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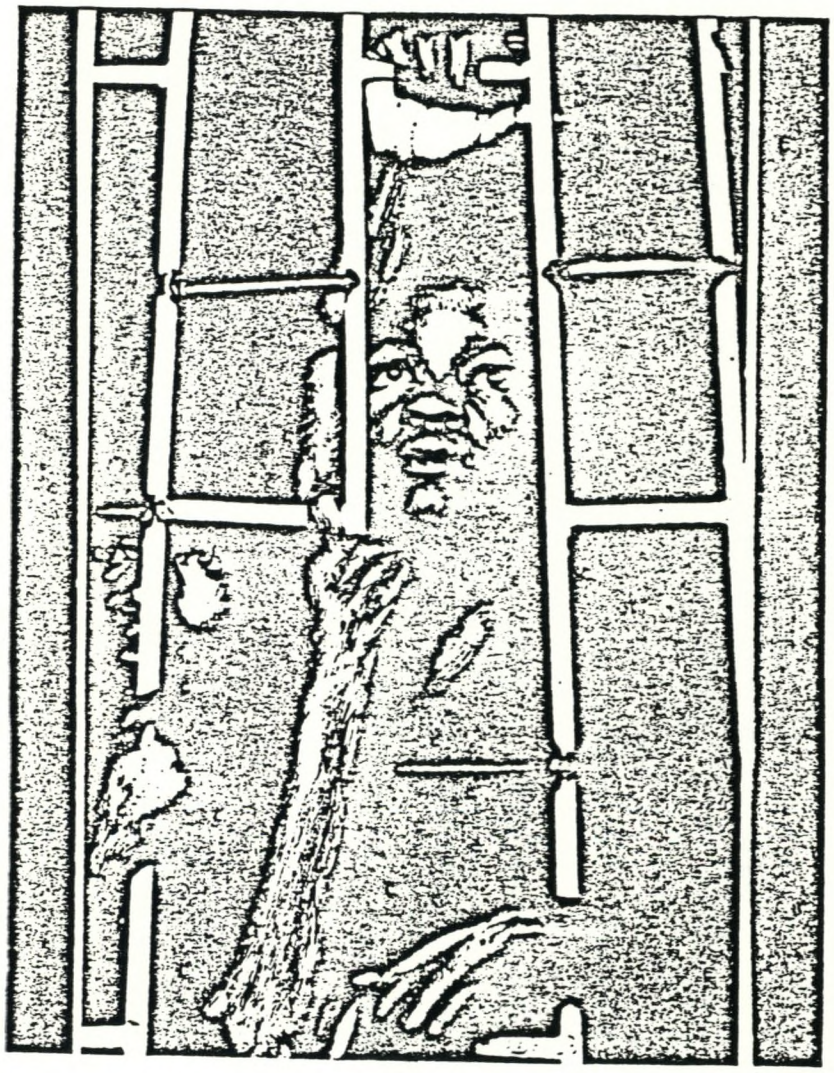
PREVENTATIVE DETENTION

Tool of Repression



At the time of going to press in September 1984, there are preventive detention orders in effect against the following people:

Abel Dube	Matthew Goniwe
Mbulelo Goniwe	Fort Calata
Patrick Mosiuoa Lekota	Archie Gumede
Mewe Ramgobin	George Sewpersadh
M J Naidoo	Billy Nair
Essop Jassat	Aubrey Mokoene
Curtis Nkondo	R A M Saloojee
Peter Jones	Muntu Myeza
Haroon Patel	Sam Kikine
Kadir Hassim	Jerry Thlopane
Andries Mapetla	Moss Chikane
Saths Cooper	Madoda Jacob

Release 84.09.27

Release 24.09.27 "

34.09.27 Release

For most of them this is not their first experience of detention.

Few people understand the iniquity of the Preventive Detention provisions of the Internal Security Act. This booklet seeks to explain what the law says about this and other aspects of repression, and the implications.

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PREVENTIVE DETENTION IN SOUTH AFRICA

During August 1984 government forces swooped on leaders of the U.D.F., on leaders of organisations affiliated to the U.D.F., and on leaders of Azapo, and took them all into Preventive Detention in terms of Section 28 of the Internal Security Act.

Section 28 is one of four sections in the Act which gives the authorities the power to arrest and detain a person without going through the Courts, and to by-pass the normal processes of law.

Preventive Detention can last for an indefinite period and has no other purpose but to remove a person from society, to prevent him from doing something which the Minister thinks he might be going to do.

No-one has any protection against being detained in this way.

- In March 1984, four Cradock community leaders were detained under Section 28.
- In August 1984, eighteen leaders of the protest against the elections for the tricameral parliament were detained under Section 28.
- Abel Dube has been in detention since 21 April 1982. Since 13 November 1982, his detention has been in terms of Section 28.
- By 11 September 1984, twenty six people had been acted against in terms of Section 28 under the much more severe conditions imposed by the 1982 "reformed" Internal Security Act.

  Two of them, David Tobela, who was detained from 27 April 1982 to 10 August 1983, and Mordicae Tatsa, who was detained from 22 March 1982 to 10 August 1983, are no longer in detention. Mr Tobela was actually detained on 30 January 1981 but was put into preventive detention in April 1982.

  Neither of them can be quoted. Mr Tatsa is also prohibited from attending any gatherings. He is a banned person.

> As some day it may happen that a victim
> must be found
> we've got a little list, we've got a
> little list
> of society offenders who might well be
> underground
> and who never would be missed
> who never would be missed.
>
> The Mikado: Gilbert & Sullivan

THE LIST

- **Anyone who has ever been detained in terms of Section 28 is automatically "listed" and may thus be effectively silenced for the rest of his life because he may never be quoted nor may anything he says be published or disseminated unless the Minister can be persuaded that his name should be removed from the list.**
- **Anyone who records or reproduces by mechanical or other means, or prints, publishes or disseminates any speech, utterance, writing or statement (or any extract) by a listed person can be sentenced to three years imprisonment without the option of a fine.**

SECTION 28

SHORT DESCRIPTION:		'Detention of certain persons in a prison in order to prevent commission of certain offences or endangering security of state or of maintenance of law and order.'
DETAINING AUTHORITY:		Minister of Law and Order.
GROUNDS:	(a)	If in the Minister's **opinion** 'there is reason to apprehend that the person **will** commit' a security offence.
	(b)	'If he is **satisfied** that the person engages in', promotes, or is likely to promote activities endangering State security of maintenance of law and order.
	(c)	If he has **reason to suspect** that a person previously convicted of a security offence, engages or is likely to engae in activities as in (b).
POWERS OF DETENTION:		The Minister on any of the above grounds may direct that any person be detained **in a prison**.
DETENTION ORDER:		By means of a **written notice**, signed by the Minister, and addressed to the member of the Prisons Service who is in charge of the prison specified. A copy of this notice tendered by a police officer to the person concerned serves as a warrant for his arrest (although the officer can also act on a telegram from the Minister, or the knowledge that the notice exists). The notice delivered to the person concerned must also be accompanied by a **written statement** from the Minister 'setting forth the reasons for the detention ... and as much of the information which induced the Minister to issue the notice ... as can, in the opinion of the Minister, be disclosed without detriment to the public interest.'

On Friday 7 September, the Natal Supreme Court declared the detention orders served on detainees in Natal to be invalid because the Minister had not provided them with sufficient reasons for the action against them. The Natai seven were released.

New detention orders were issued immediately and were served on the detainees being held in prison in Johannesburg. Police sought the Natal seven in order to redetain them.

In the new order the Minister added on **one** sentence: "No other information can, in my opinion, be disclosed without detriment to the public interest and the maintenance of law and order."

On September 10, the Transvaal Supreme Court turned down an application for the release of the detainees.

The Judge found that the additional sentence rendered the detentions valid.

CONDITIONS OF DETENTION:	'in accordance with the provisions of regulations made by the Minister of Justice.'
PERIOD OF DETENTION:	'for the period during which the **notice** is in force', i.e. the detention period is stipulated on the Minister's notice.
	In the case of the four Cradock community leaders detained in March 1984, the period stipulated was 12 months from 31/3/84 to 30/3/85. For the 18 recent detainees, a six month period was stipulated, ending on 28/2/85.
	There is nothing to prevent a new notice being served at the end of the period as has happened in the case of ABEL DUBE. He was originally detained on 21/4/82, placed under Section 28 on 13/11/82 for the period of 12 months, which was then renewed for a further 12 months expiring on 31/10/84.
	The Minister may also withdraw the detention notice at any time.
	Thus the length of detention is totally at the whim of the Minister of Law and Order.
RIGHT OF APPEAL:	The detainee may, within 14 days of receiving his detention notice, make 'representations in writing to the Minister, relating to his detention or release', and submit 'any other information relating to the circumstances of his case.'
ACCESS TO DETAINEE:	**No person may have access to the detainee or to official information relating to the detainee, except the following:** **The Minister of Law and Order** **The Director of Security Legislation**

A judge of the Supreme Court
Chairman of a board of review
Any official in the service of the State

However other persons may have access to the detainee 'with the consent of and subject to such conditions as may be determined by the Minister or the Commissioner of Police.'

In addition, a **non-listed** lawyer may have access to the detainee within the first 14 days for the sole purpose of assisting him in making representations.

REVIEW BOARD

Review of the Minister's Action

A board of review constituted under the Internal Security Act is supposed to investigate and consider the action of the Minister in detaining a person under Section 28, in the following manner:

The Minister must submit to the board 'as soon as possible after the expiration of the period of fourteen days' the following documents:

- A copy of the detention notice
- A written statement giving the reasons and all information which induced him to issue the notice
- Additional relevant information which came to his knowledge after issuing the notice
- Copy of any written representation submitted by the detainee to the Minister
- Any relevant additional information the Minister deems necessary

The board of review may then, in its discretion, hear oral evidence from any person including the detainee.

After consideration, the board must then furnish the Minister with a written report on its findings, stating whether it is of the opinion that the detention notice should stand or should be amended or withdrawn. The Minister must notify the detainee as soon as possible of the board's findings and recommendations, if any. **However, the Minister need not give effect to any recommendation**. If he refuses to do this, then within 14 days he must submit to the Chief Justice of South Africa copies of all documents previously submitted to the board of review, together with the board's report and any further report he may deem necessary. After consideration of these documents, the Chief Justice must then either endorse the Minister's actions, or he may set them aside if he is satisfied that the Minister 'exceeded his powers under the Act, acted in bad faith, or based his decision on considerations other than those contemplated in section 28.'

PERIODICAL REVIEW

Six months after the detainee was notified of the review board's ruling on his detention, he may request the Minister in writing to submit his case to the board of review specifying any changed circumstances or new facts considered as justification for the withdrawal of the detention notice. The procedure outlined above is then repeated, but with the appropriate documents.

The detainee may repeat his request at intervals of not less than six months.

The Minister may himself submit the case of any section 28 detainee to the board of review at any time.

CONSEQUENCES

Consolidated List:

The Director of Security Legislation is required to maintain a **consolidated** list on which he must enter the names of persons (amongst others) who **are** or **have been** detained under Section 28. He must also notify such persons **in writing** that their names have been so entered. The Act does not stipulate how soon the Director must do this. The Minister of Law and Order may **'on good cause shown'** instruct the Director to remove any name from the list. Such removals must each be published in the Government Gazette, but the consolidated list itself need only be published once every three years.

Restrictions on listed persons:

- The Minister may by written notice prohibit any listed person from becoming, or continuing to be a member or office-bearer of any organisation or public body specified in the notice, or from taking any part in its activities. Alternatively, the notice may impose certain restrictions in regard to such membership.
- The Minister may serve a banning order on any listed person; this may involve various prohibitions such as not absenting oneself from a specified area or from a specified place during specified hours, not entering specified places, not communicating with specified persons, not attending gatherings and not receiving specified visitors.
- A listed person is disqualified from standing for election in the House of Assembly or a provincial council.
- A listed person is disqualified from being admitted by the court of any division of the Supreme Court to practise as a lawyer. Any listed person already practising shall be struck off the roll, on application made by the Director-General: Justice.

Five of the seven people detained in Durban on 21 August are lawyers.

- A listed person who fails to notify the police of a change of residence or employment is liable to imprisonment for up to 10 years.
- Any person who quotes a listed person, regardless of where or when the statement, speech or utterance was made, is liable to imprisonment for up to three years.

The other three sections of the Internal Security Act which allow the authorities to detain people without going through the courts are:

Section 50 under which any police officer of the rank of warrant officer and up, can detain a person for 48 hours. This can be extended to 14 days on application to a magistrate. The purpose of this Section is described as 'action to combat state of unrest'.

Section 29 under which any police officer of the rank of lieutenant-colonel and up, can order the detention of a person for an indefinite period for the 'purposes of interrogation'.

Section 31 under which the Attorney-General can order the detention of a person to hold him or her as a potential state-witness in a trial. The period is until the trial ends, or for six months if the trial has not yet started.

As at 31 August, 572 people had been detained during the first 8 months of 1984.

119 people were known to have been detained during the month of August.

122 people were known to be still in detention at the end of the month.*

It is not known how many others may be in detention. There is no obligation on the security police to release such information and they have considerable powers to prevent publications of facts about detentions and detainees.

Section 50 has been used extensively against people who are active in opposition to the new Constitution. It enables low-key repression through detention to take place unhampered. By clever timing, the 48 hours can be extended over a weekend. If the 48 hours does not expire before 4 pm on Friday, the detainee can be held until Monday.

Section 29 is the notorious provision which allows the State to hold people for an indefinite period, isolated from all contact with the outside world and at the mercy of their interrogators.

Reports of torture through solitary confinement and brutal physical and mental assault have been extensively documented.

Some people held in terms of Section 31 and Section 29 have subsequently been imprisoned for refusing to give evidence against the accused in political trials.

Bans on meetings

In 1976 an emergency ban was placed on all **outdoor** gatherings throughout South Africa. This ban has been renewed regularly since then and has in fact been continuous.

A gathering is defined as "any gathering, concourse or procession of any number of persons" — that is, any gathering of more than one person.

In terms of Section 46 of the Internal Security Act, a magistrate may impose a ban on **indoor** gatherings in his district for specified periods of time.

Magistrates impose such bans very frequently.

The Minister may also impose a ban on indoor gatherings in the whole or part of the Republic.

At midnight on 11 September 1984 he imposed such a ban in 21 magisterial districts until 30 September.

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* Figures include those in detention in the "independent" homelands.

The Minister classified the types of prohibited indoor meetings as follows:

> "Any gathering held where any government or any policy principle, or any actions of the Government of any state, or the application or implementation of any Act is approved, defended, attacked, criticised or discussed, or which is in protest against or in support or in memoriam of anything."

Only recognised political parties are exempt from these bans.

The penalty for convening or presiding over a prohibited meeting may be a fine of R2 000 or two years imprisonment.

The penalty for attending such a meeting may be a fine of R500 or six months imprisonment.

Other tools of repression

The State's repressive powers which can be used to suppress dissent, extra-parliamentary opposition, protest and effective non-violent organisation against apartheid do not end here.

It has taken to itself other powers to ban organisations, to cut them off from financial resources, to prevent the proper and free reporting of police and military actions, to censor free speech.

It has no hesitation in using these powers.

1984 in South Africa

Throughout 1984 in many different parts of the country, severe action has been taken against communities who are protesting rent increases, the establishment of Town and Village Councils, inadequate education, removals, homeland citizenship and the homelands policy, the new pass laws, and the new Constitution.

Much has gone unreported and the factual situation is not always easy to establish.

What is clear is that amidst the widespread chaos and confusion, anger and alienation, there is explicitly expressed, total opposition to the policies of the minority government now in power.

Banning meetings and publications, and detaining leaders is the surest way of causing confusion, rumours, violent outbreaks of arson and stone-throwing.

To remove leaders is the surest way of provoking unrest.

The South African government has used repressive measures against its opponents for 25 years. It has not succeeded in silencing dissent.

It will not succeed in the future.

The ban on outdoor meetings has not succeeded in preventing people from gathering in the streets.

The ban on indoor gatherings does not and will not prevent people from attacking, criticising, discussing, or protesting actions of government or the laws which oppress them.

Preventive detention of some leaders will not prevent others from taking their place.

Why is the South African government NOW mustering all the forces of repression at its disposal?

Because it is feeling threatened and insecure. There is no other explanation for its excessive and hysterical reaction to opposition to the new constitutional system.

The growth of the U.D.F. is a visible expression at national and regional levels of the determination of hundreds of local community organisations to resist their continued dispossession.

This **is** undoubtedly a threat to apartheid.

It is **not** a threat to South Africa.

It **is** one of the most hopeful signs on the political horizon for eventual resolution of the serious conflicts in our society.

To destroy the U.D.F. will **not** be to destroy the people's determination to be free.

To destroy the U.D.F. **will** be to destroy hope for relatively non-violent progress towards justice, democracy and peace.

The constitutional programme is in ruins.

The claim of "consensus" is denied by events.

The government is beginning to realise the essential weakness and vulnerability of the Apartheid system.

The governed are realising their strength.

The "outsiders" are inevitably moving in and there is no use in frantically trying to fortify the battlements against them.

IT'S TIME TO START MOVING TOGETHER TOWARDS A NEW SOUTH AFRICA

REPUBLIC OF SOUTH AFRICA

TO: THE MEMBER OF THE PRISONS SERVICE IN CHARGE OF THE NEW JOHANNESBURG PRISON JOHANNESBURG

NOTICE IN TERMS OF SECTION 28(1) OF THE INTERNAL SECURITY ACT, 1982 (ACT 74 OF 1982)

I hereby in terms of section 28(1) of the Internal Security Act, 1982 direct that the person mentioned hereunder be detained in the New Johannesburg prison until 28 February 1985:

Name of person:

Address:

Given under my hand at Pietersburg this 8th day of September 1984

MINISTER OF LAW AND ORDER

Note:

(1) The person to whom this notice relates (hereafter referred to as the detainee) shall be detained in accordance with the provisions of the regulations contained in the annexure hereto.

(2) The detainee may —

(i) within fourteen days as from the date on which a copy of this notice is delivered or tendered to him make representations in writing to the Minister regarding his detention or release and submit any other information relating to the circumstances of his case;

(ii) be assisted by a legal representative in the preparation of such documents;

(iii) in writing apply to the board of review to give oral evidence before the board;

(iv) after a period of six months as from the date on which he was notified of the outcome of an investigation by the board of review, request the Minister in writing to submit his case to the board of review for investigation and consideration and may in such request specify any change in the circumstances or of the facts pertaining to his case, which in his opinion may serve as justification for the amendment or withdrawal of the notice in force against him.

(3) The detainee may not receive any visitor except with the consent of and subject to such conditions as may be determined by the Minister or the Commissioner of the South African Police.

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STATEMENT BY THE MINISTER OF LAW AND ORDER IN TERMS OF SECTION 28(3)(b) OF THE INTERNAL SECURITY ACT, 1982 (ACT 74 OF 1982)

(a) REASONS FOR THE DETENTION OF IN ACCORDANCE WITH A NOTICE ISSUED IN TERMS OF SECTION 28(1) OF THE INTERNAL SECURITY ACT, 1982

I am satisfied that the said engages in activities which endanger the maintenance of law and order.

(b) INFORMATION WHICH INDUCED ME TO ISSUE THE SAID NOTICE:

By acts and utterances the said did himself and in collaboration with other persons attempt to create a revolutionary climate in the Republic of South Africa thereby causing a situation endangering the maintenance of law and order.

No other information can, in my opinion, be disclosed without detriment to the public interest.

L LE GRANGE

MINISTER OF LAW AND ORDER