TORTURE IN SOUTH AFRICA

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Catholic Institute for International Relations
Human Rights Forum (British Council of Churches)
International Commission of Jurists

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INTRODUCTION

At 1.30 am on 5 February 1982, the body of Dr Neil Aggett, a trades union organiser, was found hanging against the grille of his cell at John Vorster Square police headquarters. The death of this young white South African brought to the attention of the world again, perhaps even more starkly than the death of Steve Biko in detention, security police abuses of political detainees in South Africa.

Qualified psychiatrists, like Professor Charles Vorster of Rand Afrikaans University and Professor L.J. West of the Neuro-Psychiatric Institute in Los Angeles, have gone on record as saying that Dr Aggett showed no predisposition to suicide. If he did commit suicide by hanging himself with a pyjama cord in his cell, it was because of the treatment he received while in security police custody. Those who saw him in the last week of his life, during which he was interrogated non-stop from early on a Thursday until early on a Sunday morning, described him as unresponsive and clearly suffering from pain. Dr West described the effects of prolonged solitary confinement and interrogation as 'debility, dependency, dread'. Available evidence suggests that Dr Aggett was systematically humiliated and threatened as well as physically abused.

The question which many South Africans asked themselves was how in a supposedly Christian country a young man of undoubted high ideals — not even the security police shed doubt on Dr Aggett's idealism — against whom no case of criminal conduct, even under South Africa's draconian laws, had been made, comes to die in mysterious circumstances in a prison cell in Johannesburg. They are asking in general how can young people who might at any other time and in any other place be seen as the hope of a nation be treated so mercilessly.

In the face of these questions the Attorney-General of the Transvaal, one of the highest legal officers in South Africa, and the senior public prosecutor in the Johannesburg area, appear to have taken an attitude of extraordinary passivity. The Aggett inquest became, not a state investigation into the circumstances surrounding Dr Aggett's death, but a prolonged battle by lawyers acting for the Aggett family to get at the truth in the face of obstruction from state officials. The investigation into Dr Aggett's death took place in spite of the efforts of the state, not as a result of them, calling into question the impartiality of the state's legal officers.

This is the background to the following publication which attempts to document conditions now being encountered by South Africa's political detainees. These conditions have been the major anxiety of the Detainees' Parents Support Committee (DPSC), which was formed after the wave of detentions that took place in November 1981 when, on the 26th of that month, Dr Aggett was arrested under the Internal Security Act.

Since the presentation of the DPSC's memorandum on torture in South Africa's

prisons to the Minister of Justice and to journalists on 30 September 1982, the publishers of this report have come into the possession of this and other documents associated with the Committee. The work of the Committee is a remarkable testimony to the revulsion of ordinary South Africans, black and white, to the systematic abuse of political prisoners in South Africa. Barely a year old, this group of ordinary people whose composition cuts across race, age and class divisions has campaigned publicly and fearlessly throughout its first twelve months for the rights of detainees and those imprisoned without trial for their political convictions.

The DPSC represents a generation of South Africans and their friends for whom the tragedy of a human being held captive and tortured has ceased to be a distant rumour, or a cautious press story. For them it is their child, their friend, subjected to the humiliation and systematic degradation of detention in South Africa. Their voice raised in protest is not that of anti-apartheid campaigners, political activists, nor the special pleas of one racial group, one religion, but the voice of many anguished parents who have seen what has happened to their children at the hands of the South African security police.

To date the response of the South African state to the Committee's well-researched allegations of torture, contained in over 70 affidavits, has been to dismiss them and to declare that the Committee are 'seeking sensational publicity' with 'unsigned allegations'. Readers of the documents will see for themselves that what makes this material shocking is not any sensation-seeking on the part of its compilers, but the barbarities perpetrated by the South African authorities and amply attested here.

On 24 November, Mr Le Grange, Minister of Law and Order, instructed the security police that detainees must 'not be assaulted in any manner or otherwise maltreated or subjected to any form of torture or inhuman or degrading treatment'. He specifically mentioned that detainees should be given adequate sleep and exercise. However, what Mr Le Grange presents as new guidelines are no more likely to be enforced in the context of political detention in South Africa than previous provisions which, in broad measure, they reiterate.

The South African government claims that its system of detention, codified in its most recent form as the 1982 Internal Security Act, operates in defence of Western civilisation and Christian values. In making these documents available to a wider audience the organisations sponsoring this publication do so in protest against what is being done in the name of these values, and in tribute to the courageous work of the Detainees' Parents Support Committee in upholding them in the midst of apartheid.

Catholic Institute for International Relations
Human Rights Forum (British Council of Churches)
International Commission of Jurists
December 1982

MEMORANDUM ON SECURITY POLICE ABUSES OF POLITICAL DETAINEES

DETAINEES' PARENTS SUPPORT COMMITTEE

1. BACKGROUND

On 27 April 1982, a delegation representing the Detainees' Parents Support Committees of Johannesburg, Durban and Cape Town met the Ministers of Law and Order and of Justice and presented to them a memorandum in which it was stated that the DPSC was concerned that widespread and systematic use was being made by Security Police of assault and torture during interrogation of detainees. It went on to enumerate many of these abuses, and requested a clear statement from the ministers as to the official constraints on interrogation procedures. The DPSC called for a code of conduct for interrogators and an independent system of monitoring their behaviour.

In reply the ministers rejected the allegations and said they would deal with them in due course. A few days later, the Commissioner of Police, General Geldenhuys, issued a statement ordering an extensive investigation into the allegations, saying that those making them would be approached for statements, and be afforded an opportunity to substantiate their claims.

A week later members of the DPSC delegation were approached by a high-ranking officer of the CID who had been appointed to investigate the allegations. He also raised the possibility of a prosecution against the persons in terms of Section 27 of the Police Act if the allegations against the police could not be proved. The DPSC was requested to furnish statements to the CID so as to substantiate their claims. The DPSC was further requested to confine their allegations of improper treatment of detainees to the preceding six months.

The DPSC rejected the submission that any investigation should confine itself to the period from mid-1981. Firstly, many of the officers alleged to have participated in earlier incidents are still serving in the Security Police. Secondly, the DPSC can see no logical reason in drawing a distinction between alleged practices of torture in 1980 and 1981. Indeed the research and allegations reveal no marked difference between the pattern of abuses alleged to have been committed prior to July 1981 and abuse alleged to have been committed after this period. Finally, the DPSC made it clear that they would draw on all available channels of research to substantiate their claim, including court judgments, inquest records and civil actions, and not merely the statements of detainees who were held during that period. The DPSC sought an assurance that the object of the investigation was the practice of torture itself and that the DPSC or individual deponents would themselves not be harrassed.

The DPSC has now submitted to the CID over 70 sets of allegations concerning abuses in one form or another by police officers.

It must be stated that the statements so far submitted do not represent the totality of evidence on the systematic use of torture or improper treatment of detainees. For

different reasons some statements that were obtained were not relied upon. No thorough attempt was made to collect statements from convicted prisoners who have allegedly been tortured. Some former detainees, for reasons ranging from fear to scepticism about the genuineness of the investigation, declined to provide statements for remission to the CID. The DPSC has experienced difficulties in tracing informants to obtain permission for the use of their statements. But the research so far should be viewed only as an incomplete sample of the widespread allegations of torture perpetrated on detainees. Copies of the statements have been submitted to the Ministers of Law and Order and of Justice. It is anticipated that further statements will be submitted in due course.

2. SOURCES OF STATEMENTS

The allegations have been drawn from statements by former detainees, admissions by the State itself, court proceedings and actual court judgements. The majority of the allegations deal with the recent period 1981-1982, while some date back to 1978. We have not sought to refer to the much publicised inquests and earlier trials wherein substantial evidence of assault and maltreatment emerged, e.g. the Biko inquest, the Mdludli inquest, the trial of S.V. Ndou and others.

3. EXTENT OF MALPRACTICES

The statements so far submitted confirm the concern felt by the DPSC regarding the incidence and extent of malpractices in the treatment and interrogation of detainees. While the DPSC is alive to the possibility of an inaccuracy in a particular statement submitted in good faith, the DPSC believes the statements submitted so far reveal a clear picture which as a whole cannot be ignored.

The practices, more fully categorised below, range from mere bullying or neglect to third degree brutal torture.

Furthermore, the allegations of malpractices are not confined to any particular centre. Places at which they are reported to have occurred include police stations at all the major centres in South Africa. The places most commonly cited in the most serious allegations are Protea (Soweto), Sanlam Building (Port Elizabeth), and John Vorster Square (Johannesburg). Included in the scores of Security Police named as being involved in these malpractices are at least 20 commissioned officers up to the rank of major. Some members were categorised as experts in, for example, electric shock torture.

Nine of the statements submitted so far deal with women detainees.

Only a small minority of the persons allegedly assaulted or abused were eventually convicted of any offence. The vast majority were not even charged. Of course even where persons have been convicted the use of cruel or improper treatment can never be condoned.

The DPSC has sought to exclude those statements that deal with torture perpetrated on detainees in the former homelands. However, in this memorandum it must be pointed out that this is not to be interpreted as either an indication that such practices do not occur or that such practices are irrelevant. In the first place allegations of maltreatment of detainees in these territories have become increasingly common. Associated with these allegations have been further allegations of a close working relationship between the security apparatus of these territories and South African

security officials. The most recent allegations concern the treatment of Reverends Phosiwe, Phaswana and Farisane in the Republic of Venda. These three priests were so badly assaulted, suffocated, and electrically shocked that they falsely 'confessed' to crimes they had not committed. During the course of the investigation one Isaac Muofhe died during interrogation. The inquest magistrate found that two members of the Venda Security Police were responsible for his death as a result of an unlawful assault. The attorney-general of Venda dropped all charges against the priests despite having signed 'confessions' from them. Reverend Phosiwe alleges that a white officer from South Africa had been seconded to assist in the investigation.

4. NATURE OF ALLEGED MALPRACTICES

The DPSC believes that the statements submitted to date corroborate the basic pattern of maltreatment alleged by them in their first memorandum to the minister. In this memorandum the DPSC restates its concern over possible treatment of detainees. The statements submitted to the ministers reveal a repetition of certain types of malpractice over a wide area. The DPSC summarises the main areas of misconduct revealed in the statements hereunder and specifically draws attention to the seeming pattern of conduct.

4.1. *Physical Abuse*

The statements contain numerous complaints of prolonged and intensive interrogation, sometimes by successive teams of interrogators and sometimes for a continuous period of several days. Coupled with this intensive interrogation are alleged practices designed to reduce the detainee to a state of exhaustion and compliance with the interrogators' suggestions. These include the following:

4.1.1. Deprivation of sleep in at least 20 cases, some for periods of many days and nights. In one case involving lengthy sleep deprivation the police made payment of substantial damages arising out of their treatment of the detainee culminating in her being found in a comatose condition by the district surgeon. Prolonged sleep deprivation can have serious affects on a person's mental state.

4.1.2. Deprivation of food and drink whilst being interrogated.

4.1.3. Deprivation of toilet facilities in eight cases which in some cases led to involuntary urination and the humiliation of cleaning the interrogation room thereafter. In one instance a detainee alleges he was obliged to drag a large chain to which he had been handcuffed when going to the toilet which made access impossible.

4.1.4. Enforced standing and arduous physical exercises in over 28 cases for long periods, sometimes days and nights. The exercises included holding heavy objects above the head, standing barefoot on bricks, press-ups, running on the spot.

4.1.5. Exposure to cold in 25 cases by being kept naked for long periods, sometimes several days and nights. In some cases discomfort was increased by being doused with water, made to stand in front of a fan or open window.

4.1.6. Enforced suspension is reported in 11 cases. Most of these involve a method referred to by some Security Police as the 'helicopter', in which the detainee in handcuffed at the wrists and at the ankles, and while in a crouching position, a pole is inserted through legs and arms. He is then suspended on the pole between a table and a chair, sometimes for hours on end, while being subjected to a barrage of questions and sometimes blows. Other cases include suspension by the arms while handcuffed. This

suspension causes acute and excruciating pain.

4.1.7. In 54 cases, including six women, hitting with fists, slapping, kicking, beating with sticks, batons, hosepipes, gun butts and other objects, crushing of toes with chairs or bricks, dragging by hair, banging head on wall or table and throwing or pushing against a wall, are the more common forms of assault. Some of the injuries which have resulted are perforated eardrums, broken teeth, loss of sight in an eye, damaged kidneys and bladder and permanent scarring. One, Linda Mogale, was found by the court to have had his teeth broken, allegedly by pliers.

4.1.8. Suffocation is reported in 25 cases, mostly by hooding with a bag made of canvas or plastic. Hooding appears to have several purposes, firstly to induce near suffocation when the bag is pulled tightly around the neck, secondly to heighten the terror of the situation and thirdly to hide the identity of the interrogators or the nature of the equipment when electric shock is being applied. Other forms of suffocation include the use of a wet towel, or choking by hand or cord. In many cases the detainees are alleged to have lost consciousness.

4.1.9. Electric shock is alleged in 22 instances. Invariably the detainee is hooded or blindfolded so that he never sees the equipment used or the operator. In one case a detainee alleges he was wrapped tightly in a canvas strait-jacket before being shocked. In several cases shocking took place at remote spots away from a police station. Shock torture was allegedly applied for protracted periods in several instances, sometimes resulting in loss of consciousness. In one extreme case, the victim started to experience fits as a result of damage to his nervous system, he continued to have fits for three months after his release from detention and approached the DPSC to assist him to find suitable medical attention. In one case two non-Security policemen were actually charged with hooding and administering electric shocks to a man in their custody. They pleaded guilty to common assault and were fined R50. The significance of these allegations, which were obviously accepted by the State, has not received the attention it deserves. What enquiries have been made as to the source of the electrical equipment and the hoods? Who trained the policemen in the use of the equipment?

Electric shocks appear to be administered by means of an apparatus which can draw power from a wall plug or a running motor-car. The apparatus allows the interrogator to switch the current on and off, causing the victim to scream and jerk involuntarily. Electric shocks have allegedly been administered in most of the major centres.

4.1.10. Attacks on genitals are reported in 14 cases. These include hitting, kicking and squeezing of testicles, attaching pliers to the penis and the application of electric shock to the genitals.

5. PSYCHOLOGICAL ABUSE

5.1. Reports of psychological abuse contained in the statements fall into several categories, from the more subtle forms such as isolation, humiliation, and concern about loved ones, to the more obvious forms of intimidation and threats to life and limb.

5.1.1. *Isolation:* All detainees report being isolated in solitary confinement, as provided for by detention clauses of security legislation. The short-term and long-term effects of solitary confinement have been described by several authorities as more damaging to health than even many extreme forms of physical abuse. Detainees refer to the psychological impact of being transferred from the limited period detention of

Section 22 to the indefinite detention provided by Section 6 (a situation which the Security Police did not fail to exploit). One detainee reports being held for 45 days before interrogation commenced; this constitutes a refined form of torture apart from being a gross violation of the purpose of detention as stated in Security Legislation.

5.1.2. *Humiliation and degradation:* Many detainees complain of actions apparently designed to humiliate, degrade and 'break' them. The denial of toilet facilities, apart from physical discomfort, has a humiliating effect, especially when the detainee is no longer able to contain himself, and is then compelled to clean up the room. Verbal abuse and ridicule was reported in several cases, sometimes combined with enforced self-abuse, and generally of a personal or racial nature. The statements also include reports of denial of washing facilities and being forced to scrub the floors of the interrogation room.

5.1.3. *Intimidation:* The frequent use of highly intimidatory and aggressive situations as a prelude to direct threats or actual violence, is referred to in the statements. The most common of these is being compelled to strip naked or near naked (reported in 25 cases) as in the case of Stephen Biko, which serves to accentuate the vulnerability of the detainee, who may be held in this condition for days.

5.1.4. *Hooding:* Another commonly reported practice (19 cases) is hooding, which apart from other purposes, produces disorientation and fear of the unknown. Detainees complained in several instances of being removed from the police cells and driven to isolated spots in the bush, which also created a similar condition of disorientation and extreme fear.

5.1.5. *Threat to life and limb:* Allegations of death threats to 11 detainees are contained in the statements. Apart from verbal threats, a firearm has been drawn in some cases, in one instance inserted and cocked in the detainee's mouth and in another fired next to the detainee's feet in an isolated area. One detainee alleges that an open knife was held to his throat. Threats to drop from a high building are also reported, or the simulation of being held or thrown out of a window.

In 13 statements, threats of torture and assault are reported. These include being threatened with the use of an undefined apparatus with the appearance of headphones, being burned with a lighted cigarette and being taken to the *waarkamer* (truth room).

5.1.6. *Threat to loved ones:* Threats relating to children, parents and wives and close friends are alleged in six statements. These include threats to kill or detain such relatives. One woman alleges she was assaulted in the presence of her baby, whilst another had her two-and-a-half-year-old child taken into custody with her, then forcibly removed a day later. In one case the detainee was told that her young child would be removed from her custody unless she made a statement. The use of untrue reports about the welfare of loved ones is also claimed in some instances.

5.1.7. *Indefinite detention:* Many detainees allege that their interrogators have exploited their vulnerability by emphasising that the detainee will not be released until the interrogator is satisfied with the answers. This power to detain people indefinitely is capable of gross abuse and there are cases where persons are held in isolation under security legislation for lengthy periods, sometimes in excess of a year, for no apparent purpose. The particular abuses which have come to the attention of the DPSC are those where:

5.1.7.1. a person is questioned at the beginning of his period of detention and may then remain in detention for several months without further questioning. This is an abuse of the law.

5.1.7.2. a person is detained and not questioned at all for a lengthy period after his initial detention. This is also an abuse of the law.

5.1.7.3. prior to the 1982 Internal Security Act people were detained under Section 22 of the General Law Amendment Act when it was well known to the Security Police that there was no intention to release the detainee within the 14 days provided and that the detention would continue in terms of Section 6 of the Terrorism Act. This was done to facilitate the admission of a confession obtained during the period of 14 days. The detainee was left with the impression that he might be released after 14 days and this created false expectations which were cruelly unfulfilled and harmful to the morale of the detainee. This was a further abuse of the law.

6. HEALTH CONSEQUENCES

In addition to the physical injuries brought about by assaults many detainees complain about the longer term psychiatric effects. The general health of three of the detainees concerned deteriorated to the point where the authorities found it necessary to hospitalise them during the course of interrogation. Five detainees had to be hospitalised on release from detention, or required medical attention. One of the detainees, Dr Neil Aggett, died whilst in detention.

7. AN EXAMINATION OF SAFEGUARDS

Code of Conduct for Interrogators

It is very difficult to establish whether an official code of conduct for interrogators actually exists. No response has been forthcoming from the Minister of Law and Order to this question which was posed by the DPSC in its memorandum, other than to reject allegations of assault and torture. During a parliamentary debate in February 1982, in response to a question by Mrs Suzman, Mr Le Grange gave a 'categorical assurance that inhuman and degrading methods of interrogation of detainees under Section 6 are not used by the Security Police'. Later, during the debate on the internal Security Bill, he announced an investigation into the conditions under which detainees were held and interrogated, to be conducted in consultation with the Commissioner of Police and the Director of Security Legislation, and that broad guidelines would be announced at a later stage.

The *Citizen* newspaper of 11 August 1982 reports that Mr Le Grange, during an interview with foreign reporters, had said that a small number of men had been charged with violating the standards on the treatment of prisoners (detainees), but did not say what these standards were.

The *Rand Daily Mail* of the same date reported that Mr Le Grange had said he was considering drawing up a voluntary (?) code of conduct for policemen involved in detentions. A week later he referred to the investigation announced in parliament and went on to say that 'what is envisaged is not a statutory code but a set of rules or directions which will be binding on all concerned and will augment the instructions already issued by the Commissioner of Police in regard to conditions of detention'.

It is not known what standing orders or constraints regarding conduct by interrogators are in force. *Prima facie* the widespread malpractices alleged would indicate that if such code is in existence it is not taken seriously. Indeed such alleged instruments as hoods and electrical apparatuses seem to be conveniently available. Any

'code' that does exist does not appear to have a monitoring or enforcement procedure. A 'voluntary' code for interrogators can only be described as absurd.

8. 'VISITS'

8.1 Visits by Magistrates and the Inspector of Detainees:

The 1982 Internal Security Act makes provision for compulsory fortnightly visits by a magistrate, District Surgeon and the Inspector of Detainees. The allegations submitted by us indicate that procedure as it existed under previous legislation has provided an appearance of a safeguard against improper treatment of detainees, whilst failing in many instances to be an effective check. The main complaints advanced for this failure have been:

8.1.1. The identification by the detainee of the magistrate with the interrogators. This occurs particularly where the magistrate questions the detainee in the presence of the Security Police. On other occasions this is the result of the confusion in the mind of the detainee as to the difference between the branches of the state's judicial and law-enforcement agencies, or simply where the detainee does not accept that the magistrate is the person he purports to be.

8.1.2. Some detainees complained that they are warned by their alleged assailants not to report any improper treatment to the magistrate on pain of further assaults or removal of privileges etc. The magistrate has no power to restrain the detainee's assailants from having unsupervised access to the detainee. Detainees have reported that they can see little benefit and substantial risk in reporting incidents of maltreatment to the magistrate.

8.1.3. Some of those detainees who have reported assaults to the magistrate allege that they have indeed been subjected to intimidation and duress which has led them to retract their statements.

8.1.4. Detainees have alleged that the Security Police are in a position to prevent the magistrate from visiting the detainee by informing him that the detainee concerned is away, or by physically removing him from the cells for the day. The very same allegations 8.1.1 to 8.1.4 concerning the visiting magistrate pertain to the Inspector of Detainees. (See evidence of Inspector mentioned in the Aggett inquest).

In particular detainees who are alleged to have reported assaults to either of the officials on the condition that such complaint is not relayed to the Security Police who assaulted them have later been confronted by their alleged assailants. In the 1982 Act the Inspector is specifically required to report irregularities to the person in charge of the place where the detainee is being kept.

9. THE DISTRICT SURGEON AND HEALTH CARE

There are various allegations that concern the ability of the District Surgeon to protect the detainee from maltreatment and ill health. These are:

9.1. allegations of cursory examination, e.g. where details of injuries are not recorded or causes inquired into.

9.2. allegations of detainees being visited or seen by District Surgeons irregularly or not at all. The most serious allegations concern the denial of access to further medical treatment by the police until the detainee has satisfied the police. As detainees' access to medical inspection is vetted by the Security Police they are also able to refuse a request.

9.3. allegations concerning the administration of medicine by the police themselves

or neglect in carrying out the instructions of the District Surgeon. The capacity in law and practice for police officers to overrule the decision of the District Surgeon on the medical treatment of a detainee is absolutely unacceptable.

9.4. allegations that examinations and inquiries by the District Surgeon are carried out in the presence of the Security Police.

9.5. allegations that detainees are warned not to reveal maltreatment to the District Surgeon, or that they are compelled to reveal to the police what transpired in the course of the examination or to retract what they had told the District Surgeon.

9.6 allegations that a District Surgeon has reported to the police the information he has obtained from his patient.

9.7 allegations that the District Surgeon attempted to assist the police rather than the detainee. For example where a District Surgeon failed to dress or disinfect three bullet wounds in a detainee or to hospitalise him as she felt it was better that he assist the police; or where the District Surgeon asked the police questions about the detainee's health and not the detainee, or where a District Surgeon appears to have falsely reported to the Attorney-General concerning the injuries suffered by persons assaulted.

9.8. It appears that the District Surgeon in some cases is the doctor who cares for the police personnel in the area and may have a professional or personal relationship with the individual interrogators or Security Policemen.

10. LAYING CHARGES

There are theoretically several ways in which detainees can or have laid charges against their assailants. They may have complained to the magistrate, the Inspector of Detainees, the District Surgeon or the station commander of the police station in which they are being held. In those cases where the complaints have been taken up, the procedure is for the CID of the South African Police to interview the complainant. Where the victim wishes to go ahead with the complaint the CID conduct an investigation, and thereafter the docket is referred to the Attorney-General. There are extremely few cases where Security Policemen have been actually charged, and the DPSC knows of none where any have been convicted. This is revealing, given:

10.1.1. the many court findings in inquests and trials in which maltreatment was found to have occurred;

10.1.2. the assumption of civil liability by the State for alleged assaults or maltreatment;

10.1.3. the sheer volume of complaints and allegations of assault on detainees.

10.2. The allegations suggest several reasons why the successful prosecution of these assaults is infrequent.

10.2.1. *The investigation of the allegations by the CID.* The investigation by the CID is hampered by many of the factors mentioned above, viz: the CID cannot protect the complainant from further assaults; the CID cannot prevent duress being applied on the complainant to withdraw the charge; the CID is associated with the Security Police in the eyes of the complainant. Allegations concerning each one of these factors has been cited in the affidavits.

The impression may be gained that there may be collusion between the CID and their Security Police colleagues, especially where they are based in the very same Police Station. In the Makhoba case the investigating officer was one of the alleged assailants on behalf of whom the State later admitted liability for assaulting the detainee. Where

there is an investigation the CID are faced with the difficult task of compiling a docket on the exclusive evidence of the complainant.

10.2.2. *Absence of protection.* Because the detainee is in a vulnerable position in relation to his interrogators, who may call on him or remove him at will, many of the detainees stated that they felt open to further assaults of the very kind that they wished to complain about and there are allegations that complaints have led to further assaults, consequently the complainants have alleged that it seemed better to leave things be, rather than complain as the complaint could only worsen their position or delay their release. The only reason for pursuing a charge would be an abstract sense of personal justice. Even this reason counts for little if the complainant believes that it is extremely unlikely that the prosecution would succeed.

10.2.3. In addition to the problems faced in laying a charge the detainee faces formidable problems in adducing proof in support of his claim. He has no witnesses. His assailants may lead many witnesses to say how well he was treated, how co-operative he was, how happy he was. If he can actually produce evidence of physical injury the assailants may allege a variety of reasons as to how he acquired these, viz. falling down steps, hitting his/her head against a wall.

However, the preponderance of cases deal with maltreatment that would leave no physical mark (see above — deprivation of sleep, exercises, humiliation, exhaustion, electric shocks, suffocation, deprivation of toilet or food, psychological attacks, threats of violence or death, slapping with an open hand, exposure to cold or heat, promises of release, etc.). Even where more violent assaults have allegedly been perpetrated e.g. where bruising is extensive, there is no guarantee that the victim will see a District Surgeon while such bruising is evident. And even where the District Surgeon does record such injuries, the detainee will still have to prove the cause thereof. The accused (i.e. the police) will be entitled to the benefit of the doubt where such injuries may possibly have arisen from another cause.

It is alleged that members of the Security Police openly informed detainees that they can evade conviction for assault while simultaneously bragging about the detainees they have allegedly assaulted. In many cases the detainees do not know the names of their interrogators, or (when they have been hooded) who was present and what instruments were used.

In one case where a detainee's complaint led to the alleged assailants actually being charged, the policemen were acquitted, although the District Surgeon stated that she could not have obtained her injuries by inflicting them on herself. The court effectively accepted this to be the case. Persons following this trial may interpret this case (possibly erroneously) as indicating the futility of laying charges against the Security Police. Some detainees suspect that if charges are successfully laid there may be a lack of rigour or enthusiasm in the investigation of the case.

11. THE MINISTER'S RESPONSE

11.1. For the above reasons we feel that the minister's response to allegations of torture (that there has been minimal success in the reporting of assaults, and the prosecution thereof and that accordingly such maltreatment does not occur) is not sufficient to allay the concern of the DPSC that such treatment occurs.

11.2. The minister has also alluded to the disparity between all the allegations and the number of successful civil claims. Here we refer to many of the reasons mentioned

above, viz. fear of further recrimination by the police felt by many detainees, the problems of adducing proof, the feeling that the courts will not readily accept the sole evidence of a former detainee against the word of numerous police officers, absence of permanent physical scars. There are, however, two further reasons specifically relevant. The first is that an action against the police effectively lapses after five months. Persons held under security legislation are incarcerated without access to their lawyers for periods frequently in excess of this period. Secondly, if they have been too frightened to complain or press charges at the time of the assault this may count against them in the civil proceedings.

11.3. Indeed the so-called safeguards against torture appear to be worse than ineffective if regard is to be had to the statements and other evidence. Magistrates' reports that a detainee did not complain of assault when visited have been used against a detainee in subsequent criminal and civil trials. However, where persons did complain and their counsel attempted to subpoena these officials to testify, the officials successfully claimed privilege and refused to produce their reports. The very procedure which was supposed to protect detainees appears to operate more effectively to stifle claims of assault than it has done to prevent assaults taking place.

12. CONCLUSION AND RECOMMENDATIONS

12.1. The DPSC has not been convinced by the minister's denial that cruel or humiliating practices are perpetrated on detainees. Indeed the evidence reveals a clear picture of widespread systematic malpractices. The DPSC believes that it has a duty as parents and as South Africans to draw attention to these allegations of prevalent abuse of detainees.

12.2. It is of some concern that the minister has not answered the legitimate request by the DPSC to explain what official constraints are placed on interrogators. Instead of examining the framework which placed unchecked power in the hands of interrogators, instead of recognising a problem, the minister has chosen to foreclose any possibility of such an approach by denying outright the existence of such practices and by threatening the DPSC.

12.3. The DPSC makes it clear that it is not its primary objective to seek merely the prosecution of individuals but rather a re-examination of the whole system of unchecked power in interrogation of detainees.

12.4. The DPSC does not purport to offer elaborate or detailed recommendations. The Association of Law Societies, the Bar Council and other professional bodies have already done so. There is considerable expert evidence of protection available to detainees in other countries.

12.5. The DPSC reiterates its opposition to the current security legislation and in particular the provisions enabling indefinite incommunicado detention without access to the courts. However, so long as such legislation is in existence then the DPSC believes the following minimum rights should be accorded to a detainee:

12.5.1. access to a lawyer,

12.5.2. access to relatives,

12.5.3. access to a doctor of choice,

12.5.4. access to reading material of choice.

12.6. Furthermore there should be:

12.6.1. an enforceable code setting out standards of interrogation;

12.6.2. an effective and independent machinery for enforcing and policing the treatment of detainees;

12.6.3. clinical and personal independence of the District Surgeon from the Security Police.

AFFIDAVIT OF AURET VAN HEERDEN

IN THE MATTER OF THE INQUEST OF THE LATE DR N.H. AGGETT

AFFIDAVIT

I, the undersigned,

AURET VAN HEERDEN,

hereby make oath and say:

1. I am an adult male post-graduate student, 27 years of age, and reside at 49 Mendelsohn Avenue, Glendower, Johannesburg.

2. I was detained for 14 days under Section 22 of the General Law Amendment Act on 24 September 1981. Thereafter I remained in detention under Section 6 of the Terrorism Act. Towards the end of March 1982, I was transferred from detention under Section 6 of the Terrorism Act to detention under Section 12B of the Internal Security Act. I was ultimately released from detention on 9 July 1982.

3. I was initially detained from 24 September to 29 September 1981 at John Vorster Square where I was interrogated. From then until 23 October I was held at Pretoria Central. I was then transferred to Sandton Police Station cells and was held there until November 17. I was then held at the Benoni Police Station cells until December 3. On December 3 I was transferred back to John Vorster Square where I was held in the second floor cells. My cell number at John Vorster Square was cell 215. I was held at the John Vorster Square cells until my release on 9 July 1982.

4. Prior to my detention I was a friend of Neil Aggett. I had known him for a number of years before my detention. I had discussed trade union affairs and policy with him on a number of occasions, and also the relationship between political movements and trade unions. These discussions were pertinent to my studies into trade union organisations, and Neil and I therefore shared a common interest.

5. I can remember Neil being brought into John Vorster Square on 11 December 1981. He was allocated cell 209, one of the two cells which had a door opposite the door of my cell. This other cell, next to 209, was cell 208.

6. From the time that Neil was brought into detention, he and I established a form of communication between ourselves. When the guards opened the doors for meals, Neil and I could talk to each other, across the passageway, through the grilles of our cells. Depending on how long the main doors of the cells stayed open each evening, we would get a chance to talk to each other, at the very least long enough to greet each other. On occasion it was as long as an hour and we had a number of lengthy discussions.

7. The primary subject of our discussions was Neil's interrogation. This was because my interrogation had already been completed. I had been interrogated continuously from the date of my arrest until about December 3 when I was transferred

to John Vorster Square. Neil would describe the kind of questions that his interrogators were asking him, how he had answered them and who was doing the questioning. Generally we discussed the personal dynamics of the interrogation, i.e. the relationship between the detainee and the interrogator. I was sometimes in a position to advise him and to offer my comments. A number of the security policemen who had been interrogating him had also interrogated me, so we could discuss these people.

8. From the time that Neil was brought to John Vorster Square in mid-December until his intensive interrogation started towards the end of January 1982, Neil was in a fit mental and physical state. He was not unduly depressed and physically he seemed quite strong.

9. At the beginning of January Neil told me about a physical assault that had been made upon him while under interrogation on the tenth floor. As usual, the guards opened up our cell doors at about 4.00pm in order to give us supper. When they opened Neil's door opposite, I saw him walking from inside his cell towards the grille. I could see that he was limping. When he got to the grille, I asked him what had happened. He told me that he had been taken into the general office on the tenth floor by his interrogators. They closed the door and put a desk against it so that nobody could come in. He was stripped totally naked and was made to run on the spot. He was made to do exercises like press-ups and star jumps. He was told that he was being made to do this because his statement was totally unsatisfactory. I can remember him mentioning that Van Schalkwyk was there, because he later said that Van Schalkwyk actually assaulted him. There were people in the room firing questions at him. He said that the idea seemed to be to exhaust him. He said that there was an absolute pool of sweat on the ground. He said that it lasted about three hours. During that time Van Schalkwyk had clubbed him on his body and his face with his forearm. There was an item of clothing wrapped around Van Schalkwyk's forearm. He said that at one stage Van Schalkwyk's watch had cut his forearm while Van Schalkwyk was assaulting him in this manner, and he showed me the cut on his forearm. His interrogators told him that this was just to give him a taste of what would happen if he did not start writing a more comprehensive statement.

10. Neil finished typing and indexing his statement a few days after this assault. There appeared to be a lull in his interrogation. He was not sure what was going to happen to him. Both of us hoped that we would be released quite soon.

11. Then Neil told me that Lt Whitehead, one of his interrogators, had begun to play a kind of a game with him. He would grant him privileges and then take them away from him. He gave the example of his surgery books. He felt that Whitehead was holding back his surgery books, which he believed had been delivered by his support group.

12. Neil was also attempting to get to see the doctor in order that his injuries, which he had received during the assault, might be recorded. He was asking MacPherson just about every day to see the doctor. He told me that he believed that he was being deliberately blocked from seeing the doctor.

13. Then at a later stage, towards the middle of January, Neil told me that he had told the magistrate about the injuries that he had sustained. He told me that his purpose was that he wanted his injuries documented, preferably while the injury was still visible on his arm.

14. He also told me at about this time that Whitehead had started telling him that they knew he was lying and that he should expect to be fetched. Neil reported that the

words were to the effect that he (Whitehead) was going to come and fetch him late one night and was going to take him out and give him a rough time.

15. Thereafter, during the latter part of January, the security police started taking Neil up to the tenth floor on a daily basis. Neil told me that the interrogation had changed. Before, his interrogators had been quite unspecific about the areas which they wanted him to cover. They were now giving him specific subjects that they required him to write about. One incident which he mentioned was that he had been taken into an office on the tenth floor; Major Abrie, Captain Struwig, Captain Swanepoel and Lieutenant Whitehead were there; they said to him that they did not believe he was telling the truth, and they threatened that, if from that point onwards he did not get far closer to the truth, they would give him a hard time.

16. By mid-January 1982, I had been granted the privilege of studying in Lieutenant's Pitout's office on the tenth floor. I remember that, on a particular Friday afternoon, while I was sitting in Lieutenant Pitout's office, Captain Swanepoel came into his office and told Pitout that he been put on duty for the coming Sunday from 6.00am to 6.00pm. Lieutenant Pitout was not happy about this arrangement as he had something to do late on Sunday morning. When he mentioned this to Captain Swanepoel, Swanepoel said the following words, 'Kyk, ek glo nie hy sal so lank hou nie.'[1] It was then that I realised that they were talking about Neil. I remembered that that morning, when I had been taken from my cell, his cell was already empty. I realised that he was under interrogation and that a long period of interrogation, at least until Sunday, was envisaged. I made a mental note of the date, which was Friday 29 January. I deduced that Neil was now undergoing the rough time that Lieutenant Whitehead had threatened.

17. I did not see Neil in his cell at supper time that night of Friday 29 January. I also did not see him at all on Saturday 30 January. I was now worried about him.

18. On the morning of Sunday 31 January, I realised that Neil was back in his cell, because food was brought to his door. However, it was obvious that something strange had happened, because Neil was not coming to his door to collect the food. At supper time, his food from lunch was still there but it was untouched. The guard who was bringing supper called to him but got no response and left the food there. So both his lunch and his supper stood untouched outside his door. I then called the guard and asked him what was going on with Neil. He indicated that Neil was sleeping.

19. Again, on the morning of Monday 1 February, he was out of his cell by the time I was taken out. On Monday evening, when they opened my door for supper, I saw Neil coming from inside towards his cell door. I made as if to greet him and he immediately hesitated and did not walk any nearer to the grille. I was puzzled and beckoned him to come closer. We then communicated with each other in very low undertones and with a combination of hand signs and whispers. He indicated to me that the people upstairs on the tenth floor knew that he and I had been speaking. Thus he did not want to speak. I asked him how they knew. He pointed around the corner towards the guard. I then asked him what had happened and he made signs with his hands indicating that he had been broken. It was as if a stick was being broken. At the same time as he made this hand signal, he actually whispered the words, 'I've broken'. He was very downcast; everything about him spoke of defeat and resignation. I asked him what they had done to him. He indicated that they had given him electric shocks and

1 'Look, I don't think he'll last that long.'

that he had been kept awake and standing for a certain amount of time. I asked him what the implications were and he said that he had been forced to say that he had SACTU links. He said, and I quote verbatim, 'They forced me to say that I am a communist'. He then started crying and said, 'They just must not ask me any more questions'. Our conversation stopped shortly after that.

20. I can't remember whether I spoke to Neil on Tuesday 2 February. However, on the afternoon of Wednesday 3 February, the entire investigation staff went out for a *braaivleis*.[1] I was taken down to my cell at about 12.00 noon. Neil was already in his cell. When the guards opened the door at the usual supper time, about 4.00pm, Neil came to the door and I began speaking to him. He was very nervous about the fact that he had been brought down early. He interpreted this as meaning that they had started to interrogate other people on the basis of things that he had said, and that they were now putting him aside to work on others. The person he specifically feared for was Elizabeth Floyd. I told him that he was over-reacting and informed him about the *braaivleis*. He was very depressed, tearful, a totally different person from the person I had known before. I was desperately trying to lift his spirits and to perk him up. I kept saying to him that he should not give up at this stage. I told him that he should just try in his mind to emphasise the positive aspects. It was difficult to communicate with him and I don't think I got through to him. he indicated to me that he felt that for the foreseeable future he would remain in detention.

21. The next morning, Thursday 4 February, on my way to the showers, I passed Neil just outside my cell. He was coming down the passage walking west to east and I was heading east to west to go and fetch my shower kit. I presume that he was coming back from the showers. He was walking on his own. I greeted him and said, 'How's it, Neil?' He looked up and there was virtually no acknowledgement or recognition in his eyes. His posture was very slumped over. He was completely downcast. He moved his right arm slightly as an attempt at a greeting. This was totally out of character because normally if we met in this way he would have stopped and we would have said a few words to each other and then moved along. He was walking very slowly. He was listless.

22. That evening, when the doors were opened for supper, he looked so bad that I actually decided not to talk to him. I now realised that, since he had come back from his session on the tenth floor the previous weekend, he had undergone a progressive deterioration. It was the kind of disintegration which was making him into a zombie. I felt now that, if I tried to reach out to him, it might make the whole situation worse. I actually moved away from my door so that he could not see me. The guard then came and closed my door and I stood watching Neil through my peep hole until his door was eventually closed.

23. That evening and night I worried about his condition. For the first time, I began to think that he might commit suicide. I decided that the next day I would speak to Cronwright and tell him that, as a suicide risk, Neil should be transferred to a psychiatric ward or at least put into one of the suicide-proof cells. I dozed off and fell asleep. I noted that Agenbag checked once that night. Later, in the early morning, I heard the commotion of voices speaking in the passage, and, because this was completely out of the ordinary, I realised that Neil had died.

24. That morning, February 5, I confronted Lieutenant Pitout with the fact that Neil had committed suicide. At first he feigned ignorance but then I told him that I

1 barbecue.

knew, and that I had seen him building up to it. Later that day, he came to me and asked me whether I wanted to make a statement. I replied that I did. He gave me paper and a typewriter and I typed a statement which I finished the next Monday morning. I signed the statement but it was not sworn to. Lieutenant Pitout gave it to Major Cronwright. Major Cronwright told me a couple of weeks later that he was not going to act on my statement. He said that this was because his men do a good job, they work hard and he was going to protect them.

For legal reasons, paragraphs 25-30 have been omitted.

AURET VAN HEERDEN

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at Johannesberg on 20th day of September 1982.

ROBIN CHARLES READ
Commissioner of Oaths

STATEMENT OF ALEXANDER MBATHA

1. REMOVAL FROM SANDTON POLICE STATION

1.1. *Time:* 2.15am. *Date:* 18 November 1981

1.2. A black security policeman woke me up in my cell, and told me to follow him as I was wanted for interrogation at Protea. He signed a register in the charge-office and told the white policeman on duty that he is taking me to Protea for interrogation. I noticed the clock in the charge office — the time was 2.15am. He handcuffed my hands at the back and lead me out of the charge office to a car, where two other black security policemen were seated, one on the driver's seat and the other on the passenger seat in front. We got in the back seat of the car.

(I do not know their names but I can identify them).

They then drove off to Protea police station:

2. AT PROTEA POLICE STATION:

2.1. One of the black security policemen remained with me in the reception office at Protea. My hands were still in handcuffs.

2.2. At about 4am: A white security policeman came and stood at the door of the reception office and immediately another white policeman (Trollip) went past him and came straight to me. He has some article in his hands. The lights in the reception office were lit.

2.3. TROLLIP placed a jersey material hood over my head and remarked that my head is too big, and placed a second on over the first one and told me to stand up.

2.4. I could not see immediately after he placed the first hood over my head. I felt hot on my face with these hoods on.

2.5. He then pushed me from behind and kept talking to me (barking orders of either I must turn left or right and turning in a full circle whilst walking).

2.6. We must have walked for a long time before reaching the place where he said to me that it is the 'room of truth'.

2.7. We reached a place where the handcuffs were removed. And I was told to undress.

1. After undressing my hands were tied behind my back with what I felt like ropes.
2. Over my wrists I could feel that they were placing a plastic band and over the plastic band the ropes were fastened into knots. I could also feel that there was a long rope hanging loose from my wrists which when pulled, my hands were jerked painfully from my back.
3. Please note that as from the reception office up to the torture room and after one person was talking to me:

Threatening, swearing, laughing — mockingly — and asking me questions — THAT MAN WAS TROLLIP.

2.8. BEATINGS FIRST:

1. They (it should have been three to four people) started:
A. By twisting my nose;
B. Pouring water over my forehead (so as to cool my face and head);
C. Punching me, especially on my stomach and chest;
D. Kicking me on my buttocks;
E. Punching me on my ears;
F. Punching on my back and kidney region.

3. INTERROGATION

While punching and pouring water over my head — the voice of TROLLIP wants to know from me:

A. What the Roman Catholic Church stands for as I am the field-worker in the Department of Development;

B. How much do we (Church) support subversion groups in the country;

C. The accusation that Bishop Hurley intends to do what Bishop Lamont did in Rhodesia;

D. My car registration number has been spotted in all the homelands;

E. I must state my ANC activities as I am frequenting Swaziland, Lesotho and Rhodesia;

F. Why do I send my children to school in Rhodesia;

G. The unholy trio of the Bishops' Conference:
1. Bishop Hurley,
2. Father Smangaliso Mkatshwa,
3. Myself as field-worker.

4. ELECTRIC TORTURE SECOND

4.1. I felt an instrument over my private parts which on contact with my skin had a burning effect. This was done over my testicles, penis and thighs (in front). The burning effect was painful.

4.2. It became worse when Trollip said I must bend on my knees on the floor. As this instrument is placed over my private parts I could not cringe away as I was on my knees and at this stage I was feeling dizzy.

4.3. My knees gave in and I remember faintly falling on my side and rolling on the wet floor as this instrument was now applied on my thighs as I was rolling from one side of the wet floor to another.

4.4. I was kicked in that position on the wet floor on my mouth and I bit my tongue severely and my dentures broke, and I spit my dentures out with great difficulty through my mouth as the hoods extended over my chin.

4.5. I felt in that position on the floor something heavy falling on my chest and I lost consciousness completely.

4.6. When I came to I felt a burning sensation on my right thumb, right forefinger and right middle finger. Trollip told me to dress myself after untying my hands but with the hoods on my head. He told me that seeing I did not co-operate with him as he was

interrogating me — Part 2 of my interrogation — I will not be lucky to live again.

4.7. He gave instructions to someone to lead me out to the car. With the hoods on. The hoods were removed only when we were at Uncle Charlie's Garage by the black security policeman.

4.8. We reached Sandton police station. In the morning and the watch in the charge office indicated 9.30am on November 18. I was taken to my cell in that condition — swollen face and eyes, bleeding mouth and nose and my whole body was aching.

APPENDIX A

NATIONAL DELEGATION OF THE DETAINEES' PARENTS SUPPORT COMMITTEE TO THE MINISTERS OF JUSTICE AND LAW AND ORDER

MEETING AT 3PM TUESDAY 27 APRIL 1982 AT HOUSES OF PARLIAMENT, CAPE TOWN

MEMBERS OF DELEGATION

Representing Cape Town DPSC, Mr H. Floyd.

Representing Durban DPSC, Mrs P. Gordhan.

Representing Johannesburg DPSC, Professor H.J. Koornhof, Mr T. Mashinini, Dr M. Coleman.

PROPOSED AGENDA:

As already indicated, the DPSC wishes to cover the following subjects:

1. Official parameters of interrogation practices.
2. Departmental safeguards against abuses.
3. Principles of detention provisions of Security Legislation, and also the question of bannings.
4. Separation of Justice and Police responsibility in decisions to detain, prosecute or release.

INTERROGATION PRACTICES

The DPSC is well aware that detainees, particularly those under Section 6, are being subjected to a variety of forms of torture and assault, both mental and physical. This is being widely done on a systematic basis by many members of the Security Police and at many points throughout the country. These practices cannot be considered to be isolated incidents perpetrated by the odd over-zealous interrogator, but are undoubtedly standard procedure sanctioned at some level in the police hierarchy. To enumerate some of the commoner forms:

(a) Continuous interrogation: Interrogation over a period of several days and nights by successive teams of interrogators. This naturally involves sleep deprivation and can also involve deprivation of food and drink and even toilet facilities.

(b) Enforced standing: Standing for long periods during interrogation, including standing on bricks, standing on one leg, standing in an unsupported squatting position.

(c) Humiliation and intimidation: by being stripped naked during interrogation, handcuffing and manacling, shouting, threatening, insulting and being forced to exercise vigorously. Also holding for long periods in solitary confinement without interrogating.

(d) Physical assault: including assault with fists and with various objects.

(e) Psychological assault: includes false reports of death or illness of dear ones, threat of being held in detention indefinitely and, of course, solitary confinement itself.

(f) Electric shock: The equipment for electric shock is available at many Security Police interrogation centres and is in common use. It is also used in conjunction with 'strait-jackets' of wet canvas.

(g) Hooding: Used to induce near suffocation, and also to hide the identity of the Security Police engaged in assaulting the detainee.

(h) Other tortures: include hanging by the arms or legs for long periods, alternate immersion of feet in hot and icy water, and subjection to extreme noise.

Official Sanction of Interrogation Practices

The DPSC wishes to have a clear statement from the ministers as to which of the above practices, if any, are sanctioned by them. In those cases where a particular practice is officially permitted, what limitations are imposed? For example, what is the longest period sanctioned for an interrogation session, how many interrogators at a time; how many teams? Do the ministers sanction removal of detainees from official police centres to isolated areas such as mine dumps, beaches, farms and open bush for the purposes of interrogation? Or does the Security Police have unlimited discretion as to interrogation procedures?

Safeguards Against Abuses

The DPSC knows and understands that provisions are made in security legislation for detainees to be visited by magistrates and inspectors on a more or less regular basis, and also by District Surgeons on an irregular basis. In theory detainees are able to lodge complaints about their treatment to any or all of these state-appointed officials. However, in practice, detainees are discouraged from doing so by the knowledge that the complaint stays within the system and is further likely to rebound in the form of increased pressure to withdraw the complaint. The closed system is the reason why abuses continue unabated and substantially unchecked. The DPSC maintains that the only way in which abuses can be eliminated is by permitting access to detainees by family, lawyers and independent doctors. That is why the DPSC has consistently requested that panels of independent medical practitioners be appointed to visit all detainees. It repeats that demand now. As a matter of interest, the Medical Association of South Africa is a signatory to the Tokyo Declaration with Articles 1 and 2 reading as follows:

1. The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife.

2. For the purpose of this Declaration, torture is defined as the deliberate systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority , to force another person to yield information, to make a confession, or for any other reason.

The medical profession should be placed in the position of being able to carry out its commitment to the Tokyo Declaration.

Principles of Detention Laws

The DPSC is unable to accept our security legislation for two basic reasons:

Firstly, it maintains that the security laws are against the interests and security of our country. They may serve to protect the security of this government, but if a security problem exists, it is of this government's own making as a result of its policies which deny the peaceful and legitimate aspirations of the majority of the population and drive its expressions of protest into violent channels, as the only course left open. Thus the security laws serve to escalate violence and insecurity, as the record shows.

Secondly, the DPSC rejects the detention provisions of our security legislation as running totally counter to all internationally accepted tenets of civilised law and the rights of the individual. Even in Northern Ireland, which has a very much greater security problem than South Africa, safeguards exist in their legislation which protect the rights and health of the individual and which limit the detention period to a maximum of seven days. Section 6 of the Terrorism Act is designed so that the detainee disappears completely from public view, whilst Section 10(1)(a) of the Internal Security Act (the so-called Private Detention clause) is the ultimate in by-passing the

courts in order to impose a jail sentence by ministerial decree. The banning weapon also falls into this category.

The DPSC demands, but does not expect, the scrapping of current security legislation while this government persists with its apartheid policies. As an interim measure, however, it would expect the following rights to be accorded equally to all detainees:

Freedom of access to family (or their appointees).
Freedom of access to lawyers and to the courts.
Freedom of access to independent doctors of one's choice.
An approved Code of Conduct for interrogators.
Strict control and independent monitoring of interrogation practices.
Food and clothing parcels.
Books, newspapers, study materials.
Letters.
Prompt and open reporting of detentions to family and press.

Bannings

The DPSC finds it utterly incomprehensible that any legal system can justify the banning of a person who, after being detained for five or six months or more for the stated purpose of interrogation, is released without any charges. This amounts to trial and sentence by ministerial decree and can only serve to bring our legal system into disrepute in the eyes of the international legal community.

Separation of Justice and Police Responsibilities

There seems to be a lack of clarity as to the separation of functions and responsibilities between the Departments of Justice and of Police when decisions are taken to detain, release, charge, or re-detain under a different act. For example, does the Minister of Justice apply his mind in each and every case to the question as to whether a person should be re-detained under Section 6 of the Terrorism Act after serving out the 14 days under Section 22 of the General Laws Amendment Act, or does he simply rubber stamp a police decision?

As another example, does the Attorney-General return dockets to the police for another 'try' when he is dissatisfied with the information submitted to him instead of ordering the release of the detainee on insufficient evidence? If so, is this not likely to produce an intolerable intensification of pressure on the detainee and also extend the detention period to extraordinary lengths as we have seen recently?

A further unclear area is the mechanism whereby a Section 6 detainee is transferred to Section 12B (the so-called Witness clause). Does the Attorney-General simply rubber-stamp a Security Police decision or does he apply his own mind to such a decision and also to determining the conditions of detention under Section 12B, in which he is supposed to have discretion?

In an attempt to unravel such questions, the DPSC some time ago (on 18 March and 30 March 1982) approached the Attorney-General of the Transvaal with the request for an interview. However, this was refused in his letter of 2 April 1982 and the questions contained in the DPSC's letter of March 30 remain unanswered. They are now referred to the ministers for their comment.

BY HAND

30 March 1982

Mr J.E. Nöthling,
Attorney-General of the Transvaal,
Palace of Justice,
Church Square,
Private Bag X300,
PRETORIA,
0001

Your Ref. 1/4/18/101/82

Dear Sir,

In response to your letter of 24 March 1982, we thank you for your invitation to submit requests for information relating to individual detainees, however, the reason for requesting a meeting with you was to seek clarification of matters of principle, and we reiterate our belief that this can best be achieved by a face-to-face discussion as opposed to protracted correspondence. While we are prepared to discuss individual cases as examples of the more general issues at stake, our concern is with the processes of law involved in the investigation, formulation and prosecution of charges against detained persons.

We are unclear as to the separation of functions between your office and that of the Security Police. In your letter you clearly state your function is to decide, upon evidence gathered by the police, as to whether to institute a prosecution against a specific person or not. For example, if on the basis of a docket submitted to you by the Security Police, you decide there is insufficient evidence for a prosecution, is it your function to prompt the Security Police as to what further evidence they should seek in order for you to bring a prosecution? Or is your refusal to prosecute on the basis of the available evidence in effect a recommendation to release the detainees concerned? What is particularly puzzling to us is the statement in several newspapers during late December 1981 (e.g. reported in the *E.P. Herald* December 25), attributed to the chief of the Security Police Lt. General Coetzee, to the effect "that a member of the Attorney-General's office had been assigned to the Security Police to assist with formulating the charges." This would seem to conflict with your function as we understand it and as it is expressed in your letter.

Another issue which we wish to discuss with you relates to the extraordinary length of time for some conclusion to be reached. In late November 1981, exactly four months ago, one of our members was informed by Col. Muller, head of the Witwatersrand Security Police, that an advocate had been appointed by you, and that matters should now move speedily to a conclusion. Yet of those in detention at the time of Col. Muller's statement, a few have only recently been released, while the majority are still in detention. We are totally at a loss to understand how, after an investigation lasting six months (and four months after the appointment of the advocate from your office to prepare charges), three detainees were brought to court without your office being able to produce a charge sheet.

We also seek clarification in regard to your role in the detention of persons under Section 12B of the Internal Security Act, to which no reference is made in your letter. Our understanding is that the decision in this regard is yours. We would like to know what criteria other than those furnished by Security Police, influence your decision to detain under Section 12B. We also believe that the conditions of detention under Section 12B are subject to your discretion and we would be interested to know the manner in which you apply your mind towards exercising this discretion.

In view of the complexity of these and many other related issues, you will appreciate our reasons for requesting an interview, and we await your early advices as to a time and date convenient to yourself.

For: DETAINEES' PARENTS SUPPORT COMMITTEE

Dr M. COLEMAN

Telefoon
Telephone No. 28-3740

Telegrafiese adres
Telegraphic address.....

Poskode
Postal Code 0001

J 402

By beantwoording meld
In reply please quote
No. 1/4/18/101/82

DEPARTEMENT VAN JUSTISIE ● DEPARTMENT OF JUSTICE
REPUBLIC VAN SUID—AFRIKA ● REPUBLIC OF SOUTH AFRICA

KANTOOR VAN DIE PROKUREUR-GENERAL
OFFICE OF THE ATTORNEY-GENERAL

Private Bag X300,
PRETORIA.

Dr M. Coleman
Detainees' Parents Support Committee,
PO Box 39431,
BRANLEY.
2018

2 April 1982

Dear Dr Coleman,

DETENTION OF PERSONS: YOUR LETTER OF 30 MARCH 1982

With reference to your above-mentioned letter I wish to inform you as follows:

(1) I can unfortunately not agree to discuss with you the way in which I perform the functions entrusted to me by law. In regard to the statement attributed to Lt. Gen. Coetzee in regard to an advocate assigned by me to the Security Police, "to assist with formulating the charges" I wish to explain that I assigned an advocate of my staff, subsequently supplemented by another State advocate, to commence studying the evidence in the case, even before the police investigations had been completed, in order to expedite matters and thus enable me to reach a decision in regard to the matter as soon as possible. However a large volume of evidence is involved and the police investigations are still continuing.

(2) As should be evident from the above I and my staff are doing our best to dispose of this matter with as little delay as possible.

(3) As far as the application of Section 12B of the Internal Security Act, 1950 is concerned, I wish to refer you to the section itself. I exercise my discretion in regard thereto after consideration of all the relevant evidence.

It appears to me that no useful purpose can be served by a personal discussion of general matters regarding this matter.

Yours sincerely,
J.E. Nöthling,
ATTORNEY-GENERAL

APPENDIX B

LETTER FROM THE DETAINEES' PARENTS SUPPORT COMMITTEE TO THE SOCIETY OF ADVOCATES OF THE WITWATERSRAND

Johannesburg, 26 March 1982

The Secretary,
Society of Advocates of the Witwatersrand,
JOHANNESBURG

Dear Sir,

As is probably known to you, this Committee came together as an informal association of parents and relatives of persons taken into detention under the Security Laws and, more particularly under Section 6 of the Terrorism Act 83 of 1967.

The goals this Committee has set itself can be defined as follows:

1. To provide a forum for parents, relatives and friends of detainees, where all aspects of the detentions, individually as well as generally, can be discussed, and
2. As far as possible to alleviate the fate of the detainees and, where necessary, give assistance to their dependents.
3. To alert public opinion to the inherent evils of the Security Laws and more specifically:
   — detention in solitary confinement, without recourse to the Judiciary and in contravention of the internationally accepted principle of *habeas corpus,* and without the comfort of contact with family and friends;
   — cruel and completely unchecked methods of interrogation;
   — a completely 'closed' system of control, which puts the detainee inexorably in the sole hands of the Security Police.
4. To make it known that those detained under the Terrorism Act are, by and large, not in any way connected with acts of terrorism, but on the contrary are involved in activities that foster goodwill among the various population groups (Vide Neil Aggett) and assist in the development and well-being of the poorer section of the South African population.
5. To exert whatever pressure possible to have the Security Laws deleted from the Statute Book, as the normal criminal laws are perfectly adequate to deal with all real acts of terrorism.

Whatever impact we may have made on society in general and certain groups in particular, we have not succeeded in our demand for the release of the detainees.

The period of detention now exceeds six months for several of the detainees, and many of them have now been held for four months and longer. Most of us, parents and relatives, are now extremely concerned about the state of health of those in detention. During the rare visits authorised by the Security Police most of the parents/spouses, these last few weeks, have noticed the extreme pallor, the loss of weight, the lack of vitality of the detainees. Some are being treated for high blood pressure as a direct result of prolonged detention. And, as you know, some have had to be hospitalised under conditions which are not really conducive to their full and speedy recovery.

Those of the detainees who have been authorised to continue with their studies have great difficulty to concentrate on their courses. This even applies to ex-detainees now released, who yet find it difficult to take up their studies from where they left off a few months earlier. This fact is testified to by Ms Jackie Cock of the Witwatersrand University who is in charge of monitoring the studies of the detainees.

Other detainees are the breadwinner for their families, have jobs that may no longer be kept

open for them, have children who cry out for the return of their father or mother.

In bringing the foregoing to the attention of your esteemed Society, we realise that these facts may well be known to you, and that your Society has on several occasions spoken out against this state of affairs.

We have, however, a specific request to formulate and trust that the members of your Society will give it favourable consideration.

It is our fear that in any Court Case(s) that may, finally, be brought against some of the detainees whilst others may be forced to appear as State witnesses, use will be made in Court of statements and/or confessions obtained by the Security Police under conditions which we feel are conditions of extreme stress and duress, extracted from detainees who are, by the very fact of lengthy periods of solitary confinement and cruel methods of interrogation, not in possession of their normal physical, mental and spiritual faculties. Hence such statements should be viewed with extreme caution, if not rejected outright.

Would your Society agree, not only to acquaint your own members of this, but to submit this to the Magistrates and Judges on the Witwatersrand some of whom may possibly be nominated to preside over one or the other of such cases?

That our views are not just forthcoming from a group of concerned relatives can be substantiated in various ways.

Firstly, we enclose a copy of resolutions adopted by a meeting of staff of the medical school of the University of the Witwatersrand, on 18 March 1982. The wording of this three-page document speaks for itself and is in fact couched in stronger terms than this Committee has thus far used itself.

Secondly, we would like to quote extracts of two recent articles in the daily press, quoting two eminent personalities, namely Professor Marinus Wiechers, hoogleraar in staats en volkereg at UNISA, and Professor Anthony Mathews, head of the department of law at Natal University.

Beeld, in its issue of 10 March 1982, quoted Professor Wiechers as follows:

> For the humanist the person and his freedom are in themselves the highest good; for the Christian the person with all his weaknesses and shortcomings, remains the bearer of God's image. This concept demands respect for human dignity and compels one to love one's neighbour. The Rabie Report contains no clear view of man. And that is what it is most deeply concerned with. Because a security system is maintained and threatened by people. Once complete clarity has been achieved about man, his weaknesses but also his dignity, it will be possible to put difficult matters such as detentions, solitary confinement and political trials into clear perspective. Then only will the physical and mental torture of solitary confinement without visits by family, friends and a minister be understood; then only will the support of a lawyer gain meaning. *(Translation from Afrikaans).*

The *Rand Daily Mail* of 23rd March 1982, quotes Professor Mathews as follows (also about the Rabie Commission's Report:

> The Rabie proposals on the other form of detention — pre-trial detention — are even more disconcerting. The detainees who have died have all been pre-trial detainees and adequate protection of future detainees calls for drastic reform of the law. There is every likelihood that abuses will continue and tragedies of the past be repeated unless three main principles of reform are adopted by the legislature. The total period of pre-trial should be short. Britain relies on a combination of seven-day detentions and efficient police detection work. Interrogation of persons held in isolation for much longer than that is a form of mental torture: there is surely evidence enough of that. Limiting the maximum period of detention for interrogation is the most important safeguard for protection of the individual.

The above two quotations are merely extracts from the two studies concerned.

The reflections contained in the 'Parker' report on authorised procedures for the interrogation of persons suspected of terrorism, and the minority report by Lord Gardiner

thereanent, are surely well known to your members.

We would end by quoting from 'A critical survey of our Law' regarding clinical independence of the doctor in the treatment of prisoners, by Professor S.A. Strauss, Professor of Law in the University of South Africa, and in so quoting we are stringing together remarks by Professor Strauss spread over the whole of his survey:

> The treatment meted out to men behind bars — and I am not referring in this context to medical treatment only — in the modern world has become a touchstone for some of the most basic values adhered to by democratic societies. . . . The modern view is that a special duty is cast upon police and prison authorities, and medical officers, because in consequence of the deprivation of his liberty the prisoner no longer has free access to medical practitioners and health-care facilities. . . . As regards persons detained under Section 6 of the Terrorism Act, there is further the extremely discouraging factor that such detainees have no right of access to legal practitioners. . . . Finally, it is observed that Section 6 of the Terrorism Act, which precludes a security detainee from having access to a legal adviser without official permission, can render whatever rights such a detainee may have in regard to medical treatment nugatory in practice from the point of view of their enforcement by means of judicial intervention. Quite apart from having created the possibility of indefinite detention of suspected terrorists, the Act in this respect offends against basic democratic notions valued in the Western World.

We apologise for the length of this letter but hope that the items quoted may be of assistance, and that your Society will agree to bring the subject matter to the attention of Judges and Magistrates, as well as to your own members. If in addition a further public pronouncement could be made, we would of course be most grateful.

We thank you in advance, and meanwhile remain,
Yours faithfully,
for the Detainee's Parents Support Committee,
S. de Beer (Mrs)
(A member)

We are enclosing the following an exures:
1. Resolutions by the Faculty of Medicine, University of the Witwatersrand.
2. Letter from Ms Jackie Cock of the University of the Witwatersrand.
3. Letter to Brigadier H. Muller about K.
4. Letter to Brigadier H. Muller about N.
5. Letter to Minister Le Grange re C.

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG
FACULTY OF MEDICINE

DETENTION WITHOUT TRIAL, SOLITARY CONFINEMENT AND POLICE METHODS OF INTERROGATION

RESOLUTIONS ADOPTED BY A MEETING OF STAFF OF THE MEDICAL SCHOOL OF THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

A special meeting of staff members of the Medical School of the University of the Witwatersrand, Johannesburg, was held on Thursday 18 March 1982, in order to receive a report back on the follow-up to the Faculty's earlier initiatives on the medical handling of the late Mr Steve Biko, and secondly, to discuss the current waves of detentions and the physical and psychological welfare of the detainees. No resolution was put to the meeting on the Biko case as such, because, as a new complaint has been lodged with the South African Medical and Dental Council, the matter could be regarded as *sub judice*.

The following two resolutions were adopted by the meeting, the first with an overwhelming majority in favour and a single dissentient vote, and the second unanimously.

RESOLUTION 1

This meeting of the staff of the University of the Witwatersrand Medical School declares its abhorrence of detention without trial. In particular, we are perturbed by the way in which individuals, including one of our medical students and the daughter of one of our medical professors, are held in solitary confinement and are subjected to intensive and prolonged interrogation. A distressing number of detainees have, in fact, died while in detention and we must assume that the conditions under which they were held were directly responsible for many of these deaths. In recent weeks a number of detainees have been submitted to civilian hospitals suffering from illnesses which, it may reasonably be assumed, have been directly caused by the conditions under which they have been held by the police.

We are of the opinion that solitary confinement and the interrogation methods employed by the Security Police constitute torture, as defined in the Tokyo Declaration, are a crime against humanity and the moral law, and must be resisted because of the harmful effects which they cause not only on the detained, but also on the reputation of the Republic of South Africa. We have no special qualifications for arguing the latter point but, as professionals who have committed themselves to improving the health of all individuals, we feel compelled to speak out against the suffering caused by these measures. Both the physical and the mental effects are potentially serious. Sensory deprivation and isolation are well proven methods for inducing an artificial psychosis or episode of insanity, some of which are permanent. Experimental studies have supported the view that, although the threshold might vary from one person to another, no one is immune to the deleterious effects of mental torture.

We urge immediate access of independent doctors, including psychiatrists, to all detainees presently held and those that may be held.

RESOLUTION 2

This meeting of staff of the University of the Witwatersrand Medical School notes that the British Government in 1972, after hearing evidence of the deleterious effects of solitary confinement and the methods of interrogation that had been used in Northern Ireland, immediately outlawed these 'authorised procedures for the interrogation of persons suspected of terrorism'.

We feel it is imperative that we staff members of the Medical School and other concerned persons inform ourselves more thoroughly on the published results of investigations on the harmful effects of:

(a) solitary confinement,

(b) prolonged and intensive interrogation, and

(c) in the words of the Declaration of Tokyo*, 'deliberate systematic or wanton infliction of physical or mental suffering, by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession or for any other reason'.

We call on individuals with the appropriate background, skills and expertise to come together and apply their scholarly minds to this problem and to inform the community at large of the results of their deliberations.

We view with deep concern the common practice of detention without trial. We urge the Vice-Chancellor to convene a small group of members of Senate and Council, together with representatives of the Society of Advocates, and to seek an interview with the Prime Minister.

Office of the Dean
22 March 1982 Faculty of Medicine

*The 'Declaration of Tokyo' comprises Guidelines for Medical Doctors Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to Detention and Imprisonment: the Declaration was approved by the Council of the World Medical Association in March 1975 and adopted, as amended, by the 29th World Medical Assembly.

LETTERS FROM PARENTS
(Names and addresses removed)

Johannesburg, 21 March 1982

Mr L. Le Grange,
Minister of Law and Order,
Private Bag X9080,
CAPE TOWN.

Dear Sir,
I confirm the telegram being sent to you, as per copy enclosed.

Our son C. was detained on 22nd Sept. 1981 and, hence, is now six months in detention without any charges having been raised against him.

In terms of the recommendations of the Rabie Commission detention beyond the period of six months must be specifically authorised by you and reasons given. As these recommendations have been accepted by the Government, we urge that, unless immediate release of our son be authorised, you please clearly detail the reasons for his continued detention.

We saw our son at John Voster Square on Wednesday the 17th March, 1982, and are most concerned about the quite evident deterioration in his health and general condition.

He looks deathly pale and thin, his eyes have a strange look and he told us he is being treated for high blood pressure, a condition he has suffered from before his detention.

Kindly note that we have been homoeopaths for over thirty years and do not at all approve of allopathic drugs which our son is now evidently being given.

Unless, therefore, our son be released immediately (and, surely, six months is an inordinately long period to decide whether charges are to be laid) we insist that he can be attended by our own Doctor and treated by homoepathic remedies rather than by allopathic drugs.

Your very urgent attention to this matter is requested to avoid further deterioration in our son's condition.

Copies of this letter are going to the Prime Minister, The Minister of Justice, the Minister of Health, Mr D. Dalling, Mrs H. Suzman and Dr M. Barnard, as also to General Coetzee.

May we ask you to please reply urgently for which we thank you in anticipation.

Yours faithfully,
Signed by parents

Brig. H. Muller
John Vorster Square,
Johannesburg.

March 24 1982

Dear Sir,
I write to you because of the concern of our family about the health of N.

The most noticeable aspects about his appearance are his pallor (his skin has a greyish pallor), his considerable loss of weight, and that on occasions his eyes have been red. However he has dismissed our anxiety as he is a cigarette smoker. He says that the ventilation in his cell is very bad, and the air circulates very slowly.

The only exercise he gets is walking up and down his cell — probably a few paces both ways. He never sees the sun either and this adds to the dismal and generally unhealthy conditions in which he is confined.

We also find it strange that during our last visit (at Pretoria Central Prison, on 5th March) he said he was having problems with his teeth, but that he would rather live with these than ask for the State dentist to have a look at his teeth. This is obviously not a normal reaction, and must give rise to the question of his general psychological state.

Under the circumstances, unless N is to be released in the very near future, we must ask that he be given medical and dental attention by independent practitioners in whom he has confidence.
Awaiting a prompt reply,
Yours truly,
Signed by parent

23rd March, 1982

Colonel H. Muller,
Security Police,
John Vorster Square,
JOHANNESBURG.

Sir,

re: K.

We wish to place on record our deep concern about the deteriorating health of our son, K., who has now been in detention for five months.

The conditions of his detention and the effects of solitary confinement are, we believe, contributing to a number of ailments which we enumerate as follows:

(1) FIBROSITIS of the neck and shoulders due to lack of exercise and to a sedentary existence. We understand that the one-hour daily exercise stipulated in the regulations, is not being observed and that the exercising facilities are virtually non-existent.

(2) K. has SHEARMAN'S DISEASE: This chronic back condition has worsened due to his lack of movement. Also, because he has not been provided with a chair which was requested by the General Hospital Physiotherapist.

(3) DETERIORATION OF HIS EYESIGHT: due to the poor light level in his cell. This has necessitated examination by a specialist and we are concerned that his eyesight, which was perfect before his detention, may be permanently affected.

(4) HEADACHES: K. is complaining of continual severe headaches. These may be caused by his eyes or are the psychological effects of solitary confinement. We understand that he has to

resort to strong analgesics to counteract the headaches and these, over a period of time, must affect his general health.

(5) A progressive LOSS OF CONCENTRATION and mental stability directly attributable to the effects of solitary confinement.

(6) MOUTH ULCERS: there are several causes for this condition, which could be due to ill health, a vitamin deficiency, unhygenic eating conditions as well as other causes. Our family doctor recommends that K. be examined by a Specialist Physician immediately.

(7) MARKED LOSS IN WEIGHT: due to either mental stress or low food intake, or both.

(8) BAD SKIN PALLOR: brought on by his poor general state of health and by his prolonged lack of sun and fresh air.

We must view the above symptoms with the greatest concern and voice our opinion that any further deterioration in K's state of health should make hospitalisation an immediate consideration.

We would appreciate the courtesy of your comments.

Signed by parents

C/C Dr Jacobson, District Surgeon.

APPENDIX C

REPLY TO THE SOUTH AFRICAN AMBASSADOR AT WASHINGTON, MR DONALD SOLE, CONCERNING THE HEALTH OF DETAINEES

PREAMBLE

Prominent American politicians expressed concern at the conditions of incarceration of detainees held for interrogation by the South African Police. This followed the death in detention of Dr Neil Aggett on the 5/2/1982 and the hospitalisation of a number of other persons held in solitary confinement in terms of South African security legislation.

On the 12th May, it was reported that Mr Sole, South African Ambassador to Washington, had released a statement to the effect inter alia that the hospitalisations of detainees were as a result of a conspiracy by unnamed persons to give publicity to conditions of detention and that the detainees had faked their illness. (*Rand Daily Mail* 12/5/82.)

This Memorandum deals with the following:

1. The source of the information supplied to Mr Sole.
2. The medical ethics involved in the release of the 'information' contained in the statement.
3. The inaccuracy of the contents of the said statement.
4. The effects of solitary confinement on the health of a detainee.
5. The request for an independent inquiry into the medical condition of the particular detainees mentioned in Mr Sole's statement, as well as the medical treatment of detainees, generally.

1. MR SOLE'S SOURCES

The source of Mr Sole's information was revealed in Parliament by Mr Pik Botha, Minister of Foreign Affairs, on 20.5.82. He informed Parliament that Mr Sole had obtained his information from the South African Police, the very agency which was responsible for the detention and interrogation of the detainees. (*The Star*, 20.5.82.)

2. THE DISCLOSURE OF THE MEDICAL STATE OF DETAINEES

2.1 On March 5th, 1982 the Minister of Justice informed Parliament that it was questionable whether it was ethically justifiable 'to publicly discuss' the psychiatric condition of detainees. (Hansard, 5.3.82, Column 23). The Department of Health has itself stated that 'Permission for the disclosure of a diagnosis may be given only by the patient, next of kin or the medical practitioner in Court under protest'. ('Special Areas of Primary Health', p.33.)

2.2 Mr Sole's statement represents a turnabout on the part of the South African Government. In summary, representatives of the South African Government have seen fit to publicly disclose confidential medical information, which information was based on reports given to them by the Security Police. That this information itself has been refuted by the medical practitioners involved in treating the detainees, underscores the unreliability of the source of the information.

3. THE INACCURACY OF MR SOLE'S STATEMENT

Mr Sole's allegations are refuted as follows:

3.1 Mr Sole alleged that the detainees were all hospitalised at almost the same time, which

was when they had access to their families. Furthermore, Mr Sole stated that there was a conspiracy to highlight mental illness which coincided with a campaign by the detainees' relatives to publicise the conditions under which the detainees were being held.

In reply it must be pointed out that:

a. all communications between detainees and relatives were supervised and controlled by, and in the presence of, Security Police.

b. the dates of hospitalisation reveal no pattern of simultaneous hospitalisation. The detainees referred to by Mr Sole were hospitalised on dates which range from 20.11.81 to 16.3.82;

c. some of those hospitalised received no family visits;

d. the Parents' Support Committee reject strongly the suggestion that they conspired to induce their children to fake mental illness;

e. it was the worldwide concern at the death of Dr Neil Aggett which induced the authorities to refer certain detainees to hospital who should have been taken there earlier.

f. It is difficult to conceive of a conspiracy between the detainees who were held incommunicado in separate prisons up to 600 kilometres apart.

3.2 Mr Sole has stated that 7 of the 9 detainees were faking mental illness. He stated in one instance that psychiatrists could find nothing seriously wrong with detainees Mr Pravin Gordhan and Mr Sam Kikine. However, the psychiatrist, Dr C.S. Levisohn, who treated these detainees, has refuted this claim. He has stated that he could not understand where Mr Sole had obtained his information for this was not what he had reported to the District Surgeon or the Commissioner of Police. (*Natal Mercury* 15.5.82.) As Mrs Gordhan has stated, 'The fact that Pravin was . . . admitted for psychiatric treatment by doctors appointed by the State is sufficient evidence of the truth'. (*Rand Daily Mail*, 13.5.82.)

3.3 Another example cited by Mr Sole is that of Thozamile Gqeta, whom he alleges was released because of his mental condition and yet was able to continue his activities without let up or any sign of mental disturbance.

Mr Gqeta, a prominent trade unionist, was detained on several occasions in 1980 and 1981. On some of these occasions he was maltreated and kept in solitary confinement for long periods of time. In October 1981 his mother and Uncle were killed when their house was burnt down under sinister circumstances. When Mr Gqeta and his girlfriend were returning from his mother's funeral, she was shot dead by Ciskei Police. Shortly afterwards, he was detained yet again. It was at this point that he suffered such severe depression that doctors opposed his continued detention. When his brother visited him in hospital he reported that Thozamile was unrecognisable. A spokesman for the South African Allied Workers Union, (SAAWU) stated (22.5.82) that when Mr Gqeta was released, his mental condition was so poor, he received extensive and regular psychiatric treatment. He was too weak to continue his work for the union even had he wished to.

3.4 With regard to Mrs Levitan, Mr Sole implies that she too faked mental illness and that 'a psychiatrist indicated he could find little wrong with her'.

However, Mrs Levitan was never admitted to a psychiatric ward, but was hospitalised twice as a result of a physical complaint.

3.5 In his disclosure, Mr Sole stated that 'Mrs Mbatha suffered from high blood pressure (she is very obese) and has been treated in hospital for this condition'.

This statement is inaccurate. The facts of Mrs Mbatha's illness are more revealing. In the first instance, Mrs Mbatha is not obese. She was detained in October 1981. The police compelled her to take her two-year old child with her. Subsequently, the police forcibly took the child away without revealing where they were going to place her. They taunted Mrs Mbatha by informing her that the child would be placed in an institution for 'Communist children' administered by the Security Police. Later Mrs Mbatha became ill. Her first request to see a doctor was ignored. Approximately five days later, she was taken to a district surgeon who diagnosed high blood pressure, prescribed medication and instructed the police to bring Mrs Mbatha back within a week. The Security Police neglected to administer the medication and to take Mrs Mbatha back to the district surgeon as instructed.

Mrs Mbatha's condition deteriorated over the next fortnight until she collapsed suffering

inter alia from partial paralysis. Mrs Mbatha was only hospitalised 5 days later after the district surgeon had seen her condition. Whilst she was in hospital, the Security Police threatened her and accused her of shamming.

3.6 Mr Sole claims that 'detainees are able to give the utmost publicity to what in most cases turned out to be unfounded claims of illness'.

In reply, we must point out that —

a. the State has enacted legislation which serves to prevent detainees, their relatives and the press from giving publicity to the conditions of detention, the health of a detainee, or the methods of interrogation. (The Police Act, The Terrorism Act, the Prisons Act.) In terms of Section 6 of the Terrorism Act not even a parent is entitled to know if a detainee has been hospitalised. To us, the major cause for concern is not the publicity given to the conditions of detainees but, on the contrary, the secrecy surrounding their detentions.

b. There is no public access to the complaints made by the detainee to the police, the Inspector, the magistrate or the district surgeon. Until such access exists there can be no guarantee that the detainee's complaints will be acted upon. The case of Mrs Mbatha is evidence of the potential for neglect where the detainee is dependent on the will of her captors to see that he or she receives medical attention. This would appear to be aggravated where the authorities' attitudes, as exemplified by the attitude of Mr Sole's informants, is one of scepticism towards the complaints of detainees.

3.7 Mr Sole states that the comparison between the treatment of detainees in South Africa and the use of psychiatric hospitals followed by other countries is not relevant.

We believe that this assertion should be qualified. In the first place we would point out that the clinical independence of the doctor treating a detainee patient has not been accepted by the South African authorities. A detainee has no right to see a doctor of his choice. Even a decision of the State-appointed doctor concerning the *medical* treatment of a detainee may be overruled by the Security Police. (See the record on the Biko inquest.) Furthermore, communications between the detainee and the doctor have been relayed back to the Security Police.

Secondly we believe that the widespread use of detention in solitary confinement for long periods of time with or without exposure to the Security Police's methods of interrogation can have, and has had, profound psychological effects on the human mind. It is artificial to distinguish this form of mental treatment on the basis that it does not take place in a hospital. Such treatment is no less sinister because it takes place in a police station and detainees are merely treated in a hospital.

As regards the coupling of solitary confinement with drastic methods of interrogation, we refer to the words of the legal representative instructed by the Minister of Law and Order. Mr Schabort opposed the publication of a statement made by Dr Neil Aggett 14 hours before he died, and in which he stated that he had been blindfolded, punched, kicked, electrically shocked and kept awake for days at a time. Mr Schabort argued that publication of this statement was not in the national interest because it 'would disclose the working methods and techniques of the Security Police'. (*The Star*, 3.6.1982.)

4. Solitary Confinement and Mental Health

4.1 The implications of Mr Sole's statement are that solitary confinement per se poses no threat and has no effect on mental health. This view is shared by the Minister of Law and Order, Mr Le Grange, who has stated in Parliament that solitary confinement is not mental torture. It should be pointed out here that solitary confinement for lengthy periods up to and sometimes exceeding a year is widespread practice in South Africa. Its use is mostly confined to persons detained without charge under legislation dealing with the 'security of the State'. (See 'Report on the Report of the Rabie Commission' — Centre for Applied Legal Studies — p.102.)

4.2 Professor C.J. Vorster of the Rand Afrikaans University does not share the view of the Minister of Law and Order. He has stated that solitary confinement is a severe form of mental

torture. (*Rand Daily Mail*, 11.2.1982.) Professor Vorster stated that it is accepted worldwide amongst academics that solitary confinement or stimulus deprivation is at the same level as physical torture. Professor S.J. Saunders, Principal of the University of Cape Town, has stated 'there is absolutely no doubt whatsoever that solitary confinement such as that experienced by detainees held in South Africa under Section 6 of the Terrorism act, may result and frequently will result in serious psychological changes which will impair the detainee's ability to arrive at the truth'. This view is shared by Professors Albino and Mathews of Natal University. ('The permanence of the temporary' *SALJ*, 1966, p.23.)

The Viljoen Commission of Inquiry into the Penal System of South Africa described solitary confinement and spare diet 'as a form of punishment which cannot be tolerated in a civilised society'.

4.3 Professor Vorster, reviewing worldwide literature on the effects of solitary confinement, has said that the effects of this treatment include hallucinations, disorientation, anxiety, delusions, susceptibility to persuasion or propaganda, and severe depression. (*Rand Daily Mail*, 11.2.82.)

5. Rejection of Mr Sole's statement and the Call for an Independent Inquiry into the Treatment of Detainees

Mr Sole's statement ought to be rejected in the first instance because of its inaccuracy and the unreliability of its source and secondly because it implies that detention in solitary confinement is not a threat to the mental health of detainees. In this way, the South African Police and Mr Sole seek to justify its prevalent use.

The detainees concerned see Mr Sole's allegations in a serious light and accordingly have agreed, together with their doctors, to publicly refute Mr Sole's allegations and to grant access to their medical records to any independent inquiry which wishes to establish the correctness of Mr Sole's allegations. However, it is not only the cases of these particular detainees that need to be examined, but the practice of solitary confinement in South Africa and the existence or otherwise of adequate safeguards to guarantee the safety and health of detainees. The media has drawn attention to the tragic death of Dr Neil Aggett. However, Neil Aggett was not the first person to die while detained under Security Legislation in recent years. He was the 50th.

ADDENDUM

Medical Access to Detainees

1. Only State appointed doctors have access to detainees.
2. The detainee has no choice in what doctor he may see.

After the death in detention of Dr Neil Aggett, the Detainees Parents' Support Committee and its Health sub-Committee demanded that an independent panel of doctors chosen by the DPSC have the right of access to all detainees. The State refused to accede to this demand.

3. There is no enforceable right by relatives of detainees to information relating to the health of the detainee.
4. There is no routine psychiatric examination of persons held in solitary confinement.
5. There is no guarantee that a decision by a doctor will not be overruled by the Security Police.

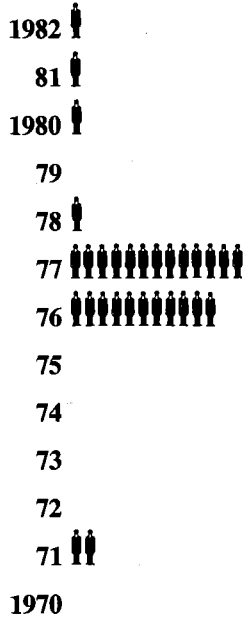
Response by Minister of Law and Order on 24 November 1982

We cannot allow a detainee's own doctor to visit him because of the information that might be passed on. In saying this I am not trying to insult the medical profession. There would be a risk factor whether a detainee was visited by a doctor, a dominee or a legal person.

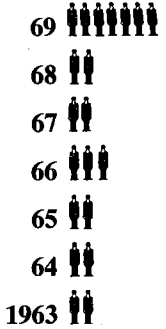
Deaths of People in Detention Under Security Laws

Date	Name	Place	Attributed cause
3.9.63	Solwandle Looksmart Ngudle		Suicide by hanging
Sep 1963	Bellington Mampe	Worcester	No details available
24.1.64	James Tyita		Suicide by hanging
9.9.64	Suliman Saloojee	Johannesburg	Jumped from seventh floor
9.5.65	Ngeni Gaga		Natural causes
9.5.65	Pongolosha Hoye		Natural causes
Aug 1966	James Hamakwayo		Suicide by hanging
9.10.66	Hangula Shonyeka		Suicide (no further details given)
19.11.66	Leong Pin	Leeuwkop Prison	Suicide by hanging
5.1.67	Ah Yan	Silverton	Suicide by hanging
9.9.67	Alpheus Madibe		Suicide by hanging
11.9.68	J B Tubakwa	Pretoria Prison	Suicide by hanging
1968	Unnamed person mentioned in Parliament		No details available
3.2.69	Nicodemus Kgoathe	Pretoria	Slipped in the shower
28.2.69	Solomon Modipane	Pretoria	Slipped on the soap
10.3.69	James Lenkoe	Pretoria	Suicide by hanging
1.6.69	Caleb Mayekiso	Port Elizabeth	Natural causes
16.6.69	Michael Shivute		Suicide. No further details
10.9.69	Jacob Monnakgotla	Pretoria	Natural causes
27.9.69	Imam Abdullah Haron	Maitland	Fell down the stairs
1970	No deaths		
21.1.71	Mthayeni Cuthsela	Umtata	Natural causes
27.10.71	Ahmed Timol	John Vorster Square	Jumped through 10th floor window
1972	No deaths		
1973	No deaths		
1974	No deaths		
1975	No deaths		

Recorded Deaths in Detention



19.3.76	Joseph Mdluli	Durban	Fell on a chair
5.8.76	Mapetia Mohapi	East London	Death by hanging
2.9.76	Luke Mazwenbe	Cape Town	Suicide by hanging
25.9.76	Dumisani Mbatha (16)	Modder B Prison	Natural causes
6.10.76	Unnamed	Carletonville Police Cells	No details available, but head injuries
9.10.76	Edward Mzolo	Johannesburg Fort	No details available
14.10.76	William Namodi Tshwane	Modder B Prison	No details available
19.11.76	Ernest Mamashila	Balfour (Natal)	Suicide by hanging
26.11.76	Thalo Mosala	Butterworth	No details available
11.12.76	Wellington Tshazibane	John Vorster Square	Suicide by hanging
15.12.76	George Botha	Port Elizabeth	Jumped six floors down a stairwell
9.1.77	Nanoath Ntshuntsha	Leslie	Suicide by hanging
9.1.77	Lawrence Ndzanga	Johannesburg Fort	Natural causes
20.1.77	Elmon Malele	Johannesburg	Hit head against a desk after fainting
13.2.77	Mathews Mabelane	John Vorster Square	Fell from 10th floor
15.2.77	Tswafifeni Joyi		No details
22.2.77	Samuel Malinga	Pietermaritzburg	Natural causes
26.3.77	Aaron Khoza	Pietermaritzburg	Suicide by hanging
7.7.77	Phakamile Mabija	Kimberley	Jumped through sixth floor window
1.8.77	Elijah Loza	Cape Town	Natural causes (stroke)
3.8.77	Hoosen Haffejoe	Durban	Suicide by hanging
13.8.77	Bayempin Mzizi	Durban	Suicide by hanging
12.9.77	Steve Bantu Biko	Pretoria	Hit the back of his head against a wall
16.11.77	Bonaventure Sipho Malaza (13)	Krugersdorp	Suicide by hanging
10.7.78	Lungile Tahalaza	Port Elizabeth	Jumped through fifth floor window
1979	No deaths		
10.9.80	Saul Ndzumu	Umtata	Natural causes
13.11.81	Tshifhiwa Muofhe	Venda	'Found dead in his cell'. No further details
5.2.82	Neil Aggett	Johannesburg	Still to be determined



This graph, reading chronologically from the bottom, shows the number of people who have died in detention over the last 20 years. Notable features include the cessation of deaths for four years after the outcry which followed the death of Ahmed Timol in 1971; a sharp increase probably associated with the many detentions after the Soweto riots in 1976; and a decrease after the much-publicised death of Steve Biko.

TORTURE IN SOUTH AFRICA

'The treatment meted out to men behind bars—and I am not referring in this context to medical treatment only—in the modern world has become a touchstone for some of the most basic values adhered to by democratic societies . . . The modern view is that a special duty is cast upon police and prison authorities, and medical officers, because in consequence of the deprivation of his liberty the prisoner no longer has free access to medical practitioners and health-care facilities . . . As regards persons detained under Section 6 of the Terrorism Act, there is further the extremely discouraging factor that such detainees have no right of access to legal practitioners . . . Finally, it is observed that Section 6 of the Terrorism Act which precludes a security detainee from having access to a legal adviser without official permission, can render whatever rights such a detainee may have in regard to medical treatment nugatory in practice from the point of view of their enforcement by means of judicial intervention. Quite apart from having created the possibility of indefinite detention of suspected terrorists, the Act in this respect offends against basic democratic notions valued in the Western World.'

Professor S.A. Strauss, Professor of Law, University of South Africa (quoted from Appendix B of *Torture in South Africa*)

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