

## **SACBC'S ATTEMPTS TO SECURE RELEASE OF TORTURED SECRETARY GENERAL, FATHER SMANGALISO MKHATSHWA**

Father Smangaliso Mkhathshwa, secretary general of the Southern African Catholic Bishops' Conference, was detained 12/6/1986. To secure his release three applications were made to the courts.

The first application was based on his detention effected in terms of Section 50 of the Internal Act and converted to a detention under the State of Emergency Regulations without a new arrest. A similar case before the Transvaal Division of the Supreme Court ruled this illegal. A contrary verdict was given in another similar case by three judges in the same division of the Supreme court so the matter, goes to the Appellate Division in Bloemfontein.

The second application was made on the grounds that State of Emergency Regulation 3.1 under which Father Mkhathshwa was held was *ultra vires*. Three judges in the Natal Division of the Supreme Court sitting in Durban came to this conclusion. Before Father Mkhathshwa's case could be settled, three judges of the same division of the Supreme Court sitting in Pietermaritzburg come to a contrary decision. The matter was argued before the Appellate Division in Bloemfontein.

Archbishop D.E. Hurley OMI, President of the Southern African Catholic Bishops' Conference, published a resume of the circumstances of detention and efforts to obtain the release of Father Mkhathshwa, in Pretoria on 11/9/86.

### **Archbishop Hurley:**

Shortly after the failure of the second application (that State of Emergency Regulation 3.1 was *ultra vires*) Father Mkhathshwa, on August 20 and 21, was subjected to the interrogation and torture that has been so widely publicised.

Briefly, he was removed from his place of detention, blindfolded and with hands manacled behind his back, returned 32 hours later after continual interrogation, blindfolded and manacled. He was insulted, stripped of his lower clothing and subjected in a humiliating and indecent manner to electric shock treatment and to the intimidation of gunshot noises near his head.

As soon as the facts were known through his secretary, Sister Cecilia Smit OP, I sent Father Mkhathshwa's own story to the State President by telex with this introduction:

"Mr. State President,

It is with deep horror and distress that I communicate with you a text compiled by Father Smangaliso Mkhathshwa who has been detained at Hercules Police Station in Pretoria since June 12 986. The text describes the treatment meted out to him on Wednesday and Thursday, August 20 and 21 1986. We are confronted here with a crime of torture committed by representatives of the state against a detainee held at the mercy of the state. In the name of the Southern African Catholic Bishops' Conference I call upon you, Mr. State President, to denounce this treatment and to order a thorough investigation of what happened to Father Mkhathshwa and what has possibly happened to other detainees."

I was able to hear from Father Mkhathshwa's own lips an account of what he had suffered when I visited him in the Pretoria Central goal on August 27.

### **Restraint order brought against police**

On Thursday, August 28, the court heard an urgent application brought by the Conference asking for a court order to restrain members of the South African police force "from further assaulting and/or torturing the person of Father Mkhathshwa." In a written undertaking by the Minister of Law and Order placed before the court he said he had taken note of Father Mkhathshwa's allegations. Without admitting that they were correct he had given strict instructions that no member of a force, as defined in the Emergency Regulations, is allowed to act against Father Mkhathshwa in an unlawful manner. The Minister also agreed to pay the legal costs of the application thus far.

It was agreed in court that the Minister would file an affidavit in reply to Father Mkhathshwa's allegations on Friday, August 29. The judge noted that the Southern African Catholic Bishops' Conference would file a new urgent application that, in the event of it being confirmed that Father Mkhathshwa had been assaulted and/or tortured, his detention be declared unlawful on the grounds of bad faith.

### **Minister's allegations rejected**

On Tuesday, September 2, an affidavit by the Minister of Law and Order was produced in court containing allegations against Father Mkhathshwa. These were firmly rejected by Father Mkhathshwa in a responding affidavit. In the light of this the judge decided that there should be a trial to deal with the allegations which read as follows:

The security police knew since 1973 that Father Mkhathshwa was actively involved in overthrowing the existing order in South Africa.

He was an active supporter of the ANC (African National Congress) and supported a wide variety of black activist organisations that were working towards overthrowing the existing order in the country.

Immediately before the state of emergency Father Mkhathshwa was active in organising and carrying out consumer and school boycotts and organised intimidation of people to observe the boycotts.

Father Mkhathshwa played an important role in financing the different activist groups co-responsible for the country-wide unrest situation.

He had trained black activists, including youths, in making petrol bombs.

In all these activities Father Mkhathshwa was parading as a priest of the Roman Catholic Church.

Unfortunately the judge who had given the order for the trial reversed his decision on September 4 saying that he had overlooked a decision. This was by the Judge President of the Transvaal Division of the Supreme Court, to the effect that all matters

concerning the State of Emergency be held in suspense until the Appellate Division had ruled on the *ultra vires* issue in regard to the Regulations.

### **Call for prayer**

While sympathising deeply with Father Mkhathshwa on his continued detention and on all the hardships he has suffered, we hope that he will be given the opportunity to defend himself in open court and to prove that he was indeed detained in bad faith.

We call for continued prayer for him.

We also express our warmest gratitude for messages received from many parts of the world, messages of sympathy and solidarity and of protest against cruelty inflicted on Father Mkhathshwa. Among them we note those from Episcopal conferences and we were especially touched by the message received from Pope John Paul II, through his Secretary of State, Cardinal Casaroli:

“The Holy Father was deeply saddened at the news of the detention and mistreatment of Father Smangaliso Mkhathshwa. He wishes to assure you, your brother bishops and the Whole Church in South Africa of his fraternal solidarity and communion in prayer in these painful circumstances. It is His Holiness’ fervent hope that the present violence and abuse of power will cease and the respect for personal dignity and legal guarantees will be ensured for all. The Holy Father earnestly prays that in your beloved nation there will soon be re-established basic conditions of peace and justice in full recognition of the fundamental rights of the human person.”