

Prepared Statement
of

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Mr. Chairman, as director of the Southern Africa Project of the Lawyers Committee For Civil Rights Under Law, I have come today not only to express support for the nine Black South Africans who have been sentenced in what has come to be known as the "Silverton Siege Trial," but also to charge South Africa with yet another violation of international law.

On March 26 of this year in testimony presented to the Special Committee Against Apartheid, I argued that South Africa was bound under international law to accord Prisoner of War status to South African Political Prisoners under the Geneva Conventions of 1949 and Protocol I thereto. More specifically, I made the following points:

In any traditional war situation, when a member of the regular troops of one of the belligerents is captured by the enemy, the provisions of the Geneva Convention of 1949 Relative to the Treatment of Prisoners of War dictate a certain level of humane treatment during the period of captivity. Specifically, such captured militants cannot be tortured, can be forced to do labor only in extremely limited situations, and until the hostilities end, must be housed and fed according to detailed prescriptions that are considered to reflect generally accepted rules of civilized conduct. Most importantly, prisoners of war are immune from criminal prosecution and, hence, execution for those acts of combat which do not violate the laws of war, but which might otherwise be common crimes under municipal law.

In June 1977 these provisions, formerly considered operative

only between sovereign States parties to the 1949 Convention, were expressly extended to cover captured militants in national liberation struggles against colonial and racist regimes. The legal instrument which contains this amendment is the first Protocol to the Geneva Conventions, which by its terms applies to "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination..."

On December 7, 1978, Protocol I entered into force. Today, more than eleven States have registered with the United Nations instruments of accession to the Protocol, to which more than 63 States are signatories. On November 28th of this year the African National Congress of South Africa made official declaration of its intent to consider the terms of the Protocol binding upon its operations in South Africa.

The Republic of South Africa became bound by the terms of the 1949 Convention by its own instrument of accession in 1952, and it has, I argue, become bound by the further terms of Protocol I through the progressive development of customary international law with regard to self-determination which have vested the liberation movements of South Africa with a locus standi in international law and relations, with a right of armed resistance to the forcible denial of the equality of all South Africans, and with a right to seek and receive support and assistance from third States. An international character is thereby conferred on these armed struggles in South Africa.

In light of these developments in international law, it is

important to note the following points about the Silverton Siege trial and the sentences that were imposed:

1.) In the course of the 16-week trial that ended in a sentence of death for three of the defendants and terms of imprisonment ranging from 10 to 20 years for six other defendants, the prosecution accused the defendants of endangering state security by having received military and political training outside the country, and having returned to establish bases within the country from which they directed operations against various installations in the Republic. These points, conceded by the prosecution, are powerful evidence that the actions of the accused were not mere criminal acts but military operations outside the scope of criminal prosecution. The Silverton Siege trial fits the pattern of what has in recent years become the most frequent type of political trial in South Africa; those in which the nature of the charges indicate that the South African regime is becoming increasingly engaged in military confrontations with trained freedom fighters, as was the case in Zimbabwe. In that country also, as the war escalated, charges of recruitment were regarded so seriously that many of those convicted were sentenced to death.

2.) While the international community must be particularly vocal in its opposition to the three death sentences imposed in that trial, we must remain clear that the imposition of all 9 sentences were in violation of South Africa's obligations under the Geneva Conventions.

The penal and disciplinary sanctions applicable to prisoners of war are set out in detail in Section VI, Chapter III of the 1949 Convention. In no circumstances may proceedings be taken or

punishment given except as provided in that chapter, which states in part that except for breaches of disciplinary codes while in captivity, prisoners of war may only be tried for acts that fall within the category of war crimes—a category which is not suitable for the offenses charged in the Silverton Siege trial. Further, Prisoners of War may be tried only by a military court unless the laws of the capturing power expressly permit civilian courts to try members of its own armed forces for the same offense—again a situation which was not the case with regard to the Silverton Siege trial.

3.) The sentences in the Silverton Siege trial of the Pretoria 9, the execution of Solomon Mahlangu early last year, the sentencing to death of James Mange in November 1979, and the October 13th sentencing to death of a Namibian farmworker for his simple failure to tell his employer that armed guerillas were in the area, speak loudly of the role of law in South Africa as a chief weapon against a people's struggle for basic human rights.

Mr. Chairman, the Southern Africa Project of the Lawyers Committee For Civil Rights Under Law pledges its resources to the support of international law and the restoration of the rule of law in South Africa. We intend a vigorous campaign against sentences such as the ones in the Silverton Siege trial.

Thank you Mr. Chairman.