

CIVIL



RIGHTS



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Cape Town

News Letter

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Diarise this date

Our Annual General Meeting is to be held this year on September 8 in the Electricity House lecture theatre and will, we hope, take the form of a Symposium on Apartheid with an interesting panel of speakers. Formal notice will be circulated next month.

Keep it up!

Good letters have appeared in the Press recently from some of our members on issues of civil rights. We were particularly pleased to see one in "Die Burger" on the BOSS legislation, which that paper published under the heading "Is Daar in S.A. Dan 'n Noodtoestand?" ("Is there a state of emergency in South Africa?") This is an excellent way of preaching to others besides the converted. We were glad also that the writers used their own names - so much more effective than a pseudonym.

Freedom of the Press

The "Prisons trial" of Messrs Gandar and Pogrund has now passed into history. The issue of course turned on what must be regarded as "reasonable steps" to ensure that the information published was not false. The "Cape Times" points out that in the absence of official confirmation from prison authorities (which, human nature being what it is, is unlikely) "newspapers have no certain way of knowing that the steps taken, no matter how far-reaching, will be held to be adequate". "Dagbreek" (a government-supporting paper) says, "the effect on newspapers could be that they might refrain completely from publishing these reports, rather than run the risk of prosecution. That surely" (comments the newspaper rather naively) "was not the intention of the legislators." It may be noted that the presiding judge also declared he did not believe that the intention of the legislation was to prevent newspapers from commenting on abuses. Such, at any rate, may very probably be its effect. Under the circumstances it is a dangerous and costly pursuit. And as the "Sunday Times" says "Every restriction on the Press involves a loss of rights for the

people as well."

"Die Burger" comments that . . . the Prisons Act was no doubt intended to prevent material being published in this country which would provide ammunition for South Africa's enemies abroad; but the paper concludes that this has in fact "achieved the opposite of the intended result . . . We believe more strongly than before that it is better to combat untruths about South Africa's prison system . . . by means of refutation and openness and without special legislation."

Arguing on similar lines, the "Cape Times" concludes that "South Africa's best response (to unfavourable comment) would be to scrap the Prisons Act provision in question". This, says the paper, would be gain indeed.

The Minister and the slums . . .

Mr Blaar Coetzee, Minister of Community Development, has been threatening to invoke the Slums Act against the Cape Town City Council. As our Chairman, Dr Oscar Wollheim, pointed out in an interview with the "Cape Argus", this threat might well be described as "sheer effrontery" in view of the way in which the Department of Community Development interferes with the housing plans of Cape Town and other municipalities. Says Dr Wollheim, "The majority of the sub-economic houses which his department is building and is compelling others to build are slums before any people inhabit them" because of their inability to meet the criteria against which houses are judged to be slums or not. Among these criteria he mentioned the following:

- * Parents had no privacy at night.
- * Growing boys and girls could not be separated in their living quarters;
- * Eating, cooking, washing, sleeping and living had to take place in the same rooms; and
- * It was difficult to keep the inhabitants or the house clean.

In addition, Dr Wollheim pointed out, the department "insists on snatching 50 per cent of the houses which Cape Town builds for people quite unnecessarily removed from perfectly adequate accommodation under Group Areas declarations", so that the Minister's accusations "are not only grossly unfair but manifestly unjustifiable".

Mr Coetzee was criticising overcrowding in Coloured-occupied houses under the control of the City Council. The Council holds that even overcrowded houses are better than pondoks.

B O S S

That was not the original title of the Bureau for State Security. It is not clear who first succumbed to the irresistible temptation to re-christen it. The wrath of the Afrikaans press (unable to justify the relevant legislation, and so reduced to inveighing against the "maliciousness" of those who have made the title common) is understandable. Certainly the title is apt.

As the "Cape Times" points out, the Bill introduced by Mr. Froneman derives from the Official Secrets Act, which originally authorised a seven years' gaol sentence for anyone passing on military information. This was extended some years ago to include "police matters"; the present measure includes "any security matter", defined as: "any matter relating to the security of the Republic and includes any matter dealt with by or relating to the Bureau of State Security or relating to the relationship existing between any person and the Bureau". There is a clause stating that the Prime Minister, any person authorised by him and any Cabinet Minister may express the opinion that certain information affects the interests of the State. This, says the "Cape Times", "acts as a total exclusion of any court process of any kind. No evidence dealing with this information can be given, compelled or received in any court of law. Officialdom is thus given absolute power to do what they like to any person and to do it in absolute secrecy, Parliament and the public and the courts of law excluded on pain of a seven-year gaol sentence ..."

In replying to the second reading debate, the Deputy Minister made the extraordinary assertion that "the Bill contained nothing that subverted democracy or the normal process of law". The provision enabling the Prime Minister, Ministers or people designated by them to decide that evidence or documents should not be submitted to the courts if it was "not in the interest of the State or public" was, he said, "a codification of existing practice over which there had been differing court decisions". Under pressure from the Opposition, Mr. Froneman admitted that it was possible that under this legislation a person could be prevented from giving evidence in his own defence in criminal cases or in his own interest in a civil case.

The Bill was condemned not only by the Parliamentary Opposition and the English-language Press (discounted of course by the Government and its supporters) but by the Bar Councils of Johannesburg and Pretoria, Cape Town and Durban, Afrikaans Professors of Law and a number of judges and other leading lawyers.

In particular, Mr Justice Marais, of the Transvaal, said he was worried about "the dignity, independence and esteem of the judiciary in the South African scheme of things" and the fact that the Government had introduced and passed such a law without informing or consulting the country's judges.

"Too far by far ..."

The "Sunday Express", while welcoming the fact that some of the Government's own supporters realise the dangers of such legislation, describes their protests as "coming rather late in the day". Was it not "too far", says the paper, when the Government tampered with the rule of law?

* When it imposed 90 days and 180 days detention without trial?

* When it invested itself with power to detain people without their being able to seek the protection of the courts - without the normal right to consult legal representatives; the normal right to seek bail; the normal right to demand that they be taken before a court and their innocence or guilt established?

* ... when the Government could, by administrative decree, confine an individual to his home at night and at week-ends, restrict him to a particular area, keep him from social contact, exclude him from factories and various institutions, take away his livelihood, impose renewed prison sentences, detain him as a witness or accused without his relatives knowing his whereabouts?

* When the right of lawful opposition and protest was curbed by Special Police action and intimidation?

This is something ...

Now, at last, says the paper, judges complain about the restrictions on their right to hear evidence and the fact that they were never consulted; ex-judges warn against interference with the normal practice of the law; professors of law at Afrikaans universities complain that the Act undermines the authority of the courts; Bar Councils complain that the Act takes away from the courts their established right to protect the citizen from unwarranted claims of privilege by the Executive. This is, "in essence, support for the rule of law" and is welcome.

We support wholeheartedly the suggestion that the Prime Minister (who has remained extraordinarily silent in all this) refer the Act to the Law Revision Committee, a standing body of lawyers under the Chief Justice.