MASS TRIALS

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THERE is one important development in the Union which its national press has failed even to report: South Africa has, under Nationalist rule, become a country in which "mass" trials are almost a commonplace. Occasional paragraphs, varying from the cryptic to the non-committal, do, of course, tell newspaper readers of large trials proceeding in various parts of the country, but if the press has realised the connection between, for instance, last November's trials of some 1,000 African women for protesting against their being issued with passes in Johannesburg and the Lydenburg trial, proceeding at the same time, of 190 Bapedi tribesmen who had opposed the setting up of so-called Bantu "Authorities" in rural Sekhukhuneland, it has studiously refrained from enlightening its readers.

Nor has the average reader of the press been led to see any connection between last October's trial of 22 Johannesburg men and women for allegedly inciting the city's Africans to stay at home during the white elections in April, and the trial, concluded in Rustenburg only a month earlier, of 44 Bafurutse tribesmen who opposed the carrying of passes by their women in their home district of Zeerust. These are only some recent examples, for the chain of Nationalist mass trials can be traced back through those resulting from many strikes, including that in 1956 of 365 workers in Benoni's Amato Textile Mills, to the year-long ordeal in 1950-51 of 79 tribesmen from Witzieshoek rural reserve, which accelerated the introduction of Verwoerd's puppet "Bantu Authorities".

It may, of course, be naive to expect that South Africa's daily press should comment on the pattern inherent in these cases, but it *is* surprising that more liberal commentators have not stressed their connection with the treason trial. For, seen as a "mass" trial, the treason proceedings are only the most obvious link in a long and powerful chain. As such, the publicity which they have received helps to illuminate the nature of collective trials since 1950.

Many of the difficulties which both the prosecution and the defence have encountered in the treason trial are connected with

its mass character, for it is no easy matter to indict or to defend 156, 91 or even a mere 30 people under a system of criminal law originally designed to protect the interests of each individual accused.

There are, in particular, two aspects of the treason proceedings which are common to all the recent mass trials. On the one hand, the Crown's discovery, after 11 months of preparatory examination, that there was no case for 65 of the suspects to answer showed conclusively how haphazard the 156 original arrests were. On the other hand, the defence has repeatedly been able to assert that the introduction of vast quantities of the most assorted documents as evidence, and the repeated Crown failures to frame a valid indictment, have demonstrated the incompetence of the criminal and political police's preliminary investigations.

It is the combination of these circumstances with a large number of accused which is, in all adequately defended cases, a guarantee of extremely lengthy proceedings. It has also led to a high proportion of eventual acquittals.

The first of the mass trials under Nationalist rule, that of 104 tribesmen from the Orange Free State "reserve" of Witzieshoek in 1951, is of particular interest because of the circumstances from which it arose. The pattern established in Witzieshoek, which can be only briefly indicated here, is one which has, in essence, been repeated not only in Zeerust and Sekhukhuneland. It is also the pattern which is even now threatening to turn the Transvaal's citrus areas of Zebedelia into a *second* Zeerust and the Cape Province's Tembuland into a *second* Sekhukhuneland. In essence, this pattern is one of resistance to or protest against Government policy, leading to wide-spread arrests, extended "mass" preparatory examinations and/or trials, culminating in the acquittal of a large number of the accused and heavy sentences for those convicted. Where the resistance concerns tribal affairs, the arrests arise out of clashes between tribesmen and "loyal" headmen, with the police frequently intervening on the side of the latter.

In Witzieshoek, the cause of the trouble was the attempt of the Native Affairs Department, from 1942 to 1950, to force the Mopeli tribesmen to cull, or reduce, the number of their cattle in order to conserve the limited lands which had been reserved for them. It is, however, well known what cattle mean to the tribal African: in effect, cattle are his bank, his

security and his status. As one witness in the resultant trial put it, "Cattle is our God". The tribe's representations, protests and demands for a commission of enquiry over the years were ignored, a split occurred in the tribe between a small minority consisting of the pro-culling paramount chief and his supporters on the one hand and the anti-culling majority of the tribe on the other. Enforced culls led to retaliatory vandalism and arson; heavily armed police took over the reserve; and unauthorised meetings were prohibited. When the district commandant of police and a posse of his men, equipped with sten guns, tried to disperse some thousand tribesmen holding a *pitso* or gathering on November 27, 1950, a bloody clash ensued. This was followed by widespread arrests, and a four-month long preparatory examination of some 130 tribesmen, of whom 104 were committed for trial for public violence.

The trial, in which ex-Senator H. M. Basner appeared for the defence, ended a year, almost to the day, after the clash. 25 of the original accused had by then been discharged, and 6 of the remaining 79 were sentenced to a year's imprisonment for holding an unauthorised meeting only. The rest were found guilty of public violence and sentenced to terms of imprisonment ranging from 18 months to 5 years, leave to appeal being refused.

There can be little doubt that the Witzieshoek resistance led the Nationalist Government to tighten its control over tribal life, through the setting up of so-called "Bantu Authorities". But mass trials have also resulted in rural areas because of resentment at nationally imposed measures.

The resistance of Bafurutse tribesmen in the Transvaal's Zeerust area to the carrying of passes by their women led to the first trial of this kind. Following the events described in a previous issue of "*Africa South*"[1] some 140 tribesmen were arrested in December, 1957 after an outbreak of violence, and subsequently tried in batches of varying size on charges of murder or public violence. The trial of the last batch of 44 ended only in October, 1958 and, of the 140 tried, 35 were eventually acquitted. 20 others were sentenced for petty offences only.

Zeerust flared up as a result of the issuing of passes to all African women, whether in town or country, but the direct cause of the violence and arson which swept the reserve of Sekhukhuneland in May of last year was the imposition of Bantu "Authorities" on rural tribesmen. The background to

[1]Vol. II No. 3. '*Zeerust: A Profile of Resistance*'

the Sekhukhuneland unrest has also been given in a previous issue of this journal[2]. Mass arrests from May onwards were followed by the appearance at a preparatory examination on charges of murder of 257 tribesmen, of whom 53 were discharged in October, five months after the original arrests. 25 of the remaining 204 were then committed for trial for public violence and the other 179 for murder. Bail for the aged men and women —several are over 70 years old—waiting to face charges of public violence has been fixed at £20, and that for the remainder of their group at between £50 and £100. At the time of writing none of them has been able to raise these amounts, and they are therefore still lodged in gaol. The date of the trials has not yet been announced, but it is unlikely to be earlier than March 1959, ten months after the original arrests.

Turning from rural to urban, industrial areas, the recent struggles of South Africa's textile workers, most of whom are non-whites, stand out. The mass trial of the Amato factory's Benoni workers has already been mentioned. Perhaps of wider significance, however, was the recent mass trial which followed the unsuccessful non-white "stay-at-home" during last April's all-white elections. 22 men and women, including only one white, were arrested in Johannesburg in April, examined and then tried collectively for inciting Africans to strike—a serious crime in South Africa. The case ended in September 1958, and there were no acquittals. A distinction was, however, made between the sentences imposed on the great majority of the accused, who had only distributed leaflets, and those few who had actually addressed meetings urging Africans to stay at home. Mr. Stephen Seghale, a militant Sophiatown leader, and a second Congressman from Newclare were sentenced to a year's imprisonment each without being given, as the other accused were, the option of a fine. Both cases have been taken to appeal.

What is, however, interesting is the acknowledgment by the Court, through the differentiation of sentences, that most of the accused played very minor parts in the abortive demonstration. By no wild stretch of even the political police's imagination, could, for instance, an old woman—who was shown to have done no more than carry a packet of leaflets—be described as a ringleader in a conspiracy to bring the country's commerce and industry to a standstill. Yet most of the 22 people charged in Johannesburg were of this type. That they should have been

[2]Vol. III No. 1. *'The Sekhukhuneland Terror'*

arrested and charged is particularly interesting when one remembers that, with the "stay-at-home", the police did not even have to rely on informers. At the Newclare £1-a-day conference which issued that call, Colonel A. T. Spengler and his political police were made welcome. Whilst delegates who had travelled hundreds of miles in dilapidated charter buses from all parts of the country squatted on the bare ground, the Colonel and his men, complete with tape recording equipment and cameras, were provided with a wooden table and chairs. Placed strategically in front of the five-ton lorry which served as a platform, they were often referred to by the speakers, one of whom invited them to join in the vote on how long the "stay-at-home" should last. Almost every member of the crowd, including this correspondent, must have been photographed several times by these "official observers". Why, then, were the majority of those afterwards brought to trial such humble and obscure persons?

Where, as in some mass trials, long and necessarily arduous criminal investigations would be required to identify ringleaders, one could assume that mass trials result from that incompetence which the police have displayed so amply during the treason proceedings. It is, after all, so much easier to arrest every possible—and perhaps some impossible—suspects and then to let the Courts sort out participation and apportion guilt. And if, as in the treason trial, the lives and livelihoods of 65 people have been disrupted for a full year of preparatory examination before the discovery is made that there is, after all, no charge for them to answer, that is just too bad. After all, the State does not have to pay any compensation.

The length of mass trials might, of course, also be ascribed to that decline in the professional competence of junior Crown officials which is occasioning so much private concern in the legal profession.

Now if these alone were the reasons for the increasing incidence of mass trials under Nationalist rule, there would be cause enough for both indignation and concern.

Most of South Africa's criminal law is, after all, still based on the assumption that a man is innocent until he is proved guilty, and that it is therefore the Crown's job to prove the latter. Implicit in this reasoning is the assumption that a man will not be brought before the Courts unless the Crown has prepared so good a case against him that it feels reasonably sure that it can

obtain a conviction. To do this, the South African police have long relied on informers. (It would be interesting to see what would happen if some perceptive trade unionist organised these invaluable people and brought them out on strike for higher pay). If this "detection" is now to be transferred to the Courts, there is no way, short of pleading guilty, of avoiding extremely long trials.

The State has no obligation to provide free defence except if the accused, after a preparatory examination, are committed for trial on the capital charges of murder or treason, and even where this is the case, this free defence must of necessity be strictly minimal. The advocate's fee of three guineas per day which is allowed for the purpose would, for instance, provide few accused with an effective defence.

By contrast, the difficulties of providing an adequate private defence in a mass trial are frightening. The attorneys or barristers briefed may, if they are to do justice to their clients, well have to neglect their normal practices completely for weeks, and often months, on end. The accused, whether they are townsmen or illiterate tribesmen, are too poor to pay even minimal fees, and in the latter cases, the Courts often sit in remote rural areas.

Thus the increasing number of mass trials, with the large number of eventual acquittals, would provide grounds for both indignation and concern if they were due merely to police or Crown incompetence. But a closer examination of recent mass trials reveals another factor which seems to indicate an even wider significance: the consistent inclusion of rank-and-file, humble people amongst those arrested and tried. Their presence may, I would suggest, be explained by the understanding which Nationalist cabinet ministers have gained of the intimidating effect on ordinary people of mass trials. For, if merely listening to a denunciation of the Government can lead one man to an ordeal which may last two or more years, his neighbour may become chary of listening to any further denunciations, let alone of making them himself. For if he too were to be tried, what if he *were* acquitted in the end? Would that repair his life or undo his children's past hunger? Would that compensate him for his loss of earnings, his unploughed fields, for his wife's harassment? Has eventual acquittal, which must have grown ever more unreal and mirage-like as the long days in the dock merged into months and then into years, led to rejoicing

amongst the Bafurutse of Zeerust? I have heard of none. What those acquitted, and their tribe have, however, gained from their ordeal, is the knowledge that opposition to Verwoerd's decree is paid for in suffering.

This, then, is the power of mass trials over ordinary men and women, and it is their apparently systematic inclusion which has differentiated mass trials under Nationalist rule from those under their predecessors. This distinction is a vital one, and it would be futile for Nationalist politicians to deny responsibility for it by attempting to hide behind the skirts of the Union's Attorney-Generals. For, ever since 1926, these civil servants have been controlled by Ministers of Justice; an arrangement which the Nationalists endorsed in 1955 and again in 1957. In the Criminal Procedure Act of the latter year, no words were minced: "Every Attorney-General shall exercise his authority and perform his functions . . . subject to the control and directions of the Minister, who may reverse any decision . . . and may himself . . . exercise any part of such authority and perform any such function".

This has been the case since 1926, but in pre-Nationalist mass trials leaders alone seem to have been involved. Even in mass industrial cases, such as the 1936 trial of Rose de Freitas and 21 garment workers for inciting *other* employees of the Cape Town clothing firm of Back & Co. to strike, this appears to have been the pattern. When a mass trial followed the strike called by the African Mineworkers' Union on the Witwatersrand in 1946, the accused were, by common consent, the leaders of the Union and a number of leading members of the Communist Party. Similarly, the follow-up sedition trial of the whole national executive of the Communist Party was, by definition, a trial of alleged ringleaders.

It was left to the Nationalists to make the systematic inclusion of rank-and-filers and even mere bystanders a feature of mass trials. Once others understand this development as well as the Nationalist leaders presumably do, they will understand why so many Congress rank-and-filers were caught in the treason arrest dragnet. They will also understand who so many obscure tribesmen were brought to trial in Witzieshoek and Zeerust, and why over 1,000 women were tried in Johannesburg last November. Inefficiency and the inherent difficulties of dealing with a popular resistance are part of the story, but they are far from all of it.

It is clear that the increasing frequency of mass trials presents the Congress leadership with a problem which could affect the whole future of their movement. For, whether because of, or despite, the system of repressive laws which the Nationalists have at their command, the Congress leadership seems today to be committed to the reality of a lawful struggle in South Africa. Since the Defiance Campaign of 1952 they have not judged it wise to lead their followers to jail.

But the Nationalists are committed only to the semblance, and not to the reality, of legality. Having successfully manipulated the South African variety of parliamentary democracy, they have been satisfied, and even anxious, to maintain its façade. The Courts have not been openly tampered with, for an obedient parliament is always at hand to narrow yet further the limits of their jurisdiction. It has, until now, still seemed reasonable for ordinary people to challenge restrictions or impositions in the Courts of the land. The Congress leaders have not been alone in having frequent recourse to law.

Yet even as this is being written comes a piece of news whch shows just how far the Nationalists are prepared to go in enforcing their rule and the depths of cynicism of which they are capable in undermining South Africa's legal tradition.

The official journal of the Incorporated Law Society of the Transvaal reports that the Minister of Justice intends to introduce legislation which will enable him to indict people without disclosing what their offence has been. This would mean that one could be indicted for, say, treason, without being given any indication of where, when or how treason was committed. Evidence would be led in court to provide these mere details.

Mr. Swart is reported to have said that this is intended to eliminate acquittals on purely technical grounds, but the Transvaal Law Society seems to take a wider view in saying: "This is repugnant to the general principles of the Rule of Law . . . A person may have to defend himself blindfolded".

It seems that the Nationalists have found a way of using mass trials to intimidate the ordinary man and woman without whose support the Congress movement's opposition to white supremacy must flounder. To fight this new technique in the Courts requires financial resources which ordinary people do not command, and which the treason and other mass trials have shown the Congress movement as such to lack. What price then the "due process of the law"?