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E/CN.4/1987/L.12  
13 February 1987  
Original: ENGLISH  
COMMISSION ON HUMAN RIGHTS  
Forty-third session  
Agenda item 9  
THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO  
PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION  
Afghanistan, Algeria, Angola, Bulgaria, Cuba, Czechoslovakia, Ethiopia,  
Ghana, German Democratic Republic, India, Kenya, Nigeria, Rwanda, Senegal,  
Somalia, United Republic of Tanzania, Viet Nam, Yugoslavia and Zimbabwe:  
draft resolution  
Situation in southern Africa  
The Commission on Human Rights.  
Bearing in mind the importance for the effective guarantee and observance  
of human rights of the universal realization of the right of peoples to  
self-determination enshrined in the Charter of the United Nations and embodied  
in the International Covenants on Human Rights, as well as in the Declaration  
' on the Granting of Independence to Colonial Countries and Peoples contained in  
General Assembly resolution 1514 (XV) of 14 December 1960,  
and in accordance with rule 69, paragraph 3 of the rules of procedure of  
the functional commissions of the Economic and Social Council.  
GE. 87-10568/7050E  
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Deeglx conscious of the urgent need for strict observance of the principles of sovereign equality, political independence, territorial integrity of States and self-determination of peoples, as enshrined in the charter of the United Nations and developed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations Bearing in mind that the provisions of the Geneva Conventions of 12 August 1949 apply to all the freedom fighters in South Africa and Namibia fighting for their independence and self-determination, Recalling General Assembly resolutions 2621 (XXV) of 12 October 1970, containing the programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, d 35/118 of 11 December 1980, the annex to which contains the Plan of Action for the Full Implementation of the Declaration, Recalling further General Assembly resolutions 2649 (XXV) of 30 November 1970, 2955 (XXVII) of 12 December 1972, 3070 (XXVIII) of 30 November 1973, 3236 (XXIX) of 22 November 1974, 3246 (XXIX) of 29 November 1974, 3382 (XXX) of 10 November 1975, 33/24 of 29 November 1978, 35/35 A and B of 14 November 1980, 36/38 of 1 December 1981, 36/76 of 4 December 1981, 37/35 of 23 November 1982, 38/17 of 22 November 1983, 38/54 of 7 December 1983 and 39/91 of 14 December 1984, Recalling also its resolutions 3 (XXXI) of 11 February 1975, 9 (XXXII) of 5 March 1976, 3 (XXXIV) of 14 February 1978, 2 (XXXV) of 21 February 1979 5 (XXXVI) of 15 February 1980, 14 (XXXVII) of 6 March 1981, 1982/16 of 5 February 1982, 1983/4 of 15 February 1983, 1984/14 of 29 February 1984, 1985/6 of 26 February 1985 and 1986/24 of 10 March 1986, Recalling further the relevant provisions of the Paris Declaration on Namibia and the Programme of Action on Namibia (A/CONF.120/13, part 3) adopted by the International Conference in Support of the Struggle of the Namibian People for Independence, held in Paris from 25 to 29 April 1983, Conscious of the worsening of the situation in southern Africa as a result of South Africa's racist policies of oppression, aggression and occupation, which constitute a clear threat to world peace and security, and condemning the continuing breach by South Africa of the obligations assumed by it under the Charter of the United Nations and its persistent non-compliance With the relevant resolutions and decisions of the United Nations,

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Expressing its profound indignation at the brutal repression which followed the imposition of the so-called "new constitution" and the declaration of the state of emergency by the apartheid regime of South Africa in defiance of international public opinion,

Condemning the continued colonialist and racist oppression of millions of Africans, particularly in Namibia, by the racist Government of South Africa through its persistent, illegal occupation of the international Territory and its intransigent attitude towards all efforts being made to bring about an internationally acceptable solution to the situation obtaining in the Territory,

Condemning the racist regime of South Africa for its ruthless exploitation of the people and resources of Namibia, as well as its attempt to destroy the national unity and territorial integrity of Namibia, '

Condemning the racist regime of South Africa for developing a nuclear capability for military and aggressive purposes which constitute a serious threat to Africa and to international peace and security,

Reaffirming that Walvis Bay and the offshore islands constitute an integral part of the Territory of Namibia,

Reaffirming that "bantustanization" is incompatible with genuine independence, national unity and sovereignty and has the effect of perpetuating the power of the minority and the racist system of apartheid in South Africa,

Reaffirming also that the system of apartheid imposed on the South African people constitutes a gross and massive violation of the rights of that people,

. Reiterating its affirmation on the importance of the effective realization of the right of peoples to self-determination, national sovereignty and territorial integrity and of the speedy granting of independence to colonial countries and peoples as imperative for the enjoyment of human rights,

1. Calls upon all States to implement fully and faithfully the resolutions of the United Nations, in particular General Assembly resolution 1514 (XV). and to take all the necessary steps to enable the dependent peoples of the territories concerned to exercise fully and without further delay their inalienable right to self-determination and independence;

2. Reaffirms the inalienable right of the people of Namibia to self-determination, freedom and national independence in a united Namibia

including Walvis Bay and the offshore islands, in accordance with the Charter of the United Nations and as recognized in General Assembly resolutions 1514 (XV) and 2145 (XXI) of 27 October 1966 and Security Council resolution 435 (1978) of 29 September 1978, as well as in subsequent resolutions of the Assembly relating to Namibia, and the legitimacy of its struggle by all means at its disposal, including armed struggle, against the illegal occupation of its Territory by South Africa;

3. Reaffirms the legitimacy of the struggle of the oppressed people of South Africa and its national liberation movements by all available means, including armed struggle, for the elimination of the apartheid system and the exercise of the right of self-determination by the people of South Africa;

4. Reiterates its affirmations that the continuation of colonialism in all its forms and manifestations, including racism, racial discrimination, apartheid, the exploitation by foreign and other interests of economic and human resources and the waging of colonial wars to suppress the national liberation movements, is incompatible with the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples and poses a serious threat to international peace and security;

5. Urges all States, directly and through their action in the specialized agencies and other organizations of the United Nations system, to provide all moral and material assistance to the oppressed people of South Africa and Namibia;

6. Calls for the full implementation of the provisions of the 1963 Declaration of June 1986 calling for mandatory sanctions against South Africa and the Declaration and Programme of Action adopted by the International Conference for the Immediate Independence of Namibia, held at Vienna from 7 to 11 July 1986;

7. Rejects categorically the so-called "new constitution" as null and void and reiterates that peace in South Africa can only be guaranteed by the establishment of majority rule through the full and free exercise of adult suffrage by all the people in a united and undivided South Africa;

8. Strongly condemns the continued violations of the human rights of peoples still under colonial and foreign domination, the continuation of the illegal occupation of Namibia and South Africa's attempts to dismember its territory, and the perpetuation of the racist minority regime in southern Africa;

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9. Also strongly condemns the apartheid regime of South Africa for its brutal repression and indiscriminate torture and killing of workers, schoolchildren and other opponents of apartheid, and the imposition of death sentences on freedom fighters;

10. Strongly condemns the wanton killing of peaceful and defenceless demonstrators and workers on strike, as well as the arbitrary arrests of the leaders and activists of mass organizations, and demands their immediate and unconditional release, in particular that of Nelson Mandela and Zephania Mothopeng;

11. Condemns the policy of "bantustanization", which purports to denationalize the majority of the South African people and is contrary to the principle of self-determination and inconsistent with genuine independence and national unity;

12. Condemns the imposition of censorship and other restrictions on the media by the racist regime, in particular on press reports and the transmission of audio-visual material, aimed at concealing from world public opinion the ruthless atrocities perpetrated by the apartheid regime against the peoples of South Africa and Namibia;

13. Vigorously condemns all collaboration, particularly in the nuclear, military and economic fields, with the Government of South Africa and calls upon the States concerned to cease all such collaboration forthwith;

14. Condemns the continuing activities of foreign economic and other interests which are impeding the implementation of the Declaration contained in General Assembly resolution 1514 (XV) with respect to colonial territories, particularly Namibia;

15. Demands that South Africa immediately release all people detained or imprisoned as a result of their struggle for self-determination and independence, and that it guarantee full respect for their fundamental rights and the observance of article 5 of the Universal Declaration of Human Rights, under which no one shall be subjected to torture or to cruel, inhuman or degrading treatment;

16. Declares that the illegal occupation of Namibia by South Africa continues to constitute an act of aggression against the Namibian people and a threat to international peace and security as well as an affront to the United Nations, which has direct responsibility for the Territory until independence;

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17. Condemns the wanton acts of aggression and destabilization perpetrated by the apartheid regime of South Africa against front-line and other neighbouring States;

18. Demands that South Africa put an immediate, total and unconditional end to its wanton and unprovoked acts of aggression and withdraw its occupation forces from Angola;

19. Calls upon the Western and other countries with political, economic, military, nuclear, strategic, cultural and sports relations with the racist minority regime of South Africa to sever such relations, as they encourage that regime to persist in its suppression of the aspirations of people to self-determination and independence;

. 20. Decides to include in the provisional agenda of its .  
forty-fourth session the item entitled "The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation" and to give it high priority consideration.

UNITED  
NATIONS  
Economic and Social Distr-  
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Council  
E/CN.4/1987/L.13  
18 February 1987  
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COMMISSION ON HUMAN RIGHTS  
Forty-third session  
Agenda item 6

VIOLATIONS OF HUMAN RIGHTS IN SOUTHERN AFRICA:  
REPORT OF THE AD HOC WORKING GROUP OF EXPERTS  
United States of America: draft resolution

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Situation of human rights in South Africa  
The Commission on Human Rights,  
Recognizing that apartheid is a gross violation of the fundamental human  
rights of the people of South Africa,  
Noting that gross and cruel violations of human rights under apartheid  
continue to take place in South Africa,  
Acknowledging that apartheid violates the basic principles of the  
Universal Declaration of Human Rights, particularly the right to equality  
before the law and to non-discriminatory treatment,  
Deeply disturbed by widespread reports of South Africa's use of the army  
and the police in the black African townships resulting in acts of violence  
against men, women and children,  
Considering that the struggle of the South African people for a united,  
non-racial democratic society enjoys the full support of the international  
community,  
Bearing in mind the principles contained in the Charter of the  
United Nations concerning the right of peoples to self-determination,  
GE.87-10625/7133E

1. Affirms that in order to build a true democracy apartheid should be abolished in all its forms through peaceful means and rejects:
  - (a) The perpetuation of apartheid and other forms of racial intolerance and discrimination;
  - (b) The exclusion of the majority black population from participating in the political, social, economic and cultural life of their country;
  - (c) The denial to the black population of their full citizenship rights;
2. Strongly condemns the dramatic escalation of the violation of human rights in South Africa since the imposition of the state of emergency in June 1986 and other subsequent regulations;
3. Strongly condemns also the widespread detention and incarceration of children under the apartheid penal system;
4. Unequivocally calls for termination of the existing state of emergency, the abolition of the apartheid laws, the dismantling of the Bantustans, the lifting of the bans on all political organizations and parties, the return of all political exiles and the unconditional and immediate release of Mr. Nelson Mandela and all other political prisoners in South Africa;
5. Requests that South Africa desist from its harassment of organizations and individuals engaged in the legitimate struggle against apartheid policies;
6. Strongly condemns South Africa for any indiscriminate use of force against unarmed demonstrators;
7. Calls upon South Africa to respect international standards on trade-union rights in respect of black trade unions;
8. Requests that South Africa afford the people of South Africa access to legitimate vehicles for expressing their political, social and cultural aspirations;
9. Requests that South Africa take immediate steps to ensure that all South Africans are afforded the opportunity of access to a unified, free educational system;
10. Requests that South Africa completely abolish the unjust and inhumane system of apartheid in all its forms;
11. Commends the international community for its unflagging support for all the people of South Africa and their legitimate efforts to exercise self-determination;



12. Asserts that enjoyment by South Africans of all the fundamental human rights contained in the Universal Declaration of Human Rights is essential for the exercise of genuine self-determination;

13. Emphasizes that in particular:

- (a) The right to worship freely;
- (b) The right to freedom of expression and opinion;
- (c) The right to a free and unimpeded flow of information;
- (d) The right to form free and independent trade unions;
- (e) The right to associate freely with others;
- (f) The right to own property;
- (9) The right to participate in a political system based upon common and equal citizenship, universal franchise and duly elected representative institutions;

are of great importance in building free, democratic institutions in South Africa;

14. Egggg the United Nations system, and in particular the Centre for Human Rights, to promote assistance through advisory services to South Africans peacefully attempting to establish democracy in South Africa;

15. Calls upon Governments and peoples, in co-ordination with the United Nations, to lend material and technical assistance to South Africans peacefully striving to establish a free and open society in South Africa, especially in the following areas:

- (a) Legal assistance for South Africans seeking peacefully to establish democratic institutions and organizations;
- (b) Advice and assistance for the creation of free and open political institutions in South Africa;
- (c) Material support to individuals or groups in South Africa seeking to engage in entrepreneurial activity;
- (d) The creation of self-help organizations at the community level;

16. Requests the Secretary-General to publicize widely efforts made to bring about peaceful change and greater enjoyment of fundamental human freedoms in South Africa.

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PRESS RELEASE

COMUNICADO DE PRENSA COMMUNIQUE DE PRESSE

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thINTERNATIONAL COMMISSION OF JURISTS

COMMISSION INTERNATIONALE DE JURISTES COMISION INTERNACIONAL DE JURISTAS

109, ROUTE DE CHENE, P.O.BOX 120, CH-1224 CHENE-BOUGERIES/GENEVA, SWITZERLAND

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Monday, 16 March 19 7

1800 hours GMT

INTERNATIONAL COMMISSION OF JURISTS

MISSION TO SOUTH AFRICA

Introduction

The International Commission of Jurists sent a mission to South Africa for three weeks in February 1987 to examine the situation concerning human rights, with particular reference to the topics outlined below. It is believed to be the first such mission since the state of emergency.

The mission was composed of four lawyers: Geoffrey Bindman, a London solicitor, Jean-Marie Crettaz, a Geneva advocate, Henry Downing, an Irish barrister, and Guenter witzsch, a German Professor of Public Law. They had all previously studied aspects of the apartheid system. '

After a series of meetings in Johannesburg they' divided into two pairs, one going to the 'homelands' of Boputhatswana and Ciskei and to Port Elizabeth, the other to Durban and Cape Town. The whole team then visited together Bloemfontein, Pretoria and Cape Town.

During their mission they met with a wide range of practicing and academic lawyers, judges, community workers, political activists and ordinary residents of townships. In the last week they met with government officials and the Deputy Minister of Law and Order, Mr. Rolf Meyer.

The mission collected a vast amount of information and it will be some time before their full report is available. Meanwhile, they have met to agree their main conclusions as Follows!-  
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## CONCLUSIONS

### The apartheid dilemma

There is no indication that the will of the ruling party in South Africa to retain power in the hands of the white minority is in any way diminished. This poses a dilemma for the government. Nothing short of severe repression, under which the rule of law and human rights have a low priority, can give them any chance of maintaining domination over the huge disenfranchised majority most of which - and especially its youth - is determined to share political power. On the other hand, the acknowledgement of such a strategy undermines the pretensions of the government to legitimacy within the Western liberal tradition. It also discourages foreign investment and the trading and cultural relationship on which the lifestyle of the white community depends.

The government appears to have resolved its dilemma in favour of an uncompromising assault on any organised extra parliamentary opposition, and aims to disguise its strategy within a framework of 'legalism, including restrictions on publishing information about 'unrest'.

The government claims that its wholesale abrogation of human rights under a veil of secrecy is justified by the need to overcome subversive forces operating through ostensibly peaceful and lawful organisations.

In any event, a government elected by some 7% of the population, out of which less than a quarter is enfranchised at all, has no claim to greater legitimacy than its opponents who are plainly in the majority.

### 'Dismantling apartheid ?

Some inroads into the apartheid system have recently been made which might create the impression that the government is set on a course of eventually abolishing apartheid. Already in 1979 the multi-racial use of many public facilities was allowed. A number of Acts were repealed, such as the Mixed Marriages Act, the Immorality Act, certain curfew laws, and, in particular, the so-called pass laws. Blacks are now allowed to have title to leasehold in certain areas. The Restoration of Citizenship Act appears to be a turning 'point in the government's policy, since the government now accepts the fact that millions of blacks must remain as citizens of South Africa. Previously, the declared policy was that every black living in South Africa had to become a citizen of an 'independent homeland'. Eventually all blacks living in South Africa would then become foreigners and any discrimination against them would be based on nationality rather than colour. This dream has had to be abandoned.

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Impressive as these various steps may appear to someone 'used to the old system of "petty apartheid", they leave the structure of racial discrimination basically unchanged, as long as the government does not address itself to a repeal of the corner stone of the entire system, the Population Registration Act which governs the right to vote. Even where major legislative changes have to be acknowledged as in the areas of pass laws and citizenship legislation, - the government has limited their scope of application. Thus, blacks no longer need a pass book to travel within South Africa, but still cannot settle freely since they need work and residential permits to do so. The Restoration of Citizenship Act does not restore the citizenship to most of the 8 million blacks residing in the so-called independent homelands, and even for many of those living in South Africa citizenship is often granted not as a right but by discretion, and the authorities appear to take a restrictive view of their discretionary powers.

There are still limits to the lifting of so-called 'petty apartheid'. -

During the visit of the mission four young girls were prosecuted in Durban for unlawfully bathing from a beach reserved for whites only, and a black school boy was refused participation in a national sporting event by the governors of the white host school. The Group Areas Act still prevents couples living together across the colour line without government permission. The reluctance of the government to grant it is illustrated by its refusal to allow its own Ambassador to the EEC, Professor Ranchod, classified as "Indian", to reside in a neighbourhood designated for whites.

The Illegal Squatting Act still criminalises residence in an unauthorised area and empowers the authorities to remove a person to any other land which the Minister may designate. And in spite of public announcements to the contrary, the government still continues its policy of forced removals of black people. Removals have been threatened recently at Brits in the Transvaal and at Lavaaia camp in the Eastern Cape. Both have been deferred due to public outcries - members of the mission were present when the Lavaaia camp removal was expected to take place - but the reprieve is likely to be a temporary one.

Obstruction of Political Activity and Freedom of Assembly  
Banning of the United Democratic Front (UDF), composed as it is of some 600 organisations, would have been difficult, but the government has evidently determined to impede its activities, particularly by banning its meetings.

Wide powers under the Internal Security Act and Emergency Regulations have been used to detain UDF and trade union leaders, giving specious reasons which the Courts do not investigate. For example, it is regularly claimed that the detainee is suspected of membership of the banned ANC, and the courts do not give him an opportunity to refute the allegation.

The mission attended the notorious Delmas trial of UDF leaders and were able to talk with some of the defendants. 13 of the 19 defendants have been detained for over 18 months without bail on 'security' grounds. The courts accepted the government's argument that it could not disclose its evidence for opposing bail, again for 'security' reasons.

In the comparable Pietermaritzburg trial, attended by one member of the mission on a previous occasion, 16 UDF leaders were effectively silenced for over a year until the government eventually abandoned its case for want of evidence.

The security laws

The Internal Security Act of 1982 gives the government and the security forces acting under its authority massive powers to arrest and detain without charge or trial. It also authorises the banning of meetings and gatherings of all kinds and thereby enables the government to prevent or criminalise any unwelcome political activities. Even potential prosecution witnesses may be held in prison and many are detained for long periods. The Attorney-General of the Transvaal said to a member of the mission that it is the practice to keep potential witnesses incommunicado to avoid the influence of family or lawyers. Detainees of all kinds under these powers have complained of violent assaults and torture, including electric shocks, and these have frequently been verified by medical examination.

Members of our group received personal accounts of such treatment from victims, saw their injuries, and saw many photographs of young blacks who had been subjected to gross brutality.

The State of Emergency declared on 12 June 1986 and still in force grants the police even wider powers of detention. They have been used to put out of circulation leaders of the UDF, the NECC and COSATU and their various affiliates. Under the emergency, detention for up to 14 days may be ordered by any member of the armed forces, State police, or local township police, many of whom have poor education and minimal training. Under the emergency regulations, severe restrictions are imposed on freedom of speech and freedom of the press. 'Subversive' statements may not be published. The definition of subversive is so wide as to defeat virtually any defence.

The activities of the security forces may not be reported in 'unrest' situations. In effect the conduct of the security forces in black townships has been removed from public scrutiny. The regulations give them immunity from legal liability for acts done 'in good faith'. Since it is virtually impossible for the complainant to prove bad faith, the immunity is an invitation to violence. Numerous killings and assaults have taken place.

Nearly 7,000,000 Rand has been paid by the government in settlement of claims by victims of assaults by the security

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forces. The government prefers to pay them than to face court action, even where it may be able to rely successfully on the immunity.

Notwithstanding the severe restrictions imposed on the press, several editors and journalists have shown great courage by publishing powerful criticism of the government. Others, unfortunately, have become self-censors, fearful of offending an all-powerful executive. '

A Police State ?

The evidence demonstrates that the police have virtually unlimited powers and have little to fear from the courts. The Deputy Minister of Law and Order assured the mission that police misconduct was severely punished. The mission saw no evidence of this. It was unable to credit the professed desire of the government to restrain police brutality, as it is in the atmosphere of terror created by police brutality in the townships that the government's strategy of repression depends. Even the most glaring abuses have gone unpunished.

The Legal Resources Centre in Cape Town obtained an interdict against the police to restrain further assaults on the residents of squatter camps in the area of Crossroads. In defiance of the interdict fresh attacks were mounted by the vigilantes and police which, on 9 and 10 June 1986, led to the eviction of some 60,000 people and the destruction of their homes and property. No disciplinary or court action has been taken against the policemen involved notwithstanding their gross contempt of court.

Also in the Cape area was the notorious incident of the 'Trojan horse' when 3 children were shot dead by policemen who emerged from boxes on top of an unmarked lorry and opened fire. After the killings they arrested several people in the neighbourhood and charged them with public violence, alleging that they were throwing stones. When the case came to court in late 1986 the police were unable to produce any credible evidence and the case was dismissed. No prosecution or disciplinary action has been taken against the policemen responsible for the killing.

Trade Unions

Trade union law is one area where the rights of blacks and their bargaining power have increased following the 1981 Labour Relations Act. This resulted in the formation of the mainly black Congress of South African Trade Unions (COSATU). However, this organisation has been severely restricted, largely owing to its uncompromising attitude to apartheid and its support for the UDF coalition. Many of its leaders have been arrested and detained without charge, and several of its member unions have been threatened with eviction from their offices.

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Employers often call in the police during strikes, including purely industrial strikes. The police oblige by making arrests of the leaders to bring pressure to end the strike.

In general, there is a dearth of information in the media about strikes..

The Administration of Justice and Legal Aid

The constitutional system in South Africa makes Parliament supreme. The judges are bound by their oath of office to apply the law passed by Parliament. They have discretion in certain aspects, such as sentencing, and they have the responsibility for interpreting the law - deciding the meaning of the words which Parliament has used to express its instructions.

Given the evident intention of the government to deny human rights to the majority of its citizens do the judges have any power to defend them? And if they have any such power, do they exercise it? The record of the South African judges has nearly always been negative and two recent studies of the judiciary since 1910 have criticised their excessive readiness to support the policies of successive governments. Nevertheless, there is a strong vein of legalism in South Africa and the judges have seen themselves as belonging to the same professional tradition as the English and American judges, in which a high degree of technical competence and independence of the executive are valued. The claim to independence is not wholly justified. The judges are appointed by the government and there have been a number of very obviously political appointments in the past by which the government has sought to ensure that the courts will not upset state policy. In this they have plainly succeeded and continue to succeed with only limited exceptions.

In the last two or three years some judges have demonstrated a degree of independence by ruling against the government in a number of cases where they have had to interpret the Internal Security Act and the Emergency Regulations. Some of these 'liberal' decisions have been reversed by the Appellate Division and others have been reversed by the government amending the law. It is plain that an adverse decision will not be allowed to stand if it inhibits the government's freedom to detain whoever it wishes to detain. It is therefore obvious that the judges, however courageous and independent, can mitigate only marginally the impact of the security laws. At the same time their presence on the bench lends undeserved credibility to a legal system in which personal and political freedom are left unprotected.

In general, the judges have been criticised not only on account of their participation in a legal system which denies basic rights to personal liberty. In administering the ordinary law they have made decisions and imposed sentences which many find

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excessively harsh, particularly sentences on juvenile offenders. This applies even to the more 'liberal' judges.

#### Judiciary.

The legal aid system in South Africa is totally inadequate. In the year ending 31 March 1984, the government funded Legal Aid Board spent only R. 3.4 m on legal aid. The effect of this is that such benefits as can be obtained from the legal aid system are largely denied to the impoverished black\_community. The Situation in the Homelands

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The situation in the so-called homelands differs from that in the rest of South Africa in one notable aspect! though the homelands are a product of South Africa's apartheid policy, South African apartheid laws do not apply within the independent homelands. i

. However, in other respects the human rights record of most of the homelands is even worse than that of South Africa, due in part to the fact that they are not recognised as independent States and therefore their internal administration is less exposed to critical scrutiny by the international community. We have Found an abundance of evidence that any political dissent is harshly suppressed, that political detainees - often even minors - are brutally tortured by a police force which closely collaborates with, or occasionally even appears to be supervised by, South African officials.

Though the judiciary enjoys a degree of independence similar to that existing in South Africa and any government interference would be rejected at least by judges at the Supreme Court level, judges often find it difficult or are reluctant to stop abuses of power by the executive branch of government.

However, the level of encroachment upon the rule of law . varies in the ten different homelands, with Venda and Ciskei having the worse reputation and Boputhatswana believed by many observers to have a better' record. The latter's constitution contains a bill of rights that, at least in theory, provides an instrument for the Supreme Court of that homeland to annul government actions and even Parliamentary legislation found inconsistent with the bill of rights. Boputhatswana also knows the institution of an ombudsman with wide powers to look into the grievances by its Citizens, but many inhabitants nevertheless feel themselves powerless when it comes to the enforcement of their civil rights, in particular their right to voice political dissent and to organise political opposition against the government.

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## Education

The policy of the ruling National Party has been to ensure a separate and inferior education for black people. The State spends six times more per capita on white children than on black children. The curriculum at black schools is restricted with the result that black students are not adequately prepared for entry to higher level education.

The effect of this discrimination is demonstrated by the problems experienced by black students attempting to enter the legal professions. Latin is a required subject in law schools, This subject is not normally taught in black schools. In the University of Cape Town, we were told that black students may have to extend their studies for up to two years to achieve the minimum latin qualification.

Black students who succeed in passing through law school must still surmount the hurdle of gaining acceptance by a firm of attorneys or in an advocate's chambers. There has been strong criticism of the professional organisations for failing to make adequate provision for the admission of black lawyers. The Chairman of the Bar Council admitted to the mission that his association has failed to tackle this problem but said that they were now seeking solutions.

## Children

Black children have protested vigorously against the discrimination inflicted on them and have been in the forefront of resistance to the government in the townships. As a consequence, children have been the target of violent repression by the State. The security Forces patrol the streets in heavily armoured vehicles which provoked stone throwing. The response by the security forces is often excessive, and results in widespread detentions and violent assaults on the children. Even where so-called "non-lethal" weapons are used, such as tear gas, rubber bullets or bird-shot, children have been seriously injured and have even died as a result.

There are many children in detention without trial. The latest figures from the Detainees Parents Support Committee show that at least 885 children under 18 years of age have been detained since the start of the emergency, some of whom are as young as ten years old. There are no rehabilitation centres for blacks as there are for whites. The prisons are grossly overcrowded. We heard complaints of children being kept in the same cells as adults, who subjected them to various forms of abuse, including sexual abuse.

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Children are being subjected to widespread physical abuse and torture by the security forces. There appears to be wide use of electric shocks and tear gas on detainees, both of which may not have any visible marks. The problem is even worse in the so-called homelands. In Ciskei, children were seen who bore the marks of torture eight months after they were interrogated by the police. The children said that the police whipped them with metal-tipped sjamboks and with strips of rolled wire, as well as scalding them with boiling water and burning plastic. The injuries were compounded by the failure to provide medical treatment for the injured children.

Even where children are prosecuted under the ordinary criminal law the results are extremely harsh. Children accused of stone-throwing are usually charged with the serious offence of public violence. A four year sentence is not unusual, even where the child is a first-time offender for whom an alternative non-custodial punishment could be found. The Minister for Law and Order has decided that there is to be no remission of sentence in public violence cases. In October 1986, one member of the mission heard two Supreme Court judges in Cape Town refuse to vary sentences of seven years imprisonment on some first offenders between 16 and 20 for acts of violence that were no more serious than punching a man in the face, setting fire to curtains and breaking a window. Many of the sentences imposed recently in public violence cases are, in the opinion of the mission, unreasonable to the point of barbarity.

A case which shocks the conscience is that of 13 year old Zachariah Makhajane, who was detained without charge under the Emergency regulations on 21 August 1986. A Supreme Court judge refused to order the boy's release in a judgement that makes no reference to 'the boy's age. An appeal to a three man court, which included the judge who is regarded as the most liberal, was dismissed on the ground that it had not been shown that the police had failed properly to form the opinion that detention was necessary for the maintenance of public order. If there was any evidence of an offence in this case, the boy could have been prosecuted. In any event, an alternative possibility would have been to put the child into care. In the view of the mission the continued imprisonment of a 13 year old child in these circumstances is indefensible. The disruptive effect of such sentences on the family is incalculable. The children, often develop post-traumatic stress disorders after detention, and many become depressed and find it difficult to integrate back into society. Children released from detention have recently been refused readmission to school.

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Mr. Tony Seedat  
Chief Representative ANC  
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With reference to our discussions on  
17 March 1987 please find attached the  
requested documents of the UN Commission  
on Humah Rights. The final texts will be  
issued in May in the Report of the Commission.