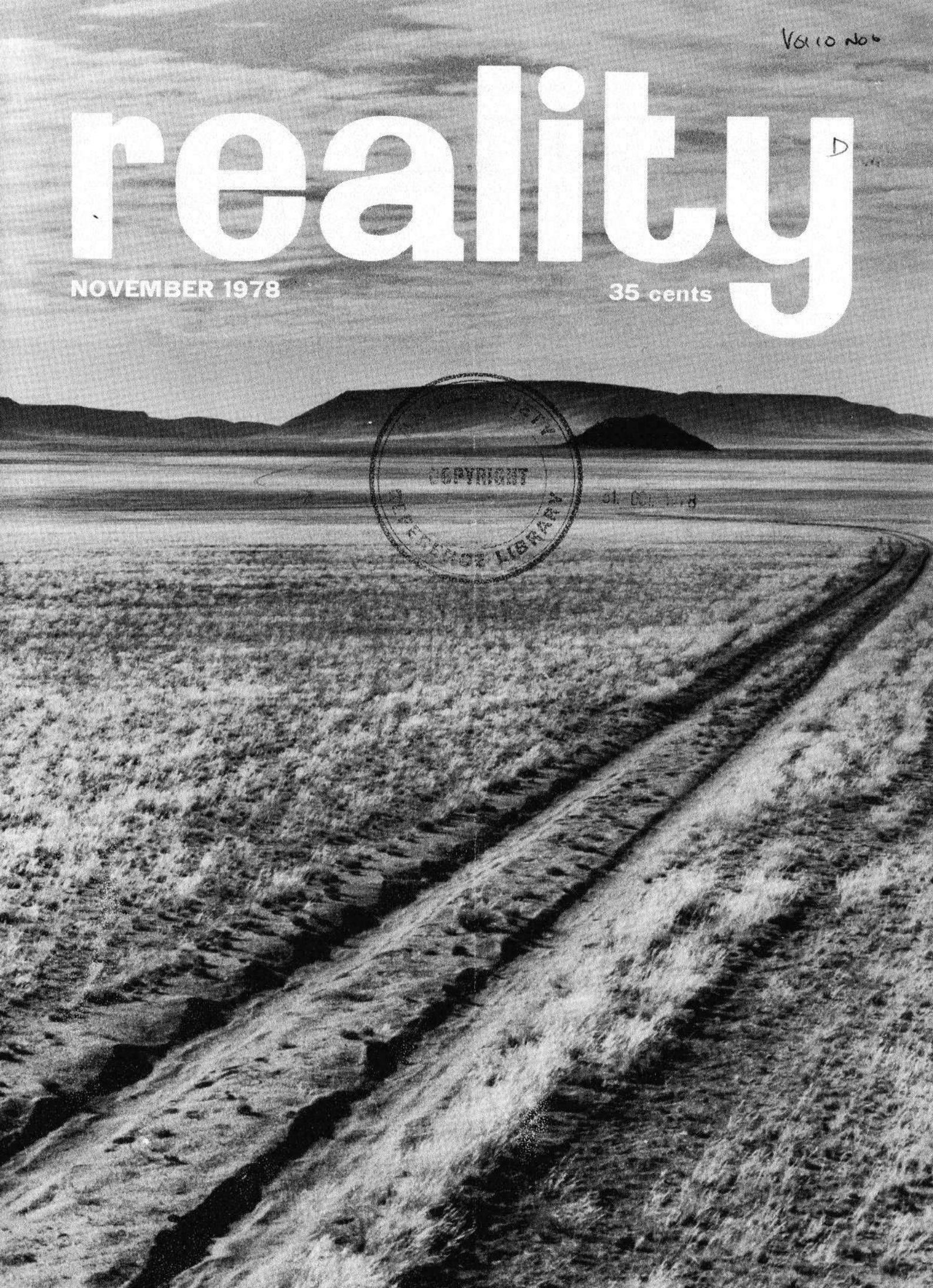
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in this issue . . .

EDITORIALS

1

NOW WHERE?

For an organisation whose consuming passion for more than sixty years has been to secure the survival of Afrikanerdom in Africa what could be more destructive of that aim than the Nationalist Party's performance over the two months since REALITY last appeared? During that time the Party has held its Provincial Congresses, taken a far-reaching decision on Namibia, and elected a new Prime Minister. Each of these events, in its different way, has shown that the Party has no conception of what is required to ensure the Afrikaner a future here.

For instance, at two of the Party's Provincial Congresses, in Natal and the Transvaal, delegates spoke of their fellow black South Africans in the most insulting language and were not even rebuked for it by the party leadership. Indeed, in Natal, where the insults seemed to come in equal measure from English-speaking and Afrikaans-speaking delegates, the provincial leader of the party appeared to defend the right of delegates to insult black people if that was what they wanted to do. Does he think that black people don't read what white politicians have to say about them? Or that, if they do, no harm is done to Afrikaner survival prospects when they read the kind of thing that was said at his congress? At the Transvaal Congress, apart from the offensive things said about having to share post office queues with black people in places like Pietersburg, loud protests were raised against the suggestions in some Afrikaner academic circles that Africans might be given more than the 13% of South Africa that the apartheid dispensation provides for, and that the Bantustans might be better consolidated. The party leadership, never very brave when confronted by its own supporters, assured them again that it would never excede the 13% land allocation or deviate from its patchwork consolidation plans of 1975. Yet can it for one moment think that black South Africa will ever accept this lop-sided arrangement as a basis for Afrikaner survival?

The other notable feature of the Nationalist Party congresses was the series of speeches made at them by the Minister of Defence, now Prime Minister. They were emotional and belligerent statements on Namibia at a time when negotiations there were at a delicate and crucial stage, and in our view totally irresponsible. These negotiations now seem to have collapsed, South Africa having rejected Dr. Waldheim's plans for their implementation on two main grounds, the size of the UN peace-keeping and administrative force he suggested and his

proposal that the elections in the territory should be delayed for a few months. The South African government claims that a peace-keeping force of the size Dr. Waldheim thinks necessary will swing the election SWAPO's way and that a delay in the election date will do the same. Both arguments seem highly dubious. Is there any previous record of a UN peace-keeping force of the kind proposed for Namibia using its position to try to influence the local situation? None that we know of. On the other hand who can suppose that the massive South African Defence Force and Police presence in Namibia is not going to influence the kind of election the Administrator-General now intends holding? After all do we not know well the lengths to which S.A. government agents have gone before, in such things as homeland and Representative Council elections, to try to make sure that the people they wanted to win those elections did win them? As for the delay in the election date it is quite clear from Mr Ahtisaari's original report and from statements subsequently made by the political organisations concerned that the only people who did **not** want a postponement of the elections were the South African Government, its Administrator-General in Namibia and the party it supports in the election, the Democratic Turnhalle Alliance. It wasn't only SWAPO which wanted a postponement, every other party did. And significantly, while the election date seemed to have become a matter of unbreakable principle by the time Mr Vorster announced the rejection of Dr. Waldheim's plan, within a week that principle had been bent sufficiently to allow a postponement just long enough to accommodate the wishes of AKTUR, the Nationalist Party's white off-shoot in Namibia, but not long enough to accommodate the combined wishes of those far more important elements in the situation, SWAPO, the Namibian National Front and Mr Andreas Shipanga's SWAPO Democrats. Mr Vorster's stated reasons for rejecting the Waldheim plan are at best, flimsy, especially when one weighs them against WHAT the possible consequences of that refusal could be. At worst they raise the question whether the Nationalists ever had any intention of allowing an election to take place in Namibia which might produce there anything but the government they wanted. The doubt implicit in this question has grown with the election of the new Prime Minister.

As already mentioned Mr P. W. Botha devoted large parts of his public speeches in the weeks before the Government announced its decision on Namibia to castigating the UN and SWAPO. Who can doubt which way his vote went when it came to deciding whether those proposals should be accepted or rejected? After all is he not said to be the man who contrived the invasion of Angola in an attempt to install a friendly government there? After such a misjudgement who can now feel with confidence that he would have judged rightly over Namibia . . . or will in the future? Yet, at this time, when what South Africa needs above all at the head of its affairs is a diplomat of extreme sensitivity, the Nationalist Party caucus elects a man whose only previous venture into the field of foreign affairs was a military fiasco. This is not to suggest that either of Mr Botha's opponents had the qualities South Africa needs now. It is interesting to note, however, that Mr Pik Botha, who must have learnt something of what goes on in the world and has shown some appreciation of the need to make at least some superficial changes in apartheid, could muster only a miserable 22 out of the 172 votes on which our fate appears to rest.

Nationalist Afrikaner leadership has in recent years been telling the world and the continent that its people are an African people with a special knowledge of Africa who know what is required for them to be able to continue to live here in peace and amity. Africa has never disputed the Afrikaner claim to be an African people, what it does dispute is its claim to that special knowledge. And who can say it is wrong?

The things said at the Nationalist Party Congresses this year show that many of its supporters regard the presence of people other than themselves in this part of the continent on anything approaching a condition of equality as offensive. Do they think Africa will ever accept them on that basis? This same attitude of superiority, we suspect, lies behind the rejection of a reasonable even if imperfect solution to the Namibian question and the election at this time of a belligerent Prime Minister with a militaristic bent. Both suggest that the Party labours under the illusion that South Africa can still buy security through its military strength. Neither suggests that the future course of events in our country will be based on a reasonable assessment of what is required for a tiny minority of less than 5 million to survive at the tip of a continent of over 200 million. For the military solution can be no more than short-term. Simple arithmetic says that.

Mr Vorster has gone. We feel no regret about that. It is said that the responsibilities of office led him to moderate his views and that this happens to all Prime Ministers. Well, if he did moderate his views he did it far too slowly, for he leaves South Africa in a far more desperate and difficult situation even than the one it was in when he took over. And will Mr P. W. Botha moderate and change his views under the responsibilities of office, and will he do it fast enough to ensure Africa's acceptance of a permanent Afrikaner presence here? We hope so, but there is nothing in his past to suggest that he will. □

A FACT

by Vortex

The whites of Rhodesia/Zimbabwe
perfectly illustrate
the human capacity to change,
to recognize the path of fate,
to adjust to new realities,

but alas, too late.

2

CROSSROADS AGAIN

By the time this edition of REALITY appears the community of 20,000 people at Crossroads on the Cape Flats may have been destroyed and dispersed. It is sometime now since the government announced that this would happen before the year ended.

As an indication that the end was approaching a series of what might be termed softening-up raids on the people of Crossroads were conducted during September. The place was surrounded at nightfall by police and administration officials and other agents of white authority who went into it with arms, teargas, dogs and other accoutrements of civilised power. They spent the night, searching, demanding documents, arresting people who hadn't got the right ones. Many of those who didn't have the right documents were the legal wives of men legally employed in Cape Town. The right place for them, according to apartheid's decrees, is not with their children and husbands, within reach of their husbands work, but back in the homelands, 500 miles away. There wives and children must suffer in patient and obedient loneliness, for eleven months of the year, waiting for the twelfth month, when their husbands and fathers come home for the fleeting moments of their annual leave. And if you are not sufficiently patient and obedient, if, in fact, you reach the point where you can't stand the loneliness anymore and, in desperation, take your children and go to Cape Town to be with him, there you will meet the police with the arms and the dogs and the teargas, and the officials without hearts. One man was shot dead by the police in those preliminary raids on Crossroads. His friends say he was a spectator, somebody who had just arrived on the scene to find out what was happening. But what if he was more than that, somebody who had picked up a stone?

Whose side is right on? The man who picks up a stone to defend his home and his right to live with his family within reach of his work? Or the man who comes with a gun in his hand, and teargas, and dogs, preparing the way for the bulldozer which will smash that home and drive that wife and children out, back to bitter loneliness 500 miles away?

The man with the gun may have the law on his side, but who has right on his side? The man with the gun, or the man with the stone? □

SPEAKING YOUR MIND ABOUT THE JUDGES AND THE LAW

FREEDOM OF SPEECH AND THE ADMINISTRATION OF JUSTICE. COLLEGE LECTURE UNIVERSITY OF NATAL PIETERMARITZBURG – 9 AUGUST 1978

by Barend van Niekerk

Perhaps my address here today will be seen by many as an apologia for my many sins as regards the speaking of my own mind about the Law and especially the judges. In a sense these persons will be right, I have the dubious distinction as some of you may know of having been in more trouble than perhaps any other academic in the English speaking world over speaking out about the law and especially the judiciary, and it may well be time therefore, belated as it may be, to justify my vehement indulgence in what I consider to be my basic right of speaking my mind, and the truth as I see it, about the administration of justice and about the law.

My fundamental proposition today and indeed the basic theme of my lecture is this: For a variety of factors, some of a legal nature, others of a societal and yet others of a psychological nature, we have the **socially catastrophic situation** today – that on a number of highly important concentrations of power there is a well-nigh total abdication, forced or voluntary, of critical responsibility on the part of those best able to shoulder such responsibility: the press, the legal profession and the legal academics. We have a situation where certain very important people who have in their mortal hands very important powers are for all practical purposes almost entirely removed from any incisive and meaningful scrutiny and criticism. As a concomitant to this situation we also have the situation that one of the traditional arms of government under the classical **trias politicas** concept is not at all sufficiently subjected to the cleansing and correcting and democratic control of free speech.

Now of course, inherent in what I have just said about the cleansing, correcting and democratic control of free speech and inherent also in my attack on the abdication of several critical forces towards the administration of justice, there is a fundamental built-in assumption. It is the assumption that freedom of speech is **good** for society, that it constitutes a **fundamental human right** and that it constitutes a **sine qua non** for the control of power and the avoidance of abuse of power. This is an assumption more easily stated than proved and it is one which is at the core

of the Western democratic ethos as it developed, painfully and haltingly, over the centuries. Most people, and certainly most people of liberal persuasion pay frequent but far too facile lipservice to the validity of this assumption. Whether or not this assumption holds true can ultimately not be determined with any scientific certainty but Western societies are predicated on the faith that it holds true and in their better moments they endeavour to act on that faith.

True and self-evident as most people in the West, and also in South Africa, and especially, in solidly decent and liberal quarters, regard this assumption in theory, there is a remarkable reluctance to extend the reach of that assumption to the most uncontrolled pocket of power in a democracy, namely the administration of justice and especially the judiciary. Concerning South Africa specifically I have no hesitation to state – and I state so on the basis of extensive research I have undertaken – that we have reached the situation, partly as a consequence of recent legal constraints and partly, and more tragically, as a consequence of the self-imposed social abdication of lawyers, academic lawyers and journalists, a situation of which it can be said that for all practical purposes the administration of justice has become enveloped in a shroud of wellnigh total silence on a score of crucial issues.

Now of course as any newspaperman will tell you it is the **law** – and especially the law of contempt but also of defamation – which has turned justice into that proverbial cloistered virtue'. And of course some of these newspapermen will not fail to point an accusing finger at me personally whilst stating that the trilogy of **Van Niekerk** contempt and defamation cases are chiefly to blame for this situation. Now of course, true as this may partly be, it is far from the whole truth and with your indulgence I wish to put the boot on the other foot and to transfer a major part of the blame for the situation we have today **upon** the **media, upon** the legal profession, and upon my fellow **legal** academics and indeed ultimately **upon you and me.**

Legal restraints on free speech such as contempt of court and defamation are not based on statutory provisions but on our uncodified common law. The importance of this is that courts cannot so easily, as they can with narrowly defined statutory provisions, put the blame for a restrictive approach on a legislature dominated by farmers, legal drop-outs and other petty crooks. Bound as they undoubtedly are by precedent, they have nevertheless effectively a well-nigh limitless discretion on issues such as contempt and defamation, especially when serious considerations of public policy are involved. When therefore they opted in that unfortunate trilogy of cases to snuff out crucial aspects of free speech in the legal domain. they were doing so willingly and without compulsion from the Legislature above. But I am not here to bury the courts, although I have certainly very little personal reason to praise them:

Indeed, much as I have criticised them in the past I wish today to extend to them a partial **exoneration** – (mind you, I emphasise, only **partial**) – and to transfer the real blame to those genteel and gentle forces of so-called liberal opinion in our society: the lawyers, and especially the academic lawyers, and even more especially the newspapers.

Judicial law-making on all issues but especially on issues relating to free speech and matters of obsenity does not take place in a kind of intellectual vacuum nor does it drop like manna from heaven, but it takes place within, and is formed, determined or at least conditioned by an intricate web of intellectual cross-currents and societal stimuli emanating from and operative within the society in which the judiciary operates. Put differently, the standards which judges ostensibly derive from some obscure nook of the law and with the help of some secret formula of legal alchemy, really come from you and me, including from your silence and mine. There is an old cliche which says that a society gets the government it deserves; it is a verity which applies much more strongly as far as the quality of justice in matters relating to speech is concerned. What we are reaping to-day is very much the product of the seed that you and I, and especially the press, sowed yesterday or *failed* to sow yesterday.

What this means now in relation to free speech concerning the administration of justice is the following. If judges for instance are regularly dressed down for their mistakes or their views, and if their decisions are subjected to the same kind of outspoken and even robust comment and critique as is reserved for other state officers, and if the individuals who get appointed to the Bench are put under the same magnifying glass as is reserved for other repositories of power, and if the administration of justice generally receives the kind of critical attention which it deserves in relation to its inherent importance, there can be no doubt that the critical and robust atmosphere which will spring up around this important pocket of semi-uncontrolled power will not fail to insinuate itself into the judicial decision making on all issues relating to free speech in the legal domain. Contrariwise again, if for whatever reason, whether it be based on psychology or social delicacy or simply social irresponsibility, an atmosphere of exaggerated discretion, mystification and of silence is thrown up around the administration of justice, this atmosphere will not fail to be adopted as the yardstick for the legal criteria generated by the judiciary. Let us not forget here a fundamental psychological truth, namely that no-one likes being criticized and that all institutions, whether it be universities or municipalities or individuals, prefer to sweep their weaknesses and their dirt under the carpet. It will be so also with a judiciary such as ours which in any event has

always snugly warmed itself in the sun of self-adulation and the adulation of others. When therefore our judiciary has to interpret legal restrictions on the basis of what is **reasonable** (whatever that may mean) or what is **fair** or what is **temperate**, they will almost invariably start with a subconscious supposition that *all* fundamental criticism of such a venerable institution is really undeserved and therefore unreasonable, and that the infrequency or absence of fundamental criticism will be a strong indication of the basic unreasonableness of such criticism.

Turning now to our South African situation, this is exactly what we have: we have an uncritical atmosphere in which judges and even sensitive issues are not subjected to more than peripheral criticism, if at all, as far as fundamental issues are concerned; an atmosphere in which judicial incompetence must rather not be mentioned, leave alone roundly criticized; in which blatant injustice must rather be played down if it is indeed referred to at all; *an atmosphere in other words into which the gusts of free speech must preferably not penetrate.* Do you think I am exaggerating the situation? Let us go back then first to a period of almost virginal honesty when the legal landscape was still unspoilt by the unseemly sight and sound of odd-ball professors stirring up the mud from the depths of the pool of the administration of justice, indeed before the contempt power was rediscovered. Here then is an extract from an editorial appearing in the most liberal South African newspaper, then and now, the *Rand Daily Mail,* on 5 January 1955, on a topic not concerned with, say, incompetence, racism or corruption but with the freedom of criticising the appointment *procedure* of Supreme Court judges. This is what the *Mail* said then in a statement which is even more relevant today after the judiciary, with the Appellate Division at the helm, have effectively put up the shutters around the Bench in order to protect it from the penetrating gaze of critics. I quote:

> *'No one who respects the dignity of the judiciary would lightly criticise the system by which judges are appointed. Clearly there is a danger that comment on this subject might give the impression that judges themselves were being criticised. That would be the first step towards undermining confidence in the Bench, a disaster that no sane citizen would court.'*

It is my pleasure indeed to introduce myself then here today as a very insane person who is not only willing but even very keen to court this ineffable disaster of questioning not only the system of appointment of judges but also every aspect of their performance and their quality.

Given now this basic philosophy on the part of the most liberal newspaper as regards critical reporting, can one be surprised to find that *where* really sensitive issues are involved there will be an almost absolute unwillingness to subject the judiciary to meaningful and outspoken scrutiny? Can one therefore really take the justification seriously that they are hampered by the contempt law in their scrutinizing functions when in fact there is possibly no real concern in the first place to rock the boat in really controversial issues? But moreover, can we really be astounded when we find that courts when called upon to strike the very delicate balance between conflicting interests in speech matters and to draw the lines between legal permissibility and impermissibility in such matters, that they would as a matter of practical psychology draw the lines and strike the balance in such a way that *less* rather than *more* speech freedom is permitted as regards criticism in which either they themselves or their natural habitat, the legal system, are involved?

If that editorial of 1955 may not be so easily repeatable in the less honest intellectual climate of today, it must at least be conceded that the unspoken premises on which it was based are today as strong as they ever were. Do you often read criticism in *your* newspapers of the appointment or promotion of judges, not to speak of magistrates? Do you often see analyses of the possible obtrusion of the racial factor in sentencing or judicial law making? Or do you perhaps (together with our silent press) assume that the obtrusion of such racial factors is inconceivable? And did I by any chance miss out on an editorial scrutiny here in Maritzburg on the qualities of the chairman, say, of the judicial commission of enquiry into the Soweto riots? Surely by definition this was the most important such commission ever to have sat in South Africa. Although I am sure that the particular incumbent would have passed such a scrutiny with flying colours, it still does not of course mean, I should like to think, that such a scrutiny must not be undertaken in the first place. On all these and many more issues relating to the judiciary we either have silence or meaningless comment or, what is worse, an outpouring of effusive praise-singing not reserved for any other profession or group of mortals, not even for men of the cloth.

And when criticism is voiced – and it is often voiced – it is directed at symptoms rather than structures, at trivia rather than essentials, at peripheral rather than basic issues. So for instance you would often find academics and newspapermen blowing off their tops, and quite correctly so, about abortion laws or the pass laws and in so doing create the facade – or is it charade? – of being wedded to a critical approach to law, whilst leaving aside matters such as class justice, racisms, judicial incompetence and the like which may perhaps also be operative within the vast structure of the administration of justice.

Now of course, like in many other things some good and some bad we have inherited much of our speech attitudes from the English including the veneration of any person, whatever his personal merits, who wears judicial robes. Also the legal sanctions which we have such as contempt of court in the form of so-called scandalising the courts and the *sub judice* restrictions have insinuated themselves into our legal system via the English law. A decade ago two English writers described the English situation as regards the veneration of judges and the revival of the contempt power as follows:

> *'Once the power had been reinacted the judges seemed to take pleasure in using it. Within a decade the criticism of judicial behaviour which had been so outspoken was replaced in the press by almost unbroken sychophantic praise for the judges.'*

And later:

> *'As the judges removed themselves from sensitive areas where their discretion or law-making activities had previously been obvious, criticism of the judiciary, which earlier in the century had been open, began to disappear. The absence of criticism was partly the result of the development of what many felt to be an excessive power to commit for contempt of court those who criticize judges . . . the general absence of criticism ensured that even bad judges were protected from any sort of criticism.'*

(Brian Abel-Smith and Robert Stevens *Lawyers and the Courts. A Sociological Study of the English Legal System 1750 – 1965 (1967)* at 126 and 289).

Although there are still important remnants in England inhibiting free speech as regards judges, there has been a slow but very pronounced shift away from invoking the contempt sanction for criticism of judges. Independently of this shift in constitutional practice there has been a greater willingness on the part of the newspapers to *break through* the suppressive barrier of taboos surrounding the judiciary and in so doing also to challenge the law. As a joint committee of British lawyers and pressmen put it in 1965, in words which I would like to commend to our own press and academic journals:

> *'We support the view of one editor who said that if a*

criticism needed to be made, the Press should have the courage to make it and risk the consequences.' (The Law and the Press (1965) 17).

The same committee also emphasised in the same breath something which needs particular emphasis in South Africa especially when our Press is compared to that of Britain and America. It stated:

'A large measure of responsibility rests upon the Press to keep a constant watch on the proceedings in the courts at all levels and to make such criticism as appear necessary in the interests of justice' (idem).

The fact that there have at times been some editors in England who have been willing to publish 'criticism which needed to be made' has not failed to influence the law, and the greatest judicial blow for this right of the citizen to indulge in robust and even misguided criticism was struck in the case of Mr Quintin Hogg (now Lord Hailsham and later, by a nice quirk, to become Lord Chancellor who is in charge of all judicial appointments). Writing in *Punch* Mr Hogg directed scathing criticism at a particular court for a particular line of decisions. Unfortunately, as can happen to the best of us, his critique was directed at the wrong court. Acquitting him of contempt Lord Denning in effect furnished us with the basic philosophical objection to a restriction of robust comment on the judiciary, an objection which has indeed become an invitation to the press to scrutinise the administration of justice with greater and more robust fearlessness. This is what he said:

'Let me say at once that we will never use this jurisdiction (to punish for contempt) as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself . . . We must rely on our conduct itself to be its own vindication (R v Com. of Police of the Metropolis: Ex Parte Blackburn (19687 2 All ER 319 AT).

The idea that judges and other officers of the law must rely on their conduct to be their vindication is one which is easily stated but seldom applied, and in South Africa this notion is totally absent as an article of faith within our judiciary. But, I am not here to flog that favourite old hobby horse of mine again but rather to indicate where *you* and *I* have gone wrong and what we can do about the vital matter of increasing the scope of free speech in the legal domain.

Now this emphasis of free speech by Lord Denning and his colleagues did not come about as painlessly as it may seem, and it actually follows a line of decisions where indeed every effort was made to prop up the dignity of sensitive judicial souls with the sting of criminal law. But it did follow a period during which sections of the press re-asserted their basic right to scrutinize the judiciary in outspoken terms. As an example of the kind of criticism which, at times, has to be made and which is made in England – and I should stress that by comparison judicial criticism in America and in Germany can be much stronger than is customarily the case in England – I can do no better than to quote from an article by the inimitable Bernard Levin who regularly writes in iconoclastic terms in the *Times*, writing however in this instance in *The Spectator* of 16 May 1958; a full decade before the *Quintin Hogg* case at a time when the sting of contempt was still very much alive and when there was an even greater reluctance than today to topple the fat holy cows from their gilded pedestals. He was writing about none other than the Lord Chief Justice, Lord Goddard. As I now read a few extracts from this article – in actual fact a book review – consider just three things: first, should the mention of these sentiments if true, (as they undoubtedly were) be permissible; secondly, if so, can you imagine for one moment that only a fraction of this legitimate criticism can be directed at, say, our own chief justice or any judge for that matter; and thirdly, do we not also have our own Lord Goddards? And remember also that this was not written in a scurrilous student newspaper but in a serious high brow journal:

'It is true that Lord Goddard's law is generally quite good; though he is far from being one of the great jurists, The trouble with Lord Goddard begins precisely where his law books end; in so many of the things, apart from knowledge of statutes and case-history, which a judge ideally needs, the present Lord Chief Justice is woefully deficient. Most notorious of his blind spots is his astonishing ignorance of mental abnormality . . . Along with this deficiency goes the girlish emotionalism which seems to be his only reaction to such subjects as capital and corporal punishment.

In detailing to the House of Lords, during one of the debates on hanging, two particularly dreadful cases, he said of one (in which a man had raped and mutilated an old woman whose house he was burgling), "The prisoner, thank God, was not a British subject". . . . What is so alarming about this kind of emotional spasm is not that anybody should be so silly as to imagine that terrible crimes are more terrible when committed by British subjects, nor even (though this is bad enough) that these remarks should be made by the premier judge on the English bench. What is so shocking about it is that Lord Goddard's citing of these examples was prefaced by the astounding assertion that they were examples of murders "where there is no question of insanity". That anybody in any judicial position at all should be so blinded by his feelings so seriously as to believe that men capable of such acts are men in whose make-up "there is no question of insanity" would be deplorable; that a judge of Lord Goddard's rank should cleave to such fantastic beliefs is indeed a wretched blot on the English legal system, far out-weighing such trivia as, for instance, the appallingly indiscreet vulgarity of his speech at a Royal Academy Banquet, in which he made puns on the two meanings of the word "hanging" (and also, one might say, of his speech to the Savage Club, much of which seemed to be taken up by an interminable tale about a man who made lavatories), or his curious liking for what the authors of this study call "masculine" or "belly-laugh" stories, but which most of us know as dirty jokes.

And indeed, on the question of insanity in murder, Lord Goddard walks hand in hand with ignorance on one side of him and barbarism on the other . . . Still, it would be idle, even if agreeable, to maintain that Lord Goddard is, as far as general opinion goes, anything but typical. Muddled, narrow, overwhelmingly emotional, with a belief, the roots of which he is a thousand light-years from understanding, in retributive punishment and the causing of physical pain to those who have caused it to others – in all this he represents only too well the attitudes of most people in the country whose juduciary he heads. Perhaps every country gets the Lord Chief Justice it deserves.'

I come to my plea and my basic message. What I am arguing and pleading for in effect is for a more incisively critical role and attitude on the part of the press in the first place but also on the part of the informed sections of the public towards the law and towards the personalities within the administration of justice. If we are serious about liberty we can never be serious enough about keeping every aspect and every personality within the legal administration of justice under the closest and the most incisive scrutiny since it is on this level of government, it is trite to say, where a large part of the edification and the erosion of civil rights take place, it is on this level where substance is given to any

right which we regard as important. And when rights are eroded or lost it is only a vigorous policy of free speech which will ultimately – at least so we must believe – keep the faith in their revival alive.

I have, as you have no doubt noticed, handed out a few subtle and not so subtle hints about the failure of our press to give the leadership in this field of civil rights because it is the press more than any other institution which sets the tone and creates the atmosphere which ultimately rubs off onto the legal system. Of course the press acts really on your behalf and on mine and you and I and our society will ultimately get the press we deserve. But apart from the press, as far as the administration of justice specifically is concerned, it is the lawyers who for want of any better qualified group must give leadership, yes critical leadership, in this regard and who must verbalise society's expectations that this arm of government must also be subjected to the cleansing operation of vigorous dissent. We find of course nothing of the sort or at least we find very little in the writings of lawyers as they appear in their journals which adequately reflect the inadequacies of our legal system and which keep our judges, either personally or as group, on their toes. And here I must in the first place direct my critique to my own profession – the academic lawyer.

For a variety of reasons which I cannot deal with here I have given up hope about ever getting vigorous dissent and creative leadership from the judiciary and the practicing profession. Individual judges and three successive chief justices have time and again said they cannot and will not speak up on fundamental issues of justice which raise controversy or which involve political issues. But there is surely no reason, other than fear, cowardice or intellectual laziness dictating why academic lawyers do not at times say what has to be said and, if need be, take the consequences. Now there are some who speak in this vein but they are very few and very far between. The symptoms of this social abdication are there for all to see. I mention but two which are easily documentable. First, at not one recent law teachers' conference has there been a discussion of the attenuation of the academic's right of free speech in legal matters and at our most recent conference there was literally not one single contribution which concerned itself with fundamental issues of justice, which approximated controversiality or which just hinted that all in our legal system was perhaps not entirely honed to the achievement of fundamental justice. Instead we saw the collective legal academic conscience listening spell-bound without any dissent to a leading star in the firmament of Natal attorneys saying in so many words that there is not really a place for idealism in the teaching of law.

Secondly, take our legal periodicals, as I have done, and you will find over the last decade literally only about 4 articles in the *South African Law Journal* and not a single one in the *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* which according to any reasonable international standard one can call controversial and/or outspoken as regards sensitive issues relating to the judiciary. Do I have to remind you of what has happened over the last ten years to our law, how rights have been diminished and eradicated and how freedom has been lost in so many of its quintessential aspects? You will search in vain if you search the pages of the law journals for a fundamental dissent on these issues.

And so you and I, and especially I and my academic legal colleagues – do our own little thing in stoking the fires of suppression by our failure to speak about so many aspects of our administration of justice; we allow our own holy cows and our own Lord Goddards to continue to graze on our legal pastures, with every day of silence ticking by we make it more difficult to reverse the trend, we make freedom of speech concerning the administration of justice more onerous and we make life easier for those who wish to suppress it. Freedom of speech which is not consistently and creatively used does not just remain in a state of hibernation but it decays and it decays in such a way that you don't even know about it. So for instance tomorrow, when you read your morning newspaper over toast and ham, you will not know and you will not be told that there is a vast concentration of power in our society about which you will not be informed. You will no doubt from time to time continue to nod approval when effusive praise is heaped on our legal system, not really caring about the fact that you cannot test that praise for its inherent validity and veracity on the platform of vigorous debate and robust dissent. What you will be doing and what your press will be doing and what your law faculties will be doing, will be to praise, in the words of John Milton 'a fugitive and cloistered virtue'. And this is the situation today as regards our administration of justice. We do in fact what John Milton said he could not do when he wrote as follows in his *Areopagitica:*

> *'I cannot praise a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out and sees her adversary, but slinks out of the race, where the immortal garland is to be run for, not without dust and heat.'*

In 1936 in one of the great judgments of our age – it was on contempt of court – an English judge, Lord Atkin, echoed this sentiment specifically as regards the administration of justice in words which are often quoted but seldom pondered and more seldom applied in the letter and in spirit:

> *'Whether the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticizing, in good faith, in private or public, the public act done in the seat of justice . . . Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.'*

If I plead here for anything, I plead for the same kind of *healthy disrespect* for the law as we display to other concentrations of power – with emphasis, I hasten to add, on the word *healthy*. If there is one place where there should be room for people to mention the unmentionable and to question the unquestionable in the administration of justice and elsewhere, it should be the universities and, especially, the law faculties. Instead, however, I see a whole new generation of law students arising, easing themselves into the legal profession and also the universities, who have *not* been exposed to fundamental criticism on scores of legal issues and I can only be reminded of the withering condemnation of N. P. van Wyk Louw when he wrote as follows in his *Logale Verset:*

> *'Opstand is net so noodsaaklik in 'n volk as getrouheid. Dit is nie eens gevaarlik dat 'n rebellie misluk nie; wat gevaarlik is, is dat 'n hele geslag sonder protes sal verbygaan.'* □

A REVIEW

STAFFRIDER

published by Ravan Press – Price R1,00

by Peter Strauss

There are some for whom censorship counts as one of their government's more abstract crimes against democracy; they would protest against it on principle, as if it were primarily an infringement against a philosophy, against a set of beliefs about the nature of the state. But there are others who experience censorship as an almost physical deprivation, or an attack on them personally – censorship, they know, is taking the air away that they need to breathe freely; they feel that unless the fresh air of truth is circulating they will choke, be smothered by the drugged and nauseous atmosphere of lies which all modern societies generate, but which some allow to be challenged. The banning of the first number of **Staffrider** was one of those occasions which made one feel, with particular intensity, that one belonged for better or for worse to the latter group. Or else it was merely the sudden breath of fresh air, abruptly terminated for the meantime, that had made one aware of one's appetite.

Fortunately, the second and third numbers have not been banned, and the sense of liberation, of one's country's inner life having taken on a new kind of reality through being given expression, is something one can feel again; particularly, black people feel it:
"These writers know about us. They really know what they are talking about. They **know** Soweto, and they know what we want." (Mrs B. Makau, speaking to Miriam Tlali in **Staffrider** No. 3).

As you see, **Staffrider** advertises itself as uninhibitedly as any other magazine, drawng attention to its scoops and catches, trying to make its contributors' personal existence imaginable, real. There is a 'Reader, you can become a contributor' philosophy about **Staffrider:** in a series called **Soweto Speaking,** Miriam Tlali gets residents to speak, mainly about how they make do, have established an independence; a new section, **Yesterday, Yesterday, Now** (which hasn't yet really established an identity for itself), asks for readers to contribute their memories.

The bulk of the magazine's material is chosen and sent to it by writers' groups all over the country; it is probably they and their friends who make up the hard core of the magazine's readership; consumption and production are intimately linked – those who practise the one identify with those who practise the other, the functions are inseparable, there is none of the European or American writer's fear of being out of touch with an audience, and conversely no sense of the writer being a special person. It is the most unauthoritarian magazine I know, a babble of voices, coinciding, clashing, tangling with each other. A great variety in quality and sophistication. One of the most astounding things is the sheer volume of the material, uneven though it is, that the magazine can find to print. One page carries about 1700 words (in the case of a story, that is; poems get more space round the edges), there are about sixty pages in a number, and the magazine appears every two months. There is little sign of the stream drying out. Evidently, South Africa wants to talk. There are of course imbalances: because being white here imposes a different experience (and perhaps because I am white) I wish there were a greater range of white voices contributing – what is good is that those contributing are not felt by the reader to be out of place; I also wish that rural South Africa were getting more of a show in – our country-dwellers should draw attention to themselves, they are becoming our forgotten people. But on the whole it is true: reading this magazine is listening to a country speaking. The country is in a bit of a tangle – all the more reason for listening.

Moreover, it is a country which is learning to invent ways of speaking that have an amazing fredom and ingenuity. In the poetry, 'style' is not a strong point: language tends to be an unconscious bricolage of voices. And a good percentage of the political poems appearing return to the boring stock themes and stock vocabulary (influenced by American Negro poetry) of consciousnesses out to prove that they are 'politicized'. But there are also – and here comes the strong point – a very large number of political poems that get to the point by striking out in totally unconventional and unexpected directions; there are poets who have improvised new poetic strategies which are also new strategies of political understanding and communication. Take Jackie wa Seroke's poem **Our Points of View:**

I goofed.
You can't do anything right.
She said nothing about that.

I am argumentative.
You are belligerent.
She enjoys a lively discussion.

I am a creature of many moods.
You are temperamental.
Mama, she is real cool.

I have a healthy sense of self-esteem.
Who do you think you are, anyway.
She is not conceited.

I am unavoidably detained.
You have no consideration for other people.
She is inexcusably late.

I am 'me'.
You are 'you'.
She is Azania.

The love poems are, if anything, even more unpredictable. In fact, it is occasionally difficult to tell at first glance what a poem is about, and difficult to classify it even then:

at such times one finds the poetry has moved into a kind of abstraction, an exploration of mechanisms or structures of feelings or ideas or relationships not specifically attached to any one object. (It is good that the above poem ends with Azania, but it need not have done.)

The writers of stories are generally happier with style (linguistic style) than the poets. (Maybe prose can digest a headier montage of dialects safely – or else the prose-writers are simply more experienced.) Mtutuzeli Matshoba for instance has an amazing fertility and facility with the different masks of language, welding the biblical to the slangy, to the mock-pedantic, to the romantic. He makes a speciality of **beginning** stories. He can go on beginning a story for a full column, letting off fireworks right and left. It's almost a disappointment (after the first surprise) when he gets to the story and you find out what he's been talking about. He is a virtuoso, a natural. At the other end of the scale is Miriam Tlali who is happiest in a mode close to reportage, able to distil her tremendous humanity and commitment into that form. Her story about a police 'hi-jack' of buses setting out for Biko's funeral (in **Staffrider** no. 1) is an unforgettable account of brutality and insult; the sense it gives of an immeasurable solidarity growing up among the oppressed is something which, in some form or the other, makes itself felt in almost all the writings that make up **Staffrider.** It is one of the things that keep it (in spite of political realities) from being a depressing magazine.

I mentioned earlier that **Staffrider** had a 'Reader, you can become a contributor' philosophy. The photographs have a function in the whole that accords with this philosophy, though the invitation they extend is of an even broader kind. Two types of photograph may appear in a newspaper or in a magazine: the one portrays the superstar – of one kind or another – and the superstar subject is there also in the treatment, the other is the picture of the anonymous human being. The first editor of **Drum** discovered that it was the second type that held the gaze of the reader. For the reader saw the anonymous subject as himself, and this discovery of his presence in the newspaper was a confirmation of his reality. Nor is this invitation and confirmation something that the photographer confers alone. There is also the sense in which the subject of the photograph acts as unconscious contributor. That is why some of the greatest photographs have shown people looking straight into the camera: a man's attitude to being photographed (however unconscious as an attitude) is perhaps the quality of character that concerns us most when it is in a photograph that we meet him – and it is a central clue to his nature not a peripheral one. What **Drum** once understood **Staffrider** seems to understand more profoundly: each face, each silhouette, is a blend of anonymity and personality, each element in that pairing being strong. □

THE FUND-RAISING ACT

by a Lawyer

With the publication in the Gazette on the 30th June, 1978 of the Fund-Raising Act, the State's tight control over the collection of funds is one step away. Only the promulgation is still required. It is anyone's guess when this will happen, as obviously the bureaucratic machinery must be set up first.

The Act prohibits the collection of contributions by any person or organization unless authorised in terms of the Act and unless the collection takes place in accordance with the provisions of the Act.

The key words are "collect" and "contributions". "Collect" is given an all-embracing meaning in relation to contributions. It means "in any manner whatsoever, soliciting, accepting, collecting or obtaining contributions *from the public* or attempting to collect".

However, any contributions solicited, accepted or obtained from any person or organization outside the Republic are *deemed* to have been collected from the public in the Republic.

The definition of "contributions" is convoluted. In short, the definition of "contributions" can, for all practical purposes, be said to mean the transferring of goods and money except where there is a legally enforceable obligation (excluding gifts and donations) without a right to claim a consideration by the mere transfer. This excludes the consideration relating to competitions, contests, games and the like where a prize can be won.

Section 33 exempts the collection of contributions which are:

(a) collected in terms of any other law;

(b) collected by or for or on behalf of an institution managed or maintained exclusively by the State or a local authority or a hospital board established by or under any law;

(c) collected from any person by virtue of his membership of the organization collecting the contributions;

(d) collected by or on behalf of a religious body during a religious service or in terms of the written authority of such body and exclusively for the purpose of promoting the religious work of such body;

(e) collected for or on behalf of any educational institution from a former student or scholar of such institution or from the parent, guardian or foster parent of a person who is or was a student or scholar of such institution;

(f) collected for or on behalf of a political party;

(g) collected under the supervision and control of the council of a university in the Republic or of a college of advanced technical education, and for the purposes of the development of such university or college;

(h) collected for or on behalf of or by an organization designated by the Minister for the purposes of this Section.

Any individual or organization which seeks to collect contributions from the public will have to be authorised by the Director of Fund-Raising and, if this is to be other than on an occasional basis, the organization will have to be registered under the Fund-Raising Act.

The term "organization" is extremely widely defined as including any body, group or association of persons, any institution, federation, society, movement, trust or fund, incorporated or unincorporated, and whether or not it has been established or registered in accordance with any law.

The Director of Fund-Raising is appointed by the Minister and will exercise the powers and perform the functions which are conferred on him in terms of the Act. However, in addition to these powers, he is given wide authority to take such steps as he may deem necessary or desirable to regulate or to coordinate the collection of contributions.

In giving his written authority to an organization to collect contributions, he may prescribe conditions, including the area within which the collections may be collected and the purpose of such collection. There is no reason why these conditions should not include a prohibition on collecting from abroad or from any particular donor.

The Act provides for the registration of branches and for the withdrawal of the registration of branches, and any person who collects contributions on behalf of an organization or branch must have written permission from the organization and this must be in the possession of such collector. However, excluded from the provisions requiring written permission, are bazaars, sales, exhibitions and the like which are under the direct control of a person who has permission from the organization. Excluded, also, are street collections which are conducted in accordance with the bye-laws of any local authority.

The Director has wide powers to amend authorities, to replace or withdraw them. There is a right of appeal against the decisions of the Director (but not to the Courts) but this right of appeal does not apply to the original conditions under which he has given authority.

The Act requires the organizations or their branches to keep records of all money received and spent and they must furnish the Director with financial reports and returns. In addition, the Director has wide powers of search and seizure. He may at any time, with the approval of the Minister, cause the affairs of an organization to be inspected and may further cause to be inspected the affairs of any other organization or persons connected with the collecting or disbursement of the contributions by or on behalf of the first-mentioned organization. There are wide grounds on which an organization may be investigated and these include the situation where the Director is requested by any person and he is satisfied "on the ground or facts" declared under Oath that the inspection of any organization or person who is collecting contributions is necessary or desirable.

The Director or inspector who carries out an inspection may, after obtaining the approval of the Minister but without prior notice, enter any premises of the organization or person and, without a warrant, may search for moneys, records, accounts and documents and may demand the delivery to him of these items. The inspector may seize these documents and may demand explanations of any entry in the records, accounts or documents, and he may interrogate on oath a member of the organization or its management, or an auditor, accountant or representative of the organization. It is an offence not to answer questions or to fail to hand over the records and accounts of an organization and, although an organization has the right during office hours and under the supervision of the Director or an inspector to examine and make entries in, or extracts from, the seized records, this provision if abused can effectively terminate the activities of an organization.

Where a person received any unsolicited contribution from any other person and the receipt of such contribution is in conflict with the provisions of the Act (such as money being received by an unregistered organization), then the recipient must return the contribution and if this is not practicable (as in the case of an anonymous donation), the Minister shall determine the manner in which it is to be used.

Registration certificates already in existence at the date of commencement of the Act – for instance under the old Welfare Act – shall continue for two years.

There are extensive penalties provided for the contravention of the Act. For example, the contravention of Section 2 (which prohibits the collection of contributions without the necessary authority) would result in a fine not exceeding R500,00 or imprisonment not exceeding three years, or both.

Finally, regard should be had to the all-embracing Section 29 which can render all other sections meaningless. This Section provides that if the Minister deems it to be in the public interest he may by notice in the Government Gazette and notwithstanding any other provisions of the Act, prohibit the collection of contributions for any purpose or in any manner or by or on behalf of any organization he may so name. No authority or permission shall be granted and no contributions shall be collected in conflict with such a prohibition.

In the ordinary course of events, most charitable organizations will not be severely affected by this Act, although many of them may well have to tighten up their book-keeping and accounting and records. The activities of professional fund-raisng bodies will be checked, and this is to be welcomed. However, those organizations whose activities do not meet with the approval of the authorities may reasonably expect that they will be kept under close surveillance. Ultimately, those "unpopular" organizations which depend on donations from the public may be forced to close down because of the withdrawal of permission to collect. □

THE BURDEN OF TAX

by Peter Brown

It is a perennial complaint of most white South Africans that they pay for everything – that it is their taxes that pay not only for the white schools and the white hospitals, but for the black schools and the black hospitals, to say nothing of the roads and the railways and everything else that benefits black as much as white.

And of course it's true, white people do pay much more tax than black people. It would be surprising if they didn't. For has not the whole economic system, for generations, from the subtle legislative definitions of who is a "worker" entitled to trade union rights, to the crudities of job reservation, been designed to ensure that they earn more money than their black competitors? White taxpayers pay most of the taxes because they earn more. There is no other reason. But, proportionate to the amount of money they earn, most black taxpayers pay more tax than white taxpayers do. This is a state of affairs most white people don't ever talk about.

The extent to which the taxation system in South Africa is weighted in favour of its white voters is dramatically illustrated in a recent report compiled by the Research Assistant of the Natal Region of the S.A. Institute of Race Relations (Information Sheet 4/78).

The report states:–

TAX LEGISLATION

Whites, Indians and Coloureds are covered by the Income Tax Act No. 58 of 1962, while Africans fall under the Bantu Taxation Act No. 92 of 1969. The salient features of the Bantu Taxation Act are:

1. African taxpayers are not eligible for abatements as afforded to other population groups in respect of children, marriage, medical aid, insurance, old age or dependents. The only deductions allowed are for contributions towards the Unemployment Insurance Fund and compulsory pension or provident funds.

2. An African is taxed on his full income above R360 per annum, whilst the starting point for other groups varies according to eligibility for abatements.

3. Spouses are assessed separately. This separation is envied by non-African taxpayers and although it is one of the few advantages of the African tax structure, up to R750 of the white taxpayers wife's earnings are tax free.

4. Africans are obliged to pay more than one kind of tax, viz. a general tax, a fixed general tax (until recently), a tribal levy and a homeland government tax. During the 1976/77 financial year, 3 259 066 Africans paid R66,7 million in terms of the Bantu Taxation Act[1] (1975/76 – R49,7 million)[2].

(a) General Tax: is collected on a monthly basis, the procedure being basically the same as the PAYE system for non-Africans. However, the percentage rates of tax are lower for blacks and the moneys deducted are remitted to the Bantu Affairs Commissioner.

(b) Fixed General Tax: (Commonly known as Poll Tax/ Head Tax). Prior to April 1978, a fixed general tax of R2,50 per annum was payable by all African males of 18 years and older. Of the R49,7 million collected during 1975/6, R10 million came from this fixed tax.[3]

(c) Tribal Levy: any tribe or community may apply to have this tax imposed. It is intended for the benefit of the community and is subject to approval by the Minister of Plural Relations and Development. Money collected from this tax is kept in trust by Bantu Affairs Commissioners, and is not forwarded to special revenue accounts like the general taxes. Tribal levy is not a permanent arrangement; it usually involves the payment of R1 – R5 for a period of 1–5 years, depending on the nature of the project for which the money is intended.

(c) Homeland Government Tax: In terms of Proclamations of the Bantu Homelands Constitution Act of 1971, citizens are required to make annual payments towards homelands revenue. The KwaZulu tax is R3,00 p.a., which is paid directly to the homeland government by males and females over 18 years of age.

A COMPARISON OF THE TAXATION BURDEN OF TWO SIMILAR SOUTH AFRICAN FAMILIES – ONE BLACK AND ONE WHITE.

The circumstances relating to the two families for the tax year to 28th February 1979 are as follows:

INCOME:

Salary R6,000 p.a.

MARRIED:

Yes – wife occupied full time in the care and feeding of the children.

CHILDREN:

4 – one born during the year, the other three attending school.

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1 Dr. Connie Mulder, Hansard 14, 1978 col. 764.
2 SAIRR: A Survey of Race Relations in South Africa, 1977, p. 309.
3 Ibid

DEPENDANTS:

An aged mother, incapacitated by old age, on whose maintenance at least R250 has been expended during the year.

MEDICAL AND INSURANCE:

Medical aid fund contributions and/or medical expenses R200 for the year.

Life cover on each man – premium R200 p.a.

RESIDENCE:

Black family – Chesterville, Natal.
White family – Glenwood, Durban, Natal.

TAX YEAR ENDING 28th FEBRUARY, 1979

CASE 1.

	Black Family	White Family
Taxable Income – Salary	R6 000	R6 000
Less Abatements:	NIL[4]	4 050
Primary		1 200
Children		
2 x R500		1 000
2 x R600		1 200
Additional – for child born during the year		200
Dependant		400
Less: R2,00 for every R10 by which taxable income exceeds R5 000 (6 000 – 5 000 = 1 000 ÷ 10 x 2)		(200)
Taxable amount	R6 000	R1 950
Tax Payable	R397	R185[5]

In this particular case, it is clear that the non-availability of abatements for the black taxpayer has given rise to a tax burden which is more than double that of the equivalent white taxpayer.

Using the same families as examples, it is now intended to draw a comparison of the taxation burden at successively lower levels of income.

CASE 2.

	Black Family	White Family
Taxable income	4 500	4 500
Less: abatements (as per case 1.)	NIL	4 250[6]
Taxable amount	4 500	250
Tax payable	R219	R23[7]

4 In terms of the Bantu Taxation Act (1969) no abatements are available to Africans.

5 The 10% surcharge has been abolished for the 1979 tax year, and is therefore not included in this amount. The 10% loan levy has been ignored as this amount is refundable.

CASE 3.

	Black Family	White Family
Taxable income	2 500	2 500
Less: abatements	NIL	4 250
Taxable amount	2 500	NIL
Tax payable	R55	NIL

CASE 4.

	Black Family	White Family
Taxable income	1 500	1 500
Less: abatements	NIL	4 250
Taxable amount	1 500	NIL
Tax payable	R20	NIL

CASE 5.

Same details as for Case 1. except that with each family the wife has earned R2 000 of the R6 000 income during the year. The essential differences that arise in this case are that, to the African family's advantage, the spouses are assessed separately and to the white family's advantage the wife's earnings are reduced by (up to) R750.

	Black Family		White Family
	Husband	Wife	
Salary – husband	4 000		4 000
wife		2 000	2 000
			6 000
Less wife's earnings allowance (up to R750 of wife's earnings)			(750)
Taxable income	4 000	2 000	5 250
Less abatements	NIL	NIL	4 200
Total (as per case 1.)			4 250
Less R2 for every R10 by which taxable income exceeds R5 000 (5 250 – 5 000 = 250 ÷ 10 x 2			(50)
Taxable amount	4 000	2 000	1 050
	169 + 35		
Tax payable	R204		R95

6 Abatements increase by R200 as the taxable income does not exceed R5,000. (Refer workings in Case 1.)

7 Excluding 10% surcharge, and 10% loan levy. (Refer footnote No. 5).

Apart from the different tax payments shown in the preceding case studies, one further consideration would be the amounts of taxpayers' money that is spent on education. The African families in these particular examples are not only paying more tax than the equivalent white families, but less is being spent on the education of their children.

To illustrate: both families have three schoolgoing children. Average expenditure for 1975–76 was R644,00 p.a. for white school children, and R41,80 for African school children.

Estimated per capita expenditure on school pupils:

3 White school children	3 x R644,00 =	R1 932,00
3 African school children	3 x R 41,80 =	R 125,40
		R1 806,60

Excess expenditure on education of 3 white school children over 3 African school children therefore amounts to R1 806,60.

The example of expenditure on school pupils does not purport to represent the entire spectrum of "who gets what" for their taxes. It is used simply to illustrate a further instance of discriminatory practice over and above the tax burden.

INCOME TAX: COMPARISON BETWEEN TAX PAYABLE BY AFRICANS AND NON-AFRICANS IN SOUTH AFRICA FOR THE TAX YEAR ENDING FEBRUARY 1979

Male	Income per Annum	Unmarried	Married No Children	One Child	Two Children	Three Children	Four Children
Non-African	1500	96	27	Nil	Nil	Nil	Nil
African		20	20	20	20	20	20
Non-African	1750	126	49	4	Nil	Nil	Nil
African		25	25	25	25	25	25
Non-African	2000	171	72	27	Nil	Nil	Nil
African		34	34	34	34	34	34
Non-African	2250	204	95	49	4	Nil	Nil
African		45	45	45	45	45	45
Non-African	2500	237	120	72	27	Nil	Nil
African		55	55	55	55	55	55
Non-African	2750	270	145	95	49	Nil	Nil
African		64	64	64	64	64	64
Non-African	3000	306	187	120	72	18	Nil
African		85	85	85	85	85	85
Non-African	4000	453	297	242	187	110	54
African		168	168	168	168	168	168
Non-African	5000	617	415	355	297	231	165
African		271	271	271	271	271	271
Non-African	6000	858	572	506	440	367	297
African		397	397	397	397	397	397
Non-African	7000	1145	761	679	602	519	440
African		538	538	538	538	538	538
Non-African	8000	1478	981	884	796	695	602
African		699	699	699	699	699	699
Non-African	9000	1815	1232	1122	1020	902	796
African		888	888	888	888	888	888
Non-African	10000	2145	1513	1392	1276	1144	1020
African		1107	1107	1107	1107	1107	1107
Non-African	11000	2497	1826	1694	1562	1416	1276
African		1346	1346	1346	1346	1346	1346

On this Income Tax table the blocks to the right of the heavy line indicate where black taxpayers pay more **income** tax than white taxpayers. As will be seen it is the poorest people with the largest families – in fact most black taxpayers. But the position is worse than that. The table shows that a black family with three or four children, with an income of R6000,00 per annum, pays more income tax than its white counterpart. But the example of such a family given earlier shows that the difference is much greater even than this table indicates.

What greater indictment of the abuse of the white monopoly of political power could one have than the one the figures in this report present?

It is something, I suppose, that now, nearly 70 years after the establishment of the Union of South Africa, the Department of Finance has at last indicated that it is investigating the introduction of a single integrated income tax system for all South Africans. But even if Africans are integrated into a non-discriminatory income tax system they will still be liable to pay other taxes which other groups don't pay. Nor is there any prospect of the gross discrepancy between what is paid on their social facilities and what is paid on white social facilities being eliminated soon. That will only happen when black people have an effective political voice at the centre of power. □

QUISLINGS OR REALISTS

Pierre Hugo : Quislings or Realists? Ravan Press 1978
pp.xxiii, 744

by M. G. Whisson

Pierre Hugo has compiled, rather than written or edited, a vast collection of documents pertaining to the political position and future of the people classified "coloured" in South Africa. His brief introduction sets the scene. There he suggests that there are three main streams of thought and action detectable among those who are "discriminated against in a particular way" (as Dick v.d. Ross defined them). The Federal Party, now the Freedom Party, represents those who are prepared to use the government's means to achieve the Party's goal of full citizenship for "coloured" people. The Labour Party represents those who seek full citizenship for all "non-white" people and who are prepared to use the government's machinery only tactically and on their own terms. A substantial but largely unorganised group rejects the use of all "puppet" institutions and boycotts, as far as possible, all segregated organizations.

Andre Müller, in a discussion of "minority goals, problems and theories" first presents an apparently rational explanation for the relative deprivation of the "coloured minority group" in terms of demographic and self-perpetuating bio-cultural factors. This, he concedes, has been exacerbated by the systematic policies and prejudices of the parties and ethnic groups in power and can only be eliminated by a reversal of those policies. He argues that the costs of granting full citizenship to the "coloured" people, including equal facilities and financial allocations for services, would be minimal in the long run as they would be offset by economic expansion, a reduction in the defence budget and increased productivity.

He cuts the "coloured" political cake differently from the more empirical Hugo, dividing the responses to minority status into four – pluralistic, assimilationist, secessionist and militant. The **pluralists** want full citizenship rights, but also some encouragement or tolerance of cultural differences. The **assimilationists** want full citizenship and are sanguine about the homogenising process in a cultural "melting pot". The **secessionists** want their own territory and political autonomy. The **militants** seek to control the society as a whole on their own terms, but their approach may also be seen as a tactic to achieve other goals. Müller argues that the majority of "coloured" people are assimilationist, a few sub-groups pluralist, a negligible minority secessionist and a growing number militant as they experience the failure of gradualist politics.

After a brief descriptive chapter on the history of the franchise, four substantial "chapters" of documents form the main part of the book. The first (Chap. 3) presents the government's view, mainly as expounded by the minister opening the annual session of a coloured council. It culminates in the "new political dispensation" whereby the National Party proposes to entrench its rule by eliminating all possibility of an effective poly-ethnic alliance in opposition to the majority white party.

Chapter 4 is devoted to the Labour Party and is, as befits the body which has demonstrated the greatest amount of popular "coloured" support, the longest in the book. Addresses given at Labour Party conferences, by leaders of the party and by sympathetic non-members such as Chief Buthelezi and Edgar Brookes, take up most of the space. In many ways this is the most interesting material since the Labour Party is made up of a curious alliance of idealistic liberals and pragmatists, some of whom take a politically expedient view in the short term (so seek to conform to the feelings of their electorate) while others take a longer view and seek a common platform with assimilationists from the "black" and "white" groups. As has been demonstrated by the divisions and reunions within the ranks of the party in the C.P.R.C. the alliance is fraglle and the leader by no means assured of the loyalty of the rank and file. In this is resembles the British party of the same name, which is likewise an alliance of ideologues, pragmatists and special interest groups, whose leader, like the priest of Neni, is a king by day but must prowl his domain with drawn sword against the threat of assassins by night. It is easy to deride the Labour Party for lack of principle, lack of sound political theory, "selling out", ineffectiveness and confusion, and this is done through the words of the **Educational Journal** in Chap. 6. But when all that is said and done, the Labour Party has provided a means for the people to demonstrate convincingly their attitude to the policies of the government, it has given opportunity for unfranchised people to learn the practical arts of politics and it has done much to politicise the mass of "coloured" people.

If the Labour Party has tacked to catch each new breath of political wind, then the Federal (now Freedom) Party has shown a more constant drift towards populist politics. Initially a creature of the government – what the **Educational Journal** might have called a withered brown figleaf to cover naked political exploitation – the Party laid great emphasis on "coloured identity" and the opportunities created by apartheid for "coloured" people to run their own affairs. With the death of its leader and founder, Tom Swartz, and the withdrawal of much of the support which it gained through government nominees

to the C.P.R.C., the party has changed its name and attempted to change its image. It remains committed to working within the framework provided by the government but is much more aggressive in its criticism of economic injustice, inequality of facilities and petty apartheid. In his appeals for "coloured unity" and in his addresses to the annual conference of his party, Dr. Bergins seems to sense a new vulnerability in the government, a growing realisation that if it does not negotiate with him and his party and make concessions to strengthen his appeal to his electorate, then all hope of "coloured" support for the "new political dispensation" is lost. Thus strengthened, paradoxically, by the success of his opponents in the C.P.R.C., he feels able to demand concessions rather than accept them gratefully.

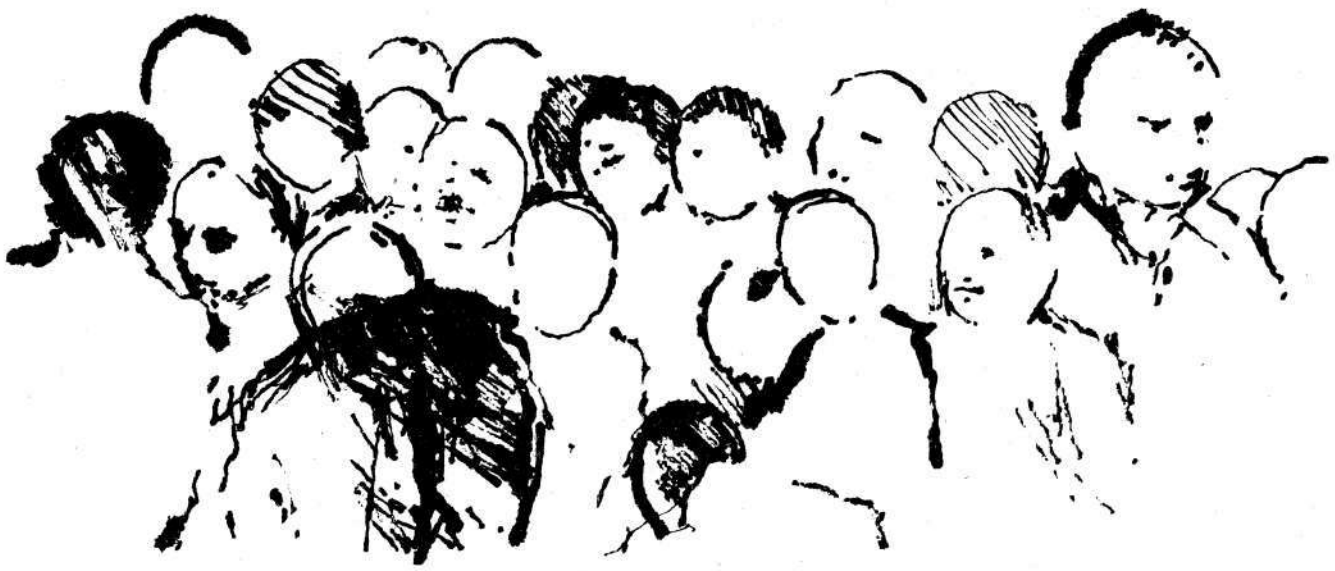
For the non-brown reader, Chapter 6, made up wholly of extracts from the **Educational Journal,** will come as a revelation. The journal, of the Teachers' League of South Africa, has a small circulation and is rarely cited in the national or regional press. Its philosophy however has penetrated deep into the English-speaking people in the "coloured" community in Cape Town through the medium of the school teachers. Evidence for its strength is suggested by the fact that in C.P.R.C. elections, the lowest percentage polls were recorded in the areas where the T.L.S.A. is most strongly supported – the constituencies of the Cape Peninsula. The philosophy is simple, and the actions which follow from it predictable. South Africa is engaged in a class struggle between the manipulators of capital and the providers of labour. The liberal free-traders and national socialists, the promoters of apartheid and black consciousness are all witting or unwitting tools of the exploiting class and the victims of false consciousness. Only through educating the masses in the true nature of the struggle will a transformation take place and South Africa become a free and just society. The vision is millenarian, the method appropriately optimistic. The doctrine is to be taught wherever possible and the faithful bound to boycott any activity which is tainted by institutionalised racism. If at times the people are compelled to conform, as in attendance at schools or residence in Group Areas, then they must be taught what is being done to them. If at times the leaders demand that the people boycott entertainment for which "open permits" exist, this is seen as a stand on principle, education through suffering, and probably a protection from "herren volk" propaganda disguised as art or culture. The **Educational Journal,** as the extracts show, indulges in vigorous **ad hominem** argument against the "brown leaders" whose names appear in the national and regional press, and provides its dedicated readers with a clear philosophy, an unambiguous guide for action (or boycott) and a constant stream of **bon mots.**

The balance of the book is made up of 122 pages of articles and leaders from the "white press", and about the same amount of space devoted to ten other annexures on aspects of "coloured" politics outside the strict framework of the four main chapters of documents.

Very little in the way of analysis is offered in either Hugo's chapters or in Müller's. No indication is given that the writers have done any first-hand research, and beyond the voting figures in the elections no suggestion as to the relative strengths of the various viewpoints. We are not told why there are such fundamental divisions of political opinion, nor whether the voters are interested in the nuances indicated in the documents. The evidence is allowed to speak for itself, but the evidence is of but one kind – the word written or spoken in public political debate – and that, as readers of Richard Crossman's diaries or any other political biography will know, represents a very specific form of communication. Given these limitations however, the book is a most valuable compendium of information on a topic which has captured much recent public interest and which is an important test of National Party intentions for our future.

One is tempted to cry "so what" at the end of it all for, as Hugo so rightly puts it "Although this book concentrates on the period after 1960, a study of the preceding period in Coloured politics leaves one with an acute sense of **dèja vu"** (p. 6). The political rituals repeat themselves in each generation as the political structure reproduces itself. There are changes, a little give here, a little take there, but the real issue is missing from the debate.

Like Tweedledum and Tweedledee, the non-blacks are battling over the use of their rattle – but the crow is coming closer, and is going to need an enormous amount of convincing that either hero is a crow in disguise, or that his crow-like qualities are a manifestation of false consciousness. □



AN ANALYSIS OF THE CRISIS FACING US ALL

by Adv. B. O'Linn
Secretary General Namibia National Front (NNF)

(This is the title of a pamphlet, circulated by the Secretary General of the Namibia National Front shortly before the recent visit of the Western foreign ministers to South Africa, from which the following extracts are taken. It presents a background to the situation in Namibia quite different to the official version being disseminated by the South African Government and its Namibian supporters at that time. This "official" view is the one most White South Africans accept – some because they like it, others because it is the only one they have heard. The facts and views presented in these extracts will, we hope, help them to understand why the NNF and other organisations felt the only proper response to South African sponsored elections was to boycott them – Editor.)

The following observations can be made after a fact finding mission to the recent session of the Security Council and discussions with foreign ministers of Western governments and with other interested parties.

The governments of the world are united behind the Western proposals and the Waldheim report as the only way to achieve a peaceful internationally recognized solution of the Namibian problem.

The explanation by Dr. Waldheim on objections and reservations raised by South Africa, SWAPO and other interested parties is part and parcel of the Security Council resolution which was accepted by 12 votes to *nil*.

The aforesaid explanation clarified certain ambiguities and made the whole report more reasonable and conciliatory.

The following points were made by Dr. Waldheim:

(a) The number of 7500 troops suggested for the military wing is the **maximum** suggested estimate and efforts will be made to keep the number as low as possible and to bring in these troops only in stages.

Consultation with interested parties, including South Africa as to the composition of the force is conceded to be necessary and in terms of the Western proposals. Such consultations **will** take place.

Consultation however does not mean a **veto** power by South Africa. It must also be noted that the representatives of the D.T.A. submitted a written memorandum to the United Nations in which they did not in the least criticise the proposed number of 7500 troops.

(b) The **350 civilian policemen** will only have the rôle of monitoring i.e. observing the activities of the S.A. police.

The South African police would in fact be **primarily** responsible for law and order.

(c) Elections in terms of the Western proposals can take place by **April 1979**, provided no further delays are caused by South Africa.

South Africa's claim that the Waldheim report is not in accordance with the Western proposals previously accepted by all interested parties, is universally rejected as totally without substance and a mere pretence to justify South Africa's repudiation of the agreement on the Western proposals. The NNF fully subscribe to this view.

The main objections raised by South Africa are the following:

(a) **The number of troops required for the military wing and the alleged lack of consultation.**
In the final written Western proposal accepted by all concerned no number is specified but the mechanism required for determining the number and composition is specified and agreed upon. It reads as follows:
"In establishing the military wing of UNTAG, the Secretary General will keep in mind functional and logistic requirements. The five governments will support the Secr. Gen's judgment in his discharge of this responsibility. The Secretary General will in the **normal manner** include in his **consultations** all those concerned with the **implementation of the agreement.**"

These provisions are clear.

South Africa's only legitimate complaint could be the lack of proper consultation if that is the case. Even if the Secr. General failed to comply with this requirement before publishing his report, adequate consultation has taken place since and before the formal decision by the Security Council endorsing his recommendations. Even now further consultation as to the number and composition is offered and open to South Africa.

(b) **The objection that the date of independence will be later than 31st December as stipulated in the Western proposals.**
It must be clear to everybody by now that independence cannot be attained by 31st December 1978.
Even Mr Vorster said in answer to a question at the Press conference where he announced South Africa's rejection that the date will still be decided by the people of Namibia.
In any case the date stipulated in the Western proposals read in context was only a target date which depended upon the date of final acceptance by all concerned including SWAPO and the United Nations Organisation.
Furthermore a period of 7 months was stipulated in the Western proposals as being required as from the date of endorsement by the Security Council for the transition period to independence during which the conditions for fair elections under U.N.O. supervision had to be achieved.

Simple arithmetic therefore leads to the logical conclusion that elections in terms of the Western proposal can only take place in April/May 1979.

(c) **The objection that the suggested 360 police officers is a new element.**
The Western plan accepted by S.A. stipulated inter alia;
"The Special Representative (of the Secr General) shall make arrangements when appropriate for United Nations personnel to accompany the police forces in the discharge of their duties."

The Secr. General has explained in his final submission to the Security Council that this civilian police element will have no executive powers but will only monitor or observe the S.A. police and that the S.A. police would be primarily responsible for law and order as stipulated in the Western proposals accepted by S.A.

Is it not obvious to any reasonable person that experienced police officers would be the only people equipped for the agreed task of observing and/or monitoring the S.A. police?
Or would S.A. and the D.T.A. suggest that the Special Representative should use soldiers?

It is also our view that the true reason for South Africa's decision is that the D.T.A., the favourite of the South African Government, can only be assured of victory in this type of election at this particular time.

In particular, the statements and comment over radio South Africa and spread by some local news media to the effect that SWAPO had rejected the Western proposals are stated to be mere lies and distortions intended to condition South Africans and Namibians for the repudiation of the agreement by S.A.

From now on the argument that SWAPO "N" is afraid to take part in elections and/or that it is not interested in a peaceful solution will hold no water with the international community.

Both SWAPO "N", SWAPO "D" and the N.N.F. will take part in elections in terms of the Western proposals and Waldheim plan and only such elections will bring international recognition, peace and stability.

In all the circumstances, it is quite clear that nothing positive will be achieved by persisting with elections now planned for **December 1978.** Such elections **will never** be **internationally** recognized.

If the Western governments are unable to prevent it, all the gains for Western diplomacy and influence of recent months, will be reversed with grave consequences for South Africa and Namibia, including for the white section of the population.

The international movement away from recognition of SWAPO as the authentic and only voice of Namibians will break down and be reversed. A SWAPO government in exile may be established and recognized by the United Nations. The support for the violent struggle will grow and violence will escalate dramatically.

Centrist and moderate political movements will lose influence whilst polarisation will take place between radical left and right.

Confrontation between black and white will be revived and will grow.

The unilateral election now envisaged by South Africa will not contain **essentials for fair elections agreed to when both South Africa and SWAPO agreed to the Western proposals** and thus the true will of the people and the true representatives cannot be established by these elections and will not ever be recognized.

Some of these essentials for fair elections contained in the Western plan are inter alia:—

1. **Every** adult Namibian will be eligible without discrimination to **vote,** to **campaign** and to stand for election."

   The **thousands** of political prisoners, detainees, political exiles will now not have the right and/or the means and/or the opportunity to vote, to campaign and to stand for election.

2. "The **Adm. General,** prior to the beginning of the electoral campaign, will repeal **all** remaining discriminatory and restrictive laws, regulations or administrative measures, which might abridge or inhibit that objective."

   This has not and will not be done by the A.G.

   Radio South Africa with or without its local Board, is still the main communications media in Namibia and the epitome of discrimination, biased reporting and indoctrination. It combines well **with** the **monopoly** of the Turnhalle-orientated groups over the local press. Some of this monopoly, e.g. the buying of the Windhoek Advertiser and Allgemeine Zeitung was achieved by foreign money in the hands of foreigners. In addition these D.T.A. mouthpieces even had to import foreign editors to do the job. School halls, town halls and accommodation in hotels and in towns are still in most cases closed to people on basis of race. Those who have no expensive circus tents available, will be at a disadvantage because halls are not made available for multi-racial political meetings.

   "The central task will be to make sure that conditions are established which will allow **free and fair elections** and an **impartial** electoral process."

   There is **no safety and security** in large parts of the country which makes campaigning difficult if not impossible. **This can only be secured by a ceasefire in terms of the Western proposals.**

   The international presence to balance the S.A. army, police and other institutions and to create an atmosphere of confidence freedom and impartiality is and will be absent.

   Can anyone really expect SWAPO to participate in elections supervised by S.A.?

4. "The key to an internationally accepted transition to independence is free elections for the whole of Namibia with an appropriate United Nations rôle in accordance with resolution 385."

   It is obvious that also this essential of the agreed Weatern proposals will be unattainable should S.A. persist with its unilateral action.

   To contend therefore that S.A. still stands by the Western proposals and is acting in the letter and spirit thereof, is an insult to intelligence.

   Even if **80%** of the population vote in this election, it will be of little consequence. In many communist and African states, polls of **90 or even 99%** are attained but that does not necessarily mean that it is credible.

   The whole governmental machine and institutions and all those aligned with it, are known to the world at large and will not deceive Western governments.

   The fact must be faced that there is no alternative to internationally supervised elections. The minimum now required to avoid drastic action and disastrous consequences is to stop all further unilateral steps, to call off the contemplated elections and to proceed in terms of the Western proposals and the Waldheim report endorsed by the Security Council. U.D.I. will go the same way as in Rhodesia. The longer we delay, the more unpleasant and radical the terms will become. □

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