It could be a useful exercise if a comparative study was made between the other 'independent' states and homelands, and the Transkei, to establish whether they have played a similar rôle to the Transkei in the South African "capitalist" system.

Comparisons do very often suggest explanations and answers to outstanding questions.

There is a certain amount of overlap between the material included in Southall's book and other texts, but the inclusion of this material is perhaps necessary to maintain the thrust of his arguments. Southall does at the same time fill in many gaps in our knowledge of the political economy of the Transkei. For example, he includes a chapter on the rôle of the white traders in the political economy of the region. This issue has been hardly mentioned in other texts.

Some of Southall's assertions could have been supported with more statistical evidence. For example, in support of his arguments, he refers to the important issues of land lost and purchased by blacks from whites, gold mine productivity, the gold price and labour wages, but hardly refers to any statistics in this regard. Southall has relied heavily upon sources of an official and non-official nature, but unfortunately practical considerations very often preclude the researcher from relying more upon informal sources like interviews with local people. The opinions and information obtainable from local people can quite easily strengthen or weaken many arguments. In my view, Southall's neo-Marxist conceptual framework provides only part of the explanation for the underdevelopment of the Transkei, but nevertheless, to date it is one of the most sophisticated exposés of South Africa's Transkei. □

by GILBERT MARCUS

ASSAULTS IN DETENTION : TIME RUNNING OUT

The South African Police enjoy a privileged and protected position under South African law. There is probably no other police force in the western world which is able to exercise such extensive powers of arrest and the ability to detain suspects for lengthy periods without trial. In addition, it is an offence in terms of the Police Act No. 7 of 1958 to publish "any untrue matter" in relation to "any action" by the police or in relation to "the performance" of any member of the police, without having reasonable grounds for believing the statement to be true. An onus is placed on the person who published the information to show that he had reasonable grounds for believing the statement to be true. Even if a publisher thinks he has reasonable grounds for believing the truth of allegations concerning the police, he would undoubtedly think twice before going to print knowing that, if convicted, he could be liable to a fine not exceeding R10,000 or to imprisonment for a period not exceeding five years or both such fine and imprisonment. That the police should enjoy this special protection is in itself extraordinary and necessarily gives rise to the suspicion that there must be good reason why the activities of the police require shelter from public scrutiny.

Most police actions take place in the public eye and if there are abuses these can be documented by witnesses. Those who are detained under the security laws do not enjoy such advantages. They are effectively removed from the public gaze being denied access to friends, relatives, lawyers and doctors of their choosing. If there are abuses, there are generally no witnesses apart from those who perpetrated the abuse. What goes on in the interrogation rooms of the security police is not purely a matter of speculation, however. Regrettably it is usually only when there is a death in detention that the public is allowed to hear what is otherwise kept a closely guarded secret. The inquests into the deaths of Steve Biko and Dr. Neil Aggett laid bare what many had feared. In July 1983 Mr. Paris Malatji was shot at point blank range between the eyes by a security policeman, Mr. Harm van As. The conviction of van As for culpable homicide marks the first time that a policeman has been found liable for the death of a political detainee. (More than 50 detainees have died in detention since the first provision for detention without trial was introduced in 1963.)

SPECIAL PROTECTION

It is not only when people die at the hands of the police that abuses reach the light of day, but also when aggrieved persons sue the Minister of Law and Order for damages resulting from injuries sustained by the police. (The Minister is sued in his representative capacity as the person statutarily responsible for the wrongful acts of the police.) Once again, the police enjoy special protections not available to mere mortals. Section 32 of the Police Act provides that "any civil action against the State or any person in respect of anything done in pursuance of this Act, shall be commenced within six months after the cause of action has arisen". In addition, written notice of the intention to take action must be given at least one month prior to such commencement. All legal systems prescribe time periods within which actions are to be commenced. These time limits vary according to the nature of the action but generally a period of three years is the limit within which an action for damages must be instituted. Time limitations of this nature are entirely reasonable. Save in exceptional cases, the administration of justice would grind to a halt if claimants were allowed to institute actions many years after the event. The time limitations prescribed by the Police Act, however,

vary markedly from the usual limitations. The period is very short, there is a requirement of written notice prior to commencement of action, there are requirements as to what must be contained in the written notice, and, most importantly, the time period is absolute, permitting no exceptions or qualifications.

Why then should actions against the police be instituted within such a short period? The ostensible reason is to enable the defendant to investigate the incident giving rise to the claim, to consider his position and to decide whether to resist, capitulate or compromise. The practice belies the theory. The reported cases bear witness to the use to which the time limitations in the Police Act have been put as a means of preventing matters from coming to court. As one practitioner has put it, "meticulous compliance with the time limits is crucial because of the apparent preoccupation of the Minister, or those who advise him, with the precise calculation of days" (R. Selvan, "Limitation of Actions Against the Police – The Case for Reform" **Lawyers for Human Rights** Bulletin No. 3, January 1984). The lengths to which the Minister has been prepared to go to defeat claims due to technical non-compliance with the provisions of the Police Act, are indeed extraordinary. Notwithstanding that there could not conceivably have been any prejudice to the Minister, every point has been taken, whether it be a delay of a few days beyond the prescribed time limits or insufficient compliance with the requirements of the written notice or the failure to address the notice to the correct official. In any other context, such objections would be, in the words of a former Chief Justice, "miserable pettifogging points" which show "a certain stamp of mind".

INSUPERABLE PROBLEM

People detained for more than six months under the provisions of the security laws have, until recently been confronted with the seemingly insuperable problem of instituting civil actions against the security police for unlawful assaults. In many cases assaults have occurred in the first few days of detention and the detainee, denied access to his lawyer, or anybody else for that matter, has been unable to comply with the provisions of the Police Act. Fears have been expressed that assaulted detainees have been deliberately detained for lengthy periods to prevent the institution of civil proceedings. There are several recorded instances of detainees having been kept in detention for well over a year and, in some cases, close to two years (See **Report on the Rabie Report : An Examination of Security Legislation in South Africa (1982)** Centre for Applied Legal Studies, University of the Witwatersrand).

The problem of the detainee who, by reason of his detention, is unable to institute a civil action against the police within the prescribed time limits, was recently dealt with by the Appellate Division in **Montsisi v Minister van Polisie** 1984 (I) SA 619 (A). The simple issue before the court was whether Montsisi was precluded from suing the Minister of Police (now the Minister of Law and Order) due to his failure to institute action within the required time limits. The parties to this dispute submitted an agreed set of facts to the court for adjudication. The truth of the facts, although not yet tested by evidence, was accepted for the purposes of obtaining a ruling on the question of law involved.

Montsisi was arrested on 10 June 1977 and detained in terms of section 6 of the Terrorism Act 83 of 1967. Section 6 of the Terrorism Act made provision for the indefinite detention of any person whom a policeman of or above the rank of lieutenant colonel had reason to believe was a "terrorist" or who had information relating to "terrorism" or other offences specified in the Act. A person so arrested was held specifically for the purposes of interrogation. The Commissioner of Police was empowered to order the release of a detainee when he had "satisfactorily replied to all questions" or when "no useful purpose" was served by his further detention. The Minister was also empowered to order the release of a detainee. The Act further provided that "no person, other than the Minister, or an officer in the service of the State acting in the performance of his official duties, shall have access to any detainee, or shall be entitled to any official information relating to or obtained from any detainee". In addition, the courts were expressly precluded from ordering the release of a detainee. (The Terrorism Act has now been replaced by The Internal Security Act of 1982. Despite cosmetic amendments, most of the obnoxious features of the Terrorism Act remain).

TWICE ASSAULTED

Montsisi was held under section 6 of the Terrorism Act until he was released on 28 July 1978. He alleged that, whilst in detention, he was twice assaulted by the police. These assaults were alleged to have taken place on 13 June 1977 and 27 October 1977. He alleged that he had suffered damages in an amount of R6,750.00. Montsisi only sent written notice of his intention to institute action on 23 November 1978. The Minister raised the defence that the action was barred by virtue of non-compliance with the time limit prescribed by the Police Act. In reply, it was averred that Montsisi had been prevented from instituting his action in time by virtue of the fact that he had been in detention. When the matter was first heard Mr. Acting Justice Kriegler upheld the Minister's defence. Montsisi appealed to the Appellate Division.

In a unanimous decision, the Chief Justice, Mr. Justice Rabie, ruled that it had been impossible for Montsisi to comply with the time requirements of the Police Act by virture of his being a detainee in terms of the Terrorism Act at the relevant time. He said that it was a principle of South African law that a person should not be forced to comply with impossible requirements. In the circumstances, the time limits did not apply for so long as Montsisi was in detention.

While this decision will go some way to mitigating the harsh effect of the Police Act, the time limitations will no doubt continue to be used to defeat good claims. In its present form, section 32 of the Police Act serves only the State and the particular policeman involved. It certainly does not serve the interests of potential litigants or the public at large. It is suggested that the Police do not warrant special protection and that the section be replaced by one more in line with modern notions of civil liability. At the very least, the court should be vested with a discretion to condone non-compliance with the time limits presently laid down. More importantly, where the guardians of society break the law, they should not be allowed to seek refuge behind the technicalities of the Act. The public interest is better served by the full exposure of abuses in open court. □