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THE STATE OF EMERGENCY LAW WITHSPECIAL  
REFERENCE TO THE DETENTION F0 CHILDREN'  
N. Hayson , Centre for applied Legal  
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Harare, September 24-27, 1987

THE STATE OF EMERGENCY LAW  
WITH SPECIAL REFERENCE TO THE DETENTION OF CHILDREN  
N. Haysom

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STATE OF EMERGENCY LEGISLATION WITH SPECIAL REFERENCE TO  
THE REGIME GOVERNING THE DETENTION OF CHILDREN  
PART 1: GENERAL COMMENT ON PURPOSE AND EFFECT OF THE LEGAL  
REGIME INTRODUCED BY THE STATE OF EMERGENCY

It is necessary to make some general comments concerning the purpose and nature of the state of emergency. These remarks are directed at all three states of emergency as proclaimed in 1985, 1986 and 1987 respectively. All were drastic measures which sought to confer the widest powers on police officials as an answer to South Africa's political problems, particularly the widespread civil resistance to government policies and institutions.

Before assessing the intention and thrust of the regulations it is necessary to bear in mind that the state of emergency should not be measured against legal criteria in isolation. The state of emergency was not simply a neutral (The first part of this position paper is an adapted version of the introduction to the edited collection of papers presented to a national workshop for civil rights attorneys held in April 1987. This collection, *Emergency Law*, will be available at the Morono Conference and provides a more detailed legal analysis of the relevant law. The second part is an edited version of a briefing circulated to members of the National Association of Democratic Lawyers in August 1987.1 ')

law-and-order measure against which one can assess its worth by comparison to analogous international standards. It is a profoundly political measure in nature, purpose, and effect. It is as political a response as, say, deciding to negotiate with black political leaders, or improving housing and living conditions for South Africa's black citizens. It is indeed the decision not to do such things.

Most international human rights instruments, including the International Covenant on Civil and Political Rights (16 December 1966), expressly allow for signatory states to impose states of emergency in which civil liberties are suspended in their countries (see Article 4). In cases such as earthquakes or civil feuding, states of emergency are deemed necessary in order to preserve liberty and social organization. The premise upon which such instruments rely is that states of emergency permit the suspension of civil liberties in order to preserve the democratic rights of the majority of citizens and only to the minimum extent required. (See, for example, the judgement in *ReEublic of Ireland v United Kingdom* (1978) 2 EMRR 25.) In South Africa the state of emergency meets neither requirement. In this sense the state of emergency shares its motivation and purpose with much other legislation in South Agrica - notablyiy security legislation. Such legislation has made inroads into the rights of assembly, association, protest, due process, free speech, and freedom of movement. Many members of the legal fraternity have criticized these provisions (though not enough, nor as vociferously as they could have). To the extent that

lawyers have sought to criticize the security legislation without reference to the political policies that generate such resistance their protest has been shallow. It is against this backdrop that a legal consideration of the state of emergency must proceed.

Just how draconian the sweep of the state of emergency is \_ can be gained from an examination of the powers the authorities possessed prior to the state of emergency. In all but name they are emergency powers. Powers of preventative and interrogative detention without trial; powers to ban books, persons and organizations on the basis of secret and untested information; powers to ban meetings and gatherings without representations from the affected parties (for nearly ten years all outdoor gatherings at which more than two persons are present have been prohibited in terms of s 46 of the Internal Security Act 74 of 1982); the state of emergency has conferred on this regime an element of normality. Even measured against this regime the state of emergency can be considered sweeping. The Public Safety Act grants the State President powers to legislate by the proclamation of regulations and, further, to confer substantial law-making and policing powers to subordinate officials. These law-making powers enabled policemen effectively to rule over regions, more particularly the black townships in these regions.

Why was it necessary to increase police powers? What was

it that the police wished to do that they could not do in terms of existing security legislation? This question, which puzzled human rights lawyers, is clarified by a closer inspection of the regulations themselves.

There are three inter-related features which, taken together, make it clear that the state of emergency has a most disturbing objective. The three features are as follows:

1. The regulations substantially augment police powers by giving them broadened executive and legislative capabilities. Regulation 3 granted the widest possible power to detain by granting this power to 'raw recruits', of the South African Defence Force, South African Police and various other agencies defined as constituent elements of 'the security forces', and vesting such recruits with this drastic power in a way which made it nearly impossible to challenge legally (see part 2 below). The purpose of the . detention provisions was to enable the mass warehousing of South Africa's township residents, notably the youth.

Figures provided by the Detainees' Parents Support Committee indicate that well over 20 000 persons have been detained - the majority of them minors. While it is not the purpose of this publication to detail the treatment some of these children have received nor the long-term psychological and social effects of incarcerating large numbers of children, it should be noted that most civil rights attorneys will have been confronted by allegations

of cruelty to children which can only leave them outraged and depressed.

The augmentation of police powers occurs also through reg 7 which grants divisional police commissioners the power to govern by decree (referred to in the regulations as 'orders'). 'Dictatorial' may sound like an exaggeration but a scrutiny of the orders promulgated during the state of emergency gives substance to this expression (see annexure attached). Orders have been used: to prohibit or restrict funerals, church gatherings, carol services, the wearing of buttons and T-shirts, entry to and from magisterial districts and residential areas; to impose curfews on townships; prevent union meetings, to ban possession of tyres unfit for use on a car; to prohibit playing, loitering or 'remaining aimlessly' on a public road; to prohibit discussion of educational and other issues; to order attendance or prohibit the attendance at schools or other institutions.

2. The second distinctive feature of the emergency regulations was the attempt to exclude legal process and legal supervision from the exercise of emergency powers, particularly the exercise of these powers by the police. In both states of emergency the State President saw fit to promulgate three provisions seeking to maintain 'law and order' without 'law'. First, the regulations contained an 'ouster clause' which sought to exclude Supreme Court

supervision of emergency powers, regulations, orders and the conduct of the security forces (reg 16 (3)). In this way the security forces would escape accountability to legal standards in the exercise of their powers. Secondly, the regulations also purported to give members of the security forces an indemnity against the consequences of their unlawful actions unless the complainant could establish that the unlawfulness was mala fides (reg 16(1)). Thirdly, the regulations attempted to restrict access to detainees by attorneys (reg 3(10)). In this way lawyers would have been prevented from monitoring or supervising the conditions and treatment of detainees. Detainees could be abused at will because the detaining authorities were provided with a barrier against outside intervention or inspection, a barrier which could be broken only by the type of exceptional case launched by District Surgeon, Wendy Orr (Orr v Minister of Law and Order SECLD 25/09/85) unreported). Apart from these specific provisions, the regulations generally sought to frame the powers of the security forces in the form of subjective discretionary powers thus avoiding legally precise standards and procedures. Lawyers had been able to breach these barriers (Metal and Allied Workers Union v State President 1986 (4) SA 358 (D); Bill v State President 1987 (1) SA 265 (W)), but the initial purpose behind them, however, has been given expression in recent Appellate Division rulings (Omar, Fani v Minister of Law and Order, State President v Bill 1987 (3) SA 859 (A)).



The third feature of the emergency regulations - and it operates in tandem with the other features - is that the regulations seek to prohibit or inhibit public accountability over police conduct by a ban on information on 'unrest events' and police conduct (regs 1, 9, 10, 11, 12 of R109 g9 10280 of 12 June 1986; regs 1-10 of Proc 224 gg 10541 of 11 December 1986). A number of these regulations were successfully struck down in three notable legal challenges (see part 2). But the fact is that a number of the restraints remain, and the government has persisted in replacing those regulations struck down by the courts with freshly drafted ones. These regulations seek by and large to inhibit information or the photographing of the security forces and their conduct. They also seek to restrict political expression and news by prohibiting the publication of a widely-defined category of statements called 'subversive statements'. A scrutiny of these regulations reveals that these provisions were (or are) also obscure and journalists are paralysed not only by the sweep of the regulations but also by their inscrutability. Those journalists who were brave enough to risk writing on sensitive topics (and were also legally equipped to understand the regulations) ran another risk not contained in the regulations but still definitely a facet of the state of emergency. The authorities are armed with wide administrative powers to punish without proceeding through legal process. An overseas correspondent faces deportation, not prosecution; a local correspondent faces

detention or the seizure of his publication, not prosecution. Authoritarian caprice is as powerful a barrier to the free flow of information as the inscrutable regulations have been.

The three features canvassed above indicate that the regulations are a prescription for unsupervised and unaccountable behaviour by security forces vested individually and collectively with enormous executive powers and armed with a formidable array of violent weapons to enforce compliance. This can only indicate that the security forces requested and were given permission to use force unconstrained by any limits. The security forces have been granted a capacity to operate in the grey areas of illegality, to break the back of township resistance: 'pacification by war'.

How the security forces actually operate, and to what effect, is a matter of speculation. The practices prior to the state of emergency are, however, a cause for grave concern. Medical and other research into injuries and killings prior to the state of emergency indicate that an alarming percentage of victims were minors, and were shot in the back (see 1986 (2) g; Journal on Human Rights 255). There have been numerous incidents, such as the Langa shootings, the Mamelodi shootings and the 'Trojan Horse' incidents in Athlone and elsewhere which would appear to confirm this approach.. Under the state of emergency, young men, apparently with inadequate training as revealed in two recent court cases, possess the power of both

judges and executioners , They decide whether an offence is being committed and what the appropriate penalty is. When children are throwing stones at Casspirs or cars, should they open fire or give the child a clip on the ear? Now that the tenuous forms of accountability represented by legal and media supervision have been reduced, can the situation be better than it was before the state of emergency? It is in this context that attorneys are constrained to use whatever energy and creativity they have and whatever powers the text of the law allows to inhibit the abuses of the authorities and to subject them to supervision.

## PART 2: SUMMARY OF LEGAL DEVELOPMENTS AND CASE LAW WITH REGARD TO 'EMERGENCY' LEGISLATION

### 1. INTRODUCTION

To date three successive states of emergency have been proclaimed: July 1985, 12 June 1986, and 11 June 1987 respectively. Regulations in terms of s 3(1)(a) of the Public Safety Act were promulgated on the same dates. These regulations were amended from time to time as appears from the schedule attached to this memorandum but the most important additional regulations were those promulgated on 11 December 1986 (the 'media regulations' R224, gg 10541 of 11 December 1986 (Reg Gaz 4027)). The 1986 state of emergency lapsed on 12 June 1987 and a fresh state of

emergency, together with regulations promulgated in terms of the Act (R96 of 1987, R97 of 1987, R98 of 1987) was declared on 11 June 1987. There appears to be little significance in the fact that two sets of regulations were in operation on 12 June. In both states of emergency the regulations essentially provided for three forms of control over the public: restrictions on access to news and on the content of publications; the augmentation of police powers to enable police officials to legislate by 'Orders' duly promulgated; and provisions enabling the detention without trial of members of the public, initially on the merest suspicion by a member ('even a haw recruit') of the Security Forces.

#### The Media Regulations

It is necessary to list some of the challenges to the previous regulations, more specifically those dealing with publications on account of the fact that clients and former detainees may face charges under those provisions. The initial 1986 media regulations were attacked in *Metal and Allied Workers' Union v State President* 1986 (4) SA 358 (D) and *Natal Newsgagers (Pty) Ltd v State President* 1986 (4) SA 1109 (N). The consequences of these attacks were that the definition of a 'subversive statement' was altered and parts of it were declared void ab initio, and the prohibition of the mere possession of these statements was also set aside. Those sections of the definition of a

subversive statement which were set aside can be found in the reported judgments cited above. On 11 December and after the deletion of the original media regulations an amended version of these was promulgated. These new media regulations were attacked in the case of the United Democratic Front and Release Mandela Campaign v the State President 1987 (3) SA 296 (N) (hereafter known as the 'ggg' case). The three judgments are still relevant in that they set out the possibilities of legal challenges to the media regulations within the ultra vires doctrine, more specifically in regard to challenges on the grounds that the regulations are too unclear or vague or ambiguous to constitute certain law.

The 1987 regulations (R97 of 1987) were adapted to meet the criticisms of the first two of the Natal Provincial Division judgments cited above. But the new regulations re-enacted many of the provisions set aside in the 3!; case: the prohibition on reporting or photographing security actions and the deployment of security forces; the prohibition of the presence of journalists at unrest incidents; the power of the Commissioner of Police to summarily add to the definition of what constitutes a 'subversive statement'. The 1987 regulations expand the definition of subversive statement by extending the definition of 'boycott' to include public undertakings (eg SATS).

## Police Powers

yThe power of divisional commissioners to make orders, and these orders themselves, have been challenged on several occasions (UDF v State President WLD 28/07/86 Case No 16433/86, unreported; UDF v State President EPD Case No 1074/86, unreported). These challenges have been founded on the requirement that the State President is not capable of delegating the very powers entrusted to him by Parliament to police officials without issuing guidelines on how such powers are to be exercised. The 1987 , (regulations repeats these provisions in\_reg 7, but adapted to comply with the guidelines as set out in the above cases.

## 2. DETENTION

### 2.1 Challenging the Detentions

Regulation 3 of the 1987 emergency regulations confers. powers to arrest and detain any person whose detention is, in the opinion of any member of the Security Forces, necessary for the 'safety of the public or the maintenance of public order or for the safety of that person or for the termination of the state of emergency'. These powers are similar to those conferred under the 1985 and 1986 regulations.\_ The only point of difference is that the 1987 regulations provide for an initial period of thirty days

detention upon the authority of the arresting officer whereas the 1986 regulations restricted this initial period to 14 days. After such initial period the detention can only continue upon the express authorization of the Minister of Law and Order.

In view of the similarities between the 1986 and 1987 regulations it is useful to summarize briefly the major challenges to the detention provisions and to give a brief legal assessment of the nature of these powers. There are four possible stages in the detention process. First a member of the Security Forces (the arresting member)-is required to form an opinion that the detainee must be detained. Thereafter he is required to arrest the detainee and in this regard he must comply with certain formalities. Thirdly the detaining member is required to detain a person so arrested and delivered to him by the arresting member. After the initial period the Minister is required to exercise his discretion as to whether the continued detention of the detainee is necessary.

It should be mentioned that apart from the detaining member who exercises a-mechanical/fuhction, the discretion of the other officials is couched in the widest and most subjective terms. The regulations merely require the official 'to form an opinion' and not, as is the phrase in s 29 of the Internal Security Act, 'to have reason to believe'. The latter has been construed as requiring

objectively good and justiciably reviewable 'reason to believe', (Minister of Law and Order v Hurley 1986 (3) SA 568 (A), Kabinet van die Tussentxdse Regering vir Suidwes-Afrika v Katofa 1987 (1) SA 695 (A)), whereas the latter merely requires the 'policeman to have an opinion - even if it is an incorrect opinion. However, it would be incorrect to treat the subjective discretion as an 'unfettered' discretion. In the exercise of a subjective discretion the arresting member, and subsequently the Minister, must act bona fide, the detention must be necessary (DemEsex v Minister of Law and Order 1986 (4) SA 530 (C), but see Makhajane v Minister of Law and Order TPD 16/10/86 Case No 1871/86, unreported), and continue to be necessary (Jaffer v Minister of Law and Order 1986 (4) SA 1027 (C), MacKenzie v Minister of Law and Order CPD 31/03/87 Case No 1167/87, unreported), the detention must be for the purposes set out in the Act (State President v Tsenoli 1986 (4) SA 1150 (A)), and the detention must be for a purpose which the normal law of the land cannot achieve (Demgsex (above) but see Ngumba v State President 1987 (1) SA 456 (E)). It has been suggested further that despite the subjective nature of the discretion the official is bound by the guidelines set out in Northwest Townships (Pty) Ltd v Administrator; Transvaal 1975 (4) SA 1 (T), that is, he must exercise his discretion in a manner which excludes irrelevant considerations, and takes into account relevant considerations and is not arbitrary.



One of the first lines of attack upon the detention of members of the public was in relation to the right of the detainee to make representations (the application of the audi alteram partem principle) prior to the extension of his detention. Whereas the first of these cases was successful (Nkwinti v Commissioner of Police 1986 (2) SA 421 (E)), after an amendment to the regulations expressly dispensing with the right to notice or a hearing, subsequent cases failed. The amendment was held to exclude even written representations prior to the extension of a detention (Fanie v Minister of Law and Order EPD Case No 1840/85, unreported, Omar v Minister of Law and Order 1986 (3) SA 306 (C), Momoniat v Minister of Law and Order 1986 (2) SA 264 (W)). In Bill v State President 1987 (1) SA 265 (W) the right to legal counsel was founded on the argument that as persons had the right to make representations (though only after the initial detention period; Momoniat (above)) they should be allowed access to their attorney. The Bill, Fanie and Omar cases (above) went on appeal to the Appellate Division where, in a blunt and unimpressive judgment (1987 (3) SA 859 (A)), the Chief Justice ruled that the Minister was not required to give reasons for detentions; that detainees were entitled to make representations to the Minister, but the Minister was apparently not obliged to reconsider the detention after receiving the representations. Furthermore, the Chief Justice states unequivocally that the right of access to a legal representative does not exist.

Detentions have also been challenged on the grounds that the technical formalities of the arrest or the warrant of detention had not been complied with (Hlahla v Minister of Law and Order TPD 04/08/86 Case No 13679/86, unreported; Itsweng v Minister of Law and Order TPD 16/07/86 Case No 127421/86, unreported; but see Suttner v State President TPD 05/08/85 Case Nos 13500, 13501/86 unreported, Leboa v State President TPD 2/9/87 Case No 2411/86, unreported and Ngumba v State President 1987 (1) SA 456 (E). ,It appears that the arrest need not comply fully with the requirements of an arrest in terms of the Criminal Procedure Act, that is, that the reasons for the arrest be advanced (Suttner (above), Kerchhoff NPD 14/08/86 Case No 1912/86, unreported, Ngumba (above)). The Bill and Fanie cases are a clear indication from the Appellate Division that they will not pursue a civil liberties approach to questions of detainees' rights and will not follow a restrictive view of the powers of the State President. Rather they will follow the law and order approach and will not set aside regulations made by the State President as long as he acts for one of the purposes authorized by the Public Safety Act, which are very wide. Finally, it appeared that if the detainee or his legal representative has opted to request reasons from the Minister he may not bring an application for his release until he has received the reasons (Seftel v Minister of Law and Order WLD 07/04/87, unreported). This has probably now changed as the Minister is no longer required to give reasons, according to the Chief Justice.

## 2.2 The Current Position of Detainees

The Minister of Justice proclaimed rules governing the conditions of detention under reg 3(7) of the 1987 emergency regulations (by GN 1300 gg 10775 11 June 1987). These rules were almost identical to the rules which had governed detainees in the previous two states of emergency. It was alleged in two matters which were not argued before the courts that these rules were punitive in nature, not merely preventative and were accordingly ultra vires the enabling statute. In particular, the position of detainees compares unfavourably with the United Nations Standard Minimum Rules for the Treatment of Prisoners (resolution 663C (xxiv) 31/07/55) as well as with awaiting trial prisoners under the Prisons Act 8 of 1959. For example, the provisions dealing with internal discipline and punishment excluded the right of legal representation. On 26 June 1987 the Minister's rules were superseded by regulations promulgated by the State President (R106/1987). The latter regulation purported to bring detainees into line with awaiting trial prisoners. This is not, however, entirely true. For example, in respect of the exercise period, the compulsory time for exercise has been reduced from one hour to half an hour. Furthermore, the new regime contained express departures from the Prisons Act and prison regulations in the following respects:

2.2.1

2.2.2

2.2.3

2.2.4

2.2.5

The regulations require-that detainees be segregated from other prisoners.

The concurrence of the Commissioner of Police is required before the prison authorities allow study privileges.

The detainee is not allowed 'under a power contained in Ithe prison regulations) to procure for himself from outside the prison any newspaper, foodstuff or potables, radio, record-player, tape-recorder and musical instrument, or television set'.

The new regulations re-enact provisions relating to the medical treatment of detainees contained in the previons rules relating to the treatment of emergency detainees.

The regulations also limit the right of detainees to visits by making applicable reg 3(8) of R96 of 1987. This provision prohibits access to a detainee by any person, other than a state official, except with the consent of and 'subject to such conditions as may be determined by the Minister or a person authorized thereto by him'.

'This regulation further prohibits access to

information relating to a detainee. This section may still be used to prevent access to the medical reports of a detainee treated in prison, although this is by no means settled law.

2.3 It does, however, appear that prisoners may receive and write letters subject to the normal prison censorship. Detainees may now receive magazines and books from outside the prison and reg 2(3) notwithstanding it may be possible for persons outside the prison to supply detainees with newspapers as this regulation appears to prohibit the prisoner himself from purchasing a newspaper.

The rules relating to the punishment of detainees has been replaced by the regime applicable to prisoners. The new regulations restrict the period in which detainees can be kept in a lock-up (police cells) to 14 days.

2.4 At a seminar on detainees' rights attended by human rights attorneys from various parts of South Africa and Namibia, inter alia the following suggestions were made:

2.4.1 . The district surgeon is under a strict professional duty to attend and care for

2.4.2

2.4.3

2.4.4

2.4.5

-20-

detainees in terms of his medical ethics.

Failure to observe these should be reported to the Medical and Dental Council.

The detainee has a right to be released in good health and ipso facto a condition caused or brought on by his/her detention could be grounds for an application for his/her release, alternatively for medical (including psychiatric) care 0

The detainee has a right to an adequate and nutritional diet. Discrepancies in diet between classes of prisoners (eg, race groups) could also be challenged.

The solitary detention of an emergency detainee is prima facie punitive unless it is in consequence of an offence in terms of the prison regulations.

Legal visits should be conducted within sight but out of hearing of a warder. This is strengthened by the recent regulation making the prison regulations applicable to detainees.

PART 3: DETENTION AND THE POSITION OF CHILDREN

The previous section has set out the position regarding the powers to detain a person, as well as the regime governing the conditions of detention. Only to the extent that the law allows a departure from this regime in regard to children can one speak of a separate regime governing children. To this extent the emergency regime is exceptional in that neither the rules nor the regulations specifically refer to children. The previous section thus also sets out the framework governing the power to detain children, as well as the conditions of detention of children.

The South African statutes law as well as the common law takes into account the age of a detainee, prisoner, or offender in various respects, and to this extent follows international norms in providing special protections for children.

When confronted by the criminal law a child under the age of 14 is presumed to be *doli incapax*, that is incapable of criminal intent unless the contrary is proved. A child over the age of 14 is regarded as having the criminal capacity of an adult but his age will invariably be taken into account for the purpose of sentence.

Furthermore the South African criminal law acknowledges that the prison environment is not a healthy environment for a

child. It does so by specifying in s 29(1) of the Prisons Act 8 of 1959 that a child accused of having committed an offence should go; be detained in a prison or police cell prior to his conviction unless there is no suitable alternative place of detention and detention is necessary. Furthermore, s 29(3) of the Prisons Act specifies that children in detention should be segregated from adults in a prison. (See also reg 137 of the Prison regulations.)

The law recognises that a parent or guardian of a child has a special custodial relationship in regard to that child. A parent or guardian is required to be warned to attend a criminal proceeding where his child is due to appear (s 74(1) of the Criminal Procedure Act) and is entitled to assist his child at such proceedings.

It is noticeable that the regulations do not provide that a parent should be informed of the detention of his or her child. Indeed in many cases parents are not so informed. Furthermore, the emergency regulations expressly provide that information concerning the detention (including the name and whereabouts of the detainee) shall not be made public. This is an important facet of the law in regard to the emergency detention of children because law should also have regard to the rights of parents. The trauma of parents seeking to trace their children may be as great as that of children who have' been detained.



#### Detention of Children

The first concern of attorneys is to obtain the release of children detainees or to challenge the discretion of the arresting officer or the minister, as the case may be, who has decided that the detention of the child is necessary for the preservation of 'law and order and the security of the state'; To date the courts have not distinguished the discretion necessary to arrest a child from the discretion necessary to arrest an adult. On the contrary, the decision of the full bench of the Transvaal in the case of Makhajane v Minister of Law and Order (WLD 29/08/86, unreported) appears to reject the submission that special circumstances would be necessary to justify the detention of a child.

In view of the fact that an emergency detention must be necessary and continue to be necessary for the preservation of law and order the minister's opinion can be challenged at any stage after the detention of the child has been extended by him. In that regard attorneys could perhaps have done more to establish the grounds of detention and whether the factual circumstances which required the detention continue to exist. However, in view of the Appellate Division's ruling in Omar's case (supra) it will be much more difficult for attorneys to challenge the discretion of the authorities as the latter are no longer required to furnish their reasons.

It should be noted that the laws which provide for emergency detention do so on the grounds of 'public safety' and not on the grounds of the acts or intentions or attitudes of the detainee. This shifts the legal questions away from the detainee and has allowed the police to argue that the militant role of youth in the explosive township situation makes the youthfulness of the detainees an aggravating factor. That the police actually believe this is confirmed by the extent of the indiscriminate detention of children,

#### Conditions of Detention

The emergency regulations provide that in the case of a conflict between the regulations and the Prisons Act the emergency regulations governing detention shall apply (Reg 1(2) R106, 1987 gg 10805). On these grounds lawyers have adopted the view that any attempt to assert the rights of children under the Prisons Act, the Criminal Procedure Act, or the Children's Act would be fruitless. As the regulations intend no differentiation between children and adults it would appear that the conditions of detention described in Part 2 would apply to children except that at the most the Prison Authorities should segregate juvenile detainees from older detainees in terms of Prison Regulation 137. The enjoinder not to hold children in detention at all (as contained in the Prisons Act) is subordinated to the emergency regulations in terms of Reg 1 (2). Because of the inadequate protections and rights afforded by these regulations, because of the

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vulnerability of the children, and because of the special hostility that the authorities often bear towards township youths, it is not surprising that some of these youths have been subjected to cruel abuses. The actual application of the law to children, and the extra legal abuse of children should be the basis for another paper.

Nicholas Haxsom

CENTRE FOR APPLIED LEGAL STUDIES

August 1987

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STATE OF EMERGENCY

12 February 1987 - 18 June 1987

Gazetted proclamations. orders and notices. with brief summary

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Shadrack Mapumulo. Durban. Umla:i. Inanda

(Port Natal Division)

GN R617 60 10669 18/03/87 Order: restrictions on funerals. KiraMashu.

- Ntuzuma. C Ierntanl. KwaDabeka. Cheslerville.

Lamann-ille. Umlazi Township (Port Natal

. Division) 0

ON R618 66' 10670 19/03/87 Order. restrictions on funerals. Easlem Province

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in GN 173 66 10598 23/01/87. West Rand

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ON 4 (76 25 - 27/03/87 Order. Commissioner KwaNdebcle Police.

- Withdrawal oftorders in ON 9 CC 45 12/08/86.

Prescnce of non-residcnts. unless legany

employed: presence of pupils: curfew 21h00-5h00;

posscssion of tyres. fuel; payment for travcl of

public transport; loitering on public roads;

delivery of goods only with permission:

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and outdoor gatherings unless subject to certain

conditions

GN R664 06 10686 31/03/87 Republic of South Africa Constitution Act.

. Assignment of powers from the Minister of Law

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Affected Organizations Act. provisions of the

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71 and 72(c). All with effect from 1 April 1987. '

ON 791 " CO 10702 04/04/87 Order. rcstrictions on funeral of Benedict

' Ngaoktse Moshcke. Scbokcng. Evamn.

Bophelang. Boipalang (West Rand Division)

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GN R873 66 10713 10I04/87 Notice by Commissioner SAP: addition to definition of 'subversive stalemate' any campaign.  
project for action for the release of detainees . i ' consisting of: -  
0 a petition or any other action calling on the 5 government to release a detainee; ;  
0 supporting a document protesting against or disapproving of detention; ;  
0 wearing slicker, clothing, or exhibiting posters, 1 stickers protesting or disapproving detention or ; supporting person's release;  
0 mending gathering to protest detention, or . in honour of detainee, or supporting detainee's ' - 3 release;  
0 symbolic act .01 solidarity in honour of persons.  
'1 . (D GN 1055 60 10737 05/05/87 Order. amend GN R617 66 10669 18/08/87: delete words preceding paragraph (a) in definition of 'unrest'. (Port Natal Division)  
ON 1056. 66 10737 05/05/87 Order. amend ON 157 60 10592 20/01/87: delete words preceding paragraph (a) in definition of 'unrest'. (Soweto Division) 1 '  
ON 1057 06 10737 05/05/87 Order. amend ON 175 06 10598 23/01/87: ' delete words preceding paragraph (a) in definition of 'unrest'. (Witwatersrand Division)  
ON 7 CC 35 08-05/87 Order: Commissioner KwaNdebele Police. Amdt 01 reg 1 in ON 4 CC 25 27/03/87. Entrance into KwaNdebele for a lawful purpose permitted.  
GN 1120 CO 10750 15/05/87 Order. restrictions on funeral of 2311 Kuzwayo. 1 ' Durban. Unilazi. Pinelawn. Inanda (Port Natal ' 1 Division)  
ON 1361 . GG 10794 18/06/87 Order: restrictions on funeral of France Thulani Ngcamu. Camperdown. Lion: River, Pietermaritzburg (Natal Division)  
I ON 1362 66 10794 18-06/87 Order. minor amendment to order in ON 1344 CG ' 10787 16/06/87  
(W  
ON 1417 66 10802 23/06/87 Order. entry of defence areas by permission only: open, cleared, unoccupied ground in Nyanga  
Extension 3. open and cleared ground in Nyanga (Western Province Division)  
Proc R106 66 10805 26/06/87 Regulations: detainees. Application of Prisons Act to detainees: segregation of detainees 1mm other prisoners; medical treatment: studies: exercise and sport: detainees to be held in police cell or lock-up for 14 days only. Deletion 013(7) of security regs. Amend reg 10 and 11 of security regs accordingly.

SOUTH AFRICAN JOURNAL ON 11U. .- 1 . '

STATE OF EMERGENCY

11 June 1987 - 18 June 1987

Gazetted proclamations; orders and notices. with brief summary

-, . Proclamation/ Government \_ 3

-'. . Govl Notice Gazelle Date Summary

Proc R95 06 10770 11/06/87 Declaration of I stale of emergency

\_. , Proc R96 . . 60 10771 11/06/87 Security regulations

. . Proc R97 66 10772 11/06/87 Press regulations V

'1 .\_ Proc R08 66 10773 11/06/87 Education regulations 1 i

ON 1300 0010775 '11/06/87 Rules ofdelcnlion '

GN 1344 66 10787 16/06/87 Order. restrictions on funcrals. 11"am-ille.

- Daveylon. Kallehong. Thokoza (East Rand

Division)

ON 1355 66 10787 16/06/87 Order: restrictions on funerals. Clermonl.

KwaDabcka. Chcslerwillc. Lamonn'ille

(Porl Natal Division)

ON 1346 CO 10787 16/06/87 Order. reslriptions on funerals. New Brighlon.

KwaZakheIe, Zu-idc. Walmn Black Township.

Malherwell. KwaMagxaki. KwaDweJi.

KwaNobuhle. Kabah, Langa. Despalch Black

Township. Fingodorp. Tamyi. Makannaskap.

Joza. Alicedale. Ou Lokasie. Tim's. Dorrington.

I(waNomzamo. Cenmon. Weston. Bommg.

Zu'eliuha. Njoli. Bongwem'. New Brighlon.

Adelaide Black Towmhip. Paterson Black

Township. Alexandria Black Township.

Kem-on-Sea Black Township. Lingelihle.

Pan Alfred Blark Township (Eastern Province

Division)

ON 1350 06 10787 16/06/87 Order: restrictions on funerals. Soweto.

' DicpklaqL Meadowlands. Dabsom'ille (Soweto

Division)

ON 1360 06 10794 18/06/87 Order: restrictions on funerals. Sharperille.

(7.x Sebokeng. Evalon. Bophe/ong. Bwpalong.

C Mohlakmg. Bekkersdal. Kagixo. Munsierille

(West Rand Division)

x,

43B:4228:EM3CY

CENTRE FOR APPLIED LEGAL STUDIES

University of the Witwatersrand

31 August 1987

INDEX OF JUDGMENTS INVOLVING INTERNAL SECURITY AND PUBLIC SAFETY ACTS

JUDGE 3 ACT

APPLICANT RESPONDENT DIV DATE CASE NO ICOUNSELJ INVOLVED COMMENTS

APELENI, Min Law & Order, SELD 12.12.86 2315/86 Mullins Public Rule nisi sought restraining

Wellington Comm of SAP IPickering Safety Act police from assaulting applicants.

& 3 others - Proc 109, Dispute of fact not referred

to oral evidence because detainees

Reg 3(1) precluded from-court appearance

LAMANI, Min Law & Order, 2316/86 No rule nisi because this

Tango Div Comm SAP would effectively be a final

& 4 others ' interdict. Mullins expects

enquiry into torture.

Application dismissed.

ARGUS Min Law & Order WLD 29.01.87 365/87 Daniels Public Argus application challenging  
PRINTING Comm of SAP Safety notice (GN 101) outlawing the  
u & PUBLISH- Act support of unlawful organization  
xING GN 101, and the order (GN 102) prohibiting  
CO LTD GN 102, the publication of related  
GG 10605 advertisements. Argued that first  
SAAN of 8 notice (GN 101) was vague in the  
January use Of the term 'support', which  
1987 could go so far as to indicate a  
mere state of mind. Daniels J did  
seem to narrow the ambit of the  
wording, stating that, in its  
' ordinary sense, 'support' was  
understood to mean 'to actively  
promote the interests of'.  
Argument in respect of the order.  
(GN 102) prohibiting advertisements  
was that the Commissioner Was  
empowered only to make orders for  
a 'particular area' and not for the  
1 Republic as a whole, as he had.  
purported to do. This ground was  
. upheld.

\_\_\_\_\_ . \_\_\_\_\_ . \_\_\_\_\_ . \_\_\_\_\_ . \_\_\_\_\_  
\_\_\_\_\_ . \_\_\_\_\_  
AZANIAN Min Law & Order DCLD 12.02.87 150/87 Didcott Internal gggs on respondents to prov  
e  
PEOPLE'S Min of Police (Moosal Security reasonable grounds for detention  
ORGANIZA- Act not discharged.  
TION s 29 Detention invalid  
(AZAPO) x Pamphlets ordered to be returned  
MOODLY ,  
Subrayan  
W



JUDGE ACT

APPLICANT RESPONDENT DIV DATE CASE NO ICOUNSELI INVOLVED COMMENTS

BILL M C State President WLD 04.08.86 1987 (1) Leveson Public Reasons for detention to be given.

& others 265 (W) V lKunyl Safety Legal access granted. Reg 3(10((a)

Act and rule 5(1) ultra vires

Broc 109,

1986 \_

BISHOP of Min Law & Order EPD ml.08.86 1101/86 Kroon Public Detention of Fr Graham Cornel ius

Roman & others Safety unlawful - his relase ordered.

Catholic Act Detention of Rev Leeuw not un-

Church Proc 109, reasonable or mala fides. .His

LEEUEW, 1986, application dismissed.

Lizzie Reg 3(1)

BLOEM AH & The State & six OPD 18.07.86 1986(4) Edeling Public Legal Access; tabling regs

JANUARIE J others 1064 (O) Hattingh Safety Application dismissed with costs.

Steyn Act

(Viloenl Proc 109,

(Mailerl 1986

1

CHERRY, .Min Law & Order EPD 20.05.87 Kroon Public Application for release of detainee Janet (Donenl Safety from North End Prison, PE.

Act It was argued that reasons given

for detention were contradictory and\_

that there were no reasons to

substantiate the Major of the

Security Police's beliefs about the

detainee's political activities.

Application dismissed.

JUDGE ACT

APPLICANT RESPONDENT DIV DATE CASE NO ICOUNSELJ INVOLVED COMMENTS

CONGRESS of Min Law & Order WLD 23.04.87 6637/87 Gordon Internal Appeal against the banning of

South Afri- ' Security Living Wage Campaign meeting by

can Trade Act Minister of Law and Order

Unions

Notice on Minister's not curtailed due to

Kgobe, Tony 26 March the Magistrate's considering the

1987 banning. Audi alteram Partem not

applicable. Minister did not fail

to apply his mind.

Application dismissed.

COUNCIL of State President, WLD 15.10.86 18690/86 Goldstone delict Internal Security Act 50 detention

Unions Min Law & Order ICTH Safety converted to PSA Proc 109, 1986

Commissioner FarlamJ Act Reg 3(1)

of SAP Proc 109, Reg 3(6) - validity not decided.

1986 Conditions of release conceded to

be invalid. Not within the court's

power to refer back to Minister to

amend them

---

DEMPSEY A Min Law & Order CPD 09.07.86 1986(4) Marais Public Detention of Sister Claire Harkin

and 3 others

530 (C)

Safety

Act

Proc 109,

1986

Reg 3(1)

Unlawful and therefore set aside

n -5.-

W

' JUDGE ACT

APPLICANT RESPONDENT DIV DATE CASE NO (COUNSEL) INVOLVED COMMENTS

FANIE, Min Law & Order EPD ,1840/85 Zietsman Public Reasons for detention, detention  
Marjorie Min of Justice Cloete Safety unlawful and release of detainees  
& others ' On Eksteen Act sought .

Appeal lTrenogvel (1985 Audi alteram partem excluded

State of Application dismissed

Emergency)

FREDERICKS, Min Law & Order EPD 23.04.86 619/86 Jennett , Internal Further detention of F  
redericks

Elvin John Comm SAP ' Van Security lawful

Div Comm SAP, . Rensburg Act 5 50 Application dismissed

Border Region lFarlamJ

GAFOOR, D Commissioner of EPD 15.11.85 1842/85 Mullins Internal Further detention bona fi  
de

Police . (Smuts1 Security Application dismissed

. s 50

w

GRAHAMSTOWN Chief Magistrate EPD 29.08.85 1448/85 Eksteen Internal Banning of meeting  
Rural COMP Albany . (Nettleton1 Security

mittee and Act

4 others s 46(1)

GUMEDE Min Law & Order DCLD 05.02.87 1987 (3) Booyesen Public Honestly held opinion to arr  
est.

MDELETSE 155 (D) (LRC Safety Not referred to oral evidence to

MKHIZE Durban) Act cross-examine applicants or

Proc 109, policemen.

1986 Application dismissed.

Regs 3(1)

and (3)

HLAHLA, Min Law & Order TPD 04.08.86 13679/86 Harms Public Arrest in respect of s 50 of the

Tshela & others x , Safety Internal Security Act

MOLALA, , Act Detention of applicants at

Francis Proc 109, Nylstroom prison not in compliance

MALOSE, 1986 with the Minister's order to

Geoffrey Reg 3(1) detain them at Nylstroom police

and 3(3) cells, therefore unlawful

Release ordered

HUFKIE Min Law & Order EPD 21.07.85 1874/85 Eksteen Public Opinion to arrest was bona fide

Commndg Officer, IKentridgel Safety No oral evidence granted

Middelburg Prison ' Act

(1985\_

State of

Emergency)

ITSWENG PS Min Law & Order TPD 16.07.86 127421/86 Roux Public Detention of David Motsiri  
Commndg Officer, Safety v Itsweng declared unlawful and

Moot Police Stn Act his release ordered

Proc 109,

1986

Reg 3(1)

JAFFER, Z Min Law & Order CPD 29.07.86 1986 (4) Berman Public warrant officer held no opinions

JAFFER, Adam Min of Justice 1027 (C) Safety as to the detention of Jaffer

Comm of Police Act after 16 June therefore detention

Officer Commndg Proc 109, unlawful, and Minister's further

Victor Verster 1986 order of detention unlawful

Prison Regs 3(1) '

and 3(3)

JUDGE ACT

APPLICANT RESPONDENT DIV\_ DATE CASE NO (COUNSEL) INVOLVED COMMENTS

KAULUMA Min van AD 25.03.87 Rabie (SWA/ Appeal against further detention.

James Verdediging Jansen Namibia) Decision in Kauluma v Minister of

Joubert AG9 of Defence 1984 (4) SA 59.

Hefer 1977

Boshoff Art. 5 Dismissed

919 (1)

KERCHHOFF, Min Law & Order NPD 14.08.86 1912/86 Kriek Public Tsenoli judgment declared wrong

Joan Min of Justice Law Safety Reg 3(1) declared intra vires '

KERCHHOFF, Comm of Police ' Thirion Act ' Legal access granted

Peter Officer Commdg Proc 109,

New Prison, 1986

P'maritzburg Reg 3(1)

LEBOA, State President WLD 18.09.86 18022/86 O'Donovan Public Order for arrest and detention bore

Josiah & others Safety the name of another person. -

Molefe Act Arrest and detention therefore

Proc 109, unlawful. Release ordered.

1986

JUDGE ACT

(APPL ICANT RESPONDENT DIV DATE CASE NO ICOUNSELI INVOLVED COMMENTS

MacKENZIE, Min Law & Order CPD 31.03.87. 1167/87 Williamson Proc 109, Application for release of

I D Officer Commdg, (Seligsonl 1986 'detainee, who was detained while Pollsmoor Prison Reg 3(1) distributing UDF pamphlets for the Christmas Against the Emergency Campaign. Judge found that the Minister did not apply his mind in the further detention beyond the time period of the Christmas Campaign. The ouster provisions of Reg 16 do not apply, although the Minister thought himself to be acting bona fide and honestly. Detention of Ian MacKenzie beyond 26 December unlawful and his release ordered.

MADUMISE State President OPD 03.10.85 3470/86 Lichtenberg Public Arrest and detention of applicant's

. Min Law & Order (Pretoriusl Safety mother bona fide.

Act Application dismissed

Proc 109,  
1986

Regs 3(1)  
and 3(3)

MAHLANGU Min Law & Order WLD 15.09.85 1986 (4) Stafford Public Habeas Corpus application for

547 (W) Safety Amos Mahlangu

Act . Application dismissed with costs

(1985

State of

Emergency)

APPLICANT

Min Law & Order  
Min Law & Order  
Min Law & Order  
& 3 others  
Min Law & Order  
& 3 others  
Min Law & Order  
& 3 others

— 9 —

JUDGE

DATE (COUNSEL)

DIV CASE NO

Ludorf

IStraussl

WLD

29.08.86 19207/86

Eloff

Goldstone

vd Merwe

lKunyJ

TPD 16.10.86 1871/86

NCPD 05.12.86 Van Rhyn

Steenkamp

IDe

Villiersl

Public

Safety

Act

Proc 109,

1986

Reg 3

Public

Safety

Act

Proc 109,

1986

Reg 3(1) I

Internal

Security

Act

s(50)

Public

Safety

Act

Proc 109,

1986

Reg 3(1)

Arresting officer's information on  
the child's conduct justified the  
opinion to arrest in terms of the  
emergency, and not to consider  
alternative legislation.

Application dismissed.

Detention of 13-year-old boy  
declared not invalid

Child Care Act - child in need of  
care - considered "far-fetched"

Arrest and detention found to be  
lawful

M

JUDGE ACT -

APPLICANT RESPONDENT DIV DATE CASE NO ICOUNSELI INVOLVED \_ COMMENTS

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MAWU and State President DCLD 16.07.86 1986 (4) Didcott Public Definition of subversive s  
tatement

MCHUNU . & 3 others 358 (D) Kumleben Safety invalid in parts:

Thirion Act subpara (a) invalid;

Proc 109, subpara (c) "administration of

1986 justice" invalid;

subpara (d) invalid;

subpara (e) invalid;

subpara (f) "of foreign action"

invalid; 3(10)(a) & rule 5(1)

ultra vires and therefore legal

access granted

MDA, Thobeka Min of Justice Ck 1986 (3) Pickard National Detention unlawful, reasons,

Comm of Police 500 (Ck) (Selvanl Security assaults.

Act 1982 Magistrate to give oral evidence

s 26 at future date.

---

MIN OF LAW Hurley D and 'AD 22.05.86 1986(3) Rabie Internal Appeal against Leon AJP's DCL  
D

& ORDER & Rickard CP 568 (A)' Botha Security judgment declaring Kearney's

others Jansen Act arrest unlawful

(Trengevel s 29(1) Appeal dismissed with costs



JUDGE ACT

APPLICANT RESPONDENT DIV DATE CASE NO ICOUNSELI INVOLVED COMMENTS

MIN OF LAW TUCK, Lenie EPD 02.04.87 1578/86 Mullins Public Appeal against Zietsman J's  
& ORDER Kannemeyer Safety decision that further detention  
Comm of van Rens- Act unlawful because of mistake in  
Police burg 'Proc 109, 'detainee's name (Puck instead of  
Div Comm 1986 Tuck), and detainee released.

of Police,

East Cape Minister considered to have  
formed an opinion.

Nqumba followed.

Appeal upheld.

MKROLA 28.11.86 Pickard Ciskei Application for legal access to  
ISchwartz- National detainee.

man) Security Refusal of court to exercise this

Act, 5 26 discretion. Arresting officer had

good reasons to believe.

Application dismissed.

MOFOKOANE, Min Law & Order TPD 17.03.86 4948/86 Spoelstra Rule nisi sought: prevention of  
Pastor Govt of Lebowa ISuttner's unlawful detention, assault,

Stephen Min Law & Order, Application struck from the roll

Lebowa Station because of defective papers

Commander,

Motetema Plc Stn

MOKOENA A Min Law & Order WLD 14.05.86 1986 (4) Goldstone Internal Urgency; Tom Lodge evi  
dence.

42 (W) Security Return of publications by

Act respondent ordered

JUDGE ACT

APPLICANT RESPONDENT DIV DATE CASE NO ICOUNSELI INVOLVED COMMENTS

MOLEFE, State President TPD 05.03.87 2586/87 Myburgh Public Application for release from Mathews Min Law & Order . (Unter- Safety detention of Happy Cleopatra, Comm SAP halter) Act aged 14. Argued that Reg 3(1) Min of Justice Proc R109, cannot be intended to apply to K 1986 children or, if so, it is mala fide.

Reg 3(1)

Application dismissed;

MOMONIAT Min Law & Order WLD 31.12.85 1986 (2) Goldstone Public Audi alteram partem excluded before

& others 264 (W) Coetsee Safety Minister orders further detention'

Heyns Act ' not ultra vires or mala fides.

(Kentridge (1985 Applicant can make representations

Marcusl State of after order issued.

Emergency) Application dismissed.

MORARJEE Min Law & Order DCLD 25.11.85 1986 (3) Kumleben Internal Audi alteram partem not applicable

' 815 (D) (Durban Security in extending detention in terms of

( LRCI Act 5 29(3)(a).

, s 29 Applicant's detention for purposes

of interrogation unlawful if, as.

contended, he was mentally unfit.

Dispute of fact on mental condition

of Shirish Soni referred to oral

evidence. Rule nisi extended.

1

MOREO, Rev Comm of SAP TPD 02.06.86 9778/86 Daniels Internal Arrest and detention not

Stephen Min Law & Order 1 Security unlawful and invalid

VANDenBROECK Magistrate van Act Application dismissed with

Fr Lodewijk Greuning s 50(1) costs

\_ 13 \_

JUDGE ACT

APPLICANT RESPONDENT . DIV DATE CASE NO ICOUNSELJ INVOLVED COMMENTS

MSANE, Min Law & Order WLD 31.03.87 87/3669 Goldstone Public Arrest and detention not mal a fides

Nonceba Comm of Police ISelvanl Safety or vindictive as alleged.

Cordelia Act No evidence that the Minister did

Proc 109, not form bona fide and honest

1986 opinion to further detain.

Reg 3 Oral evidence wasted.

Application dismissed.

MULLER, Min Law & Order EPD 06.11.86 1315/86 Kannemeyer Public Both detainees released be fore

Frederick & 4 others ' Safety hearing

Act Merits argued for costs

SMILES, 1 Min Law & Order 1316/86 Proc 109, Applicants ordered to pay

Donald & 4 others 1986

NATAL State President NPD 04.09.86 1986 (4) Leon Public 7(1)(a)(b)(c); not invalid

NEWSPAPERS Govt of RSA 1109 (W) Kumleben Safety 7(1)(d): issuing of orders

NATAL Min Law & Order Nienaber Act - invalid -

WITNESS Comm of SAP Proc 109, Reg 9: not invalid

ARGUS 1986 . 10(b): possession of subversive

SAAN Regs 7-12 statements - invalid

11: seizure of publications -

invalid 6

12: seizure and confiscation of

subversive publications -

invalid

Two telex orders declared invalid

APPLICANT RESPONDENT DIV  
NATIONAL State President WLD  
EDUCATION Min of Education  
CRISIS & Training  
COMMITTEE  
(NECC)  
SOLE, Maggie 1  
MABASO, Peter  
NEWMAN, Min Law & Order CPD  
Zelda Comm of Police  
NEWMAN, Div Comm Boland  
John PA Lourens,  
Asst Magistrate  
Malmesbury  
NKWINTI Comm of Police EPD  
& 5 others  
DATE  
09.09.86  
06.12.85  
04.11.85  
CASE NO  
16736/86  
10886/85  
1986 (2)  
421  
(E)  
\_ 146-  
JUDGE  
, 1COUNSEL1  
Coetzee  
Vivier  
Munnik  
Baker  
Jennett  
Kannemeyer  
Smalberger  
ACT  
INVOLVED 1 COMMENTS  
Public No locus standi of applicants  
Safety Application dismissed with costs  
Act  
Proc R131  
Internal Detainee released after application  
Security launched  
Act Audi alteram partem excluded  
3 50(2) Application dismissed with costs  
Public Detention unlawful; release  
Safety ordered  
Act  
(1985  
State of  
Emergency)  
Reg 3  
s 3(1)A

---

' JUDGE ACT

APPLICANT RESPONDENT . - DIV DATE CASE NO ICOUNSELI INVOLVED COMMENTS

— .  
NQUMBA, State President EPD 1987 (1) Kannemeyer Public Ketchhoff upheld  
Phila and 2 others 456 (E) Jennett, Safety Regs 3(1) & 3(3) intra vires:  
Wilshire Act not invalid due to vagueness,  
DAMONS State President Jones Proc 109, unreasonableness or beyond the  
1986 powers conferred by Parliament  
ADAMS & a 3 others Regs 3(1) Arrest not mala fides ,  
2 others and 3(3) Detention lawful. Applicants not  
released. Application dismissed  
JOOSTE State President with costs  
& 3 others  
LOEWE, State President  
Michael & 2 others

---

OMAR, A M Min Law & Order CPD 20.12.85 1986(3) Vivier Public Reg 3(3) declared not ultra  
& 5 others and 4 others 306 (C) Safety) ' vires  
Act No legal access granted  
(1985  
State of  
Emergency)  
R69 3(3)

---

\_\_\_\_\_1.\_\_\_\_\_  
\_\_\_\_\_1.\_\_\_\_\_  
OMAR and \_ Min Law & Order AD 26.06.87 1987 (3): Rabie Public eMinister not required to g  
ive  
others and others 859 (A) Joubert Safety reasons for detention  
Viljoen Act Audi alteram partem rule excluded  
FANI and Min Law & Order Boshoff 1985 emer- Detainees not entitled to make  
others and others Hoexter gency representations to the Minister  
1986 emer- after their further detention  
state Bill, Mary . gency Minister not obliged to consider  
President Cameron . representationS'made to him  
Detainees have no automatic right  
'to access to lawyers  
Hoexter geve dissenting judgment

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\_ 15 \_

, JUDGE ACT

APPLICANT RESPONDENT DIV DATE \$ASE NO ICOUNSELI INVOLVED COMMENTS

PADDOCK, Min Law & Order DCLD 1/- 1 IGordonl Public Freelance press photographer.

Billy 29.05.87 Safety His film confiscated, allegedly

1 Act in contravention of the regulations

Proc R224 because they were invalid in

Natal. May take pictures of unrest

because of RMC & UDF case.

PAVLICEVIC Min Law & Order WLD 13.07.87 12491/87 Leveson Internal No intent to subversion  
in terms of

Commanding IMahomed) Security 5 54(1) of the Internal Security

Officer, SAP Act 5 29 Act shown by respondents.

Commanding ' Public Arrest and detention of

Officer, John - Safety Act Michael Rouseos unlawful

Proc 109, His release ordered

1986

Reg 3(1)

RADEBE, K Min Law & Order WLD 07.07.86 1987 (1) Goldstone Public Unlawful detention;

Min of Justice 586 (W) Safety Mashiyani released

Act

Proc 109,

1986:

Reg 3

SHAIK, Comm of SAP DCLD 19.01.87 8624/86 Friedman Internal Arresting officer called to gi  
ve

Faizal Ali Min Law & Order Security oral evidence (Col Buchner)

Act His reasons for detention

S 29(1) reasonable

Application dismissed

JUDGE ACT

.APPLICANT RESPONDENT DIV DATE CASE NO lCOUNSELL INVOLVED COMMENTS

SMITH Min Law & Order EPD 1002/86 Zietsman Internal Detention not unlawful

VAN HEERDEN and 5 others Security Detainees not released

Act Application dismissed with costs

s50(1)

Public

Safety

Act

STATE Tsenoli AD 30.09.86 1986 (4) Rabie Public S v Tsenoli appeal upheld

PRESIDENT, 1150 (A) Jansen Safety 7

MIN OF LAW Corbett Act Kerchhoff appeal dismissed

& ORDER Joubert Proc 109,

MIN OF ' Viljoen 1986 '

' JUSTICE Regs 3(1)

, & 3(3)

KERCHHOFF, Min Law & Order

Joan and others

KERCHHOFF,

Peter

SUTTNER State President TPD 05.08.85 13500/86 Harms Public No release from detention granted

KUBHEKA Govt of RSA 13501/86 Myburgh Safety No further reasons given for

Min Law & Order Preiss Act detention

Proc 109,

1986

\_ - \_ - \_ . \_ I . \_

SWART, Min Law & Order CPD 03.04.87 11947/86 Selikowitz Public Application for release of detainee

Hester Min of Justice (Gauntlett Safety Nabil Swart.

Comm of Police (Rose- Act ' -

Officer Cmdg, Innesl Proc 109, No lawful cause shown for further

Victor Verster 1986 detention.

Prison "Reg 3 Release ordered.

APPLICANT  
TSENOLI,  
Solomon  
Lechesa  
TURRET  
CORRES-  
PONDENCE  
COLLEGE  
U D F  
U D F  
RESPONDENT DIV  
State President DCLD  
Min Law & Order  
Min of Justice  
Min Law & Order TPD  
Commissioner of  
Police  
State President WLD  
Comm of Police  
Div Comm, Soweto  
State President NPD  
Government RSA  
.Commissioner SAP  
Min Law & Order  
DATE  
08.08.86  
25.08.86  
28.07.86  
24.04.87  
CASE NO  
4988/86  
14593/86  
16433/86  
399/87  
\_ 18 \_  
JUDGE  
(COUNSEL 1  
Friedman  
Leon  
Wilson  
Myburgh  
IBrowde  
Van der  
Rietl  
Coetsee  
Preiss  
Stafford  
Page  
Galgut  
ACT  
INVOEVED  
Public  
Safety  
Act  
Proc 109,  
Reg 3(1)  
Public  
Safety  
Act  
Rule 5  
Visits  
Public  
Safety  
Act  
Proc 109,  
1986  
Public  
Safety  
Act  
Proc R224  
Reg 3(1A)



GN 238

COMMENTS

Reg 3(1) invalid and ultra vires  
the powers of the State President  
therefore Tsenoli's detention  
unlawful

3(3) therefore not necessary to  
discuss

Refusal of visits and refusal to  
give reasons not ultra vires.,  
Application dismissed.

Reg 7: Delegation of powers by CORP  
missioner of SA Police unlawful

GN 1505 q910354 10.07.86 declared  
invalid

Reg 11: seizure of  
publications declared valid

No vagueness or invalid delegation  
of powers

Decision in UDF v State President  
Case No 3475/86 decisive of this  
application.

Reg 3(1A) invalid.

Order in GN238 prohibiting adverts  
re: unlawful organisations made in  
CC 10605 of terms of 3(1A) therefore invalid.

29-January

1987

JUDGE ACT

APPLICANT RESPONDENT DIV DATE CASE NO ICOUNSELJ INVOLVED COMMENTS

U D F State President NPD 08.05.87 7395/86 Didcott Affected Application against declarati  
ont

Durban R S A (Mahomedl Organisa- of UDF to be an affected

Housing Government RSA tions Act organisation.

Action Min Law & Order Proc 190, Minister of Law & Order the

Committee Min of Justice qg10486 of incorrect minister to make the

Natal Or- Registrar of 9 October order.

ganisation Affected 1987 Audi alteram Egrtem meaning of term

of Women Organisations 'political' in the Act not decided.

Curnick Minister of Justice and Registrar

Ndhlovu of Affected Organisations

restrained from acting against UDF

pending appeal.

U D F State President EPD 1074/86 Cloete Public Reg 7(1) & 7(4): Delegation of

and 4 others ' Jones Safety powers by the Commissioner of

Kroon Act the SA Police unlawful

MOOSA, Proc 109, Reg 11: Seizure of publications

Mohamed 1986 by delegees unlawful

Valli

Orders in GN 1277 of 19 June 1986

and GN 1432 of 1 July 1986

invalid

.

JUDGE ACT

APPLICANT RESPONDENT DIV DATE CASE NO ICOUNSELJ INVOLVED COMMENT

\_\_\_\_\_.\_\_\_\_\_.\_\_\_\_\_.1\_\_\_\_\_.\_\_\_\_\_.\_\_\_\_\_.

U D E State President NPD 24.04.87 1987 (3) Page Public Reg 1(1): "Security action" definition

Government RSA SA 296 (N) Galgut Safety tion invalid; paras (vi) and (ix)  
Release Min Home Affairs IMahomedl Act of "subversive statement" definition  
Mandela Min Law & Order Proc R224, tion invalid; "unrest" definition  
Campaign Commissioner of 1986 invalid.

' Police ' Reg 1(2): limitation of the scope  
of the definitions.

Reg 2: use of the words "unrest",  
"or security action" and "or action"  
invalid.

Reg 3(1)(a): invalid

Reg 3(1)(b): invalid

Para 3(1)(c): the words "discloses  
at any time before the gathering  
takes place, the time, the date,  
place or purposed of such  
gathering, or": invalid..

Reg 4: invalid.

HR

U D F Van Der west- CPD 24.04.87 3833/87 Berman Public An order was issued on 15.04.87  
(western huizen, R N Baker Safety setting aside an order by respon-  
Cape Div Comm, Soweto Foxcroft Act dent prohibiting a UDE meeting.

Region) (Gauntlett Proc 109,  
1986 Respondent had not applied his mind

Reg 7(1) to placing restrictions on the  
meeting, rather than an outright  
ban, which he could not justify.

' \_\_\_\_E\_\_EE\_\_

JUDGE ACT

APPLICANT RESPONDENT DIV DATE CASE NO ICOUNSELI INVOLVED COMMENTS

1

VALE and Min Law & Order EPD 05.09.86 M1210/86 Jones Arrest and detention of  
others ' Karen-Leigh Thorne unlawful and  
her release ordered

Arrest and detention of other

applicants lawful - their

' applications dismissed

VISAGIE, State President EPD 15.02.87 1815/86 Eksteen Public Application to have conditio  
ns of

Abraham Min Law & Order (Seliko- Safety release declared invalid.

Johannes Commissioner of witzl Act Application dismissed.

\_, Police Proc 109,

1986

Reg 3(6)

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EMGCY

REPUBLIC i

- OF

SOUTH AFRICA

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' (CST excluded)/(AVB uilgesluit)

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PROCLAMATI'ON

by the I.

g. , State President or the Republic of South Africa

No.11. 106, 1987

I I REGULATIONS UNDER THE PUBLIC SAFETY

- ACT, 1953

Under the owers vested in me by section 3 of the Public Safety Act, 1 53 (Act 3 of 1953). I hereby make the regulations contained in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Cagle Town this Twenty-sixth day of June, One thousand N ine undred and Eighty-seven.

P. W. BOTHA,

State President.

H. J . COETSEE,

,1 . .3 By Order of the State President-in-Cabinet:

K 5 SCHEDULE

Definitions and interpretation

1. (1) In these regulations, unless inconsistent with the context-

"Commissioner pf Police" means the Commissioner of the South African Pohce, and for the pu\_rposes of the application of a proviswn of these regulations m-

(a) a division as defined in section 1 of the Police Act,

" 1958 (Act 7 of 1958), the said Commissioner or

the Divisional Cqmmisioner designated under that

Act for that divisnon; or

(b) a self-goveming territory, the said Commissioner

or the Commissioner or other officer in charge of

the police force of the government of that territory;

y'tdetainee" means a persen who is 'in detention under

regulation 3.0f the Security Regulations;

"head of a prison", in relation to a detainee detained-

(a) in a rison as defined in the Pn'sohs Act, means the

hen of that prison; or

(b) in a police celior lock-up. means the person in

charge of that police cell or lock-up;

455-16.

'Regulation Gazette

JUNE

JUNE 1987

PRETORIA, 26

REPLJBLIEK

VAN

SUID-AFRIKA

' Government Gazette

1.1.; - Staatskoerant

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No. 10805

PROKLAMASIE

van die

Smatspresidcnt van die Republiek van Suid-Afrika

No. R. 106, 1987

REGULASIES KRAGTENS DIE WET OP OPENBARE

VELLlGHELD. 1953

Kragtens die bevoe dheid my verieen by artikel 3 van die

Wet op Openbare Vei igheid, 1953 (Wet 3 van 1953), vaare

dig ek hierby die regulasies vervat in die Bylae uit.

Gegee onder my Hand en die SeEl van die Republiek van

Suid-Afrika te Kaapstad, o hede die Ses-en-twmtigste dag

van Junie Eenduisend Nege onderd Sewe-en-tagtig.

P. W. BOTHA.

Staatspresident.

H: J. COETSEE, ,

Op 135 van die Sthatspresidetit-in-Kabinet:

BYLAE

it"oordoniskry'iv'ing en uitleg

1. (1) in hierdie regulasies, tensy uit die samehang anders blyk, beteken-

"aangehoudene . n peisoen wat kragtens regulasie 3 van die Veiligheidsregulasies in aanhouding is;

"geneeskundige beampte", met betrekking tot 'n aanhoudene wat- i

(a) in 'n gevangenis soos omskryf in die Gevangeniswet aangehou word, 'n persoon wat kragtens artikel 6 van die Gevangeniswet as die geneeskundige beampte van daardie gevangenis aan estel is of n geneesheer wat ingevolge genoem e artikel die pligte verrig wat aan so 'n beampte opgedra is; of

(b) in 'n iisiesel of -opsluitplek aangehou word, die distr' s geneesheer vir die gcbied waarin daardie polisieel of -opsluitplek gelee is of 'n ander geneesheer wat op sy gesag handel;

'tgevangenis".\_ 'n gcvangenis soos omskryf in regulasie 1 van die Veili hetdsre ulasnes;

8

"Gevangnisregulasies", die regulasies afgekondig kragtens arukel 94 van die Gevangeniswet by Goewcrmentskennisgewing R. 2080 van 1965, soos gewysig;

"Gevan cniswct". die Wetop changenisse. 1959 (Wet 8 van%959);

10805-1

-

a 'No. 10805

GOVERNMENT GAZETTE. 26 JUNE 1987

medical officer", in relation to a detainee detained-

(a) in a prison as defined in the Prisons Act, means a person appointed under section 6 of the Prisons

Act as the medical officer of that prison or any

medical practitioner who in terms of the said sec-

tion performs the duties assigned to such officer; or

., (b) in a police cell or lock-up, means the district sur-

geon for the area in which that police cell or lock-

up is situated or any other medical practitioner

acting on his authority;

' "prison" means a prison as defined in regulation 1 of the Security Regulations; -

-"Prisons Act" means the Prisons Act. 1959 (Act 8 of a 1959);

"Prison Regulations" means the regulations published

under section 94 of the Prisons Act by Government

Notice R. 2080 of 1965, as amended;

"Security Regulations" means the regulations published

under section 3 of the Public Safety Act, 1953 (Act 3

of 1953), by Proclamation R. 96 of 1987;

3

"self-governing territory" means a territory de-

clared under section 26 of the National States Constitu-

- tion Act, 1971 (Act 21 of 1971), to be a self-governing

territory within the Republic.

(2) These regulations and the Security Regulations shall not derogate from the application of the Prisons Act and the Prison Regulations to or in respect of a detainee detained in a prison as defined in the Prisons Act, but in the case of a conflict between a provision of or decision under these regulations or the Security Regulations and a provision of or decision under the Prisons Act or the Prison Regulations, - the first-mentioned provision or decision, as the case may be, shall apply.

Application of certain provisions of (the Prisons Act and Regulations which are not otherwise applicable

(3 2. (1) The provisions of sections 82 and 83 of the Prisons

Act shall, subject to subregulation (3) of this regulation and

regulation 3 (8) of the Security Regulations, apply mutatis

mutandis to or in respect of a detainee, and in any such

application of the said provisions to or in respect of-

(a) a detainee detained in a prison as defined in the Pri-

sons Act, a reference in those provisions to a prisoner

awaiting trial for an alleged offence, shall be con-

strued as (reference to a detainee who is so detained

in such a prison;

(b) a detainee detained in a police cell or lock-up, a refe-

rence in those provisions-

(i) to a prisoner awaiting trial for an alleged

offence, shall be construed as a reference to a

detainee who is so detained in a police cell or

lock-up;

(ii) to the Commissioner of Prisons, shall be con-

strued as a reference to the Commissioner of

Police; and a

"hoof van 'n gevangenis", met betrekking tot 'n aangehoudene wat-

(a) in 'n gevangenis soos omskryf in die Gevangenis-

wet aangehou word, die hoof van daardie gevangenis;

of a i

(b) in 'n polisie- of -opsluitplek aangestel word, die

persoon in bevel van daardie polisie- of -opsluit-

plek;

"Kommisaris van Polisie", die Kommissaris van die

Suid-Afrikaanse Polisie, en by die toepassing van 'n

bepaling van hierdie regulasie binne-

(a) 'n afdeling soos omskryf in artikel 1 van die Poli-

siewet. 1958 (Wet 7 van 1958) betrekende Kommis-

saris of die Afdelings-kommissaris wat kragtens daardie Wet vir daardie afdeling aangewys is;

(b) 'n selfregerende gebied, bedoelde Kommissaris of die Kommissaris of ander offisier in bevel van die polisiemag van die regering van daardie selfregerende gebied;

"selfregerende gebied". 'n gebied wat kragtens anikel 26 van die Grondwet van die Nasionale State, 1971

(Wet 21 van 1971) lot 'n selfregerende gebied binne die Republiek verklaar is;

"Veiligheidsregulasies", die regulasies afgekondig kragtens artikel 3 van die Wet op Openbare Veiligheid, 1953 (Wet 3 van 1953), by Proklamasie R. 96 van 1987.

(2) Hierdie regulasies en die Veiligheidsregulasies doen nie aibrek aan die toepassing van die Gevangeniswet en die Gevangenisregulasies op of ten opsigte van 'n aangehoudene wat in 'n gevangenis soos omskryf in die Gevangeniswet aangehou word nie. maar in die geval van 'n botsing tussen 'n bepaling van of besluit kragtens hierdie regulasies of die Veiligheidsregulasies en 'n bepaling van of besluit kragtens die Gevangeniswet of die Gevangenisregulasies geld eersgenoemde bepaling of besluit, na gelang van die geval

Tm'pussing Hm svkcrc bt'pnlings mu (It-mngcniswcl cn -rcgulnsivs u u! nlc undcrslns mn lm-pussing ls nlc

2. (1) Die bepalings van artikels 82 van 83 van die Gevangeniswet is. behoudens subregulasie (3) van hierdie regulasie en regulasie 3 (8) van die Veiligheidsregulasies. mutatis mutandis op of ten opsigte van 'n aangehoudene van toepassing. en by sodanige toepassing van bedoelde bepalings op of ten opsigte van-

(a) 'n aangehoudene wat in 'n gevangenis soos omskryf in die Gevangeniswet aangehou word, word 'n verwysing in daardie bepalings na 'n gevangene wat verhoor weens 'n beweerde misdryf afgewag, uitgele as 'n verwysing -na 'n aangehoudene wat aldus in so 'n gevangenis aangehou word;

(b) 'n aangehoudene wat in 'n polisiecel of -opsluitplek aangehou word, word 'n verwysing in daardie bepalings-

(i) na 'n gevangene wat verhoor weens 'n beweerde misdryf afgewag. uitgele as 'n verwysing na 'n aangehoudene wat aldus in 'n polisiecel of -opsluitplek aangehou word;

(ii) na die Kommissaris van changesisse. uitgele as in verwysing na die Kommissaris van Polisie; en v



(iii) to a member of the Prisons Service, shall be construed as a reference to a member of the South African Police or of the police force of the government of a self-governing territory, as the case may be.

(2) The provisions of regulation 132 (2), (3), (5), (6) and (10) of the Prison Regulations shall, subject to subregulation (3) of this regulation and regulation 3 (8) of the Security Regulations, mutatis mutandis apply to or in respect of a detainee detained in a police cell or lock-up, and in any such application a reference in the said provisions-

(a) to a prisoner awaiting trial shall be construed as a reference to a detainee who is so detained in a police cell or lock-up; -

(b) to the Commissioner of Prisons, shall be construed as a reference to the Commissioner of Police; and

(c) to the head of a prison, shall be construed as a reference to the person in charge of a police cell or lock-up.

(3) Notwithstanding the provisions as applied in terms of subregulations (1) and (2) to or in respect of a detainee, no detainee shall be allowed under a power contained in those provisions to procure for himself from outside the prison any newspaper, foodstuffs or potables, radio, record player, tape recorder, musical instrument or television set.

#### Segregation

3. As far as it is practicable in the opinion of the head of a prison (with due regard to any disciplinary, control, security and other measures taken for the effective administration of the prison) detainees shall be segregated from sentenced and other categories of unsentenced prisoners in the prison.

#### Medical treatment

4. (1) A detainee shall be examined medically by the medical officer-

(a) as soon as may be practicable after his arrest and detention under regulation 3 (1) of the Security Regulations; and

(b) as shortly as possible before his release from detention.

(2) The head of a prison shall ensure that any medical or dental treatment prescribed by the medical officer for a detainee shall be carried out promptly.

(3) Medical or dental treatment of a detainee by a medical practitioner who is not the medical officer, or by a specialist, or in a hospital or clinic outside the prison where the detainee is detained, may be provided only on the recommendation of the medical officer.

#### Studies

5. As far as it is practicable in the opinion of the head of a prison (with due regard to any disciplinary, control, security and other measures taken for the effective administration of the prison) a detainee in that prison may, subject to such limitations and reservations as may generally or with reference to that particular detainee be determined by the head of the prison with the concurrence of the Commissioner of Police, be allowed to study by way of correspondence through any educational institution approved by the said Commissioner for the purposes of this regulation.

iii!

(iii) na 'n lid van die Gevangenisdiens, uitgeleas 'n verwysing na 'n lid van die Suid-Afrikaanse Polisre 0 van dierlidsmag van die regering van 'n selfregerende gebied, na gelang van die n geval. i) W "

(2) Die bealings van regulasie 132 (2), (3), (5), (6) en (10) van die Gevangenisregulasies is, behoudens subregulasie (3) van hierdie regulasie en regulasie 3 (8) van die Veiligheidsregulasies, mutatis mutandis oof ten opsigte van 'n aangeoondene wat in 'n polisie of -opsluiting

aangehou word, van toegassin , en by sodanige toepassing word 'n verwysing in beoelde palings-

(a) na 'n gevangene wat verhoor afgewag. uitgele as 'n venvysing na 'n aangehoudene wat aldus ten 'n polisie of -opsluitplek aangehou word;

(b) na die Kommissaris van Gevangeniswezen uitgele as 'n verwysing na die Kommissaris van Polisie; en

(c) na die hoof van 'n gevangenis, uitgele as 'n verwysing na die persoon in evel van 'n polisie of -opsluitplek.

(3) Ondanks die bepalinge soos ingevolge subregulasies

(1) en (2) op of ten oorsig van 'n aangehoudene toegepas.

word geen aangehou ene kragtens 'n bevoegdheid in aarde bepalinge vervat, toegelaat om enige nuusblad, eet- of drinkgoed, radio, platespeler, bandopnemer, musiekinstrument of televisiestel van buite die gevangenis vir homself te verkry nie.

#### Afsondering

3. Vir sover dit volgens die oordeel van die hoof van 'n gevangenis uitvoerbaar is (met inagneming van enige dissiplinere, beheer-, veiligheids- en ander maatreëls wat vir die doeltreffende administrasie van daardie gevangenis getref is) moet aangehoudenes afgesonder word van gevonniste en ander kategoriee ongevonniste gevangenes in die gevangenis.

#### Mediese behandeling

4. (1) 'n Aangehoudene moet deur die geneeskundige beoefende geneeskundig ondersoek word-

(a) so gou doenlik na sy arrestasie en aanhouding kragtens regulasie 3 (1) van die Veiligheidsregulasies; en

(b) so kon moontlik voor sy vrylating uit aanhouding.

(2) Die hoof van 'n gevangenis moet toesien dat enige geneeskundige of tandheelkundige behandeling deur 'n geneeskundige beoefende vir in aangehoudene voorgeskryf, stiptelik uitgevoer word. '

(3) Geneeskundige of tandheelkundige behandeling van in aangehoudene deur 'n geneesheer wat nie die geneeskundige beoefende is nie, of deur 'n spesialis, of in 'n hospitaal of kliniek uite die gevangenis waar die aangehoudene aangehou word, kan slegs op aanbeveling van die geneeskundige beoefende verskaf word.

#### Studies

5. Vir sover dit volgens die oordeel van die hoof van 'n gevangenis uitvoerbaar is (met inagneming van enige dissipline, beheer-, veiligheids- en ander maatreëls wat vir die doeltreffende administrasie van daardie gevangenis getref is) kan 'n aangehoudene in daardie gevangenis, behoudens die beperkings en voorbehoude wat die hoof van die gevangenis in die algemeen of met verwysing na daardie eepaas die aangehoudene met die instemming van die Kommissaris van Polisie beoefende, toegeleat word om aan 'n opvoedkundige inrigting of deur genoemde Kommissaris vir doeleindes van hierdie regulasie goedgekeur by wyse van korrespondensie te studeer.

I

i 4 No.10805

' Exercise and sport activities

. , 6. (1) The head of a prison shall ensure that a detainee , - ' detained in that prison is allowed to perform physical exercises for at least half an hour per day, either in the open air (weather permitting) or in any ' place outside his cell which is in the opinion of the head of the prison suitable or equipped for such purpose. -

(2) A detainee who does not desire to take any exercises shall not be forced to do so.

(3) As far as it is practicable in the opinion of the head of a prison (with due regard to any disciplinary, control. security and other measures taken for the effective administration of the prison) a detainee may be allowed to participate in or to pursue intramural sport activities if facilities therefor are available. " '

Detainees in police cells or lock-ups

' 7. No detainee shall without the consent of the Commissioner of Police be detained in a police cell or lock-up for a continuous period in excess of 14 days. '

' Amendment of regulation 3 of the Security Regulations

G.) 8. Regulation 3 of the Security Regulations is hereby amended by the deletion of subregulation (7).

i

9. Regulation 10 of the Security Regulations is hereby amended by the deletion of the expression " , except regulation 3 (7) (c) (0) , " .

Amendment of regulation 11 of the Security Regulations

10. Regulation 11 of the Security Regulations is hereby amended by the deletion of the expression " , except regulation 3 (7) (c) (i) , " . '

CONTENTS

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No. No.

y , PROCLAMATION

3\_...R. 106 Public Safety Act (3/1953): Regulations .....

' hinted tail end obtainable from the Government Printer, Bosman Street.

' 0 ' yet: BI; X35. Pretoria. 0001. Tel. 323-9731 x 267

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.0.

Amendment of regulation 10 of the Security Regulations I

. GOVERNMENT GAZETTE. 26 JUNE 1987

M I

Oefening en sportaktiwiteit

6. (1) Die hoof van 'n gevangenis moet toesien dat 'n aangehoudene wat in daardie gevangenis aan ehou word, toegelaat word om vir minstens 'n halfuur te oefen of om te gaan loop of om te gaan fiets of om te gaan swem of om te gaan ander soort oefeninge te doen, hetsy in die eiendomsgebied (indien die omstandighede dit toelaat) of in 'n plek buite sy sel wat volgens die oordeel van die hoof van die gevangenis daarvoor geskik is.

(2) 'n Aangehoudene wat geen oefeninge wens te doen om te word meer aartoe verplig.

(3) Vir sover dit voortsien die oordeel van die hoof van 'n gevangenis uitvoerbaar is (met inagneming van enige dissiplinere, beheer-, veiligheids- en ander maatreels wat Vir die doeltreffende administrasie van daardie gevangenis getref is) kan 'n aangehoudene toegelaat word om aan binne-muurse sportaktiwiteit. indien fasiliteite daarvoor beskikbaar is, deel te neem of dit te beoefen.

Aangehoudenenes in polisiegebiede en -opsluitplekke

\_ 7. Geen aangehoudenenes vir sonder die toestemming van

die Kommissarts van Pohnsne Vlr 'n aaneenlopende ty perk  
van langer as 14 dae in 'n polisieesl of -ops\_lultpiek aange-  
hou nie.

Hysiging ran regulasie 3 van die Veiligheidsregulasies  
8. Regulasie 3 van die Veiligheidsreguiasies word hierby  
gewysig deur subregulasie (7) te skrap.

Wysiging m\_n regulasie 10 van die Veiligheidsregulasies  
\_ 9. Regulasie 10 van die Veiligheidsregulasies word  
htcrby gcwysig deur die uitdrukking ", uitgesonderd regu-  
lasie 3 (7) (c) (1)," te skrap. - e

Hysiging van rcgulasie 11 van die Veiligheidsregulasies  
\_10. Regulasie H van die Veiligheidsregulasies word  
hierby gewysig deur die uitdrukking ", uitgesonderd regu-  
lasxe 3 (7) (c) (1)," te skrap. -

INHOUD

Slaals

Na. 3:330 koeranl

Na.

PROKLAMASIE

R. 106 Wet op Openbare Veiligheid (3/!953):

Regulasies ..... 1

chruk deur en verkx) baar by die Staatsdnykker. Bosmanstnat,  
Privnutslk XBS. Fretoril. 0001. Tel. 323-9731 x 267

10805-1

am. ...

en. gf .-. .

.\_ -a-.-.-.

STATUTES OF THE REPUBLIC OF SOUTH AFRICA -- Parsons AND Raroawxromas I. -

55. 81-81 Prison: Act, No. 8 of 1959 W 53. 81-82

.1

CHAPTER VI

. DETENTION AND TREATMENT OF CERTAIN OTHER CUSSED OR PRISONERS

1. Heading substituted by 3. 19 of Act No. 58 of 1978.)

81. Employment of certain other classes of prisoners.-(1) Persons detained pending arrangements for their removal from the Republic, and other persons received into a prison

in accordance with the provisions of section 27. shall perform such duties as may be necessary-

sary to maintain the good order and cleanliness of any room or other place occupied by them within the prison, and of any premises adjoining or in any way subserving, or any articles or things subserving. that room or place. or the occupants thereof, and may be permitted to perform other labour. - .

(2) Alleged mentally ill or epileptic prisoners received into a prison as aforesaid shall only be compelled to do such work as the medical officer may prescribe.

(3) A President's patient and any other person detained in a hospital prison for psychopaths shall receive such treatment and training and may be compelled to perform such work as the Commissioner may determine from time to time, unless the medical officer has certified that the performance of such work is injurious to the health of such

President's patient or such other person. ' '

(S. 81 amended by s. 9 of Act No. 88 of 1977 and substituted by s. 20 of Act No. 58 of 1978. Sub-s. (3) substituted by s. 3 of Act No. 54 of 1979.18

81A. Detention of judgment debtors.-(1) An order for the detention and a sentence for the periodical detention of a judgment debtor shall commence on the day on which the judgment debtor is received at the prison. and a judgment debtor shall be detained for the full continuous period mentioned in the order or, as the case may be, for the interrupted

periods agreed upon that the sentence of periodical detention shall be served, unless he is

sooner lawfully discharged from further detention. '

(2) Where several orders of detention or several sentences of periodical detention, or where one or more such orders and one or more such sentences. subsist in respect of the same judgment debtor. each such order and each such sentence shall be served the one after the expiration of the other, unless the court which made any such order or which imposed any such sentence has expressly directed otherwise.

-, ..., 1 .'

(3) Where a judgment debtor. after he is received at a prison. escapes, or is irregularly discharged, from custody. his further detention shall be deemed to have been suspended on the date of his escape or discharge, as the case may be, and shall be resumed on the date of his recommitment to prison. '

1S. 81A inserted by s. 4 of Act No. 54 of 1979.)

82. Procurement of necessities.-(a) Prisoners detained under any warrant issued out open any decree, order or judgment of any court made, issued or given in civil proceedings ;

((7) unconvicted prisoners awaiting trial for an alleged offence; '

(c) alleged mentally ill prisoners; and . .

- Warn. (1') substituted by s. 1,0 of Act No. 58 of 1977.1

(d) persons committed for detention as witnesses, may, subject to such limitations and restrictions as may be prescribed by the Commissioner,

be allowed-

(i) to write and receive letters;

(ii) to receive visits; and

(Issue No. 13) 97

STATUTES OF THE REPUBLIC OF SOUTH AFRICA - PRISONS AND REFORMATORIES

s. 82 Prisons Act, No. 8 of 1959 s. 82

, K , ' (iii) to procure for themselves from outside the prison and to receive at prescribed

bed  
- ' - . hour: therein such food, unfettered drink. bedding. clothing. literature and other articles as may be approved by the Commissioner. subject to a strict examination thereof:

Provided that-

(aa) all letters written and received as well as all literature must be read and censored by a member of the Prisons Service designated by the Commissioner.

excluding documents handed over by a prisoner to his legal adviser if such member is satisfied that such documents are intended. solely for the defence of the prisoner;

((112) no article of food or drink which. in the opinion of a member of the Prisons Service designated by the Commissioner, is not clean, wholesome. sound and . , free from disease. infection or contamination, shall be accepted and no food or drink shall be accepted for delivery to any prisoner unless it is in such a container or so wrapped that it is reasonably protected from contamination during handling within a prison; and '

(cc) a member of the Prisons Service designated by the Commissioner may. in ('(Ti'l his discretion and with due regard to the nutritional needs of the prisoner L453 for whom food or drink is delivered. limit the quantity of such food or drink that may be supplied in any one day to such prisoner.

' \_ IS. 82 amended by 5. 11 of Act No. 62 of 1966.)

continued on page 99

A  
t

83.- Wearing of prison dress.-No prisoner such as is referred to in section eighty-two shall be given or compelled to wear prison dress unless-

(a) that prisoner's dress is deemed insufficient or improper or in an insanitary condition;

(b) it is necessary to preserve that dress in the interests of the administration of justice; or

(c) he is unable to procure other suitable clothing from any other source.

84. . . . .

IS. 84 repealed by s. 21 of Act No. 58 of 1978.1

#### CHAPTER 1X

##### GENERAL PROVISIONS ;

85. Provisions of this Act as to the treatment and conduct of prisoners to be made available to prisoners.-The provisions of this Act relating to the treatment and conduct of prisoners shall be printed in the English and Afrikaans languages. and in any other language which may be prescribed by the Commissioner. and shall be made available to every prisoner immediately after admission to prison or if a prisoner is unable to read and

understand any of the languages in which the said provisions have been made available. the contents of the said provisions shall be conveyed to him orally.

86. Medical certificate on death of prisoner.- (1) Where a prison doctor and a medical practitioner is unable to certify that his death is due to natural causes. the member of the

Prisons Service in charge of the prison in question shall furnish the report required by section 2 of the Inquests Act. 1959 (Act No. 58 of 1959).

1Sub-s.(1) substituted by s. 18 (a) of Act No. 104 of 1983.)

(2) and (3) . . . . .

1Sub-ss. (2) and (3) deleted by 3. 18 (b) of Act No. 104 of 1983.)

(4) The Commissioner shall, save where death has occurred pursuant to a judicial sentence, also cause an enquiry to be held as to any death in any prison from other than natural causes, and report thereon to the Minister.

87. Service of court process.- (1) When a summons or subpoena in any criminal proceedings is addressed to and served upon any member of the Prisons Service or other person having the custody of prisoners. requiring him to cause any prisoner named in the summons or subpoena to be brought before any court. such member of the Prisons Service or other person shall comply in all respects with the terms of that summons or subpoena.

(2) A judge of a superior court or a magistrate may at any time order any prisoner to be brought before a court over which he is presiding in a criminal case.

1Sub-s. (2) substituted by s. 22 of Act No. 58 of 1978.1

(3) Whenever it becomes necessary to serve the civil process of any court upon any prisoner. the person charged with the service of the process shall. before serving such process.

hand a copy thereof to the member of the Prisons Service in charge of the prison in which the prisoner is detained. and such member shall thereupon permit and facilitate the service

of the process upon the prisoner personally.

(4) (a) Whenever at the instance of any party (other than the State) to civil or criminal proceedings any prisoner is subpoenaed to attend any court in order to give evidence thereat, there shall. unless-

(i) the party who sued out the subpoena has been allowed to proceed in forma

pauperis; or

(Issue No 17) 99

' ' CHAPTER III.

PRtSOXERs-svccmt. REGULATIONS mu  
DIFFERENT CATEGORIES.

UNSENTENCED PitISONERS.

(A) Prisonc'r: Awaiting Trial or Sentence.  
2 scgregation.

132. (1) A prisoner awaiting trial or sentence shali. as  
.- (M- as possible. he segregated iromJettenced and other  
' categories of unsenteoced prisoners. '  
, Association.

.. ' (2) Association between prisoners awaiting trial or  
sentence shall be restricted to a tnimum In order to  
revent collusion or conspiracy to defeat the ends of  
, justice.

V Search.

(3) When a prisoner awaiting tn'al or sentence is  
searched. no personal etfects or articles other than  
' dangerous weapons or articles with which an escape may  
' be eiiect'ed. or such other articles. money or valuables as  
-Commissioner may specially or genetally prohibit.

. (??ih removed from him. '

t f\_'

3 Food.

..(4) Subject to the provisions of section eighty-rwo of  
the Act. a prisoner awaiting trial or sentence shall be  
, ' provided with food according to the prescribed diet scale  
, applicable to his sex and race group.

Stationery and Reading Matter.

, (5) A prisoner awaiting trial or sentence may receive. or  
. purchase at his own expense. from outside sources such  
stationery and reading matter as may be approved by the  
' Commissioner: Provided that such privilege may be  
summarily withdrawn if. in the opinion of the Commis-  
t sioner. whose decision shall be final. such prisoner is in  
i any manner abusing this privilege.

Delivery of Personal Ema: and Valuables.

(6) The head of the prison may. at the request or with  
the consent of a prisoner awaiting trial or sentence. deliver  
? money. valuables. documents or other personal eHects  
,..\_.'lch prisoner to a relative. friend or legal represen-  
theme.

Private Medical and Dental Services.

(7) Subiect to security measures. the Commissioner. at  
his discretion. on request of a prisoner awaiting that or  
sentence. may authorise him to employ the scn'iccst of a  
private medical practitioner or dentist on such conditions  
as are specially or generally prescribed: Provided that no  
additional cost to the State is incurred by such private  
medical or dental services.

Compliahce with Conditions of Bail.

(8) A prisoner who has been unable to comply with  
the conditions of bail. shall be granted visits at reasonable  
times during any day and also the opportunity and  
facilities to write and receive letters in order to comply  
With such conditions. .

Preparatinn: o! Ddence.

(9).A prisoner awaiting txial or sentence may. for the  
purpose of his legal defence. within reasonable limits be-  
(0) provided with stationery:

(b) afforded an opportunity tor-the preparation or his  
defence: and

(c) gliorded an opportunity to Write letters in connection  
therewith to I relative. fn'end or letml rPnn-ennI-u.

'van die Wet. moct 'n

um-m

IIOUFSI'L'K Ill.

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GEX'ANGENES-SPIZSIALE RIZGL'LASIES

VERSKILLENDE KAI'EGORIEE.

Onorvoxtsn: OEVANGENT'zs.

'(A) l"erhm)r- 0/ Vomu'sa/wagtrndc gcrangnncs.



132. (i) 'n Getangene wat verhoor o! vonnis afgag.  
moet sover moontlik van gemniste nf ,andcr kategoriw  
ougevonntslc gevangenes nigesonder word.  
Onderlt'nge Verkcer. '  
of vonnis aiwag. moet tot 'n minimum beperk word ten  
einde samespanning of sameswering tot dwarsboming van  
dte gereg te voorkom  
Vismclering.

(3) By die visentering van in gevangene wat verhoor of vonnis aaiwg. moct gceu ander persoonlike besittings oi gevaarlike wapcos of artikels waarmee out-snapptng bcwerkslclh'g kao word of die ander artikels. geld oi waardevolle artikels wat die Kommissan's special of in die algemeen mag verbied, van horn verwydet' word Voedsel.

(4) Behoudens die bepalings van artikel twee-en-tagtig  
gevangenc wat 'verhoor of vonnis  
voorsien word volgens die voorge-  
t van toepassing is op sy geslag en  
afwag. van voedsel  
skrewe dieetskaal w  
rassegroep. ,  
Sko-Ibehodlts en lecntol.

(5) 'n Gevangene wat verhoor of vonnis afgewag. kart die skryfbehoeftes en leesstoei wat die Kommissaris mag goedkeur. van builebronne ontvang of dit op eie koste aankoop: Met dien verstande dat sodanige voorreg summier teruggetrek kan word indien. 11:: die mening van die Kommissaris. wie se beslissing iinaal is. sodanige gevangene op enige wyse misbruik van die voorreg maak. Oorhandiging van persoonl'ite besitting: en waa-derollec artt'keIJ. i

(6) Die hoof van die gevangenis kan die geld. waarde-  
volle artikels, dokumente oi. ander persoonlike besittings  
van '0 gevangene wat verhoor of vonnis afwag. op versoek  
oi met die totemming van so 'n gevangene an 'n  
iamillielid. vn'eod of regsveeneoordiger'oorhandig.  
Private genceskundige en tandheelkundige dienste.

i7) Behoudens veiligheidsmaatm'ls.  
kan die Kommis-  
saris. na sy goedvinde, op die versock  
tandarts gebrutk maak. op sodanitze t  
spesiaal of in die algemeen voorgeskryf is: Met dien  
verstande dat sodanige private geneeskundige of tand-  
heelkundige' dienste geen addisionele koste vir die Staat  
meebring nie.

Nakoming van voorwaarde: van barglog.

(8) 'n Gevangene wat nic in staat was om die voorwaardes van borgtog na tc kom nie. moct op redelike lye gedurende enige dag besocke toggeslaan word en 00k die geleenlheid en iasiliteiu: gebicd word om briewe te skryf en te ont'ang met die doel om sodanjge voorwaardm na te kom.

Voorberet' ding rem verdcdiging.

(9) Ann 'n gevangene wat verhoor of vonnis afgag. kan daar met die oog op sy regsnrdeedigiog bmnne redelike perke-

(u) sknfbehocitcs s-erskaf word; . .

(b) geleentheid gebied word om 5y verdcddtgxng voor  
t: bcrcl: en . .

(c) gcleentheid gebied word out .bnewe. tn verband

u\_ .\_, ,t-u- 1'1

.ln.....- --..

h.-

' li . Sm'c lhr T'ami'rr (v; Frirax I'rnprrru Pn'hJ'iFuI.  
' (101A prisoner awaiting trial or sentence. 511qu t":  
guiHy 01 a contravention 01 l'hcw regululmn's :1. xxi-Ilhoui  
Ihc permission of the Commissioner. hc schs or In any  
other manner transfers or aucmpls lo sell nr 50 lruncicr  
lo anolhcr person an) arliclc whi;h he has been allowed  
. .10 bripg into prison ior his own use.

A Pris'olwr Dx'lm'ncd lur Minimum nr Sulilinux Conduct.

(11) The provisions 01 this regulation shall mulali:  
mmundi: be applicable lo a prisoner detained ior any  
alleged muinous or sedilinus t\_onduct. or.19r any other.  
alleged conduct or oncnc against lhe pubuc. sulcly or  
securily 01 lb: Stale, as the Mimsicr may dclcrmmc.

(B) Rccalu'lrani or Abst'muling ll'imesscs. or Prohibited  
Immigrants. Or Fugitive or C ii'il Debtors.

. Applicability 0! Regulation 132.

133. The provisions oi rcgulation 132 shall. mulati:  
mmandis. be applicable 10--

(a) a prohibited person dclnincd in prison pending his  
removal from the Republic; and

(b) recalcitrant or absconding wilncsscs or fugitive or  
-civil debtors committcd lo a prison in terms 0!

K. .cclions two hundred and twelve and two hundred

. .md Iomeen oi the Criminal Procedure Act. 1955

'(Act No. 56 01 1955). as amended. or sections

:ixtavn and thirty 01 lhe Magistralcs' Courts Act.

1944 (Act No. 32 01 1944). as amended.

(C) Indigent or Dcsllilule Sick Persons.

Authority Ior Admission and Muinmmncc in Prison  
Hospital. '

134. (1) An indigcni or dcsLilule sick person may. on  
the order of a magistrate. bc admiucd lo. and maintained  
at. a prison hospital (or as long as is csscnliat for the  
health. prmrvaion 01 life or general care and treatment  
of such person: Providcd that no such order for the  
admission 01 such person to a prison hospital shall be  
made merely because it is alleged that he is an indigent  
or destitute sick person. unless-

(a) then: is \_no hospital available in the immediatc  
vicinity ior lhe admission. mainlcnancc. care and  
lrcalmcni 01 such person:

\$' c illness or olhcr condition 01' such person is not  
N1 an inieclious or other communicable form;

(tj'accommodation according lo the sex and race 01  
the person concerned is available at such pn'son  
hospital: and

(:1) such person is not living with. or being accom-  
modated by. his employer who is able to provide  
113: necessary maintenance; care and treatment ior  
him.

1 Applicability 0/ Rrgulation 132.

(2) The provisions of regulation 132 shall mulali:

\_, nunandi: be applicable 10 an indigent or dcsllilulc sick  
1 person admittcd. mainlaincd and treated in a prison  
i hospital in terms of sub-tcgulnliion (1).

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. 5.1 1..

(D) Judgment C iril Dvblors.

\_ Segregalinn am! Assmimion.

.\_ 135.- (1) A prison:r commiucd for dclcnliion under a  
:1 dectcc of civil imprisonmcnlincluding a committal under  
section :ixTy-firelof the Magistrates' Cduns Act. 194-1 (Act  
No. 32 of 194-1). as amended. shall. as fur as is practic.  
nhlc. he scsrc'ulsd and he allowed assccinliion only with

rrllonm of He wme cniogry: Prmklcd that. ll such  
segregation and association is not practicable owing lo  
the limited numbrof such civil debtors in 1111: prison con-  
cerned. suth Prisoner. may be segregated and allowed

. . .  
' acnr-auuu. . . . .

. . . \_ \_ %

l'c ' Lair ('l minim; um prii mc rirmluln w rl'mlr.  
(10) 'n Gmuncnc wai VCThO-f'l' oi mnnis aixxug. begnan  
'n m'nrcding xan hicrdie rcgulasics indign by 'n anikcl  
wal h) mtgclnm is Om vir 5y eic gchruik in die gnungcnis  
in I: bring. sunder die incslcmning van die Kommissaris  
xcrkonp 01 aan 'n ander pcrron cords: of pong om  
sndunigc artikcl aun 'n ander pcrrsoon lc vcrkoop 01 00:  
l: dra. ) l ' -  
Cc'i'miprm'  
gt'drag.

(11) Die bcpulings ('an bicrdic rcgulasic is nmmri:  
nmnuuli: van locpassing op 'n gcvangenc wal uungchou  
wmd wccns bcxiccrdc opslandigciof oprocrigc gcdrag of  
sirens cnigc ander bcwccrde gcdrag oi misdryf lccn die  
openbarc. cn Sluntsveilighcid. 500: die Minister mag  
bcpual.

unngrlmu u'n'ns n/mamligc n/ nprm'rige  
(B) Wccrspmmigc o/ roorfvluglcnde gctuicss rcrbode  
Immigramr n! voorlrlugmulc siriele gysc-lrmrs.  
Tmmslikhcid ran regulasie 132.

133. Die bcpalings van rcgulasic 132 is mumu': mumndi:  
van locpassing op-

(a) in vcrbode pcrrsoon wal in 'n

word in alwa

chublick: cn .

(b) wccrspannigc of voorlrvluglcnde gcluies 01 won-  
vluigicnde siviclc gysclnars wat na 'n gei'angenis  
vcrwys is kragicns anikcis In'erhmiderd-m-Iu'auul  
cn m'rchmulrrd-en.remim van die Srafrproscswct,  
1955 (We! No. 56 van 1955). 5005 gcwysio. of  
aru'kels :cnirn en drnig van die Landdrosiowe-  
wet. 1944 (Wcl No. 32 van 19-14). 5005 gcwysig.

(C) Armhmigt 0/ behorlligc Jitk pcrrsonr;  
Mapliging vir opnuning en orulvrlumd in 'n Gnungmis-  
hospilaal.

134. (1) 'n Armlsligc 01 bcbociligc sick pcrrsoon kan  
op bcvc1 van 'n landdros in 'n gcvangcnishospilaal opgc-  
neem cn onderhou word so lank as wal dil vir die gesond-  
heid. lyisbchoud 01 algcmcnc versorging en bchandcling  
van sodanigc pcrrson needsanklik is: Met dicn vcrslanc  
dnl gccn sodzmigc bcvc1 vir die opnumc van sodanigc pcrr-  
soon in 'n gcvungcnishospilual uilgcicik mag word nic  
blool omdal duar bcwccr word dal by 'n armiasligc of  
bchociligc-sick pcrrsoon is. lcnsy-

(a) dam gccn hospilaal vir die opncming. onderhoud.  
versorging cn bchandcling van sodzmigc pcrrsoon in  
diclonmiddcllikc omgcwing bcskikbaar is nic:

(b) dic sickle of ander locsiand van sodanigc pcrrsoon  
nic van 'n bcsmetlikc of, ander oordraagbarc aaia  
gevangenis aangcbou

gling van 5y vcnvydcring uil die  
is nic:

(r)%uisvesling volgcns die gcslag cn.ras van'dic  
belrokke pcrrsoon by sodunigc gcvangcnishospilaal  
beskikbaar is: en

(J) sodanigc pcrrsoon nic by sy werkgever, wai in slaat  
15 om dlc nodigc versorging, onderhnud en bchan-  
dcling tc vcrskaf. inwoon 01 dcu hom van huis-  
vestingvoorsien word nic. '

Turpusliklu'id run rogulmic 132.

(2) Die bcpalings van rcgulasic 1  
van locpassing op 'n armlasligc of bchociligc sick pcrrson  
wal kraglcns subreguiasic (11 in 'n gcvangenishospimnl  
opgencm. ouderhou en bcbandel word.

1'1

is mumlis nmmmh':

(D) Sil'iele rwmisgysi'lmrrx.

Alwiiih'ring m muirrlinpc wrku'r.

1.15. (1) 'n chungcnc wal Muglcns in bcxcl lot sixiclc  
p)s:ling vir aanhouding versus is. "1C1 inbcgrip van 'u  
vcrmsing krnglcns artikcl v\_vl-vn-srnig van die Landdros-  
hoxchl. 194-1 (Wcl No. 32 van 194-1). 5005 gcwysig. most.  
soxcr uilvocrhnar. afgescnder en locgclaal word om slcgs  
nm gcxangcncs inn dirsclM-s knicynric lc Verlwer: MN  
Ulcu scrslnndc dzll. indien sodunipc uisnmiuring en scrkctr  
ni-: uilmcrhunr is nie wcens div bcpcrkic pctul sodunigt  
s'nicic ghsuluurs ln die belrokke gcvnnpenis. sodunige  
pcvnncnc ufncmmlcr en imm-ln-u l--... "1...: n... ...-. "z...

f

b: applicable to a prisoner of this category of unsentenced  
(.- I'he search of a condemned prisoner shall be con-  
L glad in a full and thorough manner. and all articles and

5

Tm-pmlikhrill ran rcgulmic 132.

(2) Bclmudcns die bcpalings van subregulasie (1). is die  
'bcpalxngs Van rcgulasie 132 mulmi: mmundi: ook op.'n  
qngcvonnisle gexangene van hierdie lalcgorie van locpa's-  
5mg.

A ppli; ulv'ili'ly n! Rrpulmic 2': I32.

(2) Subject to the ptovisions of sub-tegulation (1). the  
royisions of regulation 13! shall mmu': nuuandu' also

. . r.

Pnsonc (E) Gecstdik gekrenkte persona.

thandeling (n bedwang.

I36. (I) 'n changenc wal ingevolgc paragraf (J)

van subarlikel (2) van arlikel :w-c-cn-nrimig van die We!  
as 'n bcwecrde gecslclik gckrenkte pcrsoon aangehou

word, is onderworpe nan dic behnndeling cn bedwnng wal  
deur die gcncskundige beaqiple voorgeskryl mag word.

Taepmlikheid ran rrgulan'e 132.

(2) Behoudens die bepalinge van subregulasie (1). is die  
bepalings van regulasie I32 "mum's mulandi: op 'n  
beweerde geeslelik gekrenkte persoon wal in 'n gevangem's  
aangehou word. van Iocpassing.

(E) Menlally Deleclire Persons. '

Treatment and Rcurainl.

136. (1) A prisoner detained as an alleged mentally

. defective permn in terms at paragraph (d) of sub-ecclnon

(2) of section m'uuy-u'vm of the Act shall be subject to  
such lrealmenl or restraint as may be:.prescnbed by the

medical olh'cer. e '

Applicdbilily 0! Regulation :32.

(2) Subject to the provisions of sub-regulation (1)\_. the  
provisions of regulation 132 shall mulalis mulcandu b;

. : . t .

, ?:fghcgile to an alleged m nlally delchve person e nme ANDER KATEGoRuaE.

OTHER CATEGORIES. (A) Jeugdige gerangenes.

Alsomiering.

137. In alwagling van die oorplasing na 'n gevangenis

soos i\_n pa'ragraal (b) van 5 b. nikcl (I) van artikel rwintig

(A) Juvenile Prisoners.

Segregation.

, 137. Pending removal to a prison referred to in pan-

. (aph (b) of sub-section (1) of section twenty of the Act.

. ljuvenile sentenced to imprisonment shall. a far as

wafssible. be segregated from an older and more hardened (B) Vroulike gerangenes.

r. . . '

wont Bn-aking en veilige bcwan'ng.

138. 'n Vroulike gevangene meet in die veilige bewaring

' en onder die bcwaking van alleenlik 'n vroulike lid of

spesiale bewazlrsler wees. en wanneer dit vir sodanige

gevangeqc nqdvq mag wees om opleiding of onderrig van

'n mqnhke lI\_d.ol spesimle bewaarder le onlvang. moel

sodamge opleldmg of onderrig in die leenwoordigheid en

onder die loesig van '1) vroulike lid of spesiale bewaarsler

geskjed.

(B) F emale Prisoners.

Guwding'and Sale Cuslody.

138. A female pn'soner shall be in the sale custody and

under the guard of only a female member or special

wardress, and. whenever it may be necessary for such

prisoner lo receive training or instruction by a male

member or. special warder. such training or instruction

shall be given in the presence and under the supervision of

a female member or special wardress.

(C) Condemned. Prisoners.

(C) Terdoodreroordeelde gethgenes.

Plckl van Irrchldling.

139. (1) Teregslellings moct in die Senlrale Gevangenis.

Place 0/ Execution. Preloria. vollrek word.

139. (1) Executions shall be carried out in the central Visenlering.

Prison. Pretoria.

(2) Die visenlcring van 'n lerdoodveroordeelde gcvangene moet ten volle en op 'n deeglike wyse uitgevoer word en daar moet op alle artikels er; voorwerpe in sy besit'. wat enigsins as gevaarlik of ongewens beskou word. beslag gelê word. en sodanige artikels en voorwerpe moet vln horn verwyder word.

A Inndcring.

(3) 'n Terdoodvcmmddccldc gcvangene moet in 'n spesi-ale sel wal vir daardic doel vonrgcskryl is. opgesluit word en moet van alle nndcr knlcgoricii gevangenes nlgcsonder word.

.fearch.

item in his possession. which are considered to be at all dangerous or undesirable. shall be seized and removed from him.

Segregation.

(3) A condemned prisoner shall be locked in a special cell prescribed for that purpose. and he shall be segregated (tom all other categories of prisoners. S/N'xinh'. rr'iliyhccillmmmrclfx. ,

(4) 'n Terdoodvcroordccldc gcvangene moet dag en nag in vcilige bcwaring en gedurig onder spcsiale bewaking gchou word.

Dl'crlsluml.

(5) 'n Terdoodveroordccldc gcvangene moet van vout-sel volgcs die voorgcskrewe dicclskaal van '1) Blanke gcvangene Voorsien word: Met dien verslende dat die Kommissaris 'n almkng Hm sodanige dieelskaal kun goedkeur.

Special Security Measures.

(4) A condemned prisoner shall be kept in sole custody under constant and special guard by day and night.

Diet Sale.

(5) A condemned prisoner shall be provided (with food according to the diet scale prescribed for a White prisoner: Provided that the Commissemner may approve 0! a

' 1' I such dielscnlc.

vana Ion 0 - Verxkamng ran :iinullcrrmiddels.

Provisional Stimulants. (6) Stimulermiddels kan Op voorskrif van die genes-

6) Stimulnns mav be iver lo a condemned risouer on(lhc prescription of the ngaedicnl omcer. p 9'5" word.

chrkv en pndxdirrmipr bearl'ciding.

(7) (u) Dehoudms die skrilcllike locslcmmlng van die Kommissaris. kan 'n lerdoodvcroordeclde gevangenc. in-dien hy dil vcrlg'ng: begoeke um '11 InmJileUd. vrlend of Visit: and Religinu: M ininran'on.

(7H1!) Subject to the written permission of the Commissioner. a condemned prisoner may. If he so deem. receive vlslu Iran: I rclulve. blend or legal rum.....uu. kundige beample aan 'n lerdoodvcroqrdeclde gevaugenc 3' ...hunl-.-1 .. ..

4 i No. 10772

' "sound recording" means any disc. cassette. tape. perforated roll or other device in or on which sounds are embodied so as to be capable of being reproduced therefrom; '

"subversive statement" means a statement-

(a) in which members of the public are incited or encouraged or which is calculated to have the effect of inciting or encouraging members of the public-

(i) to take part in any activity or to commit any act mentioned in paragraph (a). (b) or (c) of the definition of "unrest";

(ii) to resist or oppose any member of the Cabinet or a Minister's Council or any other member of the Government or any official of the Republic or any member of the Cabinet of a self-governing territory or any official of a self-governing territory or any member of a security force in the exercise or performance by any such member or official of a power or function in terms of a provision of a regulation made under the Public Safety Act, 1953. or of a law regulating the safety of the public or the maintenance of public order;

(iii) to take part in a boycott action-

(aa) against any particular firm or against firms of any particular nature, class or kind, either by not making any purchases at or doing other business with or making use of services rendered by that particular firm or any firms of that particular nature, class or kind or by making purchases only at or doing other business only with or making use only of services rendered by firms other than that particular firm or other than firms of that particular nature, class or kind;

(bb) against any particular product or article or against products or articles of any particular nature, class or kind, by not purchasing that particular product or article or any products or articles of that particular nature, class or kind; or

(cc) against any particular educational institution or against educational institutions of any particular nature, class or kind, by refusing to attend classes or to participate in other activities at that particular institution or at any institutions of that particular nature, class or kind;

(iv) to take part in an act of civil disobedience-

(aa) by refusing to comply with a provision of, or requirement under, any law or by contravening any such provision or requirement; or

(bb) by refusing to comply with an obligation towards a local authority in respect of rent or a municipal service; transgression of the provisions of any law, or to support any such stayaway action or strike;

(v) to stay away from work or to strike in connection with

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(b) cnige liscse aanval op 'n veiligheidsmaatregel of op 'n

lid van 'n veiligheidsmag of 'n lid van 'n plaaslike owerheid of op die huis of huisgesin van 'n lid van 'n veiligheidsmag of plaaslike owerheid deur 'n groep persone; 09-

(c) enige gedrag wat oproer, of openbare geweldpleging of 'n oortreding van artikel 147(1) (a) van die Wet op Intimidasie, 1982 (Wet 72 van 1982), betref;  
"periodieke publikasie" 'n publikasie wat hetsy met gereelde of ongereelde tussenposes uitgegee word;

"plaaslike owerheid"-

(a) 'n instelling of liggaam beoog in artikel 184(1)(i) van die Wet op Provinsiale Bestuur, 1961 (Wet 32 van 1961);

(b) 'n plaaslike owerheid soos omskryf in artikel 1 van die Wet op Swan Plaaslike Owerhede, 1982 (Wet 102 van 1982);

(c) 'n strykkediensteraad ingestel kragtens die Wet op Strykkediensterade, 1985 (Wet 109 van 1985); of

(d) 'n plaaslike bestuursliggaam wat ingestel is of geag word ingestel te wees kragtens artikel 30 van die Swart Administrasie Wet, 1927 (Wet 38 van 1927);

"publieke plek" 00k-

(a) 'n perseel wat deur die Staat, 'n plaaslike owerheid, 'n onderwysinstelling of die bcheerliggaam van 'n onderwysinstelling geokkupeer word;

(b) 'n perseel of plek waartoe lede van die publiek gewoonlik of op bepaalde tye toegang het, ongeag of die reg van toegang tot so 'n perseel of plek voorbehoud is of nie en of betaling vir sodanige toegang vereis word of nie; '

"publikasie" 'n koerant, boek, tydskrif, pamflet, brosjure, aanplak- of strooibiljet of deel daarvan of byvoegsel daarby;

"publiseer". met betrekking tot 'n publikasie, televisie-opname, rolprentopname of klankopname, enige handeling waardeur die publikasie of die televisie-, rolprent of klankopname-

(a) aan 'n lid van die ublick verkoop, verhuur of gratis verskaf of 'n besigbaar gestel word of anderszins 'n lid te koop, te huur of gratis aangebied word;

(b) oor die pos aan 'n lid van die publiek versend word, hetsy daardie lid daarop ingeteken het of nie;

(c) uit die Republiek persoonlik geneem of anderszins versend word of deur watter telekommunikasie-middel ook al vanuit die Republiek oorgesend of gestuur word.

en voorts, met betrekking tot-

(i) 'n publikasie, ook enige handeling waardeur die publikasie op of in 'n publieke plek opgeplak, uitgestal, uitgedeel of uitgestrooi word of anderszins 'n wyse vertoon word dat dit van 'n publieke plek sigbaar is;

(ii) 'n televisie- of klankopname, 00k enige handeling waardeur die televisie- of klankopname-

(aa) op of in 'n publieke plek vertoon of gespeel word of anderszins 'n wyse vertoon of gespeel word dat dit vanaf 'n publieke plek sigbaar of hoorbaar is; of

(bb) uitgesaai word op 'n wyse wat 'n lid van die publiek in staat stel om dit by wyse van 'n radio of televisiestel te ontvang;

(iii) 'n rolprentopname, 00k enige handeling waardeur 'n rolprentopname op of in 'n publieke plek vertoon word of anderszins 'n wyse vertoon word dat dit van 'n publieke plek sigbaar is;