. 68 - 69 of the report are to be adopted, appropriate and practical arrangements will have to be made to implement those recommendations. I suggest that this can be done through Mr B. Mashila, who acted as the attorney for the Commission. With regard to the allegations of loss of property, the Commission had no practical way of verifying the accuracy of the claims made by witnesses in respect of loss of property. The schedule, which will be furnished on Monday 7 September 1992, will simply reflect the claims made by the witnesses concerned. The value attached to the lost property is that estimated by the witnesses themselves.
6. The schedule of the names of persons against whom allegations of maltreatment were made includes the names of more senior officials who allegedly had knowledge of the abuses. With regard to the latter category, and as indicated in the report, certain senior ANC officials told the Commission that they were aware of the abuses but said that they took steps to prevent them. The report makes no finding in this regard and if recommendation (viii) is to be implemented, it will be for

the ANC to decide precisely where
responsibility lies.

7. Subject to any further queries which you might
have, I am of the view that the work of the
Commission has now been completed.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'ADV', followed by a horizontal line.

ADV GILBERT MARCUS

REPORT OF THE COMMISSION OF ENQUIRY
INTO COMPLAINTS BY FORMER AFRICAN
NATIONAL CONGRESS PRISONERS
AND DETAINEES

AUGUST 1992

Index

A.	Introduction	1 - 5
B.	The terms of reference	5 - 12
C.	The perception of the commission	12 - 16
D.	The applicable principles	16 - 24
E.	The evidence	24 - 29
F.	Conditions of detention	29 - 32
G.	Physical conditions of detention:	32 - 34
	1. The cells	34
	2. Hygiene and medical care	34 - 36
	3. Food	36 - 37
H.	Maltreatment	37 - 38
I.	Quatro	38 - 39
	1. Discipline and denigration	39 - 40
	2. Hard labour	40 - 41
	3. Assault and punishment	41 - 44
J.	Other prisons and places of detention	44 - 50
K.	Forced confessions	50 - 55
L.	The treatment of the mutineers	55 - 57
M.	The loss of property	57 - 58
N.	Context, justification and explanation	58 - 66
O.	Recommendations	66 - 74

REPORT OF THE COMMISSION OF ENQUIRY INTO COMPLAINTS
BY FORMER AFRICAN NATIONAL CONGRESS PRISONERS AND
DETAINEES

A. INTRODUCTION

In February 1991 the African National Congress (ANC) adopted a resolution to release all persons whom it had apprehended as "secret agents, spies, agents provocateurs and hired assassins" in the employ of the South African Government's security services. In August 1991, 32 men labelled by the ANC as the "most notorious" suspected agents and infiltrators and who had been detained in various ANC detention camps returned to South Africa. Upon their return, the group of 32 met with high-ranking ANC officials. Some of the group were anxious to expose the alleged maltreatment to which they had been subjected while in detention. An agreement was reached between the group of 32 and the ANC officials concerned and a moratorium on "accusative statements" was agreed upon. Within days, however, several of the group of 32 gave detailed accounts to the media of their alleged treatment in ANC camps. The allegiances of the group of 32 were divided. Approximately 20

wished to have nothing further to do with the ANC, while the remaining 12 proclaimed themselves still loyal to the ideals for which the ANC stood. The members of the former group subsequently organized themselves into an association styled the Returned Exiles Committee (REC).

Allegations made by some of the group of 32 were of the gravest nature. It was alleged that detainees were beaten with iron bars, bicycle chains and barbed wire, while they were in captivity. They stated that they were forced into making false confessions and then crammed into cells (The Star 22 August 1991). Two former detainees alleged that having been branded as spies by the ANC, they voluntarily left South Africa to clarify their position to the ANC. They were allegedly held in detention for the next six years and were subjected to torture (Sowetan, 23 August 1991). (Since the persons who made these allegations to the press did not testify before the Commission, their veracity could not be tested). Other allegations made at that time and subsequently were that summary executions

had taken place in the camps and that certain detainees had simply disappeared without trace.

The ANC, through its President, Mr Nelson Mandela, undertook to fully investigate all complaints about the treatment of detainees in ANC camps. In March 1992 the appointment of an Internal Commission of Enquiry was announced.

B. THE TERMS OF REFERENCE

In letters to each of the members of the Commission, the President of the ANC indicated his attitude to the task of the Commission. The letter stated, among other things, the following:

"Complaints have been made to the ANC by a number of persons who were previously held as prisoners by it in camps outside of South Africa concerning the conditions in which they were held, the manner in which they were treated and the manner in which their property was dealt with after their detention.

These complaints are serious and call for a full and thorough investigation by the ANC to

establish whether or not they are correct, and if they are, what action it should take in consequence thereof."

The terms of reference of the Commission were designed to achieve these objectives. They record that the Commission was established "following the receipt of complaints by individuals who were previously held as detainees by the ANC" and require the Commission to investigate complaints relating to "the conditions of their detention", "the allegations of their maltreatment", and "the complaints about the loss or destruction of their property". The Commission was required to make recommendations consequent upon its findings.

The ANC undertook "to ensure its cooperation to facilitate a full and thorough investigation into all aspects of the matter specified in the terms of reference". To this end, the ANC undertook to appoint "an independent lawyer to conduct investigations, interview witnesses, visit detention camps and lead the evidence before the Commission and to do all things reasonably incidental

- 7 -

to the foregoing". Advocate E. Revelas of the Johannesburg Bar, who is not a member of the ANC, was appointed for this purpose. The Commission was promised "full and unhindered access" to all records, documents, files, archives and other materials relevant to the investigation as well as the records of past enquiries and investigations relevant to the Commission's work.

It was provided that the proceedings of the Commission were to take place "at an appropriate venue" but that such proceedings should not be open to the general public or the press. However, the Commission was given the power to determine whether or not the presence of any person was necessary or desirable during the hearing of evidence. Any former prisoner was entitled to lodge a complaint with the secretary of the Commission. An independent firm of attorneys was appointed to facilitate the processing of complaints. Finally, the ANC undertook to publish the report of the Commission "subject only to the deletion of the names of persons mentioned in the report where this is considered appropriate by the

Commission for reasons of privacy, reputation, safety, confidentiality or the like".

In order to explain the workings of the Commission and the limitations placed upon the ambit of its enquiry, certain features of these terms of reference require elaboration.

(i) Being an internal Commission and not one clothed with statutory powers had important consequences for the Commission's method of enquiry. The Commission had no power to subpoena witnesses, nor could it compel witnesses to answer questions. The Commission could not offer apprehensive witnesses any form of protection.

(ii) The efficacy of the Commission was largely dependent on the willingness of witnesses to come forward. For reasons which are more fully discussed below, this proved to be the greatest shortcoming of the Commission.

(iii)

Ordinarily an enquiry which had attracted such widespread public interest, should be conducted in public. There were important considerations which rendered this impractical and undesirable. It must be emphasized that the enquiry was internal and that its principal purpose was to enable the ANC to investigate shortcomings within its own organization and to receive recommendations to prevent abuses from occurring in the future. Enquiries of most professional associations, such as those pertaining to attorneys, advocates and doctors, are not open to the press and the public. To hold open hearings would have resulted in many of the witnesses refusing to give evidence. Although the task of the Commission was purely investigatory, allegations of a serious nature were levelled against specific named individuals who did not have the opportunity to defend themselves

against such allegations. It would have been unfair to such persons if these allegations became public knowledge without the persons concerned being afforded an opportunity of dealing therewith. Many of the witnesses who eventually testified before the Commission would not have done so had the hearings been open to the public. They feared that they might suffer adverse consequences should their identities have been revealed. We felt obliged to respect their wishes.

- (iv) Because of the closed nature of the enquiry, several features of the terms of reference were designed to mitigate the effects of secrecy. In particular, the appointment of an independent advocate to lead the evidence, as well as the undertaking to publish the report, were considered to be important safeguards against possible abuse. In addition, however, it was

deemed appropriate to invite representatives from the International Commission of Jurists, the International Committee of the Red Cross and Amnesty International to attend hearings of the Commission. Only a representative from Amnesty International attended various sittings of the Commission.

(v)

While the terms of reference were sufficiently wide to allow the hearing of evidence in relation to all former detainees, the catalyst for the appointment of the Commission was the return of the group of 32 referred to above. The Commission therefore saw its primary task as concentrating upon the allegations emanating from the group of 32.

(vi)

The terms of reference were deliberately phrased to require former detainees to testify as to "their" conditions of detention, maltreatment

and loss or destruction of property. Although the Commission heard evidence from detainees in relation to complaints and the hardships allegedly suffered by others, the terms of reference strictly speaking precluded this.

- (vii) The Commission's powers extended only to the making of recommendations. Accordingly, there is no power of enforcement and it is for the ANC itself to decide whether or not to act on the recommendations made hereafter.

C. THE PERCEPTION OF THE COMMISSION

From the outset, the REC (as well as another organisation of former detainees formed in 1990 known as the Returned Exiles Coordination Committee) has sought to discredit the Commission. It has done so by a vigorous media campaign. The principal basis of the attack has been that the members of the Commission are biased in favour of the ANC and are accordingly incapable of conducting a fair enquiry.

It is alleged that Adv L. Skweyiya S.C., who was appointed Chairman of the Commission and Ms Mabandla are both members of the ANC and serve on its Constitutional Committee. Adv Skweyiya is also said to be a brother or cousin of Zola Skweyiya, a high-ranking official in the ANC's legal department. Adv Marcus is said to be related to Ms Gill Marcus, the ANC spokesperson. Apart from the latter suggestion, all the other allegations are entirely true. In consequence, the perception has been created that the ANC has appointed a "tame" Commission.

In rejecting the Commission, the REC has, from time to time, made its own demands. It has attempted to persuade the Government to appoint a judicial commission of enquiry. It has also called for some form of international enquiry and to that end has forged links with a German based organization known as the International Society for Human Rights. More recently, the REC announced a campaign which could culminate in the assassination of ANC leaders and cadres who allegedly committed atrocities against detainees (City Press, 9 August 1992).

As indicated above, the effective operation of the Commission was largely dependent on the willingness of witnesses to come forward. The majority of the group of 32 are under the sway of the REC. Strenuous and persistent efforts were made by Adv Revelas to secure the cooperation of the REC. To that end, she has communicated on several occasions with members of the REC in an effort to persuade them to allow their members to testify. On the suggestion of the REC, she communicated with the International Society for Human Rights. In a letter from the latter organization dated 10 June 1992, Robert Chambers, the Secretary General for the Society, stated that there could be no cooperation, since the Commission's terms of reference ignore "the blatant miscarriages of justice and misuse of powers that led to the detentions in the first place". In the event of the terms of reference being amended to allow such investigation, the Society was prepared to "resume" communications. Surprisingly, on 4 August 1992, when, to the knowledge of the Society the Commission was scheduled to hear further evidence, Adv Revelas received a request from the Society to attend the hearings of the Commission. The request was declined by the Commission.

It is not for the Commission to comment upon the motives of the REC and whether or not its misgivings concerning the Commission are reasonable. The reality cannot be avoided, however, that the manner in which the Commission is presently constituted has created in the minds of certain persons the perception of partiality. The very fact of the perception (whether justified or not) has impeded the workings of the Commission to such an extent that the full and thorough investigation called for by the President of the ANC has simply not been possible. At the end of this report, we make recommendations in this regard.

Another factor inhibiting the work of the Commission has been what can only be described as a climate of fear. We were informed that certain potential witnesses feared for their safety. They feared repercussions from the very persons whom they accused of torturing them. These fears cannot, in our view, be disregarded as irrational or unfounded, particularly in view of the fact that several of the persons accused of committing acts of torture are presently employed in the security department of the ANC.

D. THE APPLICABLE PRINCIPLES

In dealing with the issues raised by the terms of reference, and particularly the allegations of maltreatment, it is obviously important to have a yardstick by which the allegations can be measured. Fortunately, this task was made relatively simple. In approximately 1985, the ANC adopted an extensive Code of Conduct which set out, among other things, the standards for the treatment of detainees as well as the philosophical approach adopted by the ANC to the nature of justice and discipline. It is proposed to set out in some detail the philosophical underpinnings of this Code and the standards prescribed by the ANC itself and to use those standards as a basis for evaluating the allegations of misconduct.

The Code of Conduct begins with various quotations from the Freedom Charter which has been the guiding document of the ANC for more than 30 years. The Freedom Charter asserts the basic principle that "all shall be equal before the law" and "no one shall be imprisoned, deported or restricted without a fair

"While racist justice is prejudiced, dishonest, cruel, elitist, pompous, ultra-technical and dedicated to serving the interests of the minority, our justice must be fair, humane, honest, comradely, democratic, accessible, popular, equal for all members and dedicated to serving the interests of the people as a whole."

The Code classifies various types of offences and the range of permissible penalties. A "grave crime" includes, among other things, the crime of infiltrating the organization or acting on behalf of or in collaboration with "the racist regime", or "any person or group who wish to destroy the organization or prevent it from fulfilling its mission of liberating South Africa". In "exceptionally serious cases, where no other penalty would be appropriate, maximum punishment may be imposed". By maximum punishment, is envisaged the sentence of death. Deprivation of liberty for up to 15 years may be imposed in respect of grave offences.

The Code establishes various disciplinary committees and prescribes their procedures. Of particular significance is the appointment of an "**Officer of Justice**" by the National Executive Committee (NEC). The duties of the Officer of Justice, acting in collaboration with the President's office and under the overall supervision of the NEC includes the following:

- (i) to maintain the principles of legality in the organization;
- (ii) to ensure that no person in the custody of or under investigation by officers of the organization is treated in a cruel, inhuman or degrading way;
- (iii) to make regular inspections of the way persons deprived of their liberty are treated, with a view to ensuring that the purposes of re-education rather than vengeance are fulfilled.

- (iv) to see to it that no undue delay takes place between completion of investigations and the date of trial.
- (v) to ensure that the number of persons awaiting trial is not allowed to become unduly large.
- (vi) to take all necessary steps to minimize the period of waiting.
- (vii) generally, to ensure that the principles of justice and revolutionary legality are constantly maintained at all levels in the organization.

In the investigation of offences, torture or any form of "cruel, inhuman or degrading treatment" of a detainee or a person on trial is forbidden.

The investigation of grave crimes is primarily the responsibility of security. It is prescribed that "all normal and reasonable methods of investigation

may be used in the course of investigation". It is further prescribed that "intensive methods of interrogation shall be permissible only in extraordinary circumstances and under proper authorization and strict supervision by the highest political authority in the area."

The manner in which the Code is to be interpreted is stated to be "in the light of the principles of justice set out in the introduction, and any doubts about its meaning should be resolved in the manner which will give the best effect to such principles."

The NEC was vested with particular responsibilities:

"The NEC in its capacity as the highest organ of the ANC in the period between Conference, and as the guardian of the interests of the membership as a whole, will be responsible for the overall supervision and control of the functioning of this Code. Although it will not ordinarily interfere with the due operation of the Code, where gaps exist or the Code is manifestly unsuited to resolving questions that have arisen, or where it is of the opinion from evidence before it that severe injustice

This Convention is one of the cornerstones of humanitarian international law."

Mr Tambo stated further:

"We in the African National Congress have taken the serious step of making a solemn Declaration at the headquarters of the ICRC this afternoon because we have for nearly 70 years respected humanitarian principles in our struggle. ...

In signing this Declaration, the African National Congress of South Africa solemnly affirms its adherence to the Geneva Conventions and to Protocol 1 of 1977. As we have done in the past, so shall we continue, consistently and unreservedly, to support, fight for and abide by the principles of international law. We shall do so in the consciousness that our struggle for liberation is imbued with the morality of democracy and justice, of progress and peace."

It is not necessary to set out the provisions of the Geneva Convention and the Protocols thereto. The Code of Conduct is entirely consistent with the Convention and prescribes the type of humane treatment of prisoners which are demanded by the laws of war. It is these principles by which those

accused of brutality are to be judged. The limited evidence placed before the Commission revealed a shocking and persistent violation of the Code of Conduct by certain members of the security department of the ANC.

E. THE EVIDENCE

In some respects, this enquiry became academic. High-ranking officials of the ANC have openly admitted that abuses occurred in the camps. In a report which appeared in The Star on 16 April 1990, the President of the ANC admitted that torture had been perpetrated. He was reported to have stated further that the ANC was against torture and had dismissed leaders responsible for these acts after an investigation. The President's comments were made after seven former members of Umkhonto we Sizwe had claimed to have been tortured by ANC commanders. The seven had apparently been detained after the mutiny in 1984. The seven claimed to have been tied to trees and flogged with whips, locked into metal transport containers that were left out in the sun and beaten and kicked by ANC commanders and their

jailers. Shortly thereafter, Professor Albie Sachs made a similar admission at a seminar in Pretoria. More recently, however, the former ANC Chief of Staff, Mr Chris Hani, gave an extensive interview to the periodical Work in Progress in which he frankly admitted that abuses had been perpetrated by the security department (Work in Progress June 1992). In his evidence before the Commission, Mr Hani reiterated his views. Mr Nhlanhla, Mr Zuma and Mr Stuart in their evidence before the Commission all agreed that there had been abuses in the camps. This admission should not be understood as meaning that these persons were personally involved in such abuses.

The issue, therefore, is not whether abuses were perpetrated. That is now openly acknowledged by some of the most senior ANC officials. That such abuses did indeed take place is beyond doubt. What remains for investigation is essentially the identities of the victims and the nature of the abuse. A further vital factor, not covered by the Commission's terms of reference but addressed in our recommendations,

is the question of dealing with those responsible for the abuse.

The Commission heard the evidence of 17 former detainees, including Dr Pallo Jordan. The method of testimony invited witnesses to produce statements on oath and then to appear before the Commission to answer questions, also under oath. Certain witnesses appeared without making affidavits in advance. In addition, the Commission had access to the report of the Commission of Enquiry convened to investigate the circumstances leading to the death of Thami Zulu ("the Thami Zulu Commission") as well as the report of the Commission chaired by Mr James Stuart following the mutiny in 1984 ("the Stuart Commission"). The Commission also received a written report from a former detainee who wished to remain anonymous. Certain former detainees made statements to Adv Revelas but were unable to sign them or appear personally before the Commission. As indicated above we considered the focus of this enquiry to be the group of 32 former detainees who returned to South Africa in August 1991. Eleven of the group of 32 testified before the Commission, of whom 7 belonged

to the group still loyal to the ideals of the ANC and 4 belonged to the group that wished to have nothing more to do with the ANC. However, Adv Revelas obtained unsigned statements from 3 other members of the group of 32 and spoke directly to 6 others. Appointments with a further 5 members of the group of 32 were cancelled, apparently as a result of pressure from the REC. Certain other members of the group of 32 are either in South African prisons for offences committed since their return to South Africa or are awaiting trial and thus inaccessible to the Commission. Finally, the Commission heard the evidence of 5 former detainees, not forming part of the group of 32, but some of whom were imprisoned for their alleged role in the 1984 mutiny. Evidence was heard at a neutral venue over a period of 8 days.

The Commission also considered it desirable to hear the view of certain senior ANC officials, particularly those who bore responsibility for security. Although the Commission was not required to allocate responsibility for the abuses of detainees, it was explained to the ANC officials concerned that the Commission may well make recommendations in that regard but that they were

nonetheless not obliged to testify. However, Mr Mzwai Piliso, Mr Joe Nhlanhla, Mr Jacob Zuma, Mr Chris Hani, Mr Zola Skweyiya and Mr James Stuart all opted to testify before the Commission. The latter three had no connection with the security department.

Since this report will become a public document, the Commission has decided that it would be inappropriate to give the names of persons who testified before the Commission without their consent and also inappropriate to publish the names of other persons against whom allegations have been made except in isolated instances. With regard to the latter, it is important to note that there was in existence a system by which ANC soldiers were known only by code names. There ought to be no difficulty, however, in the ANC identifying the people concerned. Obviously, the names of witnesses and those implicated by their testimony will be made available to the President of the ANC for him to take appropriate action in accordance with our recommendations.

F. CONDITIONS OF DETENTION

We have interpreted our mandate in ascertaining the conditions of detention broadly to encompass matter beyond mere physical conditions. In this regard, we were profoundly shocked by a number of cases in which detainees had been held for inordinate lengths of time without ever being given the benefits of a trial. Of the 17 former detainees who gave evidence before the Commission, 12 had no trial at all. Excluding Dr Pallo Jordan who was held for six weeks, their periods of detention without trial ranged from 3 years to 7 years.

The issue of the period of pre-trial detention was addressed by the enquiry into the death of Thami Zulu. In that case, Mr Zulu had been detained for fourteen months without trial. We consider it appropriate to quote from the Thami Zulu Commission report in this regard. Having posed the question "was the length of his detention reasonable" the Commission stated:

"In some ways this is the most difficult question for us to answer, largely because no

regulations existed establishing time periods, nor is there certainty as to what the criteria for release should be. In principle, we find it unacceptable that the only test for release should be positive clearance by security, or else considerations of health.

The problem with open-ended detention is that the longer the person is detained, the stronger the desire on the part of security to prove that it has not made a mistake. This should never be a consideration. Security must do its duty to the best of its ability. The real difficulty in this case is that it was security itself which had to decide on whether it was proceeding correctly. We believe that this is the heart of the problem. There not only should have been rules prescribing the permissible periods for detention and the criteria for detention and release, there should have been an independent body making the necessary decisions.

The reality is that neither the time period nor the criteria nor the independent body existed, so we are called upon to express our opinion.

We regard fourteen months as a very long time for keeping someone in detention as a suspect. On the face of it, this is far too long, even bearing in mind all the objective contextual factors referred to earlier in this report. We note, however, that twelve of these months were spent in relatively comfortable conditions

of house confinement rather than detention. Our main problem is with the eight weeks he spent in what he was in effect solitary confinement. ... We regard it as unacceptable that the basic rights of detainees should be subjected to the organizational needs of security." (our emphasis).

We endorse the sentiments which are emphasised in the above passage, but go further. Unlike Mr Zulu, who was a high-ranking and respected member of the ANC, the detainees who testified before us, were suspected of committing grave offences and were labelled, upon their return to South Africa, as being the "most notorious" suspected agents and infiltrators. The periods of their detention were in no way mitigated by "relatively comfortable conditions of house confinement". On the contrary, the conditions of their detention were consistently harsh, only varying in degree of harshness. The mere fact that these detainees were detained for long periods of time (apart from the manner in which they were treated while in detention) constitutes, in our view, an extreme form of psychological torture. In the case of the detainees concerned, however, they have been precluded from reintegration into their own

communities even though they were never found guilty of any offence. The mere fact that they had been detained by the ANC has been sufficient for them to be stigmatized as traitors to the cause of the ANC. This has resulted in ostracism and rejection. The fact that they were labelled upon their return as being amongst the "most notorious" suspected agents and infiltrators, notwithstanding the fact that they were never tried, has served simply to reinforce the view that they are traitors. Their punishment for unproven crimes, therefore, has been double: lengthy periods of detention without trial and ostracism upon their release.

We were informed by the witnesses that theirs were not the only cases of detention without trial. Indeed, we were led to believe that there were many other examples. The injustice done to such people is of the gravest sort and we make recommendations to deal specifically with this abuse.

G. PHYSICAL CONDITIONS OF DETENTION

Evidence was presented about the conditions of detention at various prison camps. These prison camps included those specially set up by the ANC, as well as ordinary prisons run by the Governments of the countries in which they were situated. It is clear from the evidence, however, that the gravest abuses were perpetrated in Quatro camp in Angola. This camp was apparently also known as "Camp 32" and the "Morris Seabelo Rehabilitation Centre". It was originally conceived of as a rehabilitation centre. The terms of reference empowered the Commission to visit the places of detention subject to making the necessary arrangements with the Governments of the countries concerned. In the case of Quatro, we were informed by witnesses that the camp had been demolished. An inspection, therefore, would have revealed little.

The complaints about the physical conditions of detention related mainly to the type of cells in which detainees were held, the lack of proper medical facilities and poor nutrition. What follows is a general overview of the evidence.

1. THE CELLS

The evidence revealed that at Quatro camp, provision was made for both communal cells as well as isolation cells. The communal cells were, from time to time, overcrowded and inadequately ventilated. We were told that on occasions, the temperature inside the cell was higher than outside it. Certain detainees were held in solitary confinement, often for extended periods.

2. HYGIENE AND MEDICAL CARE

One of the persistent and most severe complaints which emerged from the evidence concerned the lack of adequate health treatment. The necessity for medical care cannot be separated from the conditions under which detainees were held. We were told that the tropical climate in Angola resulted in high temperatures. Problems associated with the heat and the conditions of detention included the development of skin complaints, diarrhoea and malaria. We were

advised that there was no running water in the entire camp. This difficulty affected all, and not only the detainees. However, the evidence revealed that the camp guards and commanders made it virtually impossible for detainees to maintain themselves and their clothing in a healthy condition. We were informed that blankets were allowed to be washed only once every six months and that the detainees were then allowed to bath in the water which remained after the blankets had been washed.

Toilet facilities for detainees were primitive. Detainees were required to attend to their bodily functions by means of plastic containers, which were cut in half and which were emptied once a day.

It appeared that no suitably qualified medical officer was available at all times to deal with the day-to-day medical problems of detainees. A doctor did visit the camp, but only on rare occasions. We were informed that his attitude was generally unsympathetic since he was advised in advance that

the detainees were responsible for the deaths of members of the ANC.

The absence of suitably qualified medical personnel was particularly serious in view of the injuries suffered by inmates at the hands of their captors. Many detainees were severely assaulted and injured. Not only was the health care inadequate, but we were informed that some of the medical orderlies actually participated in the assaults.

3. FOOD

The consensus of the witnesses was that the food at Quatro camp was worse than anywhere else. The diet consisted primarily of beans and rice. Certain detainees received one glass of water every 24 hours. In 1987 the then President of the ANC, Mr Oliver Tambo, visited Quatro camp. Although he was apparently disturbed by what he saw, his visit had little impact upon the food situation. Indeed, for some six months thereafter, the diet of detainees consisted mainly of diluted tomato puree and rice.

Food deprivation was frequently used as a form of punishment.

The lack of adequate nutrition was, in our view, unconscionable and pernicious. We were informed that the camp had an adequate supply of tropical fruit which grew freely in the vicinity, but which was out of bounds to detainees. The camp commanders, in contrast to the detainees, had a plentiful supply of food, which included tinned products supplied to the camp. Any food left over after the commanders had their fill was fed to the pigs.

H. MALTREATMENT

A striking feature of the evidence presented to the Commission was its consistency. The experience of the former detainees was depressingly similar, varying only in degree of severity. The witnesses who testified included persons still loyal to the ANC and those who are hostile to the ANC. It included persons convicted of crimes and those never charged.

The periods of detention and the alleged reasons therefor varied markedly. Yet, the same practices and names cropped up over and over again. We rule out the possibility of collusion or fabrication.

It is not proposed in this report to detail the treatment of each detainee individually. The individual statements of the detainees together with the typed record of the enquiry will be made available separately to the President of the ANC. A general overview of the abuses will be given. The most persistent abuses were perpetrated in Quatro which was not inappropriately described by one witness as a concentration camp. There were abuses, sometimes of the most chilling kind, perpetrated elsewhere. These will be dealt with separately.

I. QUATRO

Quatro was essentially a camp for suspected enemy agents and dissidents. The attitude of the camp

guards, commanders and medical assistants seemed to be universally hostile to the inmates. The inmates, whether convicted of any offence or not, were denigrated, humiliated and abused, often with staggering brutality. The violence inflicted on the prisoners usually had nothing whatsoever to do with any disciplinary transgression. It was violence for the sake of violence. One witness articulated what emerged as the common experience of the detainees. He said that after a while, he no longer knew how to behave. Any excuse was seized upon by the guards to inflict punishment. We set out below the main forms of abuse. We emphasize that not every detainee was subjected to the practices described hereunder.

1. DISCIPLINE AND DENIGRATION

All detainees were given names which sometimes bore derogatory or humiliating connotations. Names of some of the group of 32 included "donkey", "goat", "monkey", "pig" and "fool".

The general disciplinary regime was harsh and arbitrary. Talking during work was forbidden. Requests of almost any sort were frowned upon and often met with assault. Detainees were forbidden to reveal their real names to each other.

2. HARD LABOUR

Various forms of hard labour were required from some of the detainees. In the main, hard labour consisted of felling trees, chopping wood, breaking stones, digging trenches and hauling a water cart. It was the latter form of hard labour that elicited the greatest bitterness. The camp had no running water. Accordingly, water had to be collected in a tank from a spruit near the camp. A large tank, transported on a cart, was used for the purpose. A group of detainees was required each day to fetch water and run with the cart uphill. The task was, by all accounts, back-breaking. Indeed, it was a practice which shocked Mr Chris Hani, when he witnessed it. He told us that he attempted to alleviate this practice by acquiring a tractor. His

efforts were short-lived, however, since the tractor broke down.

3. ASSAULT AND PUNISHMENT

A variety of assaults and punishments were regularly meted out to detainees. One form of abuse, known as "pompa" was described by one witness as a "tradition" at Quatro. The victim was required to puff out his cheeks while being repeatedly slapped in the face. The effect was to create unbearable pressure on the eardrums and excruciating pain. Nearly every witness who appeared before the Commission was a victim of this abuse. Some complained of burst eardrums and bleeding from the ears. The evidence revealed that this form of abuse was routine.

Another practice frequently carried out was known as "gasmask". A pawpaw shell, from which the pulp had been removed, was pushed into the face of the detainee until he could no longer breathe. This practice was widespread.

Certain witnesses told of the practice known as "slaughter". A detainee was thrown into a narrow pit approximately four metres deep. Two metres above the base of the pit there was a trench which was the only exit from the pit. A prisoner would then be ordered to jump and try to get out of the pit through the trench, while at the same time the warders would throw heaps of soil on the prisoner struggling to get out. One witness related how a prisoner was thrown into a pit with the pawpaw skin over his face, while stones were thrown at him by the guards. The same witness told a particularly gruesome tale concerning a prisoner who had to wear the "gasmask" while his forehead was repeatedly bashed against the trunk of a tree. The victim was apparently previously burnt with boiling water on his head. The wound had never properly healed. A sympathetic medical officer provided a razor blade to shave this prisoner's hair so that the wound could be exposed to fresh air and heal. However, we were told that the wound would not heal because some guards would, from time to time, as a form of punishment, bash this prisoner's head against a tree trunk with the deliberate intent of irritating the wound.

We were informed by several witnesses that there was a particular shrub which grew around the camp called "Napalm" by the inmates. This plant resembled a grapevine and there was a dried, powdery substance on its leaves. If this substance came into contact with the skin, it would itch excessively for hours. The itching or sting would be exacerbated if the skin was wet. As a form of punishment, the leaves of this plant were either rubbed onto the skin of prisoners, or the prisoners were forced to crawl underneath the shrub.

Many witnesses testified that as a form of punishment, they would be asked by the guards whether they wanted coffee or guava juice. This sick joke simply meant that the detainee was required to choose which type of implement he wanted to be beaten with. Beatings were, on the evidence, meted out gratuitously and brutally.

Two witnesses stated that they were forced to crawl through a colony of red ants. One of them stated

that pork fat was rubbed onto his skin to induce the insects to bite.

Several witnesses complained of being placed in solitary confinement for lengthy periods. This is in itself a form of torture. We heard evidence from certain witnesses that they were confined to their cells (albeit not in isolation) for inordinately lengthy periods of time. Indeed, one witness stated that he and his fellow inmates in a particular cell were not, for all practical purposes, let out of their cells for a year. The only occasion upon which they were allowed to leave their cells was when required for some specific purpose by the guards or when placing their toilet containers outside the door.

J. OTHER PRISONS AND PLACES OF DETENTION

All the witnesses who testified before the Commission were, at various times, and for various periods, held in other prisons and places of detention. We heard evidence in relation, inter alia, to

conditions in the Angola Central Prison (also known as Nova Stella Sao), the conditions in a building known as the Revolutionary Council in Lusaka, Nonkala Prison Camp in Angola, Mazimba Prison Camp in Tanzania and the Ugandan Prison Camp.

We do not propose to dwell in any detail upon conditions in these prisons. By way of general observation, however, it can be categorically stated that while conditions were undoubtedly better than in Quatro, in no single instance can conditions be described as remotely acceptable. Certain aspects of the conditions of detention in these various centres require elaboration.

There appeared to be a curious and ill-defined relationship between the ANC Security Department and the Angolan prison authorities. The Angolan Government probably recognised the ANC's special status arising out of the ANC's adherence to the Geneva Convention and the Protocols thereto. From the accounts which we received, it appeared that the ANC security department had free access to persons

held in the prison and such persons were in fact ANC prisoners. What was particularly disturbing, however, was the fact that detainees were apparently taken from the Angolan Central Prison by ANC security officials, brutally interrogated and then returned to the prison. It appears that the Angolan authorities did not bear any responsibility for the welfare of such persons. Indeed, there was evidence to suggest that Angolan security guards participated in the assault on detainees. Those detainees who were held in Angola Central Prison complained bitterly about the conditions. In particular, the persistent complaint was of a lack of food and of sub-standard food. We were informed that prisoners frequently went without food altogether.

Quatro was evacuated in December 1988 in terms of the New York Accord which stipulated that the ANC had to leave Angola with its soldiers, prisoners and equipment by 31 March 1989. Close to 90 detainees were taken from Quatro to Nonkala, a warehouse in Luanda. This was to be a temporary prison. The evidence established that the evacuation from Quatro was particularly unpleasant. We were told prisoners

were piled into trucks and some were handcuffed to other prisoners. Newcomers were apparently handcuffed to those who had spent time in Quatro. This was done as a precaution to prevent the newcomers from escaping since they were in better physical condition and more likely to attempt to escape than other prisoners. One of the detainees who testified before us told us that he fainted on the way to Nonkala, as a result of the heat in the truck.

From Nonkala, some prisoners were taken to Uganda and others to Dakawa in Tanzania. Conditions in the Ugandan Prison, while better than Quatro, still left much to be desired. The evidence established acts of gratuitous and random violence perpetrated on the detainees by the camp guards, but not with the same frequency that occurred at Quatro. Several witnesses told the Commission of a savage assault inflicted by the guards on Brendon Khotso, one of the group of 32, who did not testify before the Commission. Mr Khotso's camp name was "Porco", meaning "pig". The background to this assault concerned a practice which many detainees found

humiliating, in terms of which they were required to heat the bathwater for the camp commanders and thereafter to throw the dirty water out. This practice was considered unacceptable by the detainees and was taken up with ANC officials. On the day in question, a young commander, estimated to be no more than 16 years of age, instructed Mr Khotso to fetch water for him. Mr Khotso refused to do so and was struck by the young commander. It is possible that Mr Khotso hit back in anger. Thereafter, Mr Khotso was fetched from his cell by a group of commanders, tied to a tree and savagely beaten. While in an unconscious state he was thrown into a swamp. Two other prisoners who were then in a weakened state as a result of being on hunger strike were told to fetch Mr Khotso from the swamp as a form of punishment. Apart from the savageness of this assault, Mr Khotso was apparently partially crippled as a result of a previous assault by camp guards.

One of the noteworthy features of the period of detention in Uganda, was attempts by certain ANC officials to improve conditions. Several witnesses

specifically singled out the efforts of Tenjiwe Mthintso, the ANC's Chief Representative in Uganda. She apparently displayed a genuine capacity to listen to complaints and as a result of her efforts conditions improved. We were informed that for the first time, detainees were able to relate their complaints without the guards being present.

As a result of their plight, certain prisoners embarked on a hunger strike in Uganda. Their demands included to be tried or released, compliance by the ANC with the Geneva Convention and classification as political offenders. Promises of a trial temporarily ended the hunger strike. Those promises were not, however, fulfilled. In January 1991 four prisoners embarked upon another hunger strike. One of them continued for 35 days, when he was removed in an unconscious state to a hospital in Kampala.

Dakawa was more of a resettlement village than a prison, although the inhabitants were not free to come and go as they pleased. It seems that most of those sent to Dakawa were involved in the mutiny of

1984. Conditions in Dakawa were poor. The inhabitants lived in tents. A small group of the Dakawa inhabitants managed to escape and make their way to Dar es Salaam where they sought protection as refugees from the United Nations. This group ultimately made its way back to South Africa in April 1990 after intervention by the South African Department of Foreign Affairs.

K. FORCED CONFESSIONS

We heard several harrowing accounts of the use of torture to extract confessions. In the main, attempts to extract confessions preceded internment at Quatro. The means used to extract confessions were, according to the witnesses, brutal in the extreme. We cite but three examples.

- (i) One witness told us how he had been assaulted by a particular ANC security official whose name frequently cropped up in evidence. When the detainee struck back, he was beaten by a group of security officials with their

revolvers until he became unconscious. His shoes, belts and ring were removed and he was taken to a cell in the Revolutionary Council, a building which formed part of the ANC headquarters in Lusaka. The following day he was interrogated and severely beaten. He was made to squat with a rod behind his knees and over his arms and whenever he lost his balance in this awkward position, was kicked and beaten. When he could no longer maintain this position, he was made to stand up with his hands against the wall and beaten on the waist with a baton. This continued for approximately an hour. He was then ordered to sit on the ground with his feet up, while his feet were continuously beaten. This treatment was designed to elicit information in connection with the alleged role that he had played in the arrest of an ANC member in South Africa. The beatings continued the next day. That night,

he made up a story, but when given paper to write his account, forgot the details and was again beaten. He was unable to urinate properly as a result of being kicked in the genitals. All in all, he re-wrote his confession up to ten times until his interrogators were satisfied. When he refused to sign his confession he was again beaten up. He finally succumbed, signed the confession, but omitted the part where he stated that the confession was made voluntarily. This was overlooked by his interrogators.

- (ii) Another witness related how he was tortured at Mazimbo Prison camp in Tanzania. He stated how over a period of approximately 14 hours he was beaten with sticks and kicked in the kidney area. He eventually made a confession which was palpably devoid of truth in which he admitted to killing certain people who are still alive today.

(iii) Another witness told of the manner in which he was interrogated by four members of the ANC security department in Zambia. The witness was hanged from a tree and burnt on the soles of his feet with candles and beaten on the back with whips. A second session of torture some time later by the same team resulted in this witness being burnt with candles, and continuously assaulted.

Most of the witnesses who appeared before the Commission from whom confessions were allegedly extracted by torture stated that they had made the confessions simply to escape the pain. They denied that their confessions were true.

While our terms of reference do not require us to investigate the validity of the reasons for the original detention, we cannot turn a blind eye to the evidence of the use of torture to extract confessions and the effect of such torture on the

legal process which ensued. The civilized world has set its face against the use of torture for moral and practical considerations. From a practical point of view, evidence extracted by torture is often dangerously unreliable. It takes little imagination to understand that those detained in harsh conditions and subjected to the type of brutality described above would say anything to bring their agony to an end. Indeed, as is illustrated by one of the example referred to, the confession in question was palpably false.

The moral argument against the use of torture surely requires no elaboration. In the case of the ANC, it is specifically prohibited by the Code of Conduct and is outlawed by the Geneva Convention to which the ANC subscribed. We were particularly struck by an observation made by Mr Hani. He expressed the view that a weakness in the security department was that those responsible for interrogation had insufficient contact with South Africa and lacked the means of checking the veracity of answers to questions, so that an onus was in effect placed upon suspects to

prove their innocence. Dr Jordan expressed a similar view.

The Commission also heard the evidence of Mr James Stuart who chaired certain tribunals set up to deal with alleged offences. He corroborated the evidence presented by certain former detainees that force was used to extract confessions. He advised us that many cases were dismissed by reason of the fact that the confessions were not voluntary. He told us of a case that had come before him where, due to confusion in the use of code names, the detainee had confessed to murdering himself!

L. THE TREATMENT OF THE MUTINEERS

Although we considered the focus of this enquiry to be the group of 32, some evidence was led by those who were detained as a result of their alleged participation in the 1984 mutiny. It is not within the scope of this Commission to deal with the causes of the mutiny. There are a number of published accounts on the mutiny including a chapter in the

recently published book by Stephen Ellis and Tsepo Sechaba entitled Comrades against Apartheid. The authors record that included in the demands of the mutineers was the suspension of the ANC security apparatus and an investigation of Quatro. The mutiny was the subject of an official enquiry by the ANC led by James Stuart. We were eventually furnished with a copy of the Stuart Commission report. The contents of that report were never made public and, it seems, not formally tabled before the ANC National Executive Committee. According to Ellis and Sechaba, although the findings of the Commission were never released, it was widely known that the investigators attributed blame for the mutiny on the excesses of the security department, poor political education, poor recreational facilities and quality of food and the yearning to go home and fight. These are indeed the findings of the Stuart Commission.

There was evidence that both soldiers and mutineers died in the exchange of fire. We were told that some of the mutineers were thereafter executed. The circumstances in which this occurred are far from clear. However, there is a sense of unease that

these executions may have been carried out summarily. It appears that after the initial executions, strenuous efforts were made by among others, Mr Hani, to stop the executions.

M. THE LOSS OF PROPERTY

Most of the witnesses who appeared before the Commission complained that personal possessions had been confiscated from them and that they have either not been compensated at all or have been inadequately compensated. In the main, complaints of loss of property related to clothing and jewellery. Upon their return to South Africa, some former detainees received vouchers to enable them to purchase clothing from a particular shop. It is not proposed in this report to detail the items lost by each witness who testified before the Commission. A schedule will be made available to the President of the ANC and appropriate recommendations will be made hereafter.

N. CONTEXT, JUSTIFICATION AND EXPLANATION

The Code of Conduct referred to above, contains a separate military code. It records that Umkhonto we Sizwe "is engaged in guerilla warfare against a powerful and remorseless enemy which resorts to torture, banditry and terrorism". As already indicated, the group of 32 were labelled as the "most notorious" suspected agents and infiltrators. Upon their arrival in South Africa, a statement issued by the ANC revealed that one was alleged to have taken part in planting a car bomb at Harare's Avondale Shopping Centre in 1986, which maimed anti-apartheid activist Jeremy Brickhill. Another was alleged to have identified ANC homes in Lesotho to the South African Defence Force. During December 1982, 42 people, including women and children were killed in a South African Defence Force raid in Lesotho. A third was said to have given "short-primed" hand-grenades to ANC members which exploded immediately the pins were pulled (Sunday Times 13 August 1991). It is not within the Commission's terms of reference to determine the truth of these allegations. It is abundantly clear, however, that

the ANC was infiltrated by South African agents and that the South African Defence Force made use of such agents in attacks that were carried out in the neighbouring countries. Apart from the Lesotho raid mentioned above, attacks were also carried out in Mocambique (Matola), Botswana and Swaziland resulting in heavy casualties. Upon their return to South Africa, some of the group of 32 openly admitted to being members of the South African Police.

Several of the ANC officials who testified before the Commission described the effect of the infiltration of South African agents on ANC activities. We were told that poison had been deliberately placed in the food at a particular camp which could have resulted in extensive deaths. We were also informed of plots to kill the ANC leadership. In his interview to Work in Progress, Mr Hani referred to a climate of "paranoia and hysteria". He went on to state:

"This climate, where the regime was destabilizing the ANC, killing its leaders, assassinating commanders of

MK, created a situation of overall suspicion. In other words, if for instance we had sent people into the country and 60 percent of them were either arrested or killed, sometimes the wrong conclusion would be drawn that those who handled the operations were working for the enemy. And in my own view, people like Thami Zulu were victims of that situation of paranoia and hysteria about the ability of the regime to send in agents. People began to lose a balanced approach in terms of combatting the infiltration of the ANC by the regime.

And that situation actually caused problems where, in my own view, the innocent and the guilty were sometimes lumped together."

Mr Hani, in his evidence before us, did not for the moment suggest that the abuses were justified for these reasons. Mr Hani referred to his personal "feeling of revulsion" upon hearing, in the mid 80's, that certain inmates of Quatro had been kept for up to two years without trial. He told us of his increasing concern for what he described as "the horrors of Quatro" and how he and others had insisted

on the adoption of the Code of Conduct in 1985. He described some of the members of the security department as "really vicious", a description which was amply borne out by the evidence. He felt that the ANC, as an organization built upon respect for human rights had an obligation to acknowledge and redress the wrongs of the past and to prevent them from happening in the future.

Mr Mzwai Piliso, the Head of the ANC's Department of Intelligence and Security until 1987 reluctantly testified before the Commission. Although given the option to refuse, he stated that he felt obliged to give evidence. Mr Piliso was directly responsible for the establishment of Quatro. His role as the head of security was to protect the organization from both external infiltration and destabilization from within.

Mr Piliso stated that there were complaints of abuse which came to his attention from time to time. He claimed that he took steps to rectify the situation. However, Mr Piliso candidly admitted his personal

participation in the beating of suspects in 1981. A plot to assassinate certain senior ANC members had been uncovered and suspects were interrogated over a period of two weeks. These suspects were beaten on the soles of their feet in Mr Piliso's presence. The soles of the feet were specially chosen, according to Mr Piliso, because other parts of the body "easily rupture". Mr Piliso justified this treatment on the basis that he wanted information and he wanted it, in his words, "at any cost".

The evidence presented by certain ANC officials disclosed a growing sense of unease with the activities of the security department within the ANC hierarchy. Among the causes of concern were the allegations of abuses in the camps and the feeling that the security department had become a law unto itself. As a result of internal pressure, changes were introduced to the security department in 1986. Mr Piliso was relieved of his duties and a provisional directorate of security was established. In 1987 Mr Joe Nhlanhla became the new head of security and intelligence. His views and attitude contrasted sharply with those of his predecessor, Mr

Piliso. Other members of the new department included Mr Zuma and Mr Sigxashe. The new group was charged with the duty of remedying the post.

Notwithstanding the change of personnel, certain elements within the security department still carried great power. It took a considerable period of time before the Code of Conduct became more than a mere scrap of paper. Mr Zola Skweyiya became the Officer of Justice in 1986. His duties were prescribed by the Code of Conduct. He told us that he experienced enormous difficulties in executing those duties by reason of lack of resources, personnel and, most importantly, the lack of cooperation from the people connected with security. He said that he made repeated attempts to visit Angola in 1986 and 1987. He claimed that he was blocked at every turn. He informed us that his attempts to execute his official functions were met with hostility. He told us how there emerged an attitude towards him that he was interfering with things that were not his concern. He was led to understand, albeit not directly, that he himself was in danger of being arrested. He was

told in categorical terms by Mr Piliso that he would never set foot in Angola.

Mr Skweyiya testified that matters improved when Mr Nhlanhla assumed office. It was felt that Mr Nhlanhla had integrity and the capacity to cleanse the security department. Mr Skweyiya did visit Angola late in 1988 but once again his entry to Quatro was apparently blocked. Similarly, he told us that his efforts to visit Uganda were also blocked.

Eventually, the attempts to enforce the Code of Conduct started bearing fruit. We were informed by both Mr Skweyiya and Mr Stuart that certain members of the security department appeared before tribunals and were disciplined. Moreover, the civil authorities in both Zambia and Tanzania prosecuted certain members of the security department for offences.

We were left with an overall impression that for the better part of the 80's, there existed a situation of extraordinary abuse of power and lack of accountability.

Nobody was beyond the reach of the security apparatus. The malaise was clearly identified by the Stuart Commission in 1984. After dealing with the complaints against the security department, which included allegations of torture and killings, the Stuart Commission reached the following conclusions:

The security department has become increasingly involved in deciding on and implementing disciplinary measures. Consequently, their major task of being the 'eyes and ears' of the Movement and helping to expose agents and protect our Movement has been seriously hampered. Some people remain suspects for years.

Force has become the rule rather than the exception. It is indiscriminately used not only as punishment but even when carrying out

interviews and debriefings. There are cases when after severe beatings individuals have admitted to being agents only to retract this later."

Even a high-ranking official like Dr. Pallo Jordan was detained by the security department in 1983. He was held for a period of six weeks without charge. During that period he was only questioned on one occasion. That occurred on the day of his release when it emerged from the questions put to him that the reason for his detention was that he had criticized the security department for conducting itself like a repressive police force.

O. RECOMMENDATIONS

GENERAL APPROACH

Some of the witnesses whom we saw have been brutalized and broken. Not only have they had to endure physical and psychological trauma, but their lives have been shattered by poverty, interrupted education and disability. Yet, despite the ordeals that they have endured, most are without rancour. They seek, in the main, simple justice: a

recognition that they have been wronged and assistance to rebuild their lives. Some of the witnesses whom we saw remain loyal members of the ANC and are proud of the many good things that they consider their organization has done.

Some of the recommendations we make go beyond the immediate victims of brutality. There are serious allegations that certain prisoners simply disappeared or were murdered. For the families of the missing and the deceased, the suffering will continue until the truth emerges. But it is not only the families and friends of victims who are entitled to be told the truth. The violation of human rights is a matter of both national and international concern. The proper investigation and exposure of human rights violations is therefore an obligation which, in our view, cannot be evaded. This obligation applies to all, including the State. At a time when there are serious allegations of abuse perpetrated by high-ranking State officials, we believe that the ANC could set an example by initiating its own investigation into the allegations of disappearance and death. This could, in our view, signify a new

direction for the protection of human rights in South Africa.

In making the recommendations that follow, we have been guided by three principles: redress, accountability and prevention. In accordance with these principles, we make the following recommendations:

- (i) Those witnesses who were detained without trial should have the allegations against them unequivocally and unconditionally withdrawn. For some of the witnesses who appeared before us they sought nothing more than having their name cleared so that they may once again be reintegrated to their communities. These witnesses deserve, in our view, a clear and unequivocal apology for the wrongs that they have suffered.
- (ii) All witnesses who suffered maltreatment while being detained in ANC camps

should receive monetary compensation for their ordeal. We make no distinction whatsoever between those who either confessed or who were proved to be South African agents and those who were not. We cannot countenance any distinction of this sort when it comes to the humane treatment of detainees.

(iii) Some of the witnesses who appeared before us were, in our view, in need of medical and psychological assistance. Such should be offered and provided by the ANC.

(iv) Some of the witnesses expressed the desire to continue with their education which had been interrupted by long periods of detention. We recommend that the ANC provide assistance in this regard.

(v) Detainees who lost property should be compensated for such loss.

(vi)

It is apparent to the Commission that many people suffered in the ANC camps. Only a small proportion of those testified before the Commission. Since it is officially acknowledged at the highest level that abuses were perpetrated in the camps, we see little advantage in this Commission of Enquiry continuing to hear such evidence. The procedures of this Commission have been costly and time consuming and, for the reasons given above, have attracted criticism. The ANC has taken an important decision to investigate wrongdoing within its own ranks. That is a process, which, in our view, should continue. Unless the ANC is prepared to see this process through to its conclusion, there will inevitably be discontent, accusations and recriminations. We suggest, therefore, that consideration be given to the creation of an independent structure which is perceived to be impartial and which is capable of

documenting cases of abuse and giving effect to the type of recommendations made in this report. A formal Commission of Enquiry such as the present is unnecessary for this purpose.

(vii)

We are aware that allegations have been made concerning the disappearance and murder of prisoners. It has been beyond our terms of reference to investigate these allegations. There is some evidence to suggest that the allegations, at least in respect of certain persons, are untrue. Nevertheless, the allegations are of the most serious nature and demand investigation. We therefore suggest that the impartial and independent structure referred to in paragraph (vi) above, or some other appropriate body be charged with the responsibility of investigating all allegations of disappearances and murder.

(viii)

We strongly recommend that urgent and immediate attention be given to identifying and dealing with those responsible for the maltreatment of detainees. It is for the ANC itself to ensure that it cleanses its own ranks of those responsible for the acts of brutality described in this report. It is clear that several persons against whom serious allegations of brutality have been levelled are currently employed by the ANC in the security department. A list of such persons will be supplied to the President of the A.C. It would be wrong, in our view, to limit responsibility to such persons. There are clearly persons in the senior ranks of the security department who were responsible for the situation in the camps and who should not escape the net of accountability. We consider this recommendation to be of the greatest importance, particularly in the light of the role that the ANC is likely to play in a

future Government. No person who is guilty of committing atrocities should ever again be allowed to assume a position of power. Unless the ANC is prepared to take decisive action, the risk of repetition will forever be present. The best formula for prevention is to ensure that the perpetrators of brutality are brought to account and are seen to be brought to account.

(ix)

In the course of the proceedings before the Commission, we received two reports of Commissions of Enquiry conducted by the ANC. These were the Commission of Enquiry into the death of Thami Zulu and the Stuart Commission of Enquiry arising out of the 1984 mutiny. If it is correct that the report of the Stuart Commission was not tabled before the NEC in 1984 that should now be done. We would strongly recommend that the Thami Zulu Commission report be released to the public and once the

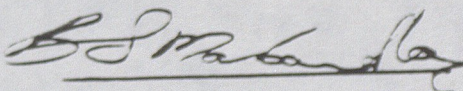
NEC has received the Stuart Commission report it too should be considered for public release. These reports concern matters of vital interest and should be subjected to public scrutiny. There are obviously many other documents which have hitherto not been made public. We can only make recommendations in regard to those that we have seen, but we suggest that the process could well be extended in the future.

(x)

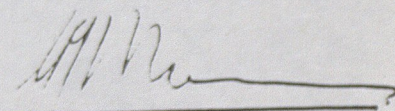
Finally, the terms of reference of this Commission contain an undertaking that this report will be released to the public. We strongly recommend that this be done as soon as possible.



Adv T.L. Skweyiya S.C.



Ms B. Mabandla



Adv G.J. Marcus

