BANNING

by David van Vuuren

"Sitting down to a meal of pickled fish and beans with some friends is not the sort of action that is likely to endanger the security of the state." True. No one could argue with a statement like that, although why it should be necessary to make it at all is puzzling. Or rather it would be, if the place were not South Africa, the setting S Regional Court Durban, the speaker Ismail Mohamed SC, recently appointed Appeal Judge of Botswana, Lesotho and Swaziland. But it is not as a judge that he is talking at this moment, – in this country there is no tradition of an Indian ever being appointed to that position, justice is white, – but as the defence in the trial of two people accused by the State of breaking their banning orders. What he is attacking is the reasonableness of the order itself. It is a test case. Neither of the accused denies being at the dinner, yet both plead not guilty. What is in question is not the niceties of the law, but the moral premise on which it is based. "These two people are being accused because they have a highly developed social conscience which has put them into conflict with the establishment." Their "crime" is that they feel for their fellow men and said that they disagreed with the way they were being treated. What we are seeing is the continuing debate about the form civilisation should take. At stake is the right to disagree. Dissent must be seen nor merely as a right but as a necessity if society is not to fall into the stagnation of self-congratulatory smugness. "People campaigned for the abolition of slavery. They were heretics. Slavery was abolished and their views became respectable. People campaigned for rights for women. Their views were heretical. When women got the vote, they were on the other side. It is people like these who utter a hundred heresies until those heresies become the orthodoxies of tomorrow." Governments and their laws are temporary, but the pursuit of justice is eternal. "These are two of the finest people that South Africa has ever produced. They must not be treated like common criminals." ("The finest people that South Africa . . ." words which are mouthed as a litany by the party faithful, about State-Presidents, Prime Ministers, Administrators and the other gods of the Nationalist Party heaven. But to use them on a non-white . . . Is this not heresy, Mr Mohamed?)

Fatima Meer is indeed a remarkable woman, one of the country's most distinguished sociologists and writers. Her name is synonomous with fearless criticism of the government. Her co-accused is Bobby Marie, her son-in-law. He has a degree in Philosophy and Political Science, has just completed his Honours. Recently he received permission from the Minister of Justice to take articles as an attorney, in spite of being banned. Both of them have on a number of occasions suffered for not keeping quiet. During the Soweto emergencies of 1976, both were arrested and spent much of the second half of the year in Transvaal prisons. Both are banned. (Fatima's son, Rashid, suffered the same fate. Unable to continue at university when he came out of prison, he eventually left the country illegally, and is now in Britain.)

The banning order is a roneod document of a variable number of pages, stapled in the top left hand corner. The specifics of name and special conditions and possible exceptions to its various clauses, are typed in. It has an embossed seal of the Minister in the bottom left corner of each page and his signature and the date on the last. "Whereas I, JAMES THOMAS KRUGER, Minister of Justice, am satisfied that you engage in activities, which endanger, or are calculated to endanger the maintenance of public order, I hereby in terms of section 9(1) of the Internal Security Act, 1950, prohibit you . . . from attending . . . any social gathering, that is to say, any gathering at which the persons present also have social intercourse, with one another." All very well, but what IS a social gathering? How many people does it need to make a gathering? What must they be doing? Is it simply enough that there should be two people together for whatever purpose? It is a question that nobody can answer with any certainty. "I have no clarity in my mind what, in terms of the Act, is a social gathering, or what a gathering is at which the persons present shall have social intercourse with one another." Justice Beyers, Judge President of the Cape Division of the Supreme Court, 1964.

To complicate matters further, different judges have at different times adopted different points of view. In the case of the State v. Hjul, 1964, the accused had been in the bar of a club in the company of another person with whom he subsequently played a game of snooker. The court held that this was NOT a social gathering, but in another case, it was accepted that the accused who had taken part in a game of bridge with three other persons, HAD attended a social gathering.

If judges of the Supreme Court cannot agree, how then can the ordinary citizen be expected to know?

Ignorance of the law is never regarded as an excuse anywhere in the world, least of all here, yet it does not seem unreasonable to expect that the law should at least make sense, that it COULD be understood. One can hardly be held responsible for breaking a law that nobody is able to understand – neither the Special Branch lieutenant who served the order, the two who received it, the Defence Attorney, nor, by implication anyone else in the court, including the prosecution and the magistrate.

Is it too cynical to suggest that the vagueness and ambiguity is deliberate? That the confusion is intentional? A part of the mechanism calculated to unsettle the nerves and unbalance the mind? Whatever the case, it is a bad law, indefensible on moral grounds. It is curious that the calculated barbarism of its effects on individuals and its intentions which are so patently in conflict with Christian principles, should be the work of supposedly God-fearing

Christians. It matters not that Jimmy Kruger, now that he has been relieved of his portfolio, should bleat that it pained him to restrict people. "Actually by nature I am not a very aggressive sort of person. I like people . . . Restricting people you don't know personally is a very very difficult thing for a person to do." The hundreds whose lives have been permanently scarred, if not totally destroyed by his official signature on that official bit of paper, must wonder why it is only now, out of office, that he shows the first sign of regret.

Fatima Meer and Bobby Marie are in court because on a night in December 1977, the Special Branch burst in on a dinner party at a friend's house and took flashlight photographs of the eleven people round the table. They had been watching Andrew Verster's house in Essenwood Road, from about six that evening and had seen a Volkswagen arrive round seven. They made a note of the five passengers, including Mrs Meer, her son-in-law, her two daughters and a friend on holiday from university in England. A while later, another car had arrived with two guests, and another arrived by taxi. The last to arrive had been a woman doctor on her own. About eight, the police had changed their position to the side of the house to get a better view and had watched the guests sit down and begin their meal. It was a hot midsummer night, and the windows and curtains were open. Nothing was hidden. They watched for an hour and then, round nine, climbed over the back wall and made their way into the house quietly through the back door which was open. On such occasions it is necessary to be quiet, as the element of surprise is important. There were eleven of them, the same number as the guests (there was one woman with them, presumably in deference to Mrs Meer. Her only function was to escourt her to the toilet and back at some stage during the raid, an unnecessary precaution lest she should try to escape). Nobody made any attempt to move when the bulbs kept flashing. Names were taken, diagrams made of the seating, the empty plates counted, a list of the wine bottles made, the exact names of the various dishes noted. The party was over. Everyone left. The raid had gone according to plan, it was smooth and efficient.

Eighteen months later the case too was over, the magistrate found them guilty. Before passing sentence he listened as Ismail Mohamed argued that as the law did not lay down a minimum punishment, he had various options open to him. He could postpone the passing of sentence conditionally or unconditionally, he could discharge them with a caution and reprimand, he could detain them until the rising of the court, or should he wish to, he could take the strongest step of passing a suspended sentence. "The question whether you accept the most extreme sentence will depend on one question. Ask yourself: Do I need that extreme punishment to deter these people from repeating this behaviour? You must not impose a sentence that will render anyone . . . the unfortunate victim of political dissension by excessive severity. These are the men and women who make civilisation possible. The basic truth is that the courts must do justice and we must not discourage these citizens from having that wonderful spirit of love and dedication and heightened social conscience without which our society would be the poorer . . . Civilisation does not come from obedience only, but from a lively social awareness . . . In the process of evolution there will be constant dissent as to what direction society should take." In 1954, an attorney had engaged in a campaign to disobey certain laws to which he objected. The Transvaal Law Society had wanted him struck off the Roll. "The court has to decide whether the facts which have been put before us on which the accused was convicted show him to be of such character that he is not worthy to be in the ranks of an honourable profession." The answer was a resounding NO, and Nelson Mandela was not struck from the roll. Arguing against a suspended sentence, Ismail Mohamed said that it was possible to break the law unwittingly. This would be an intolerable situation. The magistrate listened, and then sentenced them each to three months imprisonment, suspended for three years.

Obviously it is an unsatisfactory situation as the basic questions are still unclear — what is and what is not a gathering? — and it will be in a higher court that the debate will go on. But for the moment, for the two of them as for every other banned person, daily life continues to be a minefield of regulations and restrictions, some visible, some hidden, some obvious, some obscure. At any given moment, they are likely to be breaking the law without even being aware of it. "I hereby, in terms of Section 10(1)(a) of the Internal Security Act 1950, prohibit you . . . from . . . absenting yourself from the magisterial district of . . . being within . . . any Bantu area . . . the premises of any factory . . . any place or area which constitutes the premises of any public or private university, university college, college, school or other education institution . . . performing any of the following acts . . . preparing, compiling, printing, publishing, disseminating or transmitting in any manner whatsoever, any document, (which shall include any book, pamphlet, record, list, placards, poster, drawing, photograph) picture . . . giving educational instruction in any manner or form to any person other than a person of whom you are a parent . . . communicating in any manner whatsoever with any person whose name appears on any list in the custody of the officer referred to in Section 8 of the Internal Security Act 1950 . . ."

For the banned person the question is whether to take the order seriously and become his own policeman, so opting for a state of permanent conflict with his inner conscience which inevitably must lead to a serious distortion of his personality, or live in continuous emotional revolution against the order. Most survive precisely because they do not take their order seriously, and are thus vulnerable to arrest and conviction at any time. The magistrate had said that Meer and Marie were "distinguished citizens and not criminals" yet the fact remains that these "non-criminals" are convicted in South African courts in such a way that it makes no difference finally whether they are criminals or not. The result is the same. The courts are bound by the security acts passed by the Nationalist government to ensure its own survival, and this deflects attention from the fundamental issue, the freedom to disagree, to the contrived issue of the measure of punishment that should be imposed on those who dare to dissent. The principle that a person should be considered innocent until proved guilty has been abandoned. The accused must prove his innocence, whilst the police have the widest possible latitude in building up their case, including detention of witnesses. Under such circumstances can the testimony they give be regarded as open, willing and true?

Normality means accepting that you are always being watched, a car perhaps casually parked outside your house, someone driving at a not too discreet distance behind you, an unannounced visit at any time of day or night, to look through your house, your papers, your books, to take some away for examination for this or that, "just a routine check", interference with your mail, eaves-dropping on the phone and the like. But these are petty annoyances. There are more serious happenings. You can be taken away and held incommunicado for as long as they please. Some never return, except as a corpse.

It is however a most effective law. The banned person cannot be quoted and what they write cannot be published. And that means not only what they say and write now and in the future, but everything that they have ever said, everything they have ever written. It is as if a skin grows over the wound. They no longer exist. And what is not seen or heard is soon forgotten. Occasionally their names appear in the press to remind the world that they are still

living – maybe it is a court appearance because of some infringement of their order – but as time goes on, the references become shorter, the interest less.

"One of the conditions attached to permission for Mr Jones to attend his own wedding by a Somerset West magistrate was that there be no political reference. His banning order prohibits him from attending gatherings and at the reception, Mr Jones sat in a separate room. The long queue of guests – some from as far as King William's Town, waited in turn to congratulate the groom." The report is from the Rand Daily Mail of 30th April this year. The man is Peter Jones who was served with a banning order soon after release from detention in February. He was held with Steve Biko in August 1977. In March, David Gaza, a former director of the Umlazi Residents' Association was found guilty of contravening his banning order, and ordered to be detained until the rising of the court. However, he had already been convicted on four other contraventions of his ban, for which he had received a suspended sentence. The magistrate's leniency was not popular, and Mr Gaza is now in prison serving a twenty month sentence on the other count.

It is a most effective law. The conspiracy of silence is just as apparent in the so-called liberal press, the English language papers, as it is in the Nationalist press. The trial of a person of the importance of Fatima Meer should have been headline news. It didn't rate more than a handful of paragraphs on some inside page. Some papers shunned it completely. One cannot escape the conclusion that despite their avowed dedication to the cause of freedom and justice, the English press here has other priorities, the first being to sell papers, other issues being peripheral to this. Arguments, however compelling, about the right of the individual to disagree in what purports to be a democratic society, are not news, and do not sell papers. That the questions that these arguments raise affect every single person in this country and not merely the two unfortunate victims in the dock, is conveniently ignored. When the press willingly censors itself, it is obvious that the suggestion that it needs enactments from above to keep it in line is superfluous. It is sad but true that after thirty years of Nationalist Party rule, the very foundations on which democracy is based have become so affected and enervated that they have all but ceased to function, except in name. We witness an opposition in parliament offering near identical policies as the government but framed in different words, a judiciary overseeing laws that are the antithesis of justice, and a press paying lipservice to its role as custodian of the right to free speech, whilst in fact supporting the status quo, that is, white supremacy for ever. South Africa is acting out a play, written and staged by the Nationalist Party, for the benefit not of South Africa but of the Nationalist Party. So clever is the direction that everyone has a part, however unwilling they might seem to learn their lines. □

Diakonia Council

Statement on Prisoners' Right to Study

The Diakonia Council, which consists of official representatives of the African Methodist Episcopal, African Presbyterian, Anglican, Congregational, Evangelical Lutheran, Methodist, Presbyterian and Roman Catholic Churches, meeting in Durban on 29th May,1979, unanimously approved the following statement on the prisoners' right to study:

"The Diakonia Council **believing** in the God-given right of all people to read and study, and **noting** that in terms of the Regulations to Prisons Act of 1959 (as amended) the Commissioner exercises his discretion as to which prisoners may study and at what levels, and **recalling** Our Lord's words that what is done to those in prison is done to him (Matt 25), and the instruction of the Letter to the Hebrews that we should "Remember those in prison as though in prison with them . . . . . ." (Heb. 13:3) **urges** all members of our member churches:

1. to support the campaign for amendment to the legislation so that all prisoners will have a legally-recognised right to study, and

2. to give whatever practical support they can to prisoners wishing to study e.g. by making contributions towards the costs of studies by correspondence or for the purchase of texts." □