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S.A. CONGRESS OF DEMOCRATS.

SPEAKERS' NOTES.

ATTACK ON CIVIL RIGHTS.

NO.11.

FREEDOM OF SPEECH: The general principle is that one may say, write or publish anything which is not prohibited by a specific rule of law.

The following prohibitions existed before 1948:-

(a) TREASON: It is treason to say anything which forms part of a design to overthrow the Government by force or to offer direct and substantial assistance to the enemy in time of war. Mere criticism of the Government, however strongly expressed, or mere expressions of sympathy for an enemy state, do not amount to treason.

(b) SEDITION: An incitement to the public, or any large section of it, to defy or coerce the Government by means of violence amounts to sedition.

(c) INCITEMENT OR CONSPIRACY TO COMMIT A CRIME: A person who incites or encourages another to commit any crime, or conspires with another to commit a crime can be punished, even though the crime is not actually committed.

(d) BLASPHEMY: The definition of this offence is somewhat vague. It is no crime to propound atheist opinions, but a person who attacks religious beliefs in a scurrilous or insulting manner may be found guilty of blasphemy.

(e) OBSCENITY: It is an offence to publish obscene or indecent matter. The test as to what is obscene or indecent depends largely on the views of the Judge or Magistrate deciding the matter.

(f) DEFAMATION: Is the publication of anything calculated to damage the reputation of another, unless there is justification. Idle abuse is not defamation; there must be a danger of substantial damage to reputation. Justification exists if the statement is true and published for some legitimate reason.

(g) CONTEMPT OF COURT: It is <sup>a</sup> crime to insult a Judge or Magistrate in his official capacity, or to criticise his decisions in a disrespectful manner. It is also contempt of court to attempt to influence a court which is considering a case by publishing any opinion as to what the decision ought to be.

(h) "CREATING HOSTILITY". Under the Riotous Assemblies Act, it is an offence to say or publish anything with the intention of creating hostility between Europeans and Non-Europeans. Though this law might seem to prohibit a great deal of Nationalist propaganda, it is in fact always used against progressives. The Government also has the power to ban publications which, in the opinion of the Minister, are calculated to promote hostility. There is an appeal to the Courts against the banning of a publication under this act.

(i) PICKETING AND BLACKLISTING: The Riotous Assemblies Act forbids the use of any threat or insult to persuade anyone to join a strike, and forbids the publication of the name of strikebreakers with a view to blacklisting them.

(j) PROCEEDINGS IN CAMERA: When Court proceedings are held in camera, which may be done on the ground that the accused is a juvenile, or that the evidence is of an indecent nature, or in charges of blackmail, it is an offence to publish any part of the proceedings.

(k) OFFICIAL SECRETS: The Official Secrets Act prohibits the disclosures of confidential information relating to the Government.

/The following

The following further restrictions have been introduced by the Nationalist Government:-

(a) SUPPRESSION OF COMMUNISM: It is an offence to advocate, defend or encourage the achievement of any of the objects of Communism. Among the objects of Communism, as defined in the Act, is the bringing about of any Social, Economic or political change by means of any unlawful act. Thus any political movement which is not prepared to abide by every letter of the law is "communist", and its doctrines may not be propounded.

The Governor General also has power to ban newspapers if he is satisfied that they are engaged in furthering the objects of Communism. There is no appeal to the Courts.

(b) OFFENCES BY WAY OF PROTEST: Under the Criminal Laws Amendment Act, it is an offence to say or publish anything calculated to cause any person to commit an offence by way of protest against any law.

2. FREEDOM OF ASSEMBLY: The following restrictions appeared before 1948:-

(a) MUNICIPAL BY-LAWS: Most municipalities including Johannesburg have by-laws requiring permission to be given by the Town Clerk before any meeting or procession can be held on a public street or square.

(b) LOCATION REGULATIONS: In many locations, the permission of the superintendent is required before any meeting can be held.

(c) RIOTOUS ASSEMBLIES ACT: A magistrate may prohibit a meeting if he considers that it might lead to disturbances. The Minister of Justice may prohibit a meeting, or the attendance of a particular person at that meeting, if he considers that it could lead to hostility between Non-Europeans and Europeans. These provisions apply only to meetings of more than twelve people held in a public place.

(d) WAR MEASURE 1425: which is still in force, prohibits meetings of more than ten persons on gold-proclaimed land. This measure was passed in order to cripple the activities of the African Mineworkers Union.

The Nationalist Government has introduced a further restriction in the Suppression of Communism Act, which empowers the Minister of Justice to prohibit any gathering, or the attendance of any person at any gathering, if he is satisfied that the objects of Communism would be furthered by that gathering. This applies to gatherings of any size, held in any place, and an individual may be prohibited from attending all gatherings during a specified period.

3. FREEDOM OF MOVEMENT: The following restrictions applied before 1948:-

(a) IMMIGRATION (all races) The Minister of the Interior has very wide powers to refuse entry to immigrants and to deport them even after they have been admitted.

(b) IMMIGRATION - ASIATICS: The immigration of Asiatics into the Union is forbidden with the exception of the wives and children of Asiatics resident in the Union. Asiatics require a permit to move from one province to another.

(c) IMMIGRATION - AFRICANS: An African not born in the Union or the Protectorates may not enter an urban area without permission from the Department of Native Affairs.

(d) RIOTOUS ASSEMBLIES ACT: If the Minister of Justice is satisfied that any person is "creating hostility between Europeans and Non-Europeans" in any area, he may order that person to leave /that

that area. The Minister must supply reasons for his action if so requested, but these reasons need not be given till after the order has taken effect.

(e) PASS LAWS: (Urban Areas.) No African may remain in an urban area for more than 72 hours without permission from the municipality, unless he was born there or has lived there continuously for more than 15 years.

(f) LOCATION REGULATIONS: In most locations, any visitor, African or European, must obtain a permit from the Superintendent before entering the location.

The following changes have been made by the Nationalist Government:-

(a) IMMIGRATION: The concession in favour of wives and children of Union-domiciled Asiatics has been abolished.

(b) PASS LAWS: Travelling passes are no longer required in rural areas. An African possessing one of the new reference books can go where he likes, provided that he does not remain in an urban area for more than 72 hours.

(c) SUPPRESSION OF COMMUNISM. The Minister of Justice, after conferring with an advisory committee presided over by a magistrate, if he is satisfied that any person is advocating Communism in any area may prohibit that person from being in that area.

Any person who is not a South African citizen and is convicted of a major contravention of the Suppression of Communism Act, may be deported.

#### 4. FREEDOM OF ORGANISATION:

Though there were numerous laws aimed at hampering the activities of progressive organisations before 1948, there were no direct prohibitions against the formation of organisations, other than organisations formed for the express purpose of committing crimes.

The Suppression of Communism Act now prohibits the existence of the Communist Party and empowers the Governor-General, after consultation with an advisory committee, to ban any organisation, which in his opinion exists for the purpose of advocating Communism or is controlled by an organisation which has already been banned.

The Minister of Justice may also order any person who has listed as a member or active supporter of an outlawed organisation, to resign as a member or office-bearer of any organisation, lawful or unlawful.

#### 5. FREEDOM TO OWN AND OCCUPY LAND:

The following restrictions existed before 1948:-

(a) NATIVES LAND ACT: This Act, passed in 1913, was the Union Parliament's first piece of apartheid legislation. It forbids Africans to acquire ownership of any land not owned by Africans in 1913, or to lease land from a European owner. It also prevents Europeans from acquiring land from Africans and might seem, therefore, to operate equally as between the different groups. But, of course, the Act must be read in the light of the fact that in 1913, Africans owned approximately 10% of the Union's land. The purpose of the Act was to perpetuate this inequality in ownership, also to force farm tenants to become wage labourers.

(b) ASIATICS. (Transvaal) By a series of laws beginning in 1885, Asiatics are prohibited from owning any land in the Transvaal, except

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in areas set aside for them. Until 1919, the law did not apply to companies controlled by Asiatics. In 1919 these were included for the future, but land already held by them was not affected.

(c) ASIATICS (NATAL.) After a series of temporary measures, beginning in the 1930's, the Asiatics Land Tenure Act of 1946 prohibited the acquisition of land by Asiatics from Europeans, and vice versa.

(d) NATIVES(URBAN AREAS) ACT: Prevents Africans from living in any part of an urban area other than a location, except as "Bonafide servants." Permission from the Native Affairs Department is required before an African can rent a shop, office, etc. outside a location.

(e) RESTRICTIVE CONDITIONS IN TITLE DEEDS: A condition in the title deeds of a property restricting ownership to persons of a particular race, is recognised by South African law. Considerable use was made of such restrictions against Indians in Natal before the "Pegging Acts", and against coloured people in the Cape, who were otherwise unrestricted until the Group Areas Act.

Since 1948, all these restrictions have been superseded by the Group Areas Act. This Act prohibits all transfers of landed property from persons of one race to persons of another, save with the permission of the Minister of the Interior. It furthermore gives the Government power to remove people from property already owned by them, no matter for how many years. This is a power which did not appear in any of the previous segregation laws, all of which left existing owners safeguarded. The machinery of the Group Areas Act is extremely complicated and cannot be explained in detail here. It amounts to this, however, that every owner of land throughout the Union now holds his land at the pleasure of the Government. The Natives Resettlement Act makes special provision for the removal of Africans from the Western Areas of Johannesburg.

## 6. POWERS OF ARREST AND SEARCH:

a. A Policeman may arrest

(i) Any person named in a warrant issued by a magistrate. A warrant will be issued if sworn information is laid before the magistrate indicating that the person concerned has committed any crime.

(ii) Any person whom the policeman reasonably suspects of having committed one or a number of serious crimes listed in the Criminal Procedure Act (e.g. Murder, house-breaking and theft, assault with intent to do grievous bodily harm.)

(iii) Any person who commits any crime in the presence of a policeman.

b. An immigration officer or a policeman may arrest any prohibited immigrant.

c. The Governor-General may order the detention and arrest of a person for a period not exceeding three months, of any African whom he considers to be a danger to public peace.

d. A magistrate may issue a search warrant in respect of any stolen property or anything which has been used in the commission of a crime or anything which may afford evidence of a crime. The warrant must specify the premises to be searched and (in general terms) the things to be searched for.

e. A policeman above the rank of sergeant may carry out a search without a warrant if he has reason to believe that the object of the search would be defeated by the delay involved in obtaining a warrant.

/ f. Any European

f. Any European policeman may search without a warrant for illicit liquor.

The only changes made by the Nationalists are the appointment of inspectors under the Group Areas Act and "authorised officers" under the Suppression of Communism Act, with powers of search.

7. NEW LEGISLATION. The above paragraphs apply only to legislation which has already been passed. Bills at present before Parliament include:-

a. Criminal Law Amendment Bill which permits a policeman of any rank to carry out a search if he believes that there is no time to obtain a warrant, and adds a new ground upon which searches can be made, namely that a meeting is taking place which may affect the internal security of the Union.

b. Industrial Conciliation Act, which permits the Government to intervene in the affairs of Trade Unions so as to create separate Unions for different races and to enable minority groups to split away from Unions and obtain a share of the Union's assets.

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**RECORDS RELATING TO THE 'TREASON TRIAL' (REGINA vs F. ADAMS AND OTHERS ON CHARGE OF HIGH TREASON, ETC.), 1956 1961**

**TREASON TRIAL, 1956 1961**

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