**THE COURTS GO FAR  
BUT NOT YET FAR ENOUGH**

Over the last year the judiciary has become increasingly willing to challenge laws threatening its jurisdiction. In a series of important judgements, challenging the right of the security police to arbitrarily detain and assault people, it has clearly indicated a lack of confidence in the government and its ability to deal with the current crisis, especially in matters of state security. The attached tables are a partial list of judgements and applications which have appeared in the courts over the last nine months.

It is important to understand how it is that the courts were able to hear these applications and cases at all. It was the case of Alfred Mkhize in June 1985 which set the precedent. In that case, a full Natal bench ruled that courts could give an order that the district surgeon and magistrate present the findings of their visits to detainees to the court.

This was followed by a further important case, namely that of Paddy Kearney in September 1985 (see 'Reason to Believe', DESCOM Bulletin no 9), in which the judge ordered the release of the detainee on the grounds that the Minister had given no reasons for his detention. The latter judgement was brought on appeal to the Bloemfontein courts earlier this year. Although the Appeal Court did uphold the decision of the Natal bench, it restricted the implications of the judgement and the power of the courts to intervene in matters relating to state security. This was done by acceding to the state that there were instances in which :

- reasons could not be given in view of their sensitive nature
- people could be detained if 'in the opinion' of a senior police officer, they posed a threat to the security of the state.

While progressive organisations and activists have welcomed attempts by the courts to restrain the terror tactics of the state, they have had to contend with a sudden and horrifying increase in the number of people killed or wounded as a

**SELECTION OF APPLICATIONS BROUGHT TO  
RESTRAIN POLICE FROM ASSAULTING DETAINEES**

NAMES	DATE	DETAILS OF ACTION	SECTION
Alfred Mkhize	19/6/85	Natal bench ruled that courts could order district surgeons to release details of detainees' health	Internal Security Act
Yunus Shaik Mo Shaik	21/8/85	Order granted to restrain police from assaulting them	Section 29
Eugene Dlamini	6/9/85	Urgent interdict to restrain police assaulting him	Section 29
Sibonelo Ngubane	10/9/85	Temporary interdict granted restraining police from assaulting him	Section 29
Andre Jeftha Jerome Booysen Andrew Odendaal	26/9/85	Urgent interdict granted restraining police from assaulting them	Section 50
All Port Elizabeth and Uitenhage emergency detainees (brought by Dr Wendy Orr and 43 other applicants)	27/9/85	Supreme Court ruling Restraining police from assaulting all emergency detainees and from removing detainees from prison for interrogation	Emergency regulations
Billy Nair	30/9/85	Order granted restraining police from assaulting him	Section 29
Fourteen former detainees	17/11/85	Affidavits submitted to restrain police at Protea Police Station from assaulting emergency detainees	Emergency regulations
Six former detainees	9/1/86	Court rules that the prosecution may legally search police stations for torture equipment	Internal Security Act

LIST OF SECURITY DETAINEES RELEASED AS A RESULT  
OF COURT APPLICATIONS (SEPT 1985 TO MAY 1986)

NAMES	DATE	REASON FOR RELEASE	SECTION
Paddy Kearney	11/9/85	Judge ruled detention unlawful because the police had no reason to believe that he was a danger to state security	Section 29
Dr Rashid Saloojee Auret van Heerden Neil Coleman Simon Ratcliffe Maurice Smithers	17/9/85	2 days before urgent application to the Rand Supreme Court	Emergency regulations
Vuyani Ngcuka Thamara Ngcuka Nomvuyise Stofile Mathemba Balfour Raymond Twaku Bulelwa Thumyisa Zanoxolo Songika	17/9/85	Urgent application to the Ciskei Supreme Court	Section 26 Ciskei National Security Act
Richard Steele Anita Kromberg Sue Britton	20/9/85	Judge ruled detention unlawful because no reason to believe	Section 29
Dr Jeter J Borgsen J Odendaal	25/9/85	Hours before urgent interdict to declare detention invalid	Section 50
Praveen Gordhan Nosizwe Madlala Themba Nxumalo Jan Mkhize Ronnie Khoza	27/09/85	After lawyers had notified Minister of intention to file Supreme Court application	Section 29
Dr Farouk Meer	3/10/85	Day before application for his release	Section 29
Billy Nair	9/10/85	After telex to Minister about planned application	Section 29
Rev Mcebisi Xundu	1/11/85	On eve of application to have his detention declared invalid	Section 29

NAMES	DATE	REASON FOR RELEASE	SECTION
Hewalan Ramgobin Chanderdo Sewpershad Mooroogh Naidoo Dr Essop Jassat Dr Dundubela Mokoena Mr Curtis Mkondo Mr Archie Gumede Mr Paul David Mrs Albertina Sisulu Rev Frank Chikane Mr Cassim Saloojee Prof Ismail Mohammed	9/12/85	Withdrawal of charges of treason during trial in Pietermaritzburg Supreme Court	Internal Security Act
Fanie Kuduka	2/2/86	11-year old boy, whom the court ordered be released into the custody of his mother	Emergency regulations
Sandy Afrika	3/2/86	After papers were served by her lawyers advising police of pending application	Section 29
Shirish Soni	3/2/86	Judge ruled detention unlawful because of detainee's psychiatric condition	Section 29
Yunus Shaik Mo Shaik	25/3/86	After lawyers instructed to proceed with action	Section 29
Mkhuseli Jack Henry Fazzie	23/3/86	Banning order declared invalid because no reasons were given for the order	Section 25
Ramoshoane Mokaba Lulu Mnguni Mofapa Mohlaba Khethiwe Mboweni Thabo Majoe Thabo Phetho Daniel Ranekgetho Joseph Mokoena	26/3/86	After court ruled that the Minister had failed to give reasons for their detention	Section 20
Patti Henderson	5/86	After notification to the police of application	Section 29





result of violent attacks from black vigilante groups. In a well-documented report on vigilantes by Nicholas Haysom, it is concluded that the 'Maganbalala', in spite of specific regional differences and peculiarities, share three common features, namely :

- they emerged in the latter half of 1985
- they have a common target which is the elimination of leaders and groups which are opposed to apartheid and bantustan rule
- they operate with impunity and, in some cases, openly receive the support of the police.

There is now considerable evidence to support the involvement of the police with these vigilante groups. Following attacks on the homes of eight East Rand activists on 28 May 1986, two self-confessed vigilantes were paraded by the United Democratic Front at a Press conference in Johannesburg. The two youths, aged 19 and 20, said that they had been hired by a police informer and had been promised R500-00 to accompany a group of 13 civilians and 5 policemen to attack the homes. The police denied any involvement in the attacks. Also on the East Rand, two high school pupils from Thembisa, claimed that they were part of a gang of vigilantes set up by the township mayor, Lucas Mothiba. Frans Monyebodi, 18, claimed that he was offered money and trained in the use of a rifle by policemen from the East Rand Administration Board in preparation for the elimination of political activists.

Similar allegations were made by a wide range of organisations in the Western Cape, following the violence at squatter camps close to Cape Town. Sam Ndima, who is lieutenant to the notorious Nxobongwana, has made no secret of the fact that the 'witdoeke' get their guns from the authorities. In affidavits collected by the Repression Monitoring Group and presented to the Supreme Court, it is alleged that "Ndima told a meeting at Noxolo School that he had been given firearms by the police

station commander at Athlone to use against the comrades". At a meeting on May 18, Ndima allegedly said that he had been in touch with a police commandant, who had promised 600 guns for the witdoeke.

The activities of 'hired criminals' and of the A-team in Durban are of the same cloth. In a recent incident, a group of black men, armed with R1's arrived at an activist's home in Chesterville and demanded to be let inside, saying that they had come from Umkhonto we Sizwe with guns to arm the people. When the door was inside, they opened fire killing four people. Similar events have taken place in Kwamashu and Umlazi, and further afield in Brits, Pretoria, Johannesburg and the Eastern Cape.

It is these death squads and assassinations that political activists now fear the most. As the ability to contain organised resistance through the judiciary has diminished, other ways of eliminating opposition to government policies have spread. The nameless men in balaclavas, the thud of bricks and the flare of petrol bombs in the night - these illegal actors of the security system are silencing people and spreading terror far more effectively than did detentions or security legislation. Moreover the vigilante attacks can be easily passed off as 'black-on-black' violence and used to reinforce the traditional racist belief in the political immaturity of the black population.

It is time for the judiciary to reassert itself and protect the country's citizens from the vigilantes and the police. It must remember and act upon the words of Mr Justice Leon, who, when giving his judgement on the Kearney case, said :

"It is necessary to remind oneself from time to time that the first and most sacred duty of the court, when possible, is to administer justice to those who seek it."



## LE GRANGE GETS HIS BILLS

Recently the Pretoria government steam-rolled through Parliament two of the darkest acts yet to hit the statute books. The amendments to the Public Safety Act and the Internal Security Act represent are not only a systematic assault on a vigorous and legitimate democratic movement in South Africa. They also explode the myth of Parliamentary democracy and vindicate those who are critical of the tricameral system.

### PARLIAMENT LOSES LEGITIMACY

Early in 1986, Dr Frederick Van Zyl Slabbert, leader of the Opposition and of the Progressive Federal Party, resigned from his party and his position in Parliament. It was act of immense local significance, and gave unprecedented legitimacy to extra-parliamentary politics. A month later Dr Slabbert appeared on a platform of the United Democratic Front, and put his support alongside those of others who have always believed that the parliamentary option afforded no hope for progressive political change.

On the other side of the fence are the Indian and Coloured MP's, who have been co-opted into the tricameral system. Led by the Rev Allen Hendrikse in the House of Representatives and Mr Amichand Rajbansi in the House of Delegates, they maintain that the new political system has provided the opportunity for genuine political resistance to the hegemony of the Nationalists. They felt strongly enough, the issue to swear that if events proved them wrong, they would resign their seats.

They have not. Instead they have watched while two of the most draconian bills ever put before Parliament, have become law. Although there was opposition from their houses, the bills were passed over their heads by the veto of the State President. As Alistair Sparks, former editor of the Rand Daily Mail, says ;

"The way the government has overridden the opposition of the Coloured and Indian houses in passing the new Security Bills, has exposed more vividly than ever how phoney its reform intentions are."

Mr Sparks believes that the ministers should now fulfill their pledge, exercise the ultimate censure and walk out. But there are reasons to doubt their sincerity. Mr Rajbansi himself went along with the declaration of the State of Emergency and supported a decision which has in all likelihood landed us under permanent martial law.

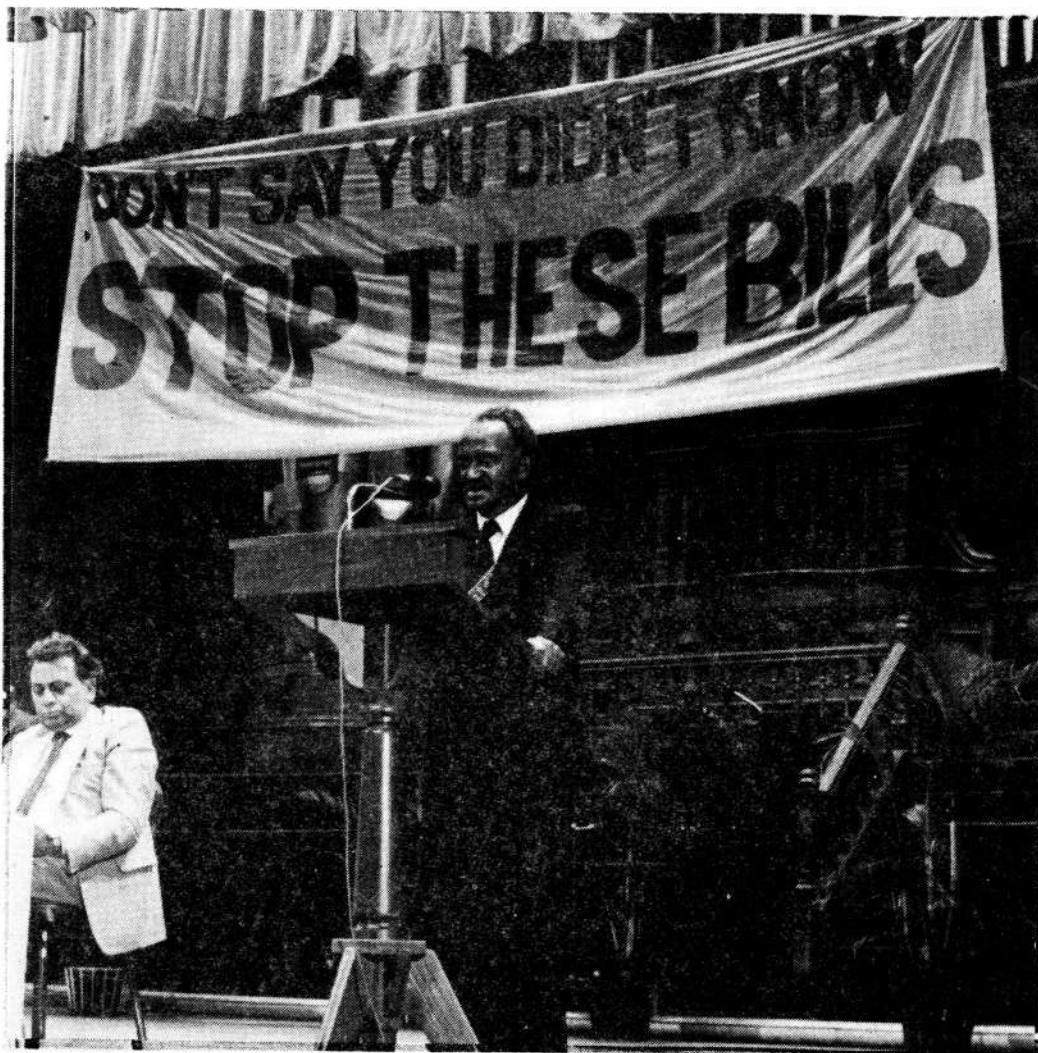
### THE LAWS

The two new laws are the Public Safety Amendment Act and the Internal Security Act. In terms of the former, the Minister of Law and Order may declare an 'unrest' area anywhere in the country at his discretion. The declaration remains in force for three months, and the Minister may make any regulations he thinks fit, without any intervention from the courts. These include powers of arrest, search and confiscation ; restriction of movement, media reporting, assembly and funerals ; control over school boycotts, work stay-aways and strikes. Powers of arrest extend outside 'unrest' areas and there exists no obligation on the part of the Minister to release the names of those detained.

The amendment is frightening even by South African standards. Besides transferring power previously concentrated in the hands of the State President, to the Minister of Law and Order, it reduces Parliament to a token democracy with only a veneer of respectability. In reality, the conditions have been created whereby the South African security forces have become a law unto themselves. Political detainees are offered scarcely any protection whilst being interrogated under conditions of almost complete secrecy.



The Internal Security Act Amendment Bill changes section 50 to allow a policeman of or above the rank of a lieutenant-colonel, to detain anybody without a warrant for a period of up to 180 days. Legal experts point out that this sort of lengthy detention existed previously under section 28 and 29 of the Internal Security Act. However the right of the state to 'remove' people under these sections has recently been successfully challenged by the courts. Section 50a confers the same powers, but avoids the messy procedure of having to give reasons of account to the courts in any way.



The Detainees Parents Support Committee believes that if the new law is used as anticipated, then concentration camps will be needed to cope with the number of detainees. Moreover the committee, which specialises in keeping track of detainees, admits that even under the present conditions it only knows of about one in six detainees.

Veteran anti-apartheid activist and patron of the United Democratic Front, Archie Gumede, believes that the new laws only mean increasing repression for the black communities. Things are already so bad in the townships that fear is the prevailing emotion. The new laws can only exacerbate the situation, further polarising South African society and making it impossible for the politics of negotiation to survive.

## DETENTION UNDER



## THE PASSLAWS

In January 1986, Amnesty International published an extensive report on influx control in South Africa, coinciding almost exactly with an announcement by the State President that the pass laws were to be amended. This took place on the 12 May 1986, with the publication of the Abolition of Influx Control Bill, which provided for the repeal of the various laws comprising the pass system.

The extent of the reform measures go only so far as to remove blatant racial discrimination from the statute books. It is clear that discretionary control over the freedom of movement and the right of residence will remain for the black population. The Prevention of Illegal Squatting Act, the Slums Act and local Health Regulations are being revised in order to prevent and control settlement in 'unsuitable places' and to combat 'urban decay'. Considerable powers will be given to local authorities to evict tenants and squatters, demolish unauthorised buildings or structures, prosecute landowners and transfer people from one area to another on the basis that they are not 'suitably' accommodated or 'properly' employed.

The Amnesty International report is thus far from obsolete and its comments on the treatment of detainees are especially relevant. The report was prepared by Kevin Boyle, Professor of Law at University College, Galway, and is the result of two years detailed research. Quoting from many sources including other academics, lawyers and first-hand experience, it clearly sets out how the system was created and administered. It considers how the pass laws were viewed and administered by the authorities, and how they were enforced by the police and courts, suggesting that this process was based on an <sup>unrest?</sup> process which was unlawful and in conflict with the requirements of the Criminal Procedures Act.

The descriptions of prison conditions for pass offenders and the general treatment of people while in custody is strikingly similar to accounts from ex-security detainees. People arbitrarily arrested at night, and especially over the weekends, were held for over three

days in crowded police cells only to be later released without charge. The cells have in some cases a cement bench circling the wall, but in others nowhere to sit but the floor. A thin foam mattress and a coarse blanket is normally issued to each prisoner, although complaints were made that there were not enough blankets to go around, or that they were wet and lice-ridden. Although in theory the arrested person was permitted to contact a relative or friend, in practise this was rarely possible and the normal picture that emerged was of a family learning of an arrest, if at all, only in time to appear at the court case.

The process of feeding prisoners awaiting trial is reported to be carried out in a way which subjects prisoners to indignity and inhumanity.

"At 8.00 pm they gave us food. Our cell was one of three which opened on to a common yard. A large plastic can, like an oil drum cut in two, full of porridge mixed with soup, was left in the middle of the yard. Then they opened all three doors and the prisoners rushed to get to the can first, grabbing with their hands. There were maybe fifty prisoners, and many were fighting to get at the food because they were starving. There were no plates, spoons or anything provided. You just fight to get some food and stuff it in your mouth with your hands. A large drum of tea is also put in the yard and this is passed from mouth to mouth, there are no cups."

Violence against prisoners is also reported to be commonplace.

"When I witnessed this game at H. there were pass offenders doing the cleaning. The officer said we need



more men. He pointed to a number of us, 'you, you', picking out six men. I did not get picked. He had a broom stick and he stood behind the men shouting and hitting them across the back. As they were rushing to get out the cell door to fetch the water, the men, about five of them all got stuck in the cell door and one man fell down and was trampled by the others. He hurt his arm. I went over to help him. The policeman said, 'leave him. He is lying. There is nothing wrong with him'...All the time the officer was hitting the prisoners across the buttocks and back. If anyone fell forward he would hit them until they got up again."

The report concludes that routine ill-treatment, degrading conditions of detention, including overcrowding and inhuman conditions for eating and sleeping, are common experiences of a large number of those arrested under the pass laws, prior to being brought to the courts. In his speech to Parliament at the beginning of the year, the State President said that the present system of influx control "is too costly and has become obsolete". He did not refer to the human rights abuses stemming from the system as a reason for this change. Exactly what form the 'cheaper' alternative will take, is still unclear. However it seems likely that this will also be aimed at criminalizing the movement and residence of black people, and that no provisions will be made to safeguard against the ill-treatment of detainees.

## THE YOUTH IN DETENTION

The accounts of life in the townships leave us in no doubt of the extent of political violence and brutality in these areas, often perpetrated in the name of reform and secured by military force. As a result many thousands of young people in South Africa are effectively 'detainees' in their own homes.

And it does not end here. Between July 1985 and March 1986, over 2000 children, under 16 years old, were detained in police cells in terms of the emergency powers. Three of these children, aged 13, 15 and 16, actually died in detention. A further 209 died in unrest incidents over the period January 1985 to February 1986. There has also been extensive evidence of the assault of children while in police custody. Ashraf Mohammed, a 15-year old school student in Uitenhage was arrested and detained four times in 1985 and on every occasion was allegedly assaulted by the security police. During one period of detention, between 23 August and 5 September, he said that he had been blindfolded, hooded with a wet bag over his head and given electric shocks through his fingers. He had then apparently been tied to a chair and beaten about the ears, culminating in a double-handed blow to both ears. He was seen to have burn marks on his hands, a swollen nose and bruises under his eyes.

Durban has been no exception. Children between the ages of 12-21 have, and are being, held by the police. There have been several horrifying cases of torture and assault. At present a group of young Durban children is being held in Barbeton, where they have been kept out of reach of their families since the 12 February 1986. 16-year old Eugene Dlamini was detained by the police in 1985. In an affidavit before the Supreme Court, he alleged that he had been severely assaulted and tortured with electric shocks while in police custody. Medical examinations revealed swellings and lacerations inside his mouth, perforation of the left eardrum and bruising on his chest, left arm and wrists and under X-ray, a fractured skull.

The effects of detention depend on the conditions and treatment during detention, and also on the detainee's age. Few people come out of detention without suffering post-traumatic stress disorder. However in some cases, the person is not badly affected emotionally, and seems to emerge both



stronger and more committed politically. This is essentially an indication of the kind of commitment that such people have to a free society and should be a source of strength to us in this predominantly depressing and debilitating situation.

In brief, post traumatic stress disorder includes :

- anxiety, irritability, general nervousness and poor concentration
- depression, poor sleep patterns often accompanied by frightening dreams and general lethargy
- 'paranoia' or a general suspiciousness
- in some cases very severe disturbance, psychotic disturbance, madness, etc.

The general difficulty of getting back to normal life is compounded by further harrassment after being released. Some children have found the post-detention situation intolerable, and have either gone into hiding or left the country.

It is clear that the state and its security forces have declared war on the youth. Those 14 to 20 year olds who are involved in the township struggles have lived through 10 years since Soweto 1976 and have been politicised in a way not seen in this country before. Their anger over the kind of society and education which they are daily forced to endure, has given them the courage and determination to take on the police, the SADF and the vigilante groups. and the struggle between the two groups frequently erupts into the intense violence which has become a sadly familiar aspect of our society. By failing to listen to their grievances, we are surely sowing the seeds of destruction for the next generation.

Enormous stress is brought upon their family and friends as a result. Parents do not know the whereabouts of their children and are continuously worried about their safety. There are also cases of political rifts between the youths and their parents, adding to an already tense and difficult family situation.

