SOUTH AFRICA 1983: REORGANIZING *APARTHEID*

SOUTHERN AFRICA PROJECT
1983 Annual Report

LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW
1400 'Eye' Street, N.W., Washington, D.C. 20005

HISTORY AND PURPOSE OF PROJECT

In the midst of the burgeoning civil rights movement which swept the country in the early 1960's, President John F. Kennedy invited a group of prominent lawyers to the White House and implored them to lend their professional skills and support to the struggle for racial equality. It was in response to this plea that the leadership of the American Bar Association and many state bar associations established the Lawyers' Committee for Civil Rights Under Law in 1963.

Since its inception, the Committee has engaged the support and active involvement of eminent members of the legal profession—including past presidents of the American Bar Association, former U.S. Attorneys General, and law school deans—in civil rights work aimed at eradicating the last vestiges of discrimination whether based on race, creed, color, or sex. The struggle to eradicate racism and discrimination in the United States is an ongoing effort. The task has yet to be completed.

Cognizant that the domestic struggle for civil rights is inextricably linked to the struggle for human rights in other parts of the world, the Lawyers' Committee in 1967 established the Southern Africa Project in response to requests for assistance in cases involving human rights in South Africa and Namibia.

In essence, the Project seeks (1) to ensure that defendants in political trials in South Africa and Namibia receive the necessary resources for their defense and a competent attorney of their own choice; (2) to initiate or intervene in legal proceedings in this country to deter actions that are supportive of South Africa's policy of *apartheid*, when such actions may be found to violate U.S. law; and (3) to serve as a resource for those concerned with the erosion of the rule of law in South Africa and that government's denial of basic human rights.

SOUTHERN AFRICA PROJECT ANNUAL REPORT

SOUTH AFRICA 1983: REORGANIZING *APARTHEID*

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SOUTH AFRICA 1983: REORGANIZING *APARTHEID*

Every "reform" in South Africa during 1983 placed new restrictions on the majority black population. The government continued to implement its policy of Grand Apartheid while world attention focused on the reputedly reformist constitution. An examination of the constitution and South Africa's policies during 1983 indicates that "reorganization" appears a more accurate term for what has been described as "reform."

The new constitution was the most dramatic maneuver by the Nationalist government to split South Africa's black population, comprised of the country's approximately 2.5 million "Coloreds," 750,000 Asians, and 20 million Africans. The new constitution permits Coloreds and Asians to enter national politics as junior "associates," and continues to bar Africans, whose exclusion to the politically and economically backward homelands is more firmly entrenched. The government has stated that it will not subsequently add an African chamber in Parliament and will restrict African politics to township affairs and the homeland governments. As Nthato Motlana, a leading black spokesman states, with the constitution, Prime Minister Botha "wants to buy off Indians and the Coloreds, reduce the number of Blacks [Africans] in white South Africa to manageable proportions and forget about the rest."

Government officials, touting the constitution as evidence of "evolutionary reform," note that it calls for a multi-racial parliament (one separate chamber each for Whites, Coloreds, and Asians) as well as participation of all three groups on the President's Council and the Electoral College. However, the power of the minority parliamentary groups--the (all-white) Progressive Federal Party, the Coloreds, and the Asians--will be insufficient to substantially change government policy.

The Electoral College will select and, if necessary, impeach the State President. The Electoral College will be comprised of 50 Whites from the majority party along with 25 Coloreds and 13 Asians. The majority Nationalist Party, therefore, can nullify any opposition.

The President--and the President alone--will decide which chamber of Parliament will consider a specific bill. A bill goes to one chamber if the President decides that the legislation applies only to that racial community, whereas all three of the chambers will receive the bill if the President decides it to be of mutual or "general" interest, for example, if it relates to defense, foreign affairs, finance, justice, or internal state security.

The President's Council will make decisions that are binding on both Parliament and the State President about legislation disputed by two or all three of the chambers. As with the Electoral College, the President's Council also will have Colored and Asian representatives. It is unlikely, however, that they will be able to prevail in a vote. Only 15 of the 60 members will be non-white. The State President will appoint 25 of the 60 members while an additional 20 will come from the white, presumably Nationalist, party.

By reorganizing rather than reforming his government, Prime Minister Botha is attempting to divide his black opposition and coopt allies for his white government against the excluded Africans. In addition, the Colored and Asian participation will allow the military to draw upon their manpower pool; a quid pro quo for inclusion in the political process is that they will be subject to conscription.

Black reaction to the constitution has been largely negative. Many Coloreds and Asians have joined a united African community to oppose it. The largest opposition group, the United Democratic Front, forms a multi-racial umbrella for some 550 organizations. The Christian Science Monitor wrote: "The constitution has sparked black resistance on a scale not seen in South Africa since the mid-1970s."

Urban "reform" in South Africa during 1983 was a process of effectively nullifying court decisions while playing black groups off against each other. And, as with the constitution, the Coloreds received some limited benefits, but only at the expense of Africans. The most outstanding example was the government's introduction of the "Koornhof bills" following a dramatic court ruling on the pass laws.

First, some background. Section 10 of South Africa's Urban Areas Act limits the number of Blacks who can live permanently in the cities. It states that Blacks not born in a "white" area may qualify for permanent living rights only if they have worked continuously for one employer for ten years or for 15 years with several employers. A 1968 law restricted the exercise of this right by requiring migrant laborers to return to the homelands for at least one month per year to renew their work contracts. Regulations interpreted this obligatory return as disrupting continuous residence and employment within the "white" area.

However, in June 1983 the Appellate Division of the Supreme Court upheld a lower court ruling that this one month "vacation" period did not constitute a legal break in employment. In the case of Mr. Mehlolo Rikhoto, a machine operator in Johannesburg, the Appellate Division concluded that it was the mutual and continuous intention of both Rikhoto and his employer that he should remain employed by the company, regardless of any obligatory renewal period. The decision, if implemented, will allow

many more Blacks to reside permanently in the cities. It also will prevent the state from deporting Blacks to the homelands should they become unemployed after qualifying for Section 10 residency rights.

In practice, however, the decision may mean very little. South African bureaucracy is notably intransigent and effectively disregards distasteful decisions from the judiciary. The New York Times described the reaction to the Rikhoto decision by the administration boards, which administer the pass laws this way: they carry "out the court's orders with all deliberate tardiness, giving applicants long questionnaires to fill out and pleading that it is too short-handed to process them."

Additionally, the Botha government nullified the effects of the Rikhoto decision by ruling that new applications for "Rikhoto rights" must now have government-approved housing before their families may join them. Soweto, South Africa's largest black township, has a waiting list for approved housing that extends back to 1969.

The government introduced The Orderly Movement and Settlement of Black Persons Bill as one of the "Koornhof bills" which further curtails the already limited right of rural Africans to visit the urban areas in the following ways. People providing accommodation in urban areas to unauthorized Africans will face a fine of 500 Rand (about $470) or six months imprisonment. Employers who hire unauthorized Africans will be fined 5,000 Rand (about $4,700) or 12 months imprisonment. Africans found in urban areas at night without permission will draw a 500 Rand fine or 6 months imprisonment and 20 Rand per day (a companion bill, the 1983 Criminal Law Amendment Bill, raised trespassing fines from 50 Rand or three months imprisonment to 2,000 Rand or two years imprisonment). To enforce these measures the Orderly Movement Bill authorizes inspectors and policemen to enter any premises--black or white--at any time without notice or a warrant.

A second Koornhof bill, The Local Authorities Act, gives African authorities in the urban black townships responsibility for such services as the allocation and management of housing and the provision of utilities but without any new access to resources. The local black authorities have no industrial tax base and thus must raise the revenue from those least able to pay taxes. The African township authorities will largely be implementing already established Nationalist Party policies and will be subject to recall by the Minister of Cooperation and Development. As with the homeland governments, the councils will be absorbing the blame for a situation that they did not create and cannot solve.

Whatever benefits urban Africans have received were at the expense of rural Africans, and the benefits received by the Coloreds were at the expense of urban Africans. The South Afri-

can government gave Coloreds and Asians at least symbolic gains--for example, parliamentary representation--but with the same act it constitutionally excluded Africans from the national government. In Cape Town the government will allow the Coloreds to move into the now African townships of Langa, Nyanga, and Guguletu, which are close to the central city, while the government plans to forcibly relocate the Africans to Khayalitsha, 25 miles from Cape Town. By further restricting the access of unemployed Africans to the cities, new government measures will increase starvation and hardship in the homelands.

It was against this background of governmental reorganization of apartheid that the Southern Africa Project continued its work in 1983. To counter the legalized injustices of apartheid, the Project fought for the right of Africans to remain residents in their traditional villages, e.g., the Magopa relocation; for the right of citizens to live free from state harassment, e.g., the Ciskei Emergency Proclamation; and for the right of peaceful black political and trade union organizations and leaders to exist, e.g., The State v. Oscar Mpetha.

The Southern Africa Project aided, in full or in part, all of the cases discussed in this Report. It paid lawyers' fees and other litigation costs. It supplied legal memoranda to counsel, especially on international legal issues. It also sent a legal observer to the trial of two security policemen accused of beating a political prisoner to death. The Project worked to raise the attention and consciousness of the American public to the abuses connected with the cases it assisted and the larger context in which they arose.

GRAND *APARTHEID:* THE HOMELANDS

South Africa's bantustan policy is one of the most pernicious aspects of apartheid. The arid, overpopulated, poverty-ridden bantustans serve as dumping grounds for unneeded black laborers and as a means to deprive all Africans of their South African citizenship. The ultimate aim of the policy is to excise the bantustans from the remaining 86% of South Africa which has been reserved for Whites, declare the bantustans to be "independent" states, and strip Blacks of South African citizenship in exchange for citizenship in the bantustans. In 1978 the Minister for Bantu Affairs stated that "If our policy is taken to its logical conclusion as far as the black people are concerned, there will be not one black person with South African citizenship."

To date, nearly 8 million Africans have been denationalized through the implementation of South Africa's bantustan policy. They are now considered to have "guest worker" status in the urban areas.

Most of the bantustans' "citizens" live there involuntarily, having been deported from urban centers or barred from entering "white" areas. Since 1960 the South African government has forcibly relocated (often at gunpoint) 3.5 million Blacks to these bantustans and has plans to relocate another 2 million in the future. Some of the displaced came from the cities following conviction for pass violations. In 1982, the government made 206,000 pass law arrests. Others forcibly resettled in the homelands came from "black spots," which are land areas lawfully owned and usually well-developed by Blacks, but which the government now wants for white ownership. Between 1970 and 1979 the government relocated over 300,000 black spot residents.

Once relocated, they face harsh conditions and repressive political systems. The homelands are densely populated, yet lack even subsistence agricultural potential. There is virtually no industry or mining. South African government statistics reveal that only one-seventh of the homelands' population is "economically active." As with the local urban authorities, the homelands are absorbing the blame for a situation they did not create and cannot solve.

Few of the homeland rulers enjoy popular support. Several rule despotically and occasionally even transcend South Africa's model of authoritarianism. As appendages of South Africa they receive as much as 80% of their budgets from the South African government. The prestigious Study Commission on U.S. Policy Toward Southern Africa report, South Africa: Time Running Out,

notes that whereas an occasional homeland such as BophuthaTswana has instituted some democratic measures, "civil liberties have often faired poorly and official corruption has thrived...by far and away the worst record belongs to Venda, particularly in the field of civil liberties which can only be described as nonexistent."

In 1983 the Southern Africa Project assisted (a) defendants arrested under the State of Emergency proclaimed by the Ciskei homeland authorities, (b) the "black spot" communities of Magopa and Mgwali which were protesting their proposed relocation to the homelands, and (c) the KaNgwane homeland which was fighting a South African government proposal to cede it to the neighboring country of Swaziland.

Particularly egregious abuses of human rights occurred in the context of a bus boycott in the bantustan of the Ciskei. The Washington Post characterized the Ciskei as the "poorest and most overpopulated region in South Africa." South Africa proclaimed the Ciskei's "independence" in 1981 despite a finding by the Quail Commission (a government-appointed commission of inquiry) that the majority of Ciskeians opposed independence.

While Ciskei's major export is its labor to the white areas of South Africa, it still suffers a 35% unemployment rate. This percentage will undoubtedly rise as legislation such as the Koornhof bills further restricts urban migration. Much of the Ciskei's work force lives in Mdantsane, South Africa's second largest black township, and normally commutes to work into nearby East London by bus or train. Apartheid policy forces Blacks to live in segregated townships and commute, on the average, two to three hours to and from work in the "white sectors." Since the state owns a substantial share of the bus company, a boycott to protest high bus fares is considered sabotage against the state.

On August 3, "President for Life" Lennox Sebe declared a State of Emergency for the Mdantsane township, imposed a curfew, and directed police and vigilantes, the latter from his political party, to stop the boycott by force if necessary. Commuters were yanked out of trains and taxis and forced into buses. By mid-November, arrests numbered in excess of 1,000, and there were allegations of brutalities to boycotters both in detention and on the streets.

Mr. July Sulani, 58 years old, told of being shot by Ciskeian police and soldiers:

> "The soldiers told us to board buses at the station. There were also policemen there. I told them I had a weekly train ticket and could not use buses. They paid no attention. So a group of us walked to the station entrance. The police then started to throw

> teargas at us and we went down on our knees. Then the shooting started as we ran to the entrance of the station. A shot pierced my back and I went down. Blood started running out and it was very painful. I was afraid of dying. They were shooting at everyone outside the station--all running around in the smoke."

Vigilantes carried sticks, "sjamboks," sabres and pellet guns as well as apparent carte blanche to mistreat detainees. A report prepared by the Centre for Applied Legal Studies at the University of Witwatersrand, detailed the allegations of citizens being whipped, suspended by their wrists while handcuffed, and held without water, food, or access to toilets.

The Ciskei has employed and, in certain respects, strengthened South Africa's repressive security legislation. A study of Ciskei's security legislation described it as "having seized the worst aspects of South Africa's legal system and then honed and tempered them into a uniquely malevolent tool." The National Security Act was widely invoked during the State of Emergency. Section 26 of the Act allows indefinite detention without trial and denies access to legal counsel or visits from relatives or friends while allowing the authorities to withhold all information about the detainees. The Act authorizes the banning of individuals and defines security offenses under exceptionally broad terms.

In response to an application to the Ciskei Supreme Court which challenged the legality of detentions under Section 26, the court noted that Section 26 states explicitly that "no court of law shall have jurisdiction to pronounce upon the validity of any action taken in terms of this section or to order the release of any person detained in terms of the provision of this section."

The government's broad sweep of arrests apparently was designed less to detain criminals than to harass and intimidate Sebe's opponents. Several detainees released after long detention periods stated that the state never interrogated them in connection with alleged offenses. "Accordingly, we can presume," a University of Witwatersrand study noted, "that the powers conferred on the police by the National Security Act have been used simply to take people out of circulation."

The broad sweep of arrests included leading churchmen and lawyers. The government detained for three months without charge the head of Ciskei's Roman Catholic Church and secretary general of the Southern African Catholic Bishops' Conference. The state also arrested Hintsa Siwisa, a lawyer, and held him incommunicado for over a month shortly after he had successfully brought an application before the Ciskei Supreme Court to restrain the police from molesting or assaulting boycotting commuters. The

Sebe government prevented other lawyers from defending the boycotters. Ciskeian Police Major G.A. Ngaki stated that by mid-August his forces had arrested over 200 boycotters allegedly for nonpayment of taxes as they entered a shopping complex to consult with their lawyers.

One of the government's chief targets was the South African Allied Workers Union (SAAWU) which enjoys strong support in Mdantsane for winning employer agreements in East London. SAAWU has strongly opposed the Sebe government and Ciskei's nominal independence. Claiming that SAAWU had instigated the bus boycott, the Sebe government banned the union.

The need for legal assistance was clearly critical. Those convicted of violating the State of Emergency regulations faced penalties of up to 2 years in prison, a 2,000 Rand fine or both. Working with South African lawyers in the Ciskei, the Southern Africa Project financed the successful defense of 340 people charged with such offenses. Every defended case ended in an acquittal.

In other cases assisted by the Southern Africa Project, the defendants were charged under the Ciskei National Security Act. In the State v. Mtutuzeli Bago and Others, defendants were charged with being members of SAAWU, the trade union banned during the boycott. The Project is financing a challenge to the SAAWU banning order: SAAWU v. The Ciskei Government. In the State v. Mkhefa and Ngani, the Project financed the filing of an urgent application for the release of two journalists working for an African language newspaper who were detained under the Security Act because of articles they had published that were critical of the Ciskeian authorities and the banning of SAAWU.

The state's repression appears to have backfired. By the end of 1983 the boycott and subsequent state bullying had heightened opposition to the Sebe regime. Citizens continue to defy the government, pupils have boycotted classes in several schools, and ANC bombs have damaged Ciskeian consulates in Johannesburg and Pretoria.

Magopa and Mgwali were both peaceful and largely self-reliant communities which the South African government designated as "black spots," black-owned property surrounded by white-owned land. Apartheid policy considers the removal of "black spots" and the consolidation of their residents into the distant, barren bantustans to be "non-negotiable." So, when "black spot" residents resist relocation, the government has had to impose removal by a variety of techniques, both legal and extralegal, by force, threat of force, and manipulation.

The residents of the village of Magopa purchased their land some 70 years ago, before legislation forbade black-owned proper-

ty. The villagers built schools and churches, sunk wells, raised cattle and various crops and thrived.

A 1927 law empowered the South African government to relocate Blacks in furtherance of the scheme of territorial segmentation of the population along ethnic lines, which is the core of the system of apartheid. While compensation is offered by the government, the amount varies widely and in some cases has been as little as $20 per person.

In June 1983 bulldozers moved into the village and demolished the houses of those who had already agreed to move. However, they did not stop there. Some houses of people who had refused to move were also demolished. Then the schools, four churches, and the clinic were bulldozed. Diesel fuel was poured into the water sources and government officials removed the pumps which provided the village with fresh water. Some 200 families continued to resist the government's demand that they move to Pachsdraai, at least 80 miles away in the bantustan of Bophutha-Tswana.

By September the bus service to the area had been terminated. According to the bus company, this was as a result of a discussion with a magistrate De Villiers. There were threats that the villagers' cattle would be impounded if they were still there in September and that pensions would not be paid at Magopa. The necessary endorsements to obtain work in urban areas as required under the influx control and labor regulations were denied those villagers still resisting removal, and cattle belonging to white farmers were being openly grazed on village land.

On behalf of those remaining families, the Southern Africa Project financed an application to the Supreme Court (Transvaal Provincial Division) to have the removal order declared as being ultra vires the State President's authority under the Black Administration Act, No. 38 of 1927. The application failed and leave to appeal was denied.

The evictions proceeded with haste. The village was cordoned off by police. At gunpoint, family possessions were indiscriminately thrown into trucks, village leaders handcuffed and dragged into vans, buildings bulldozed, parents and children separated, and cattle--the wealth of the villagers--either left to roam free or sold for a pittance to white farmers.

Residents of Mgwali have also been told that they will be moving, from their fertile and well-watered location to the inferior town of Frankfort in the Ciskei. After Ernest Myoli and fellow members of Mgwali's Action Committee met to protest the pending removal, police arrived and arrested all the committee members. In the State v. Ernest Myoli and 19 Others, a case supported by the Southern Africa Project, the government charged

the group with attending a prohibited gathering and defying the order to disperse. If convicted, Myoli and his co-defendants, none of whom have ever been previously arrested, would have faced imprisonment.

In July 1983 the court acquitted the accused on both counts and upheld the residents' legal right to convene to peacefully discuss their future.

When bantustans resist what they view as bogus independence, as in the case of the bantustan of KaNgwane, the South African government devises other means to the same end. For the past century Swaziland has claimed the KaNgwane area, situated around its northern and western borders, as part of its ancestral lands. The South African government plans to cede KaNgwane to neighboring Swaziland. Cession of the territory to Swaziland would circumvent KaNgwane's opposition to South Africa's separate development policy. Additionally, as a component of the proposed cession of KaNgwane to Swaziland, all Swazi-speaking South Africans wherever resident would be denationalized. The denationalizations would include not only all Swazi-speaking people who reside within the territory of KaNgwane, but also those who reside in urban areas or other "white" areas in South Africa. Therefore, by ceding KaNgwane to Swaziland, the South African government would accomplish its primary goal of making another 800,000 Blacks "aliens" in South Africa. No other single case supported by the Southern Africa Project affects as many people.

KaNgwane's future will be determined by a high-level governmental commission headed by the former Chief Justice of the Appellate Division of the South African Supreme Court, the Hon. F.H.L. Rumpff. The Commission was given subpoena power and authority to hear oral testimony given under oath, cross-examine witnesses, and consider all relevant evidence and information for investigation and recommendations. Attorneys for KaNgwane requested the Southern Africa Project to submit to the Rumpff Commission an amicus curiae brief on the international law issues raised by the proposed cession and denationalizations. The Project's brief, prepared with the assistance of Professors Henry Richardson of Temple University Law School and Goler Teal Butcher of Howard University Law School, addresses the question of to what extent a state violates international law by ceding portions of its territory to another state and/or by denationalizing portions of its population without the consent of the affected population. The brief focuses on the implications of the proposed cession of KaNgwane to Swaziland, with particular regard to the rights to self-determination and racial non-discrimination.

TORTURE AND DEATHS IN DETENTION

On July 5, 1983, a South African policeman stepped up to Pares Malatje, a 23-year-old book salesman in police custody, pointed a pistol at Malatje's forehead and fired at point-blank range. Malatje became the 60th political detainee to die in police custody.

Torture and deaths in detention are common in South Africa, its homelands, and Namibia. Allegations of torture of both defendants and state witnesses arise in virtually every political trial. Both physical and psychological methods of torture have been reported: sleep, food, or drink deprivation; electric shock; crushing of toes; driving nails through male genitals; as well as prolonged isolation, intimidation, hooding to cause suffocation, and indefinite detention.

The defendant in the trial of the State v. Lawrence Ntikinca, who was sentenced to four years imprisonment for furthering the aims of the banned Pan Africanist Congress, testified that he had received brutal physical assaults. He testified that security police squeezed his genitals with pliers during interrogation, that he was "tortured with a rope" and subjected to electric shocks.

Dr. Neil Aggett, the first white political detainee to die in detention, suffered physical assaults, sleep deprivation and electric shocks. After two months a fellow detainee described Aggett as "downcast and tearful. He made a gesture with his hands as though snapping a twig and I heard him whisper, 'I've broken.'" A day before Aggett's alleged hanging, the fellow detainee recalled that Aggett "seemed to have distintegrated and he looked like a zombie."

Even those detainees who are not suspected of having committed an offense but who are being held as state witnesses or to elicit information are subjected to torture. For example, the evidence of torture of state witnesses in the trial of four alleged members of the South African Youth Revolutionary Council (SAYRCO), Stanley Radebe, Ephraim Madalane, Ernest Mohakalala, and Innocentia Mazibuko, was so overwhelming that the magistrate acquitted the four defendants because of "state improprieties," concluding that security police had forced state witnesses to present fabricated testimony. Defense counsel claimed that, out of thirteen state witnesses, five had been assaulted during interrogation by security police, six were kept in prolonged isolation, seven were threatened with assault, further assault, or isolation, and ten testified that they were told what security police wanted them to say in court.

Defendants were tortured as well. Radebe testified that he made a statement to security police after being assaulted. Six prisoners testified that they heard Radebe crying out in pain while he was with prison guards and security police at the Groenpunt Prison. One prisoner stated that, from his cell which had been opposite Radebe's in the isolation block, he had seen Radebe being brought to his cell by a guard; his clothes had blood stains and his head was swollen. Finding that the state had treated Radebe "in an inhuman fashion," the magistrate ruled his confession inadmissible.

The Radebe ruling came six weeks after a provincial supreme court judge decided that security police had forced a confession from the Reverend Cedric Mayson. Mayson, a Methodist minister whom the state had charged with treason, was found to have made his statement of guilt under duress. John Dugard, professor of law at the University of Witwatersrand, suggests that the Radebe and Mayson findings could indicate a growing questioning by the courts of security police methods. The Southern Africa Project financed the defense in the State v. Radebe and 3 Others, the State v. Cedric Mayson, and the State v. Lawrence Ntikinca.

One clear indicator of the increase in brutal interrogation methods has been a recent increase in the number of deaths of political detainees from other than natural causes. These deaths and the circumstances in which they took place were surveyed in a study, Deaths in Detention and South Africa's Security Laws, published by the Southern Africa Project in September 1983.

Deaths in Detention reviews South Africa's security legislation such as the all-inclusive Internal Security Act of 1982, characteristics of detention deaths, case histories of the 60 detainees who have died, and affidavits by detainees describing various abuses inflicted upon themselves and others. The report traces the erosion of judicial oversight of the detention of political offenders from the early 1960's when Parliament enacted a series of statutes that permanently removed detention without trial from judicial review.

The report also documents the ineffectiveness of and disregard for recently promulgated administrative guidelines and procedures designed to safeguard political detainees from abuse. For example, in early 1978 the government established safeguards for detainees, including visits by magistrates and "inspectors of detainees" who would supposedly enjoy unrestricted access to detainees without needing to obtain advance notice. "However," the Southern Africa Project report states, "visits by magistrates and inspectors of detainees apparently have had little effect in practice...A magistrate could not gain access to see Dr. Neil Aggett who died in February 1982, on the grounds that Dr. Aggett was under interrogation." In November 1982, the Minister of Law and Order established a new code of police conduct which mandates that detainees "shall not be assaulted ...or subjected to any

form of torture or inhuman or degrading treatment." Nevertheless, a year after the new code's introduction, a policeman shot Pares Malatje between the eyes and the South African Lawyers for Human Rights expressed its shock at "the clear lack of effective protection for detainees" despite the professed code.

The Project's report, Deaths in Detention and South Africa's Security Laws, was distributed widely to members of Congress, United Nations' bodies, attorneys, the media, and human rights and anti-apartheid activists throughout the world. The Project Director presented testimony based on the report at a hearing in May in London before the Ad Hoc Working Group of Experts on Southern Africa of the United Nations Commission on Human Rights, and at a hearing in November before the Special Political Committee of the General Assembly of the United Nations.

In spite of the evidence of abuse in the cases of the 60 deaths in detention, the State v. Ramaligela and Mangaga was only the second prosecution of security officials charged with one of these deaths. The trial's outcome demonstrates the difficulties in convicting South African security personnel for torturing political detainees.

In October 1981, a bomb destroyed a police station in the Venda homeland and killed two policemen. The security police detained at least 20 people, including Isaac Muofhe, a salesman and lay preacher of the Evangelical Lutheran Church. Detained on November 10, 1981 and held without charge, he died in police custody two days later. He had suffered extensive damage to the scrotum, chest, forehead, lungs, gall bladder, kidney, bladder, back, right eye, left leg, and buttocks.

In July 1982, an official inquest, presided over by the chief magistrate of Venda, examined Mr. Muofhe's death. The two Venda police officers who had interrogated Mr. Muofhe, Captain Ludwig Ramaligela and Sergeant Josias Mangaga, contended that Mr. Muofhe had tried to escape from a moving pickup truck and that any physical beating of Mr. Muofhe had occurred while they were thwarting his escape attempt.

The magistrate dismissed their explanation, stating that the two policemen were deliberately trying to mislead the court. Chief Magistrate Steiner concluded that the two officers had unlawfully assaulted Mr. Muofhe. This conclusion was highly unusual. Very rarely do the presiding magistrates in inquests assign guilt.

In late 1982 the Attorney General of Venda charged Ramaligela and Mangaga with murder. The trial occurred during two weeks in February 1983. In light of the unprecedented nature of the trial--it was only the second time security police officers had been charged with the death of a detainee--the Southern Africa Project decided to send a legal observer.

During the past seventeen years the Lawyers' Committee has sent legal observers to trials of importance in South Africa. The Southern Africa Project arranged for Mr. Ralston H. Deffenbaugh, Jr. to attend the Venda trial under Lawyers' Committee sponsorship. Mr. Deffenbaugh is a member of the Bar of the Supreme Court of Colorado, the U.S. District Court in Colorado, and the U.S. Court of Appeals for the 10th Circuit. Mr. Deffenbaugh is currently Assistant for Legal and International Affairs for the Lutheran World Federation. He was particularly qualified for this mission because of his familiarity with the Afrikaans language and with the South African legal system, having lived in Namibia for seven months. Mr. Deffenbaugh subsequently prepared a report: Observations of the Trial of the State v. Ramaligela and Mangaga.

The court acquitted the defendants. The acquittals turned on the court's ruling that incriminating statements made by the policemen at the inquest were inadmissible evidence in their murder trial. Mr. Deffenbaugh wrote:

> "The Court acknowledged that the Chief Magistrate [at the inquest] had warned the accused before they gave evidence. ('You have been sworn to give evidence in this inquest and I must warn you that you are not obliged to answer questions which might incriminate you.') But the Court said that this warning was not enough. In an inquest in which the State prosecutor was leading evidence, the State owed a duty to the accused to indicate to them which questions would be incriminatory...the State prosecutor and/or Magistrate were under a duty to warn the accused, before each and every question which might be incriminatory, that the question might be incriminatory..."

Evaluating the proceedings, Mr. Deffenbaugh noted a surface appearance of fairness, e.g., a deliberate and orderly manner, vigorous prosecution, and the right to cross-examine. "Yet in light of the evidence," wrote Mr. Deffenbaugh, "one must conclude that the judgment was incredible."

Mr. Deffenbaugh suggested that "the popular mystique and fearful respect accorded to the security police considered together with the white South Africans' fear of 'terrorists' and their allies" is certainly a partial explanation for the decision since these two views "subconsciously shape the perception with which a case is approached, with which evidence is heard and evaluated...the benefit of any doubt is to be accorded to the security forces." Also working against a disinterested evaluation of the evidence is the fact that the outcome would have clear political ramifications.

Concluding his Observation, Mr. Deffenbaugh noted that, "Despite the findings of the Chief Magistrate of Venda in the inquest proceeding, and despite the overwhelming pathological evidence, the trial court in its judgment of acquittal breathed not a word of reproach or caution against the security policemen, nor did it express sympathy for the family of the deceased nor concern about his death."

Supported by the Southern Africa Project, in July 1983 the Muofhe family filed a civil action for assault and wrongful death against the Venda authorities. The family accepted an out-of-court settlement of 150,000 Rand (about $140,000), the largest known payment to the family of a victim who died in police custody. It obviously cast more doubt on the innocence of the two Venda policemen, Ramaligela and Mangaga.

Not only did the policemen go free in the State v. Ramaligela and Mangaga, but the culpability of other professionals connected with deaths in detention has not been adequately addressed. In 1983 the Southern Africa Project supported an application which sought to address the culpability of two doctors involved in the detention and death of Steve Biko: Complaint By The Health Workers Organization v. Doctors Ivor Lang and Benjamin Tucker.

Steve Biko died from brain injuries on September 12, 1977, after he was driven, chained and unconscious, 600 miles in the back of a jeep. Police at first said that he had died from the effects of a hunger strike but later admitted that he had sustained head injuries during a fight with his police interrogators.

In the Complaint, black medical professionals demanded that the South African Medical and Dental Council (SAMDC) hold disciplinary hearings regarding the professional conduct of Doctors Lang and Tucker, who examined Biko regularly while he was in detention, had full knowledge of his injuries, and yet failed to intervene either with respect to the clearly brutal interrogation or to prohibit the security police from transporting a comatose man 600 miles in the back of a jeep.

The Complaint noted that, while Dr. Lang stated, "I have found no evidence of abnormality or pathology on the patient,"..."Dr. Lang agreed that both parts of his certificate were 'inaccurate' and was unable to provide any explanation for the inaccuracy...[I]n the first part of the statement Dr. Lang purported to set out the complaint concerning the patient's condition, and although he had been asked by the Security Branch to examine [the] patient for a suspected stroke and because he could not speak, and he had been told that the patient had refused food and water and had displayed a weakness of all four limbs, he stated in his certificate only that he was told that the patient 'would not speak.'" Furthermore, "Dr. Lang never objected to his

patient being transported 700 kilometres in the back of a land rover...on the day before his death, even though he states that in the case of any other patient, it was inconceivable that such patient would have been treated in this way...."

Referring to Dr. Tucker, the Complaint noted that on September 8, 1977 Dr. Tucker observed a possible extensor plantar reflex. Dr. Tucker "stated in the inquest that he knew and knows that this is one of the most significant signs of brain damage, yet he failed to enquire of the patient or those in charge of him whether he had suffered any head injury...Dr. Tucker admits that in this case the interests of the patient were subordinated to the interests of security."

Two questions arose regarding the Council's objectivity: (1) Although the Council has held open hearings since 1928, it decided to examine the Biko situation in camera; and (2) two-thirds of the Council's membership is appointed by the government, while the medical profession elects only one-third. The Johannesburg Star questioned "the dominance of appointed members who are likely to take a Government line on a controversial matter."

The Star's worry proved justified. In May 1983 the SAMDC concluded that no prima facie evidence existed of misconduct by either of the two doctors. All of the medically-elected members voted for a further in-depth investigation. The case has been appealed to the South African Supreme Court.

OPPOSITION FROM BANNED ORGANIZATIONS

In 1983 stiffer sentences were imposed on defendants convicted of belonging to, or furthering the goals of, opposition groups that have been banned by the South African government. Increasingly in political trials, the South African government seeks and obtains the death penalty. In 1983, three members of the banned African National Congress (ANC) were executed for political offenses. A judge in another ANC case justified an unusually long jail sentence by noting that "the situation in this country has escalated and it is no longer a matter of terrorism but of civil war." Behavior of the judicial system became an issue in the State v. Mokaba. And in other cases, the state attempted to link the activities of peaceful, lawful opposition groups to banned organizations.

In 1983 the South African government executed three political prisoners while granting clemency to three others awaiting the gallows. The Southern Africa Project funded the defense of all six condemned men and the preparation of their clemency petitions.

The judgment in one of the treason trials--State v. Tsotsobe, Shabangu and Moise--resulted in part from the court's ruling that membership in the African National Congress alone is sufficient grounds for conviction for high treason. The court reasoned that the ANC has entered into a conspiracy to promote unrest in the country; therefore, anyone who joins that organization automatically joins in that conspiracy.

The case was heard in the lower court in 1981 and on appeal in 1982. The State President ruled on the clemency petition in 1983. The defendants, all in their mid-twenties and from Soweto, were accused of "terrorist activities," specifically, a rocket attack on a Johannesburg police station, the burning down of a rent office, and the planting of explosives at one of South Africa's oil-from-coal plants. No one was killed or injured as a result of the raids.

The defendants testified in the lower court that they had been tortured into signing confession statements. The results of a medical examination corroborated the claims of torture. Nevertheless, the court held that the defendants' confessions were freely made and that they were guilty of high treason. They were sentenced to death.

The appellate court upheld not only their convictions but also the death sentences. The sentences broke with a traditional South African policy of reserving the death sentence for offenses

which result in loss of life. The condemned men petitioned the State President for clemency.

In the treason trial of State v. Mosololi, Mogoerane and Motaung, former students from Soweto were accused of joining the ANC and of participating in attacks on a railway line, electricity center, and several police stations. The attacks killed four policemen.

Mosololi and Mogoerane told the court that they had been tortured during interrogation and forced to sign confession statements. Motaung, who was shot in the hip while being arrested, stated that he had been denied medical treatment for two days while being questioned. Despite this testimony, the court ruled that their confessions had been freely made.

The judge rejected the defendants' demands to be accorded prisoner-of-war status under the Geneva Conventions of 1949 and Protocol I thereto and, instead, sentenced all three to death. Deciding not to appeal through the courts, the defendants appealed to the State President for clemency. The London Times wrote that "outside South Africa there is considerable support for the argument that captured ANC insurgents should be granted POW status."

Writing to the State President, members of the Lawyers' Committee's Southern Africa Project Advisory Subcommittee and the Project Director appealed for clemency for all six political prisoners on death row and urged that the government "forego as a matter of policy the imposition of death sentences for political offenses in the future." The letter, in part, stated that "executing opponents of apartheid will not turn the tide of opposition...we believe that the execution of political opponents will further polarize relations between blacks and whites in South Africa, increase the sense of desperation and anger, and spark spontaneous violence...ultimately throwing the situation into an abyss of violence and reactive violence." Subcommittee members also wrote a joint letter to U.S. Secretary of State George Shultz requesting that he use his good offices to urge South Africa to spare the condemned men's lives.

In April and May the Southern Africa Project organized a campaign asking members of Congress, non-governmental organizations and individuals to urge the South African government to grant clemency to the six men. In response to the Project's appeal, Representatives John Conyers (D-MI), Thomas J. Downey (D-NY), Julian Dixon (D-CA), George Crockett (D-MI), and William H. Gray (D-PA) asked their colleagues to join them in sending a letter to the South African State President, urging that leniency be granted. Twenty-seven members of Congress agreed to send the appeal to the State President. Several ministers in the Washington area joined the campaign by asking members of their congregations to write to the South African ambassador urging him to

convey an appeal for clemency to the State President. In a series of public appearances and radio programs, the Project Director focused on the plight of the six men and political prisoners in South Africa.

On June 6th the South African government announced that it was granting clemency to three of the six men--Tsotsobe, Shabangu and Moise--and that Motaung, Mosololi and Mogoerane would be executed on Thursday, June 9th. From the day of the announcements until the executions on June 9th, the Project threw maximum effort into coordinating a nationwide campaign to save the lives of the condemned men. In response to a request from the Project, 48 members of the House of Representatives and five members of the Senate sent a joint cable to Prime Minister Botha urging him to order a stay of execution of the three men and to reconsider their clemency petition. In a similar cable to Secretary of State Shultz, the members of Congress called upon the administration to make immediate high-level contact with Prime Minister Botha urging him to spare the three men's lives. Presidential candidate Walter Mondale, former Attorney General Ramsey Clark, Congressional Black Caucus Chairman Julian Dixon, and Senator Edward Kennedy sent personal cables to Prime Minister Botha.

Unfortunately, all appeals failed and Mosololi, Mogoerane and Motaung were executed on June 9th.

Carl Niehaus and Johanna Lourens defied the stereotype of a "terrorist" held by most white South Africans. Both were white, middle class, and raised fully within Afrikaner society.

In November 1983, the court in the State v. Niehaus and Lourens sentenced Carl Niehaus, aged 24, to 15 years imprisonment for supporting the ANC. In addition to membership in the ANC, which alone constitutes a crime, Niehaus was also convicted of having recruited others for membership in the ANC and of gathering information and plans relating to the Johannesburg Gas Works presumably to be used in future sabotage attacks. Johanna Lourens was sentenced to four years as Niehaus' accomplice.

Their opposition to the state was never in doubt: "brutally frank" was how their attorney describes Niehaus' uncompromising defense of the inevitability of armed conflict. Yet, the harshness of the sentences did surprise many observers. Political sentences run for the full term, without the chance of parole that is accorded to ordinary crimes. In questioning the severity, the Johannesburg Star termed the pair's work as "acts which, although performed in the name of revolution, seemed only remotely likely to overthrow the state or injure anyone."

The objectivity of the court as well as police behavior became an issue in the State v. Mokaba, Maake and Nhlapo. Peter Mokaba and Jerome Maake were sentenced in August 1983 to effective terms of six to eight years imprisonment for offenses under

the Terrorism Act (which is still in force with respect to offenses committed before July 1982) and the new Internal Security Act of 1982. They were charged with activities which included membership in the ANC, undergoing military training with the ANC and recruiting others for such training, possessing banned literature and having made use of a messenger and "dead letter boxes" to transmit money and messages to and from the ANC. The third defendant, Portia Nhlapo, was accused of serving as their courier.

Two important events took place during the course of the trial. The state's case rested heavily on a confession allegedly made by defendant Mokaba. Mokaba's advocate challenged the admissibility of the confession based on detailed allegations of torture used to elicit the confession while Mokaba was being held incommunicado prior to trial. To strengthen the state's case, its star witness, Security Police Lieutenant Vorster submitted to the court a document designed to corroborate the state's claim that Mokaba's confession was voluntarily made.

Vorster's document was discovered to be a forgery. Even the prosecutor was eventually forced to concede that point. Mokaba's alleged confession was nevertheless admitted.

The second unusual event related to a state witness who was sentenced to 18 months imprisonment for refusing to testify. While the witness was serving her sentence, the trial magistrate took additional and seriously improper steps to pressure her into testifying. The magistrate denied defense counsel's motion for his recusal.

The defendants in the trial of the State v. Nongqekele and 8 Others were charged under the Terrorism Act and the Internal Security Act with furthering the aims of the banned Pan Africanist Congress of Azania (PAC) by recruiting and mobilizing support within trade unions and community organizations. The trial was the first major case involving the PAC since the 1979 "Bethal 18" trial. Among the defendants were Harrison Nongqekele, chairman of the Azanian National Union, Joseph Thloloe, a founding member of the Union of Black Journalists, and Philip Dlamini, secretary of the Black Municipal Workers Union.

Five of the accused were eventually acquitted of all charges after having spent nearly a year in detention prior to trial. While Joseph Thloloe and three other defendants were acquitted of charges under the Terrorism and Internal Security Acts, they were convicted of possession of banned literature and sentenced to two and one-half to three years imprisonment for that offense alone.

Harvard University's Nieman Foundation, which had previously given defendant Thloloe its Lysons Award for "conscience and integrity in journalism," likened the court's decision to the

excesses of Nazi Germany (where thought control was often exercised by the banning and burning of books).

Thloloe's imprisonment followed several government actions against journalists. On February 2nd several ranking journalists, including Rex Gibson, editor of the Rand Daily Mail, and Tertius Myberg, editor of the Sunday Times, were fined for writing about the attempted coup in the Seychelle Islands that has been attributed to South African covert action. A month later security policemen searched the Johannesburg office of the Washington Post while two weeks later policemen warned Harvey Tyson, editor of South Africa's largest daily, the Johannesburg Star, that he was being investigated under several press restriction laws.

In the case of the State v. Zolile Mehlala and 8 Others, the defendants, all under 18 years of age, were charged under the Terrorism and Internal Security Acts with the offenses of membership in the ANC, having prepared themselves to leave the country in order to get military training and possessing and distributing banned literature. Based on confessions the defendants alleged were extracted under torture, six of the nine accused were convicted and sentenced to five years imprisonment each.

The South African government has attempted to demonstrate in trials like that of the State v. Mokone, Mapekula and Nkosi that banned organizations have infiltrated and are directing the activities of otherwise lawful and peaceful groups. The government can thereby justify its harassment of any organization that becomes a vehicle to express the political sentiment of the black population. This tactic has been used against groups as diverse as trade unions, church organizations and informal residents associations in black townships. In the State v. Mokone, Mapekula and Nkosi, the South African government attempted to link the Council of South African Students (COSAS) to the banned ANC. The Council, to which the three defendants belong, is a successor to the now banned Soweto Students Representative Council and the South African Student Movement. The state claimed that the three defendants had attempted to channel ANC money and instructions from Botswana to COSAS. The state also alleged that the defendants possessed ANC literature and had tried to form an ANC branch in South Africa.

The magistrate ruled as inadmissible Mokone's allegations of police torture and sentenced the group to between two and three years imprisonment.

In the State v. Ian Petje and Others, defendants were students at the University of the North and members of the Azanian Peoples Organization (AZAPO). The University of the North is the largest black university in South Africa and has students from all over southern Africa (Malawi, Zimbabwe, Botswana, Namibia, and South Africa). Consequently, the student body there is one

of the most critical of the apartheid system. It is the campus where Steve Biko and others started the Black Consciousness Movement. Hardly a year passes without a strike, a sit-in, a temporary closure of the campus or mass expulsions. Conversely, it is a campus whose white staff members are among the most conservative Afrikaners in the country.

During the week of May 31, 1982, white South Africans engaged in country-wide celebrations to mark the eleventh anniversary of the Republic of South Africa. In protest, students at the University of the North declared that week a Black Arts Week, during which they dramatized the South African oppressive system in the forms of poetry, drama, black art exhibitions and speeches. On June 5th, after an address by Bishop Desmond Tutu, a group of several hundred students ended the week's activities by singing freedom songs. Within a few hours, the hundreds had increased to several thousand. Before the evening was over, a local symbol of apartheid, a bookstore owned by affiliates of the Dutch Reform Church, was gutted by fire.

Press reports attempted to link Bishop Tutu's speech to the later student unrest, claiming he had incited them to violence. Six students were charged with and subsequently acquitted of arson and public violence.

TRADE UNIONS v. *APARTHEID*

Increasingly, the independent black trade union movement is becoming the "cutting edge" in the struggle against apartheid. Growing rapidly since its legalization in 1979, total black unionization currently stands close to 500,000 workers. Through massive strikes and work stoppages these unions have extracted significant agreements from South African and multinational companies. Workers have demanded the right to organize freely and to improve collectively their standard of living and working conditions.

Equally significant, strikers have gone beyond opposition to racist labor laws and practices to raise issues that are broader than the shop floor, that is, issues that go to the core of black grievances with the apartheid system as a whole. For example, the South African Allied Workers' Union (SAAWU) was closely identified with a boycott of a state-owned bus company in the Ciskei. In November thousands of trade unionists wore "one man, one vote" stickers in protest against the constitutional revisions.

As a consequence, the South African government has reacted with harassment, intimidation, and the arrest and detention of trade union members and leaders. More than 300 trade unionists were detained under security legislation during the first eight months of 1983. The SAAWU was banned in the Ciskei, and a 74-year-old trade union leader, Oscar Mpetha, was sentenced to an effective life imprisonment for his role in a bus boycott in 1980.

In 1983, for the first time, black mineworkers won the right to negotiate collectively with their employers. The South African Chamber of Mines formally recognized the first black miners union, the National Union of Mineworkers (NUM).

The number of black workers to benefit initially will be small--about 25,000 compared to a total mining force of half a million. Yet, observers assume the agreement will strongly influence pay raises for all other black miners. The Financial Mail reports that "Employers are painfully aware of the fact that wage differentials between different mines have in the past contributed to labor unrest." Summarizing the agreement's importance, a Chamber of Mines official enthused, "An irreversible process has commenced."

Despite its new status, the National Union of Mineworkers (NUM) encountered difficulties in organizing. In the case of the State v. Wilfred Salae, a NUM organizer was charged under the Internal Security Act of 1982 for holding an open air union

meeting regarding the current negotiations with the Chamber of Mines. With financial support from the Southern Africa Project, the defense in that case raised critical issues concerning the restrictions created by South Africa's security legislation on the rights of trade unions to organize and hold meetings. In another NUM matter funded by the Southern Africa Project, the State v. M. Gwayi and 28 Others, 29 black mineworkers were charged with public violence in connection with a strike during the summer of 1982 at a gold mine in the eastern Transvaal. Public violence is a charge commonly used against black strikers. Twelve of those accused were convicted and sentenced to between two and three years imprisonment. The others were acquitted.

In the matter of the South African Allied Workers Union (SAAWU) v. Turnall, Ltd., which was financed by the Southern Africa Project, the union sought a ruling from the Industrial Court that a failure to bargain with a representative trade union constitutes an unfair labor practice and that selective rehiring of employees involved in a work stoppage constituted an unfair labor practice with respect to those not rehired.

Turnall wanted workers to be represented by a liaison committee rather than by SAAWU. Most workers consider liaison committees to be management appendages. Turnall had refused any collective bargaining with SAAWU until the union could prove it represented the workers. Shortly before a workers' meeting at which SAAWU was to obtain proof of representation, Turnall terminated the employment contracts of its employees. The next day Turnall rehired all but 33 of the workers, all of whom were union activists.

The Industrial Court encouraged an out-of-court settlement which gave the applicants neither of their two requests: reinstatement and retroactive pay.

Turnall's reluctance to recognize SAAWU may have been colored by the union's tough and usually successful negotiating history as well as its outspoken opposition to apartheid. SAAWU has strongly criticized the bantustan system and in particular the Ciskeian surrogate authorities. In August, SAAWU was banned in the Ciskei and most of its leaders detained. Thozamile Gqweta, a top SAAWU official, has been jailed nine times, tortured at least once, but never brought to trial. The Southern Africa Project is financing a challenge to SAAWU's banning order: SAAWU v. The Ciskei Government.

The future role of the Industrial Court--and, in particular, its right to reinstate fired workers--was at stake in a crucial case which was brought by the Metal and Allied Workers' Union (MAWU) against Barlows Manufacturing Company. During a work stoppage called by MAWU at a Barlows plant, several union members were arrested and charged under the new Intimidation Act, a statute specifically targeted to impede union organizing. Prior

to a disposition by the court on the criminal charge, Barlows fired the workers and refused to rehire them even after their acquittal of all charges under the Intimidation Act. The union brought the matter to the Industrial Court, arguing that Barlows had committed an unfair labor practice by firing workers who were merely suspected but never convicted of committing a criminal offense. Barlows maintained that it was outside the jurisdiction of the Industrial Court to order reinstatement of dismissed workers.

MAWU v. Barlows is still pending. Once decided, its outcome will have broad impact on the right of black workers to organize in South Africa. The rights of black people to remain in urban areas in South Africa is largely linked to their employment. With the exception of those few Blacks who were born in urban areas, provisions of the Black (Urban Areas) Consolidation Act restrict the right of the vast majority of Blacks to remain in urban areas for more than 72 hours unless they are employed there, or have worked for one employer continuously for 10 years, or are the spouse of someone with such rights. That Blacks are welcome in white urban areas only as long as their labor is required is emphasized by Section 28 of the Act, which authorizes the "removal of redundant Blacks from urban areas," and Section 29, which in effect establishes that an "idle" Black has committed an offense punishable by detention for a period not exceeding two years in a farm colony or by deportation, inter alia, to "any rural village." These influx control laws and the ever present threat of losing residential rights by breaking the period of continuous employment act as an effective deterrent to participation in any industrial action which may result in dismissal.

The Southern Africa Project has been involved with the defense in the trial of the State v. Oscar Mpetha and 18 Others since it commenced in 1981. When Oscar Mpetha was arrested at 71 years of age, he had an international reputation for his 40 years of trade union work. In 1955 he helped found the South African Congress of Trade Unions--a federation that recognized the linkage between the struggles for political and trade union rights. He was the Cape chairman for the African National Congress and therefore among its top leadership until the ANC was declared an unlawful organization. At the time of his arrest in 1980, he served as national organizer for the African Food and Canning Workers Union and chairman of the Nyanga Township Residents' Association.

As chairman of the Nyanga Residents' Association, he played a leading role in mobilizing people when the government threatened to demolish the Crossroads squatter camp outside Cape Town in 1978. It was also in that capacity that he became the leader of a bus boycott due to increased fares in Nyanga township.

As is often the case with peaceful protest in South Africa, the boycott was considered sabotage against the state, justifying

the intervention of armed security policemen. Blacks charged that commuters were roughly handled, cars were stopped and often impounded, individuals were detained and questioned, and the independent "pirate" taxi drivers--those without permits--shuttling boycotters to and from work were brutalized and arrested.

During the morning of August 11, 1980, after police attempted to force commuters to board empty buses, a confrontation occurred between "pirate" taxi drivers and riot police. It is believed that this confrontation sparked a later disruption, leading to the deaths by stoning of two white men and the subsequent arrests of Mpetha and 18 others. The day before his arrest on August 13th, Mpetha issued a statement to the press that it was "police provocation" and confrontation with "pirate" taxi drivers which led to the unrest. Many believed that Mpetha's role in organizing the boycott may have led to his arrest.

The more widely-held belief, however, was that the real charges against Mpetha were based not so much on his role in the Nyanga bus boycott as on his identification with the African National Congress and, more particularly, his effectiveness as a union organizer in the industrial port of East London. In fact, his detention and prosecution was one of the first in what became a broad-based crackdown on union leaders through which the South African government attempted to stem the growing tide of the black independent trade union movement. Mpetha's union, the African Food and Canning Workers' Union, was one of the targets. Neil Aggett, Transvaal secretary of the union, was arrested in late 1981 as part of the crackdown and died in detention after 70 days of solitary confinement and police torture.

Mpetha and his co-defendants (all but two of whom were under age 21 at the time of their arrest) were charged with treason under South Africa's infamous Terrorism Act and with two counts of murder. All of the defendants were held incommunicado under Section 6 of the Terrorism Act until they appeared in court four months following their arrest.

The indictment, served a lengthy seven days after the first court appearance, was vague in its description of the offenses. The state claimed that particularity was unnecessary in indictments under the Terrorism Act, a claim that was later rejected in an unprecedented ruling on a motion brought by defense counsel.

As the trial proceeded, the state's main intent became clear: to prove a conspiracy by the accused to randomly murder Whites. The state contended that Mpetha whipped his young co-defendants into an anti-white hysteria and instigated the riot which led to the death of the two white men.

New precedent was also established by the court's ruling on the state's motion that under Section 153(4) of the Criminal Procedure Act, the trial should be held <u>in camera</u> since included

among the accused were individuals under the age of 18. By the mere appendage of a juvenile to the list of defendants, this provision of the Act could be used as a convenient mechanism to close political trials from public inspection. In ruling that the proceedings would be open if the legal guardians and the accused youth so desired, the court closed an avenue of retreat for the state in political trials.

The Mpetha trial turned into one of the longest in South African history. For more than two years, there was evidence submitted, cross-examination and oral argument over matters such as the gross inconsistencies in the testimony of the state witnesses and the admissibility of "confessions" obtained from the defendants under duress.

The length of the trial, the conditions of his detention, his advanced age and poor health took their toll on Mpetha. A diabetic, Mpetha's health declined while held in Cape Town's Poolsmoor Prison. His sight worsened, he became mentally confused and could no longer recognize his family. He developed hypertension. A peripheral vascular disease involving his lower limbs rendered him incapable of walking. A toe became septic and had to be amputated. Complications from diabetes made a prostate gland operation necessary. Despite Mpetha's condition, all applications for bail--more than six--were denied. In spite of his age and poor health, he was forced to sit through parts of the trial shackled with leg irons.

Throughout the trial, the community presence and support were strong. Spectators packed the courtroom. Many more demonstrated outside the court until a new law was passed prohibiting demonstrations around court buildings. Trade union organizations all over the world appealed to the South African government to release Oscar Mpetha.

On June 6, 1983, Oscar Mpetha was convicted of terrorism and acquitted of murder. He was sentenced to 5 years imprisonment, the mandated minimum sentence under the Terrorism Act. Five of the other defendants were convicted of all charges; seven were acquitted of all charges. Four were found guilty of terrorism and of one count of murder. One defendant was found guilty on two counts of murder but was acquitted of terrorism. Charges had been dropped at an earlier stage against one of the defendants because of insufficient evidence against him.

Mpetha was refused leave to appeal his conviction but has been granted leave to appeal his sentence. On appeal, his lawyers will argue that Mpetha's sentencing should not be controlled by the now-repealed provisions of the Terrorism Act, but rather by the terms of the new Internal Security Act of 1982 which replaces it. The Internal Security Act does not mandate a minimum sentence for convictions of terrorism. Mitigation of Mpetha's sentence is critical. Because of the condition of

Mpetha's health, the minimum five year sentence under the Terrorism Act would in all likelihood be an effective sentence of life imprisonment.

NAMIBIA

More than 17 years have passed since the United Nations terminated South Africa's mandate over Namibia; 13 years since the International Court of Justice declared South Africa's presence in Namibia to be illegal. Still, South Africa occupies that territory by force of at times as many as 100,000 troops and has found it necessary to secure its illegal control of Namibia by occupying substantial portions of southern Angola as well. At least eighty percent of all Namibians live under de facto martial law. South African authorities in Namibia use a series of statutes and administrative regulations and proclamations to authorize sweeping powers to arrest, detain without charge or trial and interrogate. "Disappearances" are commonplace. And South African defense forces and a special counter-insurgency unit of the South African security police, "Koevoet," have been charged by a series of respected community, church and political leaders with serious abuses of authority and documented atrocities. Under the provisions of the Defense Act, members of the security forces are exempted from criminal or civil responsibility for their actions if they can demonstrate that they acted in "good faith."

South Africa's continued occupation of Namibia serves to secure the systematic exploitation of Namibia's labor force and natural resources by transnational corporations based in South Africa and a number of Western countries.

In the exercise of its authority as trustee for the people of Namibia and the natural resources of the Territory, the United Nations' Council for Namibia in 1974 promulgated Decree No. 1 for the Protection of the Natural Resources of Namibia. Pursuant to Decree No. 1, no person or entity may explore for, extract, export or in any other way exploit the natural resources of Namibia without the consent and permission of the Council, on penalty of seizure and forfeiture of those commodities wherever located. The Decree also authorizes seizure of the carrier on which any illegally exported resources are transported and provides that anyone contravening the Decree may be held liable for damages by the future government of an independent Namibia. The Decree declares any concession or license for the exploitation of Namibian resources granted the Government of South Africa to be legally null and void.

Since the early 1970's, contracts between South Africa and corporations located in several Western nations have been executed by delivery of these resources, in defiance of Decree No. 1. At the request of the United Nations Commissioner for Namibia, the Litigation Committee of the Southern Africa Project

is presently preparing a study of the feasibility of enforcing Decree No. 1 in U.S. courts. Lawyers in several other countries are completing similar studies with respect to the feasibility of enforcement of Decree No. 1 in the courts of their countries.

In the United States of America ex rel U.S.-Namibia (South West Africa) Trade & Cultural Council, Inc. v. South West Africa People's Organization (SWAPO) and Theo-Ben Gurirab (Civ. Action No. 83 Civ. 5637 JES), plaintiff is a registered foreign agent in the United States for the "South West Africa" Administrator General, the South African government's pro-consul in illegally-occupied Namibia, which has filed a series of apparently groundless suits in the U.S. courts as a function of its lobbying activities. The defendant, South West Africa People's Organization (SWAPO), is the political organization recognized by the United Nations as the "authentic representative of the Namibian people." The plaintiff alleges that because SWAPO has continued to receive certain financial support from the United Nations, it therefore has entered into a conspiracy with persons unknown at the U.N. to defraud the U.S. government. The plaintiff brought this suit on its own behalf, as well as on behalf of the United States, in the form of a qui tam action to recover money which plaintiff alleges was obtained fraudulently by defendants through the U.N. from the United States' assessed contribution toward expenses of the U.N., made pursuant to the U.N. Participation Act of 1945, as amended.

In early 1981, plaintiff brought suit in the U.S. District Court for the District of Columbia against the U.S. State Department alleging in essence the same claims. In that case, the District Court determined that the foreign principal that the plaintiff purports to represent is not recognized by the U.S., the U.N., or any other country except South Africa, as the lawful government of Namibia, and dismissed the action on the grounds that it presented a non-justiciable political issue and that the Council lacked standing.

In the current suit, legal counsel for SWAPO has filed a motion to dismiss on several grounds, including lack of standing to sue, non-justiciability, and the functional diplomatic immunity enjoyed by the defendants. The matter is still pending. At the request of the Project, counsel for SWAPO is being provided by the Washington, D.C. law firm of Delson & Gordon.

This is the second "harassment" suit brought against SWAPO by the same plaintiff in less than a year. In the previous case, Committee for a Free Namibia v. SWAPO (D.C. Dist. Ct., No. 821241), the court granted SWAPO's motion to dismiss, concluding that the plaintiff lacked standing to sue, and that its asserted cause of action is not authorized by statute.

In April, Peter Connell, member of the Board of Trustees of the Lawyers' Committee and of the Southern Africa Project Adviso-

ry Subcommittee, attended the United Nations-sponsored International Conference in Support of the Struggle of the Namibian People for Independence held in Paris, France. Bringing together high-level delegations from over 136 governments, the Secretary-General of the United Nations and other U.N. officials, representatives of 91 international non-governmental organizations, and a large number of well-known individuals, the Conference noted "...with deep concern that, sixteen and a half years after the termination of South Africa's Mandate over Namibia and twelve years after the Advisory Opinion of the International Court of Justice of 21 June 1971, South Africa continues its illegal occupation of Namibia in disregard of the wishes of the international community expressed in numerous resolutions of the General Assembly and of the Security Council. The persistent refusal by South Africa to comply with its obligations under the Charter constitutes a challenge to the international legal system. The repeated use of the veto by the Western Permanent Members of the Security Council to prevent adoption of sanctions against South Africa has not only encouraged the South African regime in its lawlessness but has provoked increasing acts of defiance to the authority of the United Nations."

THE DOMESTIC DEBATE OVER DIVESTMENT

1983 was marked by widespread activities in the U.S. designed to disengage economically from apartheid. The "divestment campaign" has been one of the most successful aspects of the U.S. anti-apartheid movement. The campaign's goal is the withdrawal of funds from corporations and financial institutions that do business in or with South Africa. Major institutions such as universities, major church bodies, and trade union pension funds have divested. As the 98th Congress recessed on November 18, 1983, the House of Representatives passed legislation which, if enacted by both Houses, would ban new investments in or bank loans to South Africa, ban the import of Kruggerands into the U.S., and mandate that U.S. corporations operating in South Africa implement a set of "fair workplace principles."

The issue of responsible investment of state and city funds has also been gaining prominence. Three states and at least ten cities have passed divestment legislation including: Massachusetts, Connecticut, Michigan, Philadelphia, Wilmington and the District of Columbia. These divestment laws prohibit or limit investment of public funds in corporations or banks that operate in South Africa. Divestment bills are currently pending before approximately 25 state legislatures and 10 city councils.

In connection with the initiative to pass a divestment bill in the District of Columbia, the Southern Africa Project received a request from Councilman John Ray, sponsor of the bill, and D.C. Divest, a community-based support group, to provide a memorandum of law addressing two issues raised by those opposing the divestment bill: (1) Would the bill be inconsistent with the fiduciary responsibilities of the D.C. Retirement Board? (2) Absent Congressional action, is the D.C. City Council precluded by the D.C. Self-Government Act from amending the rules that govern the investment of retirement funds partially financed by federal appropriations? The Project produced the requested legal opinion with the assistance of attorneys at the law firm of Arnold and Porter.

Finally, Congressman Julian Dixon (D-CA) introduced an amendment to the International Monetary Fund (IMF) Authorization Bill instructing the U.S. director at the IMF to vote against any future loans to South Africa. The issue developed after the IMF in November 1982 agreed to a $1.1 billion loan to South Africa.

In May 1983 the Southern Africa Project Director and William Robinson, the Lawyers' Committee Executive Director, co-signed a letter to Representative Stephen Neal (D-NC), Chairman of the House Subcommittee on International Trade, Investment and Mone-

tary Policy, urging him to support the bill. The letter, which was included in the official record of the Subcommittee's hearing, stated in part: "We urge that the Subcommittee consider both the political as well as the economic implications of such loans. To attempt to distinguish between economic and humanitarian considerations in South Africa would be to draw false distinctions. South Africa's economic, political, and social structures are inextricably linked...In addition to the cost in human suffering caused by the system's control over the movement of Blacks within the country, the forced relocations of black families and communities and the progressing policy of bantustanization, many feel that apartheid labor policies have backfired and are now at the root of the shortcomings of the South African economy."

The compromise version of the Dixon bill requires a "no" vote by the U.S. on IMF loans to South Africa unless the Secretary of the Treasury "certifies and documents" that several conditions are met, for example, that the loan would be used to reduce "highly inefficient labor and capital supply rigidities" while "benefit[ing] economically the majority of the people of any country which practices apartheid."

PROJECT FINANCES

Statement of Revenues and Expenditures
January 1, 1983 through December 31, 1983*/

Revenues		$ 325,293.67
Expenditures		
Personnel Expenses		
Salaries (Director, Staff Assistant, Research Assistant, and Miscellaneous Services)	$ 67,094.83	
Employee Fringe Benefits	8,548.50	
Non-Personnel Expenses		
Travel and Meetings	8,611.93	
Office Operations	36,591.03	
General and Administrative (Insurance, Depreciation of Furniture and Fixtures)	1,017.56	
Contractual Legal Services	140,883.72	
Allocated Administrative Expenses	5,706.54	
TOTAL EXPENDITURES		$ 268,454.11
REVENUES LESS EXPENDITURES		$ 56,839.56
BALANCE BROUGHT FORWARD JAN. 1, 1983		$ 94,084.58
FUND BALANCE DEC. 31, 1983		$ 150,924.14

*/ This statement of revenues and expenditures was produced using unaudited financial reports. Copies of the Lawyers' Committee's audited and revised financial report for 1983 are available upon request.

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The Southern Africa Project's activities are administered on a daily basis by Project Director Gay J. McDougall, Staff Assistant Micaela Massimino, and a student intern, Marc Levy. Those activities, in turn, are overseen by the Southern Africa Project Advisory Subcommittee of the Board of Trustees of the Lawyers' Committee.

The Southern Africa Project Advisory Subcommittee consists of: Chairman Tyrone Brown of Steptoe & Johnson (Washington, D.C.); George N. Lindsay of Debevoise & Plimpton (New York); Ramsey Clark, former U.S. Attorney General and now practicing attorney in New York City; Peter J. Connell of Aetna Life & Casualty (Washington, D.C.); Robert H. Kapp of Hogan & Hartson (Washington, D.C.); James Nabrit of the NAACP Legal Defense Fund (New York); John W. Douglas of Covington & Burling (Washington, D.C.); Conrad Harper of Simpson, Thacher & Bartlett (Washington, D.C.); Goler Teal Butcher of Howard University Law School (Washington, D.C.); and Charles Runyon (Washington, D.C.).

ACKNOWLEDGEMENTS

First, we must acknowledge the expertise and courage of the attorneys in South Africa and Namibia who, in 1983 and in prior years, have acted as correspondent attorneys for the Southern Africa Project. The history of such defense work has documented that by consistently representing political prisoners, these lawyers often become viewed by their government as oppositionists, thereby subjecting them to banning orders, political imprisonment, and forced exile.

In addition, the work of the Southern Africa Project could not have been achieved without the assistance of many organizations and individuals. For their work, guidance, and commitment, the Project would like to thank: His Excellency Mr. Anders Ferm, The Honorable William Gray, The Honorable Howard Wolpe, The Honorable George Crockett, The Honorable Tom Downey, Mr. E.S. Reddy, Mr. Dele Akinla, Ms. Kathy Blanck, Mr. Maxwell Chibundu, Ms. Ora Clemens, Mr. Frank Deale, Mr. Ralston Deffenbaugh, Jr., Father Robert Drinan, Mr. Hugo Dryland, Mr. Boris Feldman, Mr. Martin Ganzglass, Ms. Lorrie Gavin, Mr. Lester Goldner, Ms. Ruth Gordon, Mr. Brent Henry, Ms. Anne Holloway, Mr. Gerald Horne, Dr. Herbert Howe, Mr. Peter Hurst, Ms. Elizabeth Landis, Mr. Bert Lockwood, Jr., Mr. Myles Lynk, Mr. Edward May, Ms. Sarah Mitchell, Mr. Ved Nanda, Father Earl Neil, Ms. Aviva Ornstein, Mr. John Payton, Mr. Jean-Paul Prentice, Mr. Michael Prosper, Mr. Henry Richardson, Dr. Marc Salzberg, Mr. Noah Samara, Ms. Joslin Sedney, Ms. Deborah Slott, Mr. David J. Stephenson, Jr., Ms. Sharon Weinman, The American Committee on Africa, The Washington Office on Africa, TransAfrica, Amnesty International, and The Episcopal Churchmen for South Africa.

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