SOUTH AFRICA 1986: A PERMANENT STATE OF EMERGENCY

"Our country has seldom witnessed such a wave of repression and such an extensive denial of basic human rights . . . We find no justification for this inhuman repression."

S. African Catholic Bishops' Conference

1986 Annual Report
Southern Africa Project
Lawyers' Committee for Civil Rights Under Law

History and Purpose of Project

In the midst of the burgeoning civil rights movement which swept the country in the early 1960s, 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 1986: A Permanent State of Emergency

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South Africa 1986: A Permanent State of Emergency

Cover quote from Open Letter to All Detainees, Southern African Catholic Bishops' Conference, March 8, 1987

Cover Photo Credit: Afrapix/Impact Visuals, 1986. Soldiers patrolling near Cape Town, South Africa.

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Introduction

Monday June 16, 1986, was the tenth anniversary of the Soweto uprisings. An eerie silence pervaded South Africa's black townships. The buses and taxies, usually crammed with workers heading for the cities, were nowhere to be seen. The commuter trains were still running, although bereft of passengers. Downtown businesses and shops in Johannesburg, Port Elizabeth, Pretoria and Cape Town were empty of their usual throngs of black customers, or closed for lack of staff. Prohibited from gathering in churches or in any other place to commemorate the 1976 uprisings, millions of black South Africans chose to mark the anniversary by staying away from work.

The declaration of the State of Emergency set the stage for scenes of terror for many South Africans.

This successful general strike occurred in the context of four days of intense government repression. Determined to prevent any demonstrations to commemorate June 16th, the South African government declared a national State of Emergency on June 12th and arrested thousands of people in the following days. The security forces were equipped with sweeping powers to arrest anyone without charge, to search and seize property, to impose curfews, to seal off areas and to use whatever force they deemed necessary against anyone disobeying their orders.

The declaration of the State of Emergency set the stage for scenes of terror for many South Africans.

At 3:30 a.m. on June 15th the security forces surrounded the perimeter of a university residence near Soweto. Its buildings were cordoned off with razor wire and the grounds were occupied by members of the South African army. While dozens of armed policemen stood shoulder to shoulder along the corridors of the dormitories, masked members of the security forces stormed each student room, tearing the blankets off the sleeping occupants and forcing the students, at gunpoint, out of bed. They tore posters off walls, seized publications and other personal property, and detained at least thirty students.

On the first day alone of the State of Emergency, the security forces raided homes in townships outside Johannesburg, Pretoria, Port Elizabeth, Pietermaritzburg, Cape Town and Durban. Wielding submachine guns, the security forces sealed off the premises and confiscated files from the downtown offices of religious groups, political organizations, labor unions and the independent press. They seized from the headquarters of the Detainees Parents Support Committee (DPSC) politically sensitive records containing allegations by former prisoners that they had been tortured in detention. They invaded religious services on Sunday, June 15th, on the excuse that the services constituted illegal gatherings. They hurled teargas cannisters and fired rubber bullets into a Cape Town Mosque during an evening service attended by 1,000 people. And, they seized the entire congregation of 250 men, women and children in the midst of an Anglican church service in the same city.

The government attempted to shield its activities behind unprecedented press censorship. The new State of Emergency Regulations prohibited journalists from filming, recording or making a representation of any public disturbance or any actions taken by the security forces. They were prohibited as well from broadcasting or publishing statements deemed by the state to be "subversive." Heavily manned roadblocks and a mysterious failure in telephone services to major black townships on June 16th ensured that few journalists were able to evade the prohibitions.

Both foreign and domestic journalists were required to rely upon the State Bureau of Information for reportable news. The Bureau's briefing sessions acquired an Orwellian atmosphere as journalists learned that even their own questions put to Bureau officials could not be reported, if the questions revealed information in violation of the State of Emergency regulations.

Within days of the declaration of the State of Emergency, police seized copies of independent newspapers like the *Sowetan* and the *Weekly Mail*. They raided the offices of the *New Nation* and detained the only staff member present, Tladi Khuele. Several weeks later four white men, two of them wearing masks, abducted the *New Nation's* editor Zwelakhe Sisulu from his home. Within a month of the declaration of the State of Emergency, 22 journalists had been detained and four correspondents for foreign news agencies deported.

This display of state force continued and intensified during the remainder of 1986. By mid-August the number of detentions had outstripped the total figure for 1985 and was thirteen times higher than the 1984 total. The Minister of Justice acknowledged in December that at any one time there were "six to seven thousand plus" people in detention under the State

Duka/Impact Visuals, 1985

of Emergency Regulations.

The total number of people detained under the State of Emergency is unknown. Newspapers and human rights monitoring groups were prohibited by the State of Emergency Regulations from publishing the names of detainees unless officially confirmed by the police. The government refused to issue a list of detainees until August, when it released the names of only 9,287 people. In February 1987, the government released the names of a further 4,000 people. Neither government figure, however, included people who were held for less than 30 days. The DPSC and other monitoring groups conservatively estimate the total, including people detained for less than thirty days, to be 25,000. That figure does not include, however, some 5,171 people who were detained without charge or trial in 1986 under other security legislation or the previous State of Emergency which was lifted in March.

Children in detention became one of the most alarming features of the State of Emergency. An estimated 10,000 children under the age of 18, including some as young as 10, were detained under State of Emergency powers in 1986. The government admits that it has jailed young children—it only disputes the numbers.

Children who have been released recount unspeakable conditions: sexual abuse, solitary confinement, being kicked and hit with fists, sjamboks and rifle butts, being nearly strangled or suffocated with hoods pulled over their heads, being subjected to electric shocks. One school boy says he was doused with gasoline and threatened with being burned alive if he did not tell police the whereabouts of another boy.

10,000 children were detained under Emergency powers

Archbishop Desmond Tutu described an encounter with a 15 year-old released detainee:

> Johnny spoke with great difficulty as if his tongue was swollen and filled his mouth. His eyes . . . seemed to be dead to the world for much of the time. He walked . . . with a slow painful shuffle like a punchdrunk ex-boxer. . . . It is not quite clear what the police did to Johnny. Perhaps it does not matter any longer. What is certain is that he went in a lively, healthy and normal youngster and he came out a walking human vegetable.*

In November, 1986, an independent panel of doctors concluded from their examinations of over 500 released detainees, including children and adults, that 83 percent of the patients showed medical evidence of phys-

*From *The War Against Children: South Africa's Youngest Victims*, Lawyers' Committee for Human Rights, New York, 1986, at p. i.

ical abuse and 60 percent of them were "severely injured." Three young people died while in detention under emergency powers.

The extent of the government crackdown under the national State of Emergency appears to have been intended, first of all, to break the capacity of anti-*apartheid* organizations to function, especially those groups involved in grassroots organizing in the black townships. Of the total number detained, the DPSC estimates that 21,000 were leaders or members of the more than 600 community, labor, student, women's and other organizations affiliated to the United Democratic Front (UDF).

The wave of detentions was coupled with periodic police orders prohibiting gatherings and publications by specified organizations. By mid-October some 300 organizations, most of them affiliated with the UDF, had been banned from meeting. In that same month, the government used a 1974 statute to declare the UDF an "affected organization," thereby barring it from receiving oversees funds which are critical for its programs. By early January of 1987 the entire national executive of the UDF was in detention or on trial or banned from political activity or operating from hiding.

Children and youth were favorite targets for violence from the security forces

The scale of security force detentions involved a second purpose, that of disorganizing and terrorizing entire communities. Indiscriminate raids, with whole families being taken into custody, added to the pervasive sense of fear and insecurity created by the daily presence of state security forces in the townships. At a DPSC-sponsored gathering in November for the relatives of the detained and disappeared, one participant told of how men came in the dead of night, broke down the front door, smashed windows and turned over furniture searching for her 12-year-old son whom they said was a threat to the security of the state. They took him away and he has not been seen since.

Children and youth were favorite targets, not only for detentions but for violence from the security forces in the township battle zones. The state seemed determined to break the long running boycott against its "Bantu Education" system and intent on destroying a vital source of political energy and militancy in the townships. While tight press censorship obscured the full extent of the atrocities, seventeen separate shooting incidents involving the security forces and young people were reported to the DPSC between June and September of 1986. In one such incident 17 year-old Bongani Mchunu was shot dead, according to eye witnesses, when police opened fire on him in a schoolyard in Chesterville township outside Durban. He was buried together with 19 year-old Siphiwe Ngcobo who was shot dead at point blank range, allegedly while trying to escape from police custody in the same township.

A relative mourns at the funeral of Siphiwe Ngcobo and Bongani Mchunu.

In this context of repression, the government continued to tout a reform program so fraught with ambiguity as to generate skepticism. Possibly the most trumpeted change effected during 1986 was the repeal of the hated pass and influx control laws. During the 65 years prior to their abolition on July 1st, 17.2 million black South Africans were arrested for violations of these regulations which rigidly controlled their movements and lives. Now South Africa's black majority will no longer require official permission to work and live together with their families in an urban area. No longer will a passbook, alone, determine their right to be outside the so-called homelands set aside for African occupation under the 1913 Land Act.

The benefits, however, from the repeal of these unjust laws will be narrowly distributed, based on access to government-approved housing and the rights of citizenship. Since 1976, approximately 9 million black South Africans have been denationalized as a direct consequence of the fictitious "independence" of the Transkei, Bophuthatswana, Venda and Ciskei "homelands." This denationalization policy was only partly reversed with the passage of the Restoration of South African Citizenship Act in early July, 1986. By the government's own calculations, the Act will affect at most about 20 percent of the citizens of these so-called independent homelands. The remaining 7 million people will continue to be treated as aliens within "white" South Africa, and consequently subject to summary arrest and deportation procedures.

Afrapix/Impact Visuals, 1986.

In addition, the government indicated that it was prepared to swell the ranks of the denationalized. Some 50,000 people living in scattered rural communities near the borders of the four "independent homelands" lost their South African citizenship when the Borders of Particular States Amendment Act came into effect in September, 1986. That law enabled the state to redraw the map, forcibly incorporating Braklaagte and other small communities into the "independent homelands."

The government was less successful in its more ambitious plan to denationalize nearly half-a-million South Africans classified as residents of the Kwa-Ndebele "homeland," by making it "independent" in December, 1986. An extraordinary popular uprising in that impoverished relocation area north of Pretoria forced the government to abandon its plans in August. Nevertheless, an estimated 160 people died in the struggle to retain their rights as citizens.

The government's housing policy poses an additional obstacle to freedom of movement for many black South Africans. The government has refused to repeal the Group Areas Act which mandates the racial segregation of urban residential neighborhoods. Of a total of 899 group areas proclaimed by the end of 1984 under the Group Areas Act, 451 of them were for whites (13.9 percent of the population) and covered 83.6 percent of the areas proclaimed. This arrangement has created a critical land and housing shortage in black residential zones. Large "squatter" communities have proliferated on the periphery of major urban centers in response to the state's failure to provide sufficient land and housing.

Legal residence in an African urban residential area is now explicitly tied to the ownership or occupation of an officially-approved house or site. The Prevention of Illegal Squatting Act, which allows for summary eviction by force, was tightened in 1986, providing a *de facto* method of influx control. Currently, thousands of people countrywide are threatened with forced removal to the homelands.

A stunning example of the new style influx control occurred at Crossroads Squatter Camp, long an international symbol of resistance. In a mere two days, between 60,000 and 70,000 people were left homeless as armed government-backed vigilantes carried out what an observer described as "the fastest and cheapest forced removal we have ever seen." It was also the bloodiest. Forty-eight people were killed. According to affidavits filed later in the Supreme Court by doctors, priests, journalists and squatters, the security forces participated in attacks on the squatters and assisted vigilantes in torching shacks and beating residents. Rev. John Freeth alleged that he "saw no attempt being made by the police to restrain the *witdoeke* [vigilantes] from attacking the Zolani Centre, the Red Cross tents or the...shacks." Goodwin Nyingwa, a squatter, claimed to have observed a procession of casspirs (military vehicles) and police vans advancing with the vigilantes towards the camp. Women and children ran out of the camp screaming and crying. He then saw policemen from the casspirs hurl "flame throwers" onto the shacks which burst into flames.

Areas of Crossroads and its sprawling satellite camps

Police drive past during vigilante attack on squatter homes, Crossroads. *Afrapix/Impact Visuals, 1986.*

cleared out in this fashion were sealed off with barbed wire and patrolled by soldiers. Only some 25,000 of the former inhabitants were permitted to stay, to be accommodated on serviced plots with high mast lighting and streets wide enough for a casspir to patrol. This process, of what is known in official parlance as "orderly urbanization," was completed when the remaining nine-tenths of the camps' inhabitants were forced to resettle in Khayelitsha about 19 miles away, a move they had resisted for years.

In a mere two days, between 60,000 and 70,000 people were left homeless

* * * *

The work of the Southern Africa Project in 1986 was an attempt to respond to these events. The Project financed the defense of over 900 people, including hundreds of children, charged with political offenses in both South Africa and South African-occupied Namibia. The Project financed the filing of applications for the release of nearly 1,000 people, who were detained without charge or trial under the security laws or the State of Emergency, and applications for injunctions against the police to stop them from torturing detainees.

With the Project's help, legal counsel was provided for the families of 19 Mamelodi township residents who were killed when police opened fire on a peaceful march on November 21, 1985. Civil actions were filed by trade unions and political organizations challenging the arbitrary powers granted to the executive under the State of Emergency and pre-existing security legislation. And, threatened evictions of thousands of township residents involved in a countrywide rent strike were challenged.

The Southern Africa Project financed, in full or in part, the cases discussed in this report and listed in the appendix. The Project paid lawyers' fees and other litigation costs. It supplied legal memoranda to counsel, particularly on international legal issues. The Project worked to raise the consciousness of the American public about the nature of human rights abuses in South Africa and Namibia. And, the Project initiated litigation in U.S. courts to ensure the proper implementation of the Comprehensive Anti-Apartheid Act of 1986.

This report describes the activities of the Southern Africa Project in 1986 and the broader political and legal context which compelled that work.

The State of Emergency and the Courts

The Work of the Southern Africa Project in Defense of State of Emergency Detainees

Press censorship and the government crackdown on all forms of political activity during 1986 left the courts as one of the few arenas in which government actions could be challenged. Yet, under the State of Emergency Regulations the jurisdiction of the courts is severely circumscribed. Injunctive relief is denied with respect to orders issued or actions taken pursuant to these regulations. Additionally, the State of Emergency Regulations bestow on the state or any member of the security forces immunity from civil or criminal responsibility for any action taken pursuant to these regulations that may be ascribed to "good faith." The law establishes a presumption that such acts are performed in good faith.

Despite these impediments, lawyers and activists alike used every conceivable loophole as a basis for bringing test cases before the courts. Hundreds of cases were heard by provincial Supreme Court benches challenging the broad powers granted to the security forces. The applications included motions for the release of certain detainees, for injunctions to restrain the police from assaulting and/or torturing certain detainees and motions challenging the lawfulness of particular State of Emergency Regulations. The petitioners included detainees, their relatives, trade unions, church groups, the UDF and major newspaper chains.

The Southern Africa Project assisted in a large number of these cases which involved the liberty and safety of nearly 1,000 State of Emergency detainees in different parts of the country. One of these was the crucial test case filed on behalf of the Metal and Allied Workers Union (MAWU) in the Natal Supreme Court in July. During the first two months of the State of Emergency some 2,735 trade union officials and members were detained. About 80 percent of them were from the Congress of South African Trade Unions (COSATU). Formed in December 1985, COSATU is the largest and most representative trade union federation in South Africa, incorporating key independent unions from the mining, metal, food, transport and other industries. COSATU is concerned not only with shopfloor issues, but with broader grievances against the *apartheid* system.

Amongst COSATU's affiliates, MAWU was one of the worst affected by the detentions. The applicants in *MAWU & Another v. State President & Three Others*, sought a court order declaring that the State of Emergency imposed on June 12, 1986 was unlawful and directing the government ministers who were respondents in the case to release Willies Mchunu and five other detained MAWU officials. Alternatively, the applicants sought an order declaring that State of Emergency Regulation 1(viii) purporting to contain a definition of a "subversive statement" and State of Emergency Regulation 3(10) which purported to restrict the right of detainees to have access to legal counsel were null and avoid.

MAWU contended that the provisions of State of Emergency Regulation 10, which prohibited the making, writing, printing, displaying or disseminating of a "subversive statement," read together with the definition of a "subversive statement," were void for vagueness, beyond the powers authorized by the enabling act and grossly unreasonable. Regulation 1(viii) defined a "subversive statement", for instance, as one which contained anything calculated or likely to incite the public to take part in unlawful strikes or demonstrations, or to support boycotts; or to weaken the confidence of the public in the authorities' handling of the State of Emergency; or, to encourage disinvestment or the application of sanctions against South Africa. MAWU contended that it was gravely prejudiced in its lawful activities as a trade union by the very vague definition of a "subversive statement."

MAWU also contended that "the denial of legal access constitutes such a fundamental invasion of an elementary right regarded as basic to all civilized systems of government as to constitute an *ultra vires* act unauthorized by the enabling statute."

In its judgment delivered on July 16, the Court refused to release the six MAWU officials from detention, but agreed that certain aspects of the definition of a "subversive statement" were hopelessly unclear and accordingly unlawful. The Court upheld the applicants' contention that State of Emergency Regulation 3(10) was beyond the powers of the State President under the enabling act, the Public Safety Act of 1953, insofar as this regulation prohibited access by lawyers to detainees.

As a consequence of this judgment and despite obstacles and delays created by the police, lawyers representing hundreds of detainees were granted access to their clients, facilitating the launching of further test cases. The Southern Africa Project assisted in one such case: *Solomon Lechesa Tsenoli v. State President & Two Others*. The applicant, a UDF official, was arrested on June 12, 1986 and subsequently detained under the State of Emergency Regulations. Following visits from his lawyers, Tsenoli instructed them to file an application in the Supreme Court for an order declaring that the detention provisions in State of Emergency Regulation 3 were invalid and that he, therefore, should

be released.

Tsenoli contended that although the State President had the authority under the Public Safety Act to determine under what circumstances the summary arrest and detention of any person was necessary for the purposes set forth in that Act, he could not delegate, through the State of Emergency Regulations, unlimited discretion to the security forces to make that decision. Since State of Emergency Regulation 3 contained no guidelines limiting the discretion of the security police to detain individuals, it must be declared null and void.

Lawyers representing hundreds of detainees were granted access to their clients

On August 11, the court ruled in the applicant's favor. It found that the provisions of State of Emergency Regulation 3 were beyond the powers of the State President as defined in the Public Safety Act and that the continued detention of the applicant was unlawful. Tsenoli was released.

The judgment in *Tsenoli* not only resulted in the release of the applicant, but carried the implication that the thousands of detentions which had occurred since June 12 were similarly unlawful. Confronted by this threat to the sweeping powers enjoyed by his security forces, the Minister of Law and Order immediately lodged an appeal against the ruling. On September 30th, the Appellate Division of the Supreme Court overturned the lower court's decision. Sitting in Bloemfontein, the highest court in South Africa found that the powers conferred on the State President by the relevant section of the Public Safety Act were so wide as to include the power to make a regulation such as State of Emergency Regulation 3 bestowing even unlimited discretion on the security forces.

The Appellate Court's ruling upholding the lawfulness of the detention provisions of the State of Emergency Regulations represented a blow to the hopes of thousands of detained people and their families. Nevertheless, lawyers continued to pursue other ways of challenging the State of Emergency powers, in particular by attacking the grounds for specific detentions.

The Southern Africa Project assisted petitioners in *G. Sithole & Six Others v. State President & Two Others* in filing an urgent application in the Supreme Court for the release of seven University of the Witwatersrand students detained in June. The application was for an order directing the State President to furnish the applicants with the full grounds for their detention and to afford the detainees access to legal representatives. The applicants in *Sithole* contended that the arresting officers did not and could not possibly have had grounds and/or information upon which to base their "opinions," as required by State of Emergency Regulation 3, that the detentions were "necessary for the maintenance of public order." The first applicant, for instance, was detained during a massive security force raid on Glynn Thomas House, a university hall of residence in Soweto, at 3:30 a.m. on June 15. The armed policeman who arrested Grace Sithole had no knowledge of her identity at the time.

In what was implicitly an admission of the indiscriminate nature of the detentions, the police released five of the detainees involved in the application within a day of the papers being filed and before any hearing on the matter. A sixth detainee was released ten days later. Two of those released, Claire Wright, president of the Students' Representative Council, and Daluxolo Mpofu, chairperson of the Black Students' Society were placed under police orders restricting their participation in specified organizations for the duration of the State of Emergency.

In several other cases assisted by the Project, the detainees were released shortly after applications were filed, including in *Faslom Mashigo v. Minister of Law & Order & Three Others* and *B. Manning v. Minister of Law & Order & Three Others*. Two of the seven applicants in *Louise Vale & Six Others v. Minister of Law & Order & Others* were released on the eve of hearings in the Supreme Court on August 28 and 29. Tim Bouwer and Andre' Roux were released when counsel for the state discovered that the orders extending their detention beyond fourteen days were improperly authorized. All of the applicants in *Vale* contended that their detentions were unlawful on the grounds that the arresting officers had acted in bad faith. The onus of proving *mala fides* rested with the applicants. Only with respect to one applicant, Karen Thorne, did the Court accept that the arrest was dishonestly motivated, ordering the respondents to release her. Concerning the other applicants, the Court accepted that the police had acted in good faith irrespective of the correctness or otherwise of the allegations made against the applicants by the police. Subsequent to this judgement submissions were made to the Minister of Law & Order requesting his reasons for the continued detentions of the other applicants. He failed to comply with the request. Two days prior to intended legal proceedings on their behalf, however, the four remaining detainees were released. All were placed under restriction orders.

The Southern Africa Project assisted in another case involving trade unionists detained under the State of Emergency. In *Congress of South African Trade Unions (COSATU) & 27 Others v. State President & Another*, COSATU, six affiliated trade unions and twenty detained trade unionists sought a court order declaring the detention provisions of the State of Emergency Regulations invalid and the detention of the individual

applicants unlawful. (The application was launched prior to the Appellate Court judgement in *Tsenoli*.) Secondly, the applicants sought an order restraining the Minister of Law and Order from ordering or permitting members of the South African police to intimidate, harass or otherwise interfere with the activities of the trade unions involved in the application.

COSATU argued that the arrest and detention of the individual applicants could not be justified under the provisions of the State of Emergency Regulations. It contended that these detentions represented an attempt to hamstring, if not destroy, the activities of COSATU and its affiliated unions in the industrial areas of northern Natal and was accordingly unrelated to the achievement of any of the purposes set forth in the State of Emergency Regulations or the Public Safety Act. The detentions, COSATU argued, were also contrary to the provisions of section 3(3)(d) of the Act permitting the continuation of lawful trade union activities, notwithstanding the declaration of a State of Emergency.

COSATU's northern Natal region was one of the areas hardest hit by State of Emergency detentions. The detentions came in two waves. Six key officials were detained on June 12th. Three days later police invaded a meeting of the COSATU regional executive council and simply detained everyone present. In his affidavit submitted to the Court, COSATU's education officer, Alec Erwin, argued that "the only inference which can be drawn is that their arrests and detention result from a conscious decision by the police officers responsible . . . either to destroy or to handicap severely the activities of COSATU and its affiliated unions in the area of the Northern Natal [police] command."

In supporting affidavits the detained trade unionists described interrogation sessions in which they were questioned about relations between COSATU and various political organizations; about trade union structures and the identities of office-bearers; and about COSATU's relations with various international organizations. Some of the detainees were questioned about their views on the conservative KwaZulu homeland-based organization, Inkatha, and the Inkatha-sponsored trade union, the United Workers' Union of South Africa (UWUSA). A number of the detainees alleged they were threatened with beatings or with being killed by Inkatha people if they did not join UWUSA. Alec Erwin, articulating suspicions of police-UWUSA collaboration, noted in his affidavit that UWUSA was the only union in the area unaffected by State of Emergency detentions, and northern Natal was the only area where UWUSA was actively trying to recruit members and organize against COSATU.

On the date of the hearing, an agreement was reached in Court between the state's attorney and the plaintiffs' counsel for the matter to be adjourned *sine die*, subject to certain conditions, including the release of the detainees involved in the application. Two of the released detainees were placed under restriction orders.

Under the State of Emergency, trade unions have been hampered in their activities not only by detentions but by prohibitions against certain forms of political activity viewed by the state as subversive. In *Food and Allied Workers' Union v. State President & Others*, FAWU, a COSATU affiliate, sought, with the assistance of the Southern Africa Project, a declaratory order from the Supreme Court to the effect that the prohibition contained in the State of Emergency Regulations against advocating or participating in any boycott action was not intended to prohibit the calling of consumer boycotts in connection with industrial disputes.

The suit arose out of an industrial dispute involving Clover Dairies/National Co-operative Dairies and FAWU, the main union representing Clover employees for the past three years. FAWU decided to call for a community-based boycott of Clover products in an effort to pressure Clover Dairies into good faith negotiations over a number of grievances, including the reinstatement of 166 dismissed workers. The vagueness of the State of Emergency Regulations, however, with respect to the legality or advocacy of boycotts placed the union in a quandary. Specifically, State of Emergency Regulation 1(viii) defined "inciting the public or any person or category of persons to . . . take part in or support any boycott action" as making a "subversive statement," an offense punishable by ten years imprisonment or a substantial fine. FAWU requested the Commissioner of Police to clarify the legal status of a union pamphlet calling for a consumer boycott of Clover products. The Commissioner failed to respond, forcing FAWU to turn to the court for clarification.

While the union was preparing its papers, Clover Dairies *ex parte* and without notice to FAWU, launched proceedings for an injunction prohibiting the union from organizing the boycott or publishing anything harmful to the reputation of Clover Dairies. The applicant was granted an interim interdict on September 3rd. FAWU then filed a counter application for an order declaring that the call by FAWU for a consumer boycott of Clover Dairies' products was not prohibited by State of Emergency Regulation 1(viii). In addition they sought an order discharging the *rule nisi* of September 3rd.

On December 11, the government issued new State of Emergency Regulations which directly affected FAWU's application before the Supreme Court. The clause containing the definition of a "subversive statement" had been amended specifically to include statements which incited or were intended to incite members of the public to take part in boycott actions against any particular firm or its products. This amendment removed the basis of FAWU's application and rendered unlawful a tactic used successfully in recent years to strengthen the bargaining power of the independent unions in their struggle for decent wages and working conditions.

The Rent Boycott Campaign in the Townships
The Work of the Southern Africa Project in Assisting Boycotting Communities

"An eviction to one is an eviction to all."

For more than two years tens of thousands of black township residents have boycotted against the payment of rent to the government institutions controlling the townships. The boycott action has emerged as one of the most important political tactics to undermine *apartheid* rule in the townships. The wave of rent strikes began during September, 1984 in the Vaal Triangle townships south of Johannesburg. During the first half of 1985 the boycott spread to towns in the northern Orange Free State. In May, 1986, a second wave of rent boycotts began in Soweto, the Eastern Cape and townships east of Johannesburg. By the end of September rent boycotts had spread to 54 townships involving 650,000 households and were costing the State R40 million (approximately $20 million) per month in lost revenue.

The rent boycotts throughout the country have been called in support of two key demands: the lowering of rent and the resignation of township councilors. Most township households are in desperate financial straits. Unemployment is running at 56 percent in some townships, and even those who work live within a fragile margin of economic survival. The response of township residents to the news of massive hikes in rents, imposed initially in the Vaal Triangle area in 1984 and later in townships elsewhere, was an explosion of anger.

Much of the anger was directed at township councilors, empaneled pursuant to the Black Local Authorities Act, No. 102 of 1982. Government-backed township councilors, along with officials of the Development Boards established under the Black Communities Development Act of 1984, are granted authority under the Act to manage public services in black townships. However, the new township councils, which must implement government policies, have no access to new revenue sources. Having no industrial tax base, the local authorities must raise revenue from those least able to pay: the township residents.

The local administrative structures in the townships have been overwhelmingly rejected by the black community as a poor substitute for national political rights. Township residents argue that the so-called Town Councils, like the Community Councils which preceded them, were imposed by the government in an attempt to strengthen separate development and lack the power to change conditions in the townships. Township councilors are condemned as government collaborators. Some have used their positions to engage in corrupt practices. Most have used their positions to better their own life-styles.

What began as an economic issue—the sheer impossibility for most households to pay the additional amounts—broadened into a strategy for destroying the economic base of the unpopular black local authorities. As a Soweto pamphleteer expressed it in June, 1986: "We are no longer prepared to finance our own oppression. We won't pay rent. We won't pay the salaries of our enemies, the puppet councilors and their police."

By late 1986, the rent boycott had contributed to the financial collapse of nearly 40 councils. As the campaign against the councils spread, popularly-supported civic associations, residents' organizations, and street and area committees mushroomed, expressing the determination of township residents to wrest control over their lives.

"We are no longer prepared to finance our own oppression."

During the boycotts, civic associations have had to solve important problems, chief among them the constant threat of eviction. In some cases, civic associations have encouraged residents to bring eviction notices to the association so that they could be contested in court. In addition, civic associations have had to respond to the authorities cutting off electricity, water supplies and garbage removal in their efforts to break the boycotts. In Mamelodi, residents organized their own system of refuse removal. In some townships, more militant youths have also occupied government buildings to prevent the electricity from being cut off. In others, unemployed artisans and technicians have become involved in dealing with sewage and electrical problems. In November, 1986, six people were shot dead in Orlando West in Soweto when residents clashed with council police who tried to cut off the electricity of people not paying rent.

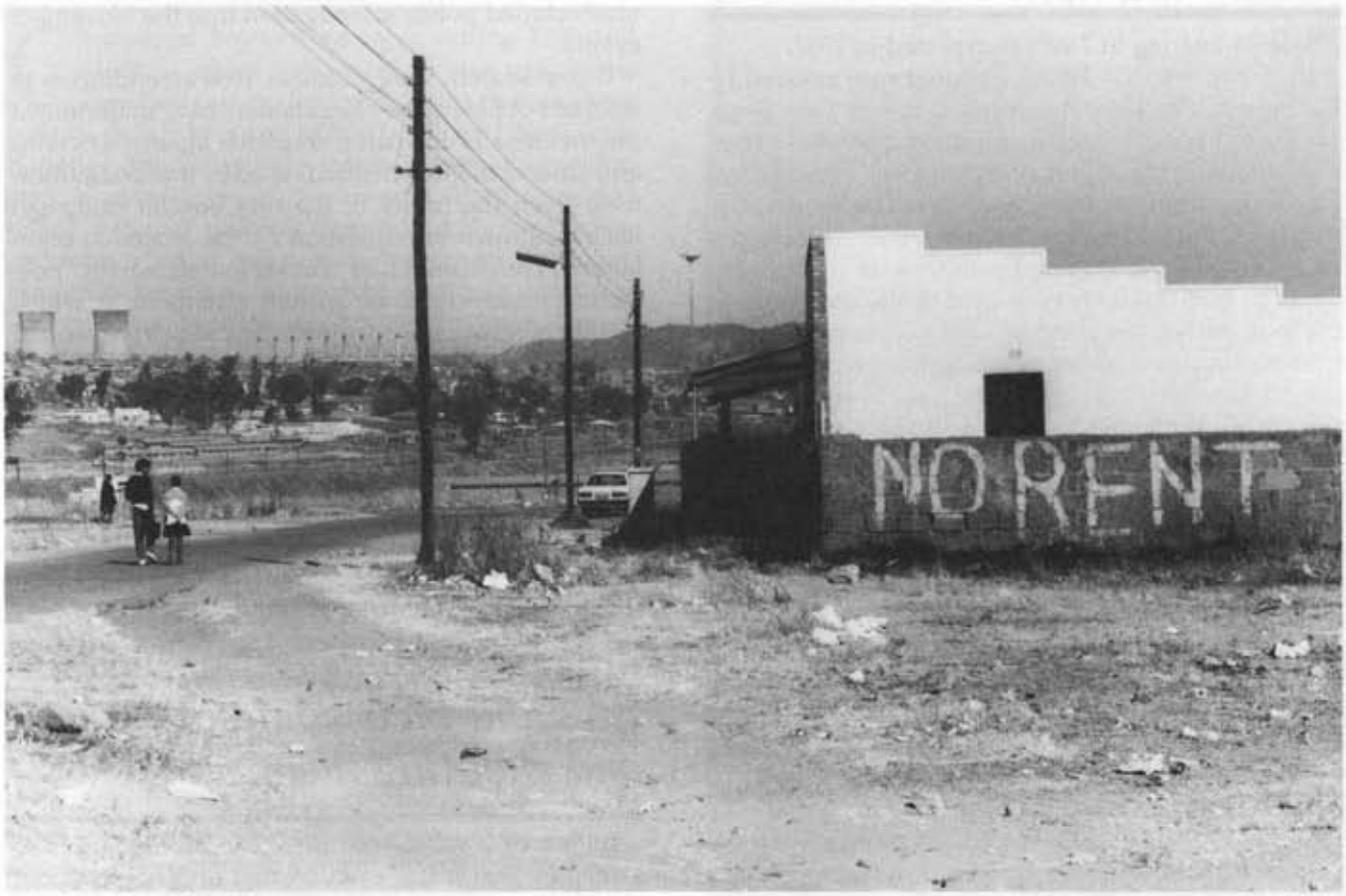
The authorities have used evictions as the primary weapon of intimidation. The Development Boards have issued notices under section 65 of the Housing Act. These evictions, carried out by council police some-

times with the backing of state security forces, have developed into scenes of bitter confrontation. One of the worst incidents occurred in Soweto on August 26, 1986. Hundreds of young people barricaded the streets of the neighborhood known as White City Jabavu in a bid to stop the Soweto City Council police from evicting families who were in arrears. White City households consist mainly of pensioners and the disabled, often with four families sharing each housing unit.

The barricades erected on August 26 failed to stop the police. Without warning, the police opened fire. As eye witnesses later reported, "people fled in all directions with police pursuing them into their homes. We hardly slept that night as police moved from yard to yard shooting." State security forces arrived to reinforce the council police. High intensity search lights were used while they shot at anyone moving about the streets.

A former veteran of the 1976 Soweto student uprisings described the night's events as the "most terrifying moment" of his life. At the sound of gunfire, he and others attending a street committee meeting on the rent issue ran out into the street where they saw more than 20 police cars parked opposite a hall. "I saw several people being shot and for nearly the whole night we were ferrying people to the hospital. What really terrified me was that we were picking up bodies in the street while bullets were whizzing past us." Twenty-seven people died and ninety-one were injured that night.

Despite official propaganda, intimidation and violence, township residents have fought back, challenging in court the legality of evictions and other retaliatory methods. The Southern Africa Project is assisting a number of these cases, including *Tsoari v. Lekoa Town Council*. The applicants in this suit seek a declaratory order that the residents in the Transvaal and Orange Free State ("Vaal Triangle") townships of Sebokeng, Sharpeville, Boipatong, Bophelong and Zamdela are not obligated to pay rent to the Lekoa Town Council into which they were incorporated in 1984.



Rent boycott graffitti, Soweto. *Duka/Impact Visuals, 1985.*

Without warning, the police opened fire.

The average rent paid by black residents in the Vaal Triangle is higher than the averages paid by Africans elsewhere in the country. At the same time, average annual black per capita incomes in the Vaal Triangle

are substantially below the national metropolitan average, while the cost of living is the highest outside of the Johannesburg area. These conditions, together with massive rent hikes imposed by the council in 1984, sparked the "Vaal Triangle Uprising" in September of that year, an event which marked the beginning of the current wave of rebellion and repression in South Africa. A hearing in *Tsoari* is expected in 1987.

Evictions have developed into scenes of bitter confrontation.

In one other Vaal Triangle-related case assisted by the Project, *Vaal Civic Association v. Evaton Town Council*, the applicant is seeking an injunction order from the Rand Supreme Court restraining the council from arresting without warrant Evaton residents who are in arrears and compelling them to sign acknowledgements of debt and stop orders in favor of the council. Some Evaton residents have filed civil actions against the local authorities claiming unlawful detentions.

In addition, a number of petitions were filed, with Project assistance, involving the Vaal Triangle townships and Tumahole township in the Orange Free State, seeking to overturn decisions against rent defaulters. The petitioners sought court orders reinstating families in their homes and restoring their personal belongings to them. In Tumahole, for instance, evictions began in June, 1986, after State of Emergency detentions undermined organizations which, for two years, had fought against steep rent increases imposed on Tumahole's desperately poor residents. By that stage each registered tenant owed the authorities R900 in back rent, an amount impossible to pay in a situation where even better-off workers earned only R120 a month. Lawyers have managed to win orders rescinding judgments against some 50 or 60 families in Tumahole, Sebokeng, Sharpeville and Boipatong.

The Project is also assisting in *Mngomezulu v. City Council of Soweto* in which the applicant is seeking an order in the Rand Supreme Court prohibiting the council from using section 65 of the Housing Act to evict rent defaulters on seven days notice and without due process. A trial date has not yet been set.

The Project is assisting in one other matter arising out of struggles around the rent issue. On November 21, 1985, nineteen people died and hundreds were wounded when police fired on a crowd which had gathered outside the Administration Board offices in Mamelodi (Pretoria) to protest rent increases and other grievances. Eyewitnesses report that the police hurled teargas and opened fire on the crowd of predominantly women and elderly Mamelodi residents without a clear warning or provocation. Then, according to Mamelodi residents, the police went on a rampage dragging people out of buses, cars and their homes, beating and shooting them. A two-month old baby girl died from the effects of teargas tossed into her home to "flush out" marchers who had sought refuge there. Six other victims, aged between 50 and 65, died from the effects of teargas, gun shot wounds in the back or from severe burns sustained after the police allegedly hurled a petrol bomb into a bus.

The Southern Africa Project is assisting the families of the deceased and some of the people who were seriously injured in pressing for full inquest proceedings, which may scrutinize the conduct of the police. Those proceedings continue to be delayed by an unconcluded police investigation into the November events.

Unfortunately, the December 1986 amendments to the State of Emergency Regulations have undermined the victories of township residents against evictions and other retaliatory methods used by the local authorities. Even the future of the rent boycott campaign itself is thrown into question by the amended regulations. The definition of "subversive statement" now includes any verbal or written statement in which members of the public are incited, or which is intended to have the effect of inciting members of the public, to take part in any act of civil disobedience "by refusing to comply with an obligation towards a local authority in respect of rent or a municipal service." Publishing or disseminating such a statement is totally prohibited. Contravention could trigger a possible ten year jail sentence or a substantial fine. The prohibition is so sweeping that it has even created uncertainty about the legality of advising residents of their rights concerning the payment of rent and service charges, or even of publicizing successful court challenges to evictions of rent defaulters.

The police went on a rampage dragging people out of buses, cars and their homes, beating and shooting them.

The government also has made it illegal to publish or disseminate a statement construed as inciting people to establish or support alternative structures of authority in the townships, or to make payments to them rather than government-established local authorities. The continued legality of challenges to the authority of the Development Boards and Town Councils by civic associations and other popularly-supported township organizations is thus in question. In a bid to stifle general awareness of the activities of these alternative organizations, or of the nature of the rent boycott campaign, the government has prohibited publication of such information without official permission.

Consumer Boycotts and Community Resistance

The Work of the Southern Africa Project in Assisting the Victims of Police Repression

"Consumer boycotts have risen as a weapon of the people in one of the most repressive and bloody periods of our people's history."
(UDF Information Bulletin, December 1985)

Consumer boycotts emerged during 1985 and 1986 as effective forms of protest against the *apartheid* system. Beginning in the Eastern Cape, with its tightly knit and highly politicized black communities, the "consumer strikes" gradually proliferated in other parts of the country. Each campaign linked national political demands with local grievances, in a bid to pressure the government through the white business community. Typically consumer boycott committees demanded, as a condition for ending the boycott, the lifting of the State of Emergency; the withdrawal of military troops from the townships; an end to police repression; the release of political prisoners and detainees; the lifting of the ban on organizations; the return of political exiles and a great diversity of local issues. In Port Elizabeth, for example, the boycott committee demanded the removal of the barbed-wire barracades installed by the government to cut off Port Elizabeth's New Brighton and Kwazakhele black townships from the outside world.

The strategy behind the boycotts is to raise the cost to the white business community of continued support of the *apartheid* system. As Soweto Consumer Boycott Committee (CBC) spokesperson Jabu Ngwenya noted, even though the business community is dependent upon Soweto residents for 80 percent of their trade, the boycott committee's major objective was not to force Johannesburg retailers out of business; but rather, to motivate the business community to press the government to meet their demands. Port Elizabeth's CBC leader, Mkhuseli Jack, declared when the committee reimposed the local boycott in April, 1986: "The economy is going to be our soft target and we are going to hit it very hard. . . . We know that some people react to a loss of profits more than to the loss of lives."

Precipitous declines in daily sales as a consequence of the boycotts did produce concessions. In some areas business and local authorities reacted by trying to negotiate with boycott leaders, or by making representations to the government or by interceding on behalf of African communities with the police. In Queenstown, for instance, where 35 businesses closed after a seven-month boycott by the residents of Mlungisi township, the authorities agreed to commit R16 million to upgrading township facilities. The most spectacular, if temporary, victory was secured in Port Elizabeth where the withdrawal of 350,000 consumers from the city's central business district led to the collapse of more than 100 businesses by mid-1986. Three-cornered negotiations between the boycott committee leaders, the Chamber of Commerce and the government resulted in the withdrawal of all security forces from Port Elizabeth's black townships in late 1985.

Residents crawl under razor-sharp fence separating New Brighton and Kwazakhele townships.
Afrapix/Impact Visuals, 1986.

The peace was short-lived. The consumer boycott was reimposed in April 1986 primarily because of, as the CBC expressed it, the "continued killing of our people" by the security forces.

The impact of the consumer boycott campaigns led to a variety of harsh police reprisals. Local and national boycott leaders were detained, banned and, as in the case of Mkhuseli Jack, tortured. The owners of township and other businesses patronized by boycotters were detained. Wholesalers were pressured to deny goods to black-owned businesses. Those who did not succumb to this pressure were forced to close because of some technical violation of licensing laws.

The police resorted to statutory weapons such as the Intimidation Act, Internal Security Act and the State of Emergency Regulations to prohibit meetings held for the purposes of discussing and planning boycott campaigns. And there was an attempt to criminalize boycott-related activities. The amended State of Emergency Regulations of December 11, 1986, explicitly prohibited the publication of any statement intended to encourage participation in consumer boycotts or the printing or broadcasting of news concerning the nature and success of boycott campaigns. These and other restrictions were used to enforce a media blackout of the UDF-sponsored "Christmas Against the Emergency," a campaign which included a ten-day consumer boycott.

In September, the first person to be charged under the Internal Security Act with "economic subversion" for advocating a consumer boycott stood trial in the Benoni magistrate's court. The accused, Abiot Hansey Motswege, a UDF organizer from the East Rand, was

Thousands of people have been detained for their activities in connection with consumer boycotts.

acquitted in February, 1987, largely on the facts of the case. The court made no finding on the legality or otherwise of consumer boycotts in general. Thousands of people have been detained for their activities in connection with consumer boycotts and remain vulnerable to criminal prosecution.

The Southern Africa Project assisted in a number of cases arising out of the consumer boycott campaigns and the state's response to them. In *State v. Mayo* and *State v. Mgwabane* the defendants were charged with violating provisions of the Intimidation Act No. 72 of 1982 in connection with the consumer boycott in East London. The boycott, launched in July 1985, resulted in one significant concession, a suspension of the forced removal order against the black township of Duncan Village. Arthur Mayo was accused of threatening people to force them to close their shops in September during the boycott. The charges were withdrawn against him in December, 1985, because of insufficient evidence.

In *State v. Mgwabane*, the accused was charged with violating section 13 of the Internal Security Act of 1982, ("furthering the aims of a banned organization"), in addition to the Intimidation Act, for allegedly urging passengers on a train travelling between East London and Mdantsane (Ciskei) to boycott white stores, and for making speeches and singing songs in praise of the African National Congress. Mlandeli Mgwabane was acquitted after a two day trial.

Entire communities participating in consumer boycott campaigns became targets of the security forces.

Entire communities participating in consumer boycott campaigns became targets of the security forces. The Southern Africa Project assisted the residents of Cathcart, outside East London, in bringing an urgent application in the Supreme Court for an injunction ordering the Ministers of Law and Order and of Defence to restrain the police and military from assaulting Cathcart residents. The applicants in *M. Kika & Others v. Minister of Law & Order & Another* alleged that on November 2, 1985, the police ordered the residents to assemble outside the township on the pretense of discussing various matters with them, including the consumer boycott of white businesses. When the people had assembled, the police produced a list from which they read out certain names. They allegedly then began assaulting the whole group by whipping, kicking and shooting at them. Many of the residents sustained severe bodily injury. The court granted the applicants an injunction in April, 1986.

The Southern Africa Project assisted the residents of the Krugersdorp townships of Kagiso and Munsieville in bringing an urgent application for a restraining order against the Ministers of Law and Order and of Defence, and the members of the police and the army under their control. According to affidavits and oral testimony submitted in *Krugersdorp Residents' Organization & Others v. Minister Of Law & Order & 2 Others*, the residents of these townships were subjected to a particularly terrifying and sustained wave of security force violence because of a consumer boycott.

The boycott was launched on December 6, 1985,

after a mass meeting called by the Krugersdorp Residents Organization (KRO). Delegates from six organizations including the KRO, formed the Krugersdorp Boycott Committee whose demands included the release of detained local leaders. The committee embarked on an information campaign among the residents, migrant workers in the hostels and domestic workers living in servants' quarters. Three weeks later the committee launched a Greyhound bus boycott. Both campaigns were widely supported.

With the launching of the boycotts the presence of state security forces became more visible. On December 9, 1985, Rooi Mashigo, a consumer boycott marshall, was fatally shot, allegedly by the police. The SADF were stationed in the Krugersdorp townships on January 6, 1986. During the following months, according to KRO chairperson, Dikeme Makgotlho, the presence and conduct of the security forces rendered the lives of ordinary residents intolerable. In 118 sworn affidavits filed in support of their court application, the residents of Kagiso and Munsieville alleged that they were subjected to killings, shootings, beatings, sexual assault, damage to their property, and other forms of harassment and intimidation by the security forces.

Fourteen-year-old Maki Legwete died during a security force raid on a meeting of school children in a primary school hall on January 27. According to Mr. Makgotlho and seven other witnesses involved in the suit, the security forces threw stun grenades and teargas into the hall. Pandemonium broke out.

> As the children were trying to escape from the effect of the teargas, policemen were waiting at the exits, sjamboking [whipping] those who [tried to escape through the doors] forcing other children to escape by breaking the glass of the windows . . . some children cutting themselves badly in the process. When this escape route was discovered, police ran around to the other side of the hall and shot at children trying to escape in this manner, in the process killing . . . Maki Legwete.

On the night of February 24th, Steven Matshogo was beaten to death when walking home from work. For weeks, gangs of masked white men, some wearing civilian clothes and others security force uniforms, cruised the streets of Kagiso at night, intimidating residents and enforcing a curfew. On the 24th they went on a bloody rampage, dragging men, women and children from taxis, their cars and their homes, and beating them with rifle butts, pick-handles, truncheons and stones. Dozens of residents suffered massive bruises and cuts. Steven Matshogo was beaten so brutally that his body was later described as "unrecognizable as human."

The gravity of the allegations made by the petitioners in the *Krugersdorp* suit was such that the State Attorney requested that the papers be withheld from the public until the respondents had filed their reply. Although the Court, in an unusual ruling, agreed to the motion, it found sufficient *prima facie* evidence in the petitioners' case to impose an interim restraining order on the Ministers of Law & Order and of Defence and the security forces under their control.

The allegations were denied in answering affidavits filed in late April and the matter went to trial. In May, the state admitted in court that they were tapping the phones of KRO members who were giving evidence in the trial. Progress in the case ceased with the detention of the four individual plaintiffs: Dikeme Makgotlho, KRO chairperson, and the Reverends Bethuel Mongwaketsi, Jacob Sefatse and Samson Kataka. They were still in detention under section 29 of the Internal Security Act in February 1987.

The Southern Africa Project assisted in cases arising out of a similarly repressive response by the Bophuthatswana "homeland" authorities to local consumer boycott campaigns. In late 1985, the Bophuthatswana police began a vicious campaign of harassment against organizers and supporters of a consumer boycott called in solidarity with 500 workers dismissed from the Metal Box factory in Rosslyn outside Pretoria.

During the past few years pressures have been mounting in Bophuthatswana, as in the other "homelands," under the impact of government policies designed to create a more stable and affluent black "middle class" in urban areas. The "homelands" once functioned as cheap labor reservoirs, with residents migrating to urban areas outside the "homelands" for work. Now, hundreds of thousands of so-called migrant workers from the "homelands" have been shut out of urban employment. Labor recruitment centers on "border" areas have been closed. One such center was at Rosslyn on the Bophuthatswana "border." Employment preference has now been given to workers from Pretoria's townships and thousands of contracts of workers from Bophuthatswana were cancelled or not renewed.

Hundreds of thousands of so-called migrant workers from the "homelands" have been shut out of urban employment.

Repression has been decentralized, along with this displacement of workers and continuing forced removals of communities into the "homelands." The Pretoria government uses the financially dependent "homeland" regimes to control an increasingly angry

and frustrated rural population facing catastrophic levels of unemployment and deepening poverty. Brutal repression carried out through the use of draconian security legislation, and by police, soldiers and hired vigilantes has become almost routine.

In Bophuthatswana at the end of 1985, "homeland" officials seemed intent on purging the area of young activists and trade union members. Metal Box factory workers and youths living in Ga-Rankuwa and other townships within the purported borders of the "homeland" fled in the face of mass arrests and assaults at the hands of the police.

The scale of the brutality was first revealed at a UDF-sponsored press conference in February, 1986. Tshini Mulondo of the Mabopane/Winterveld Crisis Committee claimed that about 50 people had disappeared and about 500 others had been detained during the preceding few months. In early March, the Catholic Archbishop of Pretoria and twelve other petitioners brought an urgent application in the Supreme Court for a restraining order against the police. Archbishop Daniels alleged that the police stationed at Ga-Rankuwa were waging a campaign of intimidation against the local population, using apparently arbitrary detentions, assaults and threats of the same. He alleged that detainees were hit, kicked and whipped with sjamboks, canes and batons. They were stripped of their clothing and sexually abused, as well as deprived of food, water and medical attention.

The court granted an injunction restraining the police from making illegal detentions and assaults, although police abuses apparently continued. On March 26, 11 people were shot dead by the police during a meeting in the Winterveld squatter camp, called by the police commandant himself to explain the recent mass arrests of youths.

The Southern Africa Project assisted in a number of cases arising out of these events, including *Postal Nhlapo v. Minister of Law & Order (Boph.)*. The case is one of a number of civil suits brought against this official for unlawful arrests and detentions carried out between November 18, 1985 and January 18, 1986. Postal Nhlapo is suing the respondent for damages as a consequence of injuries sustained by his minor son Petrus on January 15, 1986. While attending a night vigil for Solomon Boloyi, who had been fatally shot, allegedly by the police, Petrus was arrested, whipped and shot at, allegedly by members of the Bophuthatswana police. They had arrived at 9 p.m. and began firing teargas at the mourners. Overcome by the teargas the mourners allegedly were forced to strip before being assaulted and ordered to run to the vans and armored vehicles parked outside. Twenty-five-year-old Dorah Mabunda was pulled out from under a bed, bleeding from bullet wounds in her shoulders, and made to run to a police van while being beaten with truncheons and sjamboks. The following day the funeral itself was also violently disrupted.

Many of those arrested and assaulted by the "homeland" police during this period were subsequently charged with public violence and other common law offences. The Southern Africa Project assisted in the defense of a number of those so charged. In *State v. David Bokaba & Two Others*, the defendants, two sixteen-year-old students and an unemployed youth, were charged with public violence or, alternatively, arson, in connection with protests over the dismissal of the Metal Box factory workers. The charges were withdrawn in the Ga-Rankuwa magistrate's court on March 27, 1986. One of the former defendants, Moses Choma, is suing the Minister of Law and Order (Boph.) for damages as a consequence of extensive sjambok wounds sustained during his arrest on November 18, 1985.

The defendants in *State v. Derrick Zulu & Two Others* are involved in similar suits against the Minister. Derrick Zulu and Richard Motswheni, both 18-years-old, and 16-year-old Elliot Nkambule, suffered severe sjambok wounds when they were arrested by the police in December, 1985. The Project assisted in their defense when they were subsequently charged with public violence. The charges were withdrawn against them on January 27, 1986.

As with many of the youths arrested by the Bophuthatswana police at this time, the defendants in *State v. Lindiwe Makhubela & 24 others* and *State v. Reuben Kgwale & 4 others* were interrogated about and accused of being members of the Congress of South African Students (COSAS), an organization banned by the South African government in August, 1985. The "homeland" authorities blamed COSAS and other "outside agitators" for the growing opposition to its corrupt and repressive rule. The Southern Africa Project assisted in the defense of these thirty young defendants when they were subsequently charged with public violence and contraventions of Bophuthatswana's security law. The charges against the defendants in both trials were withdrawn in January, 1986.

Charges were also withdrawn in two other cases assisted by the Southern Africa Project: *State v. G. Mnisi & Two Others* and *State v. S. Temo & Two Others*. Both trials arose out of police efforts to crush the consumer boycott in Ga-Rankuwa township. In another related case, also assisted by the Project, the accused in *State v. Stanford Rakgabale & 6 others* were charged with a main count of public violence or, alternatively, robbery, for allegedly intimidating township residents in connection with the consumer boycott in December, 1985. Charges were withdrawn against them on April 9, 1986. The first accused, Stanford Rakgabale, had been acquitted earlier, in a separate trial, of a charge of malicious damage to property in connection with a petrol bombing of a car in November, 1985. Rakgabale is suing the Minister of Law and Order (Boph.) for damages as a consequence of injuries, including a broken arm, sustained during his arrest on November 18, 1985.

Political Trials and Banned Organizations

The Work of the Southern Africa Project in Assisting People Charged with Contravening the Security Laws

During 1986, at least 721 people in 116 separate trials faced charges of terrorism, subversion, sabotage and other contraventions of the Internal Security Act (ISA) No. 74 of 1982, as well as common law charges of treason and sedition. The Southern Africa Project assisted the defense in a number of these political trials. Almost invariably, defendants in these trials are held in detention for prolonged periods under section 29 of the ISA, which allows for incommunicado detention without charge or trial for the purposes of interrogation, until the detainee has "satisfactorily replied to all questions" or until "no useful purpose will be served by his further detention." Evidence from political trials, inquests, court applications for restraining orders against the police and the testimony of former detainees attest overwhelmingly to the vulnerability of section 29 detainees to ill-treatment and torture.

In providing assistance to those held or charged under South Africa's draconian security legislation, the Project seeks to ensure not only that each defendant is accorded an opportunity to defend against the charges but also to deter, through active intervention in the courts, the abuse and violence exercised against the defendants by the state.

In the vast majority of trials under the ISA, the state's case rests heavily upon a confession extracted from the detainee while being held incommunicado under Section 29 of the ISA. Consequently, the trial-within-a-trial to investigate the admissibility of the confession based on allegations of physical and mental abuse of detainees, has become a characteristic feature of political trials. Unfortunately, courts have seldom held confessions to be inadmissible even in the face of clear and convincing proof of torture.

Another major feature of these trials is the prosecution's reliance upon the evidence of state witnesses, often given *in camera*. The ISA makes special provision under section 31 for the detention of potential state witnesses. The Attorney General can order their imprisonment until court proceedings end or for six months, if the trial has not yet began. Apart from the coercive effects of detention itself, the potential witness faces a further term of imprisonment if he or she refuses to give evidence as a witness for the state. The maximum penalty for this offence has been increased steadily and today stands at five years.

The accused in these trials are further disadvantaged by the routine denial of bail through the direct intervention of the Attorney General, using his powers under section 30(1) of the ISA. This section authorizes the Attorney General to preempt the discretion of the court with respect to bail for defendants charged under the ISA. Finally, offenses under the ISA, as under its predecessor legislation such as the Terrorism Act of 1967, are constructed in such a manner as to shift burdens of proof for critical elements of the offense almost entirely onto the accused.

In *State v. P. Bacela*, one of the cases assisted by the Southern Africa Project for instance, the defendant, twenty-year-old Professor Bacela, was arrested 18 months prior to standing trial in February 1986. Arrested in August, 1984 at the Lesotho border, he was taken into detention after a letter containing references to the banned African National Congress (ANC) allegedly was found in his luggage. In June, 1985, he appeared as a witness in an East London trial, *State v. Tungwana & Seven Others*. Three months later he himself was charged with contravening Section 54(1) of the ISA ("terrorism"). He was charged on a second count of attempting to frustrate the law or, alternatively, perjury. The second charge arose out of the *Tungwana* trial during which a statement he made as a sworn witness conflicted with a statement he had made earlier to a commissioned officer while in detention.

Courts have seldom held confessions to be inadmissible even in the face of proof of torture.

During his trial, which began in the East London Regional Magistrate's Court in February, 1986, Bacela claimed that his statement to the police in December, 1984, while in detention, had been extracted from him after months of abuse at the hands of the police. Allegedly, after his arrest at the Lesotho border, he was taken to Ladybrand police station and given electric shock torture. Later he was taken away in a car and at some location unknown to himself, he was tortured again with electric shocks and interrogated about the ANC. Bacela denied knowledge of the letter found in his luggage and denied that he was leaving the country to join the ANC for military training purposes. The

next day he was taken to another police station where, allegedly, his feet were chained and a leather bag placed over his head. He was interrogated extensively about the ANC. He was finally taken to Fort Glamorgen prison in East London and held in solitary confinement for 4½ months. On December 12, 1984, he was forced to sign a statement. The statement contained an admission, which he subsequently denied during the *Tungwana* trial, that he had been recruited to undergo military training with the ANC in Lesotho.

A district surgeon, Dr. Kooperwitz, who had examined Bacela when he was in detention, testified at Bacela's trial that he had found abrasions on various parts of the defendant's body, including serious wounds consistent with sjambok (whip) blows. Defense counsel noted that Bacela had filed two complaints of assault at Ladybrand and Aliwal North police stations. The allegations of assault and torture were denied by police witnesses at the trial. On April 25, 1986, the Court found Bacela guilty of terrorism and perjury and sentenced him to a total of six years imprisonment. An appeal is pending against the conviction.

The state's reliance upon confessions as its primary evidence featured prominently in three other trials with respect to which the Southern Africa Project assisted the defense. An appeal is pending which seeks to establish the basic right of the defense to have access to statements and confessions made by the accused in *State v. Bonisile Gaga & Four Others*. The defendants, who are facing a main count of violating Section 54(1) of the ISA ("terrorism") for allegedly recruiting members of the ANC, made statements and confessions while in detention under Section 29. The prosecution refused to give the defense copies of the confessions in response to a request for further particulars to the various charges. The Magistrate's Court upheld the prosecution's contention that it was bound by the provisions of Section 29 to refuse to furnish such material to the defense. The defense then made an unsuccessful application in the Supreme Court for a *mandamus* directing the respondents to furnish copies of the documents. The matter was taken on appeal to the Appellate Division in Bloemfontein, and the trial will resume following judgement on this matter.

In *State v. V. Motaung & Another* and *State v. K. Libazi & Another*, the defendants were convicted on the basis of confessions made while held in detention under Section 29. In *Libazi*, the defendants were seriously injured in a shoot-out at a roadblock in July, 1985, during which two other men, allegedly trained ANC combatants, and a policeman were killed. The armed confrontation at the roadblock occurred after a series of bombings during June, 1986, in East London. Khaya Libazi and Andile Hewukile, both from Mdantsane in the Ciskei and members of the East London Youth Congress, were arraigned subsequently on 11 counts, including murder, attempted murder, and violations of section 54(1) of the ISA ("terrorism") and the Explosives Act.

Argument in the case centered on the extent to which Libazi and Hewukile were willing participants in the actions allegedly planned by Mzwandile Mcata and Nkululeko Njongwe, who were killed by police fire. The police alleged that the accused were waiting for the van containing the ANC operatives as it approached a T-junction they were guarding.

Neither Libazi nor Hewukile fired at the police. However, Njongwe, who was armed with a pistol, resisted arrest. In the subsequent shooting, Hewukile was shot four times and Libazi was shot in the leg. Although lying on the ground seriously wounded, both men were interrogated by the police.

In court, the defendants denied telling the police that, when the incident occured, they were on the way to sabotage two electrical sub-stations. In September, 1986, the Court acquitted both the accused of all counts in connection with the death of the policeman and the sabotage bombings, but found them guilty on the other counts. They were sentenced to an effective 15 years imprisonment each.

Heavy sentences were imposed in two other cases involving alleged ANC combatants. The Southern Africa Project assisted the defense in *State v. Isaac Mabaso*, in which the defendant, a 24-year-old resident of Soweto, was convicted of violating Section 54(1) of the ISA ("terrorism"). Isaac Mabaso was employed as a janitor in the Johannesburg Nedbank building which houses South African Defence Force offices. A bomb explosion in the building on May 28, 1985, wrecked the Southern Transvaal Medical Command causing R504,000 worth of damage. Mabaso was detained and later charged.

The state's case was based on Mabaso's confession in which he admitted helping an alleged ANC member to place a limpet mine outside the SADF offices. Mabaso maintained that he was tortured into signing the confession. The defense intended challenging its admissibility as evidence. However, the prosecution convinced Mabaso to plead guilty if the state declined to seek the death sentence. On May 2, 1986, Mabaso was sentenced to 18-years imprisonment.

In *State v. F. Thabane & Two Others*, two of the defendants, Frank Thabane and Patrick Mogale, were arrested following a police raid on several houses in the north eastern Transvaal on March 19, 1985. During the raid, George Mokoena, an alleged ANC combatant, was killed. Thabane and Mogale were seriously injured. Both men and a number of others were arrested and held under section 29 of the ISA. The third accused, Thabo Chiloane, was arrested later in April. In August, Frank Thabane was arraigned on nine counts of contravening Section 54(1) of the ISA ("terrorism") and Section 13(1) of the same Act ("furthering the aims of a banned organization"), the Arms and Ammunition Act, the Admission of Persons to the Republic Act of 1972 and the 1967 Terrorism Act. In addition, he was charged with seven alternate counts of attempted mur-

der. Chiloane and Mogale were charged with contravening Section 54(4) of the ISA for allegedly "harboring" Thabane and George Mokoena. Mogale was charged also with a breach of the Arms and Ammunition Act. They were denied bail through the intervention of the Attorney General.

After nearly a year in prison, Thabo Chiloane was acquitted for lack of evidence against him. Frank Thabane and Patrick Mogale were convicted and sentenced in April, 1986. Mogale was convicted largely on the basis of evidence contained in prison letters to his wife concerning the "harboring" of Mokoena. He was sentenced to 5 years imprisonment. Thabane was sentenced to 15 years imprisonment for contraventions of the ISA, the Arms and Ammunition Act and the Terrorism Act. An appeal has been lodged against the sentences imposed on both men.

The Southern Africa Project assisted the defense in *State v. Mazibuko & 6 Others*, a case which dramatically highlighted the coercive circumstances under which Section 29 detainees are led to make statements to the police. The accused, alleged members of the banned Congress of South African Students (COSAS), were charged with two counts of contravening Section 54(1) of the ISA or, alternatively, a contravention of the Arms and Ammunition Act, and five counts of attempted murder. The charges related to incidents occurring in Tsakane, Duduza and KwaThema on the East Rand on June 25 and 26, 1985. The accused were alleged to have been responsible for attacks or conspiring to commit attacks on government Administration Board offices, an electric power substation, and the homes of policemen and Community Councilors.

The defendants were seriously injured when apparently defective hand grenades exploded, killing eight other people who were with them. While detained under Section 29, the defendants in *Mazibuko* were kept under police guard during three months of hospitalization for their injuries. In January, 1986, the Detainee Parents Support Committee voiced concern about the conditions under which the young men were being held, noting the denial of visitors and legal counsel and the urgent need for physiotherapy and other forms of medical treatment for the detainees. By April, 1986, the accused had made two court appearances under conditions of utmost secrecy. After they were charged on March 26, 1986, the Attorney General used his powers under Section 30(1) of the ISA to deny the accused bail.

A major issue in the trial concerned the admissibility of confessions made by the accused while in detention. During the two-month long trial-within-a-trial, evidence was heard from a number of doctors revealing that the police had interrogated the accused shortly after they had undergone surgery and without the approval of the doctors treating them. John Mlangeni, who had his right hand amputated, was lying on a stretcher outside the operating room after surgery when a policemen slapped him awake and started questioning him. Joseph Mazibuko twice refused to make a statement to a magistrate and a police officer following an operation in which Mazibuko's right hand was amputated. On the third day he agreed to do so "to get rid of" him. Under cross-examination by defense counsel, Magistrate Pieter H. Marx admitted that he did not consider it within the scope of his duties to have inquired into the medical condition of Mr. Mazibuko when he took his statement at the hospital on June 28th. He further stated that even if, while taking a statement from an accused, the accused showed signs of having been assaulted but told the magistrate otherwise, he would not institute investigations into the matter, but would stick to the verbal response of the accused. Earlier the magistrate had told the court that Mr. Mazibuko and Mr. Mlangeni had made their statements freely and voluntarily and were in good condition at the time.

The letter pointed to the involvement of policemen in petrol bomb attacks.

Humphrey Tshabalala was interrogated 17 hours after his fingers were amputated, even though he was reportedly suffering from trauma, shock, loss of blood and had difficulty speaking because of a swelling on the right side of his neck. Another magistrate, B.N. Fourie, took statements from Mr. Tshabalala and two other of the accused, Johannes Mazibuko and Samuel Lekatsa, in a bathroom at the hospital. A nursing sister, who accompanied the three men, one of whom was in a wheelchair, told the court that they were in severe pain at the time. Magistrate Fourie conceded this, but claimed nonetheless, that the three men were "relaxed" and gave their statements freely.

In a ruling on November 10th, the presiding judge found that the statements by Joseph Mazibuko and Johannes Mazibuko were inadmissible as evidence. However, while acknowledging that the defendants were in pain and grieving over their injured or lost limbs, he ruled that Samuel Lekatsa, Humphrey Tshabalala and John Mlangeni were in their sound and sober senses when making their statements. This notwithstanding, the Judge described Magistrate Marx as "an untruthful witness." Subsequently, after widespread protest about his remarks during the trial, the Magistrate was suspended from his duties pending an investigation by the Judge-President of the Transvaal Provincial Division of the Supreme Court.

During the trial, the accused told the court that they had formed a group to defend themselves against vigilantes. Evidence was submitted by the defense at

the trial concerning a Duduza Community Councilor, Steven Namane, who allegedly had deployed a vigilante group against activists. The vigilantes were allegedly responsible for the death of Alexander Pailane, a Duduza Youth Congress member who had been abducted on June 8, 1985 and tortured to death at a mine dump near Tsakane.

Police witnesses gave contradictory evidence concerning their involvement in the activities of the vigilante group, particularly in the June 1985 petrol-bombing of the house of Bishop Nkoane in KwaThema and of COSAS members Sonto and Zane Thobela, who were killed in the attack. The defense presented to the court a letter addressed to the Attorney General of the Witwatersrand from lawyers acting for the Anglican Diocese of Johannesburg. The letter pointed to the involvement of policemen in a number of petrol bomb attacks, including one on the house of Bishop Nkoane.

In February, 1987, the Pretoria Supreme Court found the defendants guilty of contravening the 1969 Arms and Ammunition Act and of one count of attempted murder. They were acquitted of the charge of terrorism. Six of the accused were sentenced to sixteen months imprisonment each and the remaining defendant was given a suspended sentence.

The Southern Africa Project is assisting the defense in the on-going trial *State v. Dudu Buthelezi & Eleven Others*, which opened in the Pietermaritzburg Supreme Court on November 3, 1986, amidst tight police security. The defendants are charged with a main count of contravening Section 54(1) of the ISA ("terrorism") and 22 alternate counts under Section 56(1)(c) of the ISA relating to the possession of banned literature, and Sections 32 and 36 of the Arms and Ammunition Act for unauthorized possession of explosives, weapons and ammunition. The accused are alleged to have been active supporters or members of the ANC; to have furthered its aims between August, 1983 and July, 1986, through a variety of actions, including undergoing military training, accommodating known ANC members, transporting ANC members for training outside the country or infiltration into the country, concealing weapons, training others in the use of weapons and/or explosives and being party to decisions regarding the bombing of various sabotage targets.

A number of the defendants, Duduzile Buthelezi, Sibongiseni Dhlomo, V. J. Ramlakan, Ordway Msomi, Phumezo Nxiweni and Mapiki Dlomo, were part of a group of fourteen people connected with the University of Natal Medical School who were detained between December 24, 1985 and January 10, 1986. The Southern Africa Project provided legal assistance to their families in bringing applications in the Supreme Court for their release from Section 29 detention. Alternatively, the applicants sought an injunction ordering the commissioner of police to furnish the court with the grounds upon which the respondent justified the detentions under Section 29(1) of the ISA. In *A. Dhlomo v. Comm. of Police & Another*, the applicant expressed concern for his son's mental and physical health. His application was accompanied by a supporting affidavit from a psychiatrist who diagnosed Sibongiseni Dhlomo as suffering from acute depression "precipitated by the effect of detention and more particularly solitary confinement." Further detention would only serve to exacerbate the condition. The court applications in these cases were unsuccessful.

The Project also assisted applications on behalf of three other people detained at the same time. Sandra Afrika, the wife of V. J. Ramlakan, together with Phila Ndwandwe and Zola Gcuma were released after four months of detention. They are listed by the prosecution in *State v. Buthelezi & Others* as witnesses in the trial.

Ten of the defendants in *Buthelezi* were indicted on May 28, 1986. The remaining two, who were arrested the following month, were indicted in August. The Attorney General used his powers under Section 30(1) of the ISA to prohibit the granting of bail to the accused. On this occasion the Attorney General's intervention was the subject of a legal challenge and a landmark ruling by the full bench of the Durban Supreme Court in July, 1986.

The Court upheld the applicants' contention that the Attorney General's Section 30(1) certificates denying bail were invalid on the grounds that he had failed to observe the *audi alteram partem* rule ("let the other side be heard") in issuing them. The Court concluded that this principle of "natural justice" recognized by the common law must be assumed to be implicit in Section 30(1) of the ISA. Its observance was all the more necessary since Section 30(1) drastically impinged upon the rights of the individual by establishing the Attorney General as the first and final arbiter on the question of the granting of bail.

The Supreme Court's rejection of the validity of the Attorney General's Section 30(l) certificates cleared the way for a normal bail hearing. Only one of the defendants, however, was granted bail by the court. Ms. Duduzile Buthelezi, as a consequence of pregnancy, was granted bail of R6,000 under restrictive conditions, including partial house arrest.

Two defendants were acquitted at the conclusion of the state's case in mid-February, 1987. The prosecution had called over 50 witnesses, a number of whom testified *in camera*. At the close of the state's case, defense counsel moved for acquittal, arguing that the prosecution had failed to produce evidence implicating Sipho Bhila and Phumeza Nxiweni in sabotage and other offenses with which they had been accused. The prosecution did not oppose this motion. The two defendants were reportedly jubilant when they left the narrow, glass-enclosed dock in which they had been confined for nearly three months. The trial of the remaining accused continues.

Depoliticizing Political Trials

The Work of the Southern Africa Project in Assisting Children and Youth Arraigned on Common-Law Charges.

Partly in reaction to the international condemnation of it's draconian security legislation, the South African government has engaged in the practice of charging political offenders with common-law crimes such as public violence. In that way the government can continue to pursue its objective of imprisoning activists while at the same time reducing its exposure to world criticism. Such charges usually arise out of the circumstances of political unrest in the townships.

Many of the accused in trials involving politically-related common-law charges appear to have been arrested randomly in police sweeps in the townships following security force actions against demonstrators or mourners at funerals. Three-quarters of those charged in 1986 were younger than 20, and half were under 18 years. Sometimes young people appear to have been arrested and charged simply as a consequence of being on the streets. For example, on June 16, 1986, the 10th anniversary of the Soweto uprising, nine children, aged 11 to 16 who were playing soccer in a township street, suddenly found themselves surrounded by members of the security forces. The children were promptly arrested and charged with public violence.

Typically, township residents seeking medical treatment for gunshot wounds risk being arrested at the hospital on charges of public violence. The police operate on the premise that if a person has a police gunshot wound it constitutes *prima facie* evidence that the person is guilty of public violence. During Alexandria township's "six-day war" in February when an estimated 80 people were killed and 300 wounded in clashes with the police, the police raided Alexandria Health Clinic several times. On one occasion they seized 300 patient files and other medical records, apparently seeking to identify people who had received treatment for gunshot wounds. As a consequence of this police intrusion, frightened patients avoided the clinic fearing, as a senior physician noted, the likelihood of being arrested because of their injuries.

Since there is no requirement in South African law for the police to advise people facing charges that they have the right to legal representation or to inform the parents of a minor that the child is to appear in court, many of the defendants in these trials, especially in the rural areas, stand trial undefended. During 1986, lawyers involved in political cases received frequent reports of children suddenly being taken to court and charged, without prior warning even to lawyers noted on police files as the attorney of the record for those detainees. The mother of one such defendant learned of her son's appearance in court from other township residents. Until that time the police had not even

11-year-old Fannie Gaduka, assaulted by police and detained for 57 days before being acquitted of a charge of throwing stones at a car. Orde Eliason/Impact Visuals, 1986.

confirmed to her that they were holding him in custody. Trials have sometimes taken place at this first hearing with sentence passed on a bewildered child who understood neither the court procedure nor the language in which the proceedings were conducted. Even presuming the alleged offenses were committed, the sentences given in these trials are often disproportionately high—up to 15 years in some cases.

Where lawyers are present to conduct the defense, experience has shown that public violence and similar charges are either very often withdrawn or, if contested, lead to the acquittal of the accused. The weakness of the state's case in many of these trials is evident

Frightened patients avoided the clinic fearing the likelihood of being arrested.

from the government's own statistics. The Minister of Law and Order acknowledged, for instance, that only 167 of the 1,045 people under the age of 20 arrested on charges of public violence in the Western Cape in the last six months of 1985 were subsequently convicted. The Repression Monitoring Group (RMG), based in the Western Cape, noted in its August 1986 report that only 32 out of the 238 defendants assisted by RMG's Relief Office in the preceding ten months were convicted, including 11 out of the 63 defendants under the age of 18 years. The RMG concluded from this that

> a large number of juveniles are being arrested, charged and held for varying periods of imprisonment in circumstances where in 83.9 percent of all cases it subsequently transpires that insufficient evidence existed to secure a conviction . . . [Clearly] the courts are . . . being used to attain objectives that in the majority of cases bear little relation to the conviction of alleged perpetrators of "crime."

During 1986 the Southern Africa Project assisted in the defense of nearly 300 people charged with public violence in 88 separate trials heard in the Port Elizabeth and Uitenhage courts. Of the 62 trials whose outcomes were known at the time of the writing of this report, charges were withdrawn against the defendants in 30 trials. The accused were acquitted in 21 other trials. The defendants in the remaining 11 trials were convicted and sentenced.

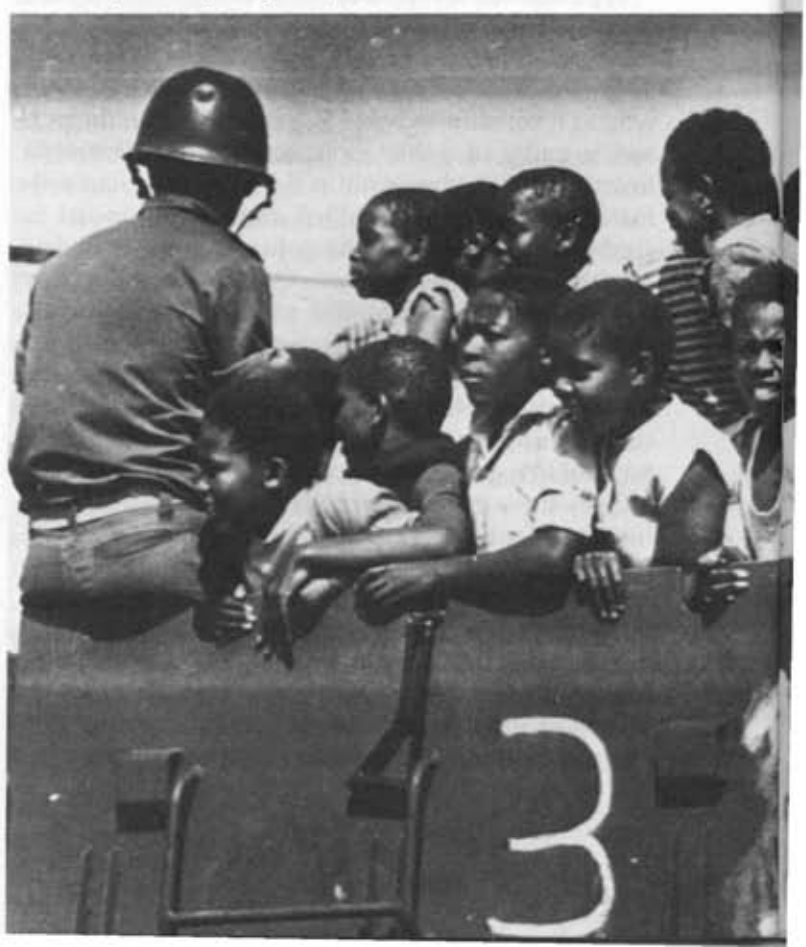
Typical of the cases assisted by the Southern African Project was *State v. Bongani Masizi & 20 Others* in which the accused were charged with a main count of public violence and a second count of contravening Section 2 of the Riotous Assemblies Act of 1956. The defendants were arrested on January 23, 1986, when marching with other school students from Zwide township towards the Port Elizabeth offices of the Department of Education and Training (DET). The DET had recently decided to force the reopening, in January, of black schools, which students had been boycotting for months. DET's instructions were enforced by heavily armed soldiers and policemen in townships and in schoolyards.

The defendants in *Masizi* were marching to protest DET's authoritarian response to the education crisis. The police intervened and broke up the march, allegedly by beating and teargassing the students. The state claimed that the march was illegal and the accused were guilty of public violence because they threw stones at police vehicles. The trial was concluded on April 11, 1986, when all of the accused were acquitted on the grounds of insufficient evidence.

In addition to the 88 cases in Port Elizabeth and Uitenhage, the Southern Africa Project assisted the defense in nine other public violence trials, similar to the case of *State v. Masizi* discussed above, involving seventy-one defendants from Duncan Village (East London), Tinis township (Fort Beaufort), Mamelodi and Shoshanguve townships (near Pretoria), Ezakheni (Natal) and Huhudi township in the Northern Cape. Charges were withdrawn in one trial, and the defendants in seven other trials were acquitted.

The two seventeen-year-old defendants in *State v. Gladys Ndebele & Joy Crutse* were convicted of charges of public violence in connection with an allegedly illegal gathering held in late 1985 in Huhudi township. Residents of the township were involved in protracted struggles over rent increases and a threatened forced

A few of the 800 school children who were released from detention following army and police raids on Soweto schools.



removal of the community to the "homeland" of Bophuthatswana. Many activists had been detained. During their trial, Gladys Ndebele claimed that the statement she made to the police admitting to the charges had been extracted from her under duress.

The police broke up the march by beating and teargassing the students.

The court nonetheless accepted the confession as admissible evidence. Both defendants were convicted and sentenced to partly suspended terms of imprisonment, with Gladys Ndebele serving an effective three years and Joy Crutse an effective two years.

State v. Mosery and Others involved two inter-linked trials arising out of clashes which had occurred between security guards and students at Dlangezwa high school in Natal in late 1985. The students had come into conflict with the school authorities over their refusal to become members of the Kwazulu homeland-based Inkatha movement. The movement, led by Chief Gatsha Buthelezi, dominates Natal area politics. In its bid to control the townships, schools and workplaces both inside and outside Kwazulu "borders," Inkatha has resorted to increasingly violent tactics, according to dozens of sworn affidavits gathered by lawyers at Durban's Legal Resources Centre and elsewhere. One UDF supporter from Durban's Umlazi township claimed that ". . . most UDF members carry an Inkatha membership card. It's like a Kwazulu 'dompas.' You can't get a house, or a job, or a pass without one." People who refused, or who did not have Inkatha membership cards, were presumed to be UDF "sympathizers." Members of the UDF and of COSATU unions allege that they receive little or no police protection when harrassed or attacked by Inkatha members.

At Dlangezwa high school in late 1985 students refusing to join Inkatha were confronted by school security guards equipped with sjamboks, batons and dogs. During one such confrontation a group of students pursued one of the security guards beyond the school premises. The guard's body was found later by a passing motorist. Fearing retaliatory attacks, the students subsequently armed themselves with petrol bombs. On October 24, 1985, the police raided student

Students were confronted by school security guards equipped with sjamboks, batons and dogs.

premises at the school and seized the weapons. A number of students were arrested. Three of them: V. Sibiya, Tsepo Moloi and Mathemba Mosery, were subsequently charged with the murder of the guard. Mosery was separately charged along with three other students with possession of explosives. The two trials were heard by the Regional Magistrate's Court at Eshowe. With respect to the first case, the State amended the charge from one of murder to that of culpable homicide. When the accused appeared in court on June 25, 1986 to answer this lesser charge, the prosecutor provisionally withdrew the charge for lack of evidence. The charge was later reinstituted and the trial will reopen in March, 1987. With respect to the second case, the state withdrew the charges in late 1986.

The Southern Africa Project assisted in the defense of twenty young people accused of murder in connection with the death of a policeman on September 22, 1985, in Port Elizabeth's "Soweto" slum. The area is very poor, with high unemployment, especially among the young. After finding the body, the police indiscriminately rounded up the young people in the slum, subsequently detaining about 50 of them. In the resulting trial, the accused in *State v. Ngqandu & 19 Others* alleged that they were beaten, tortured and forced to make incriminating statements. Following a

Reuters/Bettmann Newsphotos, 1985.

trial-within-a-trial, the court ruled the confessions inadmissible as evidence. The trial concluded with the acquittal of all the accused of the charge of murder. Four of the defendants were convicted of a lesser charge of culpable homicide, but were given suspended sentences. The remaining sixteen defendants were acquitted of this lesser charge.

On November 18, 1986, a year-long trial, *State v. S. Mpumlo & 9 Others*, which had revealed details of the close relationship between Community Councilors, the police and armed vigilantes, concluded with the acquittal of five accused and the conviction of the remaining five. The Southern Africa Project assisted the defense in this case. The trial of the ten defendants on six counts of murder and one count of public violence arose out of the deaths of Uitenhage Community Councilor Benjamin Kinikini, four other members of his family and one other person on March 23, 1985.

The events of that day in March followed months of intense conflict between the residents of Uitenhage's black townships and the police, culminating in the police massacre of twenty-one people at Langa on

Anger was running high over the police massacre.

March 21, 1985. Further fueling the tension at the time was the suspicion, widespread among township residents, that the Kinikini family was in collusion with the police in perpetrating acts of violence against local activists. Benjamin Kinikini was the only member of the government-instituted Community Council not to resign after a widespread campaign against it in the townships. Kinikini, other members of his family and Jimmy Klaasen, a local businessman who supported the council, allegedly formed a vigilante group in late 1984 which carried out a reign of terror in the townships.

The activities of this vigilante group were allegedly aided and abetted by the police. Members of the group were seen driving around in police vehicles and using apparently police-supplied weapons. In addition, they seemed to enjoy clear immunity from arrest and prosecution. Whenever their victims went to file charges with the police, the victims instead of the perpetrators were arrested and charged.

Frustrated by the failure of the police to put a stop to the activities of the vigilantes and intensely angry over the daily disappearance of their children, men from nearly every family of KwaNobuhle township gathered outside the Kinikini premises on the morning of March 23, 1985. Anger was running high, also, over the police massacre two days previously, and was further exacerbated by the rumor that five boys kidnapped that morning had been taken to the Kinikini's funeral parlor. Those present in the crowd of over 5,000 demanded to know the whereabouts of the missing children. A member of the Kinikini family fired shots at the crowd which then rioted and set fire to the buildings. The family died in the incident.

During the ensuing police investigation, large numbers of people were arrested. Some of those arrested were charged with the murders but those charges were subsequently withdrawn. These apparent "fishing expeditions" by the police stopped with the arraignment of 17-year-old Thobekile Mpumlo and nine others whose ages ranged from 15 to 26 years. The trial began in the Supreme Court on December 10, 1985.

The defense contested the admissibility of the confessions and statements made by the accused; torture was alleged. When the Court ruled inadmissible the statement made by one of the accused, the prosecution withdrew charges against him as the statement had constituted the only evidence. The defense challenge to the admissibility of statements by five of the accused led to a lengthy trial-within-a-trial. The defense argued that the onus of proof of voluntariness lay with the prosecution. The Court ruled otherwise. The trial-within-a-trial continued into mid-1986. Faced with the prospect of the main trial dragging on for a further year, the defense plea-bargained with the prosecution, agreeing to withdraw objections to the admissibility of the statements of four accused, while the state agreed to withdraw charges against four others. The status of the confession made by the remaining accused, Mlamli Mielies, was resolved by a judgment in early November. The Court ruled the statement to be admissible as evidence, discounting claims by Mielies that to force a statement from him the police had handcuffed him until his wrists were marked, assaulted him and fired a shot over his head.

The main evidence for the prosecution came from the testimony of an unnamed witness ("D") heard *in camera* over an eight-day period. The witness admitted to being a police informer, active with a vigilante group known as "the Peacemakers" who made arrests and conducted mock trials with the support of the local police and Administration Board officials. The Kinikini family apparently had been active with this vigilante group. Mzombanzi Kamnteni, a defense witness, alleged that witness D was one of a group of ten people who had abducted him at gunpoint from his home at 4 a.m. on March 23, 1985. Kamnteni and three other kidnapped youths were taken to the Kinikini funeral parlor and held in the cold storage room, before being handed over to the police.

The trial concluded with the conviction of four of the ten defendants on six counts of murder and one count of public violence. A fifth defendant was convicted of the charge of public violence. The remaining five were acquitted.

Namibia

The problem of securing self-determination for the people of Namibia is one that has engaged the principal organs of the United Nations since its birth, and those of its predecessor organization, the League of Nations. In blatant defiance of international law, South Africa has illegally occupied Namibia by military force for the past twenty years. In order to secure its control over that international territory, South Africa has found it necessary to deploy at times as many as 100,000 troops, and to engage in intense repression of the Namibian population and an ongoing war with SWAPO, the South West Africa Peoples Organization, recognized by the United Nations as the sole and authentic representative of the Namibian people.

As a further indication of its intention not to relinquish control over Namibia or to allow free and open elections pursuant to United Nations Security Council Resolution 435, the South African government installed in 1985 an "Interim Government for National Unity" in Namibia. Those who sit in the "National Assembly" and "Ministry Cabinet" of the so-called "Interim Government" were never elected by the Namibian people and exercise only limited authority under grant from Pretoria. The South African government retains a veto over the actions of the "Interim Government" and it retains, as well, control over defense and foreign affairs.

The continuing reality is one of violent military occupation by security forces, who have been equipped with sweeping powers under a series of statutes, administrative regulations and proclamations issued by the South Africa authorities in Namibia. Not only has Namibia inherited many of South Africa's most pernicious security measures, but in addition, the South African-installed Administrator-General of Namibia promulgated special legislation to facilitate South Africa's illegal occupation of that territory. In some cases, the new "Namibian" legislation goes much further than its South African counterparts in violating civil liberties and principles of due process and the independence of the courts.

Proclamation AG9 is the statutory basis most commonly used for indefinite incommunicado detention. The majority of Namibians taken into custody are held under Proclamation AG9 which is in effect in most of the northern half of the country from the capital, Windhoek, to the border with Angola. This emergency proclamation effectively places more than 80 percent

Security forces break up a SWAPO rally in Katutura township, Windhoek.

The Namibian, 1986.

of the Namibian population and 50 percent of the land under *de facto* martial law.

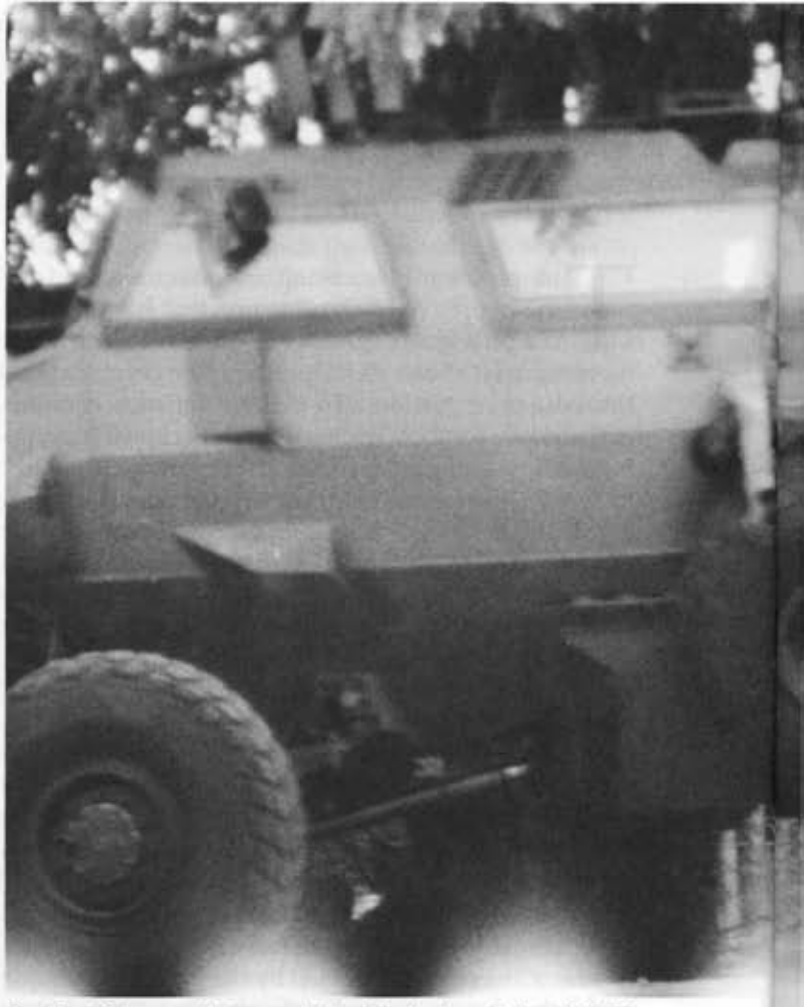
Further detention powers are provided for under Proclamation AG26. This permits the authorities unqualified powers to detain indefinitely and without charge, any person they believe presents a threat, hindrance, or obstruction to the "peaceful and orderly constitutional development" of Namibia or is likely to promote "political violence and intimidation." Proclamation AG26 is used less frequently than Proclamation AG9 as a basis for detention.

Evidence of the routine torture of Namibian detainees is extensive. For example, during a trial in the Windhoek Supreme Court in February, 1987 of eight Namibians charged with contraventions of the Terrorism Act, *State v. Heita & Others*, security police officers openly admitted that they routinely tortured SWAPO suspects during interrogation sessions. One police officer with thirteen years service told the court "it was all right to do whatever you wanted to detainees as long as you did not unnecessarily kill them."

The continuing reality is one of violent military occupation.

A similar attitude was displayed by two South African Defense Force soldiers charged in connection with the burning of a fifteen year-old boy. The soldiers allegedly held the face of young Portius Blassius against the exhaust outlet of an army truck causing him severe facial burns. As an explanation for their actions, the soldiers told the Magistrate's Court in October, 1986, that in the past they had found such tactics to be effective when they sought information from the civilian population. They were convicted of assault and fined a mere R500 each.

The leniency of that "punishment" typifies the manner in which the security forces are tacitly encouraged in their violent actions against the Namibian population. This encouragement took dramatic form in 1986 when South African State President P.W. Botha intervened to quash the trial of four white South African soldiers charged with the murder of Franz Uapota, a 48 year-old father of five children. Mr. Uapota was killed in November, 1985, in his home village in northern Namibia. According to his widow, Victoria, "the soldiers attacked my husband like a pack of wild dogs. They beat him, kicked and butted him with rifles. He did not fight back or say anything. They then dragged him 200 meters into the bush with something tied around his neck."



South African military vehicle displaying slain SWAPO guerrilla. 1987.

Victoria Uapota filed charges of murder against four soldiers. However, the trial proceedings were summarily terminated in July, 1986, pursuant to a certificate issued by the "Interim Government" acting under instruction from President Botha. Section 103 *ter* of the Defense Act of 1957 provides that criminal or civil proceedings against a member of the Defense Force may be terminated on issuance of such a certificate which asserts that the officer acted in good faith in "suppressing terrorism in an operational area."

This was the context in which the Southern Africa Project continued its work in Namibia during 1986. One case assisted by the Project: *Katofa v. the Cabinet of the Interim Government in South West Africa & the Officer Commanding Windhoek Prison*, was precedent-setting in the area of detentions without trial. The suit involved a shop owner in northern Namibia who was released after 16 months in detention. With the assistance of the Southern Africa Project, Mr. Katofa's detention under Proclamation AG26 was successfully challenged before the Windhoek Supreme Court and his release ordered.

Mr. Katofa had been arrested by South African security forces on May 7, 1984. No specific reasons were given for his detention. In the warrant issued for his arrest the Administrator-General merely asserted that

Mr. Katofa constituted a threat within the meaning of the statute. However, it was also the case that his arrest took place shortly after Mr. Katofa and others filed the case of *Kauluma & Others v. Minister of Defense & Others* to force the release of over 100 Namibians who had been held illegally for over six years.

"The soldiers attacked my husband like a pack of wild dogs."

In 1985, the Windhoek Supreme Court issued an order instructing the Administrator-General and the officer commanding the Windhoek Prison to allow Joseph Katofa access to his attorney. The Court ruled that the denial of legal counsel and the irregularity of visits by magistrates and doctors contravened the provisions of AG26. In a separate ruling, the Court ordered Mr. Katofa's release, holding that the Administrator-General and his successor in function, the Cabinet, must state the objective reasons for a person's continued detention under AG26. The state sought to appeal the Windhoek court's ruling in the Appellate Division of the South African Supreme Court. Late in 1986, the state's appeal was dismissed, preserving the ruling of the court below.

The Southern Africa Project also provided support for one of the most important political trials in recent Namibian history, *State v. Franz Angula & Six Others*. The accused in this case faced charges under the Internal Security Act, No. 44 of 1950 and the Terrorism Act, No. 83 of 1967. Both of these laws have been repealed in South Africa but are still applicable to Namibia. The Terrorism Act charges relate to 177 alleged acts of sabotage, while the Internal Security Act charges were based on allegations that the defendants, as members of SWAPO, engaged in activities designed to further the achievement of the objects of communism and to promote the establishment of a Marxist form of government in the territory.

The defense in *Angula* took a novel approach. Proclamation 101 of June 17, 1985, which established the powers of legislative and executive authority for the "Interim Government" of Namibia, is amended by the "Bill of Fundamental Rights and Objectives" which purports to guarantee a number of individual rights to the Namibian people, including the right to freedom of expression, of movement and of association, etc. The theory of the defense in the *Angula* case was that both statutes, which form the basis of the charges, contravene the provisions of the Bill of Rights. The offenses were allegedly committed prior to the enactment of the Bill of Rights. The defense argued that the subsequent enactment of a bill of rights should preclude prosecution of a previous contravention of laws which the bill now renders unconstitutional.

To buttress its argument, the defense counsel submitted a memorandum on precedents in U.S. and Canadian law, which have established the principle that the enactment of a constitution with a bill of entrenched individual rights supercedes statutes previously in force which contravene its guarantees, and voids subsequent prosecutions of offenses which occurred when those laws were valid.

The defendant's position was rejected by the Supreme Court in Windhoek. The Court held that the South African Parliament and State President retained their legislative powers over Namibia irrespective of Proclamation R.101 of 1985 and that all existing laws passed by those authorities validly continue in force until repealed. Nevertheless, this case secured a partial victory in the sentencing phase. The defendants, who could have received the ultimate punishment of death, were sentenced to prison terms ranging from five to 16 years.

A further case supported by the Southern Africa Project and involving the issue of the Bill of Rights was *The Free Press of Namiba (Pty) v. the Cabinet of the Interim Government of South West Africa*. This case challenged the excessively high deposit required of *The*

Namibian, an independent newspaper which has as its editorial policy the promotion of free and open elections under Security Council Resolution 435. The plaintiff challenged both the deposit requirement and the South African President's competence to ban newspapers in Namibia pursuant to Section 6 of South Africa's Internal Security Act. Explicit reliance was made by the defense upon the guarantee of freedom of expression in the Bill of Rights.

In a strongly worded opinion, written by Judge Levy of the Windhoek Supreme Court, the deposit imposed on *The Namibian* was set aside. While not relying directly on the "Bill of Rights," Judge Levy did cite that document in concluding that this case involved questions of "the freedom of the press and the right to criticize members of the Government, their policies and their philosophies." "The history of Southern Africa," went the opinion, "is studded with events illustrating the struggle for these freedoms."

Judge Levy rejected the "Interim Government's" argument that prior criticism of the government by the editor of *The Namibian* justified the excessive deposit. "Because people may hold their Government in contempt does not mean that a situation exists which constitutes a danger to the security of the State or to the maintenance of public order. In fact to stifle just criticism could as likely lead to these undesirable situations," he said.

On September 5, 1986, Proclamation R.101, the South West Africa Legislative and Executive Establishment Proclamation, was amended by P.W. Botha to include the following language:

> (5) No court of law shall be competent to inquire into or pronounce upon the validity of any Act of the Parliament of the Republic of South Africa enacted before or after the commencement of this Proclamation.

The Amendment thus purports to make it impossible to test acts of the South African Parliament against the Bill of Rights. The Amendment does not affect such challenges to the proclamations of the "Interim Government" or the Administrator-General of Namibia. However, it is important to note that most of the draconian security legislation applicable to Namibia is contained in statutes of the South African Parliament.

Litigation in *Free Press of Namibia* went forward on the theory that the Amendment could not affect cases which were already pending before the courts. Although it now appears as if the South African Government has seriously limited the process of judicial review with respect to security legislation applicable to Namibia, it remains to be seen whether any legal challenges can successfully restrict or invalidate the amendment to Proclamation R.101.

The legal effect of Namibia's "Bill of Rights" and other recent legal developments on the country was the subject of testimony presented by the Project Director to the Fourth Committee of the United Nations at the recent hearings on the subject of human rights in Namibia.

Portius Blassius, tortured by South African military. The Namibian, 1986.

Congress Acts Against Apartheid

The seminal event in United States-South Africa relations in 1986 was the passage, overriding a presidential veto, of the Comprehensive Anti-Apartheid Act of 1986. The first Congressional sanctions against South Africa impose a wide range of restrictions, including prohibitions on new investments, bank loans to the government and the importation of South African commodities ranging from Krugerrands to steel, textiles and sugar.

Following the enactment of the Anti-Apartheid Act, the Southern Africa Project established a Sanctions Monitoring Group to monitor the implementation and enforcement of the sanctions mandated in the Act. The Sanctions Monitoring Group consists of Project staff and volunteer attorneys from law firms and law faculties with expertise in international trade, customs, tax and corporate law. The Monitoring Group conducted a section-by-section analysis of the Act to determine the degree to which the regulations issued by the executive branch accurately reflect and implement the statutory language and the intent of Congress, and what useful refinements to the statutory language are needed to close loopholes.

The monitoring team will consult extensively with relevant departments of the executive branch, such as the Office of Foreign Assets Control of the Department of Treasury, which are charged with implementation of the statute, and will stay in close contact with the Congressional committees that have oversight responsibilities.

Early in November, 1986, the Monitoring Group discovered that South African Airways (SAA) was contesting the efforts of the Department of Transportation to implement Section 306 of the Anti-Apartheid Act. Section 306 of the Act requires the President to direct the Secretary of Transportation to revoke the right of any air carrier designated by the South African government to provide service between the United States and South Africa. The Department of Transportation issued a final order on November 13, 1986, revoking the foreign air carrier permit that had been previously issued to SAA. On the following day, SAA filed a petition before the U.S. Court of Appeals for the District of Columbia Circuit challenging the order on grounds, *inter alia*, that Congress did not intend, nor does the language of the Act require the immediate revocation of its permit. Rather, SAA claimed that a one year notification was required prior to cancellation. They also filed a motion for an emergency stay of the order of the Department of Transportation, which was denied.

The Southern Africa Project quickly worked to intervene in the lawsuit, *South African Airways v. Elizabeth H. Dole, Secretary, U.S. Department of Transportation*. On December 12, 1986, the Project, working with Professor Goler T. Butcher of Howard University Law School, filed a motion to intervene or, in the alternative, appear as *amici curiae* on the behalf of Senators Edward M. Kennedy, Carl M. Levin, Lowell P. Weicker, Congressmen Richard A. Gephardt, William Gray, III, Mickey Leland, Howard Wolpe, and TransAfrica. While the motion to intervene was denied, the petitioners were granted *amici curiae* status and a brief was filed on their behalf on December 23rd. In their brief the *amici* argued that Congress had mandated the immediate termination of air transportation between the United States and South Africa by its enactment of the Anti-Apartheid Act.

The Court of Appeals heard oral argument in *South African Airways* on January 12, 1987, but has not yet decided the case.

In a separate development, the Sanctions Monitoring Group discovered that, in spite of the ban on the importation of South African uranium contained in the Act, the Nuclear Regulatory Commission (NRC) and the Treasury Department were intending to issue regulations that in tandem would permit the importation of thousands of tons of South African and Namibian uranium into the United States. Section 309 of the Act bans the importation of "uranium ore" and "uranium oxide." The Reagan Administration maintains that forms of uranium, other than uranium "ore" or "oxide," are not covered by that prohibition and, therefore, may be imported for both foreign and domestic use. The Administration also announced its intention to permit imports of uranium ore and oxide in bond for processing and re-export for foreign use.

In January, 1987, eight license applications were filed before the NRC seeking the importation of over 3700 metric tons of uranium from South Africa and Namibia. In addition, 11 existing licenses also permitted such imports. The Southern Africa Project petitioned the NRC to block the proposed uranium imports on behalf of a coalition of Members of Congress, anti-*apartheid* and nuclear non-proliferation groups, a South African political exile, a uranium miner who had lost his job because of foreign imports, and a state Senator from New Mexico who represents many such former uranium miners. The Southern Africa Project was joined by Eldon Greenberg, from the Washington law firm of Galloway and Greenberg, who is litigation counsel for the Nuclear Control Institute.

The Southern Africa Project also filed an *amicus curiae* brief in the case of the *Trustees of the Employees'*

Retirement System, et al. v. Mayor and City Council of Baltimore. The plaintiffs in the case seek a declaratory judgment that the Baltimore ordinance requiring that the portfolios of city employees' pension funds be sanitized of South Africa-related investments is unconstitutional and requires that the Trustees violate their fiduciary duties. Plaintiffs claim that the Ordinance constitutes an unconstitutional intrusion into the exclusive federal power to conduct foreign affairs; that it violates the interstate and foreign commerce clauses of the United States Constitution; and that it is preempted by the Comprehensive Anti-Apatheid Act of 1986.

The issues raised by the case are important. Currently, 65 cities, 20 states, and 14 counties have enacted some type of divestment legislation. For example, the states of California, Connecticut, Massachusetts, Michigan, Nebraska, and New Jersey, and the cities of Boston, Detroit, New York, Philadelphia and San Francisco have enacted some form of divestment law. This legislation affects hundreds of billions of dollars in assets. The Baltimore Ordinances are typical of many such local laws enacted throughout the United States.

The Project's *amicus* brief was prepared by Martin Gold at the New York law firm of Gold, Farrell and Marks.

Project Finances

Statement of Revenues and Expenditures January 1, 1986 Through December 31, 1986

REVENUES		$751,189.52
EXPENDITURES		
Personnel Expenses		
Salaries (Director, Staff Attorney, Secretary, Paralegal, Summer Students, Misc. Services)	$108,585.53	
Employee Fringe Benefits	$ 16,556.71	
Non-Personnel Expenses		
Travel and Meetings	$ 7,060.74	
Office Operations	$ 76,905.68	
General and Administrative (Insurance, Depreciation of Furniture and Fixtures)	$ 6,038.36	
Contractual Legal Services*	$592,609.88	
Allocated Administrative Expenses	$ 10,341.81	
TOTAL EXPENDITURES		$818,098.71
REVENUES LESS EXPENDITURES		$ (66,909.19)
BALANCE BROUGHT FORWARD JAN. 1, 1986	$308,451.93	
FUND BALANCE DEC. 31, 1986	$241,542.74**	

*Funds used to finance cases in South Africa and Namibia.

**$187,000.00 of the Fund Blance is earmarked for cases in South Africa and Namibia.

This statement of revenues and expenditures was produced using unaudited financial reports. Copies of the Lawyers' Committee's audited financial report for 1986 are available upon request.

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Administration and Oversight

The Southern Africa Project's activities in 1986 were administered on a daily basis by Project Director Gay J. McDougall, Staff Attorneys Isabelle Gunning and Kenneth Nunn, Researcher Mary Rayner, Staff Assistant Diane Postell, and student interns Athena Harris and Cheryl Stevens.

Those activities were overseen by the Executive Director, William L. Robinson and the Southern Africa Project Advisory Subcommittee of the Board of Trustees of the Lawyer's Committee. The members are:

Tyrone Brown of Steptoe & Johnson (Washington); Goler Teal Butcher of Howard University Law School (Washington); Ramsey Clark, former U.S. Attorney General and now practicing attorney in New York City; Peter J. Connell of Aetna Life & Casualty (Washington); John W. Douglas of Covington & Burling (Washington); Conrad Harper of Simpson Thacher & Bartlett (New York); Robert H. Kapp of Hogan & Hartson (Washington); George N. Lindsay of Debevoise & Plimpton (New York); James Nabrit, III of the NAACP Legal Defense Fund (New York); Charles Runyon (Washington); Stuart J. Land of Arnold & Porter (Washington); L. LeVonne Chambers of the Legal Defense Fund (New York); Drew Days III of Yale University Law School; and Brooksley E. Born of Arnold & Porter (Washington).

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In addition, the work of the Southern Africa Project could not have been achieved without the assistance of many other organizations and individuals who share our commitment to human rights and majority rule in South Africa and Namibia. Although their names are too numerous to list, we thank them for their work, guidance and commitment.

The facts and figures cited in this report were drawn from a wide number of sources, particularly *The Weekly Mail* (Johannesburg), *The Namibian* and other southern African newspapers; *Survey of Race Relations in South Africa*, 1985 (South African Institute of Race Relations, Johannesburg); *ibid*, 1984; Detainees Parents Support Committee (Johannesburg), monthly reports; *A Memorandum on Children Under Repression*, November, 1986, issued by the Detainees Parents Support Committee and others; *Work in Progress* (Johannesburg), 1985 and 1986 issues; *SASPU National* (South African Student Press Union publication), 1985 and 1986 issues; *South African Labour Bulletin*, 1986 issues; the *South African Journal on Human Rights*; South African government *Gazettes; The War Against Children: South Africa's Youngest Victims*, Lawyers' Committee for Human Rights (New York), 1986; International Defense and Aid Fund (London), *Focus on Political Repression in Southern Africa*, 1986 issues; newsletters of the Namibia Communications Centre (London); *The Washington Post; The New York Times*; M. Massing, "The Chief", *New York Review of Books*, Feb. 12, 1987.

Appendix A
List of Cases Funded by the Southern Africa Project in 1986

H. Afrika v. Commissioner of Police & Another
An Inquest into the death of Sipho Maruma
An Inquest into the death of Andries Raditsela
An Inquest into the Shootings in Mamelodi Township
AZAPO v. Magistrate of King William's Town
Bana v. Minister of Law & Order
COSATU & 27 Others v. State President & Another
A. Dhlomo v. Commissioner of Police & Another
Dondashe v. Minister of Law & Order
FAWU v. State President & Others
W. Hlahla v. Minister of Law & Order
In the Matter of F. Ismail
In the Matter of Z. Mlambo
In the Matter of P. Ndwandwe
In the Matter of B. Nguqu
M. Kika & Others v. Minister of Law & Order & Another
Katofa v. Cabinet of the Interim Government of SWA & Another
Kauluma & Others v. Minister of Defence & Others
Klaas v. Minister of Law & Order
Krugersdorp Residents' Organization & 4 Others v. Minister of Law & Order & 2 Others
Kunutu & Others v. Minister of Law & Order & Another
M. Madia & Another v. Minister of Law & Order
B. Manning v. Minister of Law & Order & Three Others
E. Maseko v. Minister of Police
F. Mashigo v. Minister of Law & Order
MAWU & Another v. State President and Three Others
Mngomezulu v. City Council of Soweto
Mphaphathi v. Orangevaal Development Board
E. Myeza & Others v. Minister of Law & Order
M. Mzinzi & 19 Others v. Minister of Law and Order
Ngutyana v. Transkei Police
P. Nhlapo v. Minister of Law & Order
G. Sithole & 6 Others v. State President & 2 Others
G.N. Soobader v. Chairman of Review Board and 2 Others
State v. F. Angula & 6 Others
State v. P. Bacela
State v. A. Banzi & Another
State v. M. Blaauw
State v. B. Blom & 2 Others
State v. M. Blou & Others
State v. T. Blouw & 11 Others
State v. D. Bokaba & 2 Others
State v. P. Booi & Another
State v. S. Booi & 7 Others
State v. M. Brandy
State v. T. Brandy & Another
State v. D. Buthelezi & 11 Others
State v. M. Cuba & 2 Others
State v. L. Danster & 2 Others
State v. E. Daseh & 4 Others
State v. E. Dayimane
State v. T. Dondashe & 3 Others
State v. N. Feni & 22 others
State v. M. Gadudu
State v. B. Gaga & 4 Others
State v. P. Gaika
State v. L. George & 5 Others
State v. V. Gqamana & 3 Others
State v. S. Guliwe & 28 Others
State v. M. Haas
State v. M. Hewu
State v. X.L. Hlaka
State v. C. Hobo
State v. M. Hoyi & 9 Others
State v. S. James & Another
State v. B. Jantjies & 8 Others
State v. T. Jawuka & 4 Others
State v. D. Jobo & Another
State v. P. Kale & Others
State v. T. Kanana & 3 Others
State v. M.G. Kate & 2 Others
State v. S. Kgatuke & 20 Others
State v. R. Kgwale & 4 Others
State v. L. Khonzana
State v. N. Kona & Another
State v. M. Koni
State v. W. Kuboni & 23 Others
State v. K. Libazi & Another
State v. I. Mabaso
State v. Mabuza & 5 Others
State v. Magidimisi
State v. E. Majiki & 7 Others
State v. L. Makhubela & 24 Others
State v. S. Mama
State v. Mamjenguza
State v. M.B. Mana
State v. D. Mapu & Another
State v. I. Masalesa & 22 Others
State v. Masiza & 21 Others
State v. B. Masizi & 20 Others
State v. S. Matemotja
State v. M. Matikinca & 2 Others
State v. M. Matshisi & 3 Others
State v. A.S. Mayo
State v. Mazibuko & 6 Others

State v. M. Mbambisa
State v. T. Mbangi & Another
State v. M. Mbewu & 2 Others
State v. L. McLean & 4 Others
State v. P. Mdolomba
State v. K. Menze & 2 Others
State v. V. Menzeni
State v. Mgujulwa
State v. M. Mgwabane
State v. Mityhopho & 5 Others
State v. M. Mjekula & 11 Others
State v. Mkwanazi
State v. Mlamlela & 4 Others
State v. Mlungwana & 2 Others
State v. G. Mnisi & 2 Others
State v. C. Mokgele & 2 Others
State v. A. Monyeki & 9 Others
State v. M.L. Mosery & Others
State v. E. Motaung & 26 Others
State v. V.K. Motaung & Another
State v. Moyakhe & 11 Others
State v. T.E. Mpathi & Another
State v. Mpehlo
State v. S.T. Mpumlo & 9 Others
State v. M. Mseleni
State v. T. Mthombeni & 4 Others
State v. A. Mtinga & Two Others
State v. R.M. Mtwisha
State v. N. Mukwe & Another
State v. S.T. Mvula & 5 Others
State v. X. Namba
State v. V. Nanto & 8 Others
State v. G. Ndebele & Another
State v. Ndudula
State v. O. Ndumo
State v. D. Ngcanga
State v. A. Ngcayi & 2 Others
State v. M. Ngqandu & 19 Others
State v. P. Ningie & 41 Others
State v. T. Nkewuse & Another
State v. L. Nonganga & 5 Others
State v. Nqakula
State v. Ntsana
State v. P. Ntshingila & 2 Others
State v. Phake & 7 Others
State v. Phillips & Another
State v. S. Rakgabale
State v. S. Rakgabale & 6 Others
State v. E. Rala & 3 Others
State v. F. Ralo & 4 Others
State v. M. Ramgobin & 15 Others
State v. T.C. Rantsane & 2 Others
State v. Reed & 20 Others
State v. K. Shai & 3 Others
State v. V. Shekema & 4 Others
State v. M. Simana & 3 Others
State v. M. Sinam & Another
State v. M. Skoti & Another
State v. M. Sokutu
State v. M. Solani
State v. M. Sotoyi & 4 Others
State v. S. Springbok
State v. V. Stemele & Another
State v. Stuurman
State v. S. Suko & Another
State v. V. Swartbooi
State v. Z. Tapi
State v. S. Temo and 2 Others
State v. F. Thabane & 2 Others
State v. Thobejane & 3 Others
State v. J. Tosa & 2 Others
State v. T. Tsana
State v. L. Tsimane & 28 Others
State v. Vuwani & 3 Others
State v. M.S. Xayiya
State v. T. Zinto
State v. E. Zweni & Another
State v. D. Zulu & 2 Others
The Free Press of Namibia (Pty) v. Cabinet of the Interim Government of SWA
S.L. Tsenoli v. State President & 2 Others
Tsoari v. Lekoa Town Council
UDF and Another v. Acting Chief Magistrate of Johannesburg
UDF v. Minister of Law and Order
P. Udit v. Commissioner of Police & Another
Vaal Civic Association v. Evaton Town Council
L. Vale & Others v. Minister of Law & Order & Others

In addition to the above cases, the Southern Africa Project financed applications for the release of approximately 1,000 State of Emergency detainees.

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