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## DETENTION OF CHILDREN IN SOUTH AFRICA: A SPECIAL REPORT PREPARED BY THE INTERNATIONAL COMMISSION OF JURISTS \*

There is mounting evidence that large numbers of school age children are being held in detention for long periods in South Africa, frequently in solitary confinement, without access to parents and family and subject to police brutality. While official secrecy makes it impossible to obtain an accurate detailed count, the highly reliable South African Institute for Race Relations states that school children made up a "large portion" of the 2,430 persons officially acknowledged to have been detained under security laws during the period June 1976 - September 1977<sup>1/</sup>; and that 180 of the 714 persons held in detention under security laws as of the end of November 1977 were school children.<sup>2/</sup> The International Commission of Jurists supports the demand of the South African Institute for Race Relations for the appointment of an independent commission of enquiry to examine all aspects of detention without trial in South Africa, and urges that the mandate of the commission include an examination of the practices with respect to, and the conditions of, detention of, young children.

Following the Soweto uprising in June, 1976, the number of young people arrested and detained in terms of security laws began to increase sharply.<sup>3/</sup>

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\* Much of the information in this report was furnished to the International Commission of Jurists by J.H.G. Lovatt-Dolan, Senior Counsel of King's Inns and National University of Ireland, who acted as the Commission's observer at the trial of the Pretoria Twelve.

1/ Statement of the Minister of Police to the Natal Party Congress reported in the Rand Daily Mail, September 2, 1977.

2/ A Survey of Race Relations in South Africa, 1977, South African Institute of Race Relations.

3/ It has, of course, been widely reported that large numbers of young people were killed by police in the disturbances which started in Soweto and continued throughout the country in the last half of 1976. The Ad Hoc Working Group of Experts of the UN Commission on Human Rights in its report of October 1977 took note of the fact that the "International Defence and Aid Fund had established beyond doubt that 617 persons died between 16 June and December 1976, although the actual figure must be over 1,000 (some of the victims were barely 5 or 6 years of age)"; and that of the 229 persons killed in the Johannesburg area alone between June 18 and August 18, 1976, "one was under 10 years of age and 88 were under 20 years of age ..."

(2) 10/17

Young children were held for long periods without parental access and, in many cases, even without parental knowledge of their whereabouts; children under 13 were placed in solitary confinement and some at least were subject to police brutality. This inhuman conduct of the South African authorities is made possible by, and is perhaps the inevitable consequence of, the broad detention provisions in South African security laws.

Since 1976, the Terrorism Act of 1967 has been the most widely used of the security laws for detention purposes. Section 6 of the Act authorises detention without charge for an indefinite period of any person suspected of "terrorism", which offence is defined in extremely broad terms, or of any person thought by the security policy to be "withholding ... information relating to terrorists or to offences under /the/ Act." Detainees may be held for interrogation at such places as may be determined by the security police, not necessarily designated prisons. Moreover, detention under Section 6 is required to be incommunicado: "No person other than the Minister /of Justice/ 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." There is abundant medical evidence that prolonged solitary confinement is for many people a severe form of psychological torture and can cause lasting damage to the personality. Its use towards young children can only be described as a shocking crime.

It is of no avail for parents to try to bring habeas corpus or other legal proceedings. The Terrorism Act provides that "No court of law shall pronounce upon the validity of any action taken under /Section 6/, or order the release of any detainee."<sup>4/</sup>

#### The Official Position

While the authorities have publicly acknowledged the detention of large numbers of children under the security laws, they have refused to supply details. In answer to questions by Mrs Helen Suzman in the House of Assembly, the Minister of Police stated in February 1978 (1) that 240 persons were being detained under section 6 of the Terrorism Act on 31 December 1977, and (2) that 236 males and 23 females under the age of 18 were detained under security legislation during 1977. He refused to give a breakdown<sup>5/</sup> of their ages on the ground that "it is against the public interest to do so".

Shortly after the Soweto outbreak, when the Star of Johannesburg had reported that children, some as young as eight years, had been held for three weeks at security police headquarters, the Commissioner of Police, General G. Prinsloo, commented:

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<sup>4/</sup> In speaking on the use of the Terrorism Act against children, Professor John Dugard of the University of the Witwatersrand has said that such use emphasized the "abhorrent nature" of the act "which deviates from almost all the principles of criminal justice." Sunday Express, April 24, 1977.

<sup>5/</sup> Hansard, Cols. 71 and 86, edition of February 6-10, 1978.

"The children are probably better looked after in a police cell than they would be in a place of safety. It is not unusual to keep juveniles in cells for long periods before trials."<sup>6/</sup>

The Evidence of Children in Detention

A. The Numbers

While the refusal of the security police to provide information concerning detentions makes it extremely difficult to obtain a full count, the reports of the South African Institute of Race Relations, which do not claim to cover all cases, show an alarming trend in the numbers of children in detention under security laws:

<u>Date</u>	<u>Total Persons in Detention on the Pertinent Date</u>	<u>Numbers of school age Children</u>	<u>Number of University Students</u>
March 25, 1977	471	84	49 <sup>7/</sup>
Sept. 30, 1977	662	141	30 <sup>8/</sup>
Nov. 30, 1977	714	180	37 <sup>9/</sup>

B. Age of Children, Duration of Detention and Condition of Confinement

The UN Human Rights Commission Ad Hoc Working Group of Experts on Violations of Human Rights in Southern Africa <sup>has</sup> received testimony that "at least 150" children under 16 years of age were detained in terms of security legislation in the six months ending in April 1977; "that many of these, aged as young as 10 or 12, had been held for several months"; "that dozens of children, barely in their teens, have been kept in solitary confinement"; that "in one Port Elizabeth trial one of the accused turned out to be seven years old"; and that one lawyer had recently handled cases involving 91 children under 16 years old, including children of 10, 12 and 13 years, some of whom "had spent five months in solitary confinement".<sup>10/</sup> Most of this last group of children were subsequently acquitted or had charges withdrawn after spending up to five months in detention;<sup>11/</sup> and many were used as State witnesses against older youths".<sup>12/</sup> In addition, the UN Working Group had before it reports that the Civil Rights League in Cape Town had released a list on July 7, 1977 of the names of 39 youths detained in Cape Town since

6/ Star, July 10, 1976.

7/ List prepared by South African Institute of Race Relations and reported in Progress Report of the Ad Hoc Working Group of Experts in accordance with the Commission on Human Rights Resolution 6 (XXXIII) and Economic and Social Council Decision 236 (LXII) dated January 31, 1978, p.21-2 (hereinafter "1978 Progress Report of Ad Hoc Working Group").

8/ Detention Without Trial in South Africa 1976-1977 (South African Institute of Race Relations, October 6, 1977), p.ii.

9/ A Survey of Race Relations in South Africa 1977, South African Institute of Race Relations, p. 144 et seq.

10/ 1978 Progress Report of Ad Hoc Working Group, p.23.

11/ A Survey of Race Relations in South Africa, 1977, *ibid.*, 145.

12/ *ibid.*, 9

January, 1977, who had not been released, charged or used as witnesses in any trials. Most of these whose ages were known were teenagers.

Speaking in the Assembly in June, 1977, Mrs Helen Suzman said that scores of children had been held in solitary confinement under Section 6 of the Terrorism Act and that they were often charged with only minor offences. She mentioned the case of 86 school pupils from Kagiso of whom 53 were under 18 years and seven were under 13. All were detained and subsequently acquitted.<sup>13/</sup> In the first trial of the Pretoria Twelve, one of the State's witnesses was a 14 year-old boy who had been held alone in police cells for seven months.<sup>14/</sup>

### C. Parental Access.

As previously mentioned, Section 6 of the Terrorism Act provides that no-one except the authorities "shall have access to any detainee, or shall be entitled to any official information relating to ... any detainee," and the South African Institute of Race Relations reports that there have been a number of cases in which parents have not been informed of the whereabouts of their children in detention. The Institute calls attention to one case in which a delegation of Cape Town parents met with the Minister of Police in April 1977 to plead for information about their children who had been detained the previous November and of whom they had received no news.<sup>15/</sup>

The Ad Hoc Working Group reports additional instances: "Mr Drake Koka mentioned the case of a student leader, Daniel Mutsisi, whose whereabouts were unknown at the time of his evidence, and whose parents were unable to get any information from the police; and press reports before the Working Group detail similar cases, including that of a father of two students apparently detained under the Terrorism Act who is still trying to trace the whereabouts of one of them, Philip Moloto, more than a year after his arrest in July 1976; a mother trying to trace her daughters Naomi (15) and Leslie (13) Baloi, who "disappeared on a Sunday afternoon in November"; and another father trying to find his daughter (aged 11) and niece (aged 8) allegedly picked up in a police vehicle around the same time. The Rand Daily Mail reported in November 1976 that "the disappearance of children and adults after police raids on Reef townships has resulted in a frantic search of police stations and prisons". Further information before the Group confirms that many people are afraid to go to the police about relatives who have disappeared for fear of being detained themselves."<sup>16/</sup>

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<sup>13/</sup> A Survey of Race Relations in South Africa 1977 (South African Institute of Race Relations) relying on Hansard 19 Cols. 9291-9318.

<sup>14/</sup> Focus No. 12, September 1977, a publication of the International Defence and Aid Fund.

<sup>15/</sup> A Survey of Race Relations in South Africa 1977, p. 145

<sup>16/</sup> 1978 Progress Report of Ad Hoc Working Group, p. 22

D. Police Brutality

The widespread use of torture and brutality by the security police against persons in detention is now well-documented.<sup>17/</sup> The Ad Hoc Working Group of Experts of the Commission on Human Rights recently concluded that "it is quite clear that torture methods are used in almost every police station in /South Africa/".<sup>18/</sup>

More recently, there have been disquieting allegations that young children have been subjected to assaults and brutality by the police. The most recent Progress Report of the UN Ad Hoc Working Group contains the following testimony of police brutality directed at school children:

"Mr J.P. Rao, addressing the Group on behalf of the United Nations Special Committee against Apartheid, said that the evidence presented in several trials, which he outlined in some detail, and the accounts by many detainees after their release "show that torture and brutal attacks against people in police custody, and coercive methods to extract 'confessions', form a general pattern in the régime's goals".

Mr Rao went on to point out that a number of the assaults and beatings reported were against juveniles. He quoted the case of about 100 high school pupils from Lenasia, the Indian suburb outside Johannesburg, who had been picked up in groups by the security police in May 1977, two months after allegedly attending a meeting with Soweto students and joining the students' movement. On 29 May an angry group of parents and teachers charged that the pupils, mostly between 14 and 19 years old, had been beaten up during interrogation, some so badly that they needed medical treatment. A doctor who had treated several pupils stated that his own son had been repeatedly punched on the head and in the stomach, and that his head had been bashed against a wall.<sup>19/</sup> Further accounts of torture of children appear in a publication of the African National Congress of South Africa, which has been made available to the Group.<sup>20/</sup>

"Mr Drake Koka handed into the Group extracts from affidavits sworn by six students of Morris Isaacson High School in Soweto who were arrested, interrogated and tortured in October 1976. The students, aged between 18 and 20 years, described being beaten on the face, being beaten on the body with a sjambok (hide whip), being made to strip and having a wet sack placed over the head, being 'strangled', having lights flashed at them, being given electric shocks, sitting on an imaginary chair for two hours. Several boys had scars, and one boy had lost his hearing in one ear as a result of the assaults.<sup>21/</sup>

<sup>17/</sup> See e.g. Torture in South Africa?, a document published by the Christian Institute of South Africa, Cape Town, 1977; Report of the Ad Hoc Working Group of Experts of the UN Commission on Human Rights dated October 1977. Repeated allegations of the widespread use of torture by security police to obtain prosecution evidence were made in the recent trials of the Pietermaritzberg Ten and the Pretoria Twelve. Since March 1976, 19 persons have died in detention.

<sup>18/</sup> Deaths of Detainees and Police Brutality in South Africa since the Soweto Massacre in June 1976, a document published by the Ad Hoc Working Group of Experts of the UN Commission on Human Rights, October 1977, p.10.

<sup>19/</sup> Rand Daily Mail, 30 May 1977.

<sup>20/</sup> African National Congress, Repression, Torture and Death in South Africa, (London, 1977), pp.18-19.

<sup>21/</sup> A/32/226, para. 38. "Prison Torture in South Africa: statement from students from Morris Isaacson High School", written submission handed in by Mr Drake Koka, 2 August 1977.

"The Group has had before it information about a 10 year old boy arrested on 1 November 1976 and held in Modder B prison until 9 December, when he was released on bail, apparently as a result of publicity in the Rand Daily Mail. His mother claimed in an affidavit that the child had been assaulted by police at the time of his arrest and that when she visited him in gaol his face was so bruised that he could not eat. Major General Kriel, Deputy Commissioner of Police in charge of riot control, had said earlier that bail had been opposed on the ground that the child was to be charged with sabotage./22/

"Another juvenile, variously described in the press as 14, 15 or 16 years old, Mbuyiselo Nyathi of Forbes Grant Secondary School, called as a State witness in the trial of Mr Steve Biko for obstructing the course of justice or alternatively subordination to perjury, described in court how he had been kept in solitary confinement from 7 March to 10 April 1977. He told the court that he found solitary confinement "upsetting and confusing", and that he had been told by police that he would be released if he gave evidence, but that if he departed from his police statement he would be arrested. He also described being assaulted by a security officer and hearing loud screams from nearby rooms during a previous detention in 1976./23/"

#### Conclusion

Given the accumulating evidence of widespread detention of school children under security laws, and of their ill-treatment by security police, it is a matter of the utmost urgency that an independent Commission be established to examine all aspects of detention without trial in South Africa.

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22/ Rand Daily Mail, 3 December, 4 December, 9 December, 10 December 1976.

23/ The World, 3 April, 7 April, 10 April 1977; Rand Daily Mail, 6 April, 7 April 1977.

Geneva, August 1978

THE DETENTION OF CHILDREN IN SOUTH AFRICA

Supplement to the Special Report of July 1978

prepared by

The International Commission of Jurists \*

Recent reports substantiate the continued detention in South Africa of schoolpupils and children under the age of 18. The latest unofficial figures provided by the highly reliable South African Institute of Race Relations (1) reveal that as of June 23, 1978, a total of 806 persons were being detained in South Africa, including 31 children under the age of 18, and 169 schoolpupils (2).

Offences

The offences which culminated in the detention of juveniles appear to be characterised largely as petty law violations. According to a response to a question in Parliament on February 10, 1978, the Minister of Justice described the nature of these infractions as "... arson, incitement to public violence, stonethrowing and general disruption of law and order". A spate of trials has been held in South Africa in the past year for such offences relating to public violence, arson, malicious damage to property and incitement of these acts. Detention of juveniles for such offences is possible under the broad definition of "terrorism" in the Terrorism Act of 1967, the most widely used of the security laws for detention purposes.

Ages

Although the South African authorities have publicly acknowledged the detention of large numbers of children under the security laws, they have refused to supply more specific data, such as the children's ages. Recent information furnishes some of the heretofore missing details. Of the 31 children under the age of 18 who were detained as of 23 June 1978, the ages of the children range from 13 years to 17 years. Almost two-fifths of the detained children were 16 years old or younger.

<u>Date</u>	<u>Total Persons in Detention</u>	<u>Children in Detention</u>	<u>Age</u>	<u>Number</u>
June 23, 1978	806	31	13	2
			14	1
			15	2
			16	7
			17	19

\* Reprinted in the UN series "Notes and Documents", No. 16/78, Centre against Apartheid, N.Y., July 1978

- (1) The South African Institute compiles unofficial statistics. Their statistics are remarkably accurate when compared with official figures released by the Ministry of Justice
- (2) The term "schoolpupils" includes all persons currently in school, excluding university students, although some of these pupils may be above the age of 18

In addition, since the categories of "Schoolpupils" and children under 18" are not mutually exclusive, it is likely that significantly more young minors are being detained. For example, in addition to the 31 detained children under 18 years old, 169 schoolpupils are also being detained. Of these, 65 are above the age of 18; however, the ages of 104 schoolpupils are unknown and these may include many juveniles.

Periods of Detention

The aforementioned 31 children have been detained for periods ranging from one to twenty months. The median period of detention for these minors was in the 10-12 month category-that is, approximately half of the juveniles were held for longer periods of time and half for shorter periods.

CHILDREN DETAINED AS OF June 23, 1978      SCHOOLPUPILS DETAINED AS OF June 23, 1978

<u>Length of Detention</u>	<u>Number of Children</u>	<u>Length of Detention</u>	<u>Number of Schoolpupils</u>
1 month	1	1. month	19
4 - 6 months	4	7 - 9 months	33
7 - 9 months	9	10 - 12 months	52
10 - 12 months	7	13 - 15 months	16
14 - 18 months	5	16 - 18 months	10
19 - 20 months	5	19 - 21 months	28
		22 - 24 months	11

Schoolpupils have been held for similarly lengthy periods of detention. The 169 schoolpupils detained as of June 1978 have been held for periods ranging from one month to two years.

Trials of Children and Schoolpupils

Many of the children and schoolpupils have been not only charged, but also formally tried for their offences. On the basis of South African Institute of Race Relations' data, 400 persons have been accused of crimes relating to public violence and 63 trials have been held. Of the 400 accused, 52 were under the age of 18, and 58 were between the ages of 18 and 21. Although press reports of the trials have been scanty, it is known that at least 20 of such trials were characterised by an absence of legal representation for the defendants. At nine of these trials, the accused who was not represented by counsel, was 18 years old or under.

Sentences of Children and Schoolpupils

The Minister of Prisons J.T. Kruger, in reply to a question in Parliament in early June, revealed that six children age 15 or under are serving sentences for sabotage. The six include one 14-year-old and five 15-year-olds.

The children are incarcerated on Robben Island, which is associated in the minds of South Africans as a jail for long-term political prisoners. Although incarcerated in an adult prison, Minister Kruger claims that the juveniles "...are not being detained and treated together with adult prisoners".

In answer to the Minister's revelations, the Progressive Federal Party's Dr. Alex Boraine responded that the incarceration of juveniles was "beyond belief" and called upon the Minister of Prisons immediately to transfer the children to a reformatory "...where they will be with children of their own age and where rehabilitation will be possible" ("Robben Island Holds Children", The Star, Johannesburg, 10 June 1978.

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