

# Detention without trial in South Africa: The abuse of human rights as state strategy in the late 1980's

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"Albeit concealed behind a smokescreen of disinformation, censorship and legal formality, the apparatus of the police state is already well established in South Africa"<sup>1</sup>

In spite of the fact that by the end of August 1990 1250 people had been detained without trial in South Africa since the beginning of the year, and at least 283 were still incarcerated, there was a general perception that the era of mass detention was over. This can be attributed to the success of the hunger strike of 1989 and the lifting of the national State of Emergency on 8 June 1990. The issue of detention has tended to be obscured beneath political developments such as the unbanning of political organizations, negotiations, and the spread of violence. However, the State of Emergency remained in force in Natal, and by August a number of unrest areas had been declared in the Transvaal under the Public Safety Amendment Act. In the meantime the detention provisions of the Internal Security Act, and parallel security legislation in the bantustans, have been used vigorously, particularly in recent months against members of the African National Congress and the South African Communist Party. Allegations of assault and torture continue to be made and hunger strikes are still reported. Detention without trial has tended to take on an unjustifiably low profile, and the recently unbanned political organizations have had surprisingly little to say about it. The continued importance of human rights abuses in South Africa make this an appropriate moment to assess detention as government policy during the second half of the 1980s.

On 23 January 1989 twenty detainees at Diepkloof Prison went on hunger strike, demanding the immediate and unconditional release of all detainees. By the end of March the strike had achieved national dimensions, involving over 700 persons. Although 37 hunger strikes had been recorded in the period June 1986 to January 1989 they were sporadic and isolated. Faced by a national strike, the authorities responded by scattering detainees, and threatened that no-one on strike would be released. However, the pressure on Minister of Law and Order, Adriaan Vlok, was so great under these new circumstances that over 600 people were released by the end of March 1989. More than 10% had been in detention since 1986. The determination of the hunger strikers was illustrated by the fact that 130 were admitted to hospital, from which a number escaped. Sandile Thusi, a Durban detainee, was near death when released after 38 days

without food. His case sums up the power of an apparently powerless group, removed from society for purely political reasons and denied all access to the legal system. At the end of March there were 100 remaining detainees although by the end of August 1989 the population had risen to about 450, while another eight hunger strikes involving 22 detainees were recorded from April to June 1989. At the end of the year the number of detainees had declined to about 60<sup>2</sup>.

From the early 1960s South Africa developed a strong and unsavoury tradition of detention without trial for those who opposed apartheid. The law was, and remains, complex, but three main types of detention can be recognized under the Internal Security Act (Act 74 of 1982) and the State of Emergency (proclaimed under the Public Safety Act (Act 3 of 1953)): preventive; interrogative; and State witness. The Internal Security Act's section 29 was used for long interrogative detention of potential defendants in political trials, while section 31 was used to hold State witnesses. In March 1986 section 28, the preventive detention clause, collapsed in the face of court challenges requiring the State to furnish reasons for continued detention. However, both it and section 50 (short term preventive detention) became superfluous after the declaration of a full State of Emergency on 12 June 1986. Sections 3(1) and 3(3) of the security regulations<sup>3</sup> allowed for detention for any purpose as defined under the Emergency. Each case had, nevertheless, to be reaffirmed with the annual renewal of the Emergency.

While the scale of detention varied over the years there was a clear trend towards greater implementation. Using a three year rolling average it is possible to show that there was rapid expansion in the late 1970s, reaching a plateau in the early 1980s. The figures available are probably underestimates, years and categories are sometimes unclear, and disaggregation of annual totals is often problematic. However, from 1975 to 1984 it would appear that at least 5000 people were detained<sup>4</sup>. In 1985 over 10000 were held, more than 70% of them (7361) under the partial State of Emergency. By the end of this second Emergency on 7 March 1986, 12144 had been detained. With the declaration of the third (national) State of Emergency in 1986 at least 30000 were held (10000 in the initial 5 weeks, or one every five minutes) aided by a remission granted to common criminals on Republic Day 1986. This figure declined to about 5000 during the fourth Emergency of 1987-1988, and 2000 during the 5th of 1988-1989. This compares with 11500 in the first (1960) Emergency and 2430 after the Soweto rising of June

1976; and the 25000 detained in toto up to 21 July 1985<sup>5</sup>.

### LARGE SCALE

Detention thus reached deep within organizations and into the furthest parts of rural South Africa. This was a particular characteristic from mid 1986, with small towns and their organizations and activists experiencing severe repression<sup>6</sup>. In turn this made the documentation of the crisis more difficult: the scale of detentions, censorship, and the poorly developed structure of human rights monitoring outside urban areas together made the rural picture at times indistinct. Of the 1986-1988 Emergency detainees, 30-40% were children under 18<sup>7</sup>, some as young as 8, and 75% belonged to United Democratic Front (UDF) affiliated bodies<sup>8</sup>. Detentions crippled national and regional executives of the UDF, and had a powerful effect on Azanian People's Organization (AZAPO) affiliated groups, and other organizations with a Black Consciousness tradition. Politicized youth in area congresses and student and pupil organizations were the main target of the State, but detention affected an astonishingly wide cross section of people: the Detainees Parents Support Committee (DPSC) in late 1986 highlighted the detentions of a 9 year child in East London and an 80 year old man in Reitz, Orange Free State<sup>9</sup>, for example. Overall the two largest groups affected were students and teachers, and civic association members; followed by unionists, clergy and journalists. The relative numbers of types of person detained do not, however, necessarily give an accurate picture of the impact on local communities; and there are in any case methodological problems in such classification.

The purpose of detention was the obvious gathering of intelligence and occasional recruitment of informers; the destruction of anti-apartheid organizations by separating them from leaders and activists; and general intimidation, disruption and deterrence which forced thousands underground. Such people became used to a nomadic existence which threatened political activity, educational advancement, and livelihood. It was used as part of a general war of terror against those communities which broke away from government structures and developed as centres of people's power in the mid 1980s<sup>10</sup>. For example, it has been estimated that during 1986 and 1987 8% of the population of Alexandria was held in detention<sup>11</sup>. The determination of the authorities to track down activists was shown at Worcester in the Western Cape where a UDF member was detained as a result of a building society withdrawal and cooperation by Allied Building Society staff with the police. Random detention was used to destabilize and spread fear: people were simply in the wrong place at the wrong time. For instance in Pietermaritzburg in June 1986 a Progressive Federal Party (PFP) supporter who placed a challenging advertisement in the local Press was detained for five days; as was a domestic servant, said to be apolitical, who voiced her approval of a holiday on 16 June 1986 too exuberantly on the suburban streets<sup>12</sup>. On 15 June 1986 189 people were detained at a prayer service at St Nicholas Anglican Church in Elsie's River<sup>13</sup>. The circumstances of these detentions were not far removed from those recorded in Argentina in the 1970s even if the results were usually not so disastrous for the victims. It is possible that the threat of detention was as important a

weapon in the armoury of the State as the existence of thousands already locked away.

In effect many detainees, especially those held for over two years since the beginning of the national Emergency, became a group of permanent political prisoners and the forgotten people of a South African gulag<sup>14</sup>. In northern Natal, for example, there is circumstantial evidence that lengthy detentions from 1986 related directly to lack of energetic lawyers and a human rights monitoring structure. The authorities were extremely slow to inform families, who often found out about detained relatives from support groups. Joyce Mabudafhasi of the National Education Crisis Committee (NECC) disappeared in Port Elizabeth towards the end of 1986 and was located in detention at Potgietersrus (over 1000km away) three weeks later<sup>15</sup>. The State was reluctant to supply reasons for detention and in the case of Zwelakhe Sisulu, editor of **New nation**, provided contradictory justifications. At times the State argued that his detention related to journalistic activity; at others to his NECC position, although he never held an official post in that organization and was a prime influence behind a return to school in 1986<sup>16</sup>.

### LISTS

The monthly lists of detainees released in Parliament contained the names only of those held for more than one month. Detainee support groups questioned the currency of these lists and consequently drew attention to the problem of 'missing' persons. Human rights lawyers challenged the legality of some detentions, sometimes successfully, particularly in the Natal (Pietermaritzburg) and Durban Supreme Courts. In most cases, however, security forces tightened their grip, either through new regulations or the decisions of the Appellate Division. The Durban Supreme Court decision to free UDF Natal Executive member Lechesa Tsenoli in August 1986, by setting aside part of section 3 of the Emergency security regulations, was soon overturned by the Appellate Division in Bloemfontein, for example. In general the Appellate Division disregarded the rights of the individual and ruled in favour of the State<sup>17</sup>.

Those concessions won in respect of detention conditions, such as the judicial inspection of detainees, had no force in law and were internal administrative rules. They did not alter the fact that detainees were at the mercy of an unrestrained political police indemnified and enjoying virtual immunity under the Emergency; and which acted as policeman, judge and jailer. There was manipulation of the few rights enjoyed by detainees in terms of study, exercise, clothing parcels, access to doctors and visits; and complaints were investigated by the police and therefore lacked credibility. Detainees were moved regularly from one police station to another, making it difficult for support groups to keep track of them, and often impossible for families to exercise visiting rights. Ironically, for a country which proclaims its Christianity from the preamble to its constitution, detainees were denied Bibles and there is a case on record under the State of Emergency of the refusal to deliver an Anglican prayer book. In rural areas in particular there were complaints of worm ridden food and lack of blankets<sup>18</sup>. The regime suffered by Emergency detainees was arbitrary, putting them at mental and physical risk, and there is evidence that the police disregarded the punitive



and very precise regulations decreed by the Emergency security regulations. Solitary confinement, a gazetted punishment, was abused by the security police, often because of a refusal to mix detainees of different races. There were no rules governing interrogation; and the instructions of doctors were disregarded<sup>19</sup>.

### **ROUTINE**

Prolonged interrogation with no limit on length or nature, random assault including the use of teargas in cells, and systematic torture were experienced in all parts of South Africa and in some areas became routine. The use of teargas was officially admitted by the Minister of Justice who said that 9 instances occurred between 10 February 1987 and 31 January 1988<sup>20</sup>. General physical abuse became so frequent as to be unremarkable and some of the worst instances took place at police stations or isolated anonymous places. In 1985 Wendy Orr, an assistant district surgeon in the Port Elizabeth area, documented through affidavits 286 cases of assault or abuse perpetrated on detainees in a seven week period<sup>21</sup>. Amnesty International commented as early as 1982 that "... detainees were commonly treated brutally during interrogation by security police"<sup>22</sup>, and academic studies show that torture of various sorts was widespread<sup>23</sup>. A National Medical and Dental Association (NAMDA) survey of 600 detainees in July 1985 showed that 83% exhibited signs of abuse and 95% experienced post traumatic stress (PTS) as defined by the American Psychiatric Association. The length of detentions has sometimes been attributed to the need for the authorities to conceal the resultant physical effects<sup>24</sup>. There is no reason to believe that these conditions improved under the 1986-1990 State of Emergency and a number of instances emerged through the fog of censorship, largely as a result of court cases. For example, the maltreatment of Father Smangalis Mkhathshwa, Secretary General of the Southern African Catholic Bishops Conference, was widely reported; and at Westville Prison in Durban the existence of a blacked out torture room was revealed. In the Nair case of April 1986 two policemen were found to have lied in court about the facts of an assault case, and were convicted and fined<sup>25</sup>. Psychological torture took many forms from the refusal to switch off light to the existence of closed circuit television in the more sophisticated centres<sup>26</sup>.

Over the years some detainees were driven by detention conditions to take their own lives, and others were murdered under the cover of suicide and other euphemisms. Deaths in detention from 1963 to 1986 numbered 80<sup>27</sup> and under the State of Emergency continued. There was evidence that security police acted with impunity in the knowledge of their protected position, and that violence was used to extract information, intimidate and punish. Lord Avebury for Amnesty International has pointed out<sup>28</sup> that in other countries the suicide of detainees is unusual as most are committed people with every reason to live. In South Africa the largest group of deaths has occurred within 24 hours and 35% took place in the seven days after detention as normal, healthy individuals<sup>29</sup>. Inquests have generally found no-one to blame. From 12 June 1986 to the end of the decade six more deaths were recorded: Xoliso Jacobs at Upington on 22 Oct 1986; Simon Marule at Bloemfontein on 23 December 1986; Benedict Mashake at

Burgersfort on 26 March 1987; Nobandla Bani at Port Elizabeth on 29 July 1987; Alfred Makaleng at Pietersburg in August 1988; and Albert Simelane at Tembisa on 20 November 1989. At least three of these people were in their 20s and in the case of Mashake the inquest recorded signs of assault on his body although he was alleged to have committed suicide<sup>30</sup>.

### **WOMEN AND CHILDREN**

Women, constituting 10% of the detainee population in late 1986, encountered specific problems, in particular miscarriages after assault, teargassing during pregnancy and the imprisonment of dependent children. At least one foetus was found in a cell; and a two year old child was detained for eight months<sup>31</sup>. Racism was an inevitable concomitant to this pattern: young black men suffered the worst treatment in all senses, mature white women probably the best. Hospitalization ironically provided the most propitious chances for escapes, several of which were recorded, most notably that of four members of the South African Youth Congress (SAYCO) from Hillbrow Hospital to the West German Embassy on 20 March 1989<sup>32</sup>. The greatest concern was expressed about the psychological and physical effects of detention upon children who, having been subject to brutal treatment, showed signs of social alienation through the loss of parental and organizational discipline. At Parys in 1986 there was a case of a boy of 12 allegedly tortured<sup>33</sup>.

Some young detainees were persuaded on release to attend re-orientation camps, where they were subjected to de-politicization through reported brainwashing and intimidation. Six such camps were named in 1986 at Estcourt (Natal), Rustenburg (Transvaal), Barkley West, Kimberley and Port Elizabeth (Cape) and in the eastern Orange Free State<sup>34</sup>. Young ex-detainees were excluded from State schools<sup>35</sup>, while adults lost jobs or pay, particularly in sectors such as the construction industry, and in spite of union attempts to protect them. Of the American based companies present in South Africa, for example, only Mobil and 3M agreed to maintain full pay for persons in detention. Other ex-detainees suffered continual harassment through the laying of trivial or concocted charges often based on false evidence, on top of post-detention stress. It has been estimated<sup>36</sup> that 20-25% of detainees were charged and only 2-4% eventually convicted of an offence in the period 1981-1989: the incidence of withdrawn charges and acquittals was thus high.

There was also an increasing tendency to restrict activist detainees on release, lending credence to the somewhat clichéd claim that they were transferred from a small to a larger prison: South Africa itself, and more specifically, their homes. In effect ex-detainees became their own jailers and by 31 December 1989 there were 658 of them. Some expressed the opinion that they were better off in jail where they were part of a distinct group – under restriction they were insecure and outcast. These effective bannings were less public than the old style Internal Security Act equivalent and could be flexibly tailored with no time limit as long as the State of Emergency remained. They tended to incorporate both functional and geographic limitations and typically prohibited involvement in certain organizations and campaigns, and restricted the individual to a given magisterial district and a specific night-time location.

The last restriction made ex-detainees particularly vulnerable to vigilante attacks, while night-time visits by the police were common. Vulnerability also arose from the long, regular trips required to report to police stations – Chris Ntuli was killed in April 1989 having reported to the police in a Durban township. Two Queenstown detainees were placed under 20 hour house arrest and the requirement that they report twice to the police in the remaining four hours; and a Northern Transvaal restrictee had to report daily to a police station 108km away. During 1988 the authorities were clearly particularly concerned to prevent released activists from participating in campaigns opposed to the municipal elections held on 26 October. Many detainees were prohibited from being in any gathering: when Sandile Thusi of Durban had a visitor the other seven occupants of his house had to leave. These restrictions seriously affected lifestyles, education, employment and political and intellectual activity; and were compared with the banishment orders served in the 1950s and 1960s. Many restrictees suffered from PTS symptoms such as lack of concentration, headaches, sleeplessness or nightmares, and access to doctors was difficult under restriction orders.

### TERROR

A more general terror extended to families. Hostages, nine from one family in Soweto in 1986, were taken, people assaulted and property burned and damaged in attempts to lure wanted people into detention. In late 1986 a 74 year old man was detained as hostage for his son and a 15 year old was locked in a refrigerator on a Soweto dump<sup>37</sup>. More general harassment included hoax phone calls to the families of detained persons and the circulation of forged pamphlets attributed to the authorship of Joint Management Centres, part of the State security system. The children of detained persons were found to be behaving in aberrant ways suggesting psychological damage, and families and ex-detainees were harassed by vigilante groups. A large proportion of young refugees moving around Pietermaritzburg from September 1988 onwards in an attempt to avoid Inkatha retribution was thought to comprise ex-detainees.

The scale of detention without trial noted in the period 1985 to 1989 suggests that the government adopted it as a key tactic. By implication the use of non-Emergency law for political and ideological purposes was seen as flawed as a means to crush popular resistance. Similarly, while use of the courts for massive political show trials was not abandoned, as shown by the Delmas Treason Trial<sup>38</sup>, it proved costly and sometimes embarrassingly inept, as in the Pietermaritzburg UDF/South African Allied Workers Union (SAAWU) Treason Trial of 1985-1986. In resorting to mass violation of human rights and a state of officially sanctioned lawlessness, in which accountability of the security forces to anyone but themselves was minimized, the power of the courts to protect the welfare of those detained was drastically diminished. The main advantage for the State was the ability to act rapidly with little fear of being called to account by members of Parliament or the judiciary.

Although South Africa did not plumb the depths reached by Argentina and Chile in the 1970s, with sports stadia full of detainees and large numbers executed in cold blood, mass detentions pointed to the growing militarization of South African society. In a number of ways South Africa

experienced a bloodless coup. In the second Ernie Wentzel Memorial Lecture Justice John Didcott expressed the view that the country had become lawless because power was exercised lawlessly<sup>39</sup>. The combination of a Parliament with no democratic base, rule by decree and the wielding of virtually unbridled power made detention a natural phenomenon. The National Security Management System<sup>40</sup> shadowing each level of civil power was probably a regulator of detention and other security measures. Mike Loewe, pondering upon his time in detention in the Eastern Cape in 1986, saw in his jailers the faces of the bullies and rugby heroes he had known at school. Helen Suzman and Peter Gastrow in 1985 portrayed the security police as a law unto itself<sup>41</sup> and there is a considerable body of evidence to show that deliberate lack of control in tense situations was used as a terror tactic, especially against the youth. Use of detention was described by the Commonwealth Secretary General Sir Sridath Ramphal as early as 1985 as "... a new dimension of the systematic repression that is apartheid"<sup>42</sup>.

### WHAM

Detention was an integral part of the 'Winning Hearts And Minds' (WHAM) strategy of the government. This comprised three tactics, in which centres of resistance were heavily subsidized materially, popular organizations were undermined, and more pliable political groups eased into officially approved structures. Clearly detention was seen as a way of reducing the power of people's organizations creating opportunities for 'moderate' black political activity. The prolonged or repetitive detention of leaders and activists was designed to cause social and political dislocation as a way of severing links with their support base. A very clear signal was sent to those in both leadership and low level activist positions, and to the community as a whole, to the effect that the price of involvement in anti-apartheid politics could be very high indeed. The length and nature of interrogation in many cases showed that disruption was a primary aim, sometimes for specific reasons. For example, the breakdown in October 1985 of the Port Alfred talks between local businessmen and politicians and popular organizations was directly attributable to the detention of key individuals. Periods of detention bore no relation to the ostensible reason where this was defined beyond vague references to State security. The precise reason was less important than the State's need to remove from circulation influential and articulate opponents. Analysis by the Human Rights Trust has shown that detention was most severe in centres of people's power with well-developed area and street committees, popular courts, and rent and commercial boycotts<sup>43</sup>.

To a very great extent the State was able to rely on the acquiescence of most whites and a majority of professional bodies as it continued to abuse human rights. The Medical Association of South Africa (MASA), for example, expressed little more than polite interest in the problem of detention, existing in a world of ponderous bureaucracy at odds with the need for activism in addressing the issue. There were signs, however, that the authorities were not as sanguine about the adverse publicity derivative of mass detentions as may have appeared. Over the years the DPSC was subjected to virulent attacks by government ministers, and local detainee support groups were harassed. Together these organizations provided enough



information to challenge the bland image of reform propagated abroad and cause severe embarrassment. It is significant that of the 18 organizations restricted on 24 February 1988, two – DPSC and the Detainees Support Committee (DESCOM) – were concerned specifically with detentions. In September 1988 the Prisoners' Welfare Programme (PRIWELPRO) was banned in Transkei. New local groupings had emerged by late 1988, the role of the DESCOMs had been taken over in some instances by sympathetic unrestricted human rights organizations like Black Sash, and the prestigious Human Rights Commission had been established. South Africa, for a number of reasons, is a relatively open society and in spite of its grading by the American Human Rights Watch as one of the four worst abusers in 1987 of human rights organizations and activists (the others being Chile, Czechoslovakia and the Soviet Union)<sup>44</sup> such activism flourished and ensured that the issue of detentions was not forgotten either in South Africa or overseas. Nevertheless the long standing system of censorship, augmented by the Emergency's Media Regulations and endemic self censorship, ensured that the flow of information was minimized.

### UDF

It has been widely argued that a main purpose of the State of Emergency and its detention provisions was to neutralize the UDF. As an umbrella body the UDF was driven largely underground by detention, the threat of detention and post-detention restrictions. In the process it was rendered less democratic by force of circumstance which hampered the openness upon which democracy depends. Nevertheless many of its affiliates not only survived but flourished and the continued popularity of rent and service boycotts, periodic symbolic stayaways and election boycotts point to the underlying spirit of resistance. For example, the three day national stayaway in 1987 to protest at changes in labour legislation was the largest in the history of South Africa; and in the municipal elections of 26 October 1988 10% of blacks voted in spite of massive government pressure and an expensive public relations exercise<sup>45</sup>. Resistance continued despite the detention of leaders and activists and regulations which criminalized the calling of boycotts. Indeed the Defiance Campaign begun in August 1989 suggested that extra-Parliamentary political activity had regained its momentum, and that it would require far more than a policy of detentions and restrictions to curb it. Many of those restricted declared that they would no longer abide by their orders – in July and August 1989 alone 41 persons appeared in court in this connection. During the unrest in the Pietermaritzburg townships the absence of leading UDF personalities in no way inhibited the establishment by **amaqabane** (comrades) of defence committees to oppose Inkatha recruitment drives conducted with the passive and active support of State security forces. Detention hampered resistance, but did not destroy it.

There is evidence in fact that the very nature of detention contained solidarity as well as dislocative potential. The scale, randomness and sheer injustice of detention without trial made their mark even on those who might tend towards apoliticism: detention made more obvious the crudeness of South African State power. Thousands of people were touched, if only obliquely, by detention: extended family members, friends and colleagues of those incarcerated, for instance. The fear caused by

detention stimulated a closing of ranks, forgetting of past differences and diminution of the generation gap. In some cases spontaneous organization among families was noted. The State could not assume even in conservative segments of black society that extreme repression would receive unstinted support, implying the opening of space for political mobilization.

### IMPLICATIONS

For South Africa as a whole the implications of detention without trial have been serious and far reaching. From 21 July 1985 to the end of 1989 over 40,000 people were detained. The severity of the assault on their human rights must not be understated: sudden and arbitrary removal (often at that favoured time of day of the political policeman, the early hours of the morning, when human beings are at their most vulnerable) from the security of familiar surroundings to a restricted environment with an apparently endless time-frame, populated at best by unsympathetic and at worst by hostile and physically abusive characters with virtually limitless power. Outside, Lawyers and judges holding individual rights in high esteem were relatively few in number and where minor dents in the armour of apartheid were made these were quickly repaired by a judiciary owing obedience to State security and group identity. The legal profession, with courageous and honourable exceptions, contributed significantly to the apparently free-fall disintegration of individual human rights in South Africa. One can of course only speculate about the implications of this situation for a future South Africa but it does not seem far-fetched to argue that the legal system long since lost the respect of large numbers of South Africans<sup>46</sup>. There is the danger that detention has come to be seen as a natural accompaniment to political opposition in South Africa, to be used one day under a new dispensation against those who are the current oppressors. For those for whom detention became virtually a way of life, loss of respect for the law and the judicial system would seem to be a natural and logical process.

This article has considered a number of key variables: the size of the detainee population; the types of people involved; the purpose of detention and the conditions under which people were held; the use of further laws and regulations to control and harass detainees on release; and the general climate of informal repression surrounding the townships in particular. It must be concluded that during the late 1980s the government preferred to detain rather than negotiate, that it was a prime actor in lawlessness, and that it contributed in a major way to political violence.

The damage wrought on its own social fabric by the South African government has been major. If the future of South Africa is to be one of democracy and equity, this damage must be repaired. Just as the abuse of human rights has been central to State strategy, so their protection must in turn be central to the liberation struggle. Thirty five years ago the Freedom Charter was uncompromisingly blunt about detainees: "No-one", it declared "shall be imprisoned, deported or restricted without fair trial", in courts "representative of the people". African National Congress guidelines for a future South African constitution published in September 1988<sup>47</sup> are less specific, a cause for concern considering that the charter is seen as an ideal model, and the guidelines an indication of more

pragmatic thinking. The latter propose a Bill of Rights to "guarantee the fundamental human rights of all citizens ... (through) ... appropriate mechanisms for their protection and enforcement". Given the recent history of South Africa, the Bill of Rights and its mechanisms will need to be very clear about the issue of detention without trial in case the temptation to perpetuate a tradition proves too strong. The Namibian example gives reason for hope: constitutional article 11 headed 'Arrest and detention' outlaws arbitrary arrest and detention, limits detention in custody to forty eight hours and subjects a prolongation to the authority of a magistrate<sup>48</sup> □

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23. *Torture in South Africa* (London: Catholic Institute of International Relations, 1982), pp.9-27; D. Foster, D. Davis and D. Sandler *Detention and torture in South Africa: psychological, legal and historical studies* (Cape Town: Philip, 1987); E. Schultz "Medical care of detainees" in N. Haysom and L. Mangan *Emergency law: papers presented at a workshop in Johannesburg, April 1987* (Johannesburg: Centre for Applied Legal Studies, University of the Witwatersrand, 1987), pp.157-190.
24. D. Webster "Repression and the State of Emergency" *South African review* 4 (1988), p.167; G. Bindman *South Africa: human rights and the rule of law* (London: Pinter, 1988), p.104.
25. J.D. van der Vyver "State sponsored terror violence" *South African journal on human rights* 4(1) (1988), note 50; *Weekly mail* 2(37) (19 September 1986), p.3; and 2(16) (25 April 1986), p.9.
26. After the revelation of 24 hours per day CCTV monitoring at John Vorster Square, Johannesburg, DPSC pointed out that it was the security police, not the detainees, who needed monitoring.. *Wee Detainees Parents Support Committee Newsletter* (June 1984).
27. S. Motala argues in *Behind closed doors* (Johannesburg: South African Institute of Race Relations, 1987), p.ix that the status of twelve ceased prisoners in the period 1963 to 1934 is not entirely clear, there is, however, strong reason to believe that they were detainees.
28. *Survey of race relations* (1978), p.116.
29. Detainees Parents Support Committee *Report* (April 1986); S. Motala *Behind closed doors* (Johannesburg: South African Institute of Race Relations, 1987), p.83.
30. *Weekly mail* 4(23) (17 June 1988) 2; and 4(33) (26 August 1988) 2. In the first eight months of 1990 five more political detainees died in custody. Three others who died appear to have been held for criminal offences, but their exact status is unclear.
31. Detainees Parents Support Committee *Report* (January 1986); *Weekly mail* 2(46) (21 November 1986), p.4. The Human Rights Commission recorded four babies born in detention in 1987 and 1988. See *New nation* 3(44) (10 November 1988).
32. *Weekly mail* 5(11) 23 March 1989, pp. 1-2.
33. *Weekly mail* 2(33) (22 August 1986), pp.1, 3.
34. *Weekly mail* 2(37) (19 September 1986), p.2; and 2(38) (26 September 1986), p.2.
35. "Detention" *Work in progress* 56/57 (1988), p.33.
36. *Anatomy of repression* (Johannesburg: Human Rights Commission, 1989), p.2.
37. *Weekly mail* 2(44) (7 November 1986), p.3; Detainees Parents Support committee *Annual report* (1986).
38. Five leading activists were sent to Robben Island in 1988 for sentences ranging from 5 to 12 years, but were released in late 1989 on a technicality concerning the conduct of the trial.
39. *Weekly mail* 4(39) (7 October 1988), p.2.
40. The NSMS, later re-named the National Management System (NMS), was apparently abolished by President de Klerk after his general election victory in September 1989.
41. *Weekly mail* 2(40) (9 October 1986), p.12; *Survey of race relations* (1985), p.446.
42. *Survey of race relations* (1985), p.463.
43. Detainees Parents Support Committee *Report* (October 1987).
44. *Weekly mail* 4(3) (29 January 1988), p.6.
45. "Broadest unity against apartheid" *Upfront* 1(1) (1988), p.4; "State fails to take control" *New nation* 3(44) (3 November 1988), p.6.
46. Five Grahamstown detainees lost a case in which their 1986 detention was challenged. In 1989 they were being harrassed for costs of R25 000. An Albany Dependants Conference spokesperson commented that an attempt to seek legal redress could lead to financial bondage. See *Weekly mail* 5(30) (4 August 1989), p.13.
47. African National Congress *Constitutional guidelines for a democratic South Africa* (1988).
48. *Constitution of the Republic of Namibia* Article 11, p.8-9.