

# THE DIARY OF MARIA THOLO

by Carol Hermer. Ravan Press, Johannesburg.

Reviewed by Marie Dyer

The Diary of Maria Tholo recounts Maria Tholo's experiences during the riots in the black townships of Cape Town from August to October 1976. At that time she was running a crèche in Guguletu, as well as keeping house for her husband and two daughters. Her story has been put together in diary form by Carol Hermer from tape-recorded interviews conducted while the disturbances were going on; and the consequent immediacy of the events, as well as the obvious scrupulousness of the reporting, makes the diary an authentic and convincing document. Maria wasn't closely involved in any of the violence: no near relative of hers was arrested or injured, and neither of her daughters was attending high school. (It was the boycotting high-school students who were at the centre of the troubles). But nobody in Guguletu could avoid participation.

The particular interest of this book is in its 'insideness'. Many of the main incidents have been reported elsewhere from different points of view, and Carol Hermer adds to Maria's narrative a supporting commentary — including contemporary newspaper reports — giving a general account of the course of events. But the diary gives a view of vivid local details: the progress of a parents' meeting which the committee successfully keeps from being taken over by community council 'stooges'; schoolchildren, although continually harassed off the streets by police, appearing as if miraculously at a large gathering, having approached it with their uniforms concealed under raincoats or their mothers' overalls; the decision of the creche teachers to leave the doors open during any street riots, to avoid violence or subsequent reprisals from students fleeing from the police and wanting to run through; children so much in control of the society that even at a funeral feast they are served first; the fate of the large windows and expensive furniture of a prosperous shebeen, smashed to pieces among the bottles as the school-children pursue their campaign against liquor.

Some of the worst recollections of the riots are given new and horrifying life in Maria's first-hand accounts: the brutal beat-

ings and tear-gas attacks by police on children, even inside school grounds; the massive casualties; the large numbers of apparently random arrests and shootings; the encouragement by some police units of violence against the township residents by migrant workers in the hostels. (It was mainly the hostel dwellers in Nyanga who became aggressive; Maria suggests that the close proximity of the hostels to family houses there had resulted in a chronic state of social tension. She records relatively cordial relationships during the riots between the residents and the more suitably-sited hostels of Langa).

The diary is a record of Maria's experiences rather than an expression of her opinions, attitudes or feelings; and so although emotions like frustration — even desperation — distress, compassion, and horror are often revealed, there is often also an air almost of neutrality in the reporting, which is difficult to interpret. Like most adults in the townships, Maria seems to have been stimulated, excited, gratified by the original boycotts and demonstrations; and to have sympathised and identified — at least inwardly — with the students' militancy; but the students proceeded to direct their hostility not only against the authorities, but also — and ruthlessly — against adults who collaborated in any way; so that the students themselves became a threat which was difficult for the adults to respond to. Maria never offers any personal political judgement; although something of her allegiance can be deduced by the eagerness — almost avidity — with which she hastens to be present at or to witness any potentially significant action or confrontation, however exposed this may lead her to be, or however preoccupied she may have been with family or social affairs. (Various suburban activities like women's committee meetings or Tupperware parties obviously continued in Maria's circle during and in spite of the riots). But the book doesn't in fact set out to be any kind of personal testament: its combination of first-hand reporting with carefully collated background information makes it a unique account of a historically crucial set of event. □

## COLOURFUL JINGLES

Black hands may nurse our babies,  
Black hands may cook our food,  
Black hands may make our beds, and do our washing,  
and that's GOOD.

Black hands may do the dishes,  
Black hands may keep us clean . . .  
But would you shake a black hand? NO!  
You don't know where it's been.

The curfew tolls the knell of parting day,  
Last buses trundle, laden overly,  
As thousands homeward wend their weary way;  
But that applies to darkies — not to me.

Stephanie Warren.

## FOOTNOTES

1. Published as General Notices 774, 775 and 776 of 1980, respectively on 31 October 1980.
2. (1928) 1 KB 561 at 566.
3. This is the schedule of laws repealed and amended by the Bill:

No. and year of law	Short title	Extent of repeal or amendment
Act 18 of 1936	Development Trust and Land Act	<ol style="list-style-type: none"> <li>1. The repeal of sections 25, 26, 26bis, 27, 27bis, 28, 28bis, 29, 31, 31bis, 32, 33, 34, 35, 36, 37, 38, 38bis, 38ter, 38quat, 38quin, and 38sex.</li> <li>2. The repeal of sections 41 (3) and 42.</li> <li>3. Section 48 (1) is amended by the deletion of paragraphs (q)bis, (u), (v), (w)bis, (w)ter, (w)quat and (w)quin.</li> <li>4. Section 49 is amended by the deletion of the definitions of "Black employee", "labour tenant" and "squatter".</li> </ol>
Act 46 of 1937	Black Laws Amendment Act	The repeal of sections 1 to 32, inclusive, 38 and 39.
Act 17 of 1939	Development Trust and Land Amendment Act	Section 10.
Act 25 of 1945	Blacks (Urban Areas) Consolidation Act	The repeal of the whole.
Act 42 of 1946	Blacks (Urban Areas) Amendment Act	The repeal of the whole.
Act 45 of 1947	Black Laws Amendment Act	The repeal of sections 1 to 7 inclusive.
Act 54 of 1952	Black Laws Amendment Act	The repeal of sections 27 to 38 inclusive.
Act 67 of 1952	Blacks (Abolition of Passes and Co-ordination of Documents) Act	<ol style="list-style-type: none"> <li>1. Section 1 is amended by the deletion of the definition of "Urban Areas Act".</li> <li>2. Section 10 (1) is amended by the substitution for the expression "location, Black village or Black hostel established under section two of the Urban Areas Act" of the expression "township referred to in the Black Community Development Act, 1981".</li> </ol>
Act 18 of 1954	Development Trust and Land Amendment Act	The repeal of sections 4, 5, 6, 7, 8, 9, 10, 11 and 12.
Act 16 of 1955	Blacks (Urban Areas) Amendment Act	The repeal of the whole.
Act 69 of 1956	Blacks (Urban Areas) Amendment Act	The repeal of the whole.
Act 73 of 1956	Development Trust and Land Amendment Act	The repeal of sections 8 and 9.
Act 36 of 1957	Black Laws Amendment Act	The repeal of sections 23 to 51 inclusive.
Act 79 of 1957	Black Laws Further Amendment Act	The repeal of sections 8 and 9.
Act 41 of 1958	Development Trust and Land Amendment Act	The repeal of section 4.
Act 76 of 1963	Black Laws Amendment Act	The repeal of sections 6 to 11 inclusive.
Act 42 of 1964	Black Laws Amendment Act	The repeal of sections 18 to 25 inclusive, 27 to 31 inclusive, 39 to 76 inclusive.
Act 67 of 1964	Black Labour Act	The repeal of the whole.
Act 36 of 1966	Group Areas Act	<ol style="list-style-type: none"> <li>1. Section 1 amended by the deletion of paragraph (a) (v) of the definition of "Minister";</li> <li>2. Section 13 (2) amended by the substitution for the expression "Bantu (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945)" of the expression "Black Community Development Act, 1981";</li> <li>3. Section 20 (2) amended— <ol style="list-style-type: none"> <li>(i) by the deletion of paragraph (i);</li> <li>(ii) by the substitution for paragraph (k) of the following paragraph: <p>"(k) in pursuance of a licence issued to the occupier of the land or premises under section (9 (4) of the Bantu (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945) ) 42 of the Black Community Development Act, 1981;"</p> </li> <li>(iii) by the deletion of paragraph (1);</li> <li>(iv) by the substitution for paragraph (p) of the following paragraph: <p>"(p) In pursuance of written permission to reside on the land or on land on which the premises are situated granted in terms of section (34 of the Development Trust and Land Act, 1936) 43 of the Black Community Development Act, 1981;"</p> </li> </ol> </li> <li>4. Section 23 (6) (c) amended by the substitution for subparagraph (ii) of the following subparagraph: <p>"(ii) any (Bantu residential area) township referred to in section 1 of the (Bantu (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945) ) Black Community Development Act, 1981.</p> </li> </ol>
Act 63 of 1966	Black Laws Amendment Act	The repeal of section 4.
Act 56 of 1968	Black Laws Amendment Act	The repeal of sections 2, 3 and 4(1).
Act 101 of 1969	General Laws Amendment Act	The repeal of section 28.
Act 19 of 1970	Black Laws Amendment Act	The repeal of sections 3 to 15 inclusive.
Act 30 of 1972	Second Black Laws Amendment Act	The repeal of section 6.
Act 7 of 1973	Black Laws Amendment Act	The repeal of section 10.
Act 70 of 1974	Black Laws Amendment Act	The repeal of sections 8 and 15 (1).
Act 9 of 1975	Black Laws Amendment Act	The repeal of sections 2, 3 and 4.
Act 4 of 1976	Black Laws Amendment Act	The repeal of sections 7, 8 and 11.
Act 115 of 1977	Second Black Laws Amendment Act	The repeal of section 1.
Act 119 of 1977	Black Laws Amendment Act	The repeal of sections 3, 4, 5, 6 and 9.

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FOOTNOTES

1. Cf *S v Van Niekerk* 1970 (3) SA 655 (T) and *Estate Pelser v SAAN and another (Van Niekerk)* 1975 (1) SA 34 (N) and 1975 (4) SA 797 (AD).
2. Cf my article 'The Uncloistering of the Virtue. Freedom of Speech and the Administration of Justice' in (1978) 95 SALJ 362 & 534.
3. In the seminal case of *Furman v Georgia* 408 US 238, 33L Ed 2d 246 (1972) race was found to be one of the most basic realities determining the imposition of the death penalty in America.
4. My translation: from the Afrikaans. Per Beyers JA in *Minister of Posts and Telegraphs v Rasool* 1934 AD 167.
5. Cf my note on the well-known case of *S v Mokonto 'A Witch's Brew from Natal'* in (1972) SALJ 169 and, especially, Adrienne van Blerk 'Sorcery and Crime' in (1978) CILSA 330.
6. Harry Morris *The First Forty Years* (1948) 124-6.
7. See in this regard as regards the form of *dolus* in a kind of case like this my note 'Dolus Eventualis Revisited' in (1969) 86 SALJ 136 (on the case of *S v De Bruyn* 1968 (4) SA 498 (AD)).
8. From the case of *R v Kafakarotwe* 1951 SR 162. See my article 'Mentioning the unmentionable: race as a factor in sentencing' in (1972) 3 SA Journal of Criminal Law and Criminology 151.
9. 'It may be accepted that generally speaking, a sentence of imprisonment upon a European bears much more severely than does a sentence for the same period imposed upon a Native. The social and economic consequences are much more far reaching. These consequences may properly be taken into account in assessing the quantum of sentence.'
10. Eg by Gunnar Myrdal in his classic 'An American Dilemma'.
11. *S v Van Niekerk* 1970 (3) SA 655 (T): 'The accused having been found guilty I find it necessary to add the following. I have sat on the Supreme Court Bench in this province and in South-West Africa for more than seventeen years. I can claim to have an intimate knowledge of the handling of criminal cases in which the death penalty may be imposed. It is true that in some rape cases of Black on White some judges have imposed the death penalty. Many again have not done so and we do not know the gravity or the cases in which such a sentence was passed. Yet is it true that by far the greatest number of cases in which the death sentence can be imposed are those in which Non-Europeans have on the available preparatory evidence been properly and legitimately charged with murder. We all know that when a person plunges a sharp instrument into the body of another person, being quite reckless as to whether death results or not, and if it does under those circumstances result the perpetrator is guilty of murder. Nevertheless in the vast majority of such cases the judges in their mercy come to the conclusion that they are not satisfied beyond reasonable doubt that the perpetrator has had the requisite intention to commit murder. The result is that only in a small minority of such cases is the perpetrator convicted of murder. Then in a large number of such cases again extenuating circumstances are found, and the judges strain in every nerve so to find, and the death penalty is then not imposed. One must also look at the extremely lenient attitude taken by the Attorneys-General and public prosecutors in the lower courts. In those cases where the complainant has been stabbed or otherwise seriously injured, but the complainant survived and although the perpetrator could justifiably have been arraigned for attempted murder or assault with intent to commit murder, yet in the vast majority of such cases he is brought before a lower court on a charge of assault with intent to do grievous bodily harm, and if convicted again in the vast majority of cases a very lenient sentence of imprisonment of a few months, usually not more than six months, is imposed.'
12. For an attempt to analyse these statistics, see 1970 *Acta Juridica* 211 ff.
13. See my analysis in (1967) *Annual Survey of SA Law* 466. More recent figures of interracial crime generally seem also to suggest that statistically (and especially if a slight adjustment is made for the much larger black population) Whites are more prone to assault, kill or rape Blacks than is the case vice versa. See (1979) *Survey of Race Relations* 96.
14. See here my article '... Hanged by the Neck Until you are Dead' in (1969) 86 SALJ 457 and (1970) 87 SALJ 60. My tentative indication in this article that a certain percentage of advocates believed that racial considerations dictated the death penalty pattern led to the prosecution referred to in notes 1 and 11.
15. See my article 'The Uncloistering . . .' op cit 554 ff and especially at 559-560. In this regard I recall also the fact that a note of mine criticizing the judgment of *Hiemstra J* (as he then was) of *S v Thamaga* 1972 2 PH H 143 (T) was returned to me by an editor of a legal periodical with a note stating that although it was worthy of publication and the criticism justified, he could not risk publication. The note 'Class, Punishment and Rape in South Africa' was then published in 1976 *Natal University LR* 299 where it can be judged by my readers.
16. See my address 'The Death Penalty in South Africa: Some Psychiatric and Psychological Elements' in (1977) 3 *Bulletin of the American Academy of Psychiatry and the Law* 276. Some of the conclusions are summarized in (1979) *Survey of Race Relations* 100.

Footnotes from article "A Rose by Any Other Name" continued from p. 19

Act 12 of 1978	Black Laws Amendment Act	The repeal of sections 2, 3, 4, 5 and 11.
Act 97 of 1978	Blacks (Urban Areas) Amendment Act	The repeal of the whole.
Act 102 of 1978	Second Black Laws Amendment Act	The repeal of sections 1 and 16.
Act 16 of 1979	Laws on Plural Relations and Development Amendment Act	The repeal of sections 6, 7 (1) and 8.
Act 98 of 1979	Laws on Plural Relations and Development Second Amendment Act	The repeal of sections 4 to 9 inclusive.
Act 3 of 1980	Laws on Co-operation and Development Amendment Act	The repeal of section 3.

4. See, for example, *The Financial Mail*, 7 November 1980 page 621.
5. (1964) 3 All ER 390(CA) at 392. Harman, L.J., was extending the metaphor of Lord Denning who had observed that, "I must say that rarely have I come across such a mass of obscurity, even in a statute. I cannot conceive how any ordinary person can be excepted to understand it. So deep is the thicket that . . . both of the very experienced counsel lost their way."
6. Would-be readers of the "new deal" legislation may take comfort in the fact that they are not alone in their bewilderment. Section 48 of the draft Local Government Bill provides that:  
 "If any provision of this Act or any other law is found to be ambiguous or to give rise to administrative difficulty in the application thereof to a council, or any provision of this Act is found to be in conflict with any other law, the State President may by proclamation in the Gazette amend this Act or any other law as he may deem necessary."  
 So much for the sovereignty of Parliament!