

pc 11/1/13/15

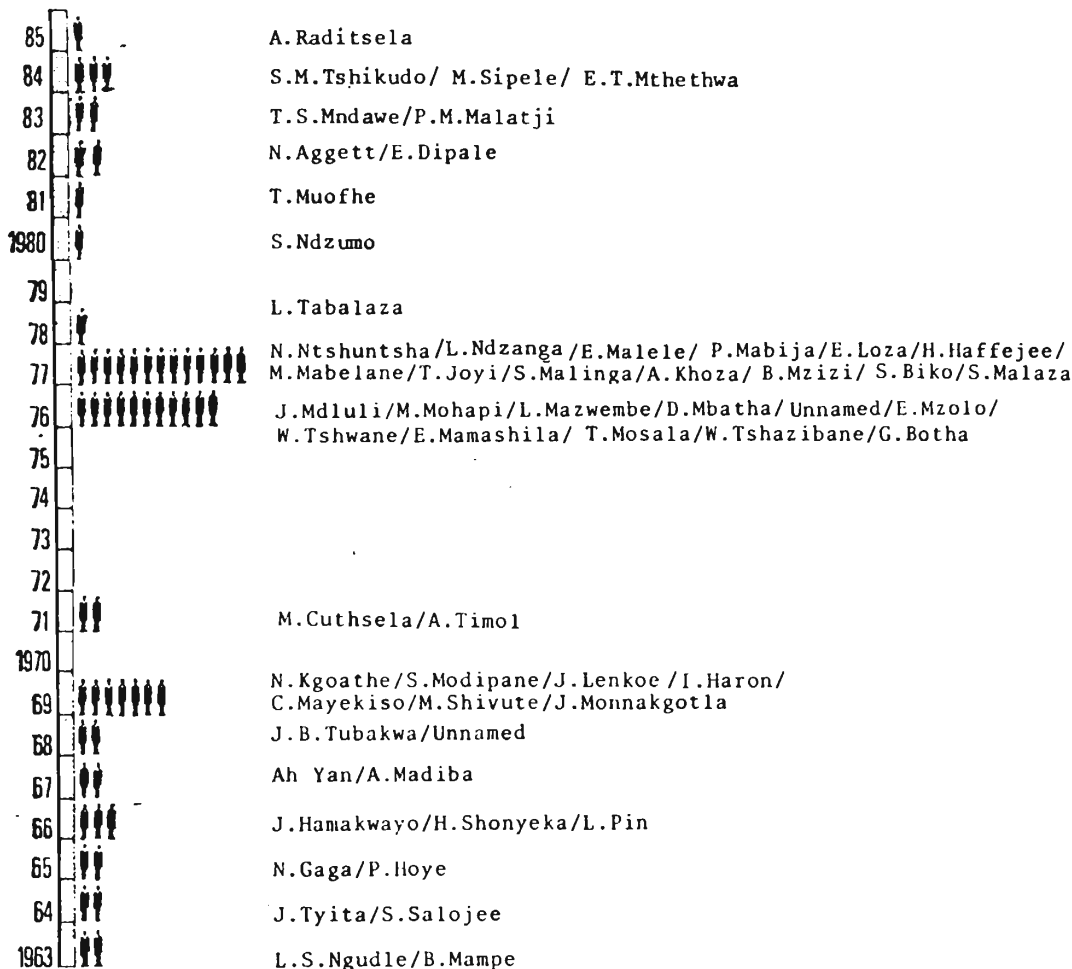


# DETAINEES AND SECURITY LEGISLATION PACSA FACTSHEET



## ARE PERSONS DETAINED IN SOUTH AFRICA UNDER SECURITY LEGISLATION AT RISK?

### RECORDED DEATHS IN DETENTION



### ALLEGATIONS OF TORTURE:

According to statements taken from 70 ex detainees, the Detainees Parents Support Committee, in a report to the Minister of Law and Order, states that detainees are subjected to interrogation methods ranging from "mere bullying or neglect to third degree brutal torture".

Detention laws in South Africa have been notoriously free from legal controls and there have also been no successful charges against members of the security people who have allegedly assaulted and tortured detainees.

A colonel giving evidence at the inquest into the death of Mr. S. Biko was asked under what law the Security Police operated. His reply was that they do not operate under any law. Is there any truth in this? Attorney R. Tucker believes that, in practice, this is probably the case, although it is not 'legal'. This is an extremely dangerous situation, giving almost unlimited powers, and we all need to be aware of it.

The above details of deaths in detention and allegations of torture indicate that people are undoubtedly at risk.

More people have died in detention related to security legislation (8 between 1982 and 1985). In the period July 1984 to 1985 a further eight people, who were arrested on political but not necessarily security related charges, died in detention.

In September 1985 Dr. Wendy Orr, a district surgeon, and 42 other applicants were granted an interim interdict restraining the police from systematically assaulting people detained at Port Elizabeth prisons. The injuries to the detainees, with allegations that they were caused by police assaults, were recorded on the prisoners' medical history cards.

The above details indicate that people are undoubtedly at risk.

## SECURITY LEGISLATION

Over the last 35 years the State has increased its control by curtailing the powers of the courts to protect fundamental freedoms. This can be seen from the various security laws promulgated over this period and, more particularly, by Clause 17 of the General Laws Amendment Act of 1963 which specifically provided that 'No court shall have jurisdiction to order the release from custody of any person so detained ...' Section 29(c) of the Internal Security Act 74 of 1982.

The Rabie Commission was set up to examine all security legislation. Many members of the legal profession thought that the Commission would be bound to consider improvements and safeguards because evidence of malpractice and abuse in the course of interrogation of detainees was so obvious. The Government welcomed the Commission's report as a means of providing detainees with better protection. Professor A. Mathews (University of Natal) sees only minor improvements which cannot be regarded as safeguards.

Brief details on two recently promulgated Security Acts are given below.

### PROTECTION OF INFORMATION ACT 84 OF 1982

This Act allows the police to prevent, or at least delay, the reporting of the names of people detained in connection with what the Minister of Justice judges to be "terroristic activities".

### THE INTERNAL SECURITY ACT, NO. 74 OF 1982

The enactment of this legislation also arises as a response to the Rabie Commission's report. Its purposes are "To provide for the security of the State and the maintenance of law order; and to provide for matters connected therewith". Detention authorised by this legislation takes the form of preventive and pre-trial detention.

#### PREVENTIVE DETENTION

Section 28 allows for the detention of certain persons in a prison in order to prevent the commission of certain offences or the endangering of the security of the State or the maintenance of law and order. An order under this law may be permanent or, if not initially permanent, be renewed indefinitely. A review process is possible but Professor Mathews suggests that this process has many serious shortcomings, one being that the Minister is not obliged to give effect to a recommendation of a review board.

#### PRE-TRIAL DETENTION

##### INDEFINITE DETENTION

Section 29 incorporates most aspects of the notorious Section 6 of the Terrorism Act (1967) but with some supposed safeguards. A senior commissioned police officer who 'has reason to believe' that a person has committed the crimes of terrorism or subversion or related crimes, or that such a person is withholding information relating to the commission of such offences, may order detentions for the purpose of interrogation. Such detention may be for indefinite periods.

##### DETENTION OF WITNESSES

Section 31 has incorporated the old 180 day detention law and it authorises the Attorney General to order the detention of potential witnesses to certain security crimes if he is of the opinion that such witnesses have material evidence to give and that there is a danger that they may be tampered with, be intimidated or abscond.

## COMMENT

*In all three of the above-mentioned sections of the Act, the courts are specifically precluded from ordering the release of a detainee, or pronouncing on the validity of regulations determining the conditions of detention, or on a refusal by the authorities to allow visits.*

*Attorney R. Tucker states that "there is very little in the system which provides any degree of protection for the detainee. Pages of legislation have created a valueless apparatus of review; an illusion exists that the detainee is being protected and still has certain rights - the truth is that what rights still remain only tend to illustrate the extent of the loss of rights and the remedies provided only highlight the absence in reality of meaningful protection."*

*This was rather forcefully emphasised by the Minister of Law and Order, when he stated in Parliament last year that the interests of the State are more important than those of the individual.*



## CONCLUSION

*We believe that everyone is important in God's eyes and that justice and righteousness are greater attributes than the present Government's rather limited notion of law and order.*

*We therefore urge you to "Remember those who are in prison, as though you were in prison with them. Remember those who are suffering, as though you were suffering with them. (Hebrews 13:2-3).*