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The regulations dealing with the state of emergency which led to the arrest and detention of upwards of 1800 South African citizens, both white and non-white are contained in a series of proclamations issued by his Excellency the Governor-General of the Union of South Africa, Charles Roberts Swarts, former minister of Justice and countersigned by the present minister of Justice F.C. Erasmus, former minister of Defence.

The proclamations are framed in terms of Public Safety Act No 3 of 1953 which was passed in that year to deal with the Campaign of Defence of Unjust Laws launched by the African National Congress and the South African Indian Congress on June 26, 1952. That law made provision for the declaration of a state of emergency in certain circumstances either in the Union as a whole or in certain specified areas, for the suspension of the ordinary law of the country in the areas specified and for the adoption of measures by regulation to ensure the safety of the public, to maintain the public order and to end the state of emergency.

Whether or not circumstances have arisen which justify the declaration of a state of emergency is entirely in the discretion of the Governor-General, acting, of course, by and with the advice of the Cabinet. Thus the state of emergency was declared in proclamation 90 dated 30th March, 1960 which reads as follows:

"Whereas in my opinion it appears that circumstances have arisen in the areas specified in the attached schedule which seriously threaten the safety of the public and maintenance of public order and the ordinary law of the land is inadequate to enable the government to ensure the safety of the public and to maintain the public order

Now therefore, acting under the powers vested to me by section two of the Public Safety Act, 1953 ( Act No 3 of 1953) I hereby declare that a state of emergency exists within the areas specified in the attached schedule as from the 27th March 1960".



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The schedule attached to this proclamation named 85 districts of the Union as areas in which the threatening circumstances had arisen. A later proclamation, No 92 dated 1st April 1960 added a further 31 districts to the scheduled areas, and a later proclamation No 123, dated 11th April, 1960 added 8 more districts, making a total of 124 districts in which the Union Government admittedly or presumably could not maintain law and order by the ordinary law of the land. This is of course patently absurd because if law order had in fact broken down in such a large part of the Union, that would have been indicated the existence of a revolutionary state of affairs in the country. No serious observer of affairs even in a prejudice-ridden South Africa cried, with objective facts, substantiate the existence of such a serious state of affairs except in a few areas of the Union. In the vast ~~areas~~ majority of the areas specified there were no branches or even individual members of the African National Congress the premier political recognition of the African people to say nothing of branches or members of any of the other organisations such as the South African Indian Congress the Congress of Democrats or the Liberal Party some of whose members were also among the 1800 detainees referred to the above. It seems that the object of including so many districts in the scheduled areas was to make the net as wide as possible so as to make it possible for the Government to detain any person in any of these areas known or suspected to be opposed to any of the policies or schemes of the Government. There had of course been serious disturbances in a few areas of the Union. There had been a "riot at Sharpville in the Transvaal in which there had been a clash between the African people & the police in which over 60 people lost their lives. A similar state of affairs had arisen at Langa and Nyanga which are both African townships within the area of jurisdiction of the city of Cape Town. Fortunately with less loss of life there had subsequently been widespread indignation among the African people over this loss of life and a call by the African National Congress for observance of Monday 28th March as a Day of Mourning for those who had lost their lives in these disturbances. This Day of Mourning was observed only



in a few of the larger cities of the Union such as the Witwatersrand, the Western Cape around Cape Town, in Port Elizabeth, East London and Durban. Clashes had occurred in the Monday evening, 28th between those who had observed the Day of Mourning and had consequently stayed at home and those who had not observed it and had gone to work as usual. But to suggest that these incidents amounted to circumstances which threatened the Safety of the Public or the maintenance of law and order in over a hundred districts in the country cried only to a power-stricken government conscious of the fact it had lost the confidence of the vast majority of the people it was called upon to govern, what occurred in the areas referred to above obviously did not mean that circumstances calling for the declaration of a state of emergency existed in Tsomo or Matatiele or Victoria East. The state of emergency was declared in those districts not because of any threatening circumstances that had arisen there, but because not individuals against whom the Government wished to take action because of their Union opposition to the policies of the Government resided there, namely in Tsomo Greenwooda Nqotyana an African banned from Cape Town for his political activities in Cape Town, in Matatiele or James L. Njongwe, the man who acted for me as President of the A.N.C. (Cape) during my absence in America in 1952-53 and was such a successful leader of the Defence campaign against Unjust Laws that he had been banned and ordered to resign from the A.N.C. in terms of the Suppression of Communism Act. he was then a medical practitioner in Port Elizabeth but had since returned to his home in the Transkei started practise in Matatiele. There can be no doubt that if he had not been practising in Matatiele, that district would not have been included in the areas scheduled under the Emergency Proclamation. Similarly Victoria East was scheduled simply because Professor Matthews who is persona non grata with the Nationalist Government supposed to be residing there. And no one could point district after district which has been included in the schedule simply the Government wished to get at one or other of its opponents. It was a long time before the Government made public the list of names of people detained in various areas, because under the emergency Regulations it was made an offence to any one to publish the name of any detainee before the



Minister of Justice had done so, but people with a fair knowledge of political affairs in the country could guess fairly easily who were among the detainees in various areas because of their knowledge of the persons opposed to the policies of the Government in the areas concerned.

The Proclamation declaring of the state of emergency was published on March 30th 1960. By the early hours of that morning, beginning from as early as 1 a.m. hundreds of South African citizens of all races had already been visited by members of the South African Police and taken into custody. The majority of them assumed that these arrests were in order, but a few in some centres decided to make an urgent applications to the divisions of the Supreme Court exercising jurisdiction in their areas. In these areas mainly Johannesburg and Durban, the existence of the state of emergency was questioned before the Supreme Court, and the prosecutors concerned were not able to produce any statutory authority for the arrest and detention of the persons concerned. In some cases it appeared that the state of emergency did not cover the areas where certain individuals were arrested and detained. The result was that these applications were successful and the persons concerned were released until the prosecution should be in a position to produce statutory authority for the arrests. When the main Gazette containing the emergency proclamation did arrive in the areas concerned the persons who had been released were re-arrested a number of them had made use of their temporal release to flee from the country, so that by the time when the police arrived with proper authority turned up at their residence they were nowhere to be found. It later transpired that they had made for the nearest British Protectorate- Basutoland, Swaziland or Bechuanaland Protectorate, as the case might be and had sought refuge there from the clutches of the South African Law.

It transpired that although the emergency proclamation was promulgated on March 30, 1960, it was made operative retrospectively as from March 29, 1960, this to obviate the possibility of any person who had been arrested before March 30 by some zealous policeman taking action against the Government for wrongful arrest



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It was of course anticipated that the Government aimed at a later stage pass an indemnity act or proclamation to legalise any illegalities which might have been committed by itself or by any of its representatives or any of its servants during the state of emergency. The proclamation declaring the state of emergency, No (90 of March 30, 1960) was followed by another, Proclamation 91 of the same date framed in terms of section three of Public Safety Act setting fourth the regulations by which the state of emergency was to be governed. These regulations as originally published were 26 in number and made provision for the following matters

- (I) Prohibition of certain gatherings or processions (Reg. 2)
- (II) The dispersal of gatherings & processions (Reg. 3.)
- (III) The Arrest and Detention of persons (Reg 4 & 4 bis )
- (IV) The Dissenutation of subversive statements (Reg 5)
- (V) Threats of Harm, Hunt or Loss (Reg 6)
- (VI) Seizure of Books or Documents (Reg 7)
- VII) Search for , seizure & confiscation of publications of a subversive character (Reg. 8 & 9)
- (VIII) Investigation concerning suspected associations (Reg. II)
- (IX) Suppression or Banning of Subversive Associations (Reg I 2 & I 3)
- (X) Interference with lawful gatherings (Reg I 4)
- (XI) Defacement of Documents issued by authority (Reg I 5)
- (XII) The seizure of arms (Reg I 6)
- (XIII) The right of search of premises or vehicles or any receptical whatsoever (Reg I 7)
- (XIV) The Examination of bBooks (Reg I 8)
- (XV) Measures to trace & arrest offenders (Reg I 9 & 20)
- (XVI) The issuing of orders under the regulations by the Commissioner of the South African Police (Reg 2 I & 22)
- (XVII) Offences & Penalties under the regulations (Reg 3 23 & 25)

A significant feature about the regulations is the number of instances in which everyone charged under the regulations will be presumed guilty until the contrary is proved, thus relieving the Crown of the necessity of discharging normally placed upon it to prove its case against the accused (see Reg 2 (3), 24(2), 24(4), 4 bis, 3(a- & (b).)



Another feature is that the detainees are dealt with under two regulations, namely (I) Regulation 4 of the original emergency regulations, Proc. (90 of March 30 1960 which authorised the minister or a magistrate or a commissioned officer to "cause to be arrested or detained or himself to arrest either or without a warrant or the order of arrest or detention any person whose arrest & detention is in the opinion of the said minister or magistrate or commissioned officer desirable in the interest of the public order or safety of that person or for termination of state of emergency". (I have underlined of that person" because I think it intriguing to consider that the same persons have been arrested or detained because the minister is of the opinion that such sections in the arrests of such persons). Such detainees may be detained for such a period as the minister may determine & may be released either unconditionally or upon such conditions the minister may think fit to impose.

Having been determined under regulation 4, the detainees may be further dealt with under regulation 4 bis which was inserted after Regulation 4 by Proclamation I39 dated 28th April, 1960. The heading of regulation 4 bis is "Further Action in connection with certain detainees". The detainees dealt with under this regulation fall into three categories namely those who, at the time of their arrest

- (a) were not in possession of a reference book issued to them in terms of the natives (Abolition of Passes & Co-ordination of Documents Act 67 of 1952 i.e. those who had either burnt or thrown away their reference books presumably as a result of the campaign against the Pass laws launched on March 21, 1960.
- (b) were in an urban area or a proclaimed area in which they were not entitled by law to . The Natives (Urban Areas) Consolidation Act 25 of 1945) defies the circumstances in which Africans are entitled to be within an urban or a proclaimed area.
- (c) were in an urban area or proclaimed area had no fixed place of employment and no sufficient honest means of livelihood."



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It is clear that this provision only applied to African detainees as the legal provisions creating these categories of persons do not apply to non-Africans

Under Regulation 4 bis the Africans falling into these three categories were to be brought before a magistrate for examination and if the magistrate is satisfied that the individual concerned fell into one or other of these categories, he must give directions that the persons concerned be sent to an institution designated by the commissioner of prisons to be detained therein "until such time as this regulation lapses or the minister orders he be released". Such persons in other words are to be removed from the list of ordinary detainees detained under regulation 4 and to be committed to prison, and while there to be treated as if they were "undergoing a sentence of imprisonment imposed upon him under any law". This means that persons falling within these three categories, without trial but merely upon examination by a magistrate cried and were committed to prison for an indefinite period. They were of course given right to appeal against the finding of the magistrate to a board consisting of not more than three persons appointed by the minister, and the decision of such a board such be final 4 bis (6) ). Nothing hasx is said about the legal or other qualifications of the members of this board against whose decisions there is no right of recourse to the ordinary courts of the country, although the magistrate holding these examinations is given wide powers to summon witnesses, to order the production of books, documents or other objects and to impose penalties varying from £100 fine or six months to £200 fine or twelve months or both such fine & such imprisonment. The regulations were of course not all directed against the detainees. Some were directed against persons generally or against certain types or gatherings or organisations or publications.

Thus one section (reg.5) made it an offence for any person to utter or disseminate a subversive statement. A subversive statement was defined in the regulations (reg.1) as any statement calculated or likely & have the effect (a) of subverting the authority of the Government or the legislation or (b) of inciting the public or any



section of the public or any person or class of persons to resist or oppose the Government or any minister of state or Administrator or official or member of the forces, in connection with any measure adopted in pursuance of any of these regulations or in connection with any other measure relating to the safety of the public or the maintenance of public order or the application of the law.

(c) of engendering in aggravating feelings of hostility in the public or any section of the public or any person or any class of persons towards any section of the public or person or class of persons

(d) of causing panic or fear among the public or any section of the public or weakening the confidence of the public or any section of the public in the successful termination of the state of emergency unless the statement is proved to be true and a complete narrative.

This means that not only detainees but all persons included in that category the Press had to be careful what they said or wrote In fear of being charged with having made a "subversive statement".

Another section (reg2) empowered a magistrate or a commissioned officer to prohibit gatherings or processions of more than a determined number of persons. The only gathering exempted from this section included.

(I) gathering held exclusively in the purposes of divine ~~sarva~~ purposes in a building used for such a worship or for the purpose of instruction under any law.

(II) a gathering or procession held exclusively in connection with funeral or the cremation of the body of a deceased person who had died from causes other than violence committed during a state of emergency.

(III) a meeting of the members of a statutory body of persons, held exclusively for the purpose transacting any business of that body.

(IV) a meeting of members of an industrial council Employer's Organisations or Trade Unions registered under the Industrial Conciliation Act 28 of 1956 in accordance with its constitution and held exclusively for the ~~person~~ purpose of transacting the lawful business of the said council, organisations or Unions.

(V) a gathering held exclusively for the purpose of a wedding

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(VI) a gathering held exclusively for the purpose of Theoretical or cinematographic entertainment.

(VII) a gathering or procession of a nature or for a purpose specified in the notice.

If such prohibited gatherings or processions are in fact held they can be dispersed by force if necessary, provided the degrees of force used shall as far as possible be limited to the achievement of the objects for which it is applied and provided further that previous or other weapons likely to cause bodily harm shall not be used unless on the opinion of the officer concerned or directing operations such is essential in the public interest or for the protection of life or property (reg 3 )

Provision is also made in the regulations (reg II & 12 ) for the investigation of the activities of what are described as "suspected associations" and if the minister so determined for such associations to be directed to discontinue their activities.. This was of course aimed at organisations such as the A.N.C. in its fight for the rights of the African people. In order to prevent organisations which have been directed to discontinue their activities from appearing and functioning under new names. Regulation 24(3) provides that a new organisation shall be regarded as a continuation of the banned organisation if

(I) any of the property ~~and~~ or books of the original association have been taken over by the later association

(II) the majority of the persons who were members of the original association have become members of the later association

(III) the majority of persons who were members of the committee managing ~~the~~ the affairs of the original association have become members of the committee which manages the affairs of the association.

Power was also taken under the regulations (reg.8 & 9 ) to investigate publications "suspected to be of subversive character", and to seize and confiscate such publications and prevent them from appearing under new names. This was obviously directed against publications such as "New Age" & "Africa South or any others which are unduly and critical of Government policy.



Two further proclamations need to be mentioned here. The first is proclamation I27 of 22nd April, 1960 which added one regulation, No 27, to the 26 regulations of the main emergency regulations. This regulation was framed because of a point raised by the Defence Council in the Treason Trial to the effect that it would be difficult if not impossible for the defence witnesses to speak freely during the existence of a state of emergency. When what they said in the court could in terms of the emergency regulations be used against them or other persons. The Special Criminal Court before which this point was raised recognised that this point was not without substance and gave judgement accordingly. Thereafter proclamation I27 promulgated with the object of protecting the witnesses in the Treason Trial but of course the relevant regulation was framed in general terms thus the

following regulation is inserted after regulation 26 27. Notwithstanding the ~~provisions~~ of these regulations, no evidence given by any person after the coming into operation of this regulation in a criminal trial commenced in any court of law prior to the 29th day of March, 1960 (a) shall be used in evidence against him in any criminal prosecution and a charge of contravening any provision of these regulations (b) shall be taken into account by a minister or magistrate or commissioned officer for any of the purposes of the regulations

"The protection afforded by this regulation only applies to the evidence given in cases" which began prior to the declaration of the state of emergency.

(II) which involve a contravention of the emergency regulations or (III) which the minister decides not to take it into account for any of the purposes of the regulations.

The accused in the Treason Trial were not satisfied with the protection which this regulation purported to give them or their witnesses and it was in this reason that the accused decided to withdraw their mandata from the Defence Council as a result the latter withdrew from the Treason Trial and the Accused decided to conduct their own defence.

The misgivings of the accused about this regulation were showed by myself and that was why I declared to give evidence in the Defence in the.....



in the Treason Trial during the existence of the state of emergency

Our fears in this regard were stung thined by proclamation I67 of May I7th, 1960, which added regulations 28, 29 & 30 after regulation 27. Regulation 28 provided that no proceeding, whether civil or criminal shall be brought in any court of law against (I) the Governor-General (II) any member of the Executive Council of the Union (III) a commissioned officer (IV) a magistrate (V) any person employed by the Government of the Union (VI) any person acting under the direction or with the consent of ~~the~~ any of the foregoing persons by reason or any act in good faith advised commanded or done by him in the execution of her powers or the performance of his duties in persuance of the emergency regulations. Untill the country is proved it shall be presumed that the act in question was advised, commanded or done in good faith.

Regulation 29 provides that no person who has been arrested and is being detained under regulation 4 or regulation I9 shall without the consent of the minister or person acting under his authority be allowed to consult with a legal adviser in connection with any matter relating to the arrest and detantion of such person..

This regulation absolves or indemnifies the Government against any illegalities it may have committed during the state of emergency. This seems to nullify any protection which Regulation 27 purportul to afford any body

#### SECOND SPELL AT EAST LONDON

I returned to East London on May I9th, 1960 and it was not long