



THE CENTRE CONDEMNS THE CRUEL, INHUMAN AND DEGRADING PUNISHMENT OF CHILDREN CAUGHT UP IN CURRENT PROTESTS AND LOOTING

FOR IMMEDIATE RELEASE

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On 13 July 2021, we released a statement calling for law enforcement officers to comply with the Child Justice Act when dealing with children caught in the current protests and lootings. We reminded law enforcement officers that children alleged to be in conflict with the law must not be detained unless it is a measure of last resort and that the detention must be for shortest appropriate of time. This is a constitutionally guaranteed right enshrined in section 28(1)(g) of our Constitution.

Since then, a video, amongst others, has surfaced in which two children caught in the protests and looting were forced to carry what appeared to be concrete blocks. The children could be seen experiencing excruciating fatigue and muscle pain to their still developing bodies. Meanwhile adults were simply apprehended and made to sit down probably to be loaded into police vans whilst the children were subjected to cruel, inhuman and degrading punishment.

We unequivocally condemn such punishment. Such actions by law enforcement officers suggests that arrest and detention of these is being replaced with unlawful punishment. The power to punish an alleged criminal offence is reserved for the judiciary. It is unlawful and unconstitutional to punish any person for a crime which they have not been found guilty.

It is important to note that children are not only entitled to rights in section 28 of the Constitution but that they are bearers of other fundamental human rights. Children have the right “not to be treated or punished in a cruel, inhuman or degrading way.” South Africa is a member of the AU and is part to the African Charter on the Rights and Welfare of the Child. According to Article 16(1) of the Charter the state has a duty to ensure the protection of children from all forms of torture, inhumane and degrading treatment and especially physical or mental injury.

Moreover, South Africa is a state party to the UN Convention on the Rights of the Child. Article 37(a) of the Convention places an obligation on South Africa to ensure that children are not subjected to torture or other cruel, inhuman or degrading treatment or punishment. Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment obliges South Africa as member state to take measures to prevent inhuman, cruel or degrading punishment.

We urge law enforcement to act within the confines of the applicable laws. The Centre furthermore calls on and strongly urges oversight bodies, such as Parliament and the Human Rights Commission, to ensure the appropriate treatment of children caught up in the protests and looting. The current state of civil unrest is not a gateway to violate the rights of the most vulnerable people in society, children. Children involved in the protests and lootings do not cease to be holders of fundamental human and children’s rights.

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