

Institutional Hearing:

Prisons

• INTRODUCTION

- 1 As an institution of the state, prisons – together with the police, the judiciary and the security apparatus – were an integral part of the chain of oppression of those who resisted apartheid.
- 2 Numerous statements to the Commission provided extensive evidence of gross human rights violations suffered by prisoners, either in detention or serving prison sentences. This testimony supported the considerable body of published accounts that shed light on the particular role played by prisons in the period under review. It also highlighted the irony that many of the leaders of our new democracy spent long years in prison because of their opposition to apartheid.
- 3 In a significant way, prisons were a microcosm of the society outside. They were protected from scrutiny by law and driven by a system that was determined by the nature of the society they protected. As such, they provide an important window on the nature of the former state. The special hearing was an attempt to open that window.

• PREPARATION FOR THE HEARING

- 4 Choice of venue was important in providing a symbolic focus for the hearings. The first and obvious choice was Robben Island, but unfortunately this proved impossible because of logistic problems and cost factors. It was decided that the Johannesburg Fort was an equally appropriate symbol of political resistance. Its former inmates included Mahatma Gandhi and President Mandela and, as the notorious 'Number Four' prison, it played a significant part in the lives of many apartheid detainees and prisoners, male and female. The hearing was held in the courtyard of the Fort, in a marquee erected alongside the former isolation block.
- 5 The two-day hearing at the Fort was made financially and practically possible through the assistance of the Human Rights Desk of the Gauteng Greater Metropolitan Council.

Focus

- 6 Preparatory discussions led to a decision to distinguish between common law criminals and political prisoners. Political prisoners were particularly disadvantaged by the apartheid system: their imprisonment was retributive and

punitive, making no pretence of rehabilitation. Because the focus of the Promotion of National Unity and Reconciliation Act (the Act) was on the political conflicts of the past, it was decided that the hearing should concentrate on the experiences of political prisoners.

- 7 It was also decided that the hearing should focus on the testimony of sentenced political prisoners rather than detainees, for reasons discussed below. The inevitable effect of this restricted agenda was that there were gaps in the testimony heard.

Pass law offenders

- 8 The first of these gaps concerned the experiences of pass law offenders who, for many of the years under review, formed a large proportion of the prison population – as high as one in every four inmates during the 1960s and 1970s. A strong argument was made for the inclusion of this category of common law prisoners in the hearings.
- 9 Pass law offenders were sent to prison, not because they were criminals, but because they did not meet the administrative requirements of a racist, apartheid law. The result was that a large number of people were sent to prison for offences that would not have qualified as criminal anywhere else in the world. Moreover, the treatment of pass law offenders could well be interpreted as a human rights violation, especially considering the nature of prison life at the time. Prisoners of all races experienced over-crowding and harsh conditions, but conditions were particularly brutal for black prisoners. In addition, gangs dominated the non-political sections of prisons. There was thus a strong probability that offenders, especially young and first-time offenders, would be drawn into gangsterism. Prisons thus became a base for the criminalisation of a significant part of at least two generations of young South Africans.
- 10 However, it was decided that the pass laws and their effects fell outside the Commission's mandate, especially given the requirement that every violation had to originate within a political context. This decision was not, however, a comfortable one for the group planning the hearing, especially in the light of the devastating effect of the pass laws on the lives of so many South Africans.

Detention without trial

- 11 The second gap concerned detention without trial. There were practical rather than legal reasons for excluding detention from the prison hearings. The working group had to take into account the fact that only two days could be allocated to the hearing, putting immense strain on an already overloaded programme. In addition, a number of testimonies about experiences under detention had already become a regular feature at human rights violations hearings around the country, the case of Steve Biko being an important example.
- 12 The exclusion of detentions from the hearing, however necessary, was unfortunate. The Human Rights Committee¹ has estimated that some 80 000 South Africans were detained between 1960 and 1990, up to 80 per cent of whom were eventually released without charge and barely 4 per cent of whom were ever convicted of any crime. Witnesses before the Commission testified about the many different ways in which detention was used as a measure of repression by the state, dating from the passing of the notorious 90-day detention clause in May 1963.

- 13 Prisons played a significant role as the prime site for detention, whether detainees were held for interrogation purposes (particularly in the early 1960s and again between 1976 and 1977), as a preventive measure (as in 1986, where it affected whole communities), or as a deliberate form of intimidation (in the 1980s). Frequently, detention was accompanied by torture and, in all too many cases, death. A paper written as early as March 1983 explained²:

There can be little doubt that the security police regard their ability to torture detainees with total impunity as the cornerstone of the detention system. It put the detainee at complete mercy for the purpose of extracting information, statements and confessions, often regardless of whether true or not, in order to secure a successful prosecution and neutralisation of yet another opponent of the apartheid system. Sometimes torture is used on detainees before they have even been asked their first question in order to soften them up. Other times, torture is used late in the interrogation process when the detainee is being stubborn and difficult.

- 14 As many as 20 000 detainees are thought to have been tortured in detention. At the same time, seventy-three deaths of detainees held under security legislation are recorded.³ Here again, the working group found itself in difficulty. In many cases reported to the Commission, it was not possible to determine under what legislation a detainee had been held – partly because there was no specific question to that effect in the initial questionnaire and partly because the victim's family often did not itself know. It was thus not possible to establish whether many individual cases were the result of 'political conflict', as was required by the mandate of the Commission. In addition, it is clear that many political cases were, in fact, treated as common law prosecutions, such as theft, arson, malicious damage to property and even murder. A senior government prosecutor, for instance, admitted that he "would preferably prosecute under the common law rather than under statutory law, because nobody can really make propaganda against the common laws whilst you can make effective propaganda against the statutory [law]"⁴.
- 15 It was therefore decided to exclude deaths in detention from the prison hearing, on the grounds that these cases would be heard in general victim hearings. The relationship between prisons and the judiciary was excluded because it was dealt with at the hearing on the judiciary.

Farm prisons⁵

- 16 Another gap was the notorious farm prisons system about which nobody came forward to give evidence. The farm prisons system ensured that farmers were supplied with a cheap supply of labour. African people who failed to produce their passes were, in theory, offered the option of 'volunteering' as farm labour in exchange for having charges dropped against them. Arrests for failure to produce a pass became a rich source of labour for the farms. The General Circular 23 of 1954, issued by the Department of Native Affairs stated:

It is common knowledge that large numbers of natives are daily being arrested and prosecuted for contraventions of a purely technical nature. These arrests cost the state large sums of money and serve no useful purpose. The Department of Justice, the South African Police and this Department have therefore held consultations on the problem and have evolved a scheme, the object of which is to induce unemployed natives roaming about the streets in the various urban areas to accept employment outside such urban areas.

- 17 The prisoners were not taken to court but to labour bureaux where they would be induced or forced to volunteer. Joel Carlson, a Johannesburg attorney, uncovered some of the gross violations of human rights that resulted from the system. An affidavit by Robert Ncube in the late 1950s stated:

After I had been there [on a farm] for about four months I noticed one day a boss boy, Tumela, who was only about sixteen years old, beating one of the workers who was cutting firewood. After the assault I noticed this man's nose was bleeding a lot. The man sat down and his nose continued to bleed and he was left there until we were locked up at six o'clock. The following morning he was unable to get up and work. He was shivering all the time. He did not work for three days and on that Saturday morning he died. The boss boy, Philip, told four of the workers to carry him into the room where the dead are kept and the body was left there until Monday morning. On Monday afternoon about half past four, I and seven others, including Philip, carried the body and buried it on the farm. There were other graves where we buried him. I never saw a doctor or the police come to see the body before it was buried.

- 18 As a result of the publicity around this and other cases, the farm labour scheme was suspended. However, within weeks, the government passed an amended Prisons Act of 1959, providing for short-term offenders to be processed quickly through the courts and sent to the farms. The act provided that the farms be considered prisons and that it was a criminal offence to publish anything about prison conditions without the prior consent of the Commissioner of Prisons.

• THE ORGANISATION OF THE HEARINGS

Themes

- 19 Despite these exclusions, the programme for the two-day hearing at the Fort was packed. The themes highlighted for the hearing were:
- a the main political prisons: Robben Island (for blacks), Pretoria (for whites) and Barberton (for women);
 - b the treatment of women prisoners;
 - c capital punishment;
 - d conditions in homeland prisons;
 - e health in prison;
 - f conditions in the 'camps' outside the country.

Witnesses at the hearings

- 20 Testimony was heard from twenty-five witnesses during the two-day hearing. Most witnesses had experienced prison first-hand, either personally or through their immediate families. In addition, evidence was heard from a number of specialists. These included Ms Paula McBride, a regular visitor to death row; Dr Judith van Heerden, an expert on prison health; Mr Benjamin Pogrand, the journalist most closely involved in the prison trials of the 1960s and 1970s, and Mr Golden Miles Bhudu of the South African Prisoners' Organisation for Human Rights (SAPOHR).
- 21 Preliminary discussions were held between representatives of the Commission's working group and the Department of Correctional Services, including meetings in Pretoria and Cape Town. Despite attempts to involve the Department, it eventually declined to participate in the hearing, although Warrant-Officer Steinberg, a warder who had served on death row, appeared in his individual capacity. The absence of the Department was unfortunate as it excluded the possibility of an official response to the testimonies and of an authoritative perspective on changes in prison policy during the years under review.

• THE HEARING

The link between prisons and apartheid

- 22 From the early 1960s, with the introduction of detention without trial under the various versions of the General Law Amendment Act, prisons became an essential part of the apartheid system of control. The incarceration of political opponents became "a significant permanent feature" and by 1976, legislated power effectively meant the "criminalisation of most forms of opposition to the apartheid state". Prisons, therefore, became a "major weapon against political dissent" and the threat of being imprisoned became an essential part of apartheid's 'armoury'⁶.
- 23 In another sense, the realities of life in prison for both common law and political inmates became a mirror of the society outside. As an exiled writer in London, Allen Cook, wrote in 1974:

The appalling fact of apartheid is that a society has been created whereby, for the blacks, the conditions of ordinary life are comparable to those of imprisonment, in terms of conditions normally held to constitute imprisonment: forcible separation from families, controlled living in security institutions behind barbed wire, and supervision by persons with wide powers to command and punish.⁷

- 24 The irony is that, towards the end of the period under review, having been in prison for political reasons became a badge of distinction, most obviously symbolised in the figure of Nelson Mandela. This might explain why so few former political prisoners, who include a large number of current government and political leaders, approached the Commission to give testimony about their experiences. Indeed, when it was suggested to some of these leaders that they should testify at the prisons hearing, they declined — either because they regarded their sufferings in prison as a necessary contribution to the struggle against apartheid or because they felt that their experiences were insignificant when compared to those of others.

Racial segregation

- 25 For most of the period covered by the Commission's mandate, racial segregation was applied at all levels in all prisons. This was evident in the physical separation between black prisoners on Robben Island and white prisoners in Pretoria and in such day-to-day matters as clothing, food and the apportioning of privileges.
- 26 This practice was especially detrimental to black prisoners, as related by Mr Andrew Masondo, who described conditions on Robben Island:

The mere fact that you were black meant your clothing was different, as if the weather treated you differently. Your food was different, as if you became hungry in a different way. The food was a problem because you were with comrades – in fact, I think it was even more painful for people like Kathy [Kathrada] and Laloo [Chiba] who could actually eat bread. Even the amount of sugar in your porridge was different: the blacks got a teaspoon, the others two.

Special treatment of political prisoners

- 27 The classification system, which determined 'privileges', was deliberately used as a weapon against political prisoners. Thus, General Andrew Masondo reported:

If you were arrested for murder or any other crime and it was your first offence, you'd be put into B group and that gave you a lot of privileges. But if you were a political prisoner, you would be put into D group. Being in D group meant at the time you could only get one letter in six months, one visit of thirty minutes in six months ... I never reached A group.

- 28 Similarly, political prisoners were, until the late 1980s, denied any amnesty or remission of sentence. Indeed, prison authorities claimed that there were no political prisoners in South Africa, which was clearly untrue. However, improvements came slowly, mainly in the late 1980s and usually after campaigns inside and outside the prisons, such as those following the Strachan case (see below).
- 29 Former prisoners at the hearing paid particular tribute to the contributions of Ms Helen Suzman (MP) and the regular visits to political prisoners by the International Committee of the Red Cross. These visits were, however, restricted to sentenced prisoners whose conditions did, in general, begin to improve in later years, while those of detainees probably worsened between 1960 and 1990.
- 30 Political prisoners were consistently treated with unusual cruelty, as when Mr Bram Fischer's son died. Fischer's daughter, Ms Ilse Wilson, described what happened:

The most difficult part of Paul's death was that his brother Gustav came from Bloemfontein to tell Bram that Paul had died, and Bram was called late one afternoon for this unexpected visit, and he was told about it. He was not allowed into a private room to talk with his brother. They had to talk to each other through the partitions, with the warders on either side of them. By the time the visit was over, it was lock-up time and Bram went back on his own to his cell and was locked up on his own. For fourteen hours after the news of his son's death, he was left on his own.

Prisons and health

- 31 Several of the witnesses told the hearing of difficulties in receiving proper medical treatment while in prison. Mr Henry Makgothi, for instance, described the difficulties he encountered in receiving treatment for tuberculosis on Robben Island:

It was very difficult to gain access to the hospital. The doctor didn't come often enough, and even then there were so many obstacles they placed in your way before you could get to the hospital; but eventually I did manage to get to the doctor and they sent me to Cape Town for treatment. I was not sent to hospital because I was a dangerous prisoner.

- 32 The overall picture gained at the hearing was that the role played by district surgeons was controversial and questionable.⁸ Medical services often failed prisoners badly. Sometimes, the consequences were very serious, as with Mr Bram Fischer, a leading Afrikaans advocate, who served a life sentence in Pretoria. His two daughters reported how, prior to the discovery of the cancer which finally killed him, their father was treated with woeful negligence and, indeed, considerable malice by the authorities at Pretoria Local:

Bram had a prostate operation in July 1974. About two months after that he saw a Dr Brand because he had an acute pain in the hip. He was not examined but given an analgesic and some physiotherapy. After two weeks of no relief, the physiotherapist referred him back to the doctor and suggested X-rays or an orthopaedic opinion. Nothing was done.

The pain was so severe that Bram needed crutches to walk. The prison didn't supply him with crutches, so the other prisoners made a crutch for him out of a broom. Later he was provided with crutches, but he still wasn't sent for X-rays.

In October, a Dr Groenewald sent him for X-rays and, later in that month, Bram saw an orthopaedic surgeon who warned that the neck of the femur was very fragile and that a fall would be dangerous. On 6 November, Bram fell while trying to shower on his crutches. On 7 November, he asked to see a doctor, who didn't come. On 8 November, he again asked to see a doctor but the medical orderly said it was impossible to get a doctor. On 9 November, Bram was in great pain and the medical orderly provided some analgesics. On 12 November, Dr Brand said there was no fracture. Bram continued in tremendous pain.

Finally on 15 November, nine days after the fall, Bram again saw Dr Brand and an X-ray was at last done. The radiographer identified a fracture of the femur. On 16 November, Bram was seen by a specialist who confirmed the fracture and advised hospitalisation.

On 19 November, thirteen days after the fall and probable fracture and four days after the fracture was diagnosed, Bram was eventually admitted to the HF Verwoerd Hospital.

- 33 Evidence was also heard from Dr Judith van Heerden of the University of Cape Town, the author of a study on prisons and health. She said that her research led her very strongly to one conclusion about the provision of health care in prisons:

To provide proper care for all inmates in custody, a strong argument can be made for the complete separation of health care from custodial care. The Department of Health should take on responsibility for custodial health care. This will also do away with the confusion about the role of nurses. Their present custodial role undermines the trust and confidentiality which should exist between patient and nurse.

- 34 Dr Van Heerden also made the point that, “abuse and the seventy-three deaths of political detainees during the three decades of repression occurred mainly outside prisons, at police stations or at interrogation centres”.

Women in prison

- 35 One of the most startling features of the hearing was the devastating description by women of their experiences as political prisoners. A number of witnesses told of their time as detainees and prisoners. Their conditions were different to those of men and were very severe. Ms Deborah Marakalala was pregnant when she was detained. She described what happened:

Whilst interrogating me, they changed from one policeman to the other, and I would have to answer questions standing. I was not allowed to sit down. At that time I was pregnant. As they could not get anything out of me during the interrogation, they said they would make me tell the truth, and they told me to take off my jacket. I did as I was told.

At that time they started assaulting me. I became lame from the waist downwards, as if I had pins and needles in my body, and I lost my balance and fell and messed myself.

- 36 She was then taken to prison where, after a few days, she asked to see a doctor, as she was “confused, sick and swollen”. No doctor came.

Then one day I felt weak. I lost strength and late that afternoon I started vomiting. I still asked to see a doctor, but I was told the doctor would not come. On the third day I collapsed. That was the time I was actually having a miscarriage, and I was taken to Johannesburg Hospital where they found that I did have a miscarriage.

- 37 Not only did she have a miscarriage but, for a year, she was not allowed to see her children.

- 38 Women were deliberately ‘diminished’; subjected not only to physical discomfort and torture but also to extreme mental torment. The most effective method was to use family matters as a means of applying pressure on women where they were most emotionally vulnerable. Ms Zahrah Narkedien described how, although physical torture could not break her, she could resist no longer when she was told that her nephew would be killed:

They tortured me for seven days, and the only thing that really made me break in the end was when they threatened to go back to my house where my sister was staying with me and kidnap my four-year-old nephew, Christopher, bring him to the thirteenth floor and drop him out of the window.

At that point I really felt at my weakest, because I felt I could risk my life and I could let my body just be handed over to these men to do what they liked, but I couldn't hand over someone else's body, so at that point I fully co-operated.

- 39 Ms Narkedien's testimony confirmed that of Ms Nobuhle Mohapi, at the first human rights violations hearing in East London. Mohapi said that, when she was detained, she was told that her child had died and that she would be allowed to attend his funeral only if she signed a statement that had been prepared for her. She refused to sign and was later released to discover that her child was not dead.
- 40 Although she tended to downplay the effects of her physical torture, Ms Narkedien's description of how she was treated by the security police gave the Commission important insight into the special treatment received by women.

They started to realise that I was enduring [their] abuse, so they took a plastic bag ... One person held both my hands down, and the other one put it on my head and then they sealed it so that I wouldn't be able to breathe and kept it on for at least two minutes, by which time the plastic was clinging to my eyelids, my nostrils, my mouth and my whole body was going into spasms because I really couldn't breathe. They'd do it to me for about three times, but I still wasn't prepared to surrender to them. I was willing to suffer it out.

And then they decided I had to do physical exercises. They always had a woman present when they were torturing me, and they asked her if she would like to leave because they were going to intensify the treatment.

All these days I was wearing the same clothing, just a dress, and I was also menstruating at that time, which I told them so I couldn't stand so long and I was bleeding a lot. They made me lie on the floor and do all kinds of physical exercises, lifting my body with my hands – what they call press-ups – then reducing the fingers until I had to pick myself up with just two fingers. While I was down they would kick me and tramp on me.

All this time it didn't really matter, but it was beginning to hurt physically. They did this for hours on end. Even Inspector de Beer, who was the investigating officer, even he came in and started hitting me with a clothes brush. Any physical pain didn't matter, because I just sort of transported myself out of there.

After a while, he kept intensifying the physical treatment, and he would use both his hands to strangle me and lift me right off the ground and then drop me, grab me by the hair and throw me down and pick me up.

After a good few hours — I think that's when they realised, after the seventh day, that they would have to use psychological treatment, because I was like a person who was physically there but spiritually and mentally I wasn't there. After he threatened me with my nephew, I said I would do anything he wanted.

- 41 Ms Narkedien also gave a chilling account of the physical conditions of the cells in which she was kept.

What really bothered me were the rats. I know there's this chauvinist thing where men would say women are just afraid of mice and rats, but these were not little mice. These were huge rats, the size of cats, that were in the cells, in the passages all the time. I would sit and eat my food, and three of these rats would just sit and look at me. I'd be in the yard praying. The rats would just be around me, and I'd get up and chase them, but they'd come back in. I had to use my towels and clothes to block the access where they were coming in under the door, and the rats just used to rip all that and eventually come in.

One particular evening, one was crawling on me, and I didn't quite mind until it got to my neck [when] I screamed the whole prison down. The guards came running as they didn't know where this problem started. When they eventually came, they found me in the corner, and I was actually eating my T-shirt. That's how berserk I went.

Solitary confinement

- 42 Another remarkable feature of the hearing was the testimony describing the effects of solitary confinement and calling for its abolition. Solitary confinement was used by the former state for two reasons: to bring about the psychological breakdown of political detainees, and as a form of punishment and control of sentenced prisoners. The testimonies were consistent in highlighting such treatment as punitive, cruel and inhumane.

- 43 Ms Zahrah Narkedien described the effects of her isolation:

I had to go down and live in the basement in isolation for seven months. That was very, very painful. I don't even want to describe psychologically what I had to do to survive down there. I will write it one day, but I could never tell you. But it did teach me something, and that is that no human being can live alone for more than, I think, even one month ... because there's nothing you can do to survive by yourself every single day.

The basement was an entire wing of the prison ... I felt, as the months went by, that I was going deeper and deeper into the ground. Physically I wasn't, but psychologically I was ... I became so psychologically damaged that I used to feel that all these cells are like coffins, and there were all dead people in there ... It was as if I was alive and all these people were dead. I was so disturbed but I would never, never let the wardresses know ... But they did destroy me....

My suggestion is that no prisoner, regardless of their crimes, should ever be in isolation per se – not even this section 29 business for two weeks. I know it serves a purpose but, ultimately, when it's prolonged, I don't think anybody can handle it.

I've been out of prison now for more than seven or ten years, but I haven't recovered and I will never recover. I know I won't. I have tried to. The first two years after my release, I tried to be normal again and the more I struggled to be normal, the more disturbed I became. I had to accept that I was damaged. A part of my soul was eaten away as if by maggots, horrible as it sounds, and I will never get it back again.

- 44 Asked if she felt solitary confinement could be defined as 'severe ill treatment', Ms Jean Middleton said:

The prison authorities themselves know it's ill treatment, that's why they use it as a punishment. People found guilty of prison offences are kept in isolation. It is a punishment. I can't describe its effects on you very well, because you do go slightly crazy, and it's very difficult to describe your own craziness ... Colonel Fred van Niekerk of the Special Branch once told a court that prisoners started showing evidence of disorientation within three days.

45 Mr Murthie Naidoo had this to say:

After making a statement, I was taken back to my cell where I was kept in solitary for four months under the 180-day law. I must confess that solitary confinement is the worst kind of torture that can be inflicted on a human being. No amount of physical torture can equal that of solitary confinement. I had absolutely no contact with any of the other prisoners who were almost entirely common law prisoners, but I could continually hear the beating and sjambokking [whipping] of other prisoners.

46 Mr Harold Strachan described how he was permanently affected:

I got put into solitary confinement for eleven months straight. And that cell ... it was as big as four squares on the floor here, and I came out of that cell twenty minutes a day to exercise indoors, in total silence. For eleven months, I didn't speak to anybody ... one handles that sort of thing all right, you just contract your universe a bit, but I had a very serious reading disability, very similar to a stammer in speech, and I have it to this day. I get stuck when reading and can't break past certain words. It is like a stammer in speech, and it is still with me. I don't know how that developed in solitary confinement, but it did.

Capital punishment

The primary purpose of this submission is to ensure that the Truth and Reconciliation Commission places on record the fact that the use of the death penalty in South Africa constituted a gross human rights violation ... It would be academic to ask whether or not the death penalty was associated with 'conflicts of the past'. It was but one of the methods used by those with power to oppress those without. 1 154 people were executed in South Africa in the ten-year period 1976-1985. The state apparatus that arrested, interrogated, tried, imprisoned and executed 1 154 people for capital crimes in South Africa was the same apparatus that maintained, often by brutal force, the apartheid system.⁹

47 As the department that implemented the death penalty, the prisons department formed an integral part of the apartheid system. Testimony at the hearing emphasised that capital punishment was used as an important weapon against opponents of apartheid. More particularly, the audience at the second day of the hearing listened in horror as witnesses told of experiences on death row, providing what one commentator described as the "most damning indictment of capital punishment ever heard in this country".

48 Ms Paula McBride told of her perceptions as a daily visitor to death row between 1987 and 1990. She came to give evidence, she said, because, "In my mind, the death penalty is a gross human rights violation and should be recorded

[as such] at the Truth and Reconciliation Commission.” Capital punishment, she said, “brutalises not only those who are sentenced, but those who sentence them – the judges – and it brutalises our whole country, because if we allow it to happen, we participate in it.”

49 She described in graphic detail what happened when someone was hanged, and the effect it had on families. She cited, for instance, the ‘Christmas rush’ of 1988, when twenty-eight people were hanged in one week. She pointed out that 95 per cent of the people who were hanged were black and that 100 per cent of these had been sentenced by white males. Over the period of the Commission’s mandate, over 2 500 people were hanged in South Africa. In South Africa, as in America, the death sentence was far more likely to be imposed if the victim of the crime was white.

50 Ms Paula McBride describes conditions on Death Row at Pretoria Maximum Security Prison:

The Maximum Security Prison in Pretoria was a prison designed for death. Its sole purpose as an institution was to imprison persons condemned to death, clothe them, feed them and keep them whole until they were killed. However, from the first time a prisoner arrived at Death Row, elaborate mechanisms were put in place to ensure that he or she would not kill themselves. This was a job reserved for the state and no one would take it away.

The lights were on 24 hours a day; prisoners were watched from a grille above their heads, they wore no belts. After the suicide in 1987 of Frikkie Muller, who gouged his wrists with a shoe nail on the day before his execution, all the condemned wore soft shoes ...

No studying was allowed – and prisoners were often taunted with the fact of their impending death. What do you want to study for? Why are you exercising? What is the point of improving your body or mind when you are going to die?.

The routine was ghastly but familiar. The Sheriff would arrive at Pretoria Maximum Security Prison with a batch of notices in his hand ... The prison warders would walk down the silent corridors between the individual cells, and footsteps would stop outside.

Those that were, in [the opinion of the State President] no longer fit for this world were sent to the ‘Pot’ ... It was here, in the waiting cells, that the hourly count down began. It was also here that the traditional silence of Death Row was broken – with singing day and night. Singing mostly of traditional and religious hymns but sometimes of freedom songs where those to be hanged were guerrillas.

During the week that they waited to die, they were measured for the hangman: the thickness of their necks, their height and their weight are all measured to ensure that the length of the drop is calculated correctly.

On the night before the execution was to take place ... each of the condemned prisoners [would be given] a whole, deboned chicken to eat and R4 to buy something from the prison tuckshop ...

The bodies would be taken in the coffins ... to unmarked graves in one of the segregated graveyards around Pretoria ... No family members were allowed to accompany the coffins or to pray while the bodies were interred. At a later date, families were handed a grave number.

- 51 Asked to comment on whether the death penalty was a deterrent, Ms McBride said it had never been proved that capital punishment would stop crime, nor had any of the approximately 250 death row prisoners interviewed ever said they felt it had deterred them. Her verdict on those calling for the reintroduction of the death penalty was clear:

People who put out the call "Hang them ... Bring back the death penalty" do not have any understanding of what it does, not just to the people who are hanged, but to our society. It is a brutal, barbarous, uncivilised, grotesque part of our society and South Africa should be the prouder that we have been one of the countries in the world to take it off our statute books.

- 52 Two witnesses gave harrowing testimony about the time they spent on death row. Mr Duma Khumalo and Ms Machabane Theresa Ramashamola were members of the 'Sharpsville Six'. They were sentenced to death for common purpose, but reprieved the day before they were to be executed. Both described in chilling detail how the experience affected them and their subsequent nightmares. Ramashamola's final statement was received in awkward silence by the hearing:

At the present moment, I don't want to live, as far as life is concerned, if they would have hanged me at that time, it would be much better. It would have been painful then, but that would be it.

- 53 The final witness in this section was Warrant Officer Steinberg, who served as a young warder on death row in Pretoria for more than two years prior to the imposition of the moratorium on hanging. One of the most telling aspects of his testimony was his evidence on the lack of special training given to warders on death row. He was never, he said, asked whether he had moral objections to hanging, nor was he given any advice on how to handle those about to be executed.
- 54 During the tea break after this testimony, a remarkable meeting took place at the entrance to the marquee. Two former death row prisoners shook hands and joked with the man who would, had they not been reprieved, have accompanied them to their execution. It was the kind of meeting that could only have happened at a hearing of the Commission.

Reporting on prisons

- 55 The Commission heard evidence from Mr Harold Strachan, about whose experiences in prison the *Rand Daily Mail* managed to publish three articles in 1965 before he was banned and charged with perjury. The Strachan articles broke an almost fifteen-year silence about prison conditions and resulted in the beginning of wholesale reforms in the prison system. However, the prisons department manufactured a perjury charge against him and the newspaper. Numerous warders and prisoners were used to deny 'a fraction' of his descriptions, and he was again sent to prison.

- 56 Mr Benjamin Pogrand, the journalist primarily involved in the Strachan articles, described the cases against Strachan and the *Rand Daily Mail* as a “series of frame-ups and concocted evidence and mass perjury”. The “Nationalist newspapers and the SABC engendered an atmosphere of fear and threat in the public, so that very few people were willing to assist us with further information, let alone testify for us”.
- 57 Mr Pogrand pointed out that, following the court cases against Mr Strachan and the newspaper, “a blanket of silence descended on the prisons for years to come”. The consequence was a “totally absurd situation that information about jail conditions could only safely be published if the Prisons Department approved publication in advance”.
- 58 The effect of the Strachan prosecutions rippled far beyond prisons. It effectively tied up the resources and energies of the *Rand Daily Mail* for more than four years while the case dragged on. Moreover, the success of the prosecutions sent a sharp warning to journalists to lay off prison stories. The onus was now on the defendant to prove that the published information was correct; in other words, defendants were deemed guilty until they could prove themselves innocent.
- 59 This affected not only stories on prisons, but was later extended to the army and police, placing an effective ban on any adverse reporting of the security forces. It created the climate in which the secret operations of Vlakplaas, for instance, could be initiated and carried out with little fear of exposure.
- 60 The use of the Prisons Act to restrict media coverage of conditions in prisons enabled the authorities to maintain a system of control that could not be monitored by outside society. This allowed abuse and injustice to continue.

The ‘camps’

- 61 Two witnesses gave evidence about the African National Congress (ANC) detention camps in Angola - particularly Quatro, apparently named after the Johannesburg Fort (‘Number Four’) itself. Both testimonies told of severe ill treatment and abuse in the camp, and of continued difficulty in getting satisfactory information from the ANC about what happened there.
- 62 Mr Diliza Mthembu, himself a one-time ANC representative in Benguela and now a sergeant in the South African National Defence Force (SANDF), described his experiences in the “hell” of Quatro. He spoke of his current feelings of being “helpless and hopeless” and of having received no satisfaction from his appearances at previous commissions of enquiry into the camps. He reserved his censure for the ANC leadership:

For the young guys who were working in Quatro, I don’t have any grudge, because maybe myself, if I was in their boots, I would do the same because they were very young. You know, sometimes using very, very young people to run an establishment of such magnitude is very dangerous.

- 63 Mr Joe Seremane, whose younger brother was executed in Quatro, gave remarkably moving testimony about his feelings of betrayal and his inability to reach ‘closure’ because of being unable to obtain clarity about the reasons for his brother’s death.

I have seen what it means to be tortured. But when I think of [my brother] Chief Timothy and compare the way he died to my suffering, my suffering is nothing, and I have decided not to say anything about that. It is just pointless. It is useless. The system [(meaning the previous government)] in a way resembled accountability because when they were finished with me, they threw me on the lap of my people and said "There is your rubbish. We are through with it." And my people (of the ANC) can't come and dump those bones (of my brother) and say "We are through with those bones".

I can ask for my court records and find them and go through the trial today, from the system; but my movement can't offer me a piece of paper to show me how they conducted the trial ... We still want the truth. It is going to be hard to forgive when you don't know exactly what has happened.

• COMMON LAW PRISONERS

- 64 The hearing heard the evidence of Mr Golden Miles Bhudu of SAPOHR. Mr Bhudu gave details of the torture and deaths of common law prisoners in prisons throughout the country. He questioned whether the experiences of these prisoners, in the light of the "perpetuation of the injustices of the past", should fall outside the mandate of the Commission. There was a difference of opinion on the panel about this, but consensus on the need to emphasise that continuing vigilance and care in running all prisons is necessary at all levels.
- 65 The evidence presented by former inmates of the prisons, whether sentenced or in detention, left a clear picture of the role of prisons under apartheid. Imprisonment (and the threat of imprisonment) became an important link in the chain of control, from security forces to police to prison. The Prisons Department was a willing partner in the state's efforts to 'neutralise' and 'eliminate' opposition. The prison gallows became the final instrument of official disapproval.

n FINDINGS ARISING OUT OF PRISONS HEARINGS

The Commission finds that:

- 66 The Department of Prisons co-operated with the former state in the use of imprisonment or the threat of imprisonment in the chain of control and oppression of opponents of apartheid.
- 67 It was the policy of the Department of Prisons to use cruel, degrading and inhuman forms of punishment on prisoners including caning, 'spare' diet, leg irons and solitary confinement.
- 68 The facilities of the Department of Prisons were regularly used by the South African Police for purposes of interrogation and torture.
- 69 The Department of Prisons created the 'farm prison' system as a basis for providing cheap labour for white farmers. Africans arrested for pass law offences were frequently used to provide this form of labour. Although the Commission

was not presented with evidence of this, it has been recorded elsewhere that the system resulted in numerous instances of gross human rights violations, some of which resulted in death.

- 70 The Department of Prisons provided inferior food, clothing, living conditions and medical care for black prisoners.
- 71 Prison staff frequently ignored the particular needs of women in respect to, for example, menstruation, pregnancy, childbirth and parenting. These needs were also often exploited as a way of subjecting women to intimidation and harassment.
- 72 The Department of Prisons co-operated with other structures of the state in the use of capital punishment to eliminate the opponents of apartheid, as well as those found to be guilty of other offences that the state deemed to be worthy of the death sentence.
- 73 The overt paramilitary basis upon which the Department of Prisons was organised, including a system of ranks closely akin to the military and police, contributed to the impression that it was an extension of the security forces. This detracted from its fundamental duty to reform and rehabilitate, as opposed to merely punishing, offenders.