

THE SUPPRESSION OF COMMUNISM ACT

1. The suppression of Communism Act was carried through Parliament in June, 1950, in the face of the broadest opposition from all sections of public opinion. Among many others the following organisations expressed strong opposition to the Act:-

- Leaders of Anglican, Methodist and other Churches;
- the Bar Council (official organisation of all barristers);
- the United Party (although it took up a compromising attitude to many objectionable features of the Act);
- the Labour Party;
- the S.A. Trades and Labour Council;
- the African National Congress;
- the African People's Organisation.

The African National Congress called a national conference of progressive organisations against the Bill, as a result of which a national day of protest was observed in June 26, 1950, during which tens of thousands of African workers went on a one-day strike.

② Some of the main features of the Act were the following:

- a) The Communist Party of South Africa was declared an illegal organisation. (The Communist Party was outlawed in Hitler Germany, Fascist Italy and pre-war Japan, as well as in all countries occupied by Axis powers during the war. The defeat of these countries automatically resulted in the lifting of these bans. Communist Party continue to be banned in Spain, Greece, Portugal and the Argentine, all of which are scarecely-veiled dictatorships.)
- b) Members of the former C.P.S.A. had their names entered on a list drawn up by a Liquidator, irrespective of when they had been members. Persons thus listed became subject, merely because of such listing to arbitrary action by the Minister of Justice.
- c) The Minister can order any listed person to resign from any organisation and to abstain from activity in any number of organisations.
- d) If he is satisfied that the presence of a listed person at a gathering might result in a spread of Communism, he can prevent that person from attending any gatherings.

(A gathering is defined as: "any gathering, concourse or procession in, through, or along any place, of any number of persons having a common purpose.")

- e) After an inquiry conducted by persons appointed by himself the Minister can prohibit any publication found at any time to have been the organ of the Communist Party (or any other organisation subsequently declared unlawful).

All the above features of the Act refer directly to "members and active supporters" of the former Communist Party. But the scope of the Act is by no means limited to such persons.

3. It is made a crime for any person to "advocate, defend the objects of Communism" which the act defines in a very unusual and far-reaching manner. The dictionary defines the objects of Communism as the "common ownership of the means of production". The Act does not include this object in its strange definition, but it does include:

"Bringing about any political, industrial, social or economic change within the Union by the promotion of disturbance or disorder, by unlawful acts or omissions or by threat of such acts or omissions..."

(This clause could be used e.g. to persecute a group of anti-communist golfers protesting against a Sunday Observance Act by playing golf on the Sabbath: they would all then become legally "communists". In fact it was used successfully to convict the leaders of the Defiance Campaign of "communism", although they were headed by the wealthy farmer, Dr. Moroka who is actually conservative and anti-communist on the question of property relations.)

"the encouragement of feelings of hostility between the European and non-European races of the Union", if the consequences are "calculated" to further, for instance "disturbance or disorder" or "unlawful acts".

(This clause would, theoretically, make a "communist" out of a Nationalist trying to cause an illegal strike against the employment of non-European labour".

4. Objections to the Act

Some of the main objections made against the Act by its opponents at the time were:-

- that it was neither democratic nor practicable to suppress ideas by law and force;
- that the Act was not limited to Communists and that the Governing party was in the habit of labelling nearly all its opponents as Communists and that the Act would be used to suppress opposition generally;
- that the Act placed unprecedented arbitrary power in the hands of the Minister of Justice to victimise, ban, deport and otherwise damage organisations, newspapers and private citizens without trial charge or defence; that it denied them recourse to the courts and violated human rights and the Rule of Law.
- that the definition of "Communist" was so wide and involved that no liberal, trade unions or non-European liberationist would know whether he was within the law.

4. The Minister's Reply:

In reply to these objections, Mr. Swart stated:-

- that Communism was a serious menace; that Communists were plotting to poison water-wells, blow up power stations and destroy white supremacy; that this was an emergency situation and that only by placing such drastic emergency powers in his hands could he cope with it.

5. The 1951 Amendments:

In 1951 Mr. Swart introduced a number of "retrospective" amendments into the Suppression of Communism Act. The main features of these amendments were:-

- that it made the Act retrospective. A "Communist" was defined as any person who "at any time before or after" the Act (26th June, 1950) "professed to be a Communist".
- it validated the Minister's illegal appointment of a liquidator to draw up a list of members of the Communist Party, which had been dissolved prior to June 26, 1950.

it provided for the expulsion of Members of Parliament on the grounds that they had at any time been a Communist.

6. "Listing:

More than 500 persons have been listed by the Liquidator, Mr. J. de Villiers Louw, as former members of the Communist Party. In terms of the Act the Liquidator is required to give prospective listees a reasonable opportunity to "make representations" not to be listed. The "representations" can only consist of denials of former party membership. In 1951 most of the people then threatened with listing sent a joint letter to Swart refusing to make such representations and condemning the Act as blatant tyranny.

7. BANNING.

- a) In May 1952 banning notices were sent by Swart to:
- Y.M. Dadoo, president of the S.A. Indian Congress,
 - M. Kotane, a member of the National Executive Committee of the African National Congress.
 - J.B. Marks, Transvaal Provincial president of the African National Congress.
 - D.W. Bopape, provincial secretary of the above.
 - E.S. Sachs, secretary of the Garment Worker's Union,
 - J. Ngwevela, a leading Cape Town member of the A.N.C. and others.

These notices instructed the recipients to resign from their organisations within 30 days, to abstain from work in a number of the anti-Nationalist organisations to abstain from gatherings other than of a "social religious and recreational character".

(Nearly all those receiving these notices defied them. It was at the beginning of the defiance campaign and Dadoo, Bopape, Marks, Kotane, Ngwevela and others attended Congress. Sachs attended a public meeting called by the Garment Workers' Union on his lawyers - mistaken - advice that it would be "legal" to do so. Harmel attended a meeting of the Transvaal Peace Council. Subsequently all but Sachs were acquitted by the Courts.)

b) In 1953 a very wide-spread spate of new banning notices were delivered by Mr. Swart. (The later notices did not contain the saving clause, excepting "social religious and recreational gatherings" from the prohibition. The effect is that, if observed meticulously the notices would condemn the recipient to solitary confinement.) By March 1954 more than 100 such notices had been issued, the trade unions and the A.N.C. being particularly hard hit. The following list, which is by no means comprehensive will illustrate the inroads made by Swart on anti-fascist organisations:

African National Congress

M. Kotane (N.E.C.)
J. Ngwevela)
R. Mahlaba) Cape E.C.
G. Tshume)

J.B. Marks, Transvaal president until 1952.

Mandela N, Transvaal president 1953

J. Motsabi, Transvaal Secretary 1953

A. Kunene)
F. Boshielo)
G. Maeka) Transvaal Executive Members
D. Tloome)
G. Ngake-)

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Trade Unions

E.S. Sachs (Secretary Garment Workers Union)
E. Weinberg (Secretary National Union of Commercial Travellers)
B. Du Toit (Secretary National Union of Laundry Cleaning and
(dying Workers)
R. Fleet (do. Hairdressers)
I. Wolfson (do. Tailors)
R. Alexander (do. Food and Canning)
M. Muller (do. Textile Workers)
I. Bhoola (do. Tin Workers)
A. Selby (do. African Textile)
H. le Roux (do. Sweet Workers)
J. Wolfson (do. Jewellers and Goldsmiths)
Cassim Amra (do. Chemical Workers, Durban)
Nancy Dick (do. Textile Workers, Cape)
P. Huyser (National organiser, Building Workers)
W. Kalk (do. Leather Workers)
S.V. Reddy (do. Tin Workers)
and many others

Peace Movement

H. Watts (secretary S.A. Peace Council)
A. Lipman (E.C. member, Tvl. Peace Council)
A. Fischer (Chairman, Transvaal Peace Council)
M. Harnel (Transvaal Peace Council)
and many others

S.A. Congress of Democrats

A. Fischer (Transvaal Chairman)
Cecil Williams
Jack Hodgson (National Secretary)
Mary Butcher (Cape E.C.)

S.A. Indian Congress

Y.M. Dadoo (National president)
Nana Sita (Transvaal president)
and many others

8. Sam Kahn, Fred Carneson and Brian Bunting:

Mr. Sam Kahn had been elected to Parliament as representative of Africans in the Cape Western division in 1949. In terms of the Act the Government set up a Select Committee before excluding him. This was done, and (against the opposition of the United Party, Labour Party and Native Representatives) the Nationalist majority voted in the Select Committee and subsequently in Parliament (May 1953) to exclude Mr. Kahn from the House of Assembly. He was also banned by Swart from membership of the Cape Town City Council to which he had twice been elected by the rate-payers of a Cape Town ward. At the same time Mr. Fred Carneson was excluded from the Cape Provincial Council in which he had also represented the Cape Western African electorate.

Mr. Brian Bunting was elected to Parliament to replace Mr. Kahn by a large majority of the African voters, each of his three opponents losing the deposits (November, 1953). The procedure that had been used against Mr. Kahn was repeated in the case of Mr. Bunting and he was also expelled from Parliament.

9. The Guardian:

In May 1952, after 15 years of continuous publication, an independent socialist newspaper, The Guardian, was ordered by Swart to cease publication. This order followed a secret inquiry, conducted in terms of the Suppression of Communism Act by three magistrates. This action was widely condemned throughout the country by newspapers such as the Cape Times and wide circles of public opinion as the most serious threat to press freedom since the days of Lord Charles Somerset.

10. The Ngwevela Judgment:

In November 1953, Johnson Ngwevela appealed to the Appellate Division against his conviction on an allegation of contravening a notice issued by Swart, ordering him not to attend gatherings. The Appeal judges set aside the conviction on the grounds that the Minister had not given Ngwevela a hearing before exercising his powers under Section 9 of the Act. This section requires the Minister, before issuing such a ban to have formed the opinion that it would encourage "communism" if the person concerned attended gatherings. The judges said that before he formed such an opinion he was obliged in terms of the principles of natural justice (*audi alteram partem* = hear the other side) to give the "accused" a chance to defend himself.

Swart's reaction to this sensible judgment was to admit his error, but to announce that he would immediately seek additional powers from Parliament to "close the loophole" in the Act revealed by the Supreme Court.

11. The 1954 - Amendment:

Swart's Bill to amend the Suppression Act and the Riotous Assemblies Act, now (March 1954) before Parliament, is yet a further measure to curtail democratic rights and to place arbitrary powers in the hands of the Minister.

Section 2. amends the Riotous Assemblies Act.

- (a) by providing that gatherings on a specific day of the week may be banned e.g. "no meetings on Sundays for the next six months". Under the present law, meetings can be banned only on one specific day, or for a continuous period.
- (b) by providing that any person who has been banned from meetings under this Act may require the Minister to give reasons. The significance of this is that in the case of *Sachs vs. Minister of Justice* in 1933, the Appellate Division held that a clause requiring the Minister to give reasons after issuing the notice implies that he need not acquaint the person concerned with the case against him beforehand.

Section 3 amends the Suppression of Communism Act by bringing prohibitions against attending gatherings under Section 5, whereas they could previously be issued only under section 9. The importance of this is that prohibitions under Section 5 require no justification except the appearance of the person's on the liquidator's list, whereas for a prohibition under section 9, the Minister must form a opinion as to the person's

activities, which mean, according to Ngwevela's case, that he must give the person an opportunity to be heard. The effect is that named persons will be able to be banned from gatherings without a hearing being given beforehand or reasons being given afterwards. Where a person has not been named, reasons will have to be given afterwards.

Section 4 introduces new provisions with regard to members of Parliament. All named persons and all persons convicted of contraventions of the Suppression of Communism Act are automatically disqualified from election unless the leave of the Minister or of one of the House of Parliament is obtained.

Section 5 provides that any person challenging the inclusion of his name on the liquidator's list must take action within twelve months of his naming, or of the coming into force of the present amendments, whichever is the later date. Proceedings for the removal of a name from the list must be taken by way of a full scale trial and not by way of application. The main implication of this is that the person concerned will have to go into the witness box and submit to cross-examination. In an application, he could merely place his evidence on affidavit.

Section 6 applies the provisions mentioned in Section 2 to the banning of meetings under the Suppression of Communism Act.

Section 7 requires the Minister to give reasons after issuing an order prohibiting a person from being in any area.

Section 8 makes it an offence to stand for Parliament if disqualified under section 4, and to play recording of speeches by banned persons.

Section 9 provides (a) that a person shall not be convicted for playing a recording if he did not know that the person concerned was banned.

(b) that books, pamphlets, records etc. found in party offices or in possession of party members shall be evidence against any person in any proceedings under the Act. Previously only documents found in the person's own possession could be used, unless the author of the document was called as a witness.

(c) that certified copies of the liquidator's list can be used in evidence without calling the liquidator as a witness.

Section 10 enables naturalised S.A. Citizens to be deported if convicted under the Suppression of Communism Act.

Section 11 validates notices issued under the old Act provided that they comply with the provisions of the amendments.

It should be noted that Section 4 introduces a new principle. Previously listing laid an individual open to victimisation by the Minister, but did not carry any automatic penalty. The new amendment automatically penalises every listed person by depriving him of an important citizenship right - the right to stand for election to Parliament and the Provincial Councils.

10 Conclusions

a.) The Suppression of Communism Act is the cornerstone of an edifice of fascist dictatorship being erected by the Malan Government.

b.) It is the duty of every democratic South African to work energetically and consistently for the total repeal of the **Suppression** of Communism Act.

References: Text of Suppression of Communism Act.
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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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