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Free the Children Alliance  
Methodist Hall  
JOHANNESBURG

South Africa is a society which is obsessed by law and legal institutions. This is manifested in a sophisticated network of laws that prescribe virtually every aspect of life in this country, from where we live, work and socialize to the laws which restrict freedom of association, speech and liberty. The Harare conference had, as its central theme the deprivation of the liberty of children. As such the conference dealt with the arrest, detention and treatment of children in South Africa. It also dealt with the role of the child as accused in the South African courts. Now the question has been asked and indeed it may have crossed your minds "why the need for such a conference and why in Harare and not in South Africa?"

Let me deal firstly with the need for such a conference. Since the beginning of the first state of emergency on the 12th June 1986, which state of emergency was renewed on the 12th June 1987, this country has seen the detention of thousands and thousands of children. That is a fact. It is also beyond dispute that a number of those children were as young as eleven, twelve and thirteen years of age and that allegations of torture and abuse abound. Numerous applications have been brought to the Supreme Court to protect children in South African police

custody. I was involved in a few of those applications and I can tell you that I have consulted children who have been tortured and who, as a result, have lost contact with reality and exist in a world of shadows and fear.

It is a fact that the vast majority of these children are not brought to court and are not charged and even if they are charged they are in most cases discharged or acquitted.

Now these kinds of realities may not offend the South African government and it may not offend the majority of the white electorate in this country but it offends and causes deep concern in a number of people, both black and white, who are not only horrified that such events take place but also realize the consequences for the country of this brutalization of South Africa's youth.

Torture has a technical, legal definition as set forth in the "Declaration against Torture", adopted by the United Nations General Assembly in December 1975. In lay terms it is any act which causes mental or physical pain and suffering at the behest of a government official in order to force a confession, intimidate or punish the victim.

Without question this definition applies to the conditions and treatment of detainees in South Africa. That the youth of the country is the subject of this abuse is not something which

should merely be treated as reprehensible or something to be frowned upon, it is something of national and international importance. The need therefore for a conference on the plight of South Africa's children arose out of a sincere concern, out of a fear of losing a generation and an anger and determination that such abuses must be exposed and stopped.

The other question that has been asked is why the conference was held in Harare and not in Johannesburg?

South Africa presents itself as a democratic country where law and order is paramount. As such it has a strangely misplaced and persistent pride in its practice of due process and its belief that it adheres to the Rule of Law and safeguards the rights of the individual.

The past few decades and in particular the last three years have however shown us that this government has no respect whatsoever for the rights of the individual. So to hold a conference of this nature in Johannesburg under the beady eyes of state security would have been impossible. Why? Because they would have banned it, it would simply not have been allowed to take place. Secondly it was also important that child detainees be given the opportunity to come forward and to speak of their experiences in detention. That could never have taken place publicly in South Africa as the children would have been too petrified to speak of their experiences, knowing that the South

African police were either present or in the vicinity. There also existed a strong likelihood that they would have been redetained should they have dared to have opened their mouths. Thirdly the Department of Home Affairs would, in all likelihood, have refused visas to international participants of the conference. Finally the state of emergency regulations and particularly the press restrictions contained in those regulations would have drastically curtailed the discussion and debate that is essential to such a conference. It is well-known that this government has an obsession for secrecy. This is a logical and comprehensible obsession when one is dealing with information that would shock and persuade any civilized person of the evil of a system that perpetrates abuses upon children. This obsession is carried to the extent that even the events in a court case involving emergency regulations and the detention of children cannot be publicized until final judgment in that case has been given. This is a process which can take years. In my opinion it was essential for such a conference to take place and crucial that it take place outside this country. It may be unfortunate to say such a thing but until the conditions of democracy are created in this country such events will have to take place outside it so that these conditions can be brought to the attention of the international community which would otherwise be kept in the dark about events in this country.

The participants of the conference came from all over the world. Most major governments were represented, professional associations as well as representatives of opposition parties and labour movements. Most importantly representatives of the African National Congress were present. I say most importantly because it is fundamental to any resolution of the conflict in this country that the African National Congress be involved. Any process or discussion of change will be futile unless those initiatives include the current political prisoners inside South African gaols and organizations such as the ANC. If the white electorate of this country thinks that they can continue batting into the twenty-first century on the same wicket with the same rules then they are naive and shortsighted. What concerns me however is that they will destroy this country in the process. So it is clear to me that for us to have discussions with South Africans in exile is not an act of treason - it is an act of reason.

In attending the conference I was part of a large delegation of lawyers. Virtually every single South African lawyer had had experience in the representation of detained children and children as accused. Extensive discussions were held with lawyers from other countries including Zimbabwe, USA, United Kingdom, Germany, France, Holland, Sweden and Zambia. Certain legal associations from various countries were also represented. The discussions centred on the treatment of

children in South Africa as well as in countries all over the world, what child care organizations were doing and particular cases in South Africa involving the treatment and detention of children. There was also extensive discussion of the effects of the emergency laws in South Africa upon the legal system and what changes were necessary to protect and make inviolable the rights of children. In so doing the lack of effective legal process for children was also dealt with in detail. Individual experiences of various attorneys in South Africa were heard, discussed and debated. For example, I told that conference and I say it again here, that as an attorney who has had extensive experience in representing detainees that electric shock torture is alive and well and is practised in South Africa. In one particular case the country's top pathologist conducted a skin biopsy on a detainee who had been released and found thermal burns which were consistent with electric shock torture.

Another example is that of four children who were arrested and detained under the emergency regulations. Now it is illegal for me in this country to tell you the details of the alleged assaults and abuses that took place on them and so I will not do so. However, what I am able to tell you is that after we had given warning of an urgent application to the Minister of Law and Order the children were released and subsequently charged with public violence in the Protea Magistrate's court in

Soweto. After a number of court appearances, most of which were postponed at the instance of the state, the trial of the children took place and at the end of state's case the court found that there was insufficient evidence of an offence having been committed and the accused were discharged. It is important to realize that those kinds of abuses, not only of the law but of the criminal justice system itself, are not isolated instances but are widespread and systematic. If these abuses are not part of official policy then one can only conclude that either the perpetrators are out of control or that those who are in positions of power in the South African security forces are unwilling to exercise the necessary authority to put a halt to those abuses. So those are the kind of things that the legal group discussed in Harare. I must be quite honest with you and also add that certain defects in our present constitution, such as the fact that 80% of the country have no effective political rights, was also discussed on an academic basis.

For me it was an exchange of views which was both illuminating and educative. South Africa is not an island and cannot be an island - it is essential for us to meet and discuss common problems and concerns with persons from other countries.

It is also important that the true story be told to the world as to what is happening in our gaols and who is occupying those gaols. When human rights activists in Germany in 1935 spoke of abuses against sections of the population, they did so out of a concern not only for the people involved but for the country itself. History has proved those persons correct. If we, the citizens of this country do not expose and oppose what is taking place then we are guilty of the same crime. It angers me that ~~when~~ on our return from Harare, certain government officials of this country took the opportunity to say that we were being disloyal to talk ill of South Africa outside our borders. I do not speak ill of South Africa but I do speak ill of a government and a system that is a degradation of the human spirit and which is destroying this country. If government officials want to be perceived as being one of the democratic governments in this world then they must act accordingly and earn that right even if it does involve an about-turn of attitude and actions.

Finally let me say that although the conference was both necessary and stimulating it is a sad day and a great tragedy for our country when a conference has to be convened to discuss the torture and detention of its children.