

## laws that protect - laws that endanger

# children under the state of emergency

their only right a name



Gill de Villag/Afrapix

*In June 1989 the International Congress on Working for Children's Rights assembled in Helsinki, Finland. Janet McCurdie of the Institute of Criminology, University of Cape Town, presented a paper on behalf of the Free the Children Alliance, Western Cape. Her contribution has been abridged for SASH.*

**D**iscrimination that disadvantages children in the legal and penal systems manifests itself both in 'the law in theory' and in 'the law in practice'. Racial discrimination is written into the law, for example in group areas, housing, education and labour legislation. In practice, the law draws a disproportionate number of black children into the legal and penal systems.

Discrimination affecting all of South Africa's children has received less attention. This is law and practice that disadvantages children by treating them as adults, thus ignoring their special needs as children. Consider the particularly negative consequences of incarcerating physically and psychologically vul-

nerable children along with adult prisoners. This is an example of a failure to discriminate actually producing discrimination.

In theory, South African law provides for the special treatment of children by means, for example, of the Child Care Act and certain provisions of the Criminal Procedure and the Prisons Acts. In practice, however, security legislation takes precedence over special protection legislation. Placing a child in solitary confinement would constitute neglect under the Child Care Act if committed by a parent or guardian but the state is free to do so under its security laws.

Many children are arrested and charged with the common law offence of public violence. It

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appears that the overly broad definition of public violence is being used as a convenient and legal means of intimidating, controlling and criminalising those involved in political protest against the apartheid regime. It has become common practice for security forces to extract confessions by assaulting children arrested on charges of public violence. The following statement was taken by an attorney representing a youth charged with public violence:

...they put a sack on my face choking me and teargassing to [get me to] admit that I stoned a house of Mr.... Then they forced me to admit and write a statement...On the very same day we appeared at court with the two white policemen who forced us to admit, we then admit[ted] only because those policemen were there...

Lawyers report special difficulties defending these children. They are often not informed as to where the child accused is being detained, and are denied access until the police have extracted a confession. Undefended child-accused are often denied bail and spend months in prison awaiting trial. Where there is legal representation, however, sentences appear to be more lenient and the chances of acquittal, or withdrawal of the charges, greater.

In 1982, South Africa's security laws were consolidated by the enactment of the Internal Security Act. This provides for the indefinite and incommunicado detention without charge of persons for security reasons. The detention provisions expressly override all other statutory and common law provisions. This effectively removes the protection of children afforded by the Child Care and (so far as it goes) the Prisons Acts. It further removes protection by ousting judicial review of arrest and detention practices. The incommunicado detention of children is an extremely harsh practice, exacerbated by the increased risk of police abuse.

Since June 1986 the whole of South Africa has been under a State of Emergency in terms of the Public Safety Act. The Emergency Regulations allow a security force member to arrest any person whose detention is, in the opinion of that member, necessary for the safety of the public, for the maintenance of public order, or for the termination of the State of Emergency. These Regulations do not provide for the specific treatment of children; rather, laws which contain protective provisions are overridden when in conflict with the Regulations. For example, the parent or guardian of a child is not required to be informed of her or his child's detention. A 13-year-old boy who spent three months in detention reported:

At first we were about seven in the cell. The

food we were given was not enough. We had to share from one plate. We were given porridge and tea for breakfast, porridge and soup for lunch and porridge and coffee for the evening meal. We slept on mats on the floor. Three people had to share one mat and we were each given one blanket. We were very cold. I did not see my parents at all during the first two months. We had no hot water and had to shower in cold water. We had no books, magazines or games at all...after the first two months we were taken to another prison...more children were brought in and eventually we were about 37 in the cell.

Since 1976 when children took to the streets in protest against unequal education, they have formed an integral part of the resistance movement. In resisting 'the system' our children have found themselves pitted against the powerful legal machinery of the criminal justice and penal systems. Within five months of the June 1986 State of Emergency, thousands of children had been detained. Serious concern galvanised many extra-parliamentary organisations into campaigning for children's rights. A 'Free the Children' campaign was started in Johannesburg [SASH, Feb. 1987] and this was the seed from which the Free the Children Alliance developed.

In February 1987 the Minister of Law and Order was asked to state the number of people who had been detained and the number of these who were under 18 years of age. He replied as follows:

Extra parliamentary activists and radical groups, amongst others the South African Communist Party, the African National Congress and the United Democratic Front are, for revolutionary and propagandistic reasons, also interested in this information - they misuse it to the detriment of South Africa and the majority of its inhabitants.

Eventually he revealed the statistics. In the interim, however, the state had created a new definition of 'child' which limited the figures released to those of children under the age of 15 years. It is clear that, since children in their late teens constituted the large majority of juvenile detainees, releasing the actual figures would have increased the public outcry. Before long the Commissioner of Police prohibited the call for the release of children. Although the Natal Supreme Court overturned this restriction two weeks later, the state attempted to continue with its enforcement.

By June 1987, mounting publicity and international pressure achieved the release of a large number of child detainees aged 15 years and

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under. In April 1988, approximately 300 children were still being held in terms of security legislation, but by the end of that year only 11 children remained in detention according to the official figures.

Community organisations have recognised that in campaigning for children's rights it is vital to consult with and involve children. We need to take their opinions seriously: to fail to do so would deny them their right to be heard, which Article 12 of the Draft Convention on the Rights of the Child upholds. It must be emphasised that advocacy and action to implement children's rights must not be seen in isolation from the broader struggle for a just, democratic and non-racial South Africa in which the human rights of ALL people are protected.

In campaigning for the implementation of the Convention on the Rights of the Child, much can be learnt from past experience. The networking and co-ordinating of community and service organisations remain difficult. Problems include the suppression of information, the detention and restriction of community leaders, the banning and restrictions on or-

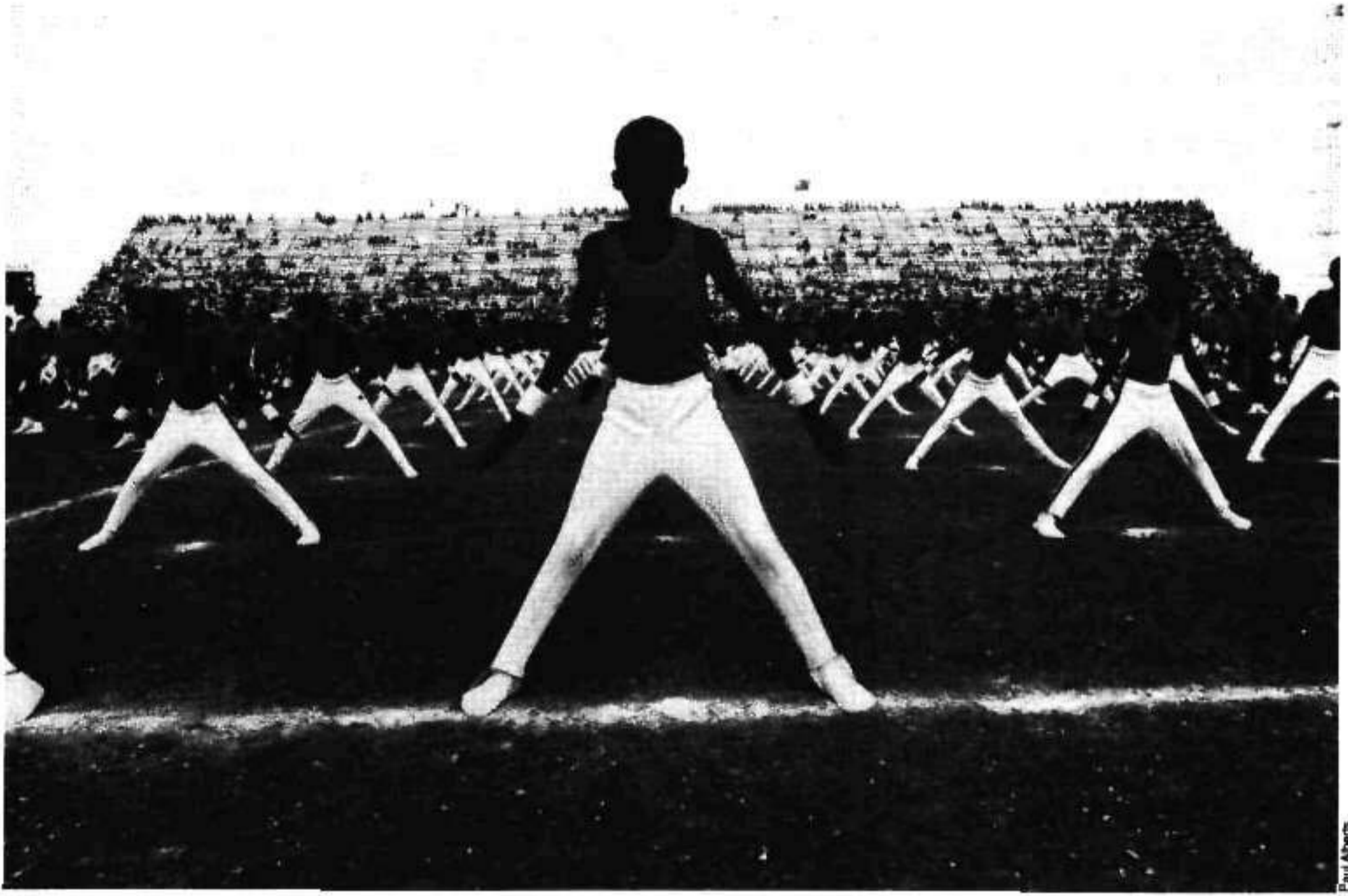
ganisations and meetings, the fostering of inter-group conflict by the state, and poor communication due to inadequate resources and state repression.

To devise a 'masterplan' would not be feasible. Rather, any strategy that promotes children's rights should be identified and enacted. Thus press campaigns, legal action, the development of organisational awareness and educational programmes, and pressure from the international arena will contribute to an awareness of and, ideally, to the implementation of the Convention. International pressure has increased the cost to South Africa of violating internationally accepted standards for the treatment of children. Where such standards are specific it is easier to pressurise the government into adherence to them.

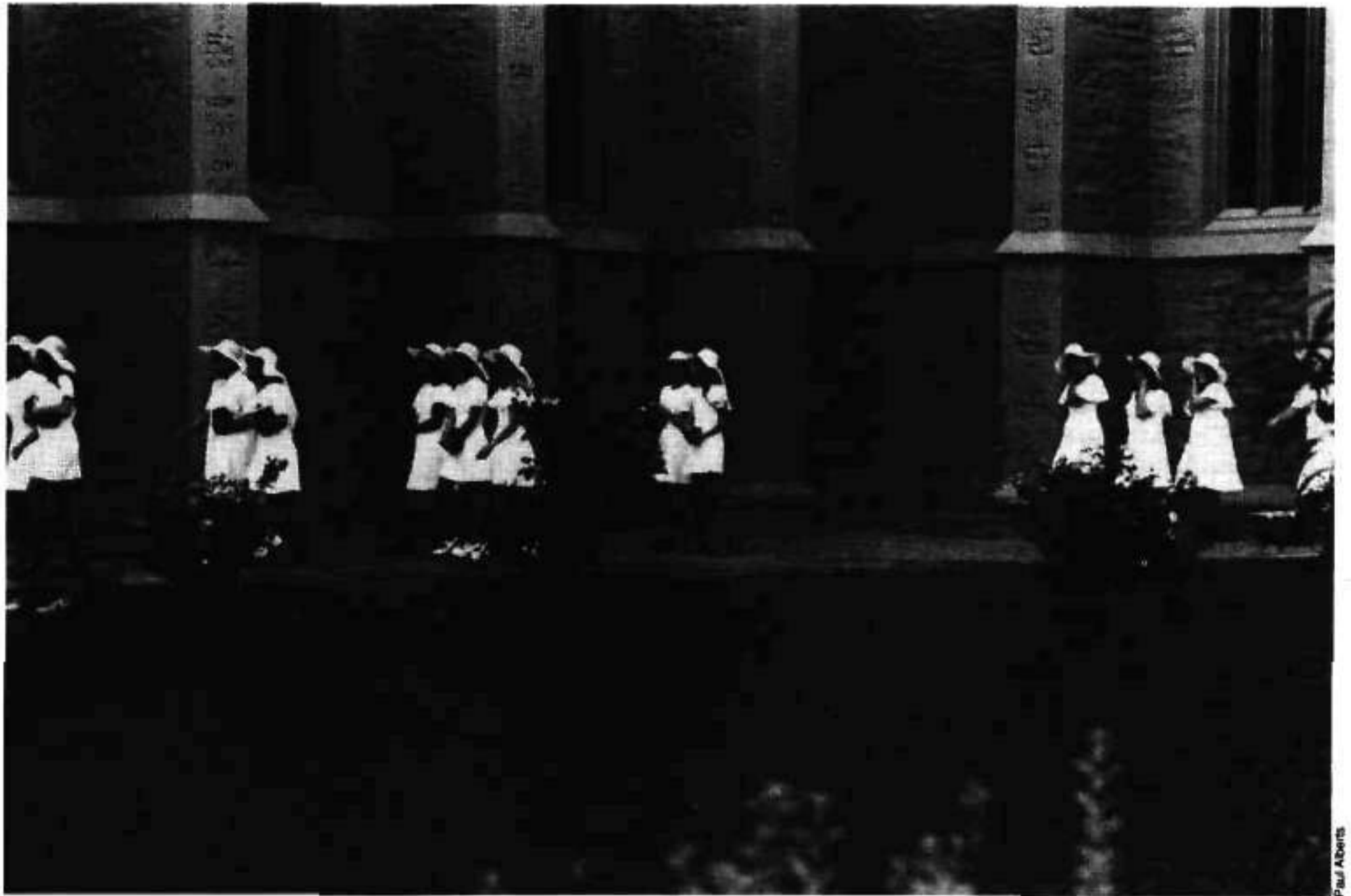
As long as children continue to be subjected to the discriminatory practices of the criminal justice and penal systems in South Africa, the campaign for children's rights in this sphere must continue. As a well-known human rights lawyer has said, 'One child in detention is one too many.' □

*Article 7, Convention on the Rights of the Child: The child shall be registered immediately after birth and shall have the right from birth to a name...*





Paul Alberts



Paul Alberts

Order takes many forms. Above: Bophuthatswana. Below: Oudtshoorn