BULLETIN 1 JULY 1987

"We, the People of South Africa, declare for all our country and the World to know: that South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of all the people."

These are the first lines of the Freedom Charter, adopted by the people of South Africa at the Congress of the People in Kliptown, South Africa, on 26th June, 1955.

Thirty-two years later the struggle of the South African people for their freedom and full democratic rights intensifies, while the white minority regime continues to legislate without the authority of the people.

Thousands of people are imprisoned and detained under the apartheid laws — laws which the regime has extended to Namibia, a country illegally occupied by South Africa.

This is the first of our regular bulletins, in which we will examine apartheid within South Africa and Namibia from a legal point of view, as well as the regime's breaches of international law and the effects of these illegal acts on neighbouring states. We will also focus on our own domestic law as it affects campaigning work in Britain.

THE SOUTH AFRICAN LEGAL FRAMEWORK

The structure of the South African legal system is based on the English usage of statute and common law. In South Africa the law is draconian in both theory and practice and is used to implement apartheid and suppress all opposition to the regime.

In this first edition we provide a brief introduction to South African 'security legislation', by which we mean, generally, those laws which criminalise forms of political activity that the government perceives as a threat to the continuation of white minority rule.

The Internal Security Act

In 1950 the Suppression of Communism Act was introduced, which proscribed various forms of 'communism'. 'Communism' was defined in very wide terms. The Act was used throughout the 1950s to detain, banish and charge political opponents of the government.

In 1960 the African National Congress (ANC) and the Pan-Africanist Congress (PAC) were banned under the Unlawful Organisations Act of that year, which was introduced in the aftermath of the Sharpeville shootings.

During the mid-1960s two further pieces of legislation were passed — the General Laws Amendment Act 1966 and the Terrorism Act 1967. They created political 'offences' such as 'terrorism', 'subversion', 'sabotage' and 'advancing the objects of communism'. The government's powers of detention, banning, search and seizure were also extended.

In 1982 all these Acts were extensively amended and codified by the Internal Security Act 1982. This Act now forms the basis of South African security legislation.

Detention Without Trial

The Act has several provisions which permit the security forces to detain people without trial, the most important being:

- **preventative detention** under Sections 28, 50 and 50A, which provide for detention of a person suspected of involvement in various specified activities against the state, for a maximum of 180 days;
- **detention for interrogation** under the infamous Section 29, which provides that a person can be detained incommunicado indefinitely until he or she answers questions to the satisfaction of an interrogating police officer. All that is needed for a Section 29 detention is the order of a lieutenant-colonel in the police force or higher officer. This section replaced the equally notorious Section 6 of the Terrorism Act (which still applies in Namibia) and has been used extensively by the police;
- **detention of state witnesses** under Section 31, which gives the Attorney General (a government prosecutor) unrestricted power to detain state witnesses until court proceedings have ended or for six months if no proceedings are commenced.

Refusal of Bail

Section 30 of the Act provides that the Attorney General has the right to veto the grant of bail to people charged under security legislation, overriding a judge's discretion.

'Ouster' Clauses

The Act has the effect of depriving the court of its judicial powers in a number of respects. Section 29(6), for instance, states that no court of law has jurisdiction to pronounce upon the validity of any action taken under Section 29, or to order the release of any person detained thereunder.

- In future editions of the Bulletin we will focus on other provisions of the Internal Security Act and equivalent security legislation in the so-called 'homelands', including those relating to bannings and house arrest, unlawful gatherings, and illegal and 'affected' organisations. We will also examine some of the 'offences' created by the Act itself, such as 'terrorism', 'sabotage', 'subversion' and 'advancing the objects of communism'.

Emergency Regulations

Since July 1985, South Africa has been subject to a state of emergency for approximately 18 out of 24 months. The Public Safety Act 1953 empowers the State President to proclaim a state of emergency within the Republic or any part thereof. Once a state of emergency has been declared it cannot be challenged and the State President then has sweeping powers to make such regulations as to him appear necessary or expedient for the 'maintenance of public safety or order'. In effect, the state of emergency allows the government to legislate by regulation without going through the parliamentary process.

The main powers provided by the regulations made when the current state of emergency was declared on 12th June 1986 (as renewed and/or amended on 12th June 1987) include:

Extended Powers of Detention Without Trial

Any policeman, soldier or member of the security forces (defined to include the army, police force and railways police) has the power to detain a person for 30 (previously 14) days. After 30 days has expired, the Minister may order that the detention be extended indefinitely (extension orders are granted in almost every case). The Minister's decision is effectively unchallengeable. The Detainees' Parents' Support Committee estimates that since June 1986, 25,000 people have been detained without trial, of whom approximately 10,000 have been minors.

'Subversive' Statements

The making of 'subversive' statements, including the production of publications, films or sound recordings containing 'subversive' statements, is prohibited by the regulations. The wide definition of 'subversive' originally contained in the 1986 regulations has been extensively broadened by the regulations issued on 12th June 1987 to include statements calling for boycott action, acts of civil disobedience (aimed at the withholding of rent), strikes and stay-aways from work. Furthermore, it is now an offence to encourage the setting up of people's organisations, such as people's courts and street committees, and to discourage people from doing compulsory military service. This regulation is a clear attempt by the state to crush any organised opposition.

Orders

The regulations grant the Commissioner of Police wide powers to make orders covering a vast range of activities. These include orders prohibiting any specified activity being performed in a particular area, entering an area in which a person is not normally resident, and holding gatherings. The Commissioner may also impose conditions on gatherings, including funeral processions.

Immunity

No proceedings can be instituted or continued against anyone in the service of the state for acts done 'in good faith' under the emergency regulations. The court has power to discontinue such proceedings which are then deemed void. The burden of proving bad faith lies with the plaintiff.

- The emergency regulations impose severe conditions on people while in detention, and lay down harsh punishments for breach of these provisions. This area will be examined in future editions of the Bulletin.

Legality of Proceedings Questioned

Ebrahim Ismael Ebrahim, a senior member of the ANC, was abducted from Swaziland at gun-point by the South African police in December 1986, and was held in solitary confinement. He recently won his application for release from detention — the first time this has occurred in South African legal history — but was immediately redetained and charged with treason. An application challenging the right of the state to charge and try him in light of the fact that he was abducted and detained in violation of international law, is being considered.

NAMIBIA

Illegal Occupation of Namibia

South Africa continues to occupy Namibia in defiance of international law. Its mandate over the Territory of Namibia was terminated by the United Nations General Assembly Resolution 2145 of 27th October 1966, which expressly states that 'South Africa has no other right to administer the Territory'. Moreover, the International Court of Justice stated on 21st June 1971 that 'South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory'.

Both the South West Africa People's Organisation (SWAPO) and South Africa have accepted the independence plan for Namibia laid down by Security Council Resolution 435 of 29th September 1978. However, South Africa continues to frustrate its implementation by invoking irrelevant issues, such as linking the independence of Namibia with the withdrawal of Cuban troops from the People's Republic of Angola.

At present the occupying force is about 120,000. In view of its population, which is 1.5 million, Namibia is the most militarised territory in the world. As a consequence there is appalling repression and other violations of human rights, the fundamental issue, of course, being the denial of self-determination to the Namibian people.

In addition, South Africa continues to grant concessions to multinational corporations which are ruthlessly exploiting the natural resources of Namibia. Such exploitation is contrary to principles of international law and Decree No. 1 of the United Nations Council for Namibia, which was adopted in 1974. The UN Council for Namibia was established in May 1967, and was entrusted with the power, inter alia, to administer Namibia on behalf of the United Nations until independence and to promulgate such laws, decrees and regulations as are necessary for the administration of Namibia.

Pretoria Moves Closer to UDI

According to the Opinion of the International Court of Justice in 1950, South Africa has no legal right to change the international status of Namibia. This right is solely vested in the United Nations. In violation of this principle of international law, Pretoria installed a puppet regime in Namibia on 17th June 1985. It is clear that South Africa is not prepared to implement UN Resolution 435 of 1978 and, furthermore, that the interim regime is moving closer to a unilateral declaration of independence (UDI).

This is illustrated by South Africa's stated intention to set up two ministries which would remain the direct responsibility of Pretoria. A proposed ministry of international cooperation would be vested with a degree of formal autonomy in the conduct of foreign relations. A ministry of security or army affairs would command the structures and legal identity of the locally conscripted army of occupation (the South West Africa Territorial Force and the South African Defence Force).

Judge Hiemstra — retired from the bench of the so-called 'homeland' of Boputhatswana — has, in accordance with Pretoria's instructions, formally submitted a draft constitution to the interim regime for adoption. Additionally, South Africa announced in February 1987 that it intends to adopt the name, Namibia, officially and create a national anthem and a national flag.

The interim regime in Namibia is not recognised by any country in the world except South Africa. Moreover, the United Nations has called upon all states not to recognise it. Pressure must be put on the British Government to refrain from meeting puppets of this illegal regime.

The Trial of the Eight

Eight Namibians faced charges under the South African Terrorism Act (which has not been repealed in Namibia) for participation in SWAPO's armed struggle. Some of the accused had been in custody since August 1985, although the trial only commenced a year later.

The court heard evidence of torture of the accused and of the prosecution witnesses. Although some of this evidence was ruled inadmissible, at least one of the accused was convicted of an offence solely on admissions made by him under torture.

In August 1986 defence lawyers objected to the indictment on the grounds that the charges therein did not disclose an offence. They argued that the relevant section of the Terrorism Act was in conflict with the 'Bill of Rights' which had been introduced in June 1985 under Proclamation R101 (which installed the present administration). One of these rights is the presumption of innocence of persons charged with an offence. The Terrorism Act section under which the eight were charged does not contain this presumption.

Ten days after the defence had filed their objection, P W Botha, under the power vested in him by the South West Africa Constitution Act 1968, tried to preempt this move by amending Proclamation R101 to state, inter alia, that no court was competent to pronounce upon, or enquire into, any South African law.

The audacity of Botha and the connivance of the prosecution in attempting to influence the conduct of this case through applying retroactive legislation was unsuccessful because the judge ruled that, as the case was already pending, he would allow the defence's challenge to proceed. He then decided that Proclamation R101 of June 1985 had effectively repealed the relevant section of the Terrorism Act and so the eight could not be charged with alleged 'offences' arising out of any acts carried out after June 1985 as in law these were no longer offences for which the accused could be prosecuted. The charge sheet was amended accordingly, still leaving almost 200 counts to be tried.

Six of the eight have now been convicted of only a handful of these 'offences', but the sentences handed down total 58 years.

The amendments to Proclamation R101 could have serious repercussions for future trials and show how the few remaining legal loopholes are being closed.

THE LAW IN BRITAIN

The activities of anti-apartheid campaigners in Britain have always been limited by the provisions of our domestic criminal and civil law. Legislation such as the Public Order Act 1936, the Highways Act 1980 and the Metropolitan Police Act 1839, as well as the common law, place restraints on protest activity both on private premises and on public highways.

The new Public Order Act 1986, which came into effect on 1st April 1987, imposes further restrictions on the individual's freedom to campaign and protest. The main sections relevant to anti-apartheid campaigners deal with breaches of the peace, public processions, public assemblies and contamination or interference with goods.

Guide to Legal Rights

A good understanding of their legal rights is clearly an asset to anti-apartheid activitists. To this end Lawyers Against Apartheid have produced a guide to the relevant provisions of Public Order legislation, detailing the applicable provisions, the penalties for non-compliance therewith, and the recommended action to be taken in order not to contravene the law.

LAWYERS IN DETENTION

Raymond Suttner, an advocate and senior law lecturer at the University of the Witwatersrand was detained on June 12th, 1986. He had already served seven years' imprisonment from 1976 to 1983, and had also been detained in 1975. Despite repeated requests for his release by his colleagues and attorneys, he remains in detention without charge.

Raymond Suttner outside court in 1975

In future editions of the Bulletin we will examine specific aspects of our domestic law applicable to campaigning activity, as well as such issues as the law relating to the labelling of supermarket products and the action that can be taken with respect to companies that defy sanctions and otherwise maintain links with the South African regime.

In addition, we will focus on aspects of security legislation and the emergency regulations in South Africa and Namibia, and scrutinise such issues as the plight of children, prison conditions, labour law, sentencing, and South Africa's attacks on its neighbouring states. We will also highlight important aspects of political trials.

Please let us know whether there are any topics touched upon in this Bulletin that you would like us to examine in further detail, and whether there are other issues that you feel should be highlighted or discussed. Any contributions to the Bulletin will be welcome.

Lawyers Against Apartheid was formed in January 1987 to mobilise the support of the legal community for the liberation struggle in South Africa and Namibia. For further information about the group, including details of membership, please write to P.O. Box 353, London WC1R 5NB.