

THE GENERAL LAW AMENDMENT BILL, 1962.

ANALYSIS

1. GENERAL.

The Bill amends the Suppression of Communism Act, the Public Safety Act, the Criminal Procedure Act, the Unlawful Organisations Act, and defines and prohibits sabotage.

2. SABOTAGE.

Clause 21 creates a new offence in South African law, namely sabotage.

A person commits sabotage if he injures, damages, destroys, renders useless or unserviceable, puts out of action, obstructs or tampers with, pollutes, contaminates or endangers any of the following:

- (a) the health or safety of the public;
- (b) the maintenance of law and order;
- (c) any water supply;
- (d) the supply or distribution at any place of light, power, fuel, foodstuffs or water, or of sanitary, medical or fire extinguishing services;
- (e) any postal, telephone or telegraph services or installations, or radio transmitting, broadcasting or receiving services or installations;
- (f) the free movement of any traffic on land, at sea or in the air;
- (g) any property, whether movable or immovable of any person or of the State.

In addition any person who in contravention of any law possesses any explosives, fire-arm or weapon or who enters or is upon any land or building is guilty of sabotage.

The penalty for sabotage is the same as the penalty for treason, namely death by hanging. If the Court for any reason decides not to sentence the person to death, it must impose a minimum jail sentence of at least five years.

The definition of sabotage is so wide that practically any worker who goes on strike for higher wages or improved living conditions can be charged with sabotage. Such a strike by African workers is already illegal under the Native Labour (Settlement of Disputes) Act, 1953, and at the moment punishable by a fine of R1,000 (£500) or 3 years' imprisonment. Now the penalty for striking, if the Attorney-General decides to charge the striker under the sabotage law, will be death. Similarly, if White, Indian or Coloured workers go on strike contrary to the provisions of the Industrial Conciliation Act, 1956, (which allows these workers to strike in limited circumstances) they, too, may be charged with sabotage.

The reason for this is that a strike may be construed as "obstructing, endangering..." the maintenance of law and order and it certainly must be described as "injuring" the property of the owners of capital (i.e. factory owners, mine-owners, farm owners, etc.). Particularly is this the position in the case of transport and food and canning workers, and workers connected with the fuel, light and power industries and with sanitary services, fire extinguishing, hospitals and medical services, postal, telegraph and broadcasting services.

One more example will suffice to show the wide reaching effects of the definition of sabotage: If a person paints a "higher wages" slogan on the wall of a building, he thereby "injures" or "damages" property. He then faces the death penalty for an act which until now may have warranted a fine or a short term of imprisonment for malicious injury to property. Similarly, if a trade union organiser goes inside factory premises to enlist new members or address the workers without the permission of the factory owner then he can be charged with sabotage.

Once charged with sabotage, the onus is then on the accused person to show that what he did 'objectively regarded was not calculated and that such an offence was not committed with intent ---

- (a) to cause or promote general dislocation, disturbance or disorder;
- (b) to cripple or seriously prejudice any industry or undertaking or industries or undertakings generally or the production or distribution of commodities of foodstuffs at any place;
- (c) to seriously hamper or to deter any person from assisting in the maintenance of law and order;
- (d) to cause, encourage or further an insurrection or forcible resistance to the Government;
- (e) to further or encourage the achievement of any political aim, including the bringing about of any social or economic change in the Republic;
- (f) to cause serious bodily injury to or seriously endanger the safety of any person;

- (g) to cause substantial financial loss to any person or to the State;
- (h) to cause, encourage or further feelings of hostility between different sections of the population of the Republic;
- (i) to seriously interrupt the supply or distribution at any place of light, power, fuel or water; or of sanitary, medical or fire extinguishing services;
- (j) to embarrass the administration of the affairs of the State."

It will be impossible for a striker who has taken part in a big strike demanding higher wages, to show that his strike was not likely to "cause substantial financial loss" to his employer. If he is a worker in the fuel, water, light, power, medical or fire extinguishing services or industries, then, too, he cannot discharge the onus on him because if the strike is a serious one it will "seriously interrupt the supply or distribution" of the named services. Similarly, the person who paints slogans on walls or who enters premises without permission may find it impossible, as a rule, to discharge this onus. A trade union organiser, by the nature of his task, will be organising workers to put demands to their employers. He may refer to the employers in a hostile way and will then have failed to show that "objectively" his act was not likely to "cause... feelings of hostility between different sections of the population" (i.e. the workers and the employers). He can then be convicted of sabotage and sentenced to death!

The Bill also makes wide inroads on traditional legal procedures which protected accused persons. If a person is charged with sabotage then unless the Attorney-General directs otherwise, he may be tried without preparatory examination. In South African criminal procedure the holding of a preparatory examination in the case of a person charged with a serious offence, assists the accused in finding out what the case is against him and assists him in preparing his defence. This is now done away with to all intents in sabotage cases.

Moreover, a person acquitted on a charge of sabotage may be tried again on any other charge arising out of the acts alleged in respect of the charge of sabotage. The ordinary rule of South African criminal procedure is that a person who has been acquitted cannot be charged again in respect of the same acts or omissions on which he has previously been freed of criminal responsibility. This, too, is done away with in respect of sabotage. Another change in legal procedure is that juveniles (under 18) may also be sentenced to death for sabotage.

In all cases it lies in the hands of the Attorney-General to decide whether or not a person shall be charged with sabotage.

3. BANNING OF NEWSPAPERS.

Since 1950, the Minister of Justice, has had the power to suppress newspapers in terms of the Suppression of Communism Act.

Using his powers under this law he banned THE GUARDIAN, ADVANCE and CLARION newspapers. However, it has been possible until now for a banned newspaper to reappear under a different name.

The General Law Amendment Bill prevents this from happening in the future. If a newspaper (i.e. any periodical publication which appears at intervals of not more than one month) is banned under the Suppression of Communism Act it will forfeit to the State the sum of up to R20,000 (£10,000) which sum it will have to deposit in advance with the Minister of the Interior. This will effectively prevent any small political or workers' paper from reappearing once it is banned, because it will usually not be possible to find such a large sum of money to be deposited with the Government, and such a newspaper runs the definite risk of losing the deposit of up to R20,000 (£10,000) each time it re-registers as a newspaper under a different name.

This power to ban newspapers must be taken together with the provisions of another Bill at present before Parliament, the PUBLICATIONS AND ENTERTAINMENTS BILL, which confers upon the authorities the power to prohibit the printing, publication and distribution of any "undesirable" literature. The definition of "undesirable" is so wide that it will be possible to suppress trade union statements and publications which express hostility to employers or which instigate strike action.

4. BANNING OF ORGANISATIONS.

The Bill (in Clause 2) widens the powers of the State President to ban organisations. He may now, in addition to his existing wide powers, ban "any organisation that carries on or has been established for the purpose of carrying on directly or indirectly any of the activities of an unlawful organisation".

If the Minister "is satisfied" for example that a trade union body is carrying on some of the activities which were once carried on by the unlawful African National Congress (e.g. campaigning for a minimum wage for all workers of at least £1 a day; demanding the repeal of "pass" laws) he may ban that trade union. This is entirely a matter for administrative discretion and unless it can be shown that the State President acted in bad faith, the Courts cannot overrule his decision.

5. BANNING OF INDIVIDUALS: HOUSE ARREST: FORCING OFFICIALS TO RESIGN, ETC.

The Bill gives the Minister absolute rights to determine who shall be an official of an organisation, what persons shall, if the Minister deems it necessary, be placed under house arrest or prevented from attending gatherings.

(a) Resignation from organisations:

Since 1950 the Minister of Justice has been able to order trade unionists who are "communists" by statutory definition, to resign from their unions and not to take any part in trade union activity. About 50 trade union officials have been ordered to resign in this way.

In terms of the General Law Amendment Bill the Minister may now also order any person "in respect of whom any prohibition" has been served under the Suppression of Communism Act, not to become an office-bearer, officer or member of any organisation without the Minister's consent. The effect of this is that if the Minister prohibits a person from attending gatherings, or places a person under house arrest, because the Minister is satisfied that that person is engaging in activities likely to further the objects of statutory "communism", then such person can also be ordered to resign from his trade union and not to become an official or member of that body or any other body. It is to be noted that even devoted anti-communists, like Patrick Duncan, editor of the liberal periodical CONTACT which is anti-Government, have been banned from gatherings under the Suppression of Communism Act.

The Act can be used to force persons who were never members of the Communist Party, or who have never been convicted of statutory "communism" to resign from their trade unions.

(b) House Arrests:

Similarly, any statutory "communist" and also any person whom the Minister is satisfied is encouraging "communism" or is engaging in activities likely to further statutory "communist" objects, may be placed under what amounts to "house arrest".

The Minister may prohibit such a person "from being within or absenting himself from any place or area... or from communicating with any person or receiving any visitor...". This is imprisonment or internment, without trial and it is at the arbitrary whim of a Government Minister.

If the Minister wants to do so he can use this to send persons to remote areas; or he may order persons not to leave their homes or places of work within certain hours, and not to communicate with others or receive visitors.

The Minister's rights over every South African are thus absolute.

(c) Gatherings:

The Bill also gives the Minister wider powers to ban gatherings, and prohibit individuals from attending gatherings.

In the past, a gathering for these purposes had to have some common purpose,

(e.g. a political or trade union meeting). Now, as a rule, it will not be necessary for there to be common purpose, e.g. a person may be banned from attending social gatherings, the theatre, etc.

(d) Control by Police:

Persons dealt with in one way or another under the Suppression of Communism Act by the Minister may in future be ordered to report to the police at given times, and have to notify the police of changes of address, or changes of employment.

Failure to carry out such instructions, or the breach of an order of "house arrest" or of an order prohibiting a person from attending gatherings, etc. is now punishable by a minimum of three years' imprisonment and a maximum of ten years.

(e) Statements by "Banned" Persons:

In terms of the Bill it will be a crime, (punishable by up to three years' imprisonment) to reproduce, in any way, the speech or statement of a person who is banned from gatherings.

(f) Possession of "Banned" periodicals:

Any person in possession of a periodical banned under the Suppression of Communism Act will be liable to up to three years' imprisonment.

6. CONVICTION OF THOSE LEAVING THE COUNTRY ILLEGALLY.

Under the Departure from the Union Regulation Act, 1955, any person who leaves South Africa without a passport commits an offence punishable by a minimum of three months' imprisonment.

It has always been difficult for the State to prove that accused persons did, in fact, leave South Africa.

In terms of an amendment to the Criminal Code, introduced by the General Law Amendment Bill, any document which on the face whereof appears that an accused person has been outside South Africa is prima facie proof that the person was outside the country, if accompanied by a certificate from the Secretary of Foreign Affairs that the document is of foreign origin.

This will greatly help the State in prosecutions under the Departure from the Union Regulation Act.

7. CONCLUSION.

From this brief summary it can be seen that the General Law Amendment Bill closes every avenue of legal expression for the people of South Africa. If it becomes law and is vigorously enforced there would be literally scores of thousands of persons who would have to be found guilty of sabotage each year by the courts and sentenced to at least five years' imprisonment, even though sabotage as ordinarily understood never entered the minds of such persons.

The Bill also constitutes a grave threat to the trade union movement. It will render nearly all trade union activity illegal and will strip the militant trade unions of practically all their remaining officials and leaders. Trade union publications will become virtually impossible. Strike action and other universally accepted procedures of workers' action will be visited by the death penalty.

Such is the price of apartheid.

Ef6.1.2

SOUTH AFRICAN CONGRESS OF TRADE UNIONS.

P.O. Box 17133,
Hillbrow.

JOHANNESBURG.
South Africa.

7th August, 1963.

TO ALL LOCAL COMMITTEES.

FOR YOUR URGENT ATTENTION.

Dear Comrades,

On 11th August, 1963 it will be three months since the following comrades were detained, under the 90 day Clause of the General Law Amendment Act.

- 1. Stephen Dlamini: National President of SACTU, Durban.
- 2. E. Loza: Secretary of the African Commercial and Distributive Workers' Union, Cape Town and member of the SACTU Local Committee, Cape Western Province.
- 3. C. Mayekiso: Secretary, Port Elizabeth Local Committee and Secretary of the S.A.R. & H. Workers' Union, Port Elizabeth.
- 4. V. Mini: Secretary, Metal Workers' Union, Port Elizabeth, and a member of SACTU Local Committee. Port Elizabeth.
- 5. L. Mancoke: Secretary, General Workers' Union, Port Elizabeth and member of Port Elizabeth Local Committee.

Please write immediately to the Minister of Justice demanding their release and the release of all the others detained and please give copies of your letters to the press. Ask all Unions in your area to write.

We have written to the Minister of Justice demanding their immediate release and we have also called for national and international demands.

Please treat this as URGENT and send us copies of all letters you write and all newspaper cuttings.

With trade union greetings,

Yours fraternally,

P.M. ALTMAN.
Assistant General Secretary.

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FEDERATION OF SOUTH AFRICAN WOMEN 1954-1963

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