

# CIVIL



# RIGHTS



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## Defence and Aid - an essential part of justice

The allegations made recently against the Defence and Aid Fund by certain government spokesmen (including the Prime Minister) have been adequately answered by the organisation itself. But it seems worth while to quote here a recent statement by Ex-Chief Justice Centlivres and Mr Hamilton Russell (who, though they made the statement in their personal capacities, are in fact both members of the Civil Rights League's Committee). The statement reads:

"In the somewhat heated controversy over the Dutch Government's proposed contribution to the Defence and Aid Fund there are issues that are apparently being overlooked, not only by many of the public but even by the Prime Minister and the Minister of Foreign Affairs.

"With the Government's political objections to the Dutch Government's motives we have no concern.

"What does concern us, however, is that such objections should have been used to attack the Defence and Aid Fund on the ground that, by assisting accused persons to obtain adequate defence - and hence a fair trial - the sponsors of the Fund are in any way associating themselves with the commission of the offence with which the accused persons may be charged.

"In this connection it should not be necessary, although it apparently is, to point out to the Government that:

(1) By our law every accused person is presumed to be innocent unless proved guilty after fair and open trial.

(2) It is an essential requisite of a fair trial that the case for both the prosecution and the defence should be adequately presented to the Court.

"An innocent accused person who is undefended may run the risk of conviction, not because the Court is not solicitous to do justice, but because the absence of skilled defence can result in the Court being left in ignorance of evidence and other factors weighing in the accused's favour, the relevance and importance whereof the accused is normally quite incompetent to realise for himself.



(3) For this reason any person or body providing the means for adequate defence is actively assisting in the administration of justice.

"This remains true whoever such person or body may be, whatever reasons they have for providing the means for defence, and in respect of any offence of any kind, although, naturally, the graver the offence the greater the need for qualified assistance.

(4) The indispensability of adequate defence is quite irrelevant to the ultimate verdict.

"Apart from the presumption of innocence prior thereto, already mentioned, a verdict of guilty still leaves the Court with a grave responsibility requiring the assistance of Counsel on both sides, namely, the appropriate penalty to impose.

"In none of the attacks on the Defence and Aid Fund by Ministers and others has the slightest attention been paid to any of the above elementary considerations.

"Indeed, no coherent reasons have been given for such attacks.

"The closest approximation to reasons that we have been able to discover are:

(a) 'Defence and Aid gives financial support to persons who have been convicted of murder...' (Dr Muller, Minister of Foreign Affairs, House of Assembly, June 16; Cape Times report, June 17);

(b) 'The Republic gave every accused person the right to be legally represented and even provided representations for accused people when they could not afford it...' (The Prime Minister, Dr Verwoerd, Speech at De Aar; Cape Times report June 26);

(c) 'Defence and Aid gives financial support to meet the Court expenses of persons, some of whom are confessed communists or who have co-operated with communists.' (Dr Muller, House of Assembly, June 16; Cape Times report June 17);

(d) 'Defence and Aid associated itself with the reckless action of saboteurs who have no respect for law and order and even the lives of innocent people.'

"The propositions stated above are, we hope, sufficient to dispose of each and every one of these inadmissible imputations. But, even assuming they had validity of any kind, they are, we believe, either factually incorrect or logically irrelevant.

"Thus, as to (a), since pro deo Counsel are appointed by the Court in capital cases, the Defence and Aid Fund has not provided defence in these instances - and that, despite the limited adequacy of the existing system owing to the Counsel appointed lacking the very necessary assistance of an attorney.

"As to (b), the State does not provide funds for defence



counsel in trials in the Supreme Court, save in capital cases. "And, in the magistrates' courts such defence as is provided is so limited in scope as to leave the vast majority of accused almost without professional assistance.

"As to (c), does the Government, or any other person, seriously suggest that any one's political opinions should disentitle him to defence on a specific criminal charge, or that the Court should be deprived of the advantage of properly and adequately hearing both sides in such cases?

"As to (d), if it had the slightest validity then every legal practitioner who appeared for an accused who was ultimately convicted would be guilty himself.

"Nor have we noticed any attempt on the part of the critics of the Fund to inform themselves of the high proportion of accused persons that it has assisted, who have been acquitted either in the first instance or on appeal.

"Unless members of the Government can at least explain themselves more adequately they run the grave risk of besmirching, by what they have said, the fair name and fame of the administration of justice in South Africa.

"In conclusion we wish to draw attention to an essential element in the administration of justice and that is the dignity, independence and integrity of the South African Bar without which impartial justice, the most valuable part of our constitution, can have no existence.

"In this connection we may recall the memorable words used by Thomas Erskine, who was later Lord High Chancellor of England, in addressing the jury in the famous case of Rex V. Tom Paine, who was prosecuted for seditious libel.

"Those words are equally applicable to South Africa under its Common Law.

"He said:

'From the moment that any advocate can be permitted to say that he will, or will not, stand between the Crown and the subject arraigned in the court where he daily sits to practise - from that moment the liberties of England are at an end.

'If the advocate refuses to defend, from what he may think of the charge or the defence, he assumes the character of the judge; nay, he assumes it before the hour of judgment; and, in proportion to his rank and reputation, puts the heavy influence of perhaps a mistaken opinion into the scales against the accused, in whose favour the benevolent principle of English law makes all



presumption, and which commands the very judge to be his counsel."

We would suggest, in all humility, that Mr Vorster and his colleagues should ponder these words, and that a Minister of Justice is very much more than a Minister of Police.

### Vigilance

It is encouraging to know that the General Council of the Bar of South Africa is to make representations to the Minister of Justice regarding the Suppression of Communism Amendment Act and the Criminal Procedure Amendment Act recently passed in Parliament. We hope that they will be able to suggest amendments to these Acts which the Minister will accept.

### The Courts and the Press

It was recently made public that judges in the British courts had the power to send people to prison for contempt of court in private, without the need to state reasons within the hearing of the Press and the public. "The subsequent Press outcry over secret goings", says the Cape Times, "prompted questions in Parliament", and as a result a change in court rules now makes it obligatory on a judge who orders imprisonment in closed court to go into open court and state the name of the person gaoled.

Says the Daily Telegraph, "The protection given to the public and its liberties by the freedom of the Press to report is too often forgotten or under-estimated. There is still a need for vigilance against encroachment upon the principle that justice must be seen to be done - for example, by the plausible case now being made out for forbidding the publication of committal proceedings before magistrates.

"It needs to be repeated dogmatically that except in very exceptional circumstances, these proceedings must be heard in open court... This need not inhibit a magistrate from asking the Press to exercise special discretion in reporting where the interests of justice seem to require.

"But innocence has less to fear from publicity than from secrecy."

We suggest that these undeniable truths are equally applicable in South Africa, not only to the courts but also to the whole administration of justice, police and prison administration; where there is too often a temptation for authority to prevent healthy publicity in such matters.