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MEMORANDUM

from

THE BLACK SASH

to the

COMMISSION OF INQUIRY INTO SECURITY LEGISLATION.

P R E A M B L E.

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Every country requires laws to protect the security of the State and its citizens, but the people of South Africa labour under a heavy and ever-mounting burden of legislation which is designed to protect the security of the State but which severely limits the freedom of the individual and in many ways reduces personal security.

Legislation which provides for punishment without trial in the form of arbitrary banning of individuals and organisations, banishment, house arrest, indefinite detention, restrictive 'naming' without the protection of the Courts and the due processes of law is a serious threat to the liberty of citizens and discriminates against them in favour of the State.

The State is the sum total of the people it represents. It is "the political organisation which is the basis of civil government" (i)

Democracy is defined as "Government by the people ; that form of government in which the sovereign power resides in the people, and is exercised either directly by them or by officers elected by them". (ii)

Therefore security legislation which infringes upon the rights of the people by sacrificing justice for the individual for order for the State is an anachronism.

Security legislation in South Africa creates a dubious security for the State at the expense of its individual citizens. It therefore destroys the principles of the free society it purports to protect. When the Rule of Law is abrogated society becomes increasingly insecure, losing its recognizable moral tenets and subsiding into frightened confusion.

The overt co-operation of dissidents is discouraged. Underground opposition is consequently encouraged. Because violence cannot be openly discussed, and therefore rationally refuted, it wins. Potentially co-operative and often outstanding dissident leaders are destroyed and the way is paved for more radical leaders to take over.

(i) Shorter Oxford English Dictionary.

(ii) Ibid.

For all these reasons/---

For all these reasons Security Legislation in South Africa is largely counter-productive.

SPECIFIC CRITICISMS :

- + Laws such as the General Law Amendment Act of 1963, the Internal Security Act of 1950, the Unlawful Organisations Act of 1960, the Terrorism Act of 1967, the Abuse of Dependence-producing Substances and Rehabilitation Centres Act of 1971 all destroy the right of habeas corpus and the basic concept of Roman Dutch Law, that people are presumed to be innocent until proved guilty in an open court of law, and that any deprivation of liberty will be unjust and unlawful.
- + Definitions in these Laws of such crimes as terrorism, treason, communism are so broad, all-embracing and accordingly unclear that they provide the authorities with almost unlimited arbitrary powers while depriving the people of a sure knowledge of what is permissible and what is not.
- + The result is government by intimidation, for penalties such as indefinite detention are so severe that political action is emasculated and protest and dissent, which are essential elements of the ordinary democratic process, are inhibited by fear.
- + The by-passing of the Courts of Law by Parliamentary legislation breeds a contempt for the Law in both government and the public and makes the State less rather than more secure. True justice cannot be arbitrary and the destruction of the Rule of Law undermines the very structure of a society.
- + Arbitrary indefinite detention, solitary confinement, banning, house arrest, banishment are all inhuman forms of punishment without trial, reflecting ill upon the society in which they are enforced and causing dreadful physical and mental suffering to those who are subjected to them, helpless, rightless and without any redress.
- + The authorities are not/---

- + The authorities are not obliged to give reasons for the infliction of such punishment, which lays the entire system open to gross abuse and leaves the individual totally unprotected.
- + Brutality brutalises, and the legitimising of brutality is leading to escalating violence in South Africa. The example which the law permits the Government to set does not encourage respect for the law or for ordinary humanity.
- + The Security Legislation, with all its harshness and authoritarianism, is destroying the moral fibre of the South African people.

RECOMMENDATIONS :

- + Restore the right of habeas corpus in all circumstances.
- + Remove the power to close courts, so that justice can be seen to be done.
- + Clarify and reduce the scope of all definitions of crimes against the State, delineating specific and recognizable limits to such crimes as treason, terrorism, sabotage, and restoring their conventionally understood meanings.
- + Abolish the principle of preventive detention and detention of witnesses.
- + Make the exercise of power of those enforcing security legislation accountable to the Courts of the land and the people.
- + Restore confidence in the due processes of the law.

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People are entitled to disagree with Government policy, but those who do so feel threatened and insecure, are reluctant to express their dissent, and are thus prevented from making their necessary and important contribution to the business of democratic government.

Ordinary people feel vulnerable, exposed and totally unprotected.

A government which needs to impose restrictive legislation upon its own citizens in order to achieve the so-called security of the State is obviously not reflecting the views, opinions and wishes of the majority of the people it governs; for if it were such legislation would not be necessary. Contented people constitute no threat to the 'State'.

It is suggested that the Government should examine the root causes of its apparent insecurity and seek to remedy them rather than tinker with palliatives.

JOYCE HARRIS
NATIONAL PRESIDENT.

November, 1979.