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# FOCUS

on political repression in South Africa

## Talks continue despite violence

*The ANC's National Executive Committee (NEC) warned in September that 'an immediate threat to the entire process of peaceful negotiations' was posed by ongoing violence involving the Kwazulu bantustan organisation Inkatha and the police and army. The violence had spread since the end of July from Natal to the Witwatersrand.*

Noting the extensive evidence of police and military support for Inkatha attacks, (see *POLICE*) the NEC declared on 20 September that the government, while accepting the need to negotiate a settlement, was simultaneously 'devising stratagems to weaken the ANC and other democratic formations'. (ANC Press Release 20.9.90; Obs 23.9.90)

After repeated requests from the ANC for a meeting with the government to discuss the violence, talks were held on 8 October. The ANC delegation, headed by Nelson Mandela, made detailed submissions on the cause of the violence and also on the issue of the detention of ANC members (see *DETENTIONS*). While both sides agreed on 'the need to keep the negotiation process on course' and 'to do their utmost to bring this violence to an end', they could not agree on 'the causes and handling' of the violence. (Joint Statement by FW De Klerk and Nelson Mandela 8.10.90)

The ANC later released details of its submissions, explaining that it had been forced to do so because of misrepresentations about the meeting by the State President. The movement said that the government was waging a 'concerted propaganda offensive' and had a 'strategy of talking peace and waging war'. (ANC Press Release 11.10.90)

Armed actions were suspended by the ANC after talks with the government in Pretoria on 6 August resulted in an agreement for dealing with the remaining obstacles to negotiations (see *Focus* 90 p.1). However, the ANC made it clear in a message explaining the agreement that its armed wing Umkhonto we Sizwe had not been dissolved: the movement retained its right to self-defence, and the suspension of armed struggle was 'conditional on the behaviour of the South African Police and Defence Force'. (NN 10.8.90)

The Pretoria agreement set target dates for the release of political prisoners and the return of exiles, and agreed the

basis of guidelines to be used in considering pardons or amnesties. The target dates were as follows:

**31 August** A working group, set up earlier to define political offences, to report on 'a plan for the release of ANC-related prisoners and the granting of indemnity to people in a phased manner'.

**1 September** Start of 'the further release of prisoners which can be dealt with administratively'.

**15 September** Report of a working group set up to resolve 'all outstanding questions' arising out of the ANC's suspension of armed struggle.

**1 October** Start of indemnification of people who fall into defined categories and do not have to be dealt with on an individual basis. This process to be completed by the end of the year.

**30 April 1991** Latest date envisaged for completion of release of political prisoners and amnesty for exiles.

The government also undertook to 'give immediate consideration' to repealing some provisions of the Internal Security Act, and to amend it in the next session of parliament (early 1991). It would also consider lifting the State of Emergency in Natal 'as early as possible'. It was further agreed that exploratory talks on the question of how 'to proceed towards negotiations on a new constitution' would soon be held. (Pretoria Minute 6.8.90)

### Talks progress

The working group set up to examine issues related to the suspension of the armed struggle made a report on 15 September, but without the participation of Umkhonto Chief of Staff Chris Hani. He was unable to attend the group's meetings because his temporary immunity from prosecution had not been renewed. The government offered a 41-hour immunity, which was rejected, but finally gave him immunity at the end of September. The report of the group was not made public. (SS 7/21.9.90)

The government called for representations on the amendment of security legislation, and on 18 October lifted the State of Emergency in Natal. However, new measures, amounting to a partial state of emergency, were imposed on Witwatersrand townships in August. (MS 19.10.90)

The government extended formal invitations to the Pan-Africanist Congress (PAC) and the Azanian Peoples Organisation (AZAPO) to enter talks. AZAPO said that it was committed to a constituent assembly as a starting point for negotiations and could not participate until one had been elected. The PAC decided to postpone a decision until a national conference scheduled for November. (S Star 12.8.90; BBC 16.8.90, 26.9.90; WM 31.8.90; S 4.10.90)

Discussions were held during August between the ANC and the government on how to structure the constitutional negotiations. The movement reaffirmed its commitment to the establishment of an interim government and then an elected constituent assembly, but the government continued to reject this. The government also met with the six leaders of the non-'independent' bantustans, provincial administrators and senior representatives of the Coloured and Indian chambers of parliament to set up another constitutional working group. President De Klerk said they had examined the prospects for federal or regional government and agreed on 'fundamental restructuring' of the bantustan system after a new constitution had been negotiated. (BBC 13.8.90)

With the exception of Bophuthatswana and Kwazulu, all the bantustan administrations have been in touch with the ANC and to varying degrees endorsed its stance on negotiations. (SS 17.8.90)

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## POLICE

# Police implicated in violence

Conflict in the Witwatersrand and Johannesburg areas, which the police were accused of fuelling, left an estimated 800 dead between late July and the end of September. The ANC, which said that a 'hidden hand' lay behind the spread of the violence, accused the government of failing to restrain the police and condemned the introduction of local emergency measures. (FT 3.10.90)

The agreement reached between the ANC and the government in Pretoria on 6 August took place against a backdrop of continuing violence, which was beginning to spread in areas near Johannesburg but was still concentrated in Natal (see Focus 90 p.3).

In the Transvaal, vigilantes owing allegiance to the Kwazulu bantustan attacked non-Inkatha residents of hostels in Sebokeng, in the Vaal Triangle, in late July. The police failed to stop them, despite advance warning from the Congress of South African Trade Unions (COSATU). In the first weeks of August armed Inkatha groups, sometimes accompanied by police, terrorised residents of Soweto and Kagiso, to the west of Johannesburg. (NN 24.8.90)

Hostel residents and squatters in the East Rand townships of Thokoza, Katlehong and Vosloorus were attacked on 12 August. The focus of the violence then moved further east to Kwathema, Daveyton and Tembisa. In ten days more than 500 people were killed. (T 15.8.90; NN 17/24.8.90)

Attacks on commuter trains and stations began on 16 August in Soweto. Twenty-six people were killed and more than 130 injured when a gang moved systematically through a Johannesburg train on 13 September, assaulting passengers. The attack was evidently carefully planned, involving two groups of men in a synchronised operation. (FT 14.9.90)

Inkatha attacks were concentrated on the East Rand and Vaal townships during September: the pattern was usually of armed groups emerging from migrant-worker hostels and attacking township residents or squatter communities. (Ind/SS 17.8.90; NN 28.8.90; FT 14.9.90)

ANC officials said that many aspects of the violence bore the hallmarks of military organisation and that whites had been seen apparently directing some of the attacks. Bogus ANC pamphlets had been distributed calling for the killing of Inkatha members. White men in balaclavas had been seen acting as snipers during an attack in Sebokeng and were in a minibus which had toured

Johannesburg and surrounding areas, indiscriminately shooting at pedestrians. Whites were also present during one of the railway killings. (S Trib 26.8.90; Tel 10.9.90)

### Police and army actions

Senior church leaders handed over a memorandum to the government at the end of August detailing incidents of police failure to act against Inkatha groups and evidence of police collaboration with Inkatha. They cited cases of police transporting such groups in armoured vehicles to enable them to carry out attacks. (S Star 2.9.90)

On many occasions police used teargas or shotguns to disperse non-Inkatha residents, and there was evidence of direct police support for the vigilantes. For example, in Thokoza on 14 August police in armoured vehicles followed an armed group of 1,000 Inkatha supporters and made no attempt to intervene as they attacked a hostel, killing many residents. By 17 August, with the death toll at 156, the police had made no known arrests. A police spokesman claimed that it was impossible to disarm the Inkatha groups massing in hostels because of insufficient forces. (T 15.8.90; NN 17.8.90)

South African Defence Force (SADF) units backing the police were reinforced with combat-experienced units on 25 August. The soldiers cordoned off parts of townships and in some cases disarmed residents and hostel-dwellers. Eleven people were killed by soldiers who fired into a large crowd outside the Sebokeng hostel on 4 September. Eyewitnesses said that troops opened fire although the crowd was peaceful. (S Tel 26.8.90; Ind 27.8.90, 5.9.90)

### Emergency measures

On 24 August the Minister of Law and Order declared 19 magisterial districts in and around Johannesburg to be Unrest Areas in terms of a 1986 amendment to the Public Safety Act. This was formulated as an alternative to the declaration of a State of Emergency by the State President after protests followed the one imposed between July 1985 and March 1986. Before the amendment became law in June 1986 another State of Emergency had been imposed (see Focus 65 p.5). Twenty-seven black residential areas were specifically mentioned in the declaration, which is valid for three months. Regulations virtually identical to those of the State of Emergency in Natal (see Focus 90 p.2) were enacted on the same day.

The regulations gave extensive emergency powers to police, soldiers and other government officials of whatever rank, including powers to:

- Disperse gatherings by force
- Detain and interrogate

- Enter premises, search and seize property without warrant.

The Commissioner of Police or a Regional Commissioner may also issue specific orders restricting the movement of people and prohibiting or restricting gatherings.

Soldiers and police were indemnified against prosecution for their actions and a fine of R20,000 or ten years' imprisonment could be imposed on anyone breaking the regulations. (GG 24.8.90)

Further restrictive measures were introduced on 25 September with the declaration of a 9 p.m. to 4 a.m. curfew in Thokoza, Katlehong, Vosloorus and Soweto. Contravention would lead to 12-hour detention and a sentence of up to six months' imprisonment or a R1,000 fine. The curfew was lifted by 12 October. (GG 21.9.90; FT 13.10.90)

### Iron fist

The new measures were accompanied by 'Operation Iron Fist' — a police and military operation involving roadblocks, the cordoning off of hostels and some squatter camps with razor wire and the use of police armoured vehicles equipped with light machine guns. It was also announced that people illegally possessing arms would be given immunity from prosecution if they handed them over to the police before 1 October, and that rewards of up to R10 000 would be offered for information leading to the discovery of arms caches. The offer was later extended to 31 October. (CP 16.9.90; Star 20.9.90)

The measures were strongly condemned by the ANC, the Congress of South African Trade Unions (COSATU) and other organisations.

At a meeting at the end of September to consider the violence, the National Executive Committee (NEC) of the ANC drew up plans for a national campaign to achieve greater accountability on the part of the police and 'other Security Services'. (ANC Press Release 20.9.90)

The NEC also called for the 'visible disbandment of the various state murder squads'. ANC officials believed that some of these units were acting as a 'hidden hand' fomenting the violence in a deliberate attempt to weaken the ANC and derail the process towards negotiations. (FT 15.9.90; Vrye Weekblad 21.9.90)

Evidence emerged of military training given to Inkatha by the SADF's Special Forces, which co-ordinated the training of UNITA and the MNR (Renamo) in destabilising Angola and Mozambique. Ex-members of the SADF revealed that up to 1,000 Inkatha members had undergone seven-month military training courses at a secret SADF base in north-eastern Namibia in 1986 and 1987. There were also widespread reports of MNR links with Inkatha and several East Rand residents said that MNR members supplied the vigilantes with automatic rifles. Nelson Mandela warned that the devastation wreaked by the MNR in Mozambique was in danger of being extended to South Africa. (WM 21.9.90)



## PRISONS

## Slow start to releases

*Following the meeting in Pretoria on 6 August between the government and the ANC a joint working group set up after earlier talks was reconvened to draw up a plan for the release of ANC-related prisoners (see 'Pardon and Indemnity' p.8) In the meantime attention was focused on those prisoners who could be released 'administratively' from 1 September onwards as laid down in the Pretoria Minute, issued after the meeting.*

The working group presented its recommendations on schedule by the end of August although these remained confidential. ANC officials were expected to visit prisons to establish who was in jail. Senior ANC leaders have visited political prisoners on a number of occasions since February including a visit by Nelson Mandela to Robben Island on 9 October. (*Star* 10.10.90)

Press reports suggested that 125 prisoners would be released 'administratively' between 1-14 September but the source of the information remained unclear. Nor were the criteria for such releases spelled out. Many reports indicated they covered those who had served more than two-thirds of their sentences, the period which would qualify a non-political prisoner for parole.

The report of the joint working group, which was accepted at Pretoria, made it clear that those cases prioritised for release in May under the Groote Schuur Minute — for 'any offences related merely to organisations which were previously prohibited' — included members of Umkhonto we Sizwe. Those freed since then have included ANC combatants convicted of terrorism and treason as well as people convicted of public violence and arson (see *LIST*).

On 8 October President De Klerk announced that he had used his powers to release 45 prisoners since 6 August. A further 21 were freed two days later. Released prisoners as well as relatives and supporters of those still inside, were concerned at the slow pace of the process and continued to put pressure on the government to free all political prisoners. Relatives of prisoners presented a protest letter to the United States embassy in September and later occupied the building to urge the US government to highlight the continued imprisonment of political activists during De Klerk's visit there in September. (*S* 24.9.90; *WM* 28.9.90; *SS* 5.10.90)

Anxiety over the pace of releases was increased by the circumstances under which some prisoners had been freed. The Prisons Service often failed to give advance notice of release to either the prisoners concerned or to those intending to meet them. On 3 September police equipped with barbed wire and using dogs were deployed at the harbour in Cape Town where people had gathered to welcome prisoners off Robben Island. The prisoners were then released at another quay, contrary to all previous practice. (*S* *Star* 2.9.90; *South* 6.9.90)

## Conditions

The vast majority of political prisoners remain in jail, where maltreatment, denial of basic rights and poor conditions persist. The condition of elderly and sick prisoners raises special concern.

Some elderly prisoners are now in poor health. Matthews MEYIWA (65) has served 13 years of a life sentence and has diabetes. James NGQONDELA (61) and Douglas TYUTYU (55), who in 1984 were sentenced to 13-year and 25-year terms respectively, both suffer from hypertension. Another prisoner suffering from the same condition, Mawhidi John PHALA, was recently released. Zamuxolo NOJO-KO, who spent a month in hospital prior to his release on 13 September, had previously participated in a hunger strike in July demanding better medical treatment. (*Focus* 52 p.10, 57 p.6, 90 p.4; *Ind* 17.9.90)

In May, Nelson Mandela and Ahmed Kathrada visited seven political prisoners in Pollsmoor Prison who have all been diagnosed as HIV positive. Kathrada told the press that they had been 'trying to secure their release for a long time' and were concerned about the conditions in which they were held. In August, six were transferred to prisons nearer their homes and the other was admitted to hospital. It is thought that at least one prisoner suffering from the virus has died in custody. (*Focus* 84 p.7, 90 p.4; *S* 30.8.90; *CT* 31.8.90, 14.9.90)

The case of Litha Timothy MLAHLEKI, a political prisoner now held on Robben Island, has shown that not all political prisoners get the same treatment. Mlahleki, who was shot on arrest, began a 42 year sentence in November 1978 when he was only 19 years old. He was convicted on charges of sabotage and attempted murder arising from attacks on police. For 12 years he has been held in several prisons and has resorted to hunger strikes on numerous occasions. (*Focus* 74 p.3, 85 p.5)

In June, his family wrote to the Minister of Justice demanding that he be released immediately or given the 'same treatment as other political prisoners'. Since 25 March, Mlahleki has been refusing to receive any visitors in protest against the authorities' refusal to permit him contact visits on the grounds that he is not a 'notch 4 prisoner'. According to Jeffery RADEBE, released from Robben Island on 9 June, prisoners on the highest privilege grade (notch 4) are allowed 35 contact visits of 40 minutes each year. Mlahleki's family questioned the criteria

used by the authorities to grade prisoners and said he needed contact visits for his 'physical and mental wellbeing'. (*Focus* 90 p.4; *DN* 8.9.90)

Mlahleki has frequently been harassed and assaulted by warders. His arm was scarred by a police dog which attacked him in his cell at Brandvlei prison during 1987-88. He has faced legal proceedings in prison as well as periods in solitary confinement arising from warders' allegations against him. Charges of assault and disobedience which were due to be heard in court in July 1989, are apparently still pending. He has been unable to study and his letters have been censored.

In another example of harsh treatment by the prison authorities, two brothers serving terms on Robben Island, Lizo and Phumlani NGQUNGWANA, were refused permission in August to attend their mother's funeral. (*Focus* 72 p.6, 85 p.7; *South* 16.8.90)

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**We call on all peace-living South Africans to support the peace initiative . . . we also urge the Government to move fast in removing all obstacles so negotiations can begin in earnest.**

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*Vronda Banda, released from Robben Island on 10 October*

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## Appeals

● On 17 August two political prisoners were freed and six co-defendants had their convictions and sentences reduced on appeal. They were convicted of murder on 24 June 1987 arising from the killing of a suspected informer in 1985. Those released were Solomon MOTSOAGAE, who had his conviction and 15-year sentence overturned completely, and Phineas MASEKO who had a 10-year sentence reduced to a three-month suspended jail term for common assault. The others had their murder convictions reduced to attempted murder. Life sentences imposed on Linda HLOPE, Sannah TWALA and Daniel MBOKWANE were reduced to 10 years. Matlakala Elizabeth MOTAUNG had a 10-year sentence reduced to six years of which two were suspended. A young boy, who was too young to be named during the trial, will now serve eight years instead of 12. Lorraine SOBUZI had a ten-year sentence reduced, but the length of sentence now to be served was not reported. It was later reported that Motaung was released early, on 23 August. (*Focus* 72 p.7; *S* 20/22.8.90)

● ANC member Bhekokwakhe Hamilton CELE was freed from Robben Island on 1 August after an appeal. A four-year jail term was imposed on Cele in June 1989 for undergoing and recruiting others to undergo military training. (*Focus* 85 p.6; *DN* 2.8.90)

● Charles BESTER was released from Kroonstad prison on 13 August 1990. He was sentenced to six years imprisonment on 5 December 1988 for refusing to serve in the SADF but this was reduced on appeal to 20 months, which he had already served. (*Ind* 31.1.90; *CT* 14.8.90)



## DETENTIONS

## ANC members assaulted

Detentions of ANC members and other anti-apartheid activists under the Internal Security Act continued in the period following the issuing of the Pretoria Minute on 6 August.

ANC members have also been detained under Bophuthatswana bantustan emergency regulations and in the Witwatersrand and Vaal areas people were detained under regulations promulgated under the Public Safety Act.

In spite of the government's pledge to review security legislation and its application (*see Focus 90 pp.1-2*), an estimated 126 people were being held under Section 29 of the Internal Security Act at the beginning of October.

In addition, following the declaration of 19 magisterial districts in the Transvaal as Unrest Areas under the Public Safety Act, approximately 190 people had been detained there by the end of September. The regulations, promulgated under Section 5a of the Public Safety Act (PSA), were gazetted on 24 August. Regulation 3(i) states that any member of a security force can detain any person who is, in their opinion, a threat to public order. Few details were available on those detained under the PSA but it was reported that 35 were held in connection with rent protests in Ennerdale near Johannesburg on 11 September, 16 of them being later released and 19 charged. A group of 11 teenagers from Soweto was held in Diepkloof for 12 days from 7 September, and at the end of September eight members of the Azanian People's Organisation (AZAPO) were reported as being held for allegedly breaching the unrest regulations. By this time all the other detainees had been released. (*SA Barometer 27.8.90; GG 24.8.90; HRC Briefing 26.9.90*)

Some of the Internal Security Act detainees are alleged by security police to have been involved with Umkhonto we Sizwe (MK). Accusations of assault and torture have emerged in press reports and in court applications by lawyers and relatives for preventative interdicts.

Some of the ANC members held since July (*see Focus 90 p.5*) allegedly in connection with the armed struggle have also been tortured or ill-treated. In August the ANC launched a campaign to demand the release of National Executive Committee member Mac MAHARAJ, Billy NAIR and all other Internal Security Act detainees.

On 12 September, Nair suffered a heart attack and was released into St Aidan's Hospital in Durban. On the same day Maharaj was admitted to the same hospital under armed guard, suffering from severe cervical spondylosis, a disease of the neck bones. This is believed to have originated as a result of police torture during the 1960s and to have been re-activated during his detention. He has since laid a

charge of assault against the police. (*NN 17.8.90; DD 25.8.90; Star/GN/CT 13.9.90; S 26.9.90*)

Another ANC member, Pravin GORDHAN, was detained on 12 July. After receiving an anonymous letter threatening that he would be assaulted by police, his wife Vanitha Raju, sought an interdict to restrain them, though this was later withdrawn. Raymond LALLA, another Durban detainee, was also reportedly tortured. (*DN 1.7.90; NN 4.9.90*)

In spite of the ANC's suspension of the armed struggle, which was announced on 6 August, security police continued to detain people they suspected of being members of MK or of having assisted such people.

Two members of the ANC detained in late June, Isaac DITSHOGO and Johannes MAKITLA (*see Focus 90 p.5*), appeared in court on two occasions after their wives applied to the Pretoria Supreme Court for their release on grounds which included concern over police assault on Ditshego. The application was first heard on 14 August, postponed to 22 August and then dismissed. Justice Priess, presiding, emphasised that the intention of Section 29 was to obtain information from detainees, and that Ditshego was offered adequate protection from further assault by the Inspector of Detainees.

Ditshego and Makitla, although still not charged by October, were alleged by the police to be members of an MK unit in the Northern Transvaal known as the Nchabaleng Unit. In a court affidavit security police linked their activities to those of Kenny Sello RAMALEKANA (referred to as Ramaloxane in *Focus 90*) and alleged that the unit, including Ramalekana and another detained cadre known as PHAGO, had received its instructions from MK Chief of Staff Chris Hani before infiltrating South Africa earlier this year. (*Star/BBC 15.8.90; S 27.8.90*)

Also in the Northern Transvaal, on 18 July security police re-detained Cassel MATHALE, allegedly for 'guiding ANC terrorists'. He was detained in 1987 for two years under the emergency regulations (*see Focus 82 p.3*), restricted until January 1990, and detained again for four weeks during March and April this year. (*CT 20.7.90; WM 24.8.90*)

Also detained for 'harbouring guerrillas', JB SIBANYONI, a lawyer from Kwandebele (*see Focus 90 p.5*), was still in detention by October. Piet MATHEBE, also listed in *Focus 90*, was accused by police of receiving 'military terrorist training abroad'. Mathebe is also from Kwandebele and was president of the South African Youth Congress (SAYCO) branch in Moutse. Sello MATHEBE, also from Moutse, was being represented by Sibanyoni at the time of their detention. (*Amnesty International 17.8.90; WM 3.8.90, 7.9.90*)

Seven members of the ANC, five of whom police alleged to be 'trained guerrillas', were detained during two

incidents on the night of 18 August (*see list*). Five members were detained in Soweto, of whom two were later released. The remaining three, alleged to have been in possession of arms, were held under Section 29 of the Internal Security Act. The other incident took place in Johannesburg, where two men were detained during a confrontation with Security Police at a hotel in Hillbrow. One of them, an ANC bodyguard, Ralph PETERSON, was shot by police and detained. Three others reportedly escaped and police alleged they left weapons inside a car. (*S Star 21.8.90*)

## Bophuthatswana bantustan

Since February 1990, when the ANC was unbanned, the leader of the Bophuthatswana bantustan, Lucas Mangope, has maintained that the ANC would never be allowed to operate within its boundaries as it was a 'foreign political organisation'. By July a proposed meeting between the ANC and Mangope had still not occurred, with the bantustan leader refusing to take the steps identified by the ANC as necessary. These included the lifting of the State of Emergency in the bantustan, the release of detainees and political prisoners and the unbanning of political organisations. (*BBC 21.2.90; NN 6.7.90*)

On 6 August, after the launch of an ANC branch in Modderspruit, seven ANC members were detained and held at Ga-Rankuwa police station under the emergency regulations.

Ten more ANC members, including seven on the executive committee of the ANC branch in Mabopane were detained on 26 August, following its launch. They were reported released during the first week of September. Other ANC branches opened at Klipgat, Ga-Rankuwa, Eersterus and Mafikeng in the week following the opening of the Mabopane branch. In terms of the bantustan's Internal Security Act, meetings of more than 20 people are illegal unless permission has been granted, but an ANC official said that this would not deter the movement. (*S 22/28.8.90; BBC 29/31.8.90; Vrye Weekblad 31.8.90; HRC 5.9.90; WM/NN 7.9.90*)

Trade unionists were also subjected to attack in the bantustan. A dispute with the OK Bazaars Ga-Rankuwa Store by members of the South African Catering and Allied Workers Union (SACAWU), during the first week of July, resulted in the reported detention of 75 workers. Sixty-eight of the workers were later charged then had the charges withdrawn; the remaining seven were due to appear in court in August. (*WM 13.7.90; Star 31.7.90*)

In the Odi region of the bantustan, near Pretoria, four trade unionists were detained by bantustan police at the Vametco Mineral plant, where a strike had started at the beginning of September. All four staged a hunger strike at the Odi maximum prison in Ga-Rankuwa. A few days later two shop stewards were also detained. At the beginning of October, four of them remained in custody. (*CT 14.9.90; S 25.9.90*)



DETAINEEES UNDER ISA SECTION 29 FROM JANUARY 1990

Additional to previous *Focus* lists

Date	Place	Name & Details	Date	Place	Name & Details
7.1.90	Transvaal	Thabethe, Vusi	18.8.90	Soweto	Unnamed, three
23.1.90	Vaal	Dikole, Aaron; Manete, Christian; Mailane, Nelson; Phahlane, Agnetius; Sesele, Thomas	19.8.90	Mahwelereng	Mothowagae, Michael
			19.8.90	Potgietersrus	Maluleke, Sammy; Mokgalagadi, Shimi
23.1.90	Vosloorus	Moqobane, Elijah	20.8.90	Johannesburg	Mahommed, Yusuf
25.1.90	Soweto	Menziwa, Muzi	27.8.90	Duduza	Moremo, Tebego; Sibanyoni, Simon
3.2.90	Nelspruit	Sojane, Thabo; Xaba, Olga	Aug. 90R	Durban	Lalla, Raymond
1.3.90R	Johannesburg	Kutuane, Phineas	Sept. 90	Stutterheim	Nokele, Andile
20.3.90		Mathe, Robinson	Sept. 90	Border	Roji, Skhenjani
20.3.90	Alexandra	Noge, Andrew	20.9.90	Soweto	Mthembu, Bheki
20.3.90	Welkom	Maomakwe, George	21.9.90	Durban	Mchunu, John Fonono,
5.4.90	Rustenburg	Montsi, A	26.9.90	Soweto	Mafole, Lyndall; Molekane, Rapu
20.4.90	Bothaville	Phori, Zacharia	27.9.90		Tshabalala, Susan
26.4.90		Maphakela—; Nkabinde—; Rapeo—	28.9.90	East Rand	Tshide, Jeremy
May 90	Nelspruit	Makhabela, Michael; Nancanda—	<b>Detentions in the Bophuthatswana bantustan</b>		
16.6.90	Gazankulu	Boyama, Samuel	25.6.90	Ramatlabama	Makoboto, Oupa
18.6.90	Gazankulu	Mohlaba, Thangasasa	3.7.90	Phokeng	Kole, Phillip
20.6.90	Gazankulu	Manganye, Ntsako; Mbhalathi, Junior; Nkwinika, Ben; Nkwinika, Theron	4.7.90	Thlabane	Magano, Kgaodi
		Phago <i>see article</i>	9.7.90	Thlabane	Senne, Granny
27.6.90	N.Transvaal	Lekala, April; Mabena, Richard	10.7.90	Thlabane	Mokgatle, Wilfred
28.6.90	Soweto	Nthlapo, Thomas	10.7.90	Phokeng	Seabe, Annah
30.6.90	Soshanguve	Mutle—	18.8.90	Temba	Masango, Nomvula
9.7.90		Mathale, Cassel	Sept. 90	Mogwase	Ntsimane, Samuel,
18.7.90	N.Transvaal	Ndobe, Terris	Sept. 90	Odi	Mogase, Lazarus; Matlhavane, Willie; Kgatitswe, Elias; Mabomela, Phillip
21.7.90	Gazankulu	Shiluvane, Martin	6/7.10.90	Ga-Rankuwa/Winterveldt	Unnamed, 52 activists
22.7.90	Gazankulu	Peterson, Ralph; Unnamed, one ( <i>see article</i> )			
18.8.90	Johannesburg				

ABBREVIATIONS  
 ISA 29 — Internal Security Act, Section 29.

POLITICAL PRISONERS REPORTED RELEASED SINCE 2 FEBRUARY

This updates lists in recent issues of <i>Focus</i> . Former prisoners are listed by release-date and the prison they were released from.			Mfeketho, Molliat Mziwoxolo	2 yrs. 6 mths. 20.7.89. F85
<b>11.6.90 Unknown</b>			<b>13.9.90 Pollsmoor</b>	
Mciteka, Stuart	3 yrs. 11.2.88. F76		Nojoko [Mojoko], Zamuxolo	7 yrs. Dec. 1987. Terrorism F75
<b>14.8.90 Pollsmoor</b>			<b>27.9.90 Goedemoed</b>	
Da Silva, Charles	7 yrs. 1987. Arson RMG		Matlotho, T	No details reported S 28.9.90
<b>18/19.8.90 Robben Island</b>			<b>27.9.90 Johannesburg</b>	
Hadebe, Mandlenkosi Chris	{16 yrs. 15.11.79. Mil. training,		Daniel, Z R	No details reported S 28.9.90
Sekete, John Mofokeng	{armed actions F26		<b>27.9.90 Krugersdorp</b>	
Baardman, Jeffrey	{10 yrs. 28.6.83.		Zwane, Ashwell	{4 yrs. 3.10.88.
Nyongwana, Philip	{Terrorism F48		Mogano, Piet	{‘People’s Courts’ F80
Ntshilele, Alfred	3 yrs. 5.8.88. F79		<b>27.9.90 Pollsmoor</b>	
<b>3.9.90 Robben Island</b>			Tusha, Mlungisa Khumalo	5 yrs. Jan. 1988. Pub. viol.
Radebe, Jeremiah	15 yrs. 20.11.80 Treason F33		<b>27.9.90 Robben Island</b>	
Mbelekana, Lindile Patrick	{9 yrs. 6.12.84. Treason		Phala, John Mawidhi	{20 yrs. 29.11.77. Armed
Nodlawu, Siph	{armed struggle F57		Thabo, John Afheli	{action, furthering ANC F14
Matakata, Michael Mkuseli	7 yrs. 28.1.86. Mil. training F64		Pule, Phaniel	4 yrs. 1988. Harboursing F86
Qaku, Ntsikelelo	6 yrs. 12.3.86. Mil. training F66		Francis, Jude	6 yrs. 27.4.87. Armed actions F71
Matiwane, Joseph Kwanele	4 yrs. 2 mths. 1.9.87. Armed struggle F74		Macozoma, Reed Zwelethu	5 yrs. 12.8.87. Poss. arms F72
Motimele, Malose	4 yrs. 1.2.88. Harboursing HRC		Nkosi, Bennet	4 yrs. 3.4.88. ‘People’s Courts’ F77
Chiwayo, Lazarus	{4 yrs. 3.4.88.		Manthata, George	8 yrs. 1985. Terrorism F59
Maloma, David	{‘People’s courts’		Mbatha, Michael	Terrorism. Due for release 1993
Mokoena, Mpini Moses	{F77		Marupeng, James	8 yrs. 6.12.85. Terrorism F63
Gans, Charles	4 yrs. 1988. Terrorism HRC		<b>27.9.90 Victor Verster</b>	
<b>11.9.90 Pollsmoor</b>			Maqhoqi, Monwabisi	6 yrs. Jan. 1989. Armed Struggle F82
Desoza, Colin	2 yrs. 15.11.89. Pub. viol. F87			
Mase, Ncedani	9 yrs. 6 mths. 1985. Pub. viol.			
<b>11.9.90 Robben Island</b>				
Xhayiya, Sivuyile	8 yrs. 1.8.85. Terrorism RMG			
Motsa, Minden	8 yrs. 1.9.85. Mil. training, F63			
Mkhuhlwa, Joseph Susele	{5 yrs. 12.8.87			
Ncivata, Zingisile Anderson	{Possessing arms F72			

Source: F — Focus reference of report of trial leading to sentence.  
 HRC — Human Rights Commission, Special Report No. 6, May 1990.  
 RMG — Repression Monitoring Group 19.8.90  
 Pub. viol. — Public violence



## POLITICAL TRIALS

## Changes to death penalty

The enactment of the Criminal Law Amendment Act on 27 July introduced changes in the law relating to capital punishment. However, the death penalty was not abolished and was subsequently passed on Charles Bongani ZWANE in a case where the defence had argued political motivation. In September three Umkhonto we Sizwe combatants had their death sentences replaced by prison terms when the Court of Appeal used its new powers.

All the major provisions of the Bill reported in *Focus 89* were passed, most notably to remove the mandatory death penalty after conviction for murder without extenuating circumstances and to leave the sentence to the discretion of the presiding judge. Most changes increased judicial discretion and broadened access to legal representation.

A significant new measure, introduced at the committee stage of the Bill and in the face of judicial opposition, increased the powers of the Appellate Division at the expense of individual Supreme Court judges. The Court of Appeal may now not only reverse the sentence of the trial court where it believes the latter has acted in error but may also set it aside if it 'is of the opinion that it would not itself have imposed the sentence of death'. (*GG 12644*, 27.7.90)

An attempt to amend the bill by restricting the death penalty to convictions for murder was rejected but there was a reduction in the number of capital offences. In treason cases the death penalty is now limited to acts 'committed when the Republic is in a state of war'. Terrorism, which under the Internal Security Act has the same penalties as treason, is similarly restricted. In recent times the regime has rarely imposed the death sentence for terrorism or treason, preferring to use the common law charge of murder to execute its political opponents.

The death penalty has been abolished for those under the age of 18 years at the time of their alleged offence and also for housebreaking and attempted housebreaking. It remains for robbery or attempted robbery 'if the court finds aggravating circumstances to have been present', as well as murder, rape, kidnapping and child-stealing.

A review procedure conducted principally by judges and former judges will now consider the cases of all those people already sentenced to death who have exhausted all legal remedies.

A number of changes have recently been made by the administrations of three of the four 'independent' bantustans, which have all used the death penalty. In June the military authorities in the Ciskei bantustan abolished capital punishment, replacing

all death sentences by terms of life imprisonment. (*DD 9.6.90*, 7.9.90)

The Transkei bantustan has had a moratorium on executions since October 1989 and a committee set up to review the death penalty met for the first time in August. It hoped to complete its work by November. Some 85 prisoners were reported to be awaiting execution in Transkei, none known to be political cases. (*Focus 86 p.10*, 88 p.7; *DD 24.8.90*, 21.9.90)

At least six political prisoners are believed to be awaiting execution in the Bophuthatswana bantustan where, since October 1989, all prisoners sentenced to death have had an automatic right of appeal. It was also announced earlier this year 'no people under the age of 18 would be sentenced to hang' but it was not clear whether the age referred to the time of sentencing or of committing the offence. (*EPH 3.5.90*)

In September three ANC combatants who had claimed prisoner-of-war status and refused to recognise the court at their trial in April 1989 had their death sentences replaced by 25-year prison terms by the Court of Appeal in Bloemfontein. Giving judgement, Justice Friedman said that he did not consider the death sentence was the proper sentence in this case. Jabu Obed MASINA, Frans Ting Ting MASANGO and Neo Griffith POTSANE were ordered to serve the 25 years concurrent with a similar term already imposed for lesser counts in the same trial. (*Focus 83 pp.6-7*; *Cit 14.9.90*)

Evelina DE BRUIN, the only woman among over 300 prisoners awaiting execution at Pretoria Central Prison, was moved in August to Upington Prison, close to her Northern Cape home, pending an appeal in May 1991. (*Focus 87 p.6*; *South 28.6.90*; *WM 24.8.90*)

## Continuing trials

While some cases had been dropped and bail seemed to be more freely available, other long-running trials continued into August and there were examples of serious new charges being laid. Some of these were formulated in terms of the Explosives or Arms and Ammunition Acts, where previously the Internal Security Act might have been used. When the trial of Tony YENGONI and others resumed in the Cape Town Supreme Court on 1 August, bail was granted to Michael Mzimkhulu LUMBAMBO, Mbutu Richmond NDUKU and Wellington Mongameli NKWANDLA, but refused to Jennifer SCHREINER and Yengeni. Lumka NYAMZA initially refused bail in solidarity with her husband, Yengeni, but accepted it on 28 August.

The state resubmitted a lengthy statement by Schreiner which they had previously withdrawn in March. The defence challenged this alleged confession and the judge ordered that the onus was on the state to prove its admissibility. In order to substantiate Schreiner's charges

of torture, assault and threats by security police, the defence was allowed, within strict limits, to submit evidence from some other detainees. (*CT 2/3/9/15/16.8.90*, 11/12/13/19/20.9.90)

Two ANC members were convicted in the Johannesburg Regional Court on 18 September after the Transvaal Attorney-General rejected defence representations to have their trial dropped following the Pretoria Minute. Johannes MAHLASELA (33), a South African Breweries worker, pleaded guilty to causing an explosion at the home of the mayor of Thokoza in October 1989 and also admitted possessing arms and ammunition. Esau MACHITJE (29) admitted being present when Mahlasela threw a grenade at the house. Both men were granted bail pending sentence although the state had opposed this for Mahlasela. (*Cit 19.9.90*; *Star 19/20.9.90*)

In an earlier case in the Johannesburg Regional Court, in June, Jongile DOLO, an alleged member of the ANC, told of being tortured and assaulted by police. Dolo, who was detained on 21 May 1989 in Katlehong, faced two charges of terrorism. (*CP 22.7.90*)

After almost seven months in detention under Section 29 of the Internal Security Act, Jacob RAPHOLO, an alleged ANC combatant who was shot at the time of his capture, appeared in the Pietersburg Regional Court on 2 August on charges of terrorism, murder, robbery and possession of arms. Rapholo's detention was linked in the press to the killing of a policeman at a Pietersburg park. He was due to appear again on 17 September. (*Focus 88 pp.9-10*; *S 6.8.90*; *HRC Update*, August 1990)

Police allegations in July of a communist plot against the government have been followed by at least three separate trials. The first court appearance was by Jabulani XIMBA (39), a laboratory technician at the University of Zululand and an alleged MK combatant. He went into hiding on 16 July after a raid on his house. He took refuge briefly in the US consulate in Durban on 23 July but left the following day and was charged under the Arms and Ammunition Act with the illegal possession of hand grenades, limpet mines and explosives. He was later bailed to appear on 14 September. (*S 24/25.7.90*; *Star 15.8.90*)

Siphiwe NYANDA (Sipho Nyanda in *Focus 90*) was refused bail when he appeared in the Durban Regional Court in August charged under the Explosives Act. He was detained on 12 July, almost two weeks before this was made public. Nyanda, a sports reporter with *The World* before he left the country in 1977, was said to have had military training and returned to South Africa in 1988. He remained undetected until arms were discovered at a rented flat in Durban. Nyanda was refused bail and remanded in custody to appear on 29 October. (*DN 23/25.8.90*; *DD 24.8.90*; *NN 14.9.90*)

Also refused bail, under Section 30 of the Internal Security Act, was Jeremy SEEGER (24), a student. His actions, which included causing explosions, were said to have begun in 1986. He was due to appear again on 2 October. (*DN/Star 25.8.90*; *Cit 21.9.90*)



Other trials

Arrests continue

During July, August and September anti-apartheid protestors continued to be arrested and gatherings were dispersed, often violently.

Until the middle of August, when they ceased, police reports gave a daily account of incidents of unrest and arrests. From these alone it was clear that hundreds of people had been arrested, mostly following gatherings alleged to be illegal. Press reports suggest that the issues around which people mobilised included the detention and trial of activists, police violence and vigilante actions, and segregated municipalities.

**There are no mechanisms for black people to address their grievances in South Africa. Therefore it is to be expected that . . . mass action should be resorted to . . .**

*Nelson Mandela, Pretoria, 6 August 1990*

Statements from senior government members made it clear that they envisaged an increased use of the courts and new legislation aimed at protestors. In September the Minister of Law and Order said that a new, stricter law on intimidation would be introduced in the next parliamentary session. The State President said later that ‘steps would be taken to ensure that all people who broke the law in the latest wave of violence [would] be brought to justice’. (*Focus 90 p.1; South 6.9.90; BBC 7/19.9.90*)

Support for detainees

The ANC declared 23 August a national day of action against detention and protests were held throughout South Africa. In Cape Town, 39 protestors were arrested outside the Security Branch headquarters at Culemborg Police Station, which the demonstrators said was ‘the place where the most consistent stories and allegations of torture of our people have taken place’.

Amongst those arrested were Cheryl CAROLUS, Johnny ISSEL and Trevor MANUEL, members of the ANC’s interim committee in the Western Cape. All the accused, who were charged with illegal gathering, were released on bail and ordered to appear on various dates in October. A regional representative of the ANC condemned the arrests and said that Cape Town’s city council had given permission for the demonstration. However, a police spokesman said it was illegal in terms of the Internal Security Act because magisterial permission had not been sought. (*DD/Ind/NN/WM 24.8.90*)

On the same day in East London ten ANC marshalls were arrested. They had been posted in the city to inform people that a march to mark the day of action was cancelled after magisterial permission had been refused. The police said they were arrested in terms of an amendment to the Dangerous Weapons Act

which came into force in July because they were carrying replica guns. The amendment prohibits the carrying of an object that ‘is likely to be mistaken for a real firearm’ unless the bearer can ‘prove he had [no] intention of using [it] . . . for any unlawful purpose’. Convictions under the act carry fines of up to R4,000 and/or a 12-month jail term. However, charges against the ten were subsequently withdrawn. (*GG 4.4.90; S 5.7.90; NN 24.8.90; DD 1.9.90*)

Others arrested following action in support of people held in custody include 18 people who face charges of illegal gathering after two protests in July in Cape Town over the detention of Shirley Gunn. (*Focus 90 p.5; Star 7.7.90*)

Also in Cape Town more than 100 teachers taking part in an alleged illegal gathering were arrested outside the Magistrates Court in July. They were there in support of two teachers who were appearing on charges of attending an illegal gathering. (*CT 26.7.90*)

Two men were arrested in August when they unfurled a South African Communist Party flag outside the Cape Town Supreme Court. They were among a group gathered to greet defendants in the Yengeni trial who had been released on bail (*see POLITICAL TRIALS*). (*NN 3.8.90*)

In September six executive members of the Merebank Interim Committee of the ANC were among 24 people arrested at Wentworth police station in Natal. Their arrests arose from a sit-in protest against detentions under Section 29 of the Internal Security Act. (*S Trib 16.9.90*)

Police and vigilantes

At the end of July, 28 members of the Progressive Teachers of Graaff-Reinet were arrested following a march to protest against police brutality and to demand the resignation of a councillor thought to be responsible for three deaths. The march was met by hostile police action and one teacher was reported to be seriously injured after being attacked by police dogs. According to a police constable who resigned from the force immediately after the march, ‘dogs were set loose while the teachers were dispersing’. As a result of the police action, residents embarked on a consumer

boycott of white-owned shops in Graaff-Reinet. (*EPH/South 19.7.90; South 26.7.90*)

A boycott in the Transvaal aimed at ending police and right-wing violence led to a number of arrests. The two-week boycott of white-owned businesses was suspended in August.

In Wesselton, Ermelo, in the eastern Transvaal, the chair of the local action committee was arrested at the end of July and appeared in court on charges of intimidation, arson and malicious damage to property. His arrest followed clashes between residents and vigilantes. According to local residents, a vigilante group, the Black Cats, was attempting to crush the consumer boycott and a nine-month old rent boycott. They said that the vigilantes seemed to have the protection and support of the local police. (*Star 26.7.90, 15.8.90*)

Residents of Siyathuthuka township in Belfast in the eastern Transvaal, also took part in a consumer boycott. They said that local police abused their powers during the protest. The entire Belfast Civic Association was arrested, although the charges against them were not reported. Eight residents, most of them members of the South African Youth Congress (SAYCO), were arrested on charges of public violence. According to a lawyer, one of the accused, Lucas KHUMALO, was severely assaulted whilst in custody and suffered a suspected broken jaw. The local ANC convenor, Steven MASANGO, faces two public violence charges. He was released on 1 August but was re-arrested as he was paying bail and charged a second time with public violence. (*NN 17.8.90*)

Forty-six students from the University of the Witwatersrand were arrested at the end of August as they tried to march to police headquarters in Johannesburg as part of a week of student action to protest against violence in the townships. The students, who face charges of illegal gathering, were among a group which was dispersed by the police using teargas and batons. The students called for the South African police to stop assisting Inkatha and for the disarming of Inkatha vigilantes. (*S 30.8.90*)

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# Pardon and indemnity

The release of political prisoners and return of exiles, safe from prosecution, have been dominant questions in the moves towards negotiations in South Africa. Hopes were raised by President De Klerk's speech to parliament on 2 February and consolidated in May when the first talks between the ANC and the government were held at Cape Town and the Groote Schuur Minute was issued.

The Pretoria Minute of 6 August, following further ANC-government discussions, advanced the process with agreement on a broad definition of a political offence. On 8 October, after another meeting with the ANC, President De Klerk announced his intention to start the process of permanent indemnification. However, the procedures envisaged in the agreements are complex ones and will take some time to implement.

The Pretoria Minute accepted the report of a working group which had been set up by the Groote Schuur meeting to make recommendations on the definition of a political offence. This report outlined the 'principles and factors' that would form the basis of guidelines to meet the South African situation when considering the granting of pardon or indemnity.

### Definition

The working group drew its principles from the field of extradition law as practised internationally. The question of whether or not an offence is political is to be approached on a case by case basis. Certain offences, of which just two examples were given, are regarded as 'purely' political: 'treason directed solely against the state and not involving a common or ordinary crime' and 'the dis-

semination of subversive literature'.

The principal factors which are to be used to decide whether a 'common crime', including a serious one such as murder, may be considered a political offence are: the motive of the offender; the context in which the offence took place; the nature of the political objective; the legal and factual nature of the offence; the object of the offence; the relationship between the offence and the political objective being pursued; and whether the act was committed under orders from or with the approval of an organisation. However, no recommendation was made by the working group as to the weighting of these factors in the South African situation.

An announcement about guidelines, relevant procedures and related matters was expected on 12 October but the Minister of Justice postponed it after disagreement between the ANC and the government (*see 'Talks continue despite violence' p.1*).(*Star 13.10.90*)

### Release and indemnity

The working group identified three categories of person affected by the definition: those already sentenced, whether serving a term of imprisonment or awaiting execution, subject to a suspended sentence or with a case under appeal or review; all those who may be liable to prosecution or who are awaiting or undergoing trial; and persons in detention.

It is recognised by the working group that the granting of pardon or indemnity is an 'executive governmental function'. The State President's power to pardon sentenced prisoners derives from the Constitution Act and the Prisons Act. With regard to indemnity, which covers both exiles and those on or awaiting trial, the power of the President is contained in the recently passed Indemnity Act (*IDAF Information Notes & Briefings No.90/3, June 1990*) while the Criminal Procedure Act allows the Attorneys-General to stop prosecutions.


The working group recommended that the executive should receive 'wise advice' from a specially constituted body or bodies. The working group would thenceforward confine itself to ANC interests while other groups could be set up to make representations on behalf of other prisoners. A government statement said that Pan-Africanist Congress (PAC) prisoners would not be released unless that organisation, like the ANC, suspended its armed struggle. Nevertheless, prisoners granted early release since February have included members of the PAC as well as those claiming allegiance to the Black Consciousness Movement.

The working group was reconvened after the Pretoria meeting and drew up a plan for the release of ANC-related prisoners and the granting of indemnity which was reportedly accepted by both the ANC and the government. Its recommendations were expected to form part of the Minister of Justice's October statement.

The most significant date envisaged by the working group was the cut off point, after which no new political offences could be considered for amnesty or pardon. This date was set as 12 noon on 8 October when De Klerk announced that the process of indemnification would begin. The announcement followed another meeting between the government and the ANC. Press reports indicated that some 3,000 ANC members, whose names had been submitted to the government, would initially return. However, it was made clear that the indemnity was not restricted to ANC-related individuals. (*Press statement by President F W De Klerk, 8.10.90*)

De Klerk's statement emphasised the role of procedures in the granting of indemnity, saying that it would not be granted automatically, nor would his statement result in the immediate suspension of trials. But it did advance both processes.

**Sources and abbreviations:** *BBC* British Broadcasting Corporation Summary of World Broadcasts, London; *Cit* The Citizen, Johannesburg; *CP* City Press, Johannesburg; *CT* Cape Times, Cape Town; *DD* Daily Dispatch, East London; *Debates* Parliamentary Debates, Cape Town; *DN* Daily News, Durban; *EP* Evening Post, Port Elizabeth; *EPH* Eastern Province Herald, Port Elizabeth; *FM* Financial Mail, Johannesburg; *FT* Financial Times, London; *GG* Government Gazette, Pretoria; *GN* Guardian, London; *HRC* Human Rights Commission Johannesburg; *MS* Morning Star, London; *Obs* Observer, London; *S* Sowetan, Johannesburg; *SS* Southscan, London; *S Star* Sunday Star, Johannesburg; *Star* Star, Johannesburg; *ST* Sunday Times, London; *S Trib* Sunday Tribune, Durban; *Tel* Daily Telegraph, London; *T* Times, London; *WM* Weekly Mail, Johannesburg



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