

# AFRIKA

AFRICAN NATIONAL CONGRESS AND NATAL INDIAN CONGRESS

Ea 1.10.5-1.2

## Newsletter

No. 5

Thursday 4th December 1952.

### JUNGLE LAW

"All the covering of gilded forms and soft words has been removed. Special ordinances and the suppression of the most ordinary rights of speech, meeting, the Press, become the ordinary laws and procedure of the country. The greater the challenge to authority, the more will this happen."

ON Friday 28th November, Mr. C.R. Swart, the Minister of Justice, told the Natal congress of the Nationalist Party that the Government will introduce a Bill in Parliament during the coming session which will give them powers similar to those being employed in Kenya.

At about the same time as Mr. Swart spoke these words, there was promulgated in Pretoria a Government Gazette Extraordinary which is extraordinary in more sense than one and which has rightly evoked sharp comment from many quarters.

#### Mrs. Bellinger

Mrs. Margaret Bellinger M.P. has said: "It reveals the complete bankruptcy of this Government and its inability even to learn the business of government. The statement by the Minister of Justice lends new dangers to the proclamation. It suggests very wide interpretation to incitement, which would seem to include the propagating of any policy that would encourage the non-European population to feel that there might be a different set-up in South Africa from that which the Nationalists visualise."

#### Mr. Lewin

Mr. Julius Lewin, an authority on Native Law and Administration says: "The main purpose of these new laws is to curtail the already meagre civil liberties exercised by Africans."

"As far as I can see, the new laws cannot apply to Europeans, because they have been issued under the Native Administration Act. If they do apply to Europeans, it would be only to activities in the reserves, not in urban areas."

"My view is that the Government has no power to change the common law of the land by proclamation. It is clear to me that the Government is meeting such complex legal problems in race relations today that it is tempted to abandon the normal machinery of the law. The Government is finding that racial domination and the rule of law are incompatible, and it chooses domination."

#### "Permitted to Die"

The RAND DAILY MAIL, outspoken Johannesburg daily, says in its Editorial THE NEW LAW OF BANTUSTAN (Dec 1st): "The drastic regulations banning meetings of Natives... can only be described as panic regulation. They might conceivably be justified if an enemy had invaded our shores and, with Africans pressed into service, was marching on Pretoria. Probably that is why they remind us of some of the proclamations of the Vichy Government after the fall of France."

From now on it looks as though South African Natives will have to converse with one another by means of signals from the hilltops. As a sort of afterthought they have been permitted to marry and to die. There are so many anomalies in the regulations that it will probably take the lawyers a week to decide what they really mean. In the meantime, we feel obliged to point out that the proviso that no one, without permission, may address a gathering of more than ten Natives in a kraal or hut strikes at the very roots of the communal life of the African. How can the Police enforce such a regulation? It simply opens the door for hardmen and informers to disrupt the life of every village in the reserves."

"E"/...

### Mr. "Justice" Swart Again

Writing on the subject once more in its Editorial of Wednesday December 3rd, the DAILY MAIL says under the heading "Mr 'Justice' Swart Again":

"Mr Swart certainly played to the gallery when producing his new law to ban the incitement of Natives. A dramatic announcement at a Nationalist congress on Friday - and within a matter of hours the regulations were promulgated.

As a stage-managed affair this was most skilful; but Mr. Swart is not an impresario. He is a Cabinet Minister, with a rather tricky problem on his hands, and his method of dealing with it is anything but skilful. Mr. Swart has not yet learnt the crucial lesson of the past four years, namely, that the policy and application of absolute apartheid are in almost constant conflict with the rule of law. We had a good example of this in the 'High Court' travesty; now Mr. Swart is going the same way with his new regulations.

It is part of our established common law that the offence of incitement can never be greater than the actual crime which a person is incited to commit. For example, if a Native enters a 'Europeans only' entrance, the offence carries a punishment of about a week's imprisonment or a fine of £5. Anyone who incited a Native to commit this offence should not therefore be liable for a greater punishment. But Mr. Swart has now provided a penalty of £300 or three years' imprisonment for inciting someone to commit what might be called a five-pound offence. Can Mr. Swart legally tamper with the common law to that extent? Above all, can he do it by regulation? It seems that such drastic alterations to the common law require at the very least the full authority of Parliament rather than that of a Minister acting under delegated powers.

But Mr. Swart, with the bit between his teeth, is not anxious to suffer the interference of Parliament. Otherwise, he would have waited the seven or eight weeks more until Parliament assembled. It is clear from the Native Administration Act of 1928, under which Mr. Swart derives his authority for making the regulations, that the legislature is opposed to the kind of dramatic surprise Mr. Swart achieved in suddenly springing the regulations on the public. The Act says that the regulations should be made public one month before they come into force; only where 'delay would be prejudicial to the public interest' can the month's notice be dispensed with. Mr. Swart obviously regards this as a case of emergency where delay would be prejudicial. But if that is his excuse for bringing in the regulations, he cannot have it both ways. People will note that the 'state of emergency' demanding such unusual steps has developed under a Nationalist administration. They will want to know why it should have become necessary for Mr. Swart to assume those wide powers in what was once a very law-abiding country. They may have to wait a long time for Mr. Swart to answer that one.

What the Minister is doing is to make nonsense of the famous apartheid principle that Natives can govern themselves in Native areas. He has issued the regulations without consulting the Natives, and has caused uncertainty among Europeans as to the extent to which they are affected.

As so often happens, the litigants will be obliged to take their troubles to Court, and the court will have to solve a few more of Mr. Swart's riddles. Only then will anyone know what those extraordinary decrees really mean."

### Draconic Powers

The influential Johannesburg STAR calls the regulations "Draconic powers" in its editorial of December 2nd. Says the STAR:-

"In a known emergency not far removed from open civil war, the Kenya Government have assumed and are using extraordinary powers to suppress organised large-scale terrorism and protect life and property from an immediate threat to the security of a whole country.

However serious the racial tension is in South Africa and however imperative it is to preserve law and order and to punish any disturbers of the peace, the South African situation cannot be compared with that of Kenya today. Yet the Minister of Justice has seen fit to announce that in the next session of Parliament the Government will ask for powers 'on the same lines as those now in force in Kenya' to quell disturbances in the Union.

Mr. Swart has not told the country how far he proposes to follow in the footsteps of Kenya. But his references to the Mau Mau, to incitements, to the removal of agitators, to the political opponents of the Government and to the

Press says... no is preparing to pattern closely on the Kenya precedent. If that is what the Government are planning, the country should be forewarned: to meet a hypothetical crisis as grave as Kenya's, the Union is in danger of being deprived of its democratic liberties.

This is no exaggeration. Under the Kenya emergency regulations, which have their roots in an Order in Council dating back to the outbreak of the Second World War, the Administration have the power to, among other things, arrest anyone without warrant, suspend or amend any law, ban meetings, restrict travel and censor telegraphic messages. The Kenya authorities can virtually control the free expression of opinion, including the Press, by prohibiting reports likely to prejudice 'the public tranquillity or resolution.'

Powers like these are usually vested in a democratic government only under the stern necessities of war or at other times of grave national emergency. They are dangerous weapons to be entrusted, without the most compelling reasons, to a Government who have laid themselves open to the suspicion of being determined to remain in office at all costs. If the Government were seeking for the means to impose their will upon the country or to embarrass their critics and political opponents seriously in an appeal to the people, they could not find a more ideal instrument than legislation of this type."

Why Help The Nationalists?

The conservative NATAL WITNESS of Pietermaritzburg warns the United Party not to play into the Nationalists' hands, in its Editorial of 3rd December. Here is the editorial in full :-

"The Nationalists are nothing if not opportunists. Although there is nothing to connect the Mau Mau terrorism in Kenya with Native dissatisfaction in the Union, Mr. Swart and others have tried to link them in the public mind. The object is plain: to make whatever oppressive measures are planned for the next Parliamentary session appear as necessary as the methods adopted (so far unsuccessfully) to suppress the Mau Mau. The Government would dearly like this interpretation of events to be accepted overseas, but in this it has failed. It has, however, achieved a limited success within the Union, and sufficient people have been blinded by fear to make themselves the unwitting tools of Nationalism.

The Government does not need urging to undemocratic action. What it does need (for its own party purposes) is moral support in its iniquity from non-Nationalists - the sort of support it received recently from the representatives of Municipal Association Executives, for instance. When Parliament reassembles next month, the Government will be well provided with evidence to show that it has support for new restrictive measures, and as the Opposition protests that they are undemocratic, the Nationalists will be able to say, in effect: 'The idea didn't come from us in the first place.' When, in due course, a law is passed under which non-European leaders can be detained, the Nationalists will be able to point out that the suggestion was that of a conference of Municipal Association representatives, who were certainly not all Nationalists. This will to a great extent tie the Opposition's hands if it wishes to oppose the measure as undemocratic.

The Government will no doubt be grateful for any other contributions offered by people who do not normally support it, and it can be relied on to make the best use of these valuable gifts. But non-Nationalists who, out of a mistaken conception of patriotism, would like to make the Government's path easier, should remind themselves that the general election is not much more than four months away. Are they prepared to see the Nationalists returned to power at the end of a Parliamentary session in which the Government 'could do no wrong' - in which every important measure was accepted as necessary by the Opposition. Are the Nationalists to be allowed to go to the electorate with the reputation of being a 'strong government' - a government which, in its last months, commanded general support in the Parliament? There is a very grave danger that the Opposition will be jockeyed into the position of 'yes-men' to Nationalist racial policies, and every non-Nationalist who encourages the Nationalists to assume new powers against non-European leaders and organisations is, whether he knows it or not, making a Nationalist election victory more likely. He is making it more likely because he is reinforcing the Nationalist structure at its weakest point - its record of racial legislation.

We believe that the United Party will be able to perceive this danger, but we are not so sure that it will be capable of dealing with it. Its most characteristic course would be to strain at gnats and swallow camels. It is already possible to visualise certain United Party M.Ps solemnly declaring that the principle of concentration camps for non-European resistance leaders is sound, but that the diet proposed is inadequate, and there should be more latrines. That sort of niggling will not win the United Party a single new vote at the general election, and the U.P. will offer this sort of 'opposition' at the risk of making itself contemptible both here and overseas. The United Party must decide - and soon, for there is very little time left - that its quarrel with the Nationalists is over fundamentals, and it must tell the country in forthright language what those fundamentals are.

At the last Parliamentary session the Opposition must expect a great deal of Nationalist pressure to 'close the ranks in face of the common danger', and so on, and so forth. Its answer must be to remind South Africans that this common danger did not exist until the Nationalists came to power, and that it can only be removed by sound government. The Nationalists are primarily responsible for the present troubled state of the country, and for them to pose as a 'strong government', capable of removing the danger which they themselves have created, is sheer impudence. The United Party should have no difficulty in exposing it.

Nationalist appeals for support are comparable to the spider's invitation to the fly. The Government will seek backing for its policies by appeals to 'patriotism', but when it has secured that support it will take the credit for it and use it for the ends of Nationalism - a republic dominated by a section of the Afrikaner people. Then it will not want its opponents 'patriotism', for it will be strong enough to do without."

JUSTICE WILL BE DONE

"Instead of uniting in its defence all who will accept civilisation, both our main political Parties talk and think of Whites 'against' non-Whites.

The Whites, it seems, must protect their privileged position by the use of their power, by refusing to allow open competition in the economic field, by refusing equal political rights to men better qualified educationally and culturally, and in every other way, than many thousands of those who now enjoy the franchise.

A people, or group, that protects itself thus from competition, dooms itself with absolute certainty to ultimate extinction, even if only because it makes itself lazy.

Sooner or later some Political Party must come into being that will stand for this elementary principle of justice.

And sooner or later, if there is to be a civilisation in Africa at all, it will be based on this principle.... The truth is often not at all palatable - nevertheless, I believe the truth to be that unless we are prepared to stand for justice and to pay the price of justice we shall never have peace.

In the national sphere, in the racial sphere and in the international sphere - justice must precede peace. I am sure that someone has got to be prepared to say things like this in season and out of season, and whether it is popular to do so or not!" -

Mr. F.R. SNELL, Rector of Michaelhouse, in a speech in Durban on the 26th November.

"There is one thing about which we all ought to agree - that is that laws which are unjust ought not to remain on the Statute Book. We need laws which are not only just but are obviously just. And unless and until we get them we shall never have peace!" -

Dr. Geoffrey Clayton, Anglican Archbishop of Cape Town

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AFRICAN NATIONAL CONGRESS YOUTH LEAGUE.

Office of the Assist. National Sec.

7044 B Westcliff,

P.O. Orlando.

14th Jan. 1954.

CIRCULAR LETTER TO EXECUTIVE.

Dear Son of Africa,

The National Executive in its report has referred to the need of building the Youth League into a mass Youth Movement which will mobilise the vast masses of African Youth, in particular, for the liberation of Africa. Mr. W.M. Sisulu, Secretary-General of the A.N.C. has also made a call to the Youth to make 1954 a year of Mass Youth Activity to oppose Fascism.

The last year has seen an intensified concentrated attack on the Youth; on Students, on Teachers, on Nurses, on workers and peasants; and there is no doubt that they will further intensify their vicious attacks. Much will depend, therefore, on the organised condition of the Youth League.

It is suggested that we implement the task of building the Mass Youth Movement immediately. The best way to begin this, is to hold Mass Youth Conferences in Regions; e.g. Cape Town, Port Elizabeth, East London, Durban and the Reef.

The aims of such Regional Conferences would be to:

- (a) Discuss the problems involved in the absence of Recreational facilities.
- (b) Discuss the problems facing the Youth as Workers, Peasants, in the Nursing Profession, and in education in general.
- (c) Give a thorough political analysis.
- (d) Formulate the tasks of Youth.

Such conferences should crystallise the problems of Youth in our country and provide a genuine basis for the formation of a mass Youth Movement.

Organisational Methods Suggested.

- (a) Inviting all democrats and democratic organisations of youth including individual schools etc.
- (b) Giving the conference the widest publicity in the press.
- (c) Factory, Street, and ward meetings.
- (d) Posters.

Youth Activities Suggested.

- (a) The production of a literary Quarterly journal which will produce PROGRESSIVE LITERATURE in the Vernaculars and in the English language, to counteract the spate of reactionary American Journals and Comic Books and local imitations such as the "Zonk" and the "Bum".
- (b) The formation of Drama Groups in "Locations" and schools which will produce progressive plays.
- (c) The formation of cultural groups to produce progressive music as distinct from American Commercialised jazz, and to develop folk dancing.

All these activities must be carried out to develop the political consciousness of the Youth and the People.

(d)...../



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**RECORDS RELATING TO THE 'TREASON TRIAL' (REGINA vs F. ADAMS AND OTHERS ON CHARGE OF HIGH TREASON, ETC.), 1956 1961**

**TREASON TRIAL, 1956 1961**

***PUBLISHER:***

*Publisher:- Historical Papers, University of the Witwatersrand*

*Location:- Johannesburg*

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