

DESCOM BULLETIN



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New Detention Strategies

In view of the coming UDF Treason Trial, Professor John Dugard of the University of the Witwatersrand, discusses the States's new detention strategies. This is a shortened version of a talk he gave at the University of Natal earlier this year.

The Government is in the process of adopting a new approach towards the security laws - one in which the courts and lawyers are featured more prominently. In the past, the Government has sought to bypass the courts by invoking the provisions of the Internal Security Act 74 of 1982, which allow it to detain and ban individuals without trial, and to restrict organisations and prohibit gatherings without access to the courts.

But now, we can expect more use to be made of the courts than in the past. Detention will not disappear as a police weapon; but more people released from detention will be tried - even if only for possession of banned literature - because it will be necessary to show that there was some reason for the original detention. Lengthy show trials with bail being refused to the accused by the Attorney-General, as in the latest UDF treason trial, will also be more common. This will serve to immobilise political opposition in much the same way as detention and banning.

As far as bail is concerned, the courts are denied the right to decide whether a person, charged in court, should be released on bail. Instead the Internal Security Act (section 30) permits the Attorney-General to make this decision, for s/he may issue a certificate to authorise the holding in custody of an accused person, and this excludes the court from deciding on bail.

The Government is now clearly determined to mislead its critics into believing that its court procedures comply with regular, civilised standards of fair-trial procedure. This is illustrated by the manner in which it has argued both at home and abroad that the UDF treason trialists are being accorded fair treatment under the law. This is simply not true, and the Government knows it. The right of a court to decide on the question of bail has very clearly been denied by the Government itself - acting through its agent, the Attorney-General of Natal. As the Attorney-General is an official of the State, it would be surprising if in the case of the UDF treason trial the decision to refuse bail had not been made either directly or indirectly by the Minister of Justice.



As shown above, the Government has embarked on a new strategy to manipulate the legal process to serve its own devious ends. The facts of the UDF trial make quite clear the intention on the part of the Government to immobilise the UDF leadership by holding that leadership in custody without bail. The Government's appointed law agents then drag out the proceedings as much as they can for as long as they can. It took the Government about 9 months to serve indictments on the UDF trialists. These were only served on Thursday 25th April, 1985. This constitutes an abuse of the process of law and an undermining of fair-trial procedures. And it is these new forms of detention which the Government is now using to silence its political opponents, while at the same time claiming that it is operating with a respect for democracy and legal procedures.

The State and Violence

Twenty five years after Sharpeville, to the day, police in the Langa township shot and killed at least twenty people. A directive to the police, prior to the shooting, emanating from police head office, instructed that any person throwing petrol or acid bombs at the police or at their vehicles, should be 'eliminated'.

During the twenty five years from Sharpeville to Langa township outside Uitenhage, thousands of people, mainly Africans, have died in a civil and cross-border war waged by the South African state. Now, in the 1980s, however, that violence is occurring at a time of 'reform'. How do the two actions relate - reform and violence? Or are they fundamentally incompatible? Is violence, and especially police repression, an aberration, regrettable and difficult to understand at a time when the state seems to be committed to genuine reform?

There is another way of looking at it - a perspective from which the two sets of actions (reform and violence) are in fact part of the same process. This is the way in which the state and certain academics have been presenting it.

Professor Samuel Huntington is one of those academics. Huntington is a United States academic, a prominent exponent of the 'orthodox right'. His views have been described as showing an 'open and abrasive commitment to the maintenance of order as the supreme political value, with an admiration for elites and strong, if not democratic, leadership'. In 1967, during the Vietnam war, Huntington visited Saigon on behalf of the United States State Department to see how control measures could be instituted in Vietnam to help the US war effort. His early suggestion there, that if the 'hearts and minds' of the peasants could not be won, then the rural areas should be drained of their population (through bombing and defoliation as it turned out), has been suggested by the South African military as well.



In September 1981, Professor Huntington turned up in South Africa, to deliver the key-note address to the Political Science Association of South Africa conference in Johannesburg. (The speech was published last year.) He said that reform in South Africa would not come easily. He defined reform in the written paper, entitled 'Reform and Stability in South Africa', as the movement to a politically more inclusive system.

Huntington argued that the reformer would have to employ 'ambiguity, concealment, and deception concerning his goals'. (He criticised any clarity as to the direction of reform.) Related to this point, he also advised that the process be broken down into bits and pieces, so that if there were to be any failures, they could be written off as small ones, and not of central importance to the overall direction of reform. He wrote that 'outside pressure does not help' during the long process of reform. (The US policy of 'constructive engagement' seems to be in line with this thinking.) He repeated that 'duplicity, deceit, faulty assumptions and purposeful blindness' be part of reform - any sense of democracy is totally lacking from the manipulative, top-down reform that Huntington advocates.

More directly on the issue of violence, Huntington wrote that 'centralisation of power may also be necessary for the government to maintain the control over violence that is essential to carry through major reforms. No reform occurs without violence the reformer must be ready to welcome and use violence when it serves his purpose'.





Violence must be welcomed because the 'law and order' response of the state soothes those to the right of the reformers. So, in the local case, the Conservative Party and the Herstigte Nasionale Party could rally behind police after the Langa shooting, and welcome the use that is being made of the South African Defence Force to 'restore law and order'. Similarly, the United Democratic Front's threat to disrupt the All Black rugby tour has already been used editorially on the SABC and in the commercial press to justify a future violent response by the state.

Furthermore, violence and 'centralisation of power' (less democracy and more dictatorship) are presented as necessary parts of the reform process - reform can only take place in a situation of stability. State violence ensures stability.

The essence of what Huntington said in the language of arch-conservative US political science, has already become part of the 'common-sense' ideas put across by politicians and the media in South Africa. For example, the 'Comment' slot on the SABC a couple of months ago had this to say: 'That radical efforts to destabilise society mushroom during a period of reform is by now a well-known phenomenon'. It then referred to Law and Order Minister le Grange's warning of action against 'destabilisers' and the 'fundamental obligation of the state to maintain stability in the country'.

This 'Comment' returns to the violence and reform idea: 'It is natural that change should evoke resistance', both from the 'stand patters' (those who want to maintain the status quo), and from 'extremists' who find the changes inadequate. However, 'in these circumstances it is more important than ever that the state should not only be capable of maintaining stability... but should be clearly seen to be doing so'.

'Violence and reform' also formed part of the theme of a talk that Gerrit Viljoen, Minister of Co-operation, Development and Education, gave to business people in Pretoria last year. He called it a 'strange coincidence' that reform should be accompanied by violence, and attributed it to factors inherent to reform, namely the apparent 'indecision and lack of self-confidence' displayed by the 'reforming leadership' that then gives agitators new heart. This implies that repressive action by the state is essential if reform is to continue unhindered.

Many more examples could be offered but the ideological preparation of white South Africans and an international audience, at whom these statements are aimed. For the repeated and increasing use of violence, is clear. Furthermore, the use of violence by the state is presented as non-contradictory, in fact an essential and integral part of reform that is said to be underway in South Africa (Don't worry; it proves that we are sincere).



Unrest in the Eastern Cape

A member of Descom attended the 1985 Black Sash conference in Port Elizabeth. Here, she records an eye-witness account of events in that strife-torn area.

"When I came out of the house I saw the police shooting people who were trying to get up. They were dragging bodies to the hippos. Before I ran away I tried to pick up a girl who had been shot. I was shot in the back and fell. I got up and started running away. Another bullet grazed my right hip. The rest of the crowd ran away and then came back and watched from a distance. The ambulances, about 12, arrived and loaded the bodies. More came back later to collect the rest." - affidavit of one of the residents of Langa

Such scenes as these - here simply and graphically described - add another grim chapter to the already weighty dossier on South African police brutality. It is a short extract from an eye-witness account of the killings at Langa which, occurring 25 years to the day after Sharpeville, are a bitter commentary on the tenacity of a system whose capacity to survive makes a mockery of any so-styled 'reform' programme.

A system wherein the determination of a black person's life, its very quality, is made wholly subservient to white interests. It follows that where that (black) life directly confronts those interests, it becomes, according to the logic of the system, expendable.

The basic division of interest between ruler and ruled in South Africa has indeed so widened as to virtually bring about a state of undeclared war. Certainly the Eastern Cape, traditionally an area of conflict and resistance, is, no less today, in the forefront of the 'battle' being waged in South Africa's black townships.

Symptoms of this unhealthy state of affairs became apparent, from the outset, to Black Sash delegates assembled in Port Elizabeth for the organisation's annual four day conference, 14 - 17 March inclusive.

Port Elizabeth itself, was like a city besieged: walled-in white apathy and/or fear on the one hand; and a three day stayaway called by the local black association, PEBCO - against union advice and despite the recession - that was 100% successful and very disciplined. There could have been no clearer rejection of Apartheid in general and of its local agents in particular.

Minor acts of hostility directed at the start of our activities were a first indication, and chilly reminder, that the "battle lines" were not necessarily restricted to recognised black areas. Certainly it was in these areas, the townships themselves and the hospitals that served them, that these lines of battle were most clearly and sharply drawn.



Evidence of just how intense the battleground was reached Conference, verbally and in the form of affidavits, through Molly Blackburn, a valuable Sash member and local MPC. :

- *Allegations of police atrocities.
- *Allegations of the indiscriminate "rounding up", the "hunting down" of suspects or of innocent bystanders.
- *Allegations of the deaths of young children, aged 5, 6 and 7 by armed white policemen.
- *The heavy military presence and a contingent of Zulu police.
- *Allegations of police intervention, beatings, destruction of property by an arm of Government who are apparently a law unto themselves.
- *Allegations of doctors being ordered NOT to treat the wounded.
- *And allegations of hospitals being told to hand over the extracted bullets before the terrified patients themselves are taken into police custody.

The list is a shocking indictment of police conduct in the Eastern Cape.





While from the already overcrowded prison came word also - again channelled through Molly - that children were being thrown in amongst the adult criminal population and that sodomy had become the daily practise.

A crisis committee was set up to help Molly deal with the endless stream of victims of police action whose only refuge it seemed was this tireless woman. Affidavits taken then and before and since all indicate tactics that were designed to bring into submission supposed enemies of the system.

Members of Black Sash made urgent appeals to the authorities but were met with entirely negative responses. Sheena Duncan, Black Sash's national president and a deputation met on two occasions with the president of the Bar Council and vice-chairman, the heads of the prison department and of the police, the heads of the medical profession and hospitals and the two chief magistrates of Port Elizabeth and Uitenhage.

We were to meet with this same attitude of indifference amongst members of all ranks of the Uitenhage police force. It was to the Uitenhage Central Police Station that nine of us were called, on the last afternoon of the conference, in response to yet another urgent cry for help.

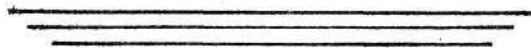
Even more horrifying than the spectacle of a physical assault on a young African boy to which the Black Sash was witness, was the reaction of the Uitenhage police and their subsequent behaviour.

Although a police officer in charge of the station said the incident would be investigated - and that of three other youths whom we confirmed had suffered similar treatment - nothing came of this underaking and subsequently all knowledge and responsibility was denied.

Also reprehensible, was the somewhat sardonic delight of members of the police who came to gloat, smile and smirk over the obvious discomfort of nine Black Sashers.

The resort to lethal weaponry and distortions that Sash experienced that Sunday, amount to such an abuse of power as to appear part of a total strategy to crush and eliminate all opposition.

Little wonder that as we left the scene, getting uglier by the minute, that Sunday, one of our members should have remarked: "Now I know we are in civil war."





Progressive health organisations (among them Descom) have recently achieved a major victory. They have been part of a successful campaign to pressure the World Medical Association to move the venue of its 1985 conference from South Africa to Belgium. This victory is a tribute to those organisations which united under a single banner during the last six months.

But we must not stop here. All health workers and others concerned with the health of detainees should continue to find ways of exerting pressure on the South African government to end all repressive legislation in this country.

The article below examines the attitudes and behaviour of many doctors in South Africa towards detainees. It also suggests some of the changes that are needed if the health care of detainees is to be improved.

Security Legislation and the Medical Profession

In recent months there has been a change in the way in which security legislation has been used by the state (charging detainees then refusing them bail). However, despite the increased use of the courts, the number of people detained without trial in 1984 was considerably greater than at any time since 1976-77. The system of detentions claimed the lives of at least five people in 1984 and was responsible for the need for psychiatric care of several other detainees.

Doctors are uniquely placed to safeguard the health of detainees, being the only people outside the state security apparatus with access to detainees held under Section 29 of the Internal Security Act (Its forerunner was Section 6 of the Terrorism Act). These sections have been responsible for most deaths and psychiatric illnesses in detention.

The objective of Section 29 is to obtain information from the detainee. The information that the security police require is obtained by a process of the systematic destruction of the personality of the detainee. How does this happen?

- * the stress of detention itself
- * the denial of normal relationships by cutting off contact with family, doctors, friends and lawyers and only allowing contact with interrogators
- * physical exhaustion including sleep deprivation and prolonged standing
- * extreme physical and emotional humiliation including having to strip, also verbal abuse and threats to family and self
- * prolonged isolation.

The effects of such techniques are always many and can result in the suicide of the detainee or in the development of a number of physical and mental disorders. These effects can be permanent.



It is therefore not surprising that detention is considered a form of torture. We must ask: what has the response of doctors been to such forms of torture?

The World Medical Association (WMA), in the Declaration of Tokyo in 1975 stated that,

"The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel inhuman or degrading procedures, whatever the offence of which the victims of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict or civil strife."

Furthermore, in the preamble to the declaration, torture is defined as: "The deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason."

This Declaration has significance for us, because it sets out clearly the moral and ethical responsibilities of doctors and also because the Medical Association of South Africa (MASA) is a signatory to it. As the MASA represents the majority of doctors in this country, one might imagine that doctors would act in accordance with the Declaration in their dealings with detainees.

Unfortunately, as a general rule, the reaction of the medical profession has been a stony silence. Many doctors have been called on in the last 20 years to treat detainees suffering from illness brought about by detention. In precious few, if any, of these cases, have doctors pressed for the release of their patients from detention. When action has been taken, it has often seemed as if the profession was more concerned to protect its own image than to safeguard the health of detainees.

The much-celebrated report of the MASA Ad Hoc Committee of Enquiry into the medical care of prisoners and detainees busied itself with aspects of medical care of detainees only. At no time did the report condemn detention or devote space to the physical conditions of detention. Significantly, the number of deaths in detention in 1984 (the year after the release of the report) was higher than the average number of deaths per year for the 20 years before the report was compiled. Despite this, the chairman of the Federal Council of MASA saw fit to claim during the year that MASA "keeps working" for the rights of detainees.

The early part of 1985 has seen some changes in the traditional veil of silence which has been drawn over security legislation by the medical profession. Six prominent physicians managed to force the South African Medical and Dental Council to reopen its investigation into the conduct of the district surgeons who attended to Steve Biko. The Society of South African Psychiatrists, at their annual conference in January, condemned detention as being harmful to mental health. This even took



place against a background of increasing international pressure on South African psychiatrists (especially by the American Psychiatric Association) to take a stronger moral stand on Apartheid and health. This is a good example of the way in which outside pressure has been effective in forcing a conservative body to take a progressive line on a specific issue. The latest example of such pressure (helped by pressure from within the country) has been the change in venue of this year's WMA conference.

Detentions in Kwazulu

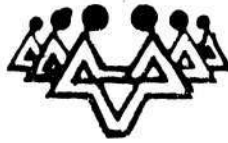
Four people from the Nongoma district of KwaZulu, approximately 50kms from Ulundi, capital of KwaZulu, have been detained under section 29 of the Internal Security Act since mid January.

Salushe Malinga Zondo, one of the king's senior indunas and formerly an advisor to the late King Cyprian KaBhekuzulu, is nearly 80 years old. He was detained along with one of the five wives by customary rites, Pauline Zondo. One of Salushe's sons, Bafana, was detained at the same time. He is 18 years old and at school in Durban. A close friend of the family, Katie Maphumula, who is in her thirties and supports her children by hawking, was also detained. Her children are now being cared for in the Zondo homestead. Katie's homestead has since been completely destroyed.

In the Zondo home, there are 16 dependant children 11 of whom attend the local schools. There are very few breadwinners. One of these a son in his 50's, has died since the detentions took place.

About 10 family members, including the wives, have recently been served with notices that they should be prepared to appear in court as state witnesses in the forthcoming trial. Although the detainees have not yet been charged, it appears as if at least one of them will be charged under section 54(4) of the Internal Security Act, which relates to harbouring or concealing, assisting or failing to report, anyone suspected of being an enemy of the South African state.

One of the worst features of the so-called 'conflict of laws' (between customary or traditional and Roman-Dutch laws) has come into focus as result of this case: marriages recognised under Roman-Dutch law are regarded as sacrosanct, which means that wives cannot give evidence against husbands(or vice versa) in a court of law. Customary marriages have no such status. Salushe's wives can therefore be compelled in terms of the law to give evidence against him.



Death in Detention — Has Anything Changed?

The detention, discharge and subsequent death of Andries Raditsela on the 6th May is indicative of a pattern of similar deaths, involving trade union and community leaders, stretching back to the early 1960s. Deaths in detention seem to parallel increased resistance in the townships to the privations of apartheid and a rise in the level of worker militancy. The effect of these deaths creates a climate of fear. Looking closely at the three recent deaths in detention shows a cycle of events often repeated in the past:

- * Andries Raditsela, 29, executive committee member of the Federation of South African Trade Unions, was detained on Saturday 4th of May at 9 am in Tsakane township, Transvaal. He was charged under the Internal Security Act, subsequently released, and died shortly thereafter, on Monday 6th May. The post mortem's findings were that he died of head injuries consistent with a blow to the head.
- * Siphon Mutsi, member of the Congress of South African Students, was detained in Odendaalsrus on May 4th. He died the same day in a Bloemfontein hospital. The police claim he 'went into convulsions' while 'having his particulars taken'. The findings of the post mortem were that he died of head injuries consistent with a blow to the head.
- * A case only recently made public, involves the death of Mr Bheki Zachariah Mvulane, 18, arrested on charges of public violence and remanded in custody on February 18th of this year. He died on the 23rd February, after being admitted unconscious to the Natalspruit hospital. Affidavits alleging that Mr Mvulane was assaulted are in the possession of the Mvulane family's lawyers.

In the experience of the Detainees Support Committee, representations to the authorities to correct this cycle of deaths in detention have not proved effective. Without preempting any court inquests on these three deaths, it can safely be said that only one prosecution has resulted from such inquests in the past. The root cause lies in the Internal Security Act, which allows for arbitrary detention by an intransigent state, bent on maintaining apartheid.



" THEY ARE TO BLAME ! "