

THE CAPE TIMES

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Detention: The issues at stake

THE Government should by now be under no illusions about the depth of feeling inside this country about the detention system. In recent days the death of Mr. Ahmed Timol has brought the basic issues forcibly to the public mind. Hardly a person in South Africa, of any political persuasion, can argue that he is unaware of the controversy about the principle and the practice of detention without trial. Even those with the deafest ears and the thickest skins cannot escape giving these issues some thought. This puts the onus on individuals, on a broad front, to make up their minds. What do they see?

In the eye of the storm is the actual treatment of specific detainees. There have been about 14 deaths in detention; and about eight suicides. Figures and names and details are hard to come by, because the public has been told little about these events. In the celebrated case of the Imam Haron, not even the inquest magistrate himself could explain some of the 26-odd bruises that contributed to the man's death. From the murk emerges one fact: the situation is deeply worrying to any reasonable man.

The whole question of principle is important, for it gives rise to the situation that has now forced itself upon the public. There operates in South Africa a regular system of detention without warrant and without access to legal representatives and without access to the courts of the land. People are just locked up, on the strength of the suspicions of a police officer. This happens under section 6 of the Terrorism Act of 1967. There is on the statute book a less authoritarian measure which is available to the police, but they generally ignore it. This is section 22 of the General Law Amendment Act of 1966 which, though rigorous, contains important safeguards. A detainee can be held for only 14 days, at which stage the Commissioner of Police must apply in writing to a judge for his continued detention. The Commissioner must show that, from information taken on oath, there are reasonable grounds of suspicion against the detainee. He must also give reasons why further detention is considered necessary. He must give the judge the conditions under which the detainee is held. The judge may grant the detainee a chance to give his reasons why he should not be detained. The judge may order immediate release, alteration of conditions of detention, or continued detention for a specific period. This provision, it must be noted, applies only to those suspected of committing or contemplating terrorism, or certain other subversive crimes. The Terrorism Act, the more severe measure, applies not only to the suspected terrorist, but also to persons believed to be withholding information from the police. The very presence on the statute book of the 1966 Act is testimony to the need for an independent check on the police, even when the security situation is so bad that a drastic measure is deemed necessary. As Mr. Mike Mitchell, MP, has indicated, the police should be obliged to use the Act with the judicial safeguard.

There is, however, a thoroughly bad tendency on the part of the political authorities to give the Security Police carte blanche to act as they think fit. Raids throughout the country just over a week ago were carried out in circumstances and at times of the

night which showed contempt for the rights and feelings of citizens, including a number of eminent churchmen, professional and academic figures. Yet the political authorities were reticent and casual in their handling of the affair. One got the impression that the matter was exclusively in the hands of the police—and that's that. The latest example of buck-passing from the political to the official level was the bland statement by the Minister of Justice, Mr. Pelsler, reported in the *Burger* yesterday, that the police were fully entitled to decide, on their own judgment, under which of the two detention Acts they held people. This means that Mr. Pelsler exercises no control over this situation. He comes into the picture after the country's reputation has taken a knock; after eminent citizens have been searched before dawn; and after the country's friends abroad have despaired as they see its enemies hoot with joy. Any accountability the political authorities have to Parliament and to the people who elect them is nullified.

The fact must be faced that the security of the State has been placed above the ordinary judicial process and the Security Police, in their actions, beyond the control of the Cabinet. If we go on this way, the country is on a slippery slope. Once the political authorities, who are answerable to the electors, start to lose their grip they quickly lose control of the whole situation. Thus, this country is entering a testing moment in its history. The Bench has always deservedly had a high reputation here and abroad—indeed the respected *London Times*, dealing with the latest detention incidents most critically, felt constrained to draw attention to this high regard for the Bench, in an editorial on Saturday. If South African judges have a matter in hand, the average citizen is content to let justice run its course. But when authority is taken out of their hands, and vested in police sergeants interrogating rightless suspects incommunicado, the line of totalitarianism is certainly being crossed. The basic question in all this is whether an inherent South African regard for freedom under the law—incidentally, a major component of the country's arsenal against subversion—will reassert itself. The lights are burning faintly, but there is hope. Opposition parties have not been alone in questioning the system of detention as it operates. Ropport, the respected *Afrikaans Sunday* newspaper, has expressed disquiet about what has been going on, and has favoured a judicial inquiry into the latest suicide. Even Neels Natte of the *Transvaal* is publicly worried about the lack of official information in the Timol case. A respected moderate academic, Dr. Denis Worrall, has criticized the legislature for failing to introduce provisions which apply in other societies, thus leaving the Security Police to operate in a procedural vacuum—leading to over-reaction on their part. Significantly, it is not only the predictable consciences which are stirred. The issues are so serious that they touch a broader patriotism, one that simply has an inbuilt respect for the ordinary law of the land and for the judges who apply it. Strong feelings on current issues have little to do with language group or party allegiance. This crisis touches the basis of our country and the civilization we profess to uphold.

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