

# CIVIL



# RIGHTS



Box 3807

Cape Town

Vol. XX No. 6

27/7/73

News Letter

## Our 25th anniversary

Enclosed is the notice of our 25th annual general meeting, at which our distinguished guest speaker is to be Professor A.S. Mathews, head of the Faculty of Law at Natal University in Durban. Professor Mathews needs no commendation from us, and we look forward to a capacity crowd at the Claremont Civic Centre on Monday, September 10. Book the date now!

## Realistic second thoughts

While not wishing to comment on the situation at the University of the Western Cape, which is now presumably sub judice, we should like respectfully to congratulate the Minister of Coloured Relations on acceding to the request of that University's Council and appointing a judicial commission to go into the whole situation. No doubt the frank and fearless attitudes of leaders of the Coloured community contributed to this result. This is one of the most hopeful features of the present situation in South Africa.

## Not so realistic ...

Less realistic - indeed, frightening - was much of the thinking at the recent congress of the Afrikaanse studentebond at Stellenbosch. It is almost incredible that a body of (presumably) mature students should solemnly agree that "All the Black women and children in the White areas must be shipped (!) back to the homelands and only the men should be left in the White areas for as long as we need them". Even "Die Burger", says the "Sunday Times", issued a timid reproof about 'facile talk', pointing out that (apart from any question of human or Christian values), 63 million Africans (77 per cent of the South African population) would, on this basis, have to be housed and fed (and of course, presumably, employed) in 13 per cent of the country. A few days earlier, the Deputy Minister of Bantu Administration and Education, Mr T.N.H. Janson, had told the opening session of the Highveld Bantu Administration Board ("Cape Times", 3/7/73) that Whites 'should not bluff themselves' that all Africans would be

resettled in their homelands in 20 or 30 years' time. A week or so later, a prominent Afrikaner theologian told a gathering of Dutch Reformed ministers that "the Dutch Reformed Churches should accept that the Black people would gain power in South Africa, and that it was only good and fair that the power monopoly of the White man should be broken". He urged the Dutch Reformed Churches to strive to eliminate the economic disparity between Black and White which, he said, was not a sudden incidental occurrence, but like a disease in the bone and blood of South African society. We hope that the ministers will take that message to their congregations.

We hope, too, that the reasoned and remarkably moderate approach of Mr P.H. Maredi, full-time representative of Lebowa in the urban areas, to the ASB arguments gave even the unconvinced majority "furiously to think".

#### Change in the air

SPRO-CAS, which has now completed its study project and issued the results to the public, is to disband its present organisation this year, but its director, Mr Peter Randall, is planning a new programme ("Cape Times", 10/7/73) "to co-ordinate the activities of groups and organisations at present working for change". One of the new group's functions, says Mr Randall, will be "to rethink strategies for change, such as protest, and to decide whether it is effective or counterproductive". We look forward to more information about this.

Other interesting indications are the forthright call of Mr Japie Basson, M.P., for what he calls "the open society", in which there would be neither compulsory separation nor compulsory integration; the "Verligte Action" movement, which seems to be growing; and - as we go to press - the news that Mr Theo Gerdener, founder of ASASA (see our last news letter) is moving in the direction of starting a new political party. More power to all their elbows.

#### "Piecemeal abolition of the courts ..."

At the recent legal aid conference held at the University of Natal Professor S.A. Strauss, Professor of Law at UNISA, made a searching examination into the erosion of some of the basic value of the system of criminal procedure in South Africa (Sunday Times 8/7/73). Professor Strauss stated categorically that the proposed Schabasch-type "Internal Security Commission" should function within the framework of the normal judicial system, except in tim

of a declared state of emergency or war.

Professor Strauss said he would be the last person to disapprove of the creation of institutions which sought to preserve the security of the state and law and order. "But if such a commission were to assume the form of a tribunal with inquisitorial powers, and its recommendations were to be directly or indirectly coupled with administrative bodies possessing drastic powers of restriction of freedom, without even minimal judicial supervision, we shall virtually have arrived at the stage of a 'people's court'".

It was contradictory, he said, that on the one hand "we daily praise the excellence of our legal system and institutions, yet on the other hand we simultaneously propose a motion of no confidence in our most important legal institution, the court of law - which, in fact, we are legislatively abolishing piecemeal".

The courts, said the Professor, were the ultimate custodians - the "vigilant watchdog" - over the principles of legality. Access to an independent judiciary guaranteed respect and maintenance of the rights of the individual. He quoted from the British Royal Commission on the Police in 1962:

\* "In countries in which the term Police State is applied opprobriously, police power is controlled by the Government - but they are so called not because the police are nationally organised, but because the citizen cannot rely on the courts to protect him. Thus in such countries the foundations upon which liberty rests do not exist."

Threats to the security of the State, he said, had led to the systematic creation in South Africa during the past two decades of an extraordinary type of procedure which had been termed "the drastic process". He listed a number of erosions in the law which he found it hard to justify. These were:

\* The elimination of judicial control over the granting of bail, as was provided for in the Criminal Procedure Act (prohibition of bail by the Attorney-General).

\* The total elimination of judicial control over certain forms of detention, as was provided for by Section 6 of the Terrorism Act and Section 215 bis of the Criminal Procedure Act (six months' detention of witnesses).

\* The shifting of evidential onus on to the accused, for example, in the General Law Amendment Act of 1962, Section 21 (the sabotage clause) and in the Terrorism Act.

"Hand in hand with the introduction of the drastic process

we have in South Africa also witnessed the unfortunate tendency of the process being extended to offences which do not involve the security of the State.

The Suppression of Communism Act, 1950, though it had received substantial public support as a measure against communism, was being used, in spite of "Ministerial assurances that the Act was employed only to curb the activities of communists", against persons "whose activities and opinions cannot be categorised as the promotion of communism in any of its universally recognised forms".

"Apart from the harm which this must have done to the image of our country, and in particular to our legal system, we have thereby virtually abandoned the principle of legality.

"It has been argued that the courts must be by-passed because proof beyond a reasonable doubt is too difficult to obtain; that the time factor involved in prosecutions renders criminal proceedings ineffective; that by bringing accused persons to trial we provide them with a platform for the dissemination of their thoughts.

"This type of argument really amounts to doubt being cast upon the very foundation of our system of administration of law."

It would be a far more acceptable situation, said the Professor, if the Suppression of Communism Act were amended to confine its operation exclusively to subversive conduct falling within the recognised ambit of communism in its common ideological sense, and if other subversive actions of a serious nature were penalised in terms of legislation not related to communism. The ideal should always be that interference with the fundamental rights of the citizen should take place only by due process of law.

We couldn't agree more.

#### Pity the poor dustmen

We are glad to see that the Athlone and District Management Committee is to take up with the City Council the question of facilities in Sea Point for people working there, and for the Council's own workers who "have nowhere to go for a cup of tea or a meal" in that area. Also that the Department of Community Development is apparently willing to consider proposals for restaurant facilities for Coloured people in the City area.