

POLICE POWERS

part 2: arrest and detention

This pamphlet sets out the 8 different police powers of arrest and detention under 3 different laws: The Criminal Procedure Act, the Internal Security Act and the Public Safety Act.

Since June 12 last year, most activists have been detained under the Emergency Regulations of the Public Safety Act. But it is important for us to realise that over 3 000 people have also been arrested and detained under sections of other laws.

It is important that you know what all these laws say - what powers they give the government and police, and also what rights you have if you are picked up.

Each type of arrest and detention is looked at under these headings:

- * Name of law (which Act of Parliament).
- * Section of the Act.
- * What does the law say you can be picked up and held for?
- * Is a warrant needed for your arrest/detention?
- * Who is the person that can arrest you and is the permission of a higher ranked person needed?
- * How long can you be held for? X
- * Can you see a lawyer?
- * Can you see your family or friends?
- * Are you visited by other people working for the government?

1. NAME: ORDINARY ARREST (2 days)

LAW: Criminal Procedure Act

SECTION: 50

WHAT FOR? As a suspect on a criminal charge; example, theft, rape, public violence.

WARRANT NEEDED: This is the official paper giving the police authority to arrest you. The police normally need a warrant to arrest you, but there are quite a few exceptions to this, for example, if you are actually seen committing a crime or if you are suspected of committing serious crimes like murder, arson or fraud.

ARRESTED BY: Any member of the police, including 'kitskonstabels' municipal (township) police also have the power to arrest you (they are also referred to as "community guards").

FOR HOW LONG? You must be charged and brought to court within 48 hours (2 days) from the time of your arrest. If you are picked up after 4 o'clock on a Wednesday afternoon, your 48 hours will only be up after the court closes on Friday, so you will only appear in court on Monday.

LAWYER?

s73 of the Criminal Procedure Act (CPA) says that you have a right to get a lawyer from the moment that you are arrested. It is not true that you can only see a lawyer after you have been charged. You should ask to see a lawyer straight away and you should say that you will not answer any questions and make any statement until you have seen your lawyer. You have to give the police your name and address, but you do not have to give them any more information. In the same way that it is your right to see a lawyer, it is your right not to give the police anything more than your name and address. But, it is very important to realise that even the few rights that you have when you are under arrest (or in detention) are not always respected.

So, for example, you might find that you are forced to answer lots of questions. Here your right to remain silent has not been respected.

However hard it might be for you, you should still try to say that it is your right not to give more information.

FAMILY/
FRIENDS VISIT?

You have no right to see your family or friends until you appear in court, but the police can give them permission to see you. Even though they cannot see you, they can still try to drop off food and clothes for you.



2. NAME: DETENTION FOR INTERROGATION (NO TIME LIMIT)

LAW: Internal Security Act

SECTION: 29

WHAT FOR? For interrogation/questioning as a suspect of being involved in "terrorism" or "subversion":

* "Terrorism" includes acts of resistance against the government or economy using force - for example, attacks on community councillors and police.

* "Subversion" includes acts of resistance against the government or economy without using force - for example, general stayaways and consumer boycotts.

* Being "involved" in "terrorism" or "subversion" includes:

- doing something yourself
- withholding information about what someone else did
- hiding someone
- or in any other way assisting someone.

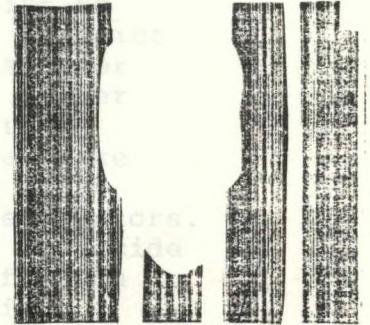
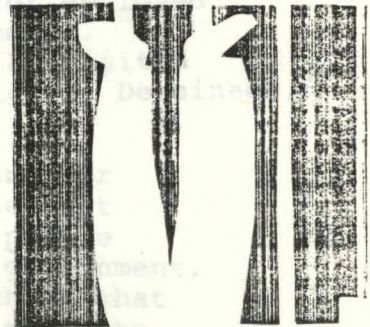
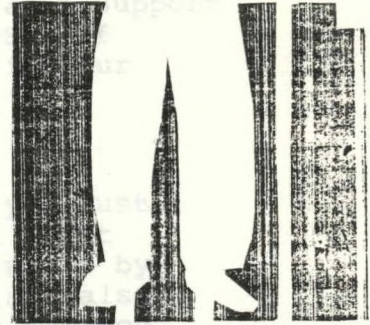
Even though you can be charged after being held under s29 for questioning, you do not have to be charged. Very often the police interrogate people to get information and then release you without charge.

WARRANT NEEDED? No
ARRESTED BY? A police officer of the rank of lieutenant-colonel or a higher rank (for example, brigadier, general) must authorise your arrest. Any member of the police (including kitskonstabels) can physically arrest and detain you under s29 on the orders of the lieutenant-colonel or higher officer. But municipal police do not have this power. From now on when we talk about "member of the police", we include kitskonstabels. But we do not include the municipal police because they do not have the power to carry out detentions under the Internal Security Act.

FOR HOW LONG? You can be detained for as long as the police want to keep you. The law says that the Commissioner of Police can order your release from detention when you have given satisfactory replies to all the police questions at your interrogation. Although it is difficult for you to say nothing, there is nothing in the law which says that you have to answer questions or make any statement while in detention.

If you feel that you have to answer some questions, these rules might help you:

- * if you choose to answer some questions, remember that you do not have to answer all questions, especially ones that will incriminate you (involve you in a criminal charge) or others.
- * try to answer verbally but not to make a written statement
- * if you make a written statement, try not to swear under oath that your statement is true - this is because a sworn statement will be used as evidence in court.
- * if you make a sworn statement, try not to make this statement in front of a magistrate because this will make your position very difficult in court.
- * if you have been assaulted in detention and you are forced into making a sworn statement, try to say in your statement that you were forced into making the statement - also, you should ask to read your statement before you sign it.



LAWYER?

You have no right to see a lawyer but you can still ask to see your lawyer. The police can give your lawyer permission to see you. If you are not allowed to see a lawyer while in detention, you can write to the Minister of Law and Order about your detention or release. Your lawyer will also be able to do this if he/she is asked by your family.

If you have not been able to contact your lawyer while in detention, you must ask to see your lawyer when you first appear in court. You should say that you want to see your lawyer before you say anything in court. If you do not have a lawyer by this time, ask for one. If you want a lawyer but cannot afford one, tell the magistrate and you may be given legal aid to apply for the lawyer.

If you do not have a lawyer, your family could arrange for one through the nearest Crisis Centre or Relief Office or Dependents' Conference Office. This applies to all the detention sections we will be discussing.

FAMILY/FRIENDS VISITS?

You have no right to see family or friends, but you may get special permission for this from the police. Your family can arrange for you to receive clothes and food. It is best to do this through your lawyer or through the Detainees Parents Support Committee (DPSC) if there is one in your area.

OTHER VISITS?

The law says you must be visited at least once every 2 weeks by a magistrate and also by a district surgeon, who is a doctor employed by the government. You can also be visited by an Inspector of Detainees.

It is important for you to realise that all of these people work for the government. Some people think that it is a good thing to make a complaint to a magistrate, district surgeon or Inspector of Detainees. Other people think that complaining can make your position worse with your interrogators. You will have to decide what is best for you in the situation.

3. NAME: DETENTION OF STATE WITNESSES (6 months or more)

LAW: Internal Security Act

SECTION: 31

WHAT FOR? To be used as a witness for the state in a political trial on charges such as "terrorism", treason or taking part in the activities of a banned organisation. Detainees held under this section are not supposed to be interrogated. In most cases s31 detainees are first held under s29 for interrogation and then moved to s31 after making a statement to the police.

WARRANT NEEDED? Yes

ARRESTED BY: The attorney-general (the chief state prosecutor for each province) is the person who makes out the warrant for your detention. Any member of the police force can then arrest and detain you with this warrant. As we have said, most people end up under s31 after being under s29 before.

Here, the attorney-general would send the warrant authorising your detention as a state witness to the police and you would not actually be "arrested" again but simply shifted to s31.

FOR HOW LONG?

You can be held for 6 months under s31 or for as long as the trial lasts. The 6 months will only run from when the accused you are a witness against, is arrested. For example, imagine, you were put under s31 on 1 April and the person who is going to be the accused in the trial was arrested on 1 January. This would mean that if the accused was charged before the end of June and the trial went on until August, you could be held as a state witness until August. If the person who was supposed to be the accused is not charged by the end of June, you should be released at the end of June.

LAWYER?

Just like s29, you have no right to see a lawyer. Under s31 you need the permission of the attorney-general or the police.

FAMILY/FRIENDS

No right for a visit - you need permission from the police or attorney-general. Like s29 food and clothing can be arranged with the police through your lawyer and/or the DPSC.

OTHER VISITS? Like s29, the law says that you must be visited once every 2 weeks by a magistrate and district surgeon.

4. NAME: DETENTION OF STATE WITNESSES (Maximum 6 months)

LAW: Criminal Procedure Act

SECTION: 185

WHAT FOR? To be used as a witness for the state in a political trial on charges such as arson and murder.

WARRANT NEEDED? Yes

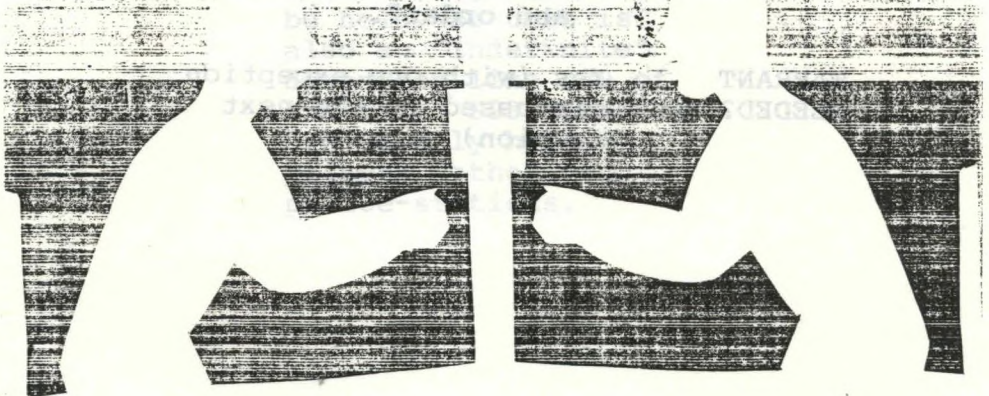
ARRESTED BY? Like s31 of the Internal Security Act (ISA), the attorney-general is the person who orders your detention under a warrant. You should be held for no longer than 3 days unless the attorney-general has got a warrant for your further detention from a Supreme Court judge. Once there is a warrant for your detention, any member of the police can arrest and detain you.

FOR HOW LONG? S185 of the CPA says that you cannot be held for longer than 6 months (unlike s31 of th ISA). If the trial in which you are needed as a witness ends before 6 months are up, then you should be released at this earlier time.

LAWYER? Like s31 of the ISA, you have no right to see your lawyer - you need permission from the attorney-general or police.

FAMILY/FRIENDS VISITS? No right for a visit - permission needed from attorney-general or police. Arrange food and clothing through lawyer and/or DPSC.

OTHER VISITS? The law says that you must be visited once a week by a magistrate.



5. NAME: LONG TERM PREVENTATIVE DETENTION
(No time limit)

LAW: Internal Security Act

SECTION: 28

WHAT FOR? Unlike s29 of the ISA, this section is not meant to be used for interrogation. Here you are held to stop or prevent you from taking part in political work. This is why this type of detention is called preventative detention. You can be detained under this section if the Minister of Law and Order thinks:

- * you will commit an act of "terrorism", "subversion" or "sabotage", or that
- * you are involved in activities which are a danger to "state security" or the "maintenance of law and order".

WARRANT
NEEDED?

Yes (with one exception discussed in the next section)

ARRESTED
BY?

The Minister of Law and Order is the person who has to make out a notice authorising your detention. The member of the police force (any rank) must normally hand you the notice (which serves as a warrant) when arresting and detaining you. If the police do not yet have the notice, but have been told that the notice has been made out by the Minister, they can arrest you without the warrant and hold you for up to 7 days until the Minister's notice has been received.

FOR HOW
LONG?

You can be detained for as long as the Minister of Law and Order wants to keep you. This is why we call this type of detention "long-term preventative detention". There is no time-limit on how long you can be held, so this is also an "indefinite" detention like s29 of the ISA. S28 detainees are usually held in prisons rather than police-stations.

LAWYER?

As a general rule, you have no right to see your lawyer. The exception to this is that you do have the right to see your lawyer within 14 days of the detention notice being given to you. Remember that this 14 days will not always run from the start of your detention but only from when the notice is received by you which might be up to 7 days after you have been detained. You can only see your lawyer during these 14 days for the purpose of your lawyer writing to the Minister of Law and Order about your detention and possible release from detention. When asking for your lawyer you should say that this is the reason why you want to see your lawyer. To see your lawyer at any time after the 14 days, you would need police permission.

FAMILY/
FRIENDS
VISITS?

No right to visits - these would have to be arranged with the police by special permission - through your lawyer and/or the DPSC. In addition to food and clothing, it is possible to arrange things like books and study materials under s28.

OTHER
VISITS?

The law says that a Supreme Court judge has the right to visit you under this section. Just as in the cases of people like magistrates and district surgeons under s29 of the ISA, you will have to use your own judgement in deciding if it is useful to make complaints to these judges.

6. NAME: SHORT-TERM PREVENTATIVE DETENTION
(14 days)

LAW: Internal Security Act

SECTION: 50

WHAT FOR? You can be detained under this section if the arresting officer thinks that you are active in things like "disorder, riots or public violence" and that your detention is necessary to stop "public disturbances".

Like s28 of the ISA the purpose of this section is preventative - to take you out of political action. The section is not supposed to be used for interrogation.

WARRANT NEEDED? No

ARRESTED BY: A police officer of the rank of warrant officer or a higher rank has to arrest and detain you or can order your arrest and detention in a prison or police station.

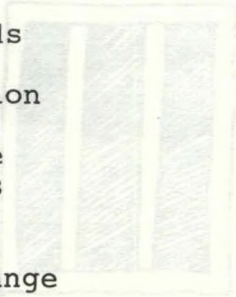
It is important to know that a member of the SADF of the rank of warrant officer or higher has the same power as the police to detain you under this section.

FOR HOW LONG? You can be detained for a total of 14 days. If the police want to hold you for longer than 48 hours they have to get a warrant from a magistrate after the 48 hours (2 days) are up. This warrant extends your detention for another 12 days making a total of 14 days altogether. Compare this s50 to s50 of the CPA where you must be released after 48 hours or on the first court day after 48 hours are up.

Be careful not to mix up the 2 different s50's. Even though detention under s50 of the ISA is only for 14 days, it is possible for the police to move you to s29 of the ISA when your 14 days are up. It is also possible that you will be released and then arrested again by the police for another 14 days.

LAWYER: Under this section of the ISA you have a right to see your lawyer from the moment you are arrested and detained. This is why it is important to ask under what section you are being held. Unlike s29 of the ISA where you need special permission to see a lawyer, under s50 you must say you want to see your lawyer because it is your right.

FAMILY/FRIENDS VISITS? Your family and friends have a right to visit you. Under this section you are supposed to be treated in the same way as someone who has been charged and is awaiting trial. It is a good idea to arrange these visits through your lawyer and/or DPSC.



OTHER VISITS? The law says nothing about visits by other government officials under this section.

7. NAME: LONG-TERM PREVENTATIVE DETENTION
(180 days)

LAW: Internal Security Act

SECTION: 50A

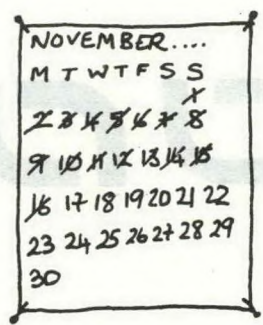
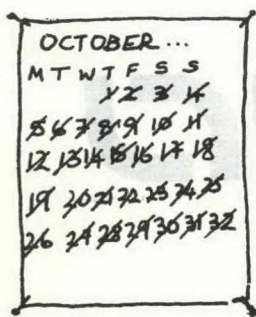
WHAT FOR?

This section is new and was brought in in June 1986. It gives the police temporary powers of detention when the State President has said in the Government Gazette that this section is in operation. It is likely that the State President will do this when the Emergency is lifted - but he does have the power to give the police these extra powers at any time, even during the Emergency. You should compare s50A with s50 of the ISA because some things are the same as s50 and other things are different. The reasons for your detention under s50A are much the same: if the police officer thinks your detention will help to prevent "public disturbance, disorder, riot or public violence".

WARRANT NEEDED? No

ARRESTED BY? Like s50 of the ISA a police officer of the rank of warrant officer or higher can order your arrest and detention without warrant. You can be held in a prison or police station.

FOR HOW LONG? Under s50A your detention is for 180 days (6 months). Like s50 of the ISA the police have to get permission to extend your detention longer than 48 hours. But under s50A they only have to get a written order from a police officer of the rank of lieutenant-colonel or higher to extend your detention to 180 days.



LAWYER?

Under this section the Minister of Justice has the power to make regulations about the circumstances of your detention, including things like seeing a lawyer and other visits. This section has not been used yet and so the Minister has not yet made any Regulations. The section does say (like s29 of the ISA) that you can write to the Minister of Law and Order about your detention.

FAMILY/FRIENDS VISITS?

This will depend on the Minister of Justice's Regulations when this section is used for the first time.

OTHER VISITS?

Will depend on Regulations.



8. NAME: EMERGENCY DETENTION (for as long as Emergency lasts)

LAW: Regulations passed under the Public Safety Act

SECTION: Regulation 3(1)

WHAT FOR? You can be arrested and detained under the Emergency if the member of the force arresting you thinks that your detention is necessary for one of these things:

- * the maintenance of public order
- * the safety of the public
- * for your own safety
- * to bring about the end of the State of Emergency.

In some cases it is possible to challenge an emergency detention if your lawyer can show that your detention was not necessary for one of the above things, for example, you could rather have been arrested and charged after 48 hours for something like having banned literature. The police have the power to interrogate you under the Emergency, but the law does not say that you have to answer questions or make a statement.

WARRANT NEEDED? No

ARRESTED BY? Any member of the SAP
(now including the Railways
Police), the SADF or
the Prisons Service
can arrest and detain
you. In the SAP this
includes constables
and kitskonstabels.
In the SADF this includes
privates and riflemen.

NOTE: This is the only one of the detention laws that says any member of these forces can give the order to detain you.

NOTE: Municipal police do not have these powers of detention under the Emergency.

FOR HOW LONG? After you have been arrested, the member can have you detained in a police station or in a prison by making out a written order to the Head of the Prison. You can then be held up to 14 days. For you to be held for longer than 14 days, the Minister of Law and Order has to make out a written order saying that you should be held for longer. You can then be held for as long as the State of Emergency lasts.

RELIEF CENTRE -CAPE TOWN

PHONE 243782

CRISIS CENTRE -PORT ELIZABETH

PHONE 543141

So we can see why this is also a form of long-term detention - some detainees have been in since the start of this latest State of Emergency on June 12 1986.

LAWYER?

The Emergency Regulations say that no-one is allowed to see you without the permission of the Minister of Law and Order or the police.

The families of some detainees have challenged this in court. Some of the courts have said that as a detainee you should have a right to see your lawyer.

Many detainees are now being allowed to see their lawyers but this still has to be arranged through the police.

When inside, it is important that you ask to see your lawyer to try to challenge your detention in court. Your family can also ask your lawyer to do this.

DEPENDANT'S CONFERENCE PHONE NUMBERS

Assistance for families of detainees

CAPE TOWN- (021) 457373 QUEENSTOWN- (0451) 3446
 GRAHAMSTOWN- (0461) 2445 UMTATA- (0471) 23653
 KIMBERLEY- (0531) 41535 WORCESTER- (0231) 26611
 KING WILLIAM'S TOWN- (0433) 23165
 MIDDELBURG- (0483) 21500
 PORT ELIZABETH- (041) 27391
 OUDTSHOORN- (04431) 92136

FAMILY/FRIENDS VISITS?

Because of the Emergency Regulations, these visits have to take place with the permission of the police.

You get a visit by applying in writing to the Divisional Commissioner of Police in the area you are arrested (eg Western Province, Boland, South Western Districts).

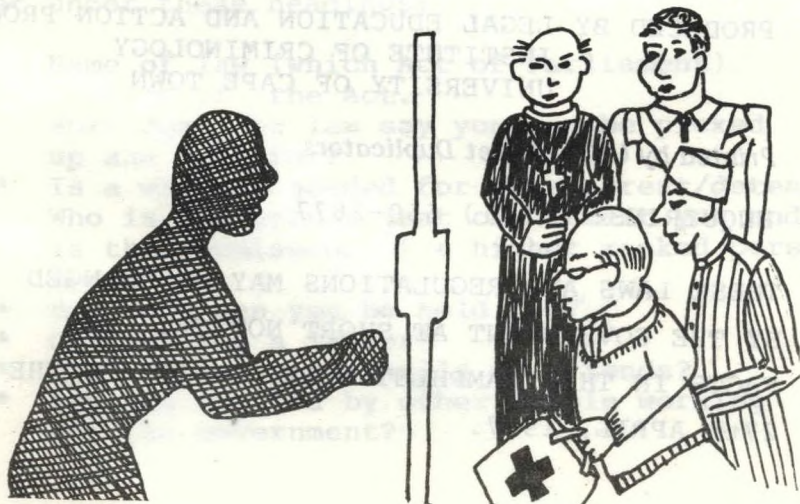
It is best to organise this through your lawyer.

When the lawyer writes off to get your family permission to visit, he/she must include the ID numbers and address of the family members or friends who want to visit.

Your family can bring money and clothes (but not food) for you when they come to visit you in detention.

OTHER VISITS?

Judges have the right to visit Emergency Detainees. A prison doctor (a district surgeon) is usually available for medical problems. You can ask to see your private doctor or a specialist but you are unlikely to get permission. Your family should ask your private doctor to telephone the Chief District Surgeon for your area to ask about your health and to arrange for you to receive any special medicines. It is also possible to get permission for your church Minister, Imam or Rabbi to visit you in detention.





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