

THE SOUTH AFRICAN POLICE (II)

LAWS AND POWERS

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ABOUT a year ago, the Prime Minister, the Honourable J. G. Strijdom, is reported to have said in England: "I invite you to sunny South Africa to see for yourselves if it is true that South Africa is a police state." In the same issue of the *Rand Daily Mail* there was a picture and a report of 60 armed and sinister-looking police attending a Peace Conference which was held in Johannesburg.

The ordinary powers of the South African police to search and make arrests, with or without warrants, are defined in the Criminal Procedure and Evidence Act of 1955. These powers may be justified on the ground that they are essential for the swift and effective combat of crime which is a social menace. The police must, for instance, obtain a search warrant before they can search any premises, except in extraordinary circumstances, where this might cause delay and thus defeat the purpose of the search. The whole Act attempts to restrict the powers of the police to invade the rights of the individual. The result is that, as regards serious crimes, the law is content to have a few criminals escape its long arm rather than allow the police arbitrary powers over the rights of persons.

The powers of the police in the execution of their duties in combating serious crime are so narrowly defined that the ordinary decent person, irrespective of his race or colour, has little to fear from the police, because these powers are designed more for the protection of his rights than as an assault upon them. Unfortunately, however, the Criminal Procedure Act is not the final authority on the powers of the police.

It is impossible to assess the true extent of the powers of the police without reference to those characteristically South African laws which have transformed inalienable human rights into crimes for the majority of the people. The system of racial discrimination in South Africa has, since its inception, denied their basic rights to the 10 million non-Europeans in South Africa. That same denial is now being extended

to all those who dare to condemn, nay, even criticize, this system as immoral and unjust. It is over the 'Kaffirs and Coolies' who have to be kept in their place, and the Whites who are traitors to White baaskap and Afrikanderdom, that the South African police exercise powers which are far more drastic, vicious and arbitrary than over the habitual murderer or robber.

All democratic societies recognize that it is essential for the liberty of the individual and the security of his person that he should not be subjected to arbitrary arrest or detention. This right, where it is recognized, constitutes an important and fundamental limitation upon the powers of the police.

Sections 10 and 29 of the Native Urban Areas Act of 1945, however, have effectively destroyed this right for Africans. They have conferred upon the police the power to make mass arrests, arbitrarily and indiscriminately. Section 10, for instance, makes it an offence for an African to be in an urban area for more than 72 hours, unless he falls within one of four categories enumerated in the Act. If the arrested person relies upon the fact that he has not been in the area for more than 72 hours, the onus of proof in Court is upon him. If he relies upon the defence that he is entitled to be in the area by virtue of the fact that he falls within one or other of the exempted groups, again the onus of proof is upon him. The result is that it is merely sufficient for a policeman to see an African in an urban area, to arrest him, and to leave it to his victim to convince the Court that he was not committing an offence by his presence there.

Recently, police conducted raids and arrested thousands of men and women in the western areas of Johannesburg under Section 10. Thousands of man-hours of work were wasted. Thousands of people were detained. Hundreds proved that they were entitled to be in the areas and were released—then arrested again and again. And each time they had to prove that they were committing no offence. Those who did not know that they were committing no offence, pleaded guilty, paid the fine or went to gaol. And the reason advanced by the police for this cruel persecution of a community was that there were illegal tenants infiltrating into an area which Dr. Verwoerd, Minister of Native Affairs, was trying to remove as a 'black spot'. The real reason, of course, was that the police hoped to break the resistance of the people to the Western Areas Removal Scheme.

Then there is the notorious Section 29 of the Native Urban Areas Act:

(1) Whenever any authorized officer has reason to believe that any Native within an urban area . . .

(a) is an idle person in that . . .

(b) is an undesirable person in that . . .

he may without warrant arrest that Native or cause him to be arrested . . . and may thereupon bring such a Native before a *Native Commissioner or Magistrate who shall require the Native to give a good and satisfactory account of himself.*"

In this case too, the person arrested has committed no offence, and, having been brought before the Magistrate, the onus is on him to give a 'good and satisfactory account of himself'; if he succeeds in doing so, he must be grateful to be released.

Article 11 of the Declaration of Human Rights states that: "Everyone has the right to freedom of movement and residence within the borders of the State."

No such right exists for the Africans, as has been shown in terms of Section 10 of the Urban Areas Act. Further, in terms of the Abolition of Passes and Co-ordination of Documents Act of 1952, any policeman is entitled to stop an African at any time and demand to see his reference book (pass), and Poll Tax receipt, failure to produce either of which on demand constitutes an offence. There is no limit to the number of times an African can be stopped to have his documents inspected.

This power of the police was effectively abused during the recent bus boycott on the Rand and Pretoria. Workers who were walking to and from work because they could not afford to pay the penny increase in the bus fare, were stopped four or five times on a single journey by different groups of police who demanded to see their documents. This followed immediately after Mr. B. Schoeman had stated that the Government was going to 'smash' the boycott. It was a deliberate attempt to intimidate and provoke the boycotters.

These raids are a popular sport of the South African police. The humiliation of having to stop every few hours to produce these documents, the torture and cruelty of having to line up for hours, in full view of the public, manacled, whilst the police waylay more victims, are aspects of this degrading practice.

Arising from their power to effect communal arrests, the police have devised new methods of solving crimes. Whenever

there is a crime wave, the police acquire an exaggerated enthusiasm for checking and rechecking documents. They measure their success in solving crimes by the thousands of people they are able to arrest during the raids. The principle upon which they base their work is that every African is a criminal or potential criminal unless his documents are in order.

The powers of the police are not confined to mass raids for these documents. Under the liquor laws, Africans are prohibited from possessing liquor. Regular raids are conducted by the police, and during these raids they enter and search any house without warrants. Although the law provides that they should have 'reasonable belief' that the liquor laws are being contravened in a house, the indiscriminate and arbitrary manner in which the raids are conducted clearly indicate that they do not conduct these searches on any 'reasonable belief' at all. And police raids are not merely conducted during the decent hours of the day. Various laws prohibit Africans, except those who are employed, from residing in servants' quarters which are provided in European homes. Police searches for so-called illegal tenants are carried out at a time when they believe their victims are comfortably asleep.

There are graver powers which the police exercise. The Riotous Assemblies Act of 1914 confers upon the police the power to disperse prohibited or unlawful gatherings. The Act describes the manner of dispersal and provides that under certain circumstances the police may use force: firearms may be used by the police if *inter alia* any person in the gathering has a "manifest intention of killing or seriously injuring any person" or has "a manifest intention of destroying or doing serious damage to any valuable property movable or immovable". The Act goes on to warn that firearms "shall be used with all reasonable caution, without recklessness or negligence, and so as to produce no further injury than is necessary for the attainment of the object mentioned above."

A few newspaper extracts which have been collected over a period of four months may illustrate the use or abuse of this power by the police more vividly.

At *Vlakfontein*. "Twelve Natives hit by bullets in riots in the Location." A force of about 250 police "fired a few shots over the heads of the angry mob of 1,500 Natives. . . ."—*Rand Daily Mail*, 29-10-56.

At *Lichtenburg*. "Police opened fire, killing two Natives

and wounding several others, after trouble broke out in Lichtenburg Location to-day when reference books were issued for the first time to Native women there."—*The Star*, 7-11-56.

At *Boskuil, Transvaal*. "European policemen fired a number of shots and the crowd dispersed."—*The Star*, 19-11-56.

At *Langa Location, Cape Town*. "The European policemen fired five shots over the crowd to disperse them. None of the Natives in the crowd was injured."—*Rand Daily Mail*, 3-12-56.

"Police baton-charged a crowd at Cape Town's Langa Location, after nine Natives had been arrested at an African National Congress meeting."—*The Star*, 25-2-57.

At *Pretoria*. "Pass and Tax arrests follow batons in Pretoria.

"Three new features have marked the bus boycott campaign in Pretoria during the last 24 hours.

"A crowd of about 1,000 Natives who gathered for a meeting in Lady Selborne yesterday evening and were ordered by the police to disperse, were charged by the police. Seventy arrests have been made.

"Sixteen Natives were injured, one seriously, during the baton charge last night; 15 were treated in General Hospital and discharged, but one was admitted with a bullet wound in the head."

At *Johannesburg*. "Shots interrupt treason inquiry.

"Police open fire after charging crowd with batons.

"Senior officer shouts at his men to 'Stop that shooting.'

"Four European and 10 non-Europeans were admitted to the General Hospital after the disturbances."—*The Star*, 20-12-56.

There was that brutal baton charge by the police on a peaceful procession in Johannesburg on the 26th June, 1957. This attack was so nakedly unjustifiable that a senior officer of the police closed his eyes to the eloquent photographs of the assault taken by pressmen and the groaning casualties in the hospitals and 'boldly' denied that there had been a baton charge by his police.

After every incident, responsible persons and organizations have called upon the Minister of Justice to appoint a Commission of Enquiry to investigate the causes of this deplorable violence between the people and the police, and more particularly what seems to be the trigger-happiness of the police force. The Minister has consistently refused to do so. The stock answer which he gives, sometimes within twelve hours of the event, is that he is satisfied that the police acted responsibly, under

trying conditions, when their lives were in danger. On one occasion, a few years ago, the Minister is reported to have said that he had instructed the police to shoot first and ask questions afterwards.

Numerous persons have suggested that it is easy to disperse or quell a mob by using a water hose or tear gas. It has been pointed out that these methods have been used effectively and without any danger to life in many civilized countries. Our police, however, continue to use their revolvers and sten-guns.

An analysis of these incidents from newspaper reports discloses that, firstly, there are no police casualties and no valuable property which was damaged by the crowds. Secondly (and this is the reason why there are not police casualties), most of the crowds upon which the police open fire consist of unarmed non-Europeans, prohibited by law from carrying firearms or 'dangerous weapons'. The occasions on which police attack crowds of women are increasing. Are the police not using their firearms recklessly, negligently, and in total disregard of life? This question might have been answered by a public Commission of Enquiry. But the Minister of Justice seems reluctant to have it answered.

The unbridled power of the police is alarming. But the abuse of this unbridled power for party political purposes is tyranny of the type which loomed over Gestapo Germany only a few years ago. The outline of that spectre is being chalked by every occasion on which the Nationalist Government has, under the pretext of law and order, inflicted police terror on African communities which oppose and protest against apartheid schemes.

During the ten years of Nationalist rule there has been an expansion of the police force. In addition, what was once a small branch concerned mainly with saboteurs during the war has grown in stature into what is now known as the Security Branch. According to the official Year Book, this section of the police has "branches in all larger villages, towns and cities in the Union," and, it is rumoured, in Universities too.

Unlike the normal South African police, the members of the Security Branch do not parade the streets with stern looks on their faces and sten guns and revolvers within easy reach. Their psychological war is conducted with forced smiles, courtesy and amiability against all those, black and white, who have the audacity to criticize the 'traditional' policy of South Africa.

The activities of this branch of the police, which specializes in what is referred to as 'subversive' organizations and ideas, include tapping telephones, opening correspondence, planting informers among unsuspecting groups, eavesdropping, peeping through windows of private homes, and planting recording devices at private meetings and conferences. All these activities are supposed to be hidden from the public, because it is not in the 'public interest' to disclose them. However, the Security Branch is not satisfied that the public should be completely ignorant of its activities. Its senior officials occasionally boast of the vast store of information they have unobtrusively collected about certain individuals and organizations. They deliberately allow the imagination of the people to run riot with speculation on the possible methods employed by the Branch. The spectacular mass raids for documents and books adds the necessary colour to the 'unknown' but ominous activities of this Branch.

This Branch of the police has created such a feeling of distrust and fear that it has become impossible to conduct a frank discussion of the situation in the country without bolting doors, drawing curtains and talking in muffled tones. The haunting feeling of the unseen but ubiquitous Security Branch is driving free thought and expression to the dark and lonely corners of our country.

What are these ominous powers with which the Security Branch tries to paralyze the country? Their main powers lie within the Suppression of Communism Act (so aptly nicknamed the Suppression of Opposition Act), and the Riotous Assemblies Act. Under these two Acts anything short of death can be the fate of a person who is sufficiently unfortunate to get into the black notebooks of the Security Branch.

These two statutes authorize the Minister of Justice, who acts upon reports and recommendations of the Security Branch, to call upon named communists to resign from any organization specified by the Minister. This has had the effect of depriving persons of their livelihood. Nor is this power confined to named communists, for the statutes authorize the Minister to prohibit persons from being in defined areas, though in many instances the areas from which persons are prohibited are those within which they earn their livelihood. There is also that prohibition from attending gatherings under the statutes which made it impossible for priests to conduct religious services until a special dispensation was granted.

Not all the powers of the Security Branch can be traced to statutes. The success of an applicant in obtaining a passport depends (in the final resort) upon the attitude of the Security Branch. His file is opened, and a speech made at a public meeting criticizing the Government or his motor-car number taken down outside the house of a 'dangerous' person may destroy his chance of a visit overseas.

Then there are those sinister forms of intimidation resorted to by the Security Branch in order to get people dismissed from their places of employment. The employer is visited and a confidential discussion is held about one of his employees. . . . "We just wanted to inform you that X is a member of the African National Congress, or is a communist, that is all." . . . And then, a little later, "We just wanted to find out if X is still employed by you, this is just our routine check-up." It does not take the employer long to understand what he must do to avoid further visits by the Security Police. The Special Branch exercises a tremendous influence over everything from the issue of trading licences to the granting of passports.

The routine work of the Branch consists in attending the meetings and conferences of organizations which hold the view that race harmony and prosperity in South Africa can only be achieved by treating all men, irrespective of colour or race, as equals. At these meetings, notes are taken of the speeches. Photographs and car numbers and the names of all those present find their way into the expanding filing cabinets of the police. Although they are left to take their notes in peace, they occasionally invite their armed brethren to accompany them in a display of force and guns.

From the beginning of 1954, the Security Branch, accompanied by a posse of armed police, developed the habit of forcing its way into private meetings and demanding the names and addresses of the persons present. They snatched documents and books and demanded passes from the Africans present. A similar raid was carried out at a preliminary conference of the Congress of the People, attended by persons of all races, in Johannesburg on the 25th July, 1954. An urgent application was made to the Supreme Court in which an order was sought restraining the police from attending the conference. The Honourable Mr. Justice L. Blackwell, then judge of the Supreme Court of South Africa, is reported to have remarked when granting the application that South Africa was not yet a police

state. At the next session of Parliament, the Minister of Justice, Mr. C. R. Swart, introduced the Police Amendment Act and the Criminal Procedure and Evidence Act, which extended the powers of the police to search persons and premises without warrant.

There can be little doubt that the primary function of the police is ceasing to be the protection of the rights of the people of South Africa and is becoming the defence of the interests and ideas of the Nationalist Party of South Africa. This is even more apparent now that there is mounting opposition against the Nationalists, and large sections of the people who have hitherto been exempt from police surveillance and terrorism are finding themselves victims of the unbridled powers of the police.

The Prime Minister has, of course, invited people to come and see for themselves if South Africa is a police state, and that was exceptionally generous of him. Presumably the Security Branch officials stationed at ports and airports will not obstruct the Prime Minister's invitees, as they have so often done with other visitors to this country who have come to see for themselves. Anyway, the Prime Minister's visitors will be well-advised not to give expression to their impressions if they hope to come through the maize curtain again.